



Department of **Education**

Department of **Treasury**

WA Schools PPP Project

State Security

The State of Western Australia

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

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State Security

This contract is made on 2015
between

The State of Western Australia

and

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

and

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

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 the parties agree as follows:

Recitals

- A. The background to the Project is set out in the Deed.
- B. Project Co is, or will be, the legal and beneficial owner of the Secured Property.
- C. This deed sets out the terms on which Project Co grants a first ranking charge to the State over the Secured Property to secure payment of the Secured Money.

Operative Provisions

1 DEFINITIONS, INTERPRETATION AND RELATED MATTERS

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 of the Deed.

1.2 Definitions

In this deed, unless the context indicates otherwise:

Term	Meaning
Attorney	an attorney appointed under this deed.
Collateral Security	any present or future Encumbrance, guarantee or other document or agreement created or entered into by a Transaction Party or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.
Control Event	<ul style="list-style-type: none"> (a) in respect of all of the Secured Property, that is or would have been Revolving Assets: <ul style="list-style-type: none"> (i) a voluntary administrator, liquidator or provisional liquidator is appointed in respect of Project Co or the winding up of Project Co begins; (ii) a receiver, a receiver and manager, or Controller is appointed to any of Project Co's property;

Term	Meaning
	<ul style="list-style-type: none"> (iii) the Security or any other Encumbrances over any of the Secured Property is enforced in any other way; or <p>(b) in respect of a particular asset of the Secured Property that is, or would have been, a Revolving Asset:</p> <ul style="list-style-type: none"> (i) Project Co breaches, or attempts to breach Clause 4.6 in respect of the Secured Property or takes any step which would result in it doing so; (ii) distress is levied or a judgment, order or Encumbrance is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Encumbrance, over the Secured Property; (iii) the Secured Party gives a notice to Project Co that the Secured Property is not a Revolving Asset (however the Secured Party may only give a notice if a Default Event is continuing); or (iv) a person takes a step (including signing a notice or direction) which may result in Taxes or an amount owing to an Authority, ranking ahead of the Security.
Controller	has the meaning given to the word “controller” in the Corporations Act, but as if “security interest” included any Security, and includes a Receiver.
Deed	means the document entitled “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.
debt	includes debts owing by a bank or other financial institution, including in relation to a current trading account.
Default Event	means the State has elected, by notice under Clause 41 of the Deed, to terminate the Deed in connection with a Default Termination Event or a Major Default.
Encumbrance	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.
Key Contract	any Project Document to which Project Co is expressed to be a party.
Marketable Securities	marketable securities as defined in section 9 of the Corporations Act.

Term	Meaning
Officer	the State or its authorised delegates.
Permitted Encumbrance	<p>(a) a lien arising solely by operation of Law and in the ordinary course of a Transaction Party's ordinary business; provided that the Transaction Party is not in default in payment to the lienee on the due date;</p> <p>(b) an Encumbrance to which the State has given its prior consent, but only to the extent it secures financial indebtedness in amounts to which the State has given consent; and</p> <p>(c) each Financiers' Security as defined in the Finance Direct Deed.</p>
Power	any right, power, authority, discretion or remedy conferred on the State, a Receiver or an Attorney by any Project Document or any applicable Law.
PPSA Regulations	the regulations made under the PPSA.
Principal Debtor	EduWest Finance Company Pty Ltd ACN 608 038 320.
Project	<p>means:</p> <p>(a) the financing and undertaking of the Development Phase Activities;</p> <p>(b) the performance of the Services; and</p> <p>(c) the handover of the Relevant Infrastructure to the State, and the performance of all other obligations in accordance with or as contemplated by any Project Document or incidental to any Project Document.</p>
Receiver	a receiver or receiver and manager appointed under this deed.
Revolving Assets	<p>any Secured Property which is;</p> <p>(a) inventory;</p> <p>(b) a negotiable instrument;</p> <p>(c) machinery, plant, or equipment which is not inventory and has a value of less than \$1,000 or its equivalent; or</p> <p>(d) money (including money withdrawn or transferred to a third party from an account of Project Co with a bank or other financial institution),</p> <p>and in relation to which no Control Event has occurred, subject to Clause 4.9.□</p>

Term	Meaning
<i>Secured Moneys</i>	<p>all debts and monetary liabilities of Project Co and each other Transaction Party to the State under or in relation to any State Project Document and in any capacity, irrespective of whether the debts or liabilities:</p> <ul style="list-style-type: none"> (a) are present or future; (b) are actual, prospective, contingent or otherwise; (c) are at any time ascertained or unascertained; (d) are owed or incurred by or on account of Project Co or another Transaction Party alone, or severally or jointly with any other person; (e) are owed to or incurred for the account of the State alone, or severally or jointly with any other person; (f) are owed to any other person as agent (whether disclosed or not) for or on behalf of the State; (g) are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; (h) are owed to or incurred for the account of the State directly or as a result of: <ul style="list-style-type: none"> (i) the assignment or transfer to the State of Liability of Project Co or another Transaction Party; or (ii) any other dealing with any such Liability; (i) are owed to or incurred for the account of the State before the date of this deed or before the date of any assignment of this deed to the State by any other person or otherwise; or (j) comprise any combination of the above.
<i>Secured Obligations</i>	<p>all of Project Co's liabilities and obligations to the State under or by reason of the Project or the State Project Documents or any of them, where such liabilities or obligations:</p> <ul style="list-style-type: none"> (a) are present or future; (b) are actual, prospective, contingent or otherwise; (c) are at any time ascertained or unascertained; (d) are owed or incurred by or on account of Project Co or another Transaction Party alone, or severally or jointly with any other person; (e) are owed to or incurred for the account of the State alone, or severally or jointly with any other person; (f) are owed to any other person as agent (whether disclosed or not) for or on behalf of the State; (g) are owed to or incurred for the account of the State directly or as a result of: <ul style="list-style-type: none"> (i) the assignment or transfer to the State of Liability of Project Co or another Transaction Party; or (ii) any other dealing with any such Liability;

Term	Meaning
	<p>(h) are owed to or incurred for the account of the State before the date of this deed or before the date of any assignment of this deed to the State by any other person or otherwise; or</p> <p>(i) comprise any combination of the above.</p>
Secured Party	means the State.
Secured Property	all Project Co's present and after-acquired property. It includes anything in respect of which Project Co has at any time sufficient right, interest or power to grant a security interest and includes Trust Property.
Security	the security created or expressed to be created by this deed.
State	has the meaning given to it in the Deed.
Title Document	any original, duplicate or counterpart certificate or document of title including any real property certificate of title, a certificate of units in a unit trust, share certificate or certificate evidencing an Investment Instrument or Negotiable Instrument.
Transaction Party	<p>(a) Project Co;</p> <p>(b) the Principal Debtor; or</p> <p>(c) any other Transaction Party as defined in a Project Document.</p>
Trustee Documents	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;

and unless the context otherwise requires:

- (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; and
 - (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 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 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) **(Default Event):** a Default Event “subsists” or is “continuing” until the State notifies Project Co that it has been:
 - (i) remedied to the satisfaction of the State; or
 - (ii) waived by the State.

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) **(Project Co obligations):** In complying with or accepting any obligation or risk in accordance with this deed, Project Co must procure that, to the extent applicable, each Project Co Associate is required to comply with or accept the relevant obligation or risk and not cause Project Co to breach its obligations in accordance with this deed.
- (c) **(Business Day):** If the day on or by which any thing is to be done in accordance with this deed is not a Business Day, that thing must be done on the next Business Day.
- (d) **(Document composition):** This deed comprises:
 - (i) Clauses 1 to 11; and
 - (ii) Schedule 1 (Notice Details).

1.5 PPSA incorporated definitions

The following words and phrases defined in the PPSA have the same meaning in this deed:

- (a) Accession;
- (b) Account;
- (c) After-Acquired Property;
- (d) Chattel Paper;
- (e) Commingled;
- (f) Investment Instrument; and
- (g) Negotiable Instrument.

1.6 Finance Direct Deed

Despite any other provision of this deed, the State’s rights pursuant to this deed, including any exercise of any Power by the State, a Receiver or an Attorney, are subject to the Finance Direct Deed. To the extent of any inconsistency, ambiguity or discrepancy between this deed and the Finance Direct Deed, the Finance Direct Deed prevails.

1.7 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 SECURITY

2.1 Security Interest

- (a) Project Co grants:
 - (i) as beneficial owner, a security interest in all of the Secured Property owned by it beneficially; and
 - (ii) as sole trustee of the Project Trust, a security interest in all of the Trust Property,

- to the Secured Party to secure payment of the Secured Moneys and performance of the Secured Obligations.
- (b) This security interest is a transfer by way of security of Secured Property consisting of:
 - (i) Accounts and Chattel Paper which are not, or cease to be, Revolving Assets; or
 - (ii) a Key Contract.
 - (c) To the extent any Secured Property is not transferred, this security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Secured Property.
 - (d) **(Further action):** If any law governing this deed requires that some action be taken or some consent be obtained before a valid security interest can be granted by Project Co over any part of the Secured Property, then this security interest will only apply to that part of the Secured Property once such action is taken or consent is obtained but will at all times apply to the relevant proceeds from that Secured Property. Project Co agrees to promptly do anything necessary to ensure that the relevant action is taken or consent is obtained and remains in force.

2.2 Priority

- (a) The parties intend that the Security take priority over all other Encumbrances and other interests in the Secured Property at any time other than any Permitted Encumbrance mandatorily preferred by law.
- (b) Nothing in this deed will be construed as an agreement by the State to subordinate the Security to any other Encumbrance or interest affecting the Secured Property at any time.

2.3 Collection of proceeds of debts

Project Co may collect as agent for the Secured Party for this purpose the proceeds of any debts or other amounts now or in the future payable to Project Co subject to using those proceeds as permitted under the Project Documents.

2.4 [Not Used]

2.5 [Not used]

2.6 Authorisation

- (a) Project Co must ensure that it obtains all authorisations necessary to permit the grant of the Security in respect of any asset before it acquires any rights in that asset.
- (b) Without limiting Clause 2.6(a) if the grant of the Security in respect of an asset would invalidate, avoid or render ineffective the Security, whether in respect of that asset only or otherwise, then that asset is excluded from the Security, but only for so long as that effect prevails.
- (c) If the Security could be granted in respect of an asset referred to in Clause 2.6(b) without Clause 2.6(b) applying if an authorisation was obtained or other action taken, Project Co must promptly obtain that authorisation or take that action.

3 DISCHARGE OF THE SECURITY

3.1 Discharge

Subject to Clause 3.2, at the request of Project Co, the State must discharge the Security and retransfer to Project Co its right and interest in all Accounts and Chattel Paper transferred under Clause 2.1 (or Clause 4.8(c)) if:

- (a) the Secured Moneys have been paid in full; and
- (b) the Secured Obligations have been fully performed and satisfied.

3.2 Final discharge

- (a) The State is not obliged to discharge the Security under Clause 3.1 if, at the time the requirements of Clause 3.1 are satisfied, the State is of the opinion that:
 - (i) Project Co owes further Secured Moneys or Secured Obligations contingently or otherwise to the State; or
 - (ii) Project Co will owe further Secured Moneys or Secured Obligations to the State within a reasonable time after the date Project Co requests the discharge of the Security.
- (b) Clause 3.2(a) overrides any other Clause to the contrary in this deed.
- (c) The parties intend that Clause 3.2(a)(ii) be severed from Clause 3.2(a) if Clause 3.2(a)(ii) is void or unenforceable under applicable Law.
- (d) The parties do not intend Clause 3.2(c) to exclude the general law of severance from applying to this deed.

4 REPRESENTATIONS AND WARRANTIES, UNDERTAKINGS

4.1 Representations and warranties

Project Co represents and warrants that:

- (a) **(representations true)**: each of its representations and warranties contained in the Project Documents is correct and not misleading when made or repeated;
- (b) **(legal and beneficial owner)**: it is the legal and beneficial owner of the Secured Property;
- (c) **(no other interests)**:
 - (i) no person other than the State holds or has the benefit of an Encumbrance or other interest in the Secured Property other than under a Permitted Encumbrance; and
 - (ii) there is no agreement, filing or registration that would enable another person to obtain a priority over the Security which is inconsistent with the priority contemplated by this deed;
- (d) **(Security)**:
 - (i) this deed creates the Encumbrance purported to be created by it over the assets purported to be encumbered by it;
 - (ii) the Security has been, or in the case of After-Acquired Property on its acquisition, will be perfected; and
 - (iii) the Security has the priority contemplated by this deed;
- (e) [not used]
- (f) [not used];
- (g) **(Authorisations)**: it has obtained all authorisations necessary to permit the grant of the Security in respect of any asset in which it presently has rights; and
- (h) [not used].

4.2A 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 4.2A(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.

4.2 Survival of representations and warranties

The representations and warranties given under this deed:

- (a) survive the execution of this deed; and
- (b) are repeated on the first Business Day of each Quarter whilst any of the Secured Money remains outstanding (whether or not then due for payment) with respect to the facts and circumstances then subsisting, as if made on each such day.

4.3 Reliance

- (a) Project Co acknowledges that it has not entered into this deed or any Project Document in reliance on any representation, warranty, promise or statement made by the State or any person on behalf of the State.
- (b) Project Co acknowledges that the State has entered into each Project Document in reliance on the representations and warranties given by Project Co under this deed.

4.4 Performance under the Project Documents

- (a) Project Co must fully and punctually perform its obligations under each Project Document.
- (b) Without limiting the generality of Clause 4.4(a), Project Co must pay the Secured Moneys to the State in accordance with this deed, each other Project Document and each other obligation under which the Secured Moneys are payable.
- (c) Project Co must ensure that no Default Event occurs. Without affecting the Liability of Project Co or the Powers in any other respect (including where a breach of this

Clause 4.4(c) is also a breach of another provision of a Project Document), Project Co is not liable in damages for breach of this Clause 4.4(c) but the State may exercise its Powers consequent upon or following that breach.

4.5 Notices to the State

In addition to its obligations in any other Project Document, Project Co must notify the State as soon as Project Co becomes aware of any of the following:

- (a) the acquisition by it of, or the entry by it into, an agreement to acquire:
 - (i) any interest in real property;
 - (ii) any Marketable Securities or other property in relation to which the Security may be perfected by control;
 - (iii) any motor vehicles or other property with a value greater than \$500,000 which the PPS Regulations provide may or must be described by serial number in a registration under the PPSA;
 - (iv) any property with a value greater than \$500,000 which is situated outside Australia;
- (b) any change of the jurisdiction in which any of the Secured Property with a value greater than \$500,000 is situated; and
- (c) any data contained in a registration under the PPSA with respect to the Security being or becoming incorrect.

4.6 Negative pledge

- (a) Project Co must not:
 - (i) sell, assign, transfer or otherwise dispose of or part with possession of;
 - (ii) create or allow to exist or agree to any Encumbrance (other than a Permitted Encumbrance) over; or
 - (iii) attempt to do anything listed in Clause 4.6(a)(i) and 4.6(a)(ii) in respect of,

any of the Secured Property except to the extent expressly permitted by any State Project Document.
- (b) Project Co must not permit any of the Secured Property to become:
 - (i) Commingled with any asset that is not Secured Property except in the ordinary course of Project Co's ordinary business; or
 - (ii) an Accession to or to be affixed to any asset that is not Secured Property.

4.6A Project Co's obligations as trustee

Project Co must:

- (c) ensure the Trust Property is not mixed with any other property;
- (d) comply with its obligations as trustee of the Project Trust in all material respects;
- (e) not release, dispose of or otherwise prejudice Project Co's right of indemnity against, and equitable lien over, the Trust Property and its right of indemnity (if any) against the Trust Beneficiaries;
- (f) at the State's request:
 - (i) exercise Project Co's right of indemnity against, and equitable lien over, the Trust Property and its right of indemnity (if any) against the Trust Beneficiaries in relation to the Secured Money; and
 - (ii) assign to the State those rights of indemnity and that equitable lien and otherwise facilitate the subrogation of the State to those rights of indemnity and that equitable lien in relation to the Secured Money;
- (g) ensure that:
 - (i) another person is not appointed as trustee of the Project Trust;
 - (ii) the Project Trust is not terminated or its terms varied;

- (iii) Project Co does not resign and is not removed or replaced as trustee of the Project Trust; and
- (iv) Trust Property is not resettled; and
- (h) not default in performing or observing its obligations under the Trustee Documents in any material respect.

4.7 Permitted dealings

Project Co may do any of the following in the ordinary course of Project Co's ordinary business unless it is prohibited from doing so by another provision in a Project Document:

- (a) create or allow another interest in, or dispose or part with possession of, any Secured Property which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

4.8 Revolving Assets

If a Control Event occurs in respect of any Secured Property then automatically:

- (a) that Secured Property is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Secured Property immediately operates as a fixed charge;
- (c) if the Secured Property is Accounts or Chattel Paper it is transferred to the Secured Party by way of security; and
- (d) Project Co may no longer deal with the Secured Property under Clause 4.7.

4.9 Conversion to Revolving Assets

If any Secured Property is not or ceases to be a Revolving Asset, and becomes subject to a fixed charge or transfer, under this Clause 4.9, the Secured Party may give Project Co a notice stating that, from a date specified in the notice, the Secured Property specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to Project Co. This may occur any number of times.

4.10 Inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this deed. Project Co may not remove it without obtaining the specific and express written authority of the Secured Party to do so.

4.11 Further assurances

Project Co must:

- (a) do anything which the State reasonably requests to:
 - (i) ensure, or enable the State to ensure, that this deed, the Security and the Powers are fully effective, enforceable and perfected with the contemplated priority;
 - (ii) more satisfactorily assure or secure to the State the Secured Property in a manner consistent with the Project Documents; or
 - (iii) aid the exercise of any Power,
- including executing any document, delivering Title Documents or Chattel Paper, executing and delivering blank transfers or giving notice of the Security to any third party;
- (b) without limiting Clause 4.11(a), when the State requests, execute:
 - (i) a legal or statutory mortgage in favour of the State over any real property; or
 - (ii) any other form of security which the State considers appropriate for the property to be subject to that security,

each in form and substance required by the State but the State cannot require an obligation for which there is no equivalent obligation in any Project Document or

- which is more onerous than any equivalent obligation contained in any Project Document; and
- (c) without limiting Clause 4.11(a), cause a third party to provide any authorisation or take any other action (including executing any document) required to give effect to Clause 4.11(a).

4.12 Title Documents and Chattel Paper

- (a) Project Co must deposit with the State, or as the State directs, all the Title Documents in respect of any of the Secured Property together with executed blank transfers in respect of the Secured Property to which the Title Documents relate and all Chattel Paper forming part of the Secured Property with a value greater than \$500,000 immediately on:
- (i) its execution of this deed; and
 - (ii) acquisition of any asset which forms part of the Secured Property.
- (b) At any time while a Default Event subsists, if required by the State, Project Co must deposit with the State all Chattel Paper which forms part of the Secured Property regardless of value and which has not already been deposited under Clause 4.12(a).
- (c) Subject to Clause 4.12(d), the State may retain the Title Documents and Chattel Paper deposited with the State until the Security in respect of all the Secured Property is discharged under Clause 3.
- (d) If the Security is enforced by the State, then the State, Receiver or Attorney is entitled:
- (i) to deal with the Title Documents and the Chattel Paper as if it was the absolute and unencumbered owner of the Secured Property to which the Title Documents relate and of the Chattel Paper; and
 - (ii) in exercising a power of sale, to deliver any Title Document or Chattel Paper to a purchaser of the Secured Property to which the Title Document relates or of the Chattel Paper.

4.13 Perfection, registration and protection of Security

- (a) Project Co must ensure that:
- (i) the Security is perfected in relation to all the Secured Property subject to the Security in all jurisdictions; and
 - (ii) this deed and the Security are registered and filed in all registers in all jurisdictions,
- in which the Security must be perfected, registered and filed, to ensure its enforceability, validity, perfection and priority against all persons and to be effective as a security.
- (b) Whenever the State requires that the Security be perfected in a particular way in relation to any part of the Secured Property subject to the Security, Project Co must ensure that the Security is perfected in that way.
- (c) Project Co will not be in breach of its obligation under this Clause 4.13 and its representation and warranty under Clause 4.1(d)(ii) will not be incorrect or misleading if, after receiving written request from Project Co to take any action which can only be taken by the State to enable the Security to be perfected as required under this Clause 4.13, the State fails to take that action.
- (d) Whenever any part of the Secured Property subject to the Security is transferred to or retained in a place where this deed or the Security, because of an increase in the Secured Moneys or otherwise, bears insufficient stamp duty or is not registered or recorded, or for any other reason is of limited or of no force or effect, unenforceable, inadmissible in evidence or of reduced priority, Project Co must within 14 days after that transfer or retention ensure that:
- (i) this deed is stamped to the satisfaction of the State;
 - (ii) this deed is in full force and effect, enforceable, perfected, admissible in evidence and not of reduced priority; and

- (iii) this deed and the Security are registered in that place, or that part of the Secured Property subject to the Security is removed from that place.

4.14 No caveats

Project Co must ensure that any caveat lodged in respect of the Secured Property, other than a caveat lodged by the State or the Security Trustee, is removed as soon as reasonably practicable but in any event within 14 days after the date that Project Co becomes aware of the caveats existence.

4.15 Term of undertakings

Each of Project Co's undertakings in this Clause 4 continue in full force and effect from the date of this deed until the Security in respect of all the Secured Property is discharged under Clause 3.

5 ENFORCEMENT

5.1 When enforceable

- (a) If a Default Event subsists:
 - (i) the Security is immediately enforceable without the need for any demand or notice to be given to Project Co or any other person; and
 - (ii) the Secured Moneys are immediately due and payable by Project Co without the need for any demand or notice to be given to Project Co or any other person other than a notice expressly required by a Project Document.
- (b) The State agrees that it will not exercise any Power to enforce the Security under Chapter 4 of the PPSA unless a Default Event subsists.

5.2 No dealing with assets

Any right of Project Co to deal, for any purpose, with any asset which forms part of the Secured Property (including under Clause 4.6), other than by or through a Receiver appointed under this deed, immediately ceases if:

- (a) the State declares that the Secured Moneys are immediately due and payable;
- (b) the State takes any step to enforce the Security; or
- (c) subject to Clause 4.9, a Control Event occurs in relation to the asset.

5.3 Assistance in realisation

After the Security has become enforceable, Project Co must take all action required by the State, Receiver or Attorney to assist any of them to realise the Secured Property and exercise any Power including:

- (a) executing all transfers, conveyances, assignments and assurances of any of the Secured Property;
- (b) doing anything necessary or desirable under the law in force in any place where the Secured Property is situated;
- (c) giving all notices, orders, directions and consents which the State, Receiver or Attorney thinks expedient; and
- (d) doing anything necessary:
 - (i) for a call to be made on the uncalled capital of Project Co; or
 - (ii) to collect all called but unpaid capital of Project Co.

5.4 Postponing or delaying realisation or enforcement

The State, a Receiver or Attorney may postpone or delay the exercise of any Power for such period as the State, Receiver or Attorney may in its absolute discretion decide.

5.5 PPSA Retention of Title Property

- (a) In exercising any Power under or in relation to the Security, a State, Receiver or Attorney may not deal with any PPSA Retention of Title Property (as defined in

section 51F of the Corporations Act) except to the same extent as Project Co would be entitled to deal with that property.

- (b) Clause 5.5(a) does not apply:
 - (i) to any Secured Property to which the Secured Party has title immediately before starting to exercise any Power; or
 - (ii) to the extent it would otherwise prevent the transfer of the property because a transfer by Project Co would be prohibited or declared to be a default under a security agreement.

6 RECEIVER

6.1 Appointment of Receiver

If a Default Event subsists, the State may at any time while it subsists:

- (a) appoint any person or any 2 or more persons jointly, or severally, or jointly and severally to be a receiver or a receiver and manager of the Secured Property;
- (b) remove any Receiver and on the removal, retirement or death of any Receiver, appoint another Receiver; and
- (c) fix the remuneration and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of any realisation of the Secured Property.

6.2 Agency of Receiver

- (a) Subject to Clause 6.5, each Receiver is the agent of Project Co.
- (b) Project Co is responsible for the acts, defaults and remuneration of the Receiver.

6.3 Powers of Receiver

Subject to any express exclusion by the terms of the Receiver's appointment, the Receiver has, in addition to any powers conferred on the Receiver by applicable Law, and whether or not in possession of the Secured Property, or any part of it, the following powers:

- (a) **(manage, possession or control)**: to manage, enter into possession or assume control of any of the Secured Property;
- (b) **(lease or licence)**: to accept the surrender of, determine, grant or renew any lease or licence in respect of the use or occupation of any of the Secured Property:
 - (i) on any terms or special conditions that the State or Receiver thinks fit; and
 - (ii) in conjunction with the sale, lease or licence of any other property by any person;
- (c) **(sale)**: to sell or concur in selling any of the Secured Property to any person:
 - (i) by auction, private treaty or tender;
 - (ii) on such terms and special conditions as the State or the Receiver thinks fit;
 - (iii) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
 - (iv) in conjunction with the sale of any property by any other person; and
 - (v) in one lot or in separate parcels;
- (d) **(grant options to purchase)**: to grant to any person an option to purchase any of the Secured Property;
- (e) **(acquire property)**: to acquire any interest in any property, in the name or on behalf of Project Co, which on acquisition forms part of the Secured Property;
- (f) **(carry on business)**: to carry on or concur in carrying on any business of Project Co in respect of the Secured Property;
- (g) **(borrowings and security)**:

- (i) to raise or borrow any money, in its name or the name or on behalf of Project Co, from the State or any person approved by the State in writing; and
 - (ii) to secure money raised or borrowed under Clause 6.3(g)(i) by an Encumbrance over any of the Secured Property, ranking in priority to, equal with, or after, the Security or any Collateral Security;
- (h) **(maintain or improve Secured Property)**: to do anything to maintain, protect or improve any of the Secured Property including completing, repairing, erecting a new improvement on, demolishing or altering any of the Secured Property;
- (i) **(income and bank accounts)**: to do anything to manage or obtain income or revenue from any of the Secured Property including operating any bank account which forms part of the Secured Property or opening and operating a new bank account;
- (j) **(access to Secured Property)**: to have access to any of the Secured Property, the premises at which the business of Project Co is conducted and any of the administrative services of the business of Project Co;
- (k) **(insure Secured Property)**: to insure any of the Secured Property;
- (l) **(sever fixtures)**: to sever fixtures in respect of any of the Secured Property;
- (m) **(compromise)**: to make or accept any compromise or arrangement;
- (n) **(surrender Secured Property)**: to surrender or transfer any of the Secured Property to any person;
- (o) **(exchange Secured Property)**: to exchange with any person any of the Secured Property for any other property whether of equal value or not;
- (p) **(employ or discharge)**: to employ or discharge any person as an employee, contractor, agent, professional advisor or auctioneer for any of the purposes of this deed;
- (q) **(delegate)**: to delegate to any person any Power of the Receiver;
- (r) **(perform or enforce documents)**: to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of Project Co under, or otherwise obtain the benefit of:
 - (i) any document, agreement or right which attaches to or forms part of the Secured Property; and
 - (ii) any document or agreement entered into in exercise of any Power by the Receiver;
- (s) **(receipts)**: to give effectual receipts for all moneys and other assets which may come into the hands of the Receiver;
- (t) **(take proceedings)**: to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of Project Co, any proceedings including proceedings in relation to any insurance in respect of any of the Secured Property;
- (u) **(insolvency proceedings)**: to make any debtor bankrupt, wind-up any company, corporation or other entity and do all things in relation to any bankruptcy or winding-up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- (v) **(execute documents)**: to enter into and execute any document or agreement in the name of the Receiver or the name or on behalf of Project Co including bills of exchange, cheques or promissory notes for any of the purposes of this deed;
- (w) **(make calls)**: to make calls on any member of Project Co in respect of uncalled capital of Project Co;
- (x) **(vote)**: to exercise any voting rights or powers in respect of any part of the Secured Property;
- (y) **(collect called capital)**: to collect or enforce payment of any called but unpaid capital of Project Co whether or not the calls were made by the Receiver;

- (z) **(ability of Grantor)**: to do anything Project Co could do in relation to the Secured Property; and
- (aa) **(incidental power)**: to do anything necessary or incidental to the exercise of any Power of the Receiver.

6.4 Nature of Receiver's Powers

The Powers of the Receiver must be construed independently and no one Power limits the generality of any other Power. Any dealing under any Power of the Receiver will be on the terms and conditions the Receiver thinks fit.

6.5 Status of Receiver after commencement of winding-up

- (a) The power to appoint a Receiver under Clause 6.1 may be exercised even if, while a Default Event subsists or if at the time a Receiver is appointed, an order has been made or a resolution has been passed for the winding-up of Project Co.
- (b) If for any reason, including operation of law, a Receiver:
 - (i) appointed in the circumstances described in Clause 6.5(a); or
 - (ii) appointed at any other time,ceases to be the agent of Project Co as a result of an order being made or a resolution being passed for the winding-up of Project Co, then the Receiver immediately becomes the agent of the State.

6.6 Powers exercisable by the State

- (a) Whether or not a Receiver is appointed under Clause 6.1, the State may, while a Default Event subsists and without giving notice to any person, exercise any Power that could be conferred on a Receiver in addition to any Power of the State.
- (b) The exercise of any Power by the State, Receiver or Attorney does not cause or deem the State, Receiver or Attorney:
 - (i) to be a mortgagee in possession;
 - (ii) to account as mortgagee in possession; or
 - (iii) to be answerable for any act or omission for which a mortgagee in possession is liable.

6.7 Notice of exercise of rights

The State, Receiver or Attorney is not required:

- (a) to give notice of the Security or any Collateral Security to any debtor or creditor of Project Co or to any other person;
- (b) to enforce payment of any money payable to Project Co including any of the debts or monetary liabilities secured by this deed or by any Collateral Security; or
- (c) to obtain the consent of Project Co to any exercise of a Power.

6.8 Termination of receivership and possession

The State may, at any time, terminate the appointment of a Receiver and may, at any time, give up, or re-take, possession of the Secured Property.

7 APPLICATION AND RECEIPTS OF MONEY

7.1 Order of application

- (a) Subject to the Finance Direct Deed, at any time after the Security is enforceable, all money received by the State, Receiver, Attorney or any other person acting on their behalf under this deed or any Collateral Security may be appropriated and applied towards any amount and in any order that the State, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by Law.
- (b) Failing a determination under Clause 7.1(a), the money must be applied in the following manner and order:

- (i) first, in payment of all costs, charges and expenses (including any GST) of the State, Receiver or Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any Power;
 - (ii) second, in payment of any other outgoings the State, Receiver or Attorney thinks fit to pay;
 - (iii) third, in payment to the Receiver of his remuneration;
 - (iv) fourth, in payment and discharge, in order of their priority, of any Encumbrances of which the State, Receiver or Attorney is aware and which have priority to the Security;
 - (v) fifth, in payment to the State towards satisfaction of the Secured Moneys and applied against interest, principal or any other amount the State, Receiver or Attorney thinks fit;
 - (vi) sixth, in payment only to the extent required by Law, in order of their priority, of other Encumbrances in respect of the Secured Property of which the State, Receiver or Attorney is aware and which are due and payable in accordance with their terms; and
 - (vii) seventh, in payment of the surplus, if any, without interest to Project Co. The State, Receiver or Attorney may pay the surplus to the credit of an account in the name of Project Co in the books of any bank carrying on business within Australia and, having done so, is under no further Liability in respect of that surplus.
- (c) Any amount required by Law to be paid in priority to any amount specified in Clause 7.1(b) must be paid before any money is applied in payment of the amount specified in Clause 7.1(b).

7.2 Money actually received

In applying any money towards satisfaction of the Secured Moneys, Project Co is to be credited only with so much of the money which is available for that purpose (after deducting any GST imposed) and which is actually received by the State, Receiver or Attorney. The credit dates from the time of receipt.

7.3 Amounts contingently due

- (a) If at the time of a distribution of any money under Clause 7.1 any part of the Secured Moneys is contingently owing to the State, then the State, Receiver or Attorney may retain an amount equal to the amount contingently owing or any part of it.
- (b) If the State, Receiver or Attorney retains any amount under Clause 7.3(a) it must place that amount on short-term interest bearing deposit until the amount contingently owing becomes actually due and payable or otherwise ceases to be contingently owing at which time the State, Receiver or Attorney must:
 - (i) pay to the State the amount which has become actually due to it; and
 - (ii) apply the balance of the amount retained, together with any interest on the amount contingently owing, in accordance with Clause 7.1.

7.4 Notice of an Encumbrance

- (a) If the State receives actual or constructive notice of an Encumbrance over the Secured Property (other than a Permitted Encumbrance) or of the perfection of an Encumbrance, the State:
 - (i) may open a new account in the name of Project Co in its books; or
 - (ii) is regarded as having opened a new account in the name of Project Co in its books,

on the date it received or was regarded as having received notice of the Encumbrance or perfection.
- (b) From the date on which that new account is opened or regarded as opened:
 - (i) all payments made by Project Co to the State; and
 - (ii) all financial accommodation and advances by the State to Project Co,

are or are regarded as credited and debited, as the case may be, to the new account unless otherwise specified by the State.

- (c) The payments by Project Co under Clause 7.4(b) must be applied in the manner determined by the State or, failing a determination:
- (i) first, in reduction of the debit balance, if any, in the new account; and
 - (ii) second, if there is no debit balance in the new account, in reduction of the Secured Moneys which have not been debited or regarded as debited to the new account.

7.5 State's statement of indebtedness

A certificate signed by any Officer of the State stating:

- (a) the amount of the Secured Moneys due and payable; or
 - (b) the amount of the Secured Moneys, whether currently due and payable or not,
- is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, unless the contrary is proven.

7.6 State's receipts

- (a) The receipt of any Officer of the State for any money payable to or received by the State under this deed exonerates the payer from all liability to enquire whether any of the Secured Moneys have become payable.
- (b) Every receipt of an Officer of the State effectually discharges the payer from:
 - (i) any future Liability to pay the amount specified in the receipt; and
 - (ii) being concerned to see to the application of, or being answerable or accountable for any loss or misapplication of, the amount specified in the receipt.

7.7 Conversion of currencies on application

In making an application under Clause 7.1, the State, Receiver or Attorney may itself, or through its bankers, purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the time it thinks fit.

7.8 Amounts payable on demand

If an amount payable under a Project Document is not expressed to be payable on a specified date, that amount is payable by Project Co on demand by the State.

8 POWER OF ATTORNEY

8.1 Appointment of Attorney

For consideration received, Project Co irrevocably appoints the State and each Receiver severally its Attorney for the purposes set out in Clause 8.2.

8.2 Purposes of appointment

The Attorney may, in its name or in the name of Project Co, the State or Receiver, do any of the following:

- (a) do any thing which ought to be done by Project Co under this deed or any other Project Document;
- (b) exercise any right, power, authority, discretion or remedy of Project Co under:
 - (i) this deed;
 - (ii) any other Project Document; or
 - (iii) any agreement forming part of the Secured Property;
- (c) do any thing which in the opinion of the State, Receiver or Attorney is necessary or desirable for securing or perfecting the Security and any Collateral Security;
- (d) execute in favour of the State any legal mortgage, transfer, assignment and any other assurance of any of the Secured Property;

- (e) execute deeds of assignment, composition or release;
- (f) sell or otherwise part with the possession of any of the Secured Property; and
- (g) generally, do any other thing, whether or not of the same kind as those set out in Clauses 8.2(a) to 8.2(f), which in the opinion of the State, Receiver or Attorney is necessary or desirable:
 - (i) to more satisfactorily secure to the State the payment of the Secured Moneys; or
 - (ii) in relation to any of the Secured Property.

8.3 Exercise after Default Event

An Attorney must not exercise any Power under Clause 8.2 unless a Default Event subsists but a breach of this Clause 8.3 does not affect the validity of the Attorney's act.

8.4 Delegation and substitution

The Attorney may appoint a substitute attorney to perform any of its Powers.

9 PROTECTION

9.1 Protection of third parties

- (a) No person dealing with the State, Receiver or Attorney is bound to enquire whether:
 - (i) the Security has become enforceable;
 - (ii) the Receiver or Attorney is duly appointed; or
 - (iii) any Power has been properly or regularly exercised.
- (b) No person dealing with the State, Receiver or Attorney is affected by express notice that the exercise of any Power was unnecessary or improper.
- (c) The irregular or improper exercise of any Power is, as regards the protection of any person, regarded as authorised by Project Co and this deed, and is valid.

9.2 Protection of the State, Receiver and Attorney

- (a) The State, Receiver or Attorney is not liable for any loss or damage including consequential loss or damage, arising directly or indirectly from:
 - (i) any omission or delay in the exercise or non-exercise of any Power; or
 - (ii) the neglect, default or dishonesty of any manager, director, company secretary, employee, agent, accountant, auctioneer or solicitor of Project Co, the State, Receiver or Attorney.
- (b) Clause 9.2(a) does not apply:
 - (i) in respect of the State, to any loss or damage which arises from the wilful default, fraud or gross negligence of the State; and
 - (ii) in respect of a Receiver or Attorney, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney.

10 SAVINGS PROVISIONS

10.1 Statutory powers

- (a) Subject to Clause 10.1(b), the powers of the State under this deed or any Collateral Security are in addition to any powers the State has under applicable Law.
- (b) If the Secured Party exercises a Power in connection with this deed, that exercise is taken not to be an exercise of a Power under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this Clause 10.1(b) does not apply to a right, power or remedy which can only be exercised under the PPSA.

10.2 No notice required unless mandatory

- (a) To the extent the Law permits, Project Co waives:

- (i) its rights to receive any notice that is required by:
 - (A) any provision of the PPSA (including a notice of a verification statement); or
 - (B) any other Law, before a secured party or Receiver exercises a right, power or remedy; and
 - (ii) any time period that must otherwise lapse under any law before a secured party or receiver exercises a right, power or remedy.
- (b) If the Law which requires a period of notice or a lapse of time cannot be excluded, but the Law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the Law allows to be agreed (whichever is the longer).
- (c) However, nothing in this Clause 10.2 prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other Law.

10.3 Appointment of nominee for PPSA registration

For the purposes of section 153 of the PPSA, the Secured Party appoints Project Co as its nominee, and authorises Project Co to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of Project Co which is:

- (a) evidenced or created by Chattel Paper or a Key Contact;
- (b) perfected by registration under the PPSA; and
- (c) transferred to the Secured Party under this deed.

This authority ceases when the registration is transferred to the Secured Party.

10.4 Continuing security

The Security is a continuing security despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and remains in full force and effect until the State has given a discharge of the Security in respect of all the Secured Property under Clause 3.

10.5 No merger of security

- (a) Nothing in this deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
 - (i) any Encumbrance or indemnity in favour of the State; or
 - (ii) any Power.
- (b) No other Encumbrance or Project Document which the State has the benefit of in any way prejudicially affects any Power.

10.6 Exclusion of moratorium

Without limiting Clause 10.7, to the extent not excluded by Law, a provision of any legislation (other than a provision of the PPSA mentioned in section 115(1) of the PPSA) which directly or indirectly:

- (a) lessens, varies or affects in favour of Project Co any obligations under this deed or any Project Document;
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the State, Receiver or Attorney of any Power; or
- (c) confers any right on Project Co or imposes any obligation on the State or a Receiver or Attorney in connection with the exercise of any Power,

is negated and excluded from this deed and any Project Document and all relief and protection conferred on Project Co by or under that legislation is also negated and excluded.

10.7 Exclusion of PPSA provisions

To the extent the Law permits:

- (a) for the purposes of section 115(1) and 115(7) of the PPSA:
 - (i) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this deed to permit Project Co and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify Project Co that any of these provisions are excluded or that the Secured Party need not comply with any of those provisions as notified to Project Co by the Secured Party; and
- (d) Project Co agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

10.8 Conflict

Where any right, power, authority, discretion or remedy conferred on the State, Receiver or Attorney by this deed or any Project Document is inconsistent with the powers conferred by applicable Law then, to the extent not prohibited by that law, those powers conferred by applicable Law are regarded as negated or varied to the extent of the inconsistency.

10.9 Consent of State

- (a) Whenever the doing of any thing by Project Co is dependent on the consent of the State, the State may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Project Document.
- (b) Any conditions imposed on Project Co under Clause 10.9(a) must be complied with by Project Co.

10.10 Completion of blank securities

- (a) The State, a Receiver, Attorney or any Officer of the State may at any time complete, in favour of the State, any appointee of the State or any purchaser, any instrument executed in blank by or on behalf of Project Co and deposited with the State as security under this deed or under any Collateral Security.
- (b) The State, a Receiver, Attorney or any Officer of the State must not exercise any Power under Clause 10.10(a) unless a Default Event subsists but a breach of this Clause 10.10(b) does not affect the validity of the act of the State, Receiver, Attorney or Officer of the State.

10.11 Principal obligations

The Security and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to any other Encumbrance (other than another Collateral Security) or other obligation; and
- (b) independent of, and unaffected by, any other Encumbrance or other obligation which the State may hold at any time in respect of the Secured Moneys.

10.12 No obligation to marshal

The State is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:

- (a) any Encumbrance or Collateral Security held, at any time, by the State; or
- (b) any moneys or assets which the State, at any time, holds or is entitled to receive.

10.13 Non avoidance

If any payment by Project Co to the State is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting Project Co or any other thing, and whether or not:

- (a) any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the State,

Project Co:

- (a) as an additional, separate and independent obligation, indemnifies the State against that avoided payment; and
- (b) acknowledges that any Liability of Project Co under the Project Documents and any Power is the same as if that payment had not been made.

11 GENERAL

11.1 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 11.1(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

11.2 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 Project Co in accordance with this deed;
 - (i) any amount due and payable by Project Co 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 Project Co (acting reasonably) arising out of or in connection with any State Project Document and in good faith.
- (b) Project Co 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 Project Co is compelled by Law to make such a deduction or withholding.
- (c) If Project Co 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.

11.3 Relationship of parties

- (a) Nothing in this Deed or any other Project Document:
 - (i) **(no additional relationship):** creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
 - (ii) **(no duty of good faith):** imposes any duty of good faith on the State (unless otherwise expressly provided).

- (b) Project Co must not act as or represent itself to be the servant or agent of the State.

11.4 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 the State Project Documents.
- (b) **(State's powers, functions or duties)**: Notwithstanding anything expressly provided or implied in this deed to the contrary, the parties expressly agree that the State:
- (i) 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 11.4(d), Project Co will not be entitled to make any Claim against the State for any liability relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (d) **(Liability for breach)**: Clauses 11.4(a) to 11.4(c) do not limit any Liability of the State which the State would have had to Project Co in accordance with any State Project Document as a result of a breach by the State of a term of any State Project Document but for Clauses 11.4(a) to 11.4(c) .

11.5 Performance by State of Project Co's obligations

If Project Co defaults in fully or punctually performing any obligation contained or implied in any Project Document, the State may, without prejudice to any Power, do all things necessary or desirable, in the opinion of the State, to make good or attempt to make good that default to the satisfaction of the State.

11.6 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 11.6(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 11.6(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 11.6(b) or 11.6(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.

11.7 Notices

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this deed (in this Clause 11.7, "**Notices**"):
- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,
- of the addressee set out in Schedule 1 of this deed (or as otherwise notified by that party to each other party from time to time).

- (c) **(Date of receipt):** Subject to Clause 11.7(d), a Notice is taken to be received by the addressee:
- (i) 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;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices sent by email):** In connection with Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 11.7. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) the Services Subcontractor and the Parent Guarantor of the Services Subcontractor 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
- 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.

11.8 Entire agreement

To the extent permitted by Law and in relation to their 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.

11.9 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.

11.10 Governing law and jurisdiction

- (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 11.10(a), for the purposes of section 237 of the PPSA, the law of the Commonwealth of Australia as that law applies in the jurisdiction specified in Clause 11.10(a) governs the Security to the extent it is permitted to apply to the Secured Property under that section.

11.11 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.

11.12 Amendments

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.

11.13 Joint and several liability

If Project Co consists of more than one person, then the rights and obligations of Project Co in accordance with this deed are joint and several as between those persons.

11.14 Cumulative rights

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the State, Receiver or Attorney.

11.15 Assignment

- (a) Subject to any Project Document, the State may assign its rights under this deed and each Collateral Security without the consent of Project Co.
- (b) Project Co must not assign any of its rights under this deed or any Collateral Security without the prior written consent of the State.

11.16 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this deed.
- (d) The State and Project Co agree that:
- (i) each indemnity or promise referred to in this deed in favour of the State is held on trust by the State for the benefit of any of the Indemnified Persons; and
 - (ii) the consent of the Indemnified Persons referred to in Clause 11.16(d)(i) will not be required for any amendment to, or waiver of rights in accordance with a State Project Document.

11.17 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.

11.18 Further acts and documents

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

11.19 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.

11.20 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.

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 each states 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)

SCHEDULE 1 – NOTICE DETAILS**To the State:**

The State of Western Australia

Attention: *[Not disclosed]*

Address: *[Not disclosed]*

Phone: *[Not disclosed]*

Email: *[Not disclosed]*

To Project Co

EduWest Project Co Pty Ltd as trustee of EduWest Project Trust

Address *[Not disclosed]*

Attention *[Not disclosed]*

Fascimile *[Not disclosed]*

Telephone *[Not disclosed]*

Email *[Not disclosed]*