

# Specific Security Deed (various collateral)

**Description:** This is a precedent specific security agreement (including drafting notes) for the granting of security interests over specific types of personal property of the Grantor

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## Specific Security Deed (various collateral)

Author's notes:

This precedent has been prepared following the introduction of the Personal Property Securities Act 2009 (2009) (**PPSA**) and takes account of the changes to the law.

This precedent is intended to be used for the granting of a security deed over collateral, being personal property that is:

- **"PPSA personal property"**, that is personal property that is covered by the PPSA;
- **"Other Property"**, that is personal property that is not covered by the PPSA.

The precedent currently addresses six types of personal property:

- Serial Numbered Collateral;
- Deposit Accounts;
- Ancillary Rights;
- Life Insurance Policies;
- Livestock; and
- Crops.

It can be adapted to address other types of personal property.

Note that investment instruments and intermediated securities are not covered by the precedent "Specific Security Deed (marketable securities)". Investment instruments include, for example, share, debentures, unit trusts and managed funds.

The body of this deed itself sets out provisions commencing with "Whereas" and "In witness whereof". Provisions specific to the particular types of collateral covered by the deed and can be included or deleted as appropriate.

- **Schedule 2** addresses **Serial Numbered Collateral**. This schedule deals with personal property concerns serial numbered collateral. It requires a financing statement for each item. The Personal Property Securities Regulations (Regulations) require or permit certain collateral to be registered in the Register:
  - (a) **consumer property** – Under section 10 of the PPSA, consumer property is personal property held by an individual, or a degree, of carrying on an enterprise to which section 2.2(1)(a) requires consumer property to be described by serial number and watercraft to be described by serial number.
  - (b) **commercial property** – Section 10 of the PPSA defines commercial property as personal property that is not "consumer property", to be described by serial number (if it is motor vehicles, watercraft or other tangible property) or by serial number (if it is intangible property). As registration is optional for commercial property, it is advisable to register by serial number.
- **Schedule 3** addresses **Deposit Accounts**. A deposit account is an "ADI account" which is defined as an account kept by a person (alone or jointly with another person) with a financial institution (ADI). It can be payable on demand or at a future date (a **term deposit**).

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- **Schedule 4** addresses **Ancillary Rights**, which are rights, entitlements and authorities, including those in the Territories, that enable the conduct of certain rights are PPSA personal property (and are treated as such) however in other cases the right, entitlement or authority is outside the scope of the PPSA (often to ensure that those rights, entitlements and authorities). So, for example, the grant of a security interest, mortgage or charge is not subject to the PPSA or not.

Examples of Ancillary Rights include:

- water rights that relate to the control, use or disposition of water constituting personal property under the PPSA;
  - transferable development rights (interests in land);
  - conveyancing licence, commercial fishing licence and a lease of taxi plates (specifically excluded from the PPSA by section 8(1)(k));
  - transmission authority, petroleum authority (specifically excluded from the PPSA by section 8(1)(k))
- **Schedule 5** addresses **Life Insurance Policies** which apply to a transfer of an interest in or claim under a life insurance policy. However note that the PPSA will apply to a transfer of a right to payment or loss of or damage to collateral or its proceeds extend to rights to payment as compensation under section 148 of the Life Insurance Act 1995 (Cth). For assignments of rights it is considered unnecessary to refer to the PPSA.
- Transfers of interests in other insurance policies continue to be governed by the general law, and the inclusion of those other policies and rights in the PPSA as PPSA personal property.
- **Schedule 6** addresses **Livestock** (being PPSA personal property) widely to include cattle and sheep and also various other animals. Details in Schedule 1;
  - **Schedule 7** addresses **Crops** (being PPSA personal property) described in the Details in Schedule 1.

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**Deed** made on [date]

**Parties** [Name of Grantor] ACN [insert] of [G  
[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 applicable law or otherwise generally accepted accounting principles;
- (2) **Accounts** means profit and loss accounts, statements, reports and notes, including any attachments, intended to be read with the 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) and any person who by or through an attorney;
- (5) **Authorisation** includes any consent, approval, authorisation, document, notarisation, certificate, exemption prescribed by statute or otherwise.

*[Note also that this definition of "Authorisation" includes the definition of "Licence" below.]*

- (6) **Authorised Officer** means:
  - (a) in relation to the Grantor that the secretary of the Grantor, or a person appointed by the Grantor to the Secured Party as an authorised officer, notices or documents in connection with the transaction accompanied by specimen signatures;
  - (b) in relation to the Grantor that the secretary of the Grantor, or a person appointed by the Grantor to the Secured Party as an authorised officer, notices or documents in connection with the transaction accompanied by specimen signatures;
  - (c) in relation to the Secured Party whose title or office includes company secretary, or any person appointed as an Authorised Officer;
- (7) **Business Day** means a day that is not a public holiday in the Relevant Jurisdiction;

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- (8) **Collateral** means any PPS Person
- (a) a Security Interest over Serial Numbered Collateral identified in *Collateral is not relevant delete*
  - (b) a Security Interest over Dependent Collateral identified in **Schedule 3**; [Note: if *Collateral* or for any other reason is not relevant, delete this **subclause**];
  - (c) a Security Interest over Ancillary Collateral identified in **Schedule 4**; [Note: if *Ancillary Collateral* is not relevant, delete this **subclause 1.1(8)(c)**];
  - (d) a Security Interest over Life Insurance Policy as identified in **Schedule 5**; [Note: if *Life Insurance* is not relevant, delete this **subclause**];
  - (e) a Security Interest over Lives and Memberships identified in **Schedule 6**; [and] [Note: if *Lives and Memberships* is not relevant, delete this **subclause 1.1(8)(e)**];
  - (f) a Security Interest over Crops and Livestock identified in **Schedule 7**; [Note: if *Crops and Livestock* is not relevant, delete this **subclause**];
- (9) **Collateral Security** means any document or instrument by which a Secured Party, any Guarantor in favour of the Secured Party, any Guarantee in favour of the Secured Party, or any Secured Money;
- (10) **Controller** has the meaning given in the **Companies Act**;
- (11) **Corporations Act** means the **Corporations Act 2003**;
- (12) **Consumer Credit Law** means the law of the relevant state or territory or any other law of a state or territory;
- (13) **Deposit Accounts** is defined in **Schedule 8**; [Note: if *Deposit Accounts* are not intended to form part of the definition of **Collateral**, delete **Schedule 8** or Crops (**Schedule 7**);] or Crops (**Schedule 7**); [Note: if *Deposit Accounts* are not intended to form part of the definition in the document as it may change from time to time, delete this **subclause**.];
- (14) **Documents of Title** includes:
- (a) documents of title, chattel paper, and other documents or expressions are defined in the **Personal Property Security Act**;
  - (b) any other document (whether or not a document of title) deposited with the Secured Party;
- (15) **Event of Default** means any event or circumstance, whether or not otherwise specified in this document, which constitutes an event of default under the **Personal Property Security Act**;
- (16) **Government Agency** means any government, semi-governmental or judicial entity or organisation established under applicable law;

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## 2 Security

### 2.1 Grant of security

The Grantor grants to the Secured Party:

- (1) a PPSA Security Interest over all P
- (2) a fixed charge over all Other Prope

to secure the payment of the Secured Money  
Grantor's other obligations to the Secured Pa

### 2.2 Attachment

The Grantor acknowledges and confirms that

- (1) the Secured Party has given value  
Collateral, including by its promises  
providing or continuing to make ava  
Transaction Party;

*[Note: this clause 2.2(1) is included t  
purpose of establishing that the secu  
accordance with section 19(2) PPSA  
an antecedent debt or liability.]*

- (2) nothing in any Transaction Docume  
Interest under this document attach  
section 19(2) of the PPSA; and

*[Note: this clause 2.2(2) is included t  
postponed under section 19(3) PPSA]*

- (3) it has not made any other agreeme  
attachment of a Security Interest ex  
the Grantor and the Secured Party.

### 2.3 No subordination

The Grantor acknowledges that nothing in an  
agreement to subordinate any Security Inter  
favour of any person.

*[Note: Under section 61(2)(b) of the PPSA, a  
if the third party is the person or one of a clas  
is intended. In Chiips Inc v Skyview Hotels L  
that a similar provision in Canada had the eff  
pledge provision constituted an agreement b  
of the secured party, even if they were not re  
to enforce that agreement. This clause 2.3 is  
61(2)(b) might be construed in a similar way.]*

### 2.4 Priority

The parties acknowledge that the Security In  
relation to all Secured Money, including futur



## 2.5 Security Interest continues

If the Grantor disposes of or otherwise deals with any Transaction Document, the Grantor acknowledges that:

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

## 3 Grantor must pay Secured Money

The Grantor must pay the Secured Money in accordance with:

- (1) in accordance with any agreement or arrangement;
- (2) if there is no agreement or no Event of Default (as defined in the 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;
  - (c) in immediately available funds, free of any taxes, charges, deductions or withholdings.

## 4 Grantor must pay interest

- (1) The Grantor must pay interest on the Secured Money to the Secured Party in accordance with the terms of the Secured Money. Interest shall be paid on the Secured Money.
- (2) If the liability of the Grantor to pay the Secured Money under this document becomes merged in a deed, the Grantor must pay interest on the Secured Money at the rate of interest payable under that deed, judgment or order of a court of competent jurisdiction.

## 5 Dealing with Collateral

### 5.1 Dealing

Subject to clauses 5.2 and 5.3 or with the permission 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 any Security Interest in Collateral other than a Permitted Security Interest;
- (2) sell, assign, transfer or declare an assignment by operation of law of any

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has 'control' under section 341 or section 342 of the UCC, until a default occurs, for the secured party to not significantly restrict the grantor's ability to use the inventory and uses the proceeds of sale to

The Grantor must within 1 Business Day pay the Secured Party under this **clause 5** or as permitted or required by law.

- (1) if requested to do so by the Secured Party;
- (2) if no request is made by the Secured Party, the Grantor's working account.

#### 5.5 Priority agreement

- (1) If requested by the Secured Party, the Grantor shall enter into a priority agreement with the Secured Party (including any other Security Interest (including any other Security Interest) consensual) enters into a priority agreement with the Secured Party and the Grantor shall execute a form acceptable to the Secured Party.
- (2) The Grantor agrees to comply with the Secured Party's requirements in connection with the Collateral.

#### 5.6 Creation of Security Interest without

- (1) Subject to **clause 5.6(2)** if a law or regulation requires a Security Interest (other than a Perfection of Security Interest) Collateral without the consent of the Grantor, the Grantor shall require the Grantor to obtain the consent of the Grantor allowing that other Security Interest.
- (2) If the Grantor intends to create or perfect a Security Interest with **clause 5.6(1)** the Grantor agrees to:
  - (a) notify the Secured Party at the time of creation of the Security Interest; and
  - (b) if the Secured Party so requires, the Grantor shall comply in accordance with **clause 5.6(2)**.
- (3) Nothing in this **clause 5.6** limits the Grantor's ability to

### 6 Representations and warranties

#### 6.1 Transaction Document representations and warranties

The Grantor represents and warrants that the representations and warranties made by the Grantor in any Transaction Document are true and accurate.

#### 6.2 General

The Grantor represents and warrants to the Secured Party that:

- (1) if a corporation, it is incorporated in the United States, its incorporation, validly exists under the laws of the United States, and it is authorized to own and use its products and services currently conducted;

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position of a secured party (eg as goods on retention of title terms).

(26) **notice of Security Interest**

if the Secured Party requests, attach a weather resistant sign for the purpose of notifying the Secured Party's interest in that property and the Security Interest in that property on the relevant Transaction Document.

7.3 **Rights of Secured Party**

Clause 7.2 is not to be construed as negating the rights of the Secured Party under section 244.

8 **Default**

8.1 **Events of Default**

Each of the following events listed in this clause is an event of default (in the control of the Grantor):

(1) **obligations under Transaction Documents:**

- (a) pay or repay in accordance with the Transaction Documents any part of the Transaction Debt;
- (b) comply with any of its obligations under any condition of any waiver or variation in connection with any Transaction Document.

(2) **misrepresentation:** a representation made by a Transaction Party in a Transaction Document in connection with a Transaction Document is misleading in a material respect.

(3) **Insolvent:** a Transaction Party becomes insolvent.

(4) **enforcement against assets:** a Transaction Party is enforced, or a distress, attachment, or any of the assets and undertakings of a Transaction Party.

(5) **reduction of capital:** without the prior written consent of the Secured Party, a Transaction Party reduces its capital or assets, excluding a redemption of redeemed shares, in breach of section 254N(1) of the Corporations Act 2006.

(6) **investigation:** an investigation or inquiry commences under any law in connection with the Transaction.

(7) **Related Body Corporate:** any Transaction Party is a Related Body Corporate of a Transaction Party, or having substantially the same or similar interests as a Related Body Corporate of a Transaction Party, or clause 8, or having substantially the same or similar interests as a Related Body Corporate of a Transaction Party.

(8) **Relevant Documents ineffective:**

- (a) all or any part of a Relevant Document is illegal, invalid, unenforceable, or void.

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## Schedule 1 - Details

Item 1	<b>Relevant Jurisdiction</b>  <i>[Jurisdiction]</i>
Item 2	<b>Trust/Partnership/Joint Venture</b>  <i>Name of trust/partnership/joint venture</i>  Name of constitutive deed <i>[Deed of Trust / Partnership / Joint venture agreement]</i>  Date of deed/agreement  <i>Name parties to trust / deed of settlement</i>  Date of birth for each Trustee/Partner
Item 3	<b>Address for service of each party</b>  <i>[Note: the grantor details should mirror the secured party details. Refer to PPS Regulation Schedule 1 for more details.]</i>  The Secured Party: <i>[Name of party]</i> <i>[insert]</i>  Address: <i>[Secured party's address]</i>   Facsimile: <i>[facsimile]</i>  Email address <i>[email address]</i>  Attention: <i>[attention]</i>   The Grantor: <i>[Name of party]</i> <i>[insert]</i>  Address: <i>[Grantor's address]</i>   Facsimile: <i>[facsimile]</i>  Email address <i>[email address]</i>  Attention: <i>[attention]</i>

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## Schedule 2 - Serial Numbered Collateral

### Consumer Property

*[Note: Under section 10 of the PPSA, “consumer property” is any personal property owned by an individual, other than in the course or furtherance, of a business, if an ABN has been allocated. Regulation 2.2(1)(a) requires registration of intangible property, motor vehicles and watercraft to be made.]*

*[insert table]*

### Commercial Property - Collateral that must be registered by number

*[Note: “Commercial property” is any personal property owned by a business, if an ABN has been allocated. Regulation 2.2(1)(b) requires aircraft, when described as commercial property, to be registered by number. Other commercial property that is motor vehicles, watercraft or intangible property (other than a licence over that intangible property) may be described as commercial property. It is optional to register commercial property other than aircraft. It is only advisable to register for high value non-inventoried commercial property.]*

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		

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## Schedule 3 - Deposit Accounts

*[Note: you should only delete this Schedule if Deposit Accounts or Deposit Accounts are not relevant to your transaction (see Schedule 7).]*

### 1. Additional definitions

- (1) **Account Holder** means *[insert name of Secured Party]*
- (2) **Deposit** means the total amount standing in the Deposit Account including any accrued interest not yet credited to the Account.
- (3) **Deposit Account** means:
  - (a) the following ADI Accounts (as the Secured Party requires the Grantor to open and maintain):  
*[insert details of accounts]; or*
  - (b) any substitute, replacement or renewal of the following ADI Accounts:  
*[Note: an "ADI Account" is defined as an account with a deposit-taking institution (ADI). It can be payable to the Grantor or to the Secured Party at the future (a term deposit)]*
- (4) **Deposit Agreement** means the agreement between the Grantor and the Account Holder made on the date of the Deposit Account.

### 2. Open and maintain a Deposit Account

- (1) If Secured Party requests - The Secured Party shall open and maintain a Deposit Account with the Account Holder.
- (2) Joint signatories - Unless the Secured Party requests otherwise, the Deposit Account shall operate with joint signatories, comprising the Account Holder and officers nominated by the Grantor.
- (3) Not repayable before full repayment - The Deposit Account held with the Account Holder is repayable to the Grantor unless and until the Secured Party requests otherwise.
- (4) Deposit proceeds in the Deposit Account - The Secured Party shall open and maintain a Deposit Account the Grantor shall deposit:
  - (a) immediately until notified otherwise:
    - (i) all proceeds of sale, disposal or realisation of the assets of the Grantor;
    - (ii) any proceeds in the nature of interest or dividends;
    - (iii) any proceeds of any actual or anticipated sale, disposal or realisation of the Grantor which forms part of the assets of the Grantor;
    - (iv) any other proceeds that the Secured Party may require to be deposited.

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## Schedule 4 – Ancillary Rights

[Note: if Ancillary Rights are not intended to form part of the Deed, this Schedule should be deleted.]

### 1. Additional definitions

- (1) **Ancillary Rights** means any right or interest in land which is enjoyed or used with any property for the purpose of any activity or business carried on in or about that property;

(a) an Authorisation (as defined in the Environmental Protection Act 1990);

(b) a Licence (as defined under the Environmental Protection Act 1990);

[Note: Licences may include a Licence to develop land for the purpose of development consent to a hazardous waste]

(c) a Water Right (as defined in the Environmental Protection Act 1990);

(d) a Transferable Development Right (as defined in the Environmental Protection Act 1990);

(e) any similar right, title or interest.

- (2) **Transferable Development Right** means a right or interest in land which enables a person to develop a building to a maximum height or to use a building for a particular purpose including a right or interest in any land or building owned or controlled by a Government Agency or a local authority;

- (3) **Water Right** means a right or interest in land which entitles a person to any Licence, authority, allocation or entitlement) or other right or interest in land which gives a person access rights, rights of easement or other rights of control, flow or supply of water at any water source.

### 2. Mortgage

- (1) Subject to any law or Government restriction, the Grantor mortgage the Rights held by the Grantor in connection with the Deed to secure the payment of the Secured Obligations and the Grantor's other obligations to the Lender;

- (2) If a mortgage is not permitted by law, the Grantor shall not be bound by this clause.

### 3. Additional undertakings

Without limiting **clause 7** of this Deed (Undertaking to comply with obligations - ensure that the Deed is current and valid), the Grantor shall:

- (1) **comply with obligations** - ensure that the Deed is current and valid;
- (2) **no dealing** - not surrender, foreclose or otherwise deal with the Rights held by the Grantor in connection with the Deed;
- (3) **current and valid** - ensure that the Deed is promptly replaced if it expires;

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## Schedule 7 - Crops

### 1. Additional definitions

(1) **Crops** means all of the Grantor's present with:

(a) crops of the following type:

Type of crop *[insert]*

Hectares *[insert]*

Silo *[insert]*

Date of delivery *[insert]*

including any crops that:

(i) are sown in or growing at

(ii) have been harvested when

(b) any benefits, quotas, bonuses, or other benefits held in connection with any of the

(c) any Crop insurance; and

(d) any Deposit Account (as defined in clause 2) deposited or required to be deposited

### 2. Dealing with Crops

Without limiting **clause 5** of this Deed (Dealing with Crops), the Grantor agrees to open and maintain a Deposit Account in accordance with **clause 2 of Schedule 3**.

### 3. Additional representations and warranties

Without limiting **clause 6** of this Deed (Representations and warranties), the Grantor warrants to the Secured Party that it has good title to the land on which, or the water source in which, the Crops are located, as mentioned in sections 138B(1) and (2) of the PPSA.

### 4. Additional undertakings

Without limiting **clause 7** of this Deed (Undertakings), the Grantor undertakes to:

(a) plant and cultivate the Crops in accordance with the practice of competent

(b) when it is usual and in the proper season, in accordance with the practice of competent

(c) if necessary, store the Crops and properly maintain them, including the control of weeds and

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**Executed as a deed and delivered on the**

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

.....  
Director/Company Secretary

D

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

N

(B

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:

[n

.....  
Signature of witness

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

.....  
Address of witness

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

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