**Sample Document**

**Pledge Deed – Standard Terms**

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| --- | --- |
| **What is this sample document usually called?** | Pledge Deed. |
| **What group of documents does it belong to?** | Project Financing Documents.  See *What other documents are closely related to it?* below. |
| **Who will sign it?** | Proponent.  Pledgor. |
| **When is it used?** | Partnerships Addressing Disadvantage arrangements (**PAD Arrangement**). |
| **What does it do?** | Pledgors pledge an aggregate agreed upon amount to the Proponent for the purpose of supporting the Project. |
| **What areas does it cover?** | * Mechanics to enable Pledgors to make a pledge (including an applicable aggregate Pledge limit). * Conditions precedent to the provision of each Pledge. * Representations, warranties and undertakings. * Assignment and amendment provisions. |
| **What drafting options does it include?** | **Optional Provisions** that may be applicable to a transaction.  Drafting instructions are included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features. |
| **What other documents are closely related to it?** | * Loan Agreement – provides for a loan from the Financier to the Proponent. * Master Guarantee Deed – provides for a guarantee of the payment of all amounts due and owing by the Proponent to the Financier by the First Loss Guarantor and all Additional Guarantors. * Guarantor Accession Deed Poll – enables Additional Guarantors to accede to the Master Guarantee Deed. * Side Deed – details, among other things, certain undertakings made by the Proponent and the Financier to the State of Victoria (acting through a named Government Department) (the **State**) and the State’s limited liability. |
| **What should we do before we use this sample document?** | This sample document contains general provisions and other information only and does not take into account the objectives, needs or financial arrangements of any particular transaction.  Before using this sample document, you should:   * carefully consider and make your own assessment of whether it is appropriate for the PAD Arrangement or other transaction that you are considering; * perform your own independent investigation and analysis of the suitability and appropriateness of this sample document for any PAD Arrangement or other transaction that you are considering; * consult your own legal, tax, financial and other professional advisers as part of your assessment of this sample document and its suitability for your transaction; and * satisfy yourself that cross references in the sample document to other provisions of the sample document, or to any provisions or the names of other documents, are correct. |
| **Why is this sample document available?** | This sample document is intended to provide a guide for, and to streamline the development of, the documentation (and specific provisions) that is used for a PAD Arrangement.  Parties are advised that the State will be responsible for the initial preparation and any re-drafting of the Implementation Agreement in connection with any PAD Arrangement, and this sample document is intended to be used as the basis for preparing that document. The State would expect to take into account in any evaluation of a proposed PAD Arrangement any requests for material departures from the sample document and the reasons for the departures and the possible implications for time, cost and efficiency.  The acceptance of the final form of this document by the State will be a key condition for any agreement of the terms of a PAD Arrangement. However, it may not be suitable in all circumstances and the State reserves the right to require a departure from this sample document in order to address the specifics of a particular PAD Arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. |
| **Where can I get further information?** | If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to pads@dtf.vic.gov.au. |

**Legal matters**

This sample document has been prepared by Norton Rose Fulbright Australia at the request of, and in consultation with, the Victorian Department of Treasury and Finance (**DTF**) and its advisers. It forms part of a suite of sample transaction documents that has been developed by DTF for use in connection with PAD arrangements.

No reliance may be placed for any purposes whatsoever on the provisions and other information contained in this sample document (or any other communications or materials separately provided or discussed verbally in connection with this sample document) or on its completeness, accuracy or fairness. No representation or warranty, expressed or implied, is given by, or on behalf of, the State, Norton Rose Fulbright Australia or any other person as to the provisions and other information included in this sample document being acceptable to the State in all circumstances, that it is suitable for any particular PAD arrangement or as to the accuracy or completeness of the provisions or other information contained in this sample document and no liability whatsoever is accepted by the State or Norton Rose Fulbright Australia for any loss howsoever arising, directly or indirectly, from any use of such provisions or other information or otherwise arising in connection with it. The provisions and other information in this sample document are subject to negotiation, verification, completion and change.

|  |
| --- |
| Dated  **Pledge Deed**  Parties  [Pledgor]  [Borrower][ACN/ABN] |
|  |

**Deed** dated

**Parties <OPT TEXT if there is only one Pledgor:**

[Pledgor(s) name] [ACN/ABN] of [address](**Pledgor**)

**END OPT TEXT>**

**<OPT TEXT if there are multiple Pledgors:**

[Pledgor1(s) name] [ACN/ABN] of [address]

[Pledgor2(s) name] [ACN/ABN] of [address]

[Pledgor3(s) name] [ACN/ABN] of [address]

(collectively, the **Pledgor**)

**END OPT TEXT>**

[Borrower name] [ACN/ABN] of [address](**Borrower**)

**Recitals**

A [Insert description of Pledgor(s)].

B [Insert description of the Borrower].

C By entering into this deed, the Pledgor, in accordance with [insert description of any applicable Pledgor constituent documents], has agreed to make the Pledge(s) available to the Borrower for the purpose of supporting the Project up to an aggregate amount equal to the Pledge Amount.

**The Pledgor declares**

## **Definitions**

In this deed:

### **Authorisation** means:

#### an authorisation, consent, approval, resolution, licence, exemption, filing, lodgement or registration required by any Governmental Agency or any law; or

#### in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action;

### **Availability Period** means the period commencing on the date of this deed, and ending on [date] (or such later date as agreed to by the Pledgor);

### **Business Day** means a day that is not a Saturday, Sunday or public or bank holiday in Melbourne, Australia;

### **Corporations Act** means the *Corporations Act 2001* (Cth);

### **Finance Documents** has the meaning given to that term in the Loan Agreement;

### **Financier** has the meaning given to that term in the Loan Agreement;

### **First Loss Guarantor** has the meaning given to that term in the Loan Agreement;

### **Governmental Agency** means any government or governmental, semi-governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

### **Guaranteed Moneys** has the meaning given to it in the Master Guarantee Deed;

### **Implementation Agreement** means the implementation agreement standard terms dated on or about [insert date] between the State of Victoria and the Borrower;

### **Loan Agreement** means the loan agreement dated on or about [date] between the Borrower and the Financier (as may be varied, extended, replaced or novated);

### **Master Guarantee Deed** means the document of that title dated on or about [date] made by the Borrower, the First Loss Guarantor and the Financier;

### **Party** means a party to this deed;

### **Pledge** means a pledge created by the Pledgor in favour of the Borrower under this deed;

### **Pledge Amount** means A$[insert Pledge Amount];

### **Pledge Date** means the date on which the relevant Pledge Amount is to be paid to the Borrower;

### **Pledge Request** means a request made by the Borrower to the Pledgor for the payment of a certain amount by the Pledgor in the form set out in Schedule 1 of this deed;

### **Project** means [insert description and purpose of Project];

### **Secured Monies** means all amounts from time to time due and owing by the Borrower to the Financier under or pursuant to the Finance Documents;

### **Security** means any security, guarantee or other obligation under any document;

### **Specified Limit** means the ‘Specified Limit’ (as defined in the Master Guarantee Deed) in respect of the First Loss Guarantor;

### **State of Victoria** means the State of Victoria acting through the [insert Department];

### **<OPT TEXT insert if the/any Pledgor is a trustee:**

### **Trust** means [insert the name and details of the Trust];

### **END OPT TEXT>**

### **<OPT TEXT insert if the/any Pledgor is a trustee:**

### **Trust Deed** means [insert date of trust instrument and parties to trust instrument];

### **END OPT TEXT>**

### **<OPT TEXT insert if the/any Pledgor is a trustee:**

### **Trustee** means [insert the name and details of the/ any Pledgor who is a trustee]; and

### **<OPT TEXT If more than one party** (together the **Trustees** and each a **Trustee**) **END OPT TEXT>.**

### **END OPT TEXT>**

### **Undrawn Amount** means, at any time, the Pledge Amount less the aggregate of all amounts provided to the Borrower under clause 2.1, at that time.

## **Interpretation**

### In this deed, unless the context indicates otherwise, reference to:

#### one gender includes the other gender;

#### the singular includes the plural and the plural includes the singular;

#### a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;

#### a party to this deed or another agreement or document includes the party's executors, administrators, successors and permitted substitutes or assigns;

#### a document or agreement includes a reference to the document or agreement as amended, varied or replaced from time to time; and

#### any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

### Headings and any table of contents or index are for convenience only and do not form part of this document or affect its interpretation.

### A$, AUD and Australian dollars denote the lawful currency of Australia.

# Pledge

## **Availability of the Pledge Amount**

### Subject to the terms of this deed, the Pledgor will provide the Pledge(s) to the Borrower during the Availability Period on the date(s) requested in writing by the Borrower, provided that the date on which such a request is made is not less than 90 days (or such shorter period as the Pledgor may agree) before the date the relevant Pledge is to be made.

### The Pledge Amount may be provided in 1 or more advances.

## **Conditions Precedent to each Pledge**

[***Note*** *– the following list of Conditions Precedent is illustrative only and is not exhaustive. The State and/or the Pledgor may require that additional or alternative conditions be included under this section. The nature of conditions to be included may vary with the transaction structure for a particular PAD Arrangement. In particular, the drafting below contemplates that the First Loss Guarantor will always be liable for the total Specified Limit, regardless of whether the Facility is fully drawn at the time the guarantee/pledge is called upon.*

*Regard should be had to the timings by which each condition can be reasonably expected to be satisfied.*]

The right of the Borrower to request payment of a Pledge and the obligation of the Pledgor to make the Pledge available to the Borrower are subject to the Pledgor having been provided with evidence that:

### the Pledgor has received a duly completed and signed Pledge Request;

### the Financier has made one or more demands on the First Loss Guarantor for payment of the Guaranteed Moneys;

### either:

#### if the amount of Guaranteed Money demanded exceeds the Specified Limit, the First Loss Guarantor has paid an amount equal to the Specified Limit; or

#### if the amount of Guaranteed Money demanded does not exceed the Specified Limit, the First Loss Guarantor has failed to pay any part of the Guaranteed Money in accordance with the Master Guarantee Deed; and

#### the Borrower’s request for payment of that Pledge against the Pledgor is made on a rateable basis with all other pledgors or guarantors of the Borrower’s obligations under the Finance Documents, taking into account the aggregate liability limit corresponding to each such pledgor or guarantor; and

### the Loan Agreement has not been amended, supplemented or changed after the date of this deed except where the Pledgor has consented to that amendment, supplement or change.

## **Limit of Pledges**

The Borrower will not be entitled to request payment of a Pledge and the Pledgor will have no obligation to comply with any request to make the Pledge available if payment of such Pledge would result in the aggregate of all Pledges exceeding the Pledge Amount.

## **Application of Pledges**

The Borrower may only use a Pledge:

### towards payment of the Secured Monies to the Financier; or

### for any other purpose the Pledgor agrees to in writing.

## **Cancellation**

After the Availability Period, any Undrawn Amount will be cancelled.

# Representations, warranties and undertakings

## **Representations and warranties**

[***Note*** *– the following list of representations and warranties is illustrative only and is not exhaustive. The State and/or the Pledgor may require that additional or alternative representations and warranties be included under this section. The nature of representations and warranties to be included may vary with the transaction structure for a particular PAD Arrangement.*]

The Pledgor represents and warrants to the Borrower that:

### the obligations expressed to be assumed by it in this deed are, subject to any necessary stamping, Authorisations, equitable principles and laws generally affecting creditors' rights, legal, valid, binding and enforceable obligations;

### each Authorisation necessary to enable it lawfully to enter into, exercise its rights and comply with its obligations in this deed to which it is a party and to make this deed to which it is a party, its legal, valid binding and enforceable obligations, admissible in evidence in its jurisdiction of incorporation or domicile have been obtained or effected and are in full force and effect;

### the entry into and performance by the Pledgor of, and the transactions contemplated by, this deed does not and will not conflict with:

#### any law or regulation applicable to the Pledgor; or

#### any agreement or instrument binding upon the Pledgor or any of its assets or constitute a default or termination event under any such agreement or instrument;

### all documents which have been given by or on behalf of the Pledgor to the Borrower in connection with this deed are true and complete copies and are in full force and effect;

### any factual information provided by or on its behalf in connection with this deed was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;

### nothing has occurred or been omitted from the information provided by the Pledgor in writing in connection with this deed and no information has been given or withheld that results in the information provided by the Pledgor to the Borrower being untrue or misleading in any material respect; and

### no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started or (to the best of its knowledge and belief) threatened against it.

## **Undertakings**

The Borrower must provide to the Pledgor:

### promptly, such information regarding the financial condition, business and operations of the Borrower as the Pledgor may reasonably request;

### promptly, such information as the Pledgor may reasonably require about the Implementation Agreement and compliance of the Borrower with the terms of the Implementation Agreement;

### promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower, and which might, if adversely determined, have a material adverse effect on the Borrower and/ or the Project; and

### promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against the Borrower which is reasonably likely to have a material adverse effect on the Borrower and/ or the Project.

### **<OPT TEXT if Pledgor is/ are trustee(s)**

### **[DRAFTING NOTE: Use singular if there is only one Trustee and plural if there are multiple Trustees]**

# Trustee Representations

[***Note*** *– the following list of representations to be given by a trustee (if applicable) is illustrative only and is not exhaustive. The State and/or the Pledgor may require that additional or alternative representations be included under this section. The nature of representations and warranties to be included may vary with the transaction structure for a particular PAD Arrangement.*]

## **General**

### In addition to the representations and warranties in clause 3.1, [the Trustee/ each Trustee] makes the following representations and warranties to the Borrower, as trustee:

### The Trustee[s] [is/ are] the only trustee[s] of the Trust.

### The Trust is properly constituted. No action has been taken or, to the best of [the Trustee’s/ each Trustee’s] knowledge and belief, proposed by any person with the power or standing to do so to terminate or resettle the Trust.

### The Trust is not a managed investment scheme which must be registered under Part 5C.1 of the Corporations Act.

### Entry into this deed and performance by [the Trustee/ each Trustee] of the transactions contemplated by this deed does not and will not conflict with the Trust Deed or any agreement or instrument binding upon Trust assets.

### The copy of the Trust Deed given to the Borrower on or before the date of this deed is a true and up to date copy and discloses all the terms of the Trust, other than those implied by law.

### The Trust Deed constitutes valid, binding and enforceable obligations of the parties to it, is duly stamped and complies with all applicable laws.

### [The Trustee/ Each Trustee] has power:

#### under the Trust Deed to own the Trust assets and carry on the business of the Trust as it is being conducted; and

#### to enter into this deed and the transactions it contemplates, exercise its rights under this deed and comply with its obligations in connection with it as trustee of the Trust and in doing so it has acted and is acting properly. All requirements to enable it to do so have been and remain satisfied.

### Except as expressly permitted by this deed, no Trust asset has been resettled or vested in any person. No one is presently entitled to call for the distribution of Trust assets.

### [The Trustee/ Each Trustee] enjoys the benefit of and may exercise and enforce rights of indemnity or other rights to apply, use or retain Trust assets to satisfy its obligations arising under or in connection with this deed and the transactions it contemplates, without the consent or approval of any person or court. Those rights are not subject to a limitation or obligation to make good or clear accounts and the Borrower may subrogate to them except to the extent affected by their own conduct.

### After taking into account all other present and contingent liabilities, the Trust assets are sufficiently valuable and liquid to satisfy in full [the Trustee’s/ each Trustee’s] indemnity with respect to its payment obligations in connection with this deed and the transactions it contemplates as and when they become due and payable.

### No application or order has been sought by a person other than the Borrower or has been made in any court for a person to subrogate to [the Trustee’s/ each Trustee’s] indemnity with respect to Trust assets.

### To the extent that its payment obligations under this deed are not indemnified out of Trust assets, they rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors of the Trust, except for obligations mandatorily preferred by law applying to companies generally.

## **Repetition**

## The representations and warranties in clauses 3.1 and 4 are taken to be repeated on each day on which a Pledge is provided on the basis of the facts and circumstances as at that date.

## **Reliance**

## [The Trustee/ Each Trustee] acknowledges that they have entered into this deed in reliance on the representations, warranty, promise, undertakings or statement made by or on behalf of the Borrower.

## **Survival**

## All representations and warranties by [the Trustee/ each Trustee] survive the execution and delivery of the Loan Agreement or related documents and the provision of advances and accommodation.

**END OPT TEXT>**

# Assignment

## **No assignment by the Pledgor**

### The Pledgor must not assign or otherwise deal with this deed or any interest created by this deed without the prior written consent of the Borrower.

### Notwithstanding clause 5.1(1), the consent of the Borrower is not required where, if the Pledgor is a trustee of a trust, such assignment or other dealing is to a replacement trustee of that trust.

## **Assignment of rights**

### The Borrower must not assign or otherwise deal with this deed or any interest created by this deed without prior consent of the Pledgor.

### Notwithstanding clause 5.2(1), the consent of the Pledgor is not required where such assignment or other dealing is in accordance with clause [insert clause reference] of the Implementation Agreement.

# Amendments to the Loan Agreement

## The Borrower may not amend, supplement or change any provision in the Loan Agreement without the prior written consent of the Pledgor (such consent not to be unreasonably withheld).

# Governing law

This deed is governed by the laws in force in the State of Victoria and the Parties submit to the non‑exclusive jurisdiction of the courts of the State of Victoria.

# Notices

## All notices or other communications to or by a Party to this deed:

### must be in writing;

### will be treated as being given or made (in the case of delivery in person or by post) when delivered, received or left at the address of the recipient shown below, but if delivery or receipt is on a day that is not a Business Day in the place to which the communication is sent or is later than 4.00 pm (local time), it will be treated as being given or made at the commencement of business on the next Business Day in that place; and

### must be addressed to the recipient at the address or facsimile number specified below for that Party or any other address or facsimile number as subsequently notified by one Party to the other parties for the purposes of this deed.

The address and facsimile number of each Party is:

**Pledgor**

Address: [insert address]

Facsimile: [insert facsimile]

Attention: [insert name]

**Borrower**

Address: [insert address]

Facsimile: [insert facsimile]

Attention: [insert name]

# Miscellaneous

## This deed may not be amended, supplemented or changed, nor may any provision be waived, except in writing signed by each of the Parties.

## Where a Party does not exercise any right under this deed (which includes the granting by a Party to any of the other Parties of an extension of time in which to perform its obligations under any of these provisions), this is not deemed to constitute a forfeiture of that Party's right under this deed.

## This deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.

**Executed** as a deed and delivered on the date shown on the first page.

[***Insert execution clauses***]

**Schedule 1 Form of Pledge Request**

From: [Borrower name] [ACN/ABN] of [address](**Borrower**)

To: **<OPT TEXT if there is only one Pledgor:**

[Pledgor(s) name] [ACN/ABN] of [address](**Pledgor**)

**END OPT TEXT>**

**<OPT TEXT if there are multiple Pledgors:**

[Pledgor1(s) name] [ACN/ABN] of [address]

[Pledgor2(s) name] [ACN/ABN] of [address]

[Pledgor3(s) name] [ACN/ABN] of [address]

(collectively, the **Pledgor**)

**END OPT TEXT>**

Dated:

**Pledge Deed made between the Borrower and the Pledgor dated [insert date] (Deed)**

1 We refer to the Deed. This is a Pledge Request. Terms defined in the Deed have the same meaning in this Pledge Request unless given a different meaning in this Pledge Request.

2 We request that you provide [the/a] Pledge on the following terms:

Pledge Date: [ ] (or, if that is not a Business Day, the next Business Day)

Pledge Amount: A$\_\_\_\_\_\_\_

3 We confirm that each condition specified in clause 2.2 (*Conditions Precedent to each Pledge*) of the Deed is satisfied on the date of this Pledge Request.

4 The proceeds of this Pledge Amount should be credited to [*insert Borrower’s account details*].

5 This Pledge Request is irrevocable.

[***Insert execution clause of Borrower***]