**Sample Document**

**Side Deed – Standard Terms**

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

**Legal matters**

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

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

**Side Deed**

[Borrower name and address]

[insert date]

Private and Confidential

State of Victoria acting through the [insert Department]

50 Lonsdale Street

Melbourne VIC 3000

(the **State**)

and

[insert Financier name] [ACN/ABN] [(the **Financier**)

and

[insert First Loss Guarantor name] [ACN/ABN] (the **First Loss Guarantor**)

[insert Borrower name] [ACN/ABN] **(Borrower)** –[insert transaction name] **(Transaction)**

We refer to:

* the implementation agreement dated [insert date] between the Borrower (as Proponent) and the State (the **Implementation Agreement**);
* the loan agreement dated on or about the date of this deed between the Borrower and the Financier (**Loan Agreement**);
* the master guarantee deed dated on or about the date of this deed between the Borrower, the Financier and the First Loss Guarantor (**Master Guarantee Deed**);
* each guarantor accession deed poll as defined in the Master Guarantee Deed (**Guarantor Accession Deed Poll**); and
* each ‘Pledge Deed’ as defined in the Loan Agreement (**Pledge Deed**).

Unless the context requires otherwise, clause 35 (*Definitions and interpretation*) of the Implementation Agreement is incorporated in this deed in full, *mutatis mutandis*.

1. **Events of Default**

[***Note*** *– the mechanics of the Consultation Period described below (including associated timeframes) are illustrative only. The State may require an alternative regime and/or changes to the mechanics set out below depending on the PAD Arrangement.*]

* 1. Under clause 13 of the Loan Agreement, if an ‘Event of Default’ as defined in the Loan Agreement (**Event of Default**) occurs and provided that the Implementation Agreement has not been terminated, the Borrower, the First Loss Guarantor and the Financier must consult in good faith with the State for a period of no less than 30 calendar days after the occurrence of the relevant Event of Default (or such shorter period agreed between the Borrower, the First Loss Guarantor, the Financier and the State) (**Consultation Period**)with a view to restructuring the obligations of the Borrower and the Financier under the Loan Agreement, or otherwise varying the arrangements under or in connection with the Loan Agreement.
  2. During the Consultation Period:

1. the Financier must not:
   * terminate the ‘Facility’ as defined in the Loan Agreement under the Loan Agreement (**Facility**);
   * demand payment of the ‘Outstanding Amount’ as defined in the Loan Agreement (**Outstanding Amount**); or
   * exercise its rights under clause 21 (*Set-off*) of the Loan Agreement; and
2. the Financier may exercise its rights to call on the guarantee under the Master Guarantee Deed (**Guarantee**) provided by the First Loss Guarantor (but no ‘Additional Guarantor’ as defined in the Master Guarantor Deed.
   1. Unless the parties agree otherwise, after the Consultation Period, provided that the Implementation Agreement has not been terminated, the relevant Event of Default is subsisting and the Borrower or the Financier (as the case may be) has received towards reduction of the Outstanding Amount (rateably as applicable):
3. all ‘Guaranteed Moneys’ as defined in the Master Guarantee Deed (**Guaranteed Moneys**) then payable by the Guarantors in accordance with the Master Guarantee Deed; and
4. each pledge amount then payable under each Pledge Deed,

the Financier may:

1. terminate the Facility under the Loan Agreement;
2. following application of all moneys received by it in accordance with this paragraph 1.3, demand immediate payment of such amount of the Outstanding Amount as is less than or equal to the aggregate amount which has been received by the Borrower or the Financier under the Master Guarantee Deed and each Pledge Deed and not otherwise already applied by it towards reduction of the Outstanding Amount in accordance with this paragraph 1.3; and/or
3. exercise its rights under clause 21 (*Set-Off*) of the Loan Agreement.
   1. If:
4. an Event of Default occurs; and
5. the Implementation Agreement has been terminated in accordance with its terms,

the Financier may terminate the Facility, demand payment of the Outstanding Amount and/or exercise its rights under clause 21 (*Set-Off*) of the Loan Agreement.

1. **Payment obligations pari passu**

The Borrower undertakes to the State that the Borrower’s payment obligations to the State under the Transaction Documents rank at least *pari passu* with the claims of all of the Borrower’s other unsecured and unsubordinated creditors including the Financier, except for obligations mandatorily preferred by law applying to companies generally.

1. **Borrower’s undertaking to State**

The Borrower undertakes to the State not agree to any variation, amendment or alteration of the Loan Agreement or grant any consent, waiver, indulgence or agreement under the Loan Agreement where to do so would result in a material adverse effect on the State’s rights or interests under or in connection with the Implementation Agreement, or the enjoyment thereof.

1. **Financier’s undertaking to State**

The Financier undertakes to the State that it will not assign or transfer any of its rights or obligations under the Loan Agreement to a party unless that party executes a document agreeing to be bound by this deed in form and substance acceptable to the State.

1. **No obligation or liability of State**

The parties acknowledge and agree that, notwithstanding anything to the contrary in this deed or the Loan Agreement:

1. the State owes no obligations whatsoever to the Financier or the First Loss Guarantor in connection with this deed, the ‘Project’ (as defined in the Implementation Agreement) or the Loan Agreement, and shall have no liability whatsoever to the Financier or the First Loss Guarantor in connection therewith; and
2. the obligations of the State to the Borrower in connection with the ‘Project’ (as defined in the Implementation Agreement) are limited to those expressly set out in the Implementation Agreement, and, without limitation, the State shall not be liable for any costs or expenses or other amounts whatsoever which may be incurred by the Borrower or otherwise payable by the Borrower to the Financier or reimbursable by the Borrower to the Financier under or in connection with the Loan Agreement,

provided that this paragraph 5 shall be without prejudice to [the ‘Direct Deed’ (as that term is defined in the Implementation Agreement)] or the Borrower’s obligations under clauses 15, 16 and 17 of the Loan Agreement.

[***Note*** *– A Direct Deed will only be required where the Proponent is a special purpose vehicle. If this is not the case, references to the Direct Deed should be deleted.*]

1. **General**
   1. This deed is a ‘Transaction Document’ for the purposes of the Implementation Agreement.
   2. Each party acknowledges and agrees that:
2. subject to the terms of this deed, the Transaction Documents remain in full force and effect; and
3. nothing in this deed prejudices or adversely affects any right, power, discretion or remedy arising under any Transaction Document before the date of this deed or discharges, releases or otherwise affects any liability or obligation arising under any Transaction Document before the date of this deed.
   1. If an attorney executes this deed, the attorney declares that the attorney has no notice of revocation, termination or suspension of the power of attorney under which the attorney executes this deed.
   2. This deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument. A copy of a signed counterpart sent by facsimile machine or other electronic means including email must be treated as an original counterpart.
   3. This deed is governed by the laws of Victoria.

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

[***Insert execution clauses***]