

General security deed

Description: This is a precedent general security agreement for the granting of a security interest over all of the Grantor's personal property

Authors: Nino di Bartolomeo
Partner, Norton Rose

Helen Fielder
Know how lawyer, Norton Rose

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General Security Deed

[Author's note:

This is a precedent general security agreement for the Grantor's personal property, including all the

This precedent has been prepared following the introduction of the Property Securities Act 2009 (PPSA) and takes into account

For precedents dealing with the granting of a security deed, see the precedent documents "Specific security deed agreement (marketable securities)".]

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Deed made on [date]

Parties [Name of Grantor] ACN [insert] of [Gr
[Name of Secured Party] ACN [insert]

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this document the following definitions apply:

- (1) **Accounting Standards** means the accounting standards applicable under the law or otherwise generally applicable law or otherwise generally applicable law;
- (2) **Accounts** means profit and loss accounts, statements, reports and notes, including any schedules, attached to or intended to be read with the accounts, balance sheets;
- (3) **Applicable Interest Rate** means the interest rate applicable to the [Secured Party/the Secured Party];
- (4) **Attorney** means any attorney (including a solicitor) named in this document and any person who by delegation acts as an attorney;
- (5) **Authorisation** includes any consent, approval, authorisation, document, notarisation, certificate, permit or exemption prescribed by law or regulation, including in relation to water usage, and any other document or instrument;
- (6) **Authorised Officer** means:
 - (a) in relation to the Grantor which is a company, the company secretary of the Grantor or any person authorised by a notice to the Secured Party by the Grantor to sign notices or documents on behalf of the Grantor, notice to be accompanied by a copy of the notice;
 - (b) in relation to the Grantor that is an individual, the Grantor;
 - (c) in relation to the Secured Party which is a company, the company secretary, or any person authorised by a notice to the Grantor by the Secured Party to sign notices or documents on behalf of the Secured Party, notice to be accompanied by a copy of the notice;
- (7) **Business Day** means a day that is not a public holiday in the Relevant Jurisdiction;
- (8) **Collateral** means all PPSA Personal Property Securities

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- (9) **Collateral Security** means any document in favour of the Secured Party, any Guarantee in favour of the Secured Party, any agreement at any time created or entered into in relation to any Secured Money;
- (10) **Controller** has the meaning given in section 1 of the Companies Act 2006;
- (11) **Corporations Act** means the *Corporations Act 2006*;
- (12) **Designated Account** means any account opened by the Grantor to open and maintain under the name of the Secured Party;
- (13) **Documents of Title** includes:
- (a) documents of title, chattel mortgages and other expressions are defined in section 1259 of the Companies Act 2006;
 - (b) any other document (whether or not a document of title) deposited with the Secured Party in connection with the Secured Money;
- (14) **Event of Default** means any event or condition which is or is otherwise specified in this document as an event of default;
- (15) **Facility Agreement** means the document which sets out the terms of the Facility;
- (16) **Government Agency** means any government, local authority, semi-governmental entity or judicial authority or other regulatory organisation established in the United Kingdom;
- (17) **Guarantee** means any guarantee, indemnity, letter of comfort or other legally binding letter of comfort or security given in favour of the Secured Party against the consequences of default or non-payment by the Secured Party for, an obligation or indebtedness of the Secured Party;
- (18) **Improvements** means any improvements or additions to the Land used with any Land that is part of the Secured Money;
- (19) **Indirect Tax** means any goods and services tax and any tax of a similar nature;
- (20) **Insolvency** has a comparable meaning to that in section 1213 of the Companies Act 2006;
- (21) **Insolvent** means, in relation to any body corporate, that:
- (a) it is a body corporate and is in liquidation;
 - (b) it is a body corporate and is in administration or insolvent (within the meaning of section 1213 of the Companies Act 2006);
 - (c) a Liquidation occurs in relation to it; or
 - (d) it is subject to any arrangement or composition with creditors protected from creditors under section 1213 of the Companies Act 2006 other than to carry out a reorganisation of the Secured Party on terms approved by the Secured Party;
 - (e) an application (not being an application for an order for administration and that, is not stayed, with respect to the Secured Party) is made to the court in relation to it.

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- body corporate be wound up or liquidated or become an insolvent body corporate;
- (f) a receiver, receiver and manager or liquidator or administrator appointed over any or all of the assets of the Party and
- (g) anything analogous or having effect similar to any of the events described above having occurred under the law of any applicable jurisdiction.
- (22) **Insurance** means insurance policies that the Party maintains or will maintain under a Transaction Document;
- (23) **Land** includes any lease or other interest in real property:
- (a) in respect of land; or
 - (b) which authorises exploration for or the production of petroleum, geothermal energy or other mineral resources;
- (24) **Licence** means any notification, permit, approval or authorisation or approval from a Government Agency:
- (a) the Collateral;
 - (b) the Grantor's occupation, acquisition or use of the Collateral;
 - (c) any business or other activity conducted on the Collateral;
 - (d) and includes any gaming licence.
- (25) **Liquidation** includes provisional liquidation, receivership, appointment of controller, compromise, arrangement, reorganisation, dissolution, assignment for the benefit of creditors, bankruptcy or death;
- (26) **Marketable Securities** means interests in securities that are freely tradable in the open market;
- (27) **Other Property** means all present and future property of the Party not PPSA Personal Property;
- (28) **Permitted Security Interest** means:
- (a) any Security Interest granted under a Transaction Document;
 - (b) any Security Interest over any asset of the Party that the Party has expressly consented to in writing;
 - (c) a lien arising by operation of law in favour of a creditor and not securing financial accommodation, where the Grantor duly pays the debt and the creditor's indebtedness contested in good faith;
 - (d) a charge or lien arising in favour of a creditor in connection with a loan, unless there is default in payment.

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- (i) a clause, annexure or schedule to, this document;
- (j) an agreement or document novated, supplemented or modified by another document;
- (k) conduct includes an omission to act in writing;
- (l) "property" or "asset" includes tangible or intangible property or asset held under or derived from the property;
- (m) an amount for which a person is liable that person may become accountable, whether or not that liability has occurred;
- (n) a right includes a benefit, right or interest;
- (o) an obligation includes any liability or failure to comply with an obligation or representation;
- (p) "\$" or "dollars" is a reference to the Australian dollar;
- (q) payment includes repayment;
- (r) **know your customer check** means other identification requirements under applicable law.

- (2) A reference to costs and expenses includes expenses on a full indemnity basis.
- (3) Anything that this document states is to be done at the Grantor is to be done at the Grantor's expense.
- (4) "Including" and similar expressions include but are not limited to.
- (5) Where a word or expression is given in its grammatical forms of that word or expression.
- (6) Headings and any table of contents do not form part of this document or affect its interpretation.

1.3 Parties

If the Grantor comprises 2 or more persons, any 2 or more of them, and this document binds more of them jointly.

2 Security

2.1 Grant of security

The Grantor grants to the Secured Party:

- (1) a PPSA Security Interest over all PPSA

- (2) a fixed charge over all Other Property to secure the payment of the Secured Money and the Grantor's other obligations to the Secured Party.

2.2 Attachment

The Grantor acknowledges and confirms that:

- (1) the Secured Party has given value for the Security Interest in the Collateral, including by its promises or continuing to make available any

[Note: this clause 2.2(1) is included for the purpose of establishing that the security interest is not an antecedent debt or liability.]

- (2) nothing in any Transaction Document creates a Security Interest under this document attaching to the Collateral in accordance with section 19(2) of the PPSA; and

[Note: this clause 2.2(2) is included for the purpose of postponing the perfection of the security interest under section 19(3) of the PPSA.]

- (3) it has not made any other agreement or arrangement for the attachment of a Security Interest except as provided in this document between the Grantor and the Secured Party.

2.3 After-acquired

The Grantor acknowledges that, for the purpose of this document, the PPSA Security Interest covers all PPSA Personal Property present and after-acquired property.

2.4 No subordination

The Grantor acknowledges that nothing in this document is intended to subordinate any Security Interest in favour of any person.

[Note: Under section 61(2)(b) of the PPSA, a security interest is not intended to subordinate a security interest if the third party is the person or one of a class of persons to whom the security interest is intended. In Chiips Inc v Skyview Hotels, the court held that a similar provision in Canada had the effect that a pledge provision constituted an agreement to subordinate the security interest of the secured party, even if they were not required to enforce that agreement. This clause 2.4 is included for the purpose of ensuring that section 61(2)(b) might be construed in a similar way.]

2.5 Priority

The parties acknowledge that the Security Interest has priority over all other Security Interests in relation to all Secured Money, including future advances.

2.6 Security Interest continues

If the Grantor disposes of or otherwise deals with the Collateral in any Transaction Document, the Grantor acknowledges that the Security Interest continues to attach to the Collateral.

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- (1) the Secured Party has not:
 - (a) authorised any disposal of the Collateral;
 - (b) agreed that any disposal of the Collateral is in breach of the Security Interest held by the Secured Party;
- (2) the Secured Party's Security Interest is not in breach of any agreement or dealing or agreement to deal.

3 Grantor must pay Secured Money

3.1 Pay Secured Money

The Grantor must pay the Secured Money

- (1) in accordance with any agreement between the Grantor and the Secured Party;
- (2) if there is no agreement or no Event of Default, then (not):
 - (a) on demand, at a place and time agreed between the Grantor and the Secured Party;
 - (b) by 11.00am local time in the territory of the Secured Party;

in immediately available funds and without any set-off or other deductions or withholdings unless required by any applicable law.

4 Grantor must pay interest

- (1) The Grantor must pay interest on the Secured Money from the date the Grantor to the Secured Party in accordance with the terms of the Security Agreement to be paid on the Secured Money.
- (2) If the liability of the Grantor to pay interest under the Security Agreement document becomes merged in any deed, then the Grantor must pay interest on the amount of the Secured Money at the higher of the rate payable under the Security Agreement or the rate payable under that deed, judgment or award of a court of competent jurisdiction.

5 Dealing with Collateral

5.1 Dealing

Subject to **clauses 5.2 and 5.3** or with the consent of the Secured Party, the Grantor must not do or agree to do any of the following:

- (1) create or attempt to create or agree to create a Security Interest in the Collateral other than a Permitted Security Interest;
- (2) sell, assign, transfer or declare a trust in the Collateral;
- (3) lease or licence the Collateral or any part of the Collateral;
- (4) give control of the Collateral to any person other than the Secured Party.

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[OR]

[OPTION 2 (use this clause if the Grantor is not withdrawing from the Designated Account):] Unless at any time, the Grantor may withdraw all proceeds paid into that Designated Account and any other amounts as the Grantor thinks fit but

- (a) no Event of Default has occurred;
- (b) the proceeds paid in are not or do not arise from another dealing with the Secured Party.

(4) **no withdrawals**

[OPTIONAL: If an Event of Default has occurred, the Grantor may not withdraw any amount from the Designated Account without the consent of the Secured Party.

[Note: include the optional words in clause 8.1(3) (permitting certain withdrawals) if you do not permit certain withdrawals.]

9 Default

9.1 Events of Default

Each of the following events listed in this clause (which are outside the control of the Grantor):

- (1) **obligations under Transaction Documents:**
 - (a) pay or repay in accordance with any of the Transaction Documents any part of the Secured Obligations;
 - (b) comply with any of its obligations under clause 5.6(2) of this document or any other Transaction Document by the Secured Party under the Transaction Documents.
- (2) **misrepresentation:** a representation or statement made by a Transaction Party in a Transaction Document or in connection with a Transaction Document is false or misleading in a material respect when made or known to be false or misleading when made;
- (3) **Insolvent:** a Transaction Party becomes insolvent or is treated as insolvent under applicable law;
- (4) **enforcement against assets:** a Secured Obligation is enforced, or a distress, attachment or other legal process is levied against any of the assets and undertaking of a Transaction Party;
- (5) **reduction of capital:** without the prior written consent of the Secured Party, a Transaction Party reduces its capital or the amount of its issued Securities but excluding a redemption or repurchase of Securities, or passes a resolution referred to in section 641 of the Companies Act 2006;
- (6) **investigation:** an investigation into the affairs of a Transaction Party commences under any law in circumstances which are likely to result in the Transaction Party becoming insolvent or being treated as insolvent under applicable law.

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- (7) **Related Body Corporate:** anything referred to in **clause 9**, or having substantially similar characteristics to a Related Body Corporate of a Transaction Party;
- (8) **Relevant Documents ineffective:**
- (a) all or any part of a Relevant Document is or will be illegal, invalid, unenforceable, or void;
 - (b) a party becomes entitled to terminate or rescind a Relevant Document; or
 - (c) a party other than the Secured Party becomes entitled to terminate or rescind a Relevant Document described in **clause 9.1(8)(a)** having regard to **clause 9.1(8)(b)**;
- (9) **transfer despite prohibition**
- Collateral is or will be able to be transferred or assigned to a third party despite any prohibition in the Security Document or Interest or under proceedings to enforce the Security Document prohibiting that transfer;
- (10) **priority and attachment**
- Collateral is or will be transferred or assigned to a third party other than by any act of the Secured Party or the Grantor in the Security Document or any Collateral Security:
- (a) ceases to have the priority that it has in the Security Document or Collateral Security;
 - (b) ceases or fails to attach to any part of the Collateral in this document or Collateral Security; or
 - (c) ceases to secure the payment of the obligations that it purports to secure;
- (11) **priority agreement:** the Grantor does not have a written priority agreement entered into in accordance with the Security Document;
- (12) **amendment of constitutional documents:** the constitutional documents of a Transaction Party are amended in a manner that is not acceptable to the Secured Party (which will not be bound by the amendments);
- (13) **revocation of Authorisation:** an Authorisation given by any Transaction Party of a Relevant Document, or a Relevant Document, is repealed, revoked, rescinded, or is modified or amended in a manner unacceptable to the Secured Party, or is replaced by another Authorisation acceptable to the Secured Party;
- (14) **compulsory acquisition**
- (a) all or any material part of the Collateral is or will be compulsorily acquired by the order of a Government Agency;
 - (b) a Government Agency orders the transfer of all or any material part of the Collateral; or

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- (c) a Government Agency takes or proposes or threatens to do a Party fails to take or diligently requested by the Secured Party of any of the events referred to
- (15) **Governmental interference:** a law or partially to a material extent rendering effectiveness of a Relevant Document
- (16) **Transaction Documents:** any Event expression, is defined in any Transaction
- (17) **loan used for different purposes:** a purpose other than the stated purpose
- (18) **Serial Numbered Collateral:** the Grantor Numbered Collateral to the Secured Party
- (19) **natural persons:** if the Grantor is a natural person no longer has full legal capacity or become
- (20) **partnerships:** if the Grantor is a partner the Secured Party, the constitution of dissolved; and
- (21) **associations:** if the Grantor is an association written consent of the Secured Party:
 - (a) an application is made, a resolution winding up of that Grantor; or
 - (b) that Grantor becomes external creditors is appointed in respect

10 Collection and transfer of Collateral

At any time after an Event of Default has occurred

- (1) the Secured Party may notify the Grantor
 - (a) the Grantor is prohibited from debts and accounts receivable
 - (b) the Secured Party will collect receivable in which case the Grantor
 - (i) notify its debtors of the
 - (ii) the Secured Party present Grantor's trade debts
 - (iii) use its best endeavours Grantor's trade debts
- (2) if the Secured Party requests, the Grantor ensure that any Authorisation that is not carried on by the Grantor, the Collateral to the Secured Party or its Representative

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Schedule 1 - Details

Item 1 **Facility Agreement**

Not applicable

[OR]

[Facility Agreement] dated [date] be

Item 2 **Relevant Jurisdiction**

[Jurisdiction]

Item 3 **Trust and Trust Deed**

Not applicable

[OR]

The [name of trust] Trust establishe
(Trust Deed) dated [date] between

Item 4 [Note: if the Grantor is a partnership]

Item 5 **Address for service of each party**

[Note: the grantor details should mi
Refer to PPS Regulation Schedule

The Secured Party: [Name o

Address: [Secured

Facsimile: [facsimil

Email address [email ac

Attention: [attentio

The Grantor: [Name o

Address: [Grantor

Facsimile: [facsimil

Email address [email ac

Attention: [attentio

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Schedule 2 - Serial Numbered Collateral

Consumer Property

[insert table if required]

Commercial Property - Collateral that must be registered with a state or local government authority and has a serial number

[Note: as it is optional to register commercial property, it is advisable to register for high value non-inventory items]

Goods: Motor Vehicles	Vehicle identification number	Chassis number
(Insert description if Collateral includes any motor vehicles. Insert VIN, or if no VIN exists, insert chassis number, or if no chassis number exists, insert manufacturer's number.)		

Goods: Watercraft	Official number	Hull identification number
(Insert description if Collateral includes any watercraft. Insert official number, or if no official number exists, insert hull identification number, or if no hull identification number exists, insert Manufacturer's number.)		

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Executed as a deed and delivered on the date s

Executed by [*name of Grantor*] ACN
[*insert*] in accordance with section 127 of
the *Corporations Act 2001*:

..... D
Director/Company Secretary

..... N
Name of Director/Company Secretary
(BLOCK LETTERS) (E

..... [n
Signed and sealed for and on behalf of
[*name of Secured Party*] ACN [*insert*] by
its attorney [*name of attorney*] under
power of attorney number [*power of
attorney number*] in the presence of:

.....
Signature of witness

.....
Name of witness (BLOCK LETTERS)

.....
Address of witness

[*Note: This is the standard power of attorney execu
execution clauses blank, so the appropriate claus*

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