Finance Direct Deed

[Project]

**[xx]**

(**State**)

**[xx]**

(**Project Co**)

**[xx]**(**Security Trustee**)

[***Note: if the borrower under the Syndicated Facilities Agreement is an entity other than Project Co, then that entity should be a party to this document. Amongst other things, this entity will be required to provide representations and warranties equivalent to those provided by Project Co in clause 5.1 of the Project Deed and the agreements made by Project Co will be extended to that entity.***]

Contents

[1. Definitions and interpretation 1](#_Toc145587189)

[1.1 Project Deed definitions 1](#_Toc145587190)

[1.2 Definitions 1](#_Toc145587191)

[1.3 Interpretation 4](#_Toc145587192)

[1.4 Priority of Documents 6](#_Toc145587193)

[1.5 Project Documents 6](#_Toc145587194)

[1.6 Prior approval or consent 6](#_Toc145587195)

[1.7 Action without delay 7](#_Toc145587196)

[1.8 Provisions limiting or excluding Liability, rights or obligations 7](#_Toc145587197)

[1.9 Relationship of the parties 7](#_Toc145587198)

[1.10 State's rights, duties and functions 7](#_Toc145587199)

[1.11 Reasonable endeavours of State 8](#_Toc145587200)

[1.12 Final and binding 8](#_Toc145587201)

[1.13 Proportionate liability 8](#_Toc145587202)

[1.14 Capacity and limitation of liability of Security Trustee 9](#_Toc145587203)

[1.15 Replacement of Security Trustee 9](#_Toc145587204)

[1.16 Finance Documents 10](#_Toc145587205)

[1.17 Continuance of rights 10](#_Toc145587206)

[1.18 Representations and warranties 10](#_Toc145587207)

[2. Conditions Precedent 10](#_Toc145587208)

[3. Consent to Securities 10](#_Toc145587209)

[3.1 Consent by the State 10](#_Toc145587210)

[3.2 Consent by Security Trustee 11](#_Toc145587211)

[3.3 Nature of consents 11](#_Toc145587212)

[4. Order of priorities 11](#_Toc145587213)

[4.1 Priority of Securities 11](#_Toc145587214)

[4.2 Provisions apply despite anything to the contrary 12](#_Toc145587215)

[4.3 Application of payments on enforcement 12](#_Toc145587216)

[4.4 Contingent liabilities 12](#_Toc145587217)

[4.5 Enforcement by the State 13](#_Toc145587218)

[4.6 Receipts 14](#_Toc145587219)

[4.7 Registration and notice 14](#_Toc145587220)

[4.8 Priority for all moneys 14](#_Toc145587221)

[4.9 Marshalling of securities 14](#_Toc145587222)

[5. PA Default Events 15](#_Toc145587223)

[5.1 Notice of PA Default Events 15](#_Toc145587224)

[5.2 Security Trustee's right to Cure 15](#_Toc145587225)

[5.3 Information regarding action to cure PA Default Event 16](#_Toc145587226)

[5.4 Extension of Financiers' Cure Program 16](#_Toc145587227)

[5.5 Termination of Project Deed 18](#_Toc145587228)

[5.6 Payments to Subcontractors on PA Default Event 19](#_Toc145587229)

[5.7 Super Majority Financiers 20](#_Toc145587230)

[6. Enforcement by Security Trustee 21](#_Toc145587231)

[6.1 Enforcement by Security Trustee 21](#_Toc145587232)

[6.2 No liability 21](#_Toc145587233)

[6.3 Restriction on set off by Financiers 21](#_Toc145587234)

[6.4 Security Trustee not to hinder State under Project Documents 22](#_Toc145587235)

[6.5 Third party account bank 22](#_Toc145587236)

[6.6 Replacement of D&C Contractor or Services Contractor 22](#_Toc145587237)

[6.7 Disposal of Project Co's interest 23](#_Toc145587238)

[6.8 Appointment of Enforcing Party 24](#_Toc145587239)

[6.9 Documentation 26](#_Toc145587240)

[7. Finance Default 26](#_Toc145587241)

[7.1 Notice of Finance Default 26](#_Toc145587242)

[7.2 Notice of enforcement action 26](#_Toc145587243)

[7.3 Information to the State 26](#_Toc145587244)

[7.4 Payments by State 27](#_Toc145587245)

[8. Insurance proceeds 27](#_Toc145587246)

[9. Recognition of rights 27](#_Toc145587247)

[9.1 Recognition of the State's step-in rights 27](#_Toc145587248)

[9.2 Release of Security 28](#_Toc145587249)

[9.3 Recognition of Security Trustee rights 28](#_Toc145587250)

[9.4 State assumption of Actual Debt 29](#_Toc145587251)

[9.5 State dealings with the Security Trustee 31](#_Toc145587252)

[9.6 No role for Independent Reviewer 31](#_Toc145587253)

[10. Amendments to Finance Documents 31](#_Toc145587254)

[10.1 No amendments without consent 31](#_Toc145587255)

[10.2 Permitted Amendments 31](#_Toc145587256)

[10.3 Notice of Permitted Amendment 32](#_Toc145587257)

[10.4 Notice of intended Amendment (other than a Permitted Amendment) 32](#_Toc145587258)

[10.5 Consent to Amendments 33](#_Toc145587259)

[10.6 Consequences of Amending without consent 33](#_Toc145587260)

[11. Development Phase Capital Contribution, State Contribution and CDPD Amount 33](#_Toc145587261)

[11.1 Development Phase Capital Contribution 33](#_Toc145587262)

[11.2 State Contribution 34](#_Toc145587263)

[11.3 CDPD Amount 34](#_Toc145587264)

[12. D&C Contractor Construction Bond 35](#_Toc145587265)

[13. Assignment and novation 36](#_Toc145587266)

[13.1 No assignment, novation or other transfer without consent 36](#_Toc145587267)

[13.2 Novation by the Security Trustee 36](#_Toc145587268)

[13.3 Assignment, novation or other transfer by the State 37](#_Toc145587269)

[14. Confidential Information and disclosure 37](#_Toc145587270)

[14.1 Confidential Information and disclosure by the State 37](#_Toc145587271)

[14.2 Confidential Information and disclosure by Project Co and the Security Trustee 38](#_Toc145587272)

[14.3 Disclosure by the Security Trustee 38](#_Toc145587273)

[15. Termination 39](#_Toc145587274)

[16. Dispute resolution procedure 39](#_Toc145587275)

[16.1 Procedure 39](#_Toc145587276)

[16.2 Senior negotiations 40](#_Toc145587277)

[17. Expert determination 40](#_Toc145587278)

[17.1 Referral and selection of expert 40](#_Toc145587279)

[17.2 Rules of expert determination 42](#_Toc145587280)

[17.3 Expert finding 42](#_Toc145587281)

[17.4 Proportionate liability 43](#_Toc145587282)

[17.5 Liability of expert 43](#_Toc145587283)

[17.6 Costs 43](#_Toc145587284)

[18. Arbitration 44](#_Toc145587285)

[18.1 Reference to arbitration 44](#_Toc145587286)

[18.2 Arbitration 44](#_Toc145587287)

[18.3 Appointment of arbitrator 45](#_Toc145587288)

[18.4 General principles for conduct of arbitration 45](#_Toc145587289)

[18.5 Proportionate liability 46](#_Toc145587290)

[18.6 Extension of ambit of arbitration proceedings 46](#_Toc145587291)

[18.7 Award final and binding 46](#_Toc145587292)

[18.8 Continue to perform 47](#_Toc145587293)

[18.9 Governing law of arbitration agreement 47](#_Toc145587294)

[18.10 Interlocutory relief 47](#_Toc145587295)

[18.11 Consolidation 47](#_Toc145587296)

[19. GST 47](#_Toc145587297)

[20. Notices 49](#_Toc145587298)

[20.1 Notices 49](#_Toc145587299)

[21. Miscellaneous 50](#_Toc145587300)

[21.1 Governing Law and jurisdiction 50](#_Toc145587301)

[21.2 Entire agreement 50](#_Toc145587302)

[21.3 Further acts and documents 51](#_Toc145587303)

[21.4 Survival of certain provisions 51](#_Toc145587304)

[21.5 Waiver 51](#_Toc145587305)

[21.6 Consents and approvals 52](#_Toc145587306)

[21.7 Amendments 52](#_Toc145587307)

[21.8 Expenses 52](#_Toc145587308)

[21.9 Severance 52](#_Toc145587309)

[21.10 Counterparts 52](#_Toc145587310)

[21.11 Moratorium Legislation 53](#_Toc145587311)

[21.12 No representation or reliance 53](#_Toc145587312)

[21.13 Indemnities 53](#_Toc145587313)

Finance Direct Deed dated

**Parties** [xx] (**State**)

[xx] (**Project Co**)

[xx] (**Security Trustee**)

Background

1. The background to the Project is set out in the Project Deed.
2. Under the Finance Documents, the Financiers have agreed to provide finance to Project Co in respect of the Project, and under the Project Deed the State has granted Project Co the right to earn the Service Payment.
3. Project Co has agreed to grant the Financiers Securities to the Security Trustee to secure the due performance of Project Co's obligations under the Finance Documents, and to grant the State Securities to the State to secure its obligations to the State under the State Project Documents.
4. The Security Trustee, the State and Project Co wish to regulate the manner in which certain rights in respect of the Project are to be exercised.

Operative provisions

# Definitions and interpretation

## Project Deed definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Deed.

## Definitions

In this Deed, unless the context otherwise requires:

1. **Account Bank** has the meaning given in clause 6.5.
2. **Agreed Amount** has the meaning given in clause 19(c)(i).
3. **Amendment** has the meaning given in clause 10.1.
4. **Beneficiaries** means the beneficiaries from time to time under the Security Trust Deed.
5. **Consent Deed** means each of the D&C Contractor Consent Deed and the Services Contractor Consent Deed.
6. **Contractor Security** has the meaning given in clause 9.4(b).
7. **Cost** has the meaning given in clause 19(h).
8. **Cure Activities** means the Cure of all PA Default Events (or overcoming their effects to the reasonable satisfaction of the State).
9. **Debt Service Reserve Account** has the meaning given to that term in the [Security Trust Deed / Syndicated Facilities Agreement].
10. **Deed** means this deed and includes all schedules, attachments and annexures to it.
11. **Direct** **Deeds** means:
    1. the D&C Contractor Direct Deed;
    2. the Services Contractor Direct Deed; and
    3. any other Subcontractor Direct Deed required by the State in accordance with the Project Deed.
12. **Dispute** has the meaning given in clause 16.1.
13. **Disputing** **Parties** has the meaning given in clause 16.1.
14. **Enforcing** **Party** means any agent, attorney, trustee, receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed under any Security or under Law in connection with any Security.
15. **Finance Default** means:
    1. an event of default (however described) under the Finance Documents; or
    2. any event which would restrict or cancel, or entitle any Finance Party to restrict or cancel, Project Co's ability to obtain or have available finance or financial accommodation in accordance with the Finance Documents except to the extent that immediately after such restriction or cancellation, the finance or financial accommodation available to Project Co is equal to or greater than that required to fully undertake the Project.
16. **Finance Party** means the Security Trustee, the Facility Agent, each Financier and each other Beneficiary.
17. **Financier Enforcing Party** means the Security Trustee and any Enforcing Party appointed under the Financiers Securities or under Law in connection with the Financiers Securities.
18. **Financiers' Cure Program** means, at any time, the steps and actions that together comprise a program and the date or dates then specified in the program for cure of any PA Default Event, as outlined in clause 5.2(c) and as extended (if at all) in accordance with clause 5.4.
19. **Financiers Securities** means:
    1. the deed entitled ‘[xx]’ dated on or about the date of this Deed between, among others, Project Co and the Security Trustee;
    2. each other Security (as defined in the Security Trust Deed); and
    3. any other Security Interest which is at any time collateral to any of the foregoing.
20. **Fit and Proper Person** means, in respect of a person, that if that person acquired Control of Project Co by means of a Share Capital Dealing then the State would not be entitled to withhold its consent to the relevant Share Capital Dealing because, in the State's reasonable opinion, none of the circumstances in clause 52.5 of the Project Deed apply.
21. **New Debt Contracts** has the meaning given in clause 9.4(b)(iv).
22. **Other Party** has the meaning given in clause 21.10(a).
23. **PA Default Event** means:
    1. subject to paragraph (b), a Major Default or a Default Termination Event; and
    2. for the purposes of clauses 5.6 and 5.7 only:
       1. a Default Termination Event constituted by an Insolvency Event occurring in respect of the D&C Contractor, the Services Contractor or any Parent Guarantor; or
       2. a Default Termination Event constituted by Project Co at any time wholly or substantially abandoning all or any material (in scope or effect) part of the Project Activities.
24. **Permitted Amendment** has the meaning given in clause 10.2.
25. **Permitted Financier List** means the list set out in the Schedule to this Deed as updated by Project Co from time to time at the request of (or with the consent of) the State.
26. **Project Account** means each Project Account as defined in the [Security Trust Deed / Syndicated Facilities Agreement] and any other account of Project Co with a Finance Party.
27. **Project Co's Rights** means Project Co's rights under the Project Documents.
28. **Project Co Termination Payment** means any Termination Payment payable by Project Co to the State.
29. **Project Deed** means the document entitled "[xx] - Project Deed" between the State and Project Co dated on or about the date of this Deed.
30. **Receipt** has the meaning given in clause 4.6.
31. **Recipient** has the meaning given in clause 19(c)(ii).
32. **Relevant Financier** has the meaning given in clause 5.7(a)(ii).
33. **Representatives** has the meaning given in clause 16.2(a).
34. **Resolution Institute** means Resolution Institute Ltd ACN 008 651 232.
35. **Revenue** has the meaning given in clause 19(g).
36. **Securities** means:
    1. the State Securities; and
    2. the Financiers Securities,
37. and **Security** means each or any one of them as the context requires.
38. **Security Interest** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, 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 including a security interest under section 12 of the *Personal Property Securities Act 2009* (Cth).
39. **Security Trust** has the meaning given in the Security Trust Deed.
40. **Security Trustee Tripartite Rights** has the meaning given in clause 9.3(a).
41. **State Assumption Date** has the meaning given in clause 9.4(b).
42. **State Priority Moneys** means any amounts owing to the State under clauses 38.5 and 44.9 of the Project Deed or as a result of action taken under clause 7 of a Direct Deed.
43. **State Securities** means:
    1. the State Security; and
    2. any other instrument or Security Interest which is at any time collateral to any of the foregoing.
44. **Super Majority Financiers** means those Financiers holding equal to or greater than 75% of the total senior debt commitments (or, after the applicable availability period, equal to or greater than 75% of the total outstanding principal amounts) in each case under the relevant Finance Documents.
45. **Supplier** has the meaning given in clause 19(c).
46. **Valid Claim** means a claim by a Subcontractor (other than the D&C Contractor or a Services Contractor) for payment for works performed by that Subcontractor under its Subcontract and in respect of which the Subcontractor has become entitled to suspend work pursuant to the Security of Payment Act because of a failure by the D&C Contractor or a Services Contractor or any of their respective Associates to pay the amount claimed.

## Interpretation

In this Deed:

### (**headings**): headings and subheadings are for convenience only and do not affect interpretation;

### (**number and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

### (**Deed and Schedule references**): a reference to:

#### a party, clause, Schedule, Annexure or Attachment is a reference to a party, clause, Schedule, Annexure or Attachment of or to this Deed; and

#### a section or part is a reference to a section or part of the Schedule or the PSDR (as applicable) in which they are located,

unless expressly provided otherwise;

### (**Appendix**): a reference to an Appendix is a reference to an Appendix of the PSDR;

### (**document as amended**): subject to clause 1.3(x), a reference to a Project Document or to any other deed, agreement, document or instrument means a reference to such Project Document or other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

### (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

### (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, an Entity and a trust (including a trustee);

### (**replacement person**): a reference to a person appointed under this Deed or any other Project Document includes that person's replacement or delegate appointed in accordance with this Deed or other Project Document (as applicable);

### (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

### (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

#### all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

#### consolidations, amendments, re‑enactments and replacements;

### (**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;

### (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

### (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

### (**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;

### (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

### (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

### (**time**):a reference to time is a reference to time in Melbourne, Victoria, Australia;

### (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### (**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;

### (**absolute discretion**): unless the State or the State Representative is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the State can exercise any power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

### ("**may**"): without limiting clause 1.3(t), unless the State or the State Representative is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, 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;

### (**replacement Authorities**): where there is a reference to an Authority, institute, association or other body referred to in a State Project Document which:

#### is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that State Project Document is deemed to refer to that other entity; or

#### ceases to exist, that State Project Document is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity;

### (**no bias against drafter**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision; and

### (**consent to amendments**): references to the D&C Contract, a Services Contract, the Consent Deeds, the Finance Documents and the Equity Documents or any of them are references to those documents or the relevant document in the form either approved by the State before the date of this Deed, or in satisfaction of the conditions outlined in clause 3 of the Project Deed but as modified, varied, amended or replaced by the parties to those documents, with the consent of the State (as required) under clause 52.1 of the Project Deed.

## Priority of Documents

### If there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, or between any of the State Project Documents, then the following order of precedence applies:

#### this Deed;

#### the Project Deed; and

#### the remaining State Project Documents.

### If there is an inconsistency, ambiguity or discrepancy between this Deed and any other Finance Document, then the following order of precedence applies:

#### this Deed; and

#### the remaining Finance Documents.

## Project Documents

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

## Prior approval or consent

If Project Co or the Security Trustee (as applicable) is required by this Deed to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

## Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by Project Co or the Security Trustee, all things must be done by Project Co or the Security Trustee (as applicable) without undue delay.

## Provisions limiting or excluding Liability, rights or obligations

### (**No limitation**): A right or obligation of a party under this Deed will not limit or exclude any other right or obligation of a party under this Deed unless otherwise expressly stated.

### (**Limitation permitted by Law**): 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.

## Relationship of the parties

Nothing in any Project Document:

### (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or

### (**no good faith**): imposes any duty of good faith on the State,

unless otherwise expressly stated.

## State's rights, duties and functions

### (**State's own interests**): Unless otherwise expressly stated in the State Project Documents, nothing in the State Project Documents 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 carrying out any of its obligations under the State Project Documents.

### (**State's rights**): Notwithstanding anything expressly stated or implied in the State Project Documents to the contrary:

#### the State is not obliged to exercise any executive or statutory right, duty or function, 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, duties or functions; and

#### nothing expressly stated or implied in the State Project Documents 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, duties or functions.

### (**No Claim**): Subject to clause 1.10(d), neither Project Co nor the Security Trustee will be entitled to make any Claim against the State in connection with any exercise or failure of the State to exercise any of its legal, executive or statutory rights, duties or functions.

### (**Liability for breach**): Clauses 1.10(a) to 1.10(c) do not exclude or limit any Claim that Project Co or the Security Trustee may have against the State or a State Associate, or any Liability which the State or any State Associate may have had to Project Co, any Project Co Associate or the Security Trustee under any State Project Document or at Law:

#### for damages for breach of a State Project Document by the State or any State Associate; or

#### in respect of Project Co's, any Project Co Associate's or the Security Trustee's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of Project Co, any Project Co Associate or the Security Trustee is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State or any State Associate.

## Reasonable endeavours of State

A statement in a State Project Document providing that the State or any of its officers, employees or agents will or must use or exercise "best endeavours", "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must 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 but does not mean that the State or any of its officers, employees or agents:

### (**no guarantee**): guarantees the relevant outcome will be brought about; or

### (**no obligation**): is required to:

#### exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

#### exercise a power or discretion or otherwise act in a manner that the State regards as not in the public interest;

#### develop or implement new policy or a change in policy; or

#### procure any new Legislation or a change in Legislation.

## Final and binding

Subject to clauses 17.3 and 18.7(b) if a determination, decision, opinion or direction is stated in this Deed to be "final and binding", no party is entitled to challenge that determination, decision, opinion or direction on any basis other than that it is an indisputable error in complete disregard of the facts of the case, the applicable Law or credible evidence.

## Proportionate liability

The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of each party under this Deed, whether such rights are sought to be enforced in contract, tort or otherwise.

## Capacity and limitation of liability of Security Trustee

### (**Capacity of Security Trustee**): The Security Trustee enters into this Deed only in its capacity as trustee for the Beneficiaries under the Security Trust Deed and in no other capacity and with recourse limited to the Security Trustee's right of indemnity:

#### out of the assets of the Security Trust; and/or

#### from the Beneficiaries.

### (**No application**): The provisions of this clause 1.14 will 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 under the Security Trust Deed, because the Security Trustee has been guilty of fraud, gross negligence or wilful misconduct.

### (**Role of Security Trustee**): Each party acknowledges that the Security Trustee holds the benefit of this Deed for the benefit of the Beneficiaries and, as between the Security Trustee and the Beneficiaries:

#### is bound to act on the instructions of the Beneficiaries in accordance with the terms of the Security Trust Deed; and

#### in the absence of such instructions from the Beneficiaries, the Security Trustee is not bound to act,

in each case without derogating from the rights of the State under this Deed arising from any act or failure to act.

### (**Obligations limited**): The Security Trustee’s obligations, duties and responsibilities are limited to those expressly set out in the Security Trust Deed and this Deed.

### (**Appointment**): Each other party to this Deed may assume that the Security Trustee has been duly appointed, that its appointment has not been terminated or suspended (or the terms of its appointment materially amended) and that it is authorised to give any instruction, notice, consent or direction which it purports to give under this Deed.

### (**Agreement by Beneficiaries**): The Security Trustee acknowledges and agrees that the Beneficiaries have undertaken to the Security Trustee: **[*Note: the State will review the Security Trust Deed to confirm that this undertaking has been provided.*]**

#### to not instruct the Security Trustee to do anything which the Security Trustee is not permitted to do under this Deed; and

#### that each Beneficiary is bound by the terms of this Deed to the extent applicable to that Beneficiary, including to comply with clause 6.3, clause 8 and clause 9.4.

## Replacement of Security Trustee

### (**Novation**): If the Security Trustee is replaced as trustee under the Security Trust Deed, then the Security Trustee must ensure the conditions in clause 13.2 are satisfied by no later than the time at which the replacement becomes effective.

### (**Novation deed**): Each party agrees that, subject to the Security Trustee complying with clause 1.15(a), it will enter into a novation deed with any replacement security trustee that is appointed under the Security Trust Deed (in a form reasonably acceptable to the State, the Security Trustee and the replacement security trustee).

## Finance Documents

Project Co represents and warrants to the State that:

### (**full disclosure**): before the date of this Deed, it has fully disclosed to the State the terms of the Finance Documents; and

### (**documents governing and creating Project Co's financial indebtedness**): those Finance Documents (together with the Equity Documents) are, on the date of this Deed, the only documents governing or creating Project Co's financial indebtedness.

## Continuance of rights

### (**Rights not affected**): This Deed does not affect the rights or obligations of a party under a Project Document, except to the extent expressly provided in this Deed.

### (**Liability not affected**): 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.

## Representations and warranties

Each party represents and warrants to each other party that:

### (**power**): it has power to enter into this Deed and perform its obligations under or as contemplated by this Deed and all necessary action has been taken to authorise its execution, delivery and performance;

### (**valid and binding**): 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

### (**execution**): the execution by it and the performance by it of its obligations under and the compliance by it with the provisions of this Deed does not and will not contravene any existing Law to which it is subject.

# Conditions Precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Deed, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.5, 1.8 to 1.11, 1.14, 1.15, 1.17, 1.18, 14, 16, 17, 18, 20 and 21).

# Consent to Securities

## Consent by the State

### (**Consent**): The State consents to the Financiers Securities.

### (**Permitted Security Interest**): The State acknowledges that each of the Security Interests created under the Financiers Securities is a "Permitted Security Interest" for the purposes of the State Security.

## Consent by Security Trustee

### (**Consent**): The Security Trustee consents to the State Securities.

### (**Permitted Security Interests**): The Security Trustee acknowledges that the State Securities are "Permitted Security Interests" for the purposes of the Finance Documents.

## Nature of consents

Neither the State nor the Security Trustee by their respective consents given in clauses 3.1 and 3.2, will be deemed to have:

### (**approved**): approved the terms of any document;

### (**agreed**): agreed, affirmed, represented or warranted the validity or enforceability or binding nature of any document; or

### (**consented**): consented to any document granting or creating any interest in any right, title or property other than as set out in this Deed.

# Order of priorities

## Priority of Securities

Subject to clause 4.3 and clause 4.5, the parties agree that the order of priority of the Financiers Securities and the State Securities is, at any time:

### (**State Securities**): firstly, the State Securities for any State Priority Moneys and any Project Co Termination Payment;

### (**Financiers Securities**): secondly, the Financiers Securities for the aggregate of:

#### the Project Debt at that time together with accrued interest payable (other than default 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; and

#### any fees, costs or expenses then due from Project Co under a Finance Document at that time including because of its breach of a Finance Document, including default interest;

### (**other State Securities**): thirdly, the State Securities for any amounts secured by them at that time, other than the State Priority Moneys and any Project Co Termination Payment; and

### (**other Financiers Securities**): fourthly, the Financiers Securities for any amount secured by them at that time other than those to which clause 4.1(b) applies.

## Provisions apply despite anything to the contrary

Clause 4.1 applies notwithstanding:

### (**contents of Financiers Securities and State Securities**): anything contained in the Financiers Securities or the State Securities;

### (**date or order of the Securities**): the date or order of execution or registration of any of the Securities;

### (**order**):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 Securities;

### (**payment and 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 Securities;

### (**fluctuation in secured amounts**): any fluctuation in the amount secured by the Financiers Securities or the State Securities from time to time;

### (**date**):the respective dates on which anything is done or omitted to be done under or in relation to the Financiers Securities or the State Securities;

### (**contingent payment or moneys not due for payment**):the moneys secured by the Financiers Securities or the State Securities being contingently payable or not due for payment; or

### (**contrary rule of law or equity**):any rule of law or equity to the contrary.

## Application of payments on enforcement

To give effect to the agreed order of priority under clause 4.1, the parties agree that any moneys received by the State, the Security Trustee or any Enforcing Party on enforcement of a Financiers Security or a State Security, as the case may be, will be applied in the following order of priority:

### (**reasonable costs**): first, *pari passu* towards the reasonable costs, charges and expenses of the State, the Security Trustee and any Enforcing Party appointed under a Security incurred in the enforcement of a Security in accordance with this Deed;

### (**remuneration**): secondly, towards the remuneration of any such Enforcing Party;

### (**priorities**): thirdly, to the State and the Security Trustee in accordance with the priorities set out in clause 4.1; and

### (**surplus amount**): fourthly, 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, the Security Trustee or the Enforcing Party.

## Contingent liabilities

If a Security secures contingent liabilities to the State or the Security Trustee then, until the State or the Security Trustee (as the case may be) is satisfied that the contingent liability has been extinguished, the State or the Security Trustee may retain from the proceeds of a realisation of the Security an amount consistent with the order and amount of priority established under clause 4.1 which they reasonably estimate to be the amount of the contingent liability.

## Enforcement by the State

### (**No enforcement without consent**):Subject to the provisions of this Deed, for so long as there is Actual Debt secured by the Finance Documents, the State must not:

#### take any action in or towards exercising any right under or in respect of the State Securities; or

#### 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, which consent must not be unreasonably withheld or delayed.

### (**Priority of enforcement action**): Subject to clause 4.5(c):

#### any enforcement action under the Financiers Securities by a Financier Enforcing Party will take precedence over any enforcement action by the State or an Enforcing Party appointed under the State Securities; and

#### if an Enforcing Party is appointed in relation to any property under any of the Financiers Securities, the Enforcing Party may (if it notifies the State of its desire to do so) assume possession and control of that property from any Enforcing Party in possession and control of that property under any State Securities and the State Securities will not preclude or restrict the free dealing with the property by such an Enforcing Party in accordance with this Deed, notwithstanding the security created by the State Securities or any provision of any State Securities to the contrary.

### (**State's superior rights under Project Documents**): Clauses 4.5(a) and 4.5(b) do not:

#### prevent the State from exercising its rights at any time:

##### under clauses 38.2(a)(i), 38.2(a)(ii) and 38.2(a)(iii) of the Project Deed in respect of a PA Default Event for the period when any Financier Enforcing Party is not diligently pursuing a Financiers' Cure Program in respect of that PA Default Event in accordance with this Deed; and

##### under the State Securities to the extent necessary to allow the State to exercise its rights and give effect to Project Co's obligations under clauses 27, 38.2(a)(iv), 38.2(a)(v), 38.2(a)(vi), 46 and 47 of the Project Deed;

#### affect the State's right to set off under clause 34.7 of the Project Deed;

#### prevent the State from enforcing the State Securities upon the appointment of an administrator to Project Co by any person under part 5.3A of the Corporations Act before or during the decision period (as defined in section 9 of the Corporations Act) provided that if the Security Trustee is enforcing or subsequently enforces its claim over all or substantially all of Project Co property (except to the extent that the State is entitled to exercise its rights under this clause 4.5(c)), the State agrees that it will instruct any Enforcing Party to comply with clause 4.5(b)); or

#### limit the rights of the State in relation to any third party.

### (**Financier Enforcing Parties to co-operate**): Without limiting clause 4.5(c), if the State appoints an Enforcing Party in the circumstances referred to in clause 4.5(c)(i), then the Security Trustee must, and must instruct any Financier Enforcing Party to and use its best endeavours to procure that any Financier Enforcing Party 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.

## Receipts

If a party receives any payment in cash or in kind or recovers any amount (including by way of set off or combination of accounts) (**Receipt**)which:

### is not a payment required under any Project Document (provided that a payment that becomes due and payable on or following enforcement of a Security or acceleration of the Project Debt is not considered to be a payment required under a Project Document for the purposes of this clause); or

### is a payment required under a Project Document but is not made in the manner and to the person prescribed in the relevant Project Document,

and a Security is enforced, then the party will immediately ensure that the amount of the Receipt is applied in accordance with clauses 4.1 and 4.3.

## Registration and notice

The State and the Security Trustee must co‑operate with a view to reflecting the priority of the Securities set out in this Deed in any register or with any filing or registration authority and in giving notice to insurers and debtors liable for obligations covered by the Securities.

## Priority for all moneys

Subject to clause 4.5(c), the order and amount of priority established under this clause 4 operates in respect of all amounts received or realised by way of set off by the State or the Security Trustee on a realisation of any of the Securities.

## Marshalling of securities

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

# PA Default Events

## Notice of PA Default Events

The State agrees with the Security Trustee that it will give the Security Trustee a copy of any notice given by the State to Project Co in respect of a PA Default Event or under clause 46.2 or clause 46.3 of the Project Deed at or about the same time as the notice is given to Project Co.

## Security Trustee's right to Cure

### (**Security Trustee's right to Cure**): The Security Trustee may (but is not obliged to), upon providing the State with notice within the timeframe set out in clause 5.5(a) of its intention to do so, take steps to Cure or procure the Cure of a PA Default Event by developing a Financiers' Cure Program in accordance with this clause 5.2.

### (**Additional Right**): The Security Trustee's rights under this clause 5.2 are in addition to Project Co's right to Cure a Major Default under the Project Deed. Any Cure of a PA Default Event effected by the Security Trustee or an Enforcing Party will (as between Project Co and the State) be effective as a Cure of the PA Default Event by Project Co.

### (**Financiers' Cure Program**): If the Security Trustee gives a notice to the State under clause 5.2(a), the State and the Security Trustee must meet as soon as reasonably practicable to agree in good faith a program for the Security Trustee or the Enforcing Party appointed by the Security Trustee (or both) to undertake the Cure Activities and a date by which the relevant PA Default Event must be Cured. If the Security Trustee and the State fail to agree on a Financiers’ Cure Program, then either party may refer the matter for resolution in accordance with clause 16. The program agreed or determined in accordance with clause 16 will be the Financiers’ Cure Program.

### (**Provision of access and information**): Upon a PA Default Event occurring, the State must, to the extent reasonably requested by a Financier Enforcing Party, and provided it is in accordance with the Financiers' Cure Program:

#### provide reasonable assistance to allow any Financier Enforcing Party (including its agents, consultants and contractors) all necessary access to the Works and the Site, subject to the terms of the State Project Documents; and

#### promptly provide that Financier Enforcing Party with all material information in its possession relevant to the PA Default Event.

### (**Security Trustee Acknowledgement**):Without limiting any rights the Security Trustee can exercise in accordance with this clause 5.2 or clause 6.1, but subject to the acknowledgements in clause 9.1, the Security Trustee will not, and will instruct any Financier Enforcing Party not to and use its best endeavours to procure that any other Financier Enforcing Party will not, in any way interfere with the performance by the D&C Contractor or the Services Contractor (as the case may be) of its obligations under the relevant Subcontract, without obtaining the State's prior consent, unless such action is permitted by the terms of the D&C Contract or the Services Contract (as the case may be) or in accordance with the terms of the D&C Contractor Consent Deed or the Services Contractor Consent Deed.

## Information regarding action to cure PA Default Event

### (**Obligations of Security Trustee**): After the State notifies the Security Trustee of a PA Default Event and the Security Trustee has given notice under clause 5.2(a), the Security Trustee must:

#### in accordance with the Financiers' Cure Program and whenever reasonably requested by the State; and

#### in any event, at least every month,

update and advise the State of the Security Trustee's plans in relation to the PA Default Event including providing details of:

#### any changes (other than immaterial changes) to its Financiers' Cure Program from time to time and progress being made in the implementation of the Financiers' Cure Program, where a Financiers' Cure Program has been agreed or determined; or

#### alternative courses of action it is considering in respect of the PA Default Event and its estimates of the timing of such courses of action, where a Financiers' Cure Program has not been agreed or determined,

and must expand upon any such details when reasonably requested by the State. For the avoidance of doubt, an extension to the Financiers' Cure Program may only occur in accordance with clause 5.4.

### (**Provision of details**): Details of the plans of the Security Trustee required under clause 5.3(a) must, when time and circumstances make it appropriate to do so, or when the State so requests, be provided by the Security Trustee in writing.

## Extension of Financiers' Cure Program

### (**When extensions to be given**): Other than in the circumstances contemplated in clause 5.4(f), if a Financier Enforcing Party:

#### reasonably considers that the date by which a PA Default Event must be Cured under the Financiers' Cure Program is no longer appropriate; and

#### is and has been diligently pursuing the Cure Activities in respect of the PA Default Event and complying with the Financiers' Cure Program,

it may submit an extension request no later than 10 Business Days before the end of the Financiers' Cure Program requesting one extension to that Financiers' Cure Program. Such request must provide evidence why, notwithstanding diligent pursuit, it has been unable to Cure the PA Default Event in accordance with the Financiers' Cure Program. If the State is reasonably satisfied with such evidence and that the Financiers' Cure Program has been and continues to be diligently pursued then it will not unreasonably refuse to grant, or delay the grant of, one extension to the date by which that PA Default Event must be Cured by such period as the State determines is reasonably required to enable the Financier Enforcing Party to Cure the PA Default Event or overcome its effects.

### (**Date for Cure**):Any date set for Cure of a PA Default Event under the Financiers' Cure Program, and any change to that date in accordance with this clause 5.4, must be consistent with the period reasonably required by the Security Trustee or any other Financier Enforcing Party to Cure the PA Default Event assuming that the Security Trustee or other Enforcing Party (as applicable) were diligently pursuing the Cure provided that such period, including any extension under clause 5.4(a) (but subject to clause 5.4(f)), must be no longer than the applicable time period specified in clause 5.5(b)(i)A or 5.5(b)(i)B (as applicable).

### (**Negotiation**): If the Security Trustee reasonably considers that the extension determined by the State in accordance with clause 5.4(a) does not comply with clause 5.4(b), the Security Trustee:

#### may (provided that the Security Trustee or other Enforcing Party has been diligently pursuing the Cure Activities) refer the matter for resolution in accordance with clause 16; and

#### whilst the matter is being determined, must continue to diligently pursue and instruct any Financier Enforcing Party to, and use its best endeavours to procure that a Financier Enforcing Party continues to, diligently pursue the Cure Activities,

and, subject to clause 5.5(b)(ii), the State must not terminate the Project Deed with respect to the relevant PA Default Event until such Dispute is resolved.

### (**Suspension of Financiers' Cure Program**): Where a Financier Enforcing Party has taken action under a Financiers Security, on and from the date on which the State exercises its rights under clause 38 of the Project Deed, the Financiers' Cure Program (and any related cure period) will be suspended to the extent that the State’s exercise of those rights prevents the Financiers' Cure Program from being performed, unless the exercise of those rights was caused by an act or omission of the Financier Enforcing Party.

### (**Diligent Pursuit**): The Security Trustee must itself diligently pursue and must instruct each other Financier Enforcing Party to use its best endeavours to ensure that each other Financier Enforcing Party continues to diligently pursue any Cure Activities at all relevant times and is complying with the applicable Financiers' Cure Program. 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 Cure Activities, regard is required to be had to the time necessary to enforce the D&C Contract or the Services Contract, or to engage a substitute D&C Contractor, Services Contractor or Parent Guarantor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Security Trustee is not a D&C Contractor or Services Contractor (as applicable).

### (**Extension Events and Intervening Events**): Subject to clause 5.4(g), if a Financier Enforcing Party is prevented or delayed from carrying out its obligations in accordance with a Financiers' Cure Program as a direct result of an Extension Event or an Intervening Event for which Project Co would be entitled to relief under the Project Deed, then the Financiers' Cure Program will be extended to reflect the period the Financier Enforcing Party is prevented or delayed from carrying out its obligations in accordance with the Financiers' Cure Program by that Extension Event or Intervening Event, subject to the Financier Enforcing Party demonstrating to the State's satisfaction (acting reasonably) that the Financier Enforcing Party has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Cure Activities and otherwise comply with the Financiers' Cure Program.

### (**Concurrent delays and failure to mitigate**): The Financiers' Cure Program will not be extended to reflect the period the Financier Enforcing Party is prevented or delayed from carrying out its obligations in accordance with the Financiers' Cure Program by an Extension Event or Intervening Event to the extent that:

#### any period that the Financier Enforcing Party is prevented or delayed from carrying out its obligations in accordance with a Financiers' Cure Program by an Extension Event or Intervening Event is contemporaneous with any period that the Financier Enforcing Party is prevented or delayed from carrying out its obligations in accordance with a Financiers' Cure Program by an event which is not an Extension Event or Intervening Event; or

#### the Financier Enforcing Party has not taken all reasonable steps to mitigate, minimise or avoid the effects, consequences and duration of the Extension Event or Intervening Event, in each case to the extent the impact on the prevention or delay could have been avoided by the Financier Enforcing Party having taken such reasonable steps.

## Termination of Project Deed

The State agrees that it will not terminate, rescind or treat as repudiated the Project Deed unless it first notifies the Security Trustee of its intention to do so in accordance with clause 5.1 and:

### (**no response**):the Security Trustee has not responded to the notice from the State in respect of the PA Default Event under clause 5.1 within 15 Business Days after receipt of that notice or has responded that it does not intend to Cure the PA Default Event; or

### (**notice given**):the Security Trustee gives a notice to the State under clause 5.2(a) within 15 Business Days after receipt of the notice from the State in respect of the PA Default Event under clause 5.1 and:

#### the PA Default Event has not been Cured by the earlier of the date set out in the Financiers' Cure Program and the date which is:

##### during the Development Phase, [18] months; or

##### during the Operational Phase, [18] months,

from the date of the first notice given by the State to Project Co in respect of the PA Default Event (a copy of which will be provided by the State to the Security Trustee under clause 5.1); or [***Note: This clause 5.5(b) sets out the maximum cure period of 18 months permitted by the State under the State Project Documents. It is for the Financiers, Project Co and Key Subcontractors to determine the exclusive cure period that each party has for curing a Major Default within the periods specified above.***]

#### a Financier Enforcing Party is not diligently pursuing the Cure Activities, the State has given the Security Trustee notice of that failure to diligently pursue the Cure Activities and that failure has not been Cured within 15 Business Days after receipt of that notice in respect of that failure by the Security Trustee.

## Payments to Subcontractors on PA Default Event

### (**Details of Valid Claims**): Without limiting clause 9.5 of the Project Deed, if a PA Default Event has occurred and is subsisting, Project Co must immediately, upon request by the State, provide to the State details of any Valid Claims then outstanding.

### (**Application of funds**): If:

#### a PA Default Event has occurred and is subsisting;

#### there are Valid Claims that have not been paid and which, if a Cure Program under clause 45.4 of the Project Deed is in place and specifies when such Valid Claims are to be paid, have not been paid in accordance with the Cure Program; and

#### there are funds standing to the credit of a Project Account (other than the Debt Service Reserve Account or the Insurance Proceeds Account) at the relevant time,

the State may from time to time give a notice to Project Co or the Security Trustee requiring Project Co or the Security Trustee (as the case may be) to apply funds standing to the credit of a Project Account (other than the Debt Service Reserve Account or the Insurance Proceeds Account) in or towards payment of any one or more of the Valid Claims specified in that notice subject to the Subcontractor entering into a deed of release and subrogation in respect of such Valid Claims in form and substance satisfactory to the State, acting reasonably.

### (**Compliance by Project Co and Security Trustee**): Each of Project Co and the Security Trustee (as applicable) must comply with a notice issued by the State under clause 5.6(b) within 5 Business Days after receipt.

### (**Compliance by other Financier Enforcing Party**): The Security Trustee will comply, and will instruct any other Financier Enforcing Party to comply and use its best endeavours to ensure that any other Financier Enforcing Party complies, with each notice issued by the State under clause 5.6(b) within 5 Business Days after receipt.

### (**Payments from Project Account**): Project Co:

#### consents to the Security Trustee (and/or any Financier Enforcing Party) making any payments from time to time from the Project Account that they are required to make in order to comply with a notice issued by the State under clause 5.6(b); and

#### agrees that any such payment will be taken to have been made at the request of Project Co and the Secured Money (as defined in the Security Trust Deed) will not be taken to be reduced to the extent of any such payment.

### (**Contrary to law**): No party is required to make any payment under this clause 5.6 if to do so would be contrary to any law.

## Super Majority Financiers

### (**No consent by Relevant Financier**): If:

#### a PA Default Event has occurred and is subsisting; and

#### a Financier (**Relevant Financier**) refuses to grant its consent to any amendment, consent or waiver under a Project Document sought by the State or Project Co to which the Super Majority Financiers have consented or would otherwise have consented (including any amendment, consent or waiver for the provision of additional debt financing and the subordination of the existing senior debt) which requires (but has not then received) the consent of all Financiers,

then Project Co, the State, the Security Trustee and the Super Majority Financiers may proceed with such consent, amendment or waiver without the consent of the Relevant Financier.

### (**No obligation or reduction**): Nothing in clause 5.7(a):

#### imposes an obligation on any Financier to pay or advance an amount which is more than the amount which it has committed to pay or advance under the Finance Documents;

#### enables:

##### the reduction of any amount payable to a Financier under the Finance Documents;

##### an extension:

###### of a maturity or payment date (however defined) under the Finance Documents;

###### of availability for utilisation of any commitment of any Financier;

##### a change to the sharing provisions applicable to, or to the priority of any payment to, a Financier who is a participant in a facility, unless:

###### the change affects the Financier in a manner which is consistent with the treatment of other Financiers who are participants in that facility;

###### the change relates to the introduction of a super senior debt incurred in connection with a workout or restructure to Cure the effects of a subsisting PA Default Event; and

###### the change is consented to by Financiers holding in aggregate senior debt commitments equal to or greater than [75%] of all senior debt commitments (or, after the applicable availability period, equal to or greater than [75%] of the total outstanding principal amounts) in each case under the relevant Finance Documents; or

##### the release of any Financiers Securities or guarantees granted in favour of a Finance Party for the benefit of a Financier, other than for the purpose of any restructuring pertaining to Project Co undertaken in accordance with the Project Documents,

without that Financier's agreement.

# Enforcement by Security Trustee

## Enforcement by Security Trustee

Without limiting the actions which the Security Trustee may be entitled to take following the occurrence of a PA Default Event (whether in accordance with the Finance Documents or otherwise), a Financier Enforcing Party may:

### exercise some or all of Project Co's Rights;

### engage one or more other persons to exercise some or all of Project Co's Rights; and

### assign, novate, transfer or otherwise dispose of all or any of Project Co's Rights,

subject to the terms of those documents, this Deed and the rights and duties of the Financier Enforcing Party under the Financiers Securities and at Law.

## No liability

### (**No liability**): Without limiting the liability of Project Co (which, subject to clause 6.2(b), continues to be responsible for the performance of its obligations under the Project Documents), none of the Finance Parties nor any Financier Enforcing Party is or will be liable for any obligation or liability of Project Co under the Project Documents by reason only of the Financiers Securities or the exercise, in accordance with the Financiers Securities, of any of their rights under the Financiers Securities.

### (**Obligations remain effective**): The State acknowledges that all payments made by the Finance Parties or any Financier Enforcing Party and all acts, matters or things done or effected by them which would fully satisfy and discharge (had they been paid, done or effected by Project Co) any of 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 respect of which such payment has been made or act, matter or thing has been done or effected.

## Restriction on set off by Financiers

### (**Non-exercise of rights**): Without limiting the operation of clause 4, the Security Trustee agrees on its own behalf and on behalf of each Finance Party that it will not, and to the extent possible using its best endeavours the Security Trustee will procure that no Finance Party will, exercise:

#### any right of set off or combination of accounts in relation to a Project Account other than, in respect of set off, amounts standing to the credit of:

##### a Project Account which are directly referrable to principal amounts advanced by, or net payments made under, swap agreements by, a Financier under a Finance Document; or [***Note: subject to review of Finance Documents.***]

##### a Debt Service Reserve Account; or

#### any other right in relation to any of those accounts the effect of which would be to apply money standing to the credit of the account in a way inconsistent with clause 44.10 of the Project Deed and clause 8.

### (**Agreement**): The Security Trustee agrees on its own behalf and on behalf of each Financier that:

#### its rights under clause 6.3(a) are subject to clause 5.6; and

#### it will not, and the Security Trustee shall use its best endeavours to procure that each Financier will not, exercise any of its rights under clause 6.3(a) unless clause 5.6 has been fully complied with.

## Security Trustee not to hinder State under Project Documents

The Security Trustee must not knowingly exercise (and must instruct any other Financier Enforcing Party not to and use its best endeavours to procure that any other Financier Enforcing Party will not exercise) any rights (whether arising under a Financiers Security or otherwise) in any manner which interferes with, or restricts in any way, the proper and lawful exercise by the State of the State's rights under clauses 27, 34.7, 38, 46 or 47 of the Project Deed or the State Securities (each, subject to the other provisions of this Deed), the Direct Deeds or this Deed.

## Third party account bank

Project Co must ensure that no Project Account is held with a party (**Account Bank**) other than a Finance Party unless Project Co first procures that the Account Bank undertakes to the State in form and substance reasonably satisfactory to the State, to be bound by clause 6.3 and clause 8 on the same terms as the Security Trustee.

## Replacement of D&C Contractor or Services Contractor

### (**No replacement without consent**): If, at any time, the Security Trustee proposes to Cure a PA Default Event or a Finance Default by appointing a new Subcontractor to replace either the D&C Contractor or the Services Contractor, or by novating the D&C Contract or the Services Contract (and other relevant Project Documents) to a replacement Subcontractor, then the Security Trustee must first obtain the State's prior consent, which must not be unreasonably withheld or delayed if the State is satisfied that the matters set out in clause 6.6(b) are satisfied.

### (**When consent must be given**): The State must not unreasonably withhold its consent if it is satisfied (acting reasonably) that:

#### the State has been provided with written details of the proposed replacement Subcontractor and the terms and conditions on which the proposed replacement Subcontractor is to be engaged;

#### were the same appointment made by Project Co, the appointment of the replacement Subcontractor would comply with the Project Deed in all respects, including the satisfaction of the State's probity requirements and the financial capacity, experience and capability to perform the obligations of the Subcontractor being replaced;

#### except as otherwise agreed by the State, the proposed terms and conditions of the replacement Subcontractor’s engagement are not less onerous from the perspective of the Subcontractor than those which apply to the current Subcontractor and include a requirement to perform such of the obligations of the current Subcontractor under the relevant Project Document which remain unsatisfied;

#### the proposed replacement Subcontractor has agreed to be bound by the terms of the relevant Project Documents (including a relevant Direct Deed) or such other terms as agreed to by the State; and

#### a person other than the State bears all of the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:

##### any enquiries which the State may make for the purposes of determining whether to consent to the replacement Subcontractor;

##### the procurement of a replacement Subcontractor; and

##### the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

### (**Facilitation of appointment of replacement Subcontractor by State and Security Trustee**): To the extent that the appointment of a replacement Subcontractor involves the novation of a Project Document in accordance with this clause 6:

#### each of the State and the Security Trustee will release those of the Securities as it is necessary to release (but only to the extent necessary) to facilitate the novation; and

#### each party to this Deed and party to the Project Document consents to that novation,

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

### (**Release**): To the extent that the release of a Security is necessary under clause 6.6(c), each party will use reasonable endeavours to ensure that the Project Document (as novated) becomes subject to a Security Interest in favour of the party who granted the release, on terms substantially similar to those of the released Security.

## Disposal of Project Co's interest

### (**No disposal without consent**): If a Financier Enforcing Party proposes to Cure a PA Default Event or a Finance Default by assigning, novating, transferring or otherwise disposing of an interest in Project Co or Project Co's interest in, or obligations under, the Project Documents in accordance with the Enforcing Party's rights or the Financiers' rights under the Finance Documents, the Security Trustee must first obtain the State's prior consent, which must not be unreasonably withheld or delayed if the State is satisfied the matters set out in clause 6.7(b) are satisfied.

### (**When consent must be given**): The State must not unreasonably withhold its consent if it is satisfied (acting reasonably) that:

#### the State has been provided with written details of the proposed purchaser and the terms and conditions of the proposed disposal;

#### either:

##### the proposed disposal is by way of a Permitted Share Capital Dealing;

##### the State is not permitted to withhold its consent to the proposed disposal under clause 52.5 of the Project Deed; or

##### the proposed purchaser:

###### is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and

###### has the necessary financial, commercial, managerial and technical capacity, expertise and experience and contractual and financing arrangements with third parties in place, to perform or procure the performance of Project Co's obligations under the State Project Documents;

#### the proposed disposal would not result in any adverse effect on the rights of, or increase in the Liabilities or obligations of, the State under the State Project Documents than if the relevant interests or obligations were not disposed of;

#### the proposed purchaser has agreed to be bound by the terms of the relevant Project Documents; and

#### a person other than the State bears all of the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:

##### any enquiries which the State may make for the purposes of determining whether to consent to the disposal;

##### the procurement of a purchaser; and

##### the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

## Appointment of Enforcing Party

### (**Appointment**): Without derogating from any other rights the Security Trustee may have under this Deed, the State agrees that:

#### if the Security Trustee appoints an Enforcing Party under the Financiers Securities in accordance with this Deed:

##### that appointment will not, by itself, constitute a PA Default Event; and

##### in respect of an appointment in relation to Project Co, that appointment will be taken to Cure (for the duration of the appointment) any PA Default Event solely constituted by:

###### the occurrence prior to that appointment of an Insolvency Event in relation to Project Co; or

###### an event that would restrict or cancel, or entitle a Financier to restrict or cancel, the obligation to provide finance in accordance with the Finance Documents (for such time as the Enforcing Party has the benefit of funding arrangements that would enable it to perform or procure the performance of the obligations of Project Co under the Project Documents),

but this does not prevent a PA Default Event from arising if the Enforcing Party does not otherwise perform or procure the performance of the obligations of Project Co under the Project Documents;

#### any:

##### enforcement action taken by a Financier Enforcing Party in accordance with clause 6.1;

##### replacement of a D&C Contractor or a Services Contractor in accordance with clause 6.6; or

##### disposal of an interest in Project Co or Project Co's interest in the Project Documents in accordance with clause 6.7,

will not, by itself, provide the State with the right to terminate any State Project Document.

### (**Fit and Proper Person**): The Security Trustee acknowledges and agrees that it will not appoint any Financier Enforcing Party unless:

#### the proposed Financier Enforcing Party is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and

#### the appointment is otherwise in accordance with this Deed.

### (**Notice**): The Security Trustee will not, and will instruct a Financier Enforcing Party not to and use its best endeavours to ensure that a Financier Enforcing Party does not, exercise or purport to exercise Project Co's Rights without first notifying the State.

### (**Minimising disruption**): The Security Trustee must minimise, and must instruct a Financier Enforcing Party to and use its best endeavours to ensure that a Financier Enforcing Party will minimise, any disruption that may result from it exercising Project Co's Rights.

## Documentation

If the State consents to the replacement of the D&C Contractor or the Services Contractor, or the disposal of Project Co's interest in the Project Documents, in accordance with clause 6.6 or 6.7 respectively, the State, the Financier Enforcing Party and the replacement Subcontractor or purchaser (as the case may be) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.

# Finance Default

## Notice of Finance Default

The Security Trustee must provide notice to the State promptly after it or the Facility Agent gives notice of a Finance Default to Project Co setting out:

### (**details**):comprehensive details of the Finance Default; and

### (**exercise of rights**):whether it or the Facility Agent intends to exercise its rights under the Finance Documents, and if so, the proposed date for, and proposed method of, such exercise.

## Notice of enforcement action

The Security Trustee must not (and must use reasonable endeavours to procure that the Facility Agent does not) declare any moneys secured under the Finance Documents due and payable, or take any action to enforce the Financiers Securities or recover any moneys secured under the Financiers Securities, unless the Security Trustee has first provided to the State:

### (**24 hours' prior notice**):in the case of the appointment of a Financier Enforcing Party where the Security Trustee is of the reasonable opinion that any delay in such appointment would materially adversely affect the Financiers, no less than 24 hours' prior notice; or

### (**10 days prior notice**):in all other cases, no less than 10 days' prior notice,

and, with respect to the enforcement of the Financiers Securities or the recovery of moneys under the Financiers Securities, has complied with any obligation or restriction in this Deed with respect to that enforcement or recovery.

## Information to the State

Upon the occurrence of a Finance Default:

### (**all correspondence**): the Security Trustee must provide to the State copies of all correspondence and documents issued by it or the Facility Agent to Project Co relating to the Finance Default;

### (**measures to Cure Finance Default**): if the Finance Default is capable of Cure, Project Co must keep the State informed of all measures taken or intended to be taken to Cure the Finance Default; and

### (**all measures taken in consequence of Finance Default**): in any case, Project Co and the Security Trustee must keep the State informed of all measures taken or intended to be taken by it in consequence of the Finance Default (including details of any action taken by the Security Trustee to enforce the Financiers Securities).

## Payments by State

The parties acknowledge that the State will not be liable for any costs incurred by a party to this Deed in attempting to Cure a Finance Default or in exercising rights under the Finance Documents.

# Insurance proceeds

### (**Deposit**): All Insurance proceeds received by any Finance Party or Financier 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 under the Project Deed, must be deposited in the Insurance Proceeds Account.

### (**Application**): The Security Trustee acknowledges and agrees with the State that the Insurance proceeds paid or payable in connection with the Project must be applied in accordance with clause 44 of the Project Deed.

### (**Operation of account**): Neither Project Co nor the Security Trustee may make any payment (and must take all reasonable and proper steps to ensure that no payment is made) out of the Insurance Proceeds Account except in accordance with the provisions of the Project Deed and this Deed.

### (**Assistance**): The Security Trustee acknowledges and agrees with the State that Project Co will be permitted, and the Security Trustee will use reasonable endeavours to assist Project Co, to take any action as contemplated by clause 44 of the Project Deed.

# Recognition of rights

## Recognition of the State's step-in rights

### (**State Rights**): The Security Trustee recognises and acknowledges the rights available to the State under:

#### subject to clause 5 of this Deed, clause 46 or 47 of the Project Deed;

#### clause 38 of the Project Deed; and

#### subject to clause 9.1(c) and clause 9.3, the Direct Deeds,

including to require an assignment of the D&C Contract and/or the Services Contract if it becomes entitled to terminate the Project Deed.

### (**Security Trustee to facilitate**)**:** The Security Trustee will use reasonable endeavours to ensure that 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 9.1(a). To the extent that the exercise of any such rights involves the assignment or novation of the D&C Contract or the Services Contract, the Security Trustee will release the D&C Contract or Services Contract (as applicable) from the Financiers Securities to facilitate the assignment or novation. Nothing in this clause 9.1 or the Direct Deeds requires the Security Trustee or any other Finance Party to release or forgo any rights or claims against Project Co.

### (**When State may exercise rights**): The State acknowledges and agrees that it will not exercise its rights under clause 6 or 7 of a Direct Deed unless:

#### a circumstance which entitles the State to appoint an Enforcing Party under the State Securities subsists; or

#### the State is entitled to exercise its rights under clause 38 of the Project Deed.

### (**PA Default Event**): Other than when it is exercising its rights in accordance with clause 38.2(a)(iv), 38.2(a)(v) or 38.2(a)(vi) of the Project Deed, the State must not exercise rights under clause 38.2(a)(i), 38.2(a)(ii) or 38.2(a)(iii) of the Project Deed in respect of a PA Default Event for so long as any Financier Enforcing Party is diligently pursuing a Financiers' Cure Program in respect of that PA Default Event in accordance with this Deed.

## Release of Security

### (**Obligation to release**): Subject to clause9.2(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 Project Deed 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 respect of that property and will do all things including registering documents as the State may reasonably require or as may be necessary or desirable to give effect to that release.

### (**Security over payment obligation**): Nothing in clauses9.2(a) or 6.4 requires the Security Trustee to release a Security Interest over the right of Project Co to be paid a Termination Payment.

## Recognition of Security Trustee rights

### (**Rights**): The State acknowledges the rights of the Security Trustee under each Consent Deed (**Security Trustee Tripartite Rights**).

### (**State not to hinder Security Trustee**): The State and the Security Trustee agree that if the Security Trustee appoints an Enforcing Party and exercises its rights to step in under any applicable Consent Deed, then subject to the rights of the State under clauses 4.5(c) and 9.1, the Security Trustee Tripartite Rights will take precedence over the rights of the State under the Direct Deeds and the State must not exercise its rights under a Direct Deed in such a manner as to prevent or hinder the Security Trustee in its exercise of the Security Trustee Tripartite Rights.

### (**Keep informed**): The Security Trustee must keep the State informed of all measures taken and intended to be taken in exercising the Security Trustee Tripartite Rights.

### (**Title documents**): For so long as there is Secured Money (as defined in the Security Trust Deed) secured by the Financiers Securities, the Security Trustee will be entitled to hold all documents of title, all certificates, scrip and other indicia of Project Co’s title or interest in any Secured Property (as defined in the Security Trust Deed), all negotiable instruments other than cheques, and all other documents of title to the whole or part of such property and to the extent such documents of title have been lodged with the Security Trustee, Project Co will not be deemed to be in breach of clause 6.3(a)(i) of the State Security.

## State assumption of Actual Debt

### (**State may** **assume Actual Debt)**: Subject to clauses 9.4(b) and 9.4(c), the Security Trustee acknowledges the rights of the State under clause 46.7 of the Project Deed to elect to assume some or all of the Actual Debt and/or Hedge Amounts (as determined by the State) and agrees to do all things reasonably required by the State to the State assuming some or all of that Actual Debt and/or Hedge Amounts.

### (**Security Trustee to refrain from certain activities and State assumption of rights and liabilities**): If the State elects to assume some or all of the Actual Debt and/or Hedge Amounts pursuant to clause 46.7 of the Project Deed:

#### the Security Trustee will not, and will use its best endeavours to ensure that the Finance Parties do not, accelerate or require the repayment of the Actual Debt or Hedge Amounts that has or have been assumed by the State or will be assumed by the State and will withdraw or revoke any subsisting notice to do so; and

#### the Security Trustee will cease taking any enforcement action under the Financiers Securities,

and on and from the date on which the State has assumed some or all of the Actual Debt and/or Hedge Amounts (**State Assumption Date**), the Security Trustee (on behalf of itself and the Finance Parties), Project Co and the State agree that the basis on which the State assumes some or all of the Actual Debt and/or Hedge Amounts will be as follows:

#### all of the rights of each of the Security Trustee, any other Finance Party and Project Co against the State arising from or in connection with this Deed are released and the State will have no further obligations to any party arising from or in connection with this Deed;

#### the contractual provisions which will govern the arrangements between the State and the Finance Parties regarding the Actual Debt and/or Hedge Amounts assumed by the State are the same as those which apply to the [borrower/hedge counterparty] set out in the [Syndicated Facilities Agreement and Hedge Agreements] as amended pursuant to this clause 9.4(b) and clause 9.4(c) (**New Debt Contracts**); ***[Note: names to be confirmed after the proposed Finance Documents are provided]***

#### the obligations of the State to the Security Trustee and any other Finance Party in relation to the Actual Debt and/or Hedge Amounts will be unsecured;

#### all of the rights of the Security Trustee and each other Finance Party under and in respect of each D&C Contractor Construction Bond and any performance bond provided by the Services Contractor in favour of Project Co (each a **Contractor Security**) are released and to the extent that any amount remains to be called on any Contractor Security, the Security Trustee must deliver each Contractor Security to Project Co (or otherwise as directed by the State);

#### the amount which is due and payable by Project Co under the Finance Documents will be reduced to the extent of the amount of the Actual Debt and/or Hedge Amounts assumed by the State;

#### each Finance Default subsisting at the State Assumption Date (other than with respect to any failure to pay money) will be deemed to have been Remedied or waived for the purposes of the obligations of the State to pay amounts regarding the Actual Debt and/or Hedge Amounts assumed by the State; and

#### the terms of the New Debt Contracts will be amended to delete all provisions (including undertakings, restrictions and events of default) to the extent they relate to:

##### the design, construction, commissioning, operation and maintenance of the Project;

##### the parties involved in the Project (other than the State) and any party to the [Syndicated Facility Agreement and Hedge Agreements] (other than the State, the Security Trustee and the Finance Parties);

##### the Financiers Security; and

##### [insert reference to other provisions in the Syndicated Facility Agreement and Hedge Agreement which will not apply to the payment of the Actual Debt and Hedge Amounts assumed by the State], ***[Note: to be confirmed after the proposed Finance Documents are provided]***

and the Security Trustee (on behalf of itself and the other Finance Parties) and the State agree that they will promptly enter into good faith negotiations in order to give effect to the above.

### (**No action**): With effect from the State Assumption Date, the Security Trustee (on behalf of itself and the other Finance Parties) agrees that no Finance Party will take any action:

#### which would enable any Finance Party to exercise control over any aspect of the design, construction, commissioning, operation or maintenance of the Project, any asset of the Project (including amounts standing to the credit of bank accounts) or the Project Documents; or

#### as a result of the performance or non-performance:

##### of the design, construction, commissioning, operation or maintenance of the Project; or

##### by any party involved in the Project after the State Assumption Date (other than the State) of their respective rights or obligations in respect of the Project.

### (**Assuming some not all of the Actual Debt**): If the State elects to assume some (but not all) of the Actual Debt and/or Hedge Amounts pursuant to clause 46.7 of the Project Deed, unless agreed otherwise between the State and the Finance Parties the State will assume all of the rights and obligations in relation to that part of the Actual Debt and/or Hedge Amounts on a pro rata basis across all relevant Financiers but otherwise (subject to clause 9.4(b)(iii) to 9.4(b)(ix)) on the same terms and subject to the same conditions as set out in the New Debt Contracts.

## State dealings with the Security Trustee

### (**State may raise queries**): The State may at any time and from time to time raise with the Security Trustee any concerns or questions that the State may have regarding Project Co, the performance by Project Co of its obligations under the Project Documents or Finance Documents or the Project generally.

### (**Disclosure**): To the extent required, Project Co authorises each of the State and the Security Trustee to disclose to the others such information relating to the matters referred to in clause 9.5(a) as the State or the Security Trustee may consider necessary or appropriate in the context of any discussions or other correspondence contemplated in clause 9.5(a).

## No role for Independent Reviewer

The Security Trustee acknowledges and agrees:

### (**Independent Reviewer**):that Project Co is required under clause 8.2(a) of the Project Deed to ensure that the Financiers do not appoint the Independent Reviewer to act in any role in connection with the Finance Documents, without the prior consent of the State Representative and on such terms approved by the State Representative; and

### (**prior consent**):that it will not agree to any appointment of the Independent Reviewer by the Financiers without the prior consent of the State Representative.

# Amendments to Finance Documents

## No amendments without consent

Subject to clause 10.2, the Security Trustee undertakes to the State that it will 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.

## Permitted Amendments

The prior consent of the State is not required for an Amendment that:

### (**novation, assignment or substitution**): is a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier if the novatee, assignee or substitute:

#### is a Financier;

#### both:

##### is on the Permitted Financier List; and

##### becomes a Financier under and in accordance with the Finance Documents within [12] months of Financial Close; or

#### has a credit rating of at least BBB+ by Standard and Poor's (Australia) Pty Limited or Baa1 by Moody's Investors Services, Inc;

### (**State consent**): the State has consented to as part of giving its consent to a refinancing under clause 37.1 of the Project Deed;

### (**Modification**): is an Amendment that solely gives effect to Project Co's obligation to proceed with a Modification in accordance with a notice that has been accepted by the State under clause 35 of the Project Deed;

### (**novation or assignment**): is a novation or assignment under clause 13.1; or

### (**consent**): has otherwise been consented to by the State under the Project Deed,

(each a **Permitted Amendment**).

## Notice of Permitted Amendment

Project Co and the Security Trustee must:

### (**notice**): 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

### (**further information**): provide any further information reasonably requested by the State regarding the Permitted Amendment within 10 Business Days after receipt of a request from the State.

## Notice of intended Amendment (other than a Permitted Amendment)

In seeking prior consent to an Amendment under clause 10.1, Project Co or the Security Trustee (as relevant) must give notice to the State of the intended Amendment including:

### (**details**): full details of:

#### the proposed Amendment and the reasons for the Amendment;

#### the responses or anticipated response of any other party to the relevant Project Documents regarding the proposed Amendment;

#### the response or anticipated response of any assignee or incoming party to the Project Documents to the proposed Amendment; and

#### the impact or potential impact of the Amendment on:

##### delivery of the Project by Project Co;

##### performance of, and the capacity of Project Co to perform its obligations under, the Project Documents;

##### the financial structure or business of Project Co;

##### the State's interest under or in respect of the Project Documents; and

##### Equity IRR or Distributions; and

### (**copies of Documentation**): copies of all draft contractual and security documentation and other documents relevant to the proposed Amendment.

## Consent to Amendments

Unless the State is a party to the relevant Finance Document, the State must advise Project Co and the Security Trustee within 15 Business Days after:

### (**Further information**): receiving the notice under clause 10.4 if it requires further information from Project Co and/or the Security Trustee regarding the Amendment, in which case Project Co or the Security Trustee (as applicable) must provide the further information sought by the State within a further period of 10 Business Days after receiving the State’s request for further information; and

### (**State to provide notice of consent or that Amendment is unacceptable**): the later of receiving the notice under clause 10.4 or the further information requested by the State under clause 10.5(a), whether:

#### it consents to the Amendment; or

#### the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable, in which case the Amendment will not be made.

## Consequences of Amending without consent

If any Amendment is made to a Finance Document otherwise than in accordance with this clause 10:

### (**not effective**): the Amendment will not be effective as between the parties to that Finance Document (and any agreement at any time between any of them which purports to limit the operation of this clause 10.6, including any provision that a Finance Document prevail over this Deed, will be ineffective); and

### (**State liable**): the State will only be liable under the Project Documents to the extent it would have been had there been no such Amendment.

# Development Phase Capital Contribution, State Contribution and CDPD Amount

## Development Phase Capital Contribution

### (**Payment of Development Phase Capital Contribution**): The Security Trustee, and Project Co each acknowledge and agree that:

#### the Development Phase Capital Contribution, must be paid into the Construction Proceeds Account; and

#### Project Co may only use the Development Phase Capital Contribution withdrawn from the Construction Proceeds Account to pay for DPCC Project Costs and GST related to DPCC Project Costs.

### (**Receipt of Development Phase Capital Contribution**): The Security Trustee must notify the State promptly upon receipt of the Development Phase Capital Contribution into the relevant account, and confirm in that notice each of the matters referred to in clause 11.1(a).

## State Contribution

### (**Payment of State Contribution**): The Security Trustee and Project Co each acknowledge and agree:

#### that the State Contribution, when paid by the State into the account specified in a State Contribution Notice or to the Financiers, will be, and will be taken to be, applied towards mandatory prepayment of Actual Debt outstanding;

#### without limiting clause 11.2(a)(i), that upon payment of the State Contribution into the account specified in a State Contribution Notice or to the Financiers, the amount of Actual Debt for the purposes of the Project Documents will be reduced by the amount of such State Contribution payment; and

#### that upon prepayment of the Actual Debt in accordance with clause 11.2(a)(i), the relevant facilities under the Finance Documents will be cancelled to the extent of the prepayment and that such prepaid amounts will not be available for redrawing.

### (**Receipt of State Contribution**): The Security Trustee must notify the State promptly upon receipt of the State Contribution into the relevant account or by the relevant Financiers, and confirm in that notice each of the matters referred to in clause 11.2.

## CDPD Amount

### The Security Trustee and Project Co each acknowledge and agree:

#### that the CDPD Amount, when paid by the State into the account specified in the CDPD Amount Notice or to the Financiers, will be and will be taken to be applied towards mandatory prepayment of Actual Debt outstanding;

#### without limiting clause 11.3(a)(i), that upon payment of the CDPD Amount into the account specified in the CDPD Amount Notice or to the Financiers, the amount of the Actual Debt for the purposes of the Project Documents will be reduced by the amount of such CDPD Amount payment; and

#### that upon repayment of Actual Debt in accordance with clause 11.3(a)(i), the relevant facilities under the Finance Documents will be cancelled to the extent of the prepayment and that such prepaid amounts will not be available for redrawing.

### The Security Trustee must notify the State promptly upon receipt of the CDPD Amount into the relevant account or by the relevant Financiers and confirm in that notice each of the matters referred to in clause 11.3(a).

***[Note:*** ***Clauses 11.1, 11.2 and/or 11.3 to be deleted if Development Phase Capital Contribution, State Contribution and/or CDPD Amount (as applicable) is removed from the Project Deed.]***

# D&C Contractor Construction Bond

### (**Default by D&C Contractor**): Where any obligation of Project Co to pay the State under the Project Deed has arisen by reason of default by the D&C Contractor under the D&C Contract, and that obligation is not satisfied within 5 Business Days after receipt of a demand for payment, Project Co and the Security Trustee agree with the State that:

#### to the extent that Project Co has a right to set off or deduct an amount owing by the D&C Contractor arising from the relevant default from a claim for payment by the D&C Contractor due under the D&C Contract, which Project Co would otherwise be entitled to draw under the Finance Documents, Project Co will set off that amount, draw down the equivalent amount and pay it to the State at the time set off is exercised; and

#### to the extent that Project Co does not have a right of set off or deduction as described in clause 12(a)(i) it will comply with clause 12(b).

### (**D&C Contractor Construction Bond**): Project Co will as and when required under clause 20.4 of the Project Deed (and without limiting the State's rights under that clause), claim the amount owing to the State as referred to in clause 12(a) from the D&C Contractor Construction Bond to the extent of funds then available from the D&C Contractor Construction Bond and up to an amount no greater than:

#### in the period prior to the Date of Commercial Acceptance, the D&C Contractor Construction Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor Construction Bond Amount, that lesser amount; and

#### in the period commencing on the Date of Commercial Acceptance and expiring on the later of the date 24 months after the Date of Commercial Acceptance and the expiration of the last defects liability period under the D&C Contract, D&C Contractor DLP Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor DLP Bond Amount, that lesser amount,

and pay that amount to the State, and if not so claimed by Project Co under the D&C Contractor Construction Bond and paid to the State, the Security Trustee agrees to waive priority under clause 4 over the D&C Contractor Construction Bond in favour of the State to the extent that the proceeds of the D&C Contractor Construction Bond to which Project Co is entitled (up to an amount no greater than as set out above in this clause 12(b)) are used by the State to pay to itself the amount owing by Project Co to the State under the Project Deed.

### (**Security Trustee to inform**): The Security Trustee must promptly inform the State when it makes a demand under the D&C Contractor Construction Bond.

### (**No surrender of D&C Contractor Construction Bond**): Other than in accordance with the D&C Contract, the Security Trustee must not surrender the original of the D&C Contractor Construction Bond except when making demands under the D&C Contractor Construction Bond or with the State's consent.

### (**Application of D&C Contractor Construction Bond proceeds**): The State, Project Co and the Security Trustee agree that, upon termination of the Project Deed, and without limiting clause 4.1:

#### the proceeds of the D&C Contractor Construction Bond are to be applied in accordance with clause 4.1; and

#### upon payment of any relevant Termination Payment to the Security Trustee or where a Project Co Termination Payment is payable, the Security Trustee waives any priority over (and each of Project Co and the Security Trustee must assign to the State) any right under and benefit of any D&C Contractor Construction Bond issued in favour of Project Co or the Security Trustee in each case for an amount no greater than as set out in clause 20.4 of the Project Deed.

### (**State to provide notice**): Without limiting the rights of the State under any Project Document in any way, the State agrees with the Security Trustee that it will provide to the Security Trustee a copy of any notice delivered by the State to the entity which issued the D&C Contractor Construction Bond to effect an assignment to the State of Project Co's and the Security Trustee's rights under and benefits from the D&C Contractor Construction Bond under clause 12(e) at the same time as the State gives such notice to that issuing entity.

# Assignment and novation

## No assignment, novation or other transfer without consent

Subject to clauses 13.2 and 13.3, no party may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party, which consent must not be unreasonably withheld.

## Novation by the Security Trustee

No party will withhold its consent to any novation by the Security Trustee if: ***[Note: the State considers that a replacement of Security Trustee should occur by way of novation of the Security and Security Trust documents (and this Deed). If an alternative mechanism is to be used, then the Proponent will need to demonstrate how the Security Trustee's obligations under this Deed will be stapled to those under the Security and Security Trust documents.]***

### (**right, title and interest**): it is related to all its right, title and interest in and obligations under this Deed and the Finance Documents (in its capacity as Security Trustee);

### (**Finance Documents**): it occurs consequent upon the implementation of provisions in a Finance Document providing for the replacement of the Security Trustee;

### (**solvent and reputable replacement**): it relates to a replacement Security Trustee which is a solvent and reputable financial institution or trustee company; and

### (**novation deed**): the replacement Security Trustee has executed a novation deed (in such form as the State reasonably requires) under which it agrees to be bound by the provisions of this Deed as if it were the Security Trustee.

## Assignment, novation or other transfer 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 State Project Documents made in accordance with clause 52.10 of the Project Deed, provided the proposed assignee, novatee or transferee agrees to execute a deed in favour of the Security Trustee (in such form as the Security Trustee reasonably requires) under which the assignee, novatee or transferee agrees to be bound by this Deed as if it were the State.

# Confidential Information and disclosure

## Confidential Information and disclosure by the State

### (**Public Disclosure Obligations**): The State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and Project Co or the Security Trustee (as applicable) must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations:

### (**Other purposes**): The State or any Authority may disclose any information in connection with the Project (including any Confidential Information, but excluding the Finance Documents and Equity Documents) in connection with:

#### the State selling, transferring, assigning or otherwise disposing of its interest in any Project Assets;

#### any Interface Works or any future infrastructure project or transaction undertaken in Victoria that may be investigated, assessed, constructed, operated or maintained from time to time including any equipment, computer hardware, computer software and computer or telecommunications systems and any complementary works or services associated with them but excluding this Project; and/or

#### the requirements of any State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, the Change Compensation Principles or the Augmentation Process Schedule).

### (**State's rights**): Subject to clause 14.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website.

### (**Commercially sensitive information**): The State will not publish, disclose or otherwise make generally available the information which is specified in the Commercially Sensitive Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations as required by clause 14.1(c) or in the circumstances set out in clause 55.1(c) of the Project Deed.

### (**Exercise of licence**): Nothing in this Deed prevents the State and any sublicensees using or disclosing any information to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under this Deed.

## Confidential Information and disclosure by Project Co and the Security Trustee

### (**Confidential Information**): Subject to clause 14.2(b) and clause 14.3(b), Project Co and the Security Trustee must treat as secret and confidential all Confidential Information in connection with this Deed and any other Project Document.

### (**Disclosure of Confidential Information**): Without limiting Project Co's and the Security Trustee's obligation under clause 14.2(a) and subject to clause 14.2(c), Project Co and the Security Trustee may disclose Confidential Information to:

#### a Project Co Associate, the Security Trustee's Associates or any Enforcing Party (as applicable) to the extent necessary for the purpose of undertaking the Project or exercising its rights under the Finance Documents;

#### any Financier; or

#### any prospective financier or equity investor of the Project, subject to the State having carried out any Probity Investigation that the State considers necessary.

### (**Confidentiality deed**): Before disclosing any Confidential Information, Project Co or the Security Trustee (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co or the Security Trustee (whichever is disclosing the Confidential Information):

#### on the same terms that the disclosing party is required to comply with under the Project Deed or this Deed (as applicable); or

#### on terms reasonably acceptable to the State.

## Disclosure by the Security Trustee

### (**The Security Trustee's disclosure obligations**): Subject to clause 14.3(b), the Security Trustee must:

#### not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;

#### comply with any terms and conditions the State imposes in respect of any public disclosures, announcements or statements and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

#### as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 14.3(a) or for which the State's consent or approval was not required in accordance with clause 14.3(b).

### (**Permitted disclosure**): For the purposes of clause 14.2(a) and clause 14.3(a), the Security Trustee will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:

#### required by Law, provided that it:

##### to the extent it is permitted by Law to do so, notifies the State of the requirement to make that disclosure; and

##### takes all reasonable steps to minimise the extent of the disclosure and the Security Trustee shall use its best endeavours to ensure the information is disclosed on the basis that the recipient agrees to maintain the confidentiality of the information;

#### required to obtain legal or other advice from its advisers;

#### required to be made to a court in the course of proceedings to which it is a party;

#### in respect of information that is already in the public domain; or

#### required by a relevant stock exchange, subject to:

##### such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and

##### the Security Trustee having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

# Termination

### (**Termination**): This Deed will terminate if the parties so agree in writing.

### (**Accrued rights**): The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

# Dispute resolution procedure

## Procedure

Unless a State Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between any two or more of the parties to that dispute (**Disputing Parties**) arising in connection with this Deed (including questions concerning its existence, meaning or validity) (**Dispute**) must only be resolved in accordance with the following procedure:

### first, the Dispute must be the subject of negotiation as required by clause 16.2;

### second, if the Dispute remains unresolved (in whole or in part) after the expiration of the relevant period for resolution referred to in clause 16.2 and any Disputing Party wishes to pursue the Dispute:

#### if the Dispute is expressly referred to in a State Project Document to be a Dispute which may be referred to expert determination, the Dispute must be referred to expert determination and then only in accordance with clause 17; or

#### if clause 16.1(b)(i) does not apply:

##### the Disputing Parties may either agree that the Dispute will be referred to expert determination in accordance with clause 17; or

##### if the Disputing Parties do not agree in accordance with clause 16.1(b)(ii)A to refer the Dispute to expert determination, either party may refer the Dispute to arbitration in accordance with clause 18; and

### third, if the Dispute has been referred to expert determination in accordance with clause 16.1(b)(i) or clause 16.1(b)(ii)A, any Disputing Party may subsequently refer the Dispute to arbitration in the circumstances stated in clause 18.

## Senior negotiations

### (**Notification**): If a Dispute arises then a party must, if it wants to pursue the Dispute give notice to each other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) (or, in the case of the Security Trustee, the officer who has overall responsibility for the transaction) of the Disputing Parties (**Representatives**).

### (**Contents of Notice**): A notice under clause 16.2(a) must:

#### state that it is a notice under this clause 16; and

#### include or be accompanied by particulars of the matters the subject of the Dispute.

### (**Attempt to resolve Dispute**): If a Dispute is referred to negotiation under clause 16.2(a), then:

#### the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days after the date on which the notice under clause 16.2(a) is received or such later date as the Disputing Parties may agree; and

#### any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be final and binding on the Disputing Parties.

# Expert determination

## Referral and selection of expert

### If a Dispute:

#### remains unresolved (in whole or in part) within 10 Business Days after the date on which the notice under clause 16.2(a) is received or such later date as the Disputing Parties may agree; and

#### either clause 16.1(b)(i) applies or the Disputing Parties agree to refer the Dispute to expert determination under clause 16.1(b)(ii)A,

then if a party wants to pursue the Dispute, that Disputing Party must refer the Dispute to expert determination within 20 Business Days after the date on which the notice under clause 16.2(a) is received or such later date as the Disputing Parties may agree.

### (**Agreement**): Within 5 Business Days after the date on which a Dispute is referred to expert determination under clause 17.1(a), the Disputing Parties must endeavour to agree on the expert to be appointed to determine the Dispute.

### (**Exchange of lists of 3 preferred experts**): If the Disputing Parties are unable to agree on an expert to determine the Dispute, within the 5 Business Day period referred to in clause 17.1(b), the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 17.1(f) on or before the date which is 10 Business Days after the date on which the Dispute is referred to expert determination under clause 17.1(a).

### (**Appointment of person who appears on all lists**): If:

#### a person appears on the lists of all of the Disputing Parties under clause 17.1(c), that person will be deemed to be the expert to determine a Dispute; or

#### more than one person appears on the lists of all of the Disputing Parties, the person given the highest order of priority by the party that gave the notice under clause 16.2(a) will be deemed to be the expert to determine the Dispute.

### (**Appointment if no person appears on all lists**): If no person appears on the list of all of the Disputing Parties, the party that gave the notice under clause 16.2(a) must procure:

#### the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline that is the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 17.1(c); or

#### if:

##### there is no governing body for the technical or professional discipline that is the subject of the relevant Dispute;

##### such governing body advises that it will not nominate an expert; or

##### there are multiple technical or professional disciplines that are the subject of the Dispute,

the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 17.1(c),

within 7 Business Days after the exchange of the lists under clause 17.1(c).

### (**Appropriate skills**): It is the intention of the Disputing Parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in Dispute.

### (**No entitlement to challenge appointment**): No Disputing Party will be entitled to challenge the appointment of an expert under this clause 17.1 on the basis that the expert does not satisfy the requirements of clause 17.1(f).

### (**No conflict of interest**): An expert agreed or determined in this clause 17.1 appointed by the parties cannot have any conflict of interest or any relationship with either party or their Associates that a reasonable person may regard as giving rise to the possibility of bias.

### (**Not an arbitration agreement**): Any agreement for expert determination under this Deed will not constitute an arbitration agreement including for the purposes of the *Commercial Arbitration Act 2011* (Vic).

### (**Agreement**): Within 7 Business Days after the expert has notified the Disputing Parties that they are available to be appointed as the expert in respect of the Dispute, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may reasonably require.

### (**Expert not available**): If an expert agreed between the Disputing Parties or otherwise deemed or determined to be appointed in respect of the Dispute under clauses 17.1(b), 17.1(d) or 17.1(e) is not available to be appointed as the expert for that Dispute, the parties must appoint a different expert by repeating the process in clause 17.1 save that, if the parties have already exchanged a list of 3 persons in accordance with clause 17.1(c) and there is another expert who appears on both lists, the person given the next highest order of priority by the party that gave the notice under clause 16.2(a) will be deemed to be the expert.

## Rules of expert determination

The expert determination process will be administered in accordance with, and the expert will be required to act, under the terms of the Expert Determination Agreement.

## Expert finding

### (**Notification**): The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless:

#### the expert determination includes:

##### payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $2,000,000 (Indexed); or

##### an extension of the Date for Acceptance or rejection of an extension to the Date for Acceptance, where the period of the extension that was claimed is more than 5 Business Days; and

#### within 10 Business Days after receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction with the expert's determination.

### (**Amendment to determination**): Upon submission by any Disputing Party, the expert may amend its determination to correct:

#### a clerical mistake;

#### an error from an accidental slip or omission;

#### a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

#### a defect in form.

### (**Binding on an interim basis**): Notwithstanding any challenge made under clause 17.3(a) to the determination of an expert, the determination of the expert will be binding on the Disputing Parties until it is overturned, reversed, varied or otherwise changed by the determination of an arbitrator or a court in accordance with this Deed.

## Proportionate liability

The expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 17.4, have applied to any Dispute referred to expert determination under this clause 17.

## Liability of expert

### (**Liability of expert**): The Disputing Parties agree:

#### that the expert will have no liability in connection with the expert determination; and

#### to indemnify the expert against any liability in connection with the expert determination,

except in the case of fraud on the part of the expert, in which case a Claim may be made against the expert by any Disputing Party.

### (**Engagement**): The Disputing Parties must jointly engage the expert to provide services in connection with the expert determination process and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## Costs

The Disputing Parties must:

### (**costs of the Disputing Parties**): bear their own costs in connection with the expert determination proceedings; and

### (**costs of expert**): pay an equal portion of the costs of the expert.

# Arbitration

## Reference to arbitration

If:

### (**no referral to expert determination**): a Dispute:

#### which has been referred to the Representatives for negotiation under clause 16.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 16.2(c)(i); and

#### is not a Dispute which the Disputing Parties:

##### must refer to expert determination under clause 16.1(b)(i); or

##### have agreed to refer to expert determination under clause 16.1(b)(ii)A; or

any Disputing Party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause 16.2(a) is received or such later date as the Disputing Parties may agree; or

### (**after referral to expert determination**): a Dispute which has been referred to expert determination under clause 17.1(a) and:

#### a determination is not made by the expert within 22 Business Days after the execution of the Expert Determination Agreement by the expert, either party may refer the Dispute to arbitration by notice to that effect to the other Disputing Parties within 30 Business Days after the execution of the Expert Determination Agreement by the expert;

#### no expert enters into the Expert Determination Agreement with the Disputing Parties in accordance with clause 17.1(j) within 30 Business Days after the date on which the Dispute is referred to expert determination under clause 17.1(a), a Disputing Party may refer the Dispute to arbitration by notice to that effect to the other Disputing Party within 35 Business Days after the date on which the Dispute was referred to expert determination; or

#### a notice of dissatisfaction in respect of the expert's determination is given under clause 17.3, a Disputing Party may refer the Dispute to arbitration by notice to that effect to the other Disputing Parties, within 35 Business Days after a party gives notice to the other Disputing Parties of its dissatisfaction with the expert's determination in accordance with clause 17.3 in which case the arbitration will be by way of hearing de novo.

## Arbitration

### (**ACICA Rules**): Arbitration in accordance with this clause 18 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 18.

### (**Seat**): The seat of the arbitration will be Melbourne, Victoria.

### (**Language**): The language of the arbitration will be English.

## Appointment of arbitrator

The Disputing Parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 14 Business Days after the Dispute is referred to arbitration under clause 18.1, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

## General principles for conduct of arbitration

### (**Conduct of arbitration**): The Disputing Parties agree that:

#### they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

#### any arbitration conducted in accordance with this clause 18 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

#### in conducting the arbitration, the arbitrator must take into account the parties' intentions as set out in clauses 18.4(a)(i) and 18.4(a)(ii).

### (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

### (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on Evidence, current as at the date of referral of the Dispute to arbitration.

### (**Oral hearing**): The oral hearing must be conducted as follows:

#### any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;

#### the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 18.4(a) when determining the duration of the oral hearing;

#### oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

#### the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each Disputing Party has the same time to conduct its case unless in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;

#### not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;

#### in exceptional circumstances the arbitrator may amend the date and extend the time for the oral hearing set in accordance with clause 18.4(d)(ii);

#### a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and

#### each Disputing Party is expected to put its case on significant issues in cross-examination of a relevant witness called by the other Disputing Party or, if it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the written evidence of a witness.

### (**Experts**): Unless otherwise ordered, each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

## Proportionate liability

The arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability Legislation which might, in the absence of this clause 18.5, have applied to any Dispute referred to arbitration under this clause 18.

## Extension of ambit of arbitration proceedings

### (**Extending disputes**): If:

#### a Dispute is referred to arbitration under this clause 18; and

#### there is some other Dispute also between the Disputing Parties to and under this Deed (whenever occurring),

* 1. the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the Dispute that has been referred to arbitration, make an order directing that the arbitration be extended so as to include the other Dispute.

### (**Arbitrator's order**): An arbitrator may make an order in accordance with clause 18.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## Award final and binding

### (**Final and binding**): Subject to clause 18.7(b), any award will be final and binding on the Disputing Parties.

### (**Appeal**): Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 18.

## Continue to perform

Notwithstanding the existence of a Dispute, each Disputing Party must continue to perform its obligations under this Deed.

## Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

## Interlocutory relief

This clause 18 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

## Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

# GST

### (**Revenue**): For the purposes of this clause 19, "Revenue" has the meaning given in clause 19(g).

### (**GST exclusive amounts**): Unless otherwise expressly stated all amounts referred to in this Deed are exclusive of GST.

### (**GST payable by Supplier**): If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:

#### any amount payable or consideration to be provided in accordance with any other provision of this Deed for that Taxable Supply (**Agreed Amount**) is exclusive of GST;

#### 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

#### 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 19(c) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply (unless the Recipient is required to issue the Tax Invoice).

### (**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 19(c) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as applicable) the amount of this variation. If an adjustment event occurs in relation to a supply and unless the Recipient is required to issue the Adjustment Note:

#### 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

#### no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.

### (**GST ceasing to be payable**): No amount is payable by a party in accordance with clause 19(c) or clause 19(d) 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.

### (**Expert Determination**): If the Recipient is dissatisfied with any calculation to be made by the Supplier in connection with this clause 19 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the Resolution Institute (or if the Resolution Institute advises that it will not nominate an expert or otherwise fails to do so within [20] Business Days of a request to do so, by the President of the Australian Centre for International Commercial Arbitration) for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in connection with this clause 19 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

### (**Revenue net of GST**): Any reference in this Deed 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.

### (**Cost net of GST**): Any reference in this Deed 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.

### [Not used]

### (**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 Credit, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made under or in connection with this Deed.

### (**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, and if a party to this Deed makes a Taxable Supply by virtue of entering into or performing this Deed and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Deed that other party to this Deed will be obliged either to pay the amount referred to in clause 19(c)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount will be the 'Recipient' for the purposes of this clause 19 in relation to the relevant Taxable Supply.

### (**Project Deed to prevail**): If clause 61 of the Project Deed would apply in connection with a Taxable Supply to which this clause 19 also applies then clause 61 of the Project Deed will apply in connection with that Taxable Supply and the provisions of this clause 19 (but for this clause 19(l)paragraph) will not apply.

### (**Definitions**): In this clause 19, unless otherwise defined in or for the purposes of this Deed, terms used have the meanings given to them in the GST Law.

# Notices

## Notices

All approvals, consents, directions, requirements, determinations, requests, claims, notices, agreements, demands or other communications under or in connection with this Deed:

### (**in writing**):must be in writing;

### (**addressed**):must be addressed as set out below or to such other addressee as notified by the receiving party to the other parties from time to time:

**State:**

Attention: [xx]

Address: [xx]

Email: [xx]

**Project Co:**

Attention: [xx]

Address: [xx]

Email: [xx]

**Security Trustee:**

Attention: [xx]

Address: [xx]

Email: [xx]

### (**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;

### (**form of delivery**):must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 20.1(b); and

### (**taken to be received**):are taken to be received by the addressee:

#### in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 20.1(b), 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;

#### in the case of prepaid express 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

#### in the case of email, on the first to occur of:

##### 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;

##### the time that the communication enters an information system which is under the control of the addressee; or

##### 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.

# Miscellaneous

## Governing Law and jurisdiction

### (**Governing Law**): This Deed is governed by, and must be construed according to, the laws of Victoria, Australia.

### (**Jurisdiction**): Without limiting clauses 16 to 18, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Deed.

## Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed and the other State Project Documents:

### (**entire understanding**): embody the entire terms agreed between the parties in connection with the Project; and

### (**prior agreements**): supersede any prior agreement of the parties in connection with the Project.

## 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 that party) required by Law or reasonably requested by another party to give effect to this Deed.

## Survival of certain provisions

### (**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:

#### the State's rights to set-off and recover amounts;

#### confidentiality or privacy;

#### Intellectual Property Rights;

#### any obligation to make any books and accounts and all other records or information available to the State;

#### any indemnity, release or financial security given under this Deed;

#### any limitation on Liability;

#### any obligation which this Deed requires a party to undertake after the rescission, expiration or termination of this Deed; and

#### any right or obligation arising on termination, rescission or expiry of this Deed.

### (**Interpretation**): No provision of this Deed which is expressed to survive rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.

### (**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.

## Waiver

### (**Writing**): Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

### (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of 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.

### (**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.

## Consents and approvals

### (**Conditions**): A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless otherwise expressly provided in this Deed.

### (**Project Co or the Security Trustee**): A consent or approval required in accordance with this Deed from Project Co or the Security Trustee may not be unreasonably withheld or delayed, unless otherwise expressly provided in this Deed.

### (**Compliance**): Project Co and the Security Trustee must comply, and Project Co must procure that each Project Co Associate complies, with any condition of a consent or approval given by the State.

### (**Deemed events**): If Project Co or a Project Co Associate fails to comply with any condition of a consent or approval, where the initial failure to obtain that consent or approval would have resulted in:

#### a Default Termination Event, the failure to comply will be deemed to be a Default Termination Event; or

#### a Major Default, the failure to comply will be deemed to be a Major Default.

## Amendments

Unless otherwise expressly provided in this Deed, this Deed may only be amended by a deed executed by or on behalf of each party.

## Expenses

Unless otherwise expressly provided in this Deed or (as between the State and Project Co) the Project Deed, or (as between the Security Trustee and Project Co) the Finance Documents, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 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:

### (**provisions**): any other provision of this Deed; or

### (**other jurisdictions**): that provision under the Law of any other jurisdiction.

## Counterparts

### (**Execution in counterparts**): This Deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part). A party who has executed a counterpart of this Deed may exchange it with another party (the **Other Party**) by:

#### emailing a copy of the executed counterpart to the Other Party; or

#### utilising an electronic platform (including DocuSign) to circulate the executed counterpart,

and will be taken to have adequately identified themselves by so emailing the copy to the Other Party or utilising the electronic platform.

### (**Consent**): Each party consents to signatories and parties executing this Deed by electronic means and to identifying themselves in the manner specified in this clause.

### (**Counterparts constitute an original**): Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this Deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this Deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Deed.

## Moratorium Legislation

Each of Project Co and the Security Trustee waives, and Project Co will procure that each Key Subcontractor waives, any right or Cure it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or Cure would:

### (**no reduction**): lessen any obligation or Liability of Project Co or the Security Trustee (as applicable); or

### (**no prejudice**): prejudicially affect the rights, powers or remedies of the State,

under a State Project Document to which Project Co, the Security Trustee or the relevant Key Subcontractor is a party.

## No representation or reliance

### (**No representation**): Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

### (**No reliance**): Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

## Indemnities

### (**Continuing indemnity**): Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.

### (**Expense**): 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.

**Executed** as a deed.

Each signatory executing this Deed (electronically or otherwise) intends by that execution to be bound by this Deed, and where the signatory has signed as an officer or attorney of a party, for that party to be bound by this Deed.

[***Note: execution clauses to be inserted.***]

**State**

**Project Co**

**Security Trustee**

**Schedule 1 – Permitted Financier List**