



Instructions for drafters of the Deed of Financial Guarantee – Financial Viability

These instructions have been provided by the Department of Education, Skills and Employment (the department) to assist Applicants and Approved Providers of FEE-HELP when drafting their Deed of Financial Guarantee – Financial Viability. A Deed of Financial Guarantee – Financial Viability may be provided as required in the *Financial Viability Instructions: Applicants and Providers of FEE-HELP* (FVI). The FVI are published on the department's website (www.dese.gov.au) or can be made available on request by the department.

1. On the cover page insert:

- a. the full name, the ABN and ACN, and the full registered office address of the Applicant or Approved Provider, that is, the Promisee;
- b. the full name, the ABN and ACN, and the full mailing address of the Guarantor; and
- c. the place where the Deed was made and the day, month and year on which the Deed was entered into. The date on which the Deed was made should be the date on which the last party signed the Deed.

2. In clause 2.1, strikethrough whichever sub-clause does not apply to the Promisee, that is, sub-clause 2.1(a), 2.1(b), 2.1(c) or 2.1(d). The Promisee and Guarantor must each initial next to the sub-clause that has been struck through.

Note: More than one of these sub-clauses may apply to one Promisee (e.g. where a Promisee is approved as a HEP).

3. In clause 3.1, strikethrough whichever sub-clause does not apply to the Deed, that is, sub-clause 3.1(a), or 3.1(b).

Strikethrough sub-clause 3.1(b) if the executed Deed is to be unlimited (not bound by a maximum value).

If the executed Deed is to have a specified maximum value, Strikethrough sub-clause 3.1(a) and insert the maximum amount of the guarantee in dollars at the space left in sub-clause 3.1(b).

The Promisee and Guarantor must each initial next to the sub-clause that has been struck through.

Having identified the relevant sub-clause, specify the number of months that the Deed will remain valid in the space left at the final paragraph of clause 3.1. The department recommends that the minimum term of application for a Deed is 36 months.

4. In clause 10.1, strikethrough whichever sub-clause does not apply to the Guarantor, that is, sub-clause 10.1(a) or 10.1(b). If sub-clause 10.1(b) applies, insert the name of the Guarantor at



clause 10.1(b). The Promisee and Guarantor must each initial next to the sub-clause that has been struck through.

Note: If sub-clause 10.1(b) applies, the Authorised Agent for the Guarantor cannot be the same person as the Authorised Agent for the Promisee (e.g. in cases where the Authorised Agent for the Guarantor is a sole director of both the Guarantor company and the Promisee company, the Promisee must source a third party to act as the Guarantor).

5. In clause 11.1(b), insert the Promisee recipient and Guarantor recipient contact details.
6. In clauses 12.1 and 13.1(a), insert the appropriate State or Territory in Australia of the Promisee or Guarantor.
7. Both the Promisee and the Guarantor must initial each page in the space provided in the footer to each page.
8. To execute the Deed, in clause 14:
 - a. the Promisee must insert the **name of the Promisee**;
 - b. the Guarantor must insert the **name of the Guarantor**;
 - c. the Deed must be **executed by Authorised Agent 1 and Authorised Agent 2 (if applicable)** for the Promisee and the Guarantor in accordance with sections 126 and/or 127 of the *Corporations Act 2001* (if applicable). The Authorised Agent(s) must **insert their name, signature and position**; and
 - d. the execution must also be **witnessed by an independent person (the independent person must not be the same person as Authorised Agent 1 or Authorised Agent 2)**.

Note: "Authorised Agent" is defined in clause 1 of the Deed. It is the responsibility of the Guarantor and Promisee to ensure that the Deed is executed by persons appropriately authorised under Australian law.

9. When submitting the Deed, applicants and providers must include, in accordance with the FVI as published on www.dese.gov.au, the following information in relation to the Guarantor:
 - for guarantees and agreements provided by companies – the most recently completed annual financial statements. In addition, if the statements are more than six months old, interim management reports including a standard balance sheet and detailed profit and loss statement attested to by a director of the company that they present a true and fair view of the Guarantor's financial position; and
 - for guarantees or agreements provided by individuals – a statement of assets & liabilities (excluding the principal residence) attested to by an accountant that it presents a true and fair view of the individual's financial position.