



# Deed of Financial Guarantee – Financial Viability

Full name.....

ABN.....ACN.....

Registered office address .....

.....

**(Promisee)**

Full Name.....

ABN.....ACN.....

Mailing Address.....

**(Guarantor)**

**This Deed of Financial Guarantee – Financial Viability is made at:**

.....place,

on the .....day of .....20.....

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## Operative provisions

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### 1. Interpretation

**Act** means the *Higher Education Support Act 2003*.

**Applicant** means a body, that is not a listed provider (a listed provider being either a Table A or Table B provider under sections 16-15 and 16-20 of the Act) that is applying to be an approved HEP.

**Approved Provider** means a HEP that is approved by the Minister under sub-division 16-C of the Act as a higher education provider.

**Authorised Agent** means:

- (a) for a corporation: a person who in their representative capacity is authorised to bind the Guarantor to this Deed, in accordance with section 126 of the *Corporations Act 2001*; or
- (b) for an incorporated association: a person who in their representative capacity is authorised to bind the Guarantor to this Deed, in accordance with the relevant State or Territory legislation governing the authentication and execution of documents (or the equivalent) for incorporated associations.

**Business Day** means a day that is not a Saturday, Sunday, a public holiday or a bank holiday.

**Date of this Deed** means the date specified on the covering page as the date on which this Deed is made.

**Deed** means this Deed of Financial Guarantee – Financial Viability.

**Department** means the Department of Education, Skills and Employment, or the department which otherwise has the responsibility for administering the Act.

**Financial Viability Instructions** means the Department's Financial Viability Instructions as published on [www.dese.gov.au](http://www.dese.gov.au).

**Guarantor** means the Guarantor identified on the cover to this Deed that is making a promise to the Promisee, by operation of this Deed.

**HEP** means higher education provider.

**Minister** means the Minister, or the Minister's delegate, who has responsibility for administering the Act.

**Obligations or Liabilities** of the Guarantor are a reference to the Guarantor's obligations or liabilities as either a Guarantor or an indemnifier under this Deed, or both. The use of the expression "Guarantor" in this Deed must not be construed as diminishing the Guarantor's obligations as an indemnifier under this Deed.

**Promisee** means the Applicant or Approved Provider identified as the Promisee on the cover to this Deed, that the Guarantor is making a promise to, by operation of this Deed.

**Recipient** means the Promisee recipient and the Guarantor recipient specified under clause 11.1(b) of this Deed.

**Term of this Deed** means the number of months that this Deed is valid for as specified in clause 3.1 of this Deed.

**VET** means vocational education and training.

Promisee initial: .....

Guarantor initial: .....

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## **2. Higher Education Support Act 2003**

- 2.1 The parties acknowledge and agree that the purpose of this Deed is to ensure, that the Minister is satisfied of the financial viability and the continuing financial viability of the Promisee for the purposes of:
- (a) Section 19-5 of the Act if the Promisee is a higher education Applicant; or
  - (b) Section 19-5 of the Act if the Promisee is an Approved HEP.

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## **3. Guarantee**

- 3.1 The Guarantor irrevocably and unconditionally guarantees to discharge:
- (a) any debt or meet any liability of the Promisee; or
  - (b) any debt or meet any liability of the Promisee up to a maximum value of  
\$.....;
- for a period of ..... months from the Date of this Deed (the Term of this Deed), where the Promisee is unable or unlikely to remain financially viable. The Guarantor will discharge that debt or meet that liability at the time it falls due.
- 3.2 The Guarantor will provide financial information and comply with the Department's Financial Viability Instructions as published on [www.dese.gov.au](http://www.dese.gov.au), on an ongoing annual basis or as requested, for the Term of this Deed.

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## **4. Continuing guarantee**

- 4.1 The guarantee specified in clause 3 of this Deed continues for the Term of this Deed as specified in clause 3.1 of this Deed.
- 4.2 This guarantee will not be considered as wholly or partly satisfied or discharged if the following occurs:
- (a) the payment or liquidation, at any time, after the Date of this Deed of any monies paid to the Promisee under the Deed; or
  - (b) any settlement of account or any other matter or thing.
- 4.3 This guarantee will extend to cover all monies, at any time, due to the Guarantor by the Promisee.

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## **5. Indemnity**

- 5.1 The Guarantor irrevocably and unconditionally agrees to indemnify the Promisee and to keep the Promisee indemnified against:

Promisee initial: .....

Guarantor initial: .....

(a) any loss or damage suffered by the Promisee arising out of any failure by the Guarantor to duly and punctually perform its Obligations or Liabilities under this Deed; and

(b) all expenses in connection with any rights under this Deed.

5.2 This indemnity will extend to cover all monies, at any time, due to the Guarantor by the Promisee.

5.3 This indemnity continues for the Term of this Deed as specified in clause 3.1 of this Deed.

5.4 This indemnity will not be considered as wholly or partly satisfied or discharged if the following occurs:

(a) the payment or liquidation, at any time, after the Date of this Deed of any monies paid to the Promisee under the Deed; or

(b) any settlement of account or any other matter or thing.

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## **6. Liability of the Guarantor**

6.1 The Obligations or Liabilities of the Guarantor under this Deed are:

(a) absolute and are not subject to any other instrument or document by any party other than the Guarantor, and are not subject to the performance of any condition precedent or subsequent;

(b) will not be affected by any act, omission, matter or thing that would diminish or waive the Guarantor's Obligations or Liabilities; and

(c) are only for the purposes of ensuring the Promisee's financial viability under the Act.

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## **7. No set-off or deduction**

7.1 All payments by the Guarantor under this Deed must be free of any set-off, counterclaim, deductions or withheld amounts.

7.2 If any deductions must be made by law or any amounts must be withheld by law, then the Guarantor must pay to the Promisee any additional amounts, as are necessary, to ensure that the Promisee receives the full amount of the obligation, or liability, which the Promisee has not paid.

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## **8. Amendments**

8.1 This Deed may only be varied by a Deed executed by or on behalf of the Promisee and Guarantor.

Promisee initial: .....

Guarantor initial: .....

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**9. Severance**

9.1 Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions of this Deed.

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**10. Warranty**

10.1 The Guarantor warrants that:

- (a) it enters this Deed in its own right as an individual; or
- (b) it enters this Deed as an Authorised Agent of

.....

10.2 If the Guarantor provides a warranty in accordance with clause 10.1(b), **the Guarantor also warrants that its Authorised Agent is not the same Authorised Agent as the Promisee.**

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**11. Notices**

11.1 Each communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by the Promisee and Guarantor to each other from time to time):

**Promisee recipient**

Full name:.....

Registered office address:.....

.....

Facsimile (if applicable):.....

Email (if applicable):.....

For the attention of:.....

Promisee initial: .....

Guarantor initial: .....

**Guarantor recipient**

Full name:.....

Mailing address (must provide):.....

.....

PO Box address (if applicable):.....

.....

Facsimile (if applicable):.....

Email (if applicable):.....

For the attention of:.....

- (c) must be signed by the Promisee or Guarantor making it or, by the solicitor for, or any barrister or Authorised Agent on behalf of the Promisee or Guarantor;
- (d) must be delivered by hand or posted by pre-paid post to the address, or sent by facsimile or email to the contact details of the Recipient specified in clause 11.1(b); and
- (e) is taken to be received by the Recipient:
  - (i) in the case of delivery by hand, when delivered to the Recipient by hand;
  - (ii) in the case of pre-paid post sent to the address of the Recipient specified in clause 11.1(b), in the ordinary course of post; or
  - (iii) in the case of facsimile or email, at the time when the electronic communication becomes capable of being retrieved by the Recipient at an electronic address designated by the Recipient, or if the electronic communication is made to another electronic address of the Recipient, at the time when both:
    - aa. the electronic communication has become capable of being retrieved by the Recipient at that address; and
    - ab. the Recipient has become aware that the electronic communication has been sent to that address.

If the communication is taken to be received on a day that is not a Business Day, it is taken to have been received on the next Business Day.

Promisee initial: .....

Guarantor initial: .....

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**12. Governing law**

12.1 This Deed is governed by and must be construed according to the law applying in

.....

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**13. Jurisdiction**

13.1 The Guarantor irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of

....., and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 13.1(a).

Promisee initial: .....

Guarantor initial: .....



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## 14. Execution

### For the Promisee:

Signed for and on behalf of ..... by the Authorised Agent(s) named below:

\_\_\_\_\_  
Authorised Agent 1 name

\_\_\_\_\_  
Authorised Agent 2 (if applicable) name

\_\_\_\_\_  
Authorised Agent 1 signature

\_\_\_\_\_  
Authorised Agent 2 (if applicable) signature

\_\_\_\_\_  
Authorised Agent 1 position

\_\_\_\_\_  
Authorised Agent 2 (if applicable) position

In the presence of:

In the presence of:

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness signature

Promisee initial: .....

Guarantor initial: .....

**For the Guarantor:**

Signed for and on behalf of ..... by the Authorised Agent(s) named below:

\_\_\_\_\_  
Authorised Agent 1 name

\_\_\_\_\_  
Authorised Agent 2 (if applicable) name

\_\_\_\_\_  
Authorised Agent 1 signature

\_\_\_\_\_  
Authorised Agent 2 (if applicable) signature

\_\_\_\_\_  
Authorised Agent 1 position

\_\_\_\_\_  
Authorised Agent 2 (if applicable) position

In the presence of:

In the presence of:

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness signature

Promisee initial: .....

Guarantor initial: .....