

## **SCHEDULE 7 FORM OF COUNTER-INDEMNITY**

### **To the Commonwealth of Australia**

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#### **A.**

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- A.1.1. We refer to the Deed of Guarantee executed on behalf of the Commonwealth of Australia and taking effect from 28 November 2008 (the “**Guarantee**”) and to the associated Scheme Rules (the “**Scheme Rules**”).

#### **B. Definitions**

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- B.1.1. Words and expressions defined in the Guarantee and the Scheme Rules have the same meanings where used in this deed, save that references in this deed to “the Guarantee” shall be construed as references to the Guarantee insofar (and only insofar) as it applies to our Guaranteed Liabilities.

#### **C. Indemnity**

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- C.1.1. In consideration of your agreeing at our request to issue one or more Eligibility Certificates to us, we hereby:-
- a. agree to indemnify you from and against all actions, proceedings, liabilities, claims, damages, costs and expenses in relation to or arising out of the Guarantee and this deed, and to pay to you on demand an amount equal to all payments, claims, losses, costs, charges, damages, taxes, duties and expenses suffered or incurred by you in consequence thereof or arising therefrom, whether directly or indirectly; and
  - b. agree to pay to you upon demand interest on all amounts demanded by you from us under this deed calculated daily at the rate of the 10-year Treasury Bond yield, published by the Reserve Bank of Australia, plus 1.5 percentage points, for the period commencing on the date of your demand until the date of our payment to you; and
  - c. irrevocably authorise and direct you to make any payments forthwith and comply with any demands which may be claimed or made under the Guarantee without any reference to or further authority, confirmation or verification from us, and agree that any payment which you shall make in accordance with the Guarantee shall be binding upon us and shall be accepted by us as conclusive evidence that you were liable to make such payment or comply with such demand notwithstanding any dispute that may exist between us and the Beneficiary as to the validity of any such demand; and
  - d. without prejudice to any other provision of this deed, agree that any demand made upon you for payment of sums specified in the Guarantee shall, for all purposes relating to this deed, be deemed to be a valid and effective demand, and you shall be entitled to treat it as such

notwithstanding any actual lack of authority on the part of the person making the demand if the demand appears on its face to be in order; and

- e. without prejudice to any other provision of this deed, agree that provided that any certificate or document delivered in accordance with the provisions of the Guarantee appears on its face to be in accordance with the terms of the Guarantee, such certificate or document shall for all purposes relating to this deed be deemed to be genuine and in accordance with the terms of the Guarantee; and
- f. agree that all sums payable hereunder shall be made free and clear of and without deduction for or on account of any set-off or counterclaim or any present or future taxes of any nature. Should any such payment be subject to deduction in respect of any such matter, we shall pay to you such additional amount as may be necessary to enable you to receive a net amount equal to the full amount payable hereunder. As used herein, the term “taxes” includes all levies, imposts, duties, GST, charges, fee, deductions, withholdings, stamp duty, and any obligations or conditions resulting in a charge; and
- g. agree that all payments under this deed shall be made in the currency in which payments made or liabilities incurred by you under the Guarantee are denominated; and
- h. agree that our liability hereunder shall also apply to any increase or decrease in the amount of or extension or renewal of the Guarantee from time to time (whether in the same terms or otherwise and whether arising with our agreement or by operation of law or otherwise) to the intent that all agreements, undertakings and authorities herein shall continue to be binding on us in relation to the Guarantee as so increased, decreased, extended or renewed; and
- i. agree that, without prejudice to any other rights, powers or remedies (whether provided by contract, law or otherwise) which you may have, you may set off any moneys due and payable (but not paid) by us under this deed against any obligation whatsoever owed by you to us, regardless of the place of payment or currency of either obligation, and, if the obligations are in different currencies, you may convert either obligation at a market rate of exchange selected by you for this purpose; and
- j. agree that, if, under any applicable law and whether pursuant to a judgment being made or registered against us or for any other reason, any payment under or in connection with this deed is made or falls to be satisfied by us or on our behalf in a currency (the “other currency”) other than that in which the relevant payment is expressed to be due (the “required currency”), then to the extent that the payment actually received by you (when converted into the required currency at the market rate of exchange selected by you for this purpose on the date of payment or, if it is not practicable for you to purchase the required currency with the other currency on the date of

payment, at the market rate of exchange selected by you for this purpose as soon thereafter as it is practicable for you to do so) falls short of the amount due under the terms of this deed, we shall, as a separate and independent obligation, indemnify and hold you harmless against the amount of such shortfall; and

- k. agree to observe, and perform our obligations under, the Scheme Rules in force from time to time, and to comply with any undertaking given by us to the Guarantor in connection with the issue of any Eligibility Certificate.

## **D. Warranty**

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- D.1.1. We hereby warrant and represent that we have power to enter into and have duly authorised the execution and delivery of this deed and that our obligations hereunder constitute our legal, valid, binding and enforceable obligations.
- D.1.2. Our obligations hereunder shall not be in any way discharged or impaired by reason of any time or other indulgence granted to you by the Beneficiary or by any amendment or variation of the Guarantee or any related agreement, and shall exist irrespective of any present or future total or partial invalidity, illegality or unenforceability of the Guarantee.

## **E. Obligations**

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- E.1.1. We shall not, and we shall procure that no guarantor of any Guaranteed Liability shall, without your prior written consent, enforce or seek to enforce in competition with you, any right of contribution, subrogation or indemnity from or against any other person to which we or such guarantor may be entitled by reason of the performance of our obligations hereunder or the guarantor's performance of its obligations, in each case, in respect of the Guaranteed Liability.
- E.1.2. A certificate submitted by you to us as to the amount due from us to you hereunder at the date of such certificate shall be conclusive and binding on us for all purposes.
- E.1.3. We understand and agree that our liability hereunder will continue until you have notified us in writing that you have released us from it.

## **F. Notification**

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- F.1.1. We undertake to notify you promptly upon becoming aware that a Beneficiary may make a demand upon you in respect of our Guaranteed Liabilities.

**G. Liability**

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- G.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against us under or in connection with this indemnity.

**H. Applicable Law**

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- H.1.1. This deed shall be governed by and construed in accordance with, and any matter related to it is to be governed by, the law of the State of New South Wales. We submit to the jurisdiction of the courts of New South Wales.

EXECUTED AS A DEED

[insert appropriate execution block for the Eligible Institution]