



Department of **Education**

Department of **Treasury**

WA Schools PPP Project

Finance Direct Deed

The State of Western Australia (**State**)

and

Minister for Works

and

Minister for Education

and

EduWest Project Co Pty Ltd in its personal capacity and in its capacity as trustee for the EduWest Project Trust

and

National Australia Bank Limited

and

National Australia Bank Limited

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Finance Direct Deed

This deed is made on 2015
between

The State of Western Australia (**State**)

and

The Minister for Works, a body corporate constituted under section 5 of the *Public Works Act 1902 (WA)*

and

The Minister for Education, a body corporate constituted under section 214 of the *Schools Education Act 1999 (WA)*

and

EduWest Project Co Pty Ltd ACN 608 027 434 in its personal capacity and in its capacity as trustee for the EduWest Project Trust (**Project Co**)

and

National Australia Bank Limited ABN 12 004 044 937 (**Facility Agent**)

and

National Australia Bank Limited ABN 12 004 044 937 (**Security Trustee**)

and the parties agree as follows:

Recitals

- A. The background to the Project is set out in the Deed.
- B. In accordance with the Finance Documents, financial accommodation is to be provided for the purpose of enabling Project Co to perform and comply with its obligations under the Deed.
- C. It is a condition of the financial accommodation that Project Co grants to the Security Trustee, Encumbrances over Project Co's rights, title and interests in the Project.
- D. This deed recognises the Encumbrances held by the State and the Security Trustee in connection with the Project.

Operative Provisions

1 Definitions and Interpretation

1.1 General

In this deed, unless the context otherwise requires, or where defined in Clause 1.2, capitalised terms in this deed have the meaning given to them in Clause 1 (Definitions) of the Deed.

1.2 Definitions

In this deed:

Term	Meaning
<i>Beneficiaries</i>	means the beneficiaries from time to time under the Security Trust Deed.
<i>Collateral Security</i>	any present or future Encumbrance, guarantee or other document or Deed created or entered into by Project Co or any other person as security for, or to credit enhance, the payment of any secured moneys under the Finance Documents.

Term	Meaning
<i>Consent Deed</i>	means each consent deed referred to in the definition of Finance Documents.
<i>Debt</i>	means Project Debt together with accrued interest, plus or minus any amounts payable or receivable under any hedging or swap arrangements forming part of the Finance Documents and deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of Project Co or any Financier and related to the Project but does not include equity shareholder loans or amounts in the nature of equity.
<i>Deed</i>	means the document entitled “the WA Schools PPP Project Project Deed” entered into between the State, the Minister for Works, the Minister for Education and Project Co dated on or about the date of this deed.
<i>Encumbrance</i>	means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.
<i>Enforcing Party</i>	means the Security Trustee, any agent, attorney, trustee, receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed in accordance with any Project Security.
<i>Equity Interest</i>	means the securities issued by, or other ownership interests in, Project Co and the Project Trust.
<i>Finance Default</i>	means: <ul style="list-style-type: none"> (a) any event of default (however described) under the Finance Documents; or (b) any event which entitles a Finance Party to cease to make available financial accommodation in connection with Project Co’s Financial Indebtedness (other than voluntary cancellation of financial accommodation by Project Co which the directors of Project Co determine is surplus to the requirements of Project Co to deliver the Project in full compliance with the State Project Documents).
<i>Finance Party</i>	means the Security Trustee, the Facility Agent, each Financier and each other Beneficiary.
<i>Financiers’ Cure Program</i>	means the cure program developed under Clause 4.3(c) or agreed or determined under Clause 4.3(d), as amended from time to time in accordance with this deed.
<i>Financiers’ Securities</i>	means: <ul style="list-style-type: none"> (a) the document entitled ‘General Security Deed – WA Schools PPP’ dated on or about the date of this deed between, among others, Project Co, Finance Co and the Security Trustee; (b) the document entitled ‘Featherweight Security Agreement –

Term	Meaning
	<p>WA Schools PPP' dated on or about the date of this deed between the Security Trustee and Project Co; and</p> <p>(c) any Collateral Security.</p>
<i>Fit and Proper Person</i>	<p>(a) subject to paragraph (b), means a person in respect of whom the State would not be entitled to reasonably withhold its consent to such person acquiring Control of Project Co, in accordance with Clause 48.5 (State's right to withhold consent) of the Deed; and</p> <p>(b) in respect of Clause 5.8(b), for the purposes of determining whether an Enforcing Party is a Fit and Proper Person, an insolvency partner from one of the firms listed below will be taken to be a Fit and Proper Person:</p> <ul style="list-style-type: none"> (i) [Not disclosed]; (ii) [Not disclosed]; (iii) [Not disclosed]; (iv) [Not disclosed]; (v) [Not disclosed]; (vi) [Not disclosed]; (vii) [Not disclosed]; (viii) [Not disclosed]; (ix) [Not disclosed]; (x) [Not disclosed]; (xi) [Not disclosed]; (xii) [Not disclosed].
<i>PD Default Event</i>	<p>means a Major Default or Default Termination Event under the Deed.</p>
<i>Permitted Amendment</i>	<p>has the meaning given to it in Clause 9.1(c).</p>
<i>Permitted Qualifying Transferee</i>	<p>has the meaning given in Schedule 1 (Permitted Qualifying Transferees).</p>
<i>Project Account</i>	<p>means each "Project Account" as defined in the Facility Agreement and any other account of Project Co with a Finance Party.</p>
<i>Project Co's Rights</i>	<p>means Project Co's rights under the Project Documents.</p>
<i>Project Securities</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the State Security; and (b) the Financiers' Securities, <p>and "Project Security" means each or any one of them (as applicable).</p>
<i>Secured Money</i>	<p>has the meaning given in the State Security.</p>

Term	Meaning
<i>Solvency Controller</i>	means any agent, trustee (including a trustee in bankruptcy, receiver or similar officer), receiver and manager, liquidator or provisional liquidator appointed pursuant to any security or otherwise and includes a mortgagee in possession.
<i>State Priority Moneys</i>	means all amounts: <ul style="list-style-type: none"> (a) owed to the State under: <ul style="list-style-type: none"> (i) Clause 41.7 (Payment on termination) of the Deed; and (ii) Clause 5.4 (Indemnity) of the D&C Direct Deed or Clause 5.4 (Indemnity) of the Services Subcontractor Direct Deed; and (b) incurred by the State in exercising its step-in rights under Clause 5.1 (Step-in Right) of the D&C Direct Deed or the Services Direct Deed (as applicable) or Clause 4.1 (the State's right to remedy) of the D&C Direct Deed and or the Services Direct Deed (as applicable).
<i>Trustee Documents</i>	each Project Document to which Project Co is a party as trustee of the Project Trust.

1.3 Interpretation

In this deed unless the context otherwise requires:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed, Schedule and clause references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this deed;
 - (ii) a section is a reference to a section of a Schedule; and
 - (iii) a paragraph is a reference to a paragraph in the clause in which the reference appears;
- (d) **(Deed as amended)**: a reference to this deed or to any other deed, agreement, or instrument includes a reference to this deed or such other deed, agreement, or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a 'party' is a reference to a party to this deed;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, a body politic, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trustee and a trust;
- (g) **(other persons)**: a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (h) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

- (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (k) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **("\$")**: a reference to "\$", AUD or dollar is a reference to Australian currency;
- (n) **(time)**: a reference to time is a reference to time in Perth, Australia;
- (o) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes communication by email;
- (p) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (r) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, State Representative or Principal, as applicable, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (s) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (t) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision;
- (u) **(no double counting)**: if this deed requires calculation of an amount payable to a party there must be no double counting in calculating that amount, which, for the avoidance of doubt includes amounts calculated in accordance with the Schedules to this deed; and
- (v) **(PPSA)**: each of the terms "financing statement" and "financing change statement" have the meanings given to them in the PPSA.

1.4 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this deed which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Security Trustee obligations)**: Each Finance Party acknowledges the obligations and risks accepted by the Security Trustee under this deed and agrees, to the extent applicable, to comply with or accept the relevant obligation or risk and not cause the Security Trustee to breach its obligations under this deed.
- (c) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.

1.5 Capacity of Security Trustee and Facility Agent

- (a) The Security Trustee enters this deed as trustee for the Beneficiaries without incurring Liability in any other capacity and with recourse limited to the Security Trustee's right of indemnity;
-

- (i) out of the assets of the trust established under Clause 2 of the Security Trust Deed; and/or
 - (ii) from the Beneficiaries.
- (b) The provisions of this Clause 1.5 do not apply to any obligation or Liability of the Security Trustee to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Security Trustee's indemnification out of the trust assets in accordance with the Security Trust Deed because the Security Trustee has been guilty of fraud, wilful misconduct or gross negligence.
- (c) The Facility Agent enters into this deed in the capacity as agent for each of the Financiers and each other Beneficiary and, as such, the Financiers and each other Beneficiary from time to time (including any new or substitute Financier or Beneficiary) are parties to this deed. No party to this deed is obliged to enquire whether an exercise by the Facility Agent of any right is within the Facility Agent's authority as agent of the Financiers or other Beneficiaries.

1.6 Order of precedence

To the extent of any inconsistency, ambiguity or discrepancy between this deed and any other State Project Document, this deed prevails.

1.7 Project Documents

The Security Trustee agrees that it has received a copy of the Project Documents.

1.8 Finance Documents

Project Co represents and agrees that:

- (a) before the date of this deed, it has fully disclosed to the State the terms of the Finance Documents; and
- (b) those Finance Documents are, on the date of this deed, the only documents governing or creating Project Co's Financial Indebtedness.

1.9 Assumptions

Each other party to this deed may assume that the Security Trustee and the Facility Agent have been duly appointed, that their respective appointments have not been terminated or suspended (or the terms of their respective appointments materially amended) and that they are authorised to give any instruction, notice, consent or direction which they purports to give in accordance with this deed.

1.10 Continuance of rights

- (a) This deed does not affect the liabilities, rights, powers or remedies of a party in accordance with any other Project Document, except to the extent expressly provided in this deed.
- (b) The failure by a party (other than Project Co) to comply with the provisions of this deed does not affect the Liability of Project Co under any other Project Document.

1.11 Representations and warranties

Each party represents and warrants to each other party that:

- (a) it has power to enter into this deed and perform its obligations in accordance with or as contemplated by this deed and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this deed constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors rights generally and subject to the availability of equitable remedies; and
- (c) the execution by it of, the performance by it of its obligations in accordance with, and the compliance by it with the provisions of, this deed does not and will not contravene any Law to which it is subject.

1.11A Project Trust warranties and representations

Project Co warrants and represents that:

- (a) **(trust power)**: Project Co has power as trustee of the Project Trust to execute the Trustee Documents and enter into every transaction under which Secured Money is or becomes payable;
- (b) **(due performance)**: in executing the Trustee Documents and entering into the transactions referred to in Clause 1.11A(a) Project Co has properly performed its obligations to the Trust Beneficiaries;
- (c) **(trust action taken)**: all necessary action required by the Project Trust Deed to authorise Project Co's unconditional execution and delivery of, and compliance with its obligations under, the Trustee Documents has been taken;
- (d) **(sole trustee)**: Project Co is the only trustee of the Project Trust;
- (e) **(no removal action)**: to the best of its knowledge and belief, no action has been taken to remove Project Co as trustee of the Project Trust or to appoint an additional trustee of the Project Trust;
- (f) **(right of indemnity)**:
 - (i) Project Co has a right to be fully indemnified out of the Trust Property in relation to the Secured Money;
 - (ii) Project Co has not released or disposed of its equitable lien over the Trust Property which secures that indemnity;
 - (iii) Project Co has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its rights of indemnity or equitable lien; and
 - (iv) the Trust Property is sufficient to satisfy that indemnity;
- (g) **(no trust default)**: Project Co has not defaulted in the performance and observance of its obligations as trustee of the Project Trust in any material respect;
- (h) **(no trust termination)**: to the best of its knowledge and belief, no action has been taken to terminate the Project Trust;
- (i) **(full trustee disclosure)**: Project Co has disclosed to the State full details of:
 - (i) the Project Trust and any other trust or fiduciary relationship affecting the Trust Property and, without limitation, has given to the State copies of any instruments creating or evidencing the Project Trust; and
 - (ii) its other trusteeships (if any);
- (j) **(trust duly constituted)**: the Project Trust is duly constituted and is not void, voidable or otherwise unenforceable; and
- (k) **(Trust Beneficiaries' rights)**: the rights of the Trust Beneficiaries in relation to, and their interest in, the Trust Property are subject to:
 - (i) the rights of the State in relation to, and its interest in, the Trust Property created by this document; and
 - (ii) any rights or interests in the Trust Property to which the State may from time to time be subrogated.

1.12 Conditions Precedent

The satisfaction or waiver of the Conditions Precedent under the Deed is a condition precedent to the coming into operation of this deed (other than this Clause 1.12).

1.13 Liability

- (a) Project Co is liable under the Trustee Documents as trustee of the Project Trust and in Project Co's own right.
- (b) A reference in any Trustee Document to:
 - (i) Project Co includes Project Co as trustee of the Project Trust and Project Co in its own right; and
 - (ii) Project Co's property includes property owned by Project Co as trustee of the Project Trust and property owned by Project Co in its own right.

2 CONSENT TO PROJECT SECURITIES

2.1 Consent by the State

- (a) The State consents to the Financiers' Securities and the Security Interests created thereunder.
- (b) The State agrees that the Encumbrances created under the Financiers' Securities are Encumbrances permitted by a Project Document for the purpose of the State Security and the Deed.

2.2 Consent by Security Trustee

- (a) The Finance Parties consent to the State Security.
- (b) The Finance Parties agree that the State Security is an Encumbrance permitted by a Project Document for the purposes of the Finance Documents.

2.3 Nature of consents

Neither the State, nor the Finance Parties by the consents given in Clauses 2.1 and 2.2, respectively have:

- (a) approved the terms of any document;
- (b) agreed, affirmed, represented or warranted the validity or enforceability or binding nature of any document; or
- (c) consented to any document granting or creating any interest in any right, title or property other than as set out in this deed.

3 Order of Priorities

3.1 Priority of handover obligations

Subject to Clause 8.2(b), each of Project Co and the Finance Parties agree that the State's rights under Clause 33 (Expiry Obligations) of the Deed have priority over any rights granted to the Security Trustee.

3.2 Priority of Project Securities

The parties agree that the order of priority of payment between the Financiers' Securities and the State Security is:

- (a) **(State Priority Moneys)**: first, the State Security for all State Priority Moneys due and payable at that time;
- (b) **(Debt)**: secondly, the Financiers' Securities for the aggregate of:
 - (i) Debt; and
 - (ii) amounts other than Debt due and payable by Project Co because of a breach of a Finance Document at that time;
- (c) **(State Security)**: thirdly, the State Security for any amounts secured by the State Security at that time, other than the State Priority Moneys paid in accordance with Clause 3.2(a); and
- (d) **(Financiers' Securities)**: fourthly, the Financiers' Securities for any amount secured by them at that time other than those to which Clause 3.2(b) applies, notwithstanding:
 - (e) **(other terms)**: anything contained in the Finance Documents or the State Security;
 - (f) **(dates of execution)**: the date or order of execution or registration of any of the Project Securities or any financing statement or financing change statement;
 - (g) **(order or moneys)**: the order in which any moneys may be or may have been advanced or deemed to be or have been advanced or become or became payable or secured under the respective Project Securities;
 - (h) **(payment or repayment)**: the payment or repayment in whole or in part from time to time of the money secured by the Financiers' Securities or the State Security;

- (i) **(fluctuations in secured amounts):** any fluctuation in the amount secured by the Financiers' Securities or the State Security from time to time;
- (j) **(acts and omissions):** the respective dates on which anything is done or omitted to be done under or in connection with the Financiers' Securities or the State Security;
- (k) **(payment dues):** the moneys secured by the Financiers' Securities or the State Security being contingently payable or not due for payment; or
- (l) **(contrary Law):** any rule of Law to the contrary.

3.3 Application of payments

For the purposes of giving effect to the agreed order of priority under Clause 3.2, the parties agree that any moneys received by the State, the Finance Parties or an Enforcing Party on enforcement of any of the Project Securities will be applied in the following order of priority:

- (a) first, *pari passu* towards the reasonable costs, charges and expenses of the State, the Security Trustee or any Enforcing Party appointed under the Project Securities incurred in the enforcement of a Project Security;
- (b) secondly, towards the remuneration of an Enforcing Party (other than the Security Trustee);
- (c) thirdly, towards the remuneration of the Security Trustee;
- (d) fourthly, to the State and the Security Trustee in accordance with the priorities set out in Clause 3.2; and
- (e) fifthly, any surplus amount is to be paid to an account in the name of Project Co with any bank nominated by Project Co. That surplus will not carry interest while held by the State or an Enforcing Party.

3.4 Contingent liabilities

If the Project Securities secure contingent Liabilities to the State or the Finance Parties then, until the State or the Security Trustee is satisfied that the contingent Liability has been extinguished, the State or the Security Trustee may retain from the proceeds of a realisation of their respective Project Security an amount consistent with the order and amount of priority established under Clause 3.2 which they reasonably estimate to be the amount of the contingent Liability.

3.5 Enforcement by the State

- (a) **(No enforcement without consent):** Subject to Clause 3.5(c), until the Actual Debt secured by the Finance Documents has been repaid in full or until termination of the Deed (whichever is earlier):
 - (i) the State will not take any action in or towards exercising any right, power or remedy in accordance with the State Security without the Security Trustee's consent (which consent must not be unreasonably withheld), unless that is necessary for the State to exercise its step-in rights under the Deed and the State Security with respect to an emergency or the State's right to cure defaults; and
 - (ii) must not petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of Project Co without first obtaining the consent of the Security Trustee.
- (b) **(Priority of enforcement action):** Subject to Clause 3.5(c):
 - (i) any enforcement action under the Financiers' Securities by the Security Trustee or an Enforcing Party appointed by a Finance Party will take precedence over any enforcement action by the State or an Enforcing Party appointed under the State Security; and
 - (ii) if an Enforcing Party is appointed in connection with any property in accordance with the Financiers' Securities, the Enforcing Party may upon notice to the State, assume possession and control of that property from any Enforcing Party in possession and control of that property in

accordance with any State Security and the State Security will not preclude or restrict the free dealing with the property by such an Enforcing Party, notwithstanding the security created by or any provision of any State Security to the contrary.

- (c) **(State's superior rights under Project Documents):** Clauses 3.5(a) and 3.5(b) do not:
- (i) prevent the State from exercising its rights at any time in accordance with the State Security to the extent necessary to allow the State to exercise its rights and give effect to Project Co's obligations in accordance with Clause 33 (Expiry Obligations) of the Deed;
 - (ii) affect the State's right to set-off under Clauses 34.7 (Set-off) and 41 (Termination) of the Deed;
 - (iii) prevent the State from enforcing the State Security upon the appointment of an administrator to Project Co by any person in accordance with Part 5.3A of the Corporations Act before or during the decision period (as defined in Section 9 of the Corporations Act) if at the time of enforcement by the State the Security Trustee is enforcing its Claim over the whole or substantially the whole of Project Co's property (and to the extent that the State is entitled to exercise its rights under this Clause 3.5(c), the State agrees that it will instruct an Enforcing Party to comply with Clause 3.5(b)); or
 - (iv) limit the rights of the State in connection with any third party.
- (d) **(Security Trustee appointed Enforcing Party to co-operate):** Without limiting Clause 3.5(c), if the State appoints an Enforcing Party in the circumstances referred to in 3.5(c)(i), then the Security Trustee must procure that any Enforcing Party appointed by the Security Trustee will promptly and fully cooperate with the Enforcing Party appointed by the State to the extent that the State reasonably requires and not do anything to prevent or hinder the Enforcing Party appointed by the State.
- (e) **(Status of State Security):** Nothing in this Clause 3.5 affects Project Co's obligation to comply in all respects with the State Security and other State Project Documents.

3.6 Receipts

If the State or a Finance Party receives any payment in cash or in kind or recovers any amount (including by way of set-off or combination of accounts) in relation to the Project (**Receipt**) which is:

- (a) not a payment required under any Project Document; or
- (b) a required payment but is not made in the manner and to the person prescribed in the relevant Project Document,

and a Project Security is enforced, then that party must apply the amount of the Receipt in accordance with Clauses 3.2 and 3.3.

3.7 Priority for all moneys

Subject to Clause 3.5(c), the order and amount of priority established under this Clause 3 applies to all amounts received or realised by way of set-off by the State or the Finance Parties on a realisation of the Project Securities.

3.8 Marshalling of Project Securities

Neither the State nor the Security Trustee is obliged to marshal in favour of the other. If any of the Project Securities becomes enforceable, each of the State and the Security Trustee in its absolute discretion may determine the extent (if any) to which it will have recourse to the Project Securities.

4 PD Default Events

4.1 Notice of PD Default Events

Without limiting the rights of the State under any State Project Document, the State will give the Security Trustee a copy of any notice given by the State to Project Co in connection with a PD Default Event at or about the same time as the notice is given to Project Co.

4.2 Information to Security Trustee

If the PD Default Event is capable of cure in accordance with the Deed:

- (a) without limiting any other obligations of Project Co under any Finance Document, Project Co must keep the Security Trustee informed of all measures taken or intended to be taken by Project Co to remedy the PD Default Event; and
- (b) the State must, upon notice from the Security Trustee, provide to the Security Trustee copies of all material correspondence and documents issued by the State to Project Co in connection with the PD Default Event.

4.3 Security Trustee's right to remedy

- (a) The Security Trustee may (but is not obliged to), upon notice to the State, take steps to remedy or procure the remedy of a PD Default Event and to develop a remedy program in connection with the PD Default Event in accordance with this Clause 4.3 (**Financiers' Cure Program**).
 - (b) The right to develop a Financiers' Cure Program is in addition to Project Co's right to remedy a PD Default Event in accordance with the Deed (to the extent that the PD Default Event is capable of cure). The remedy of a PD Default Event effected by an Enforcing Party will (as between Project Co and the State) be effective as a remedy of the relevant PD Default Event by Project Co.
 - (c) If the Security Trustee gives a notice to the State in accordance with Clause 4.3(a), the State and the Security Trustee must meet as soon as reasonably practicable to agree:
 - (i) the steps to be undertaken by an Enforcing Party to remedy the PD Default Event; and
 - (ii) a date by which the PD Default Event must be remedied (which date must be consistent with an Enforcing Party diligently pursuing the Financiers' Cure Program).
 - (d) If the Security Trustee and the State fail to agree on a Financiers' Cure Program, then any party may refer the matter for resolution by expert determination in accordance with Clause 13. The program agreed or determined in accordance with Clause 13 will be the Financiers' Cure Program.
 - (e) If a PD Default Event occurs the State must, to the extent reasonably requested by an Enforcing Party promptly provide the Enforcing Party with:
 - (i) reasonable assistance to allow the Enforcing Party all necessary access to the Site subject to the Project Documents; and
 - (ii) all material information in its possession relevant to the PD Default Event.
 - (f) If one or more further PD Default Events occur after the Security Trustee gives a notice to the State in accordance with Clause 4.3(a), the Security Trustee must take immediate steps to develop a Financiers' Cure Program in accordance with this Clause 4.3 for those PD Default Events.
 - (g) Without limiting any rights the Security Trustee can exercise in accordance with this Clause 4.3 or Clause 5.1, but subject to the acknowledgements in Clause 8.1, the Security Trustee agrees that neither it nor any other Enforcing Party will in any way interfere with the performance of the D&C Subcontract or the Services Subcontract without obtaining the State's prior consent, unless such action is permitted by the terms of the D&C Subcontract or the Services Subcontract (as applicable) or in accordance with the terms of the D&C Consent Deed or the Services Subcontractor Consent Deed.
 - (h) Where the word "remedy" or "cure" or any other grammatical forms of those words are used in this deed, it has the meaning given in Clause 40.1 of the Deed.
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4.4 Information

(a) **(Obligations of Security Trustee):** From the date that the Security Trustee notifies the State in accordance with Clause 4.3(a), the Security Trustee must, when requested to do so, update the State of the actions taken by an Enforcing Party in implementing the Financiers' Cure Program and the progress of the remedy of the PD Default Event in accordance with the Financiers' Cure Program.

(b) **(When extensions to be given):** If an Enforcing Party:

- (i) reasonably considers that the date specified for the remedy of a PD Default Event in accordance with the Financiers' Cure Program is no longer appropriate; and
- (ii) is and has been diligently pursuing the remedy of the PD Default Event by complying with the Financiers' Cure Program,

then, subject to Clause 4.4(f), the date specified in the Financiers' Cure Program for the remedy of the PD Default Event (including any extension to that date arising under this Clause 4.4) will be extended by such period as the State determines is reasonably required to enable an Enforcing Party to remedy the PD Default Event (or, in the circumstances of delay caused by a Relief Event, the period of delay caused by the Relief Event provided that the period of extension does not extend beyond the period of extension granted under Clause 4.5(a) of the Deed).

(c) **(Negotiation):** If the Security Trustee reasonably considers that the extension determined by the State under Clause 4.4(b) is not sufficient:

- (i) the Security Trustee may notify the State that it does not agree with the extension and the senior representatives of the State and the Security Trustee or their nominees (**Representatives**) must meet and use reasonable endeavours to resolve the dispute within 10 Business Days of receipt by the State of the notice from the Security Trustee; and
- (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and be binding on the parties.

(d) **(Dispute resolution):** If a dispute referred to in Clause 4.3(d) remains unresolved after the expiration of the period for negotiation, the Security Trustee:

- (i) may (provided that an Enforcing Party has been diligently pursuing the Financiers' Cure Program) refer the matter for resolution by expert determination in accordance with Clause 13; and
- (ii) whilst the matter is being determined, must continue to diligently pursue or procure that an Enforcing Party continues to procure the Financiers' Cure Program,

and, subject to Clause 4.4(f), the State must not terminate the Deed until such dispute is resolved.

(e) **(Diligent Pursuit):** For the purposes of this deed, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue the Financiers' Cure Program, regard must be had to the time necessary to enforce the D&C Subcontract or the Services Subcontract or to engage a substitute D&C or Services Subcontractor or Parent Guarantor of the D&C or Services Subcontractor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Security Trustee is not a builder, operator or a facilities management subcontractor (as applicable).

(f) **(Maximum remedy period):** The maximum period of time which an Enforcing Party may be given to remedy a PD Default Event will be 12 months from the date of the notice given by the State to the Security Trustee in connection with the PD Default Event under Clause 4.1, or as the State may otherwise agree, unless a Relief Event occurs, in which case the date is:

- (i) 12 Months from the date of default or as the State may otherwise agree; plus
 - (ii) the number of days that the Enforcing Party is prevented from carrying out its obligations because of the Relief Event,
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subject to the Enforcing Party demonstrating to the State's satisfaction (acting reasonably) that it has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Financier's Cure Program and provided that the period of extension does not extend beyond the period of extension granted under Clause 40.5(a) of the Deed.

4.5 Restrictions on termination

The State must not terminate the Deed unless the State has given the Security Trustee a copy of the notice in connection with the PD Default Event in accordance with Clause 4.1 and:

- (a) the Security Trustee:
 - (i) has not responded to the notice within 15 Business Days of receipt; or
 - (ii) has notified the State that it does not intend to remedy the PD Default Event; or
- (b) the Security Trustee notifies the State of its intention to develop a Financiers' Cure Program within 15 Business Days of receipt of the State's notice in connection with the PD Default Event in accordance with Clause 4.1 and:
 - (i) the PD Default Event has not been remedied by the earlier of:
 - (A) the date stated in the Financiers' Cure Program for the remedy of the PD Default Event (as may be varied from time to time in accordance with Clause 4.4); and
 - (B) the date which is 12 months from the date that the Security Trustee notifies the State that it intends to develop a Financiers' Cure Program in accordance with Clause 4.3(a); or
 - (ii) an Enforcing Party is not diligently pursuing or has not diligently pursued the remedy of the PD Default Event including by implementing the Financiers' Cure Program (if one has been agreed or determined),

provided however, that the State may not terminate the Deed due to a failure to which Clause 4.5(b)(ii) applies, unless it has given the Security Trustee notice of the failure and such failure has not been remedied within 20 Business Days of receipt of such notice by the Security Trustee.

4.6 No State liability

The State will not be liable to any Enforcing Party for any Claims or Liabilities incurred or sustained by that Enforcing Party in exercising any of its powers under or in connection with Clauses 4.3 or 4.4.

5 Enforcement by Security Trustee

5.1 Enforcement

Without limiting the actions which the Security Trustee may be entitled to take in connection with a PD Default Event (whether under the Finance Documents or otherwise), the Security Trustee and any Enforcing Party appointed under the Financiers' Securities may:

- (a) exercise Project Co's Rights;
- (b) engage another person to exercise Project Co's Rights; and
- (c) assign, novate, transfer or otherwise dispose of Project Co's Rights in whole or in part,

subject to in all cases to, the terms of the Finance Documents, this deed and the rights and duties of the Security Trustee and an Enforcing Party in accordance with the Financiers' Securities and at Law.

5.2 No Liability

- (a) Without limiting the Liability of Project Co (which continues to be responsible for the performance of its obligations under the Project Documents), the Finance Parties and any Enforcing Party will not be liable for any obligation or Liability of Project Co under the Project Documents by reason only of the Financiers'

Securities or the exercise of any of their rights, powers or remedies under the Financiers' Securities.

- (b) All money paid by the Finance Parties or an Enforcing Party and all acts, matters or things done or effected by them which would satisfy the obligations of Project Co under the Project Documents will be effective, as between the State and Project Co to fully satisfy and discharge the obligations of Project Co in connection with which such payment has been made or act, matter or thing has been done.

5.3 Restriction on set-off

- (a) Without limiting the operation of Clause 3 but subject to Clause 5.3(b), the Finance Parties agree none of them will exercise:
- (i) any right of set-off or combination of accounts in connection with the Project Accounts; or
 - (ii) any other right in connection with any of those accounts,
- the effect of exercise of which would be to apply money standing to the credit of the account in a way inconsistent with Clause 39 (Insurance) of the Deed and Clause 7.
- (b) Despite Clause 5.3(a), the rights set out in Clauses 5.3(a)(i) and 5.3(a)(ii) may be exercised:
- (i) if the Deed has been terminated or the State has given a termination notice and is immediately entitled to terminate the Deed under the Deed or this deed; or
 - (ii) to reduce Actual Debt if a Solvency Controller has been appointed to Project Co.

5.4 Security Trustee not to hinder

The Finance Parties must not knowingly exercise (and must procure that any Enforcing Party appointed under the Financiers' Securities will not knowingly exercise) any rights in a manner which interferes with, or restricts in any way, the proper and lawful exercise by the State of the State's rights under Clauses 33 (Expiry Obligations) or 34.7 (Set-off) of the Deed, the State Security, the D&C Direct Deed, the Services Subcontractor Direct Deed, this deed or any other side document entered into by the State in connection with the Project.

5.5 Third party account bank

Project Co must ensure that a Project Account is not held with a party (**Account Bank**) other than a Finance Party unless Project Co first procures that the Account Bank undertakes to the State to be bound by Clause 5.3 in the same terms as the Security Trustee.

5.6 Replacement of D&C or Services Subcontractor

- (a) If the Security Trustee or Project Co proposes to remedy a PD Default Event or a Finance Default by appointing a new contractor to replace the D&C or the Services Subcontractor, or by novating the D&C Subcontract or the Services Subcontract (and other relevant Project Documents) to a replacement contractor, then the party seeking the appointment or novation must first obtain the State's prior consent which consent must not be unreasonably withheld if the State is satisfied that the matters stated in Clause 5.6(b) are satisfied.
- (b) The State will give its consent if the State is reasonably satisfied that:
- (i) **(details):** Project Co or the Security Trustee has provided the State with details of the proposed replacement contractor and the terms and conditions on which the proposed replacement contractor is to be engaged;
 - (ii) **(compliance with Deed):** if the proposed replacement contractor were appointed, that the appointment and the replacement contractor would comply with Clauses 9.3(b) and 9.4 of the Deed in all respects;
 - (iii) **(terms and conditions):** except as otherwise agreed by the State, the proposed terms and conditions of the replacement contractor's engagement are not materially less onerous on the contractor than those that apply to the current contractor (or, if there is no current contractor,

the former contractor prior to its termination) and include a requirement to perform such of the obligations of the current contractor (or, if there is no current contractor, the former contractor prior to its termination) under the relevant Project Documents which remain unsatisfied;

- (iv) **(costs and expenses):** a person other than the State bears all the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
- (A) any enquiries which the State may make for the purposes of determining whether to consent to the replacement contractor;
 - (B) the procurement of a replacement contractor; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in connection with such documentation.

- (c) Subject to Clause 5.6(d), to the extent that the appointment of a replacement contractor in accordance with this Clause 5 involves the novation of a Project Document:

- (i) each of the State and the Security Trustee will release those Project Securities as it is necessary to release to facilitate the novation; and
- (ii) each party to this deed and each other party to the Project Documents consents to that novation,

but without prejudice to any accrued rights and Claims against the replaced contractor at the time of novation.

- (d) To the extent that the release of the Project Securities is necessary in accordance with Clause 5.6(c), each of the State and the Security Trustee is not obliged to release the Project Security unless immediately following the novation of a Project Document to the replacement contractor, the replacement contractor grants an Encumbrance in favour of the party who granted the release, on terms substantially similar to those of the released Project Security.

5.7 Disposal of Project Co's interest

- (a) If an Enforcing Party proposes to remedy a PD Default Event or a Finance Default by assigning, novating, transferring or otherwise disposing of Project Co's interest in, or obligations under the Project Documents in accordance with the Enforcing Party's rights or the Finance Parties' rights under the Finance Documents, the Security Trustee must first obtain the State's prior consent, which consent must not be unreasonably withheld if the State is satisfied the matters set out in Clause 5.7(b) are satisfied.
- (b) The State must give its consent if:
- (i) **(details):** the State has been provided with details of the proposed purchaser and the terms and conditions of the proposed disposal;
 - (ii) **(permitted disposal):**
 - (A) in relation to the disposal of an Equity Interest:
 - (1) the proposed assignment, transfer or disposal is permitted under Clause 48.6 (Permitted Share Capital Dealings and on-market acquisitions) of the Deed;
 - (2) the State is not permitted to withhold consent to that assignment, transfer or disposal under Clause 48.5 (State's right to withhold consent) of the Deed; or
 - (3) the State is reasonably satisfied that the Equity Interest is being assigned, transferred or disposed of to a person who:
 - a) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and

- b) has the necessary financial capacity and contractual and financing arrangements with third parties to perform, or procure that Project Co performs, Project Co's obligations under the State Project Documents; and
- (B) in relation to the disposal by an Enforcing Party of any of Project Co's property to a person (other than the Enforcing Party), the State is reasonably satisfied that the property is being assigned, transferred or disposed of to a person who:
 - (1) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person);
 - (2) has assumed all of Project Co's obligations under the State Project Documents; and
 - (3) has the necessary financial and technical capacity, access to the Project assets and contractual and financing arrangements with third parties to perform Project Co's obligations under the State Project Documents;
- (iii) **(no adverse effect)**: the proposed disposal would not result in there being any adverse effect on the rights of, or increase in the Liabilities or obligations of, the State under the State Project Documents than if Project Co's property or the Equity Interests (as relevant) were not disposed of;
- (iv) **(terms and conditions)**: the proposed purchaser has agreed to be bound by the terms of the relevant Project Documents; and
- (v) **(costs and expenses)**: a person other than the State bears all the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (A) any enquiries which the State may make for the purposes of determining whether to consent to the disposal;
 - (B) the procurement of a purchaser; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

5.8 Appointment of Enforcing Party

- (a) Without limiting any other rights of the Security Trustee:
 - (i) if the Security Trustee appoints an Enforcing Party under the Financiers' Securities:
 - (A) that appointment will not constitute a PD Default Event; and
 - (B) in connection with the appointment of an Enforcing Party to Project Co, a PD Default Event will not be taken to subsist under paragraph (c) (Finance and Equity Documents) of the definition of Major Default or under paragraph (b) (Project Co Insolvency Event) or (e) (Share Capital Dealing) of the definition of Default Termination Event, but if and only for so long as the Enforcing Party has access to adequate financial resources to enable Project Co to fully comply with all of its obligations under the Project Documents as and when they arise; and
 - (ii) any:
 - (A) enforcement action taken by the Security Trustee or an Enforcing Party (appointed under the Financiers' Securities) in accordance with Clause 5.1;
 - (B) replacement of a D&C or Services Subcontractor under Clause 5.6; or

- (C) disposal of Project Co's interest in the Project Documents in accordance with Clause 5.7,
will not, by itself, provide the State with the right to terminate any State Project Document.
- (b) The Security Trustee must not appoint an Enforcing Party under the Financiers' Securities unless the:
 - (i) proposed Enforcing Party is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - (ii) appointment is otherwise in accordance with this deed.
- (c) The Security Trustee will not, and will ensure that an Enforcing Party does not, exercise or purport to exercise Project Co's Rights without first notifying the State.
- (d) The Security Trustee must minimise, and must ensure that an Enforcing Party will minimise, any disruption that may result from it exercising Project Co's Rights.

5.9 Documentation

- (a) If the State consents to the replacement of the D&C or the Services Subcontractor, or the disposal of Project Co's interest in the Project Documents, under Clauses 5.6 or 5.7 respectively, the State, Security Trustee and the replacement contractor or purchaser (as applicable) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.
- (b) The Security Trustee must procure the replacement contractor's compliance with Clause 5.9(a).

6 Finance Default

6.1 Notice of Finance Default

Promptly after the Security Trustee gives notice of a Finance Default to Project Co, the Security Trustee must provide notice to the State of the Finance Default which includes:

- (a) reasonable details of the Finance Default; and
- (b) whether the Security Trustee intends to exercise its enforcement rights under the Finance Documents, and if so, the proposed date for, and proposed method of, such exercise.

6.2 Notice of enforcement

- (a) If the Security Trustee:
 - (i) declares any moneys secured under the Finance Documents due and payable;
 - (ii) takes any action to enforce the Financiers' Securities (other than to appoint an Enforcing Party); or
 - (iii) recovers any moneys secured under the Financiers' Securities,it must promptly and within 10 Business Days give notice to the State.
- (b) The Security Trustee must not appoint an Enforcing Party unless the Security Trustee has provided to the State:
 - (i) not less than 24 hours notice prior to the appointment if the Security Trustee is of the reasonable opinion that any delay in the appointment of an Enforcing Party would materially and adversely affect the Financiers; or
 - (ii) not less than 10 Business Days notice prior to the appointment in all other cases.

6.3 Information to the State

Upon the occurrence of a Finance Default:

- (a) the Security Trustee must provide to the State copies of all correspondence and documents issued by the Security Trustee to a Consortium Member in connection with the Finance Default;
- (b) if the Finance Default is capable of remedy, Project Co must keep the State informed of all measures taken or intended to be taken to remedy the Finance Default; and
- (c) whether or not the Finance Default is capable of remedy, Project Co or the Security Trustee must keep the State informed of all measures taken or intended to be taken in connection with the Finance Default (including details of any action taken by the Security Trustee in the course of enforcement of the Financiers' Securities).

6.4 Payments by State

The parties acknowledge that the State is not liable for costs incurred by a party to this deed in attempting to remedy a Finance Default or in exercising any rights under the Finance Documents.

7 Insurance Proceeds

- (a) All insurance proceeds received by a Finance Party or any Enforcing Party, which (were they to have been received by Project Co) would have been required to have been deposited into the Insurance Proceeds Account, must be deposited into the Insurance Proceeds Account.
- (b) The insurance proceeds deposited into the Insurance Proceeds Account must be applied in accordance with Clause 39.11 (Settlement of Claims) of the Deed.
- (c) Project Co is permitted, and the Security Trustee and the Facility Agent will use reasonable endeavours to assist Project Co to take any action contemplated by Clause 39.11 (Settlement of Claims) of the Deed.
- (d) Project Co, the Security Trustee and the Facility Agent, must not make any payments from the Insurance Proceeds Account except as permitted under this deed.

8 Recognition of Rights

8.1 Recognition of State's rights

- (a) The Security Trustee and the Facility Agent acknowledge the rights of the State under:
 - (i) the Deed; and
 - (ii) the D&C Direct Deed and the Services Subcontractor Direct Deed,including to require an assignment of the D&C Subcontract or the Services Subcontract if it becomes entitled to terminate the Deed.
 - (b) The Security Trustee and the Facility Agent will use reasonable endeavours to ensure that its rights under the Finance Documents are exercised in a way which facilitates the effective exercise by the State of the rights referred to in Clause 8.1(a). If and to the extent that the exercise of any such rights involves the assignment of the D&C Subcontract or the Services Subcontract by Project Co, the Security Trustee will release the D&C Subcontract or Services Subcontract (as applicable) from the Financiers' Securities to facilitate the assignment. Nothing in this Clause 8.1, the D&C Direct Deed or the Services Subcontractor Direct Deed requires the Security Trustee or the Facility Agent to release or forgo any rights or Claims against Project Co.
 - (c) The State must not exercise its rights under Clause 5 (Step-in by the State) of the D&C Direct Deed or Clause 5 (Step-in by the State) of the Services Subcontractor Direct Deed unless:
 - (i) a circumstance which entitles the State to appoint an Enforcing Party in accordance with the State Security subsists; or
 - (ii) in the case of Clause 4.1 (The State's Right to Remedy) of the D&C and the Services Subcontractor Direct Deed (as applicable), a State Cure Notice (as defined under the relevant direct deed) has been given under
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Clause 4.2 (D&C Subcontractor's Right to terminate) of the D&C Subcontractor Direct Deed or Clause 4.2 (Services Subcontractor's Right to terminate) of the Services Subcontract Direct Deed.

8.2 Release of Security

- (a) Subject to Clause 8.2(b), to the extent that Project Co is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to the State or its nominee under the State Project Documents and that property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any Finance Party (including any Security Interest under the Financiers' Securities), the Security Trustee will promptly ensure that the Security Interest is released in connection with that property and will do all things including registering documents as the State may reasonably require as may be necessary or desirable to give effect to that release but without prejudice to any accrued rights or Claims the Security Trustee may have against Project Co.
- (b) Nothing in Clause 8.2(a) or Clause 5.4 requires the Security Trustee to release a Security Interest over the right of Project Co to be paid an amount in accordance with Clause 41.7 (Payment on termination) of the Deed.

8.3 Recognition of Security Trustee rights

- (a) The State acknowledges the right of the Security Trustee under each Consent Deed (**Security Trustee Tripartite Rights**).
- (b) The State and the Security Trustee agree that if the Security Trustee exercises its rights to step in under any applicable Consent Deed, the Security Trustee Tripartite Rights will take precedence over the rights of the State under the D&C Direct Deed or Services Subcontractor Direct Deed (as the case may be) and the State must not exercise its rights under the D&C Direct Deed or Services Subcontractor Direct Deed (as the case may be) in such a manner as to prevent or hinder the Security Trustee in its exercise of the Security Trustee Tripartite Rights but subject to the rights of the State under Clause 3.5(c) or any other provision of this deed. For the avoidance of doubt nothing in this Clause otherwise limits the State in performing or procuring the normal functioning of the School Facilities.
- (c) The Security Trustee must keep the State informed of all measures taken and intended to be taken by it (or on its behalf) in exercising the Security Trustee Tripartite Rights.

9 Undertakings

9.1 Amendments to Finance Documents

- (a) **(No amendments without consent):** Subject to Clause 9.1(c), the Finance Parties must not agree to or permit any variation, amendment, waiver or replacement (**Amendment**) of any Finance Document without the State's prior consent which consent must not be unreasonably withheld.
- (b) **(Amendment not effective):** Project Co and the Finance Parties agree as between themselves and for the benefit of the State, that no Amendment to a Finance Document will be effective as between the parties to that Finance Document unless that Amendment has been made in compliance with this Clause 9.1 (and that any Deed at any time between any of them which purports to limit the operation of Clause 9.1(a) including any provision that a Finance Document prevail over this deed, will be ineffective).
- (c) **(Permitted Amendment):** The prior consent of the State is not required for an Amendment where:
 - (i) **(replacement of Financier):** the Amendment is a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier if:
 - (A) the novatee, assignee or substitute is a Financier, is a Permitted Qualifying Transferee or has a long term foreign currency rating of at least:
 - (1) A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investor Services, Inc. if the novation,

- assignment or substitution occurs before or on the last Date of Commercial Acceptance; or
- (2) BBB+ by Standard and Poor's (Australia) Pty Limited or Baa1 by Moody's Investor Services, Inc. if the novation, assignment or substitution occurs after the last Date of Commercial Acceptance; or
- (B) the Financier has fully funded its commitment under the Finance Documents;
- (ii) **(consent)**: the State has consented to a new financing arrangement under Clause 37.1 (Consent to Refinancing) of the Deed;
- (iii) **(approved Modifications)**: the Amendment solely gives effect to Project Co's obligation to proceed with a Modification in accordance Clause 36 (Modifications) of the Deed and has been agreed by the State or otherwise determined in accordance with Clause 36 (Modifications) of the Deed;
- (iv) **(Finance Default)**: the Amendment is:
- (A) a waiver by the Finance Parties of a breach of a Finance Document or a Finance Default under a Finance Document;
- (B) required to avoid a breach of a Finance Document or a Finance Default under a Finance Document; or
- (C) the exercise of an express unilateral right of a Finance Party to make an amendment under a Finance Document;
- (v) **(novation or assignment)**: the Amendment is a novation or assignment in accordance with Clause 10.1;
- (vi) **(derivative transaction)**: the Amendment is an entry into any derivative transaction permitted by and in accordance with the Finance Documents; or
- (vii) **(Amendment)**: the State's consent has already been obtained under the Deed,
- (each a **Permitted Amendment**).
- (d) **(Notice of Permitted Amendment)**: Project Co and the Security Trustee must:
- (i) give notice to the State of any Permitted Amendment within 5 Business Days after that Permitted Amendment is made, including details of the reasons for the Permitted Amendment and copies of any documents relevant to the Permitted Amendment; and
- (ii) provide any further information reasonably requested by the State regarding the Permitted Amendment within 10 Business Days of receipt of a request from the State.
- (e) **(Notice of intended Amendment (other than a Permitted Amendment))**: where the State's consent is required for an Amendment in accordance with Clause 9.1(a), the requesting party must provide the following information:
- (i) full details of:
- (A) the terms of the Amendment and the reasons for the Amendment;
- (B) the responses or anticipated response of any other party to the relevant documents regarding the Amendment;
- (C) the response or anticipated response of any assignee of, or person holding a Security Interest in, the documents relevant to the Amendment; and
- (D) the impact or potential impact of the Amendment on:
- (1) delivery of the Project by Project Co;
- (2) performance of Project Co's obligations under the Project Documents;
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- (3) the financial structure or business of Project Co;
- (4) the State's interests in the Project Documents; and
- (5) equity return or Distributions; and
- (ii) copies of all contractual and security documentation relevant to the Amendment.
- (f) **(Consent):** The State must give notice to Project Co and the Security Trustee within 20 Business Days (or such longer period as the State reasonably requests given the nature of the Amendment) of receiving the notice in accordance with Clause 9.1(a) and which, where applicable, complies with Clause 9.1(e), that:
 - (i) it consents to the Amendment;
 - (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
 - (iii) it requires further information regarding the Amendment. If so, the other parties must provide the additional information sought by the State within a further period of 10 Business Days after which the State must respond in terms of Clauses 9.1(f)(i), 9.1(f)(ii) and 9.1(f)(iii) within 10 Business Days of receipt of the additional information.
- (fa) **(Longer period):** In determining the reasonableness of a period longer than 20 Business Days under Clause 9.1(f), the parties will have due regard to Project Co's obligations under the Project Documents.
- (g) **(Clarification):** Without limiting Clauses 9.1(a) and 9.1(b), nothing in Clause 57.7 (Amendments) of the Deed or this Clause 9.1 prevents or restricts any person exercising any rights they have under the Finance Documents.
- (h) **(Consequences of amending without consent):** If any Finance Document as originally executed and delivered by the parties thereto is varied or replaced without the State's prior consent (but only to the extent that the State consent is required), then the State will only be liable under the Project Documents to the extent it would have been had there been no such variation or replacement to the Finance Document.

9.2 Amendments to Project Documents

- (a) While any Actual Debt is outstanding under the Finance Documents, the State undertakes for the benefit of the Security Trustee that it will not make any material modification, variation or amendment to the terms of any State Project Document without the prior consent of the Security Trustee, which consent must not be unreasonably withheld or delayed.
- (b) The State is not required to obtain the consent of the Security Trustee in accordance with Clause 9.2(a) in connection with any material modification, variation or amendment determined (including by an expert) in accordance with Clause 43 (Dispute Resolution procedure) of the Deed or the equivalent dispute resolution provisions of another State Project Document.

10 Assignment

10.1 No assignment without consent

Subject to Clause 10.2, no party may assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party, which consent must not be unreasonably withheld. No party is entitled to withhold its consent to an assignment or transfer of this deed by the Security Trustee or the Facility Agent if:

- (a) it is an assignment, novation or transfer of all its right, title and interest in this deed and in the Finance Documents (in its capacity as Security Trustee or Facility Agent);
- (b) it occurs consequent upon the implementation of provisions in a Finance Document providing for the replacement of the Security Trustee or Facility Agent;
- (c) it relates to a replacement Security Trustee or Facility Agent which is a solvent and reputable financial institution or trustee corporation; and

- (d) the replacement Security Trustee or Facility Agent has executed an accession document in a form acceptable to the State (acting reasonably) in which it agrees to be bound by the provisions of this deed.

10.2 Assignment by the State

Nothing will prevent the assignment, novation or transfer by the State to an assignee, novatee or transferee of the State's rights and obligations under the Deed made in accordance with Clause 48.10 (Assignment by the State) of the Deed, provided the proposed assignee, novatee or transferee agrees to execute a document in favour of the other parties (in such form as the Security Trustee reasonably requires) in accordance with which the assignee, novatee or transferee agrees to be bound by this deed as if it were the State.

11 Confidentiality

11.1 Confidential Information

- (a) (**Confidentiality obligations**): The Finance Parties must keep confidential, subject to Clauses 11.1(b) and 11.1(c), the Confidential Information.
- (b) (**Permitted disclosure**): The Finance Parties are not obliged to keep confidential any information:
- (i) which is in the public domain through no default of any party or Finance Party; or
 - (ii) the disclosure of which is:
 - (A) required by Law, including under the *Freedom of Information Act 1992* (WA);
 - (B) required by a relevant stock exchange;
 - (C) consented to by the State; or
 - (D) made to a court in the course of proceedings to which the disclosing person is a party.
- (c) (**Disclosure to Finance Parties**): The Finance Parties may disclose Confidential Information to the other Finance Parties to the extent necessary for the purpose of undertaking the financing of the Project.
- (d) (**Disclosure to prospective financiers and equity investors**): Project Co and the Finance Parties must not disclose any Confidential Information to any prospective financier or equity investor of the Project until:
- (i) if required by the State, the State has carried out any Probity Investigations in connection with the relevant entities; and
 - (ii) the Finance Party has ensured that prospective financier or equity investor complies with Clause 11.1(a),
- and then only to the extent necessary for the purpose of undertaking the financing of the Project.
- (e) (**Government websites**): Subject to the Deed, the contents of the State Project Documents and any other document in connection with the Project which is authored or authorised by the State or a governmental agency may be published on any Western Australian government internet website.

11.2 Confidentiality under the PPSA

The parties intend that, by operation of Clause 11.1, this deed is a confidentiality agreement (within the meaning of section 275(6) of the PPSA) and the parties agree that any request for disclosure of this deed made under section 275 of the PPSA must be treated accordingly.

12 Termination

- (a) This deed will terminate:
- (i) if the parties agree; or
 - (ii) immediately upon termination of the Deed.

- (b) The termination of this deed does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Deed.

13 Dispute Resolution

If a matter is referred for determination in accordance with this Clause 13:

- (a) any dispute or difference of opinion arising between the parties in connection with that matter must be resolved in the same manner that disputes or differences of opinion are resolved when referred for expert determination under the Deed;
- (b) the provisions of Clause 43 (Dispute Resolution procedure) of the Deed are incorporated into this deed but as if the only persons party to the Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (c) the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance this deed.

14 GST

- (a) **(Amount payable):** Notwithstanding any other provision of this deed, any amount payable for a supply made under or in connection with this deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any Input Tax Credits which that party is entitled to in connection with that cost, expense or other amount.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this deed:
- (i) any amount payable or consideration to be provided in accordance with any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this deed. The Recipient is not obliged to pay any amount in accordance with this Clause 14(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under Clause 14(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply, and except where the Recipient is required to issue an adjustment note:
- (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with Clause 14(b) or 14(c) to the extent that the GST to which the amount relates
-

has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

- (e) **(Revenue net of GST):** Any reference in this deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (f) **(Cost net of GST):** Any reference in this deed or any Project Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (g) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this deed.
- (h) **(GST Groups):** For the purposes of this deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.

15 Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out in **below**;
- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery):** must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out below; and
- (e) **(taken to be received):** are taken to be received by the addressee at the address set out in below:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

To the State

Address [Not disclosed]
 Attention [Not disclosed]
 Telephone [Not disclosed]
 Email [Not disclosed]

To Project Co

EduWest Project Co Pty Ltd in its personal capacity and in its capacity as trustee for the EduWest Project Trust

Address [Not disclosed]
 Attention [Not disclosed]
 Facsimile [Not disclosed]
 Telephone [Not disclosed]
 Email [Not disclosed]

To Facility Agent and Security Trustee

National Australia Bank

Address [Not disclosed]
 Attention [Not disclosed]
 Telephone [Not disclosed]
 Email [Not disclosed]

- (iv) the Security Trustee must ensure that, in connection with any communications in accordance with or in connection with this deed:
- (A) its firewall and/or mail server (as applicable):
 - (1) allows messages of up to 14 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

16 General

16.1 Interest

- (a) **(Interest):** If a party fails to pay any amount payable by that party to the other party within the time required under this deed, then it must pay interest on that amount:
- (i) from the date on which payment was due and payable until the date on which payment is made;
 - (ii) calculated on daily balances at the Default Rate; and
 - (iii) capitalised monthly.

- (b) **(Sole entitlement):** The amount specified in this Clause 16.1 will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

16.2 Set-off

- (a) Without limiting or otherwise affecting the State's rights in accordance with any other provision of this deed or at Law, the State may deduct from any monies due and payable to the Finance Parties in accordance with this deed:
- (i) any amount due and payable by the Finance Parties to the State (whether in accordance with or relating to this deed or any other State Project Documents); or
 - (ii) any amount claimed by the State against the Finance Parties (acting reasonably) arising out of or in connection with any State Project Document and in good faith.
- (b) Each Finance Party must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless the Finance Party is compelled by Law to make such a deduction or withholding.
- (c) If a Finance Party is compelled by Law to make a deduction or withholding, it must:
- (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the State all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

16.3 Relationship of the parties

Nothing in this deed or any other Project Document:

- (a) **(no additional relationship):** creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no duty of good faith):** imposes any duty of good faith on the State (unless otherwise expressly provided); and
- (c) Neither the Security Trustee, Facility Agent nor the Finance Parties may act as, or represent itself to be, the servant or agent of the State.

16.4 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless otherwise expressly provided in this deed, nothing in this deed gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with this deed.
 - (b) **(State's powers, functions or duties):** Notwithstanding anything expressly provided or implied in this deed to the contrary, the parties expressly agree that:
 - (i) the State is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in this deed has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
 - (c) **(No Claim):** Subject to Clause 16.4(d), neither Project Co, the Security Trustee or the Finance Parties will be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
 - (d) **(Liability for breach):** Clauses 16.4(a) to 16.4(c) do not limit any liability which the State would have had to any party under any State Project Document as a result of
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a breach by the State of a term of any State Project Document but for these clauses.

16.5 Reasonable endeavours

Any statement in this deed providing that the State or the State Representative, or any officer or agent of the State, will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State, the State Representative or any officer or agent of the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (i) exercise a right of any other government party, or to influence, override, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (iii) develop or implement new policy;
 - (iv) procure legislation; or
 - (v) act in any way that the State regards as not in the public interest.

16.6 Entire Deed

To the extent permitted by Law and in relation to its subject matter, this deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

16.7 Counterparts

This deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

16.8 Governing law

- (a) **(Governing Law)**: This deed is governed by, and must be construed according to, the Laws of Western Australia, Australia.
- (b) **(Jurisdiction)**: Without limiting Clause 13 each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this deed.

16.9 Waiver

- (a) **(Writing)**: A waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed by that party;
 - (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this deed.
 - (c) **(No waiver of another breach)**: No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
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16.10 Amendments to this deed

Except as otherwise expressly provided in this deed, this deed may only be varied by a deed executed by or on behalf of each party.

16.11 Survival of Certain Provisions

- (a) **(Surviving clauses):** All provisions of this deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this deed will survive the rescission, termination or expiration of this deed, including any provision in connection with:
- (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given under this deed;
 - (vi) any limitation on liability; and
 - (vii) any right or obligation arising on termination of this deed.
- (b) **(Interpretation):** No provision of this deed which is expressed to survive the termination, rescission or expiration of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

16.12 Expenses

Except as otherwise expressly provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

16.13 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to all parties) required by any Approval, Law or reasonably requested by another party to give effect to this deed.

16.14 Severance

If, at any time, a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this deed; or
- (b) that provision under the Law of any other jurisdiction.

16.15 Proportionate Liability

- (a) **(Excluded operation of Part 1F of the Civil Liability Act):** The operation of Part 1F (Proportionate liability) of the *Civil Liability Act 2002 (WA)* is excluded in relation to all and any rights of either party under this deed whether such rights are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights):** Without limiting paragraph (a), the rights of the parties (including those relating to proportionate liability) are as specified in this deed and not otherwise.

Schedule 1 – Permitted Qualifying Transferees

Permitted Qualifying Transferee means, subject to the paragraph at the end of this definition, until the first anniversary of the date of this deed, any of the following entities:

1. [Not disclosed]
2. [Not disclosed]
3. [Not disclosed]
4. [Not disclosed]
5. [Not disclosed]
6. [Not disclosed]
7. [Not disclosed]
8. [Not disclosed]
9. [Not disclosed]
10. [Not disclosed]
11. [Not disclosed]
12. [Not disclosed]
13. [Not disclosed]
14. [Not disclosed]
15. [Not disclosed]
16. [Not disclosed]
17. [Not disclosed]
18. [Not disclosed]
19. [Not disclosed]
20. [Not disclosed]
21. [Not disclosed]
22. [Not disclosed]
23. [Not disclosed]
24. [Not disclosed]
25. [Not disclosed]
26. [Not disclosed]
27. [Not disclosed]
28. [Not disclosed]
29. [Not disclosed]
30. [Not disclosed]
31. [Not disclosed]

At Project Co's request (not to be made earlier than 2 months before the first and each subsequent anniversary of the date of this deed), the State will review the above list (and any updated list provided by Project Co) and advise whether all or some of the entities can be treated as Permitted Qualifying Transferees for the period to the next anniversary of the date of this deed.

Execution page

Executed as a deed

Executed by THE HONOURABLE DR MIKE NAHAN MLA Treasurer for the time being, on behalf of the State of Western Australia, and as delegate of the Minister for Works pursuant to section 5A of the *Public Works Act 1902* (WA), in the presence of:

Signature of Witness

The Hon. Dr Mike Nahan MLA

Witness name

Witness address

Witness occupation

THE COMMON SEAL of the MINISTER FOR
EDUCATION was hereunto affixed in the
presence of THE HON PETER CHARLES
COLLIER MLC Minister for Education for the time
being,
in the presence of:

Signature of Witness

Hon Peter Charles Collier MLC

Witness name

Witness address

Witness occupation

Signed, sealed and delivered for and)
 on behalf of **EduWest Project Co Pty**)
Ltd (ACN 608 027 434) in its personal)
 capacity and as trustee for the EduWest)
 Project Trust by its attorneys pursuant to)
 power of attorney dated)
 who state that no notice of revocation of)
 the power of attorney has been received)
 in the presence of:

.....
 Witness

.....
 Attorney

.....
 Name of Witness (print)

.....
 Name of Attorney (print)

.....
 Witness

.....
 Attorney

.....
 Name of Witness (print)

.....
 Name of Attorney (print)

FACILITY AGENT

Signed sealed and delivered for and)
on behalf of **National Australia Bank**)
Limited (ABN 12 004 004 937) by its
attorney [*Not disclosed*] under power of
attorney dated 1 March 2007 in the
presence of:

.....
Signature of witness

.....
Signature of attorney

.....
Name of witness (print)

By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

SECURITY TRUSTEE

Signed sealed and delivered for and)
on behalf of **National Australia Bank**)
Limited (ABN 12 004 004 937) by its
attorney [*Not disclosed*] under power of
attorney dated 1 March 2007 in the
presence of:

.....
Signature of witness

.....
Signature of attorney

.....
Name of witness (print)

By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney