

**Confidential**

# Occupation and sharing post expiry

Northern Beaches Hospital

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Schedule 22 to the Project Deed

# Part A – Interpretation and introductory matters

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## 1. Introductory Matters

### 1.1 Approach

This Schedule 22 is in four parts as follows:

- Part A: Definitions and introductory matters;
- Part B: Matters relating to the exercise of the Early Handover Put Option, the Operator Call Option or the State Put Option and the application of this Schedule 22;
- Part C: Matters that relate to service provision and maintenance, together with rights and responsibilities; and
- Part D: Provisions that have been modified from the Main Body which are to apply on and from the Lease Commencement Date.

### 1.2 Application

It is acknowledged and agreed by the parties that Parts B and C of this Schedule 22 are interdependent and that the parties are required to participate in a process of discussion and negotiation with a view to agreeing matters in relation to the formalisation of a lease, services, the price for those services and the standards of those services, and responsibility for the physical care and maintenance of the Facility as more particularly set out in Parts B and C.

### 1.3 No Legal Effect

Clauses 1.1 and 1.2 above are of no legal effect and are to assist the parties by way of explanation.

## 2. Definitions and interpretation

### 2.1 Defined Terms

In this Schedule 22, the following terms have the following meanings:

**Appropriate Activity Measure** means the activity measure for a Shared Area that has been agreed by the parties or, failing such agreement, the time utilisation by a party of an area;

**Australian Property Institute** means the division of the Australian Property Institute Incorporated in the state in which the Site is located.

**BEEC** means a current and valid building energy efficiency certificate issued and registered in accordance with the BEED Act.

**BEED Act** means the *Building Energy Efficiency Disclosure Act 2010* (Cth).

**Building Lifecycle Model** means the model agreed or determined pursuant to clause 5 of Part C of this Schedule 22, for the anticipated Lifecycle activities for the Common Areas and Shared Infrastructure, as updated from time to time in accordance with this Schedule 22.

**Claim** includes any suit, claim, action, demand, proceeding, penalty or fine (except to the extent contrary to public policy or law), order or adverse judgement (at common law or in equity or under statute) under, arising out of, or in any way in connection with, the agreements to be formalised pursuant to this Schedule 22.

**Class A Private Patient Portion Handover Assets** means those Private Patient Portion Handover Assets comprising the main building and central infrastructure valued at over \$100,000.

**Class B Private Patient Portion Handover Assets** means those Private Patient Portion Handover Assets comprising the FF&E valued at over \$15,000.

**Collateral** has the same meaning as in the PPSA.

**Collateral Warranty** means a collateral warranty given in favour of the State by a Post Operating Term Material Subcontractor in such form satisfactory to the State (acting reasonably).

**Common Areas** means:

- (a) pathways;
- (b) routes of access and egress;
- (c) gardens and grounds;
- (d) corridors and general areas within Shared Clinical Areas and Shared Non-Clinical Support Areas;
- (e) the main facade of the Facility; and
- (f) those parts of the Facility and the Site that the State designates for common use not being Shared Clinical Areas nor Shared Non-Clinical Support Areas,

but excludes the Car Park, which to avoid doubt, is to be governed by the Car Park Management Deed.

**Compliant Lifecycle Effective Age** means, at any time, the lifecycle effective age commensurate with the Private Patient Portion Lifecycle Program having been fully complied with up to that time.

**Dispute** means any dispute between the parties arising from, in respect of, in relation to or in connection with this Schedule 22 or the Services (including any matter concerning the validity of this Schedule 22).

**Excluded Event** means an act of God, civil commotion, riot, war, earthquake, lightning, storm or tempest.

**Expert** means the expert appointed pursuant to Annexure 1 to this Schedule 22.

**Expert Determination Agreement** means the agreement between the Expert, the State and the Operator.

**Insurance** means a policy or policies of insurance which the Operator has obtained or caused to be obtained or is obliged to obtain under clause 14 of Part C of this Schedule 22.

**LA** means the lettable area determined by the State (where the Public Area is deemed to be a lettable area) using the Property Council of Australia Limited's method of measurement adopted by the State from time to time or if the Property Council of Australia Limited ceases to exist, the method of measurement published by the body which replaces it.

**Lease Commencement Date** means 00:01 hours on the date that the Post-Operating Term Private Patient Portion Lease commences in accordance with its terms (as completed and executed pursuant to clauses 82, 93 or 94 of the Main Body).

**Licensed Areas** means:

- (a) the areas subject of the licence granted to the Operator pursuant to clause 2(a) of Part B of this Schedule 22; and
- (b) to the extent applicable, the areas subject of the licence granted to the Operator pursuant to clause 4(a) of Part C of this Schedule 22.

**Lifecycle** means:

- (a) the periodic redecoration and capital replacement of all items forming part of the Common Areas and Shared Infrastructure, or the plant and infrastructure forming part of those areas, and having:
  - (i) a design life of more than three years (as demonstrable by reference to objective evidence); and
  - (ii) a cost per item of more than \$1,200 (inclusive of GST) (Indexed); and
- (b) the periodic replacement of FF&E or other equipment, medical equipment, fixtures, fittings, furniture, furnishings and decorations and other property in, on or fixed to the Common Areas and Shared Infrastructure or forming part of those areas, and having:
  - (i) a design life of more than three years (as demonstrable by reference to objective evidence); and
  - (ii) a cost per item of more than \$400 (inclusive of GST) (Indexed),

but, in each case, excluding:

- (c) routine maintenance including lubrication, cleaning, easing and adjusting, inspections (including insurance inspections) and replacement of minor items including, without limitation, filters, belts and re-lamping (Consumables);
- (d) scheduled and regular cleaning (internal, external and plant);
- (e) all statutory obligations;
- (f) testing of entire systems;
- (g) compliance with manufacturers' and/or suppliers' maintenance instructions; and
- (h) provision of tools and equipment required to perform the elements of the maintenance service described in this definition,

and, to avoid doubt, shall not include any Sinking Fund Activities or items contained within the OC Sinking Fund Model or SC Sinking Fund Model.

**Lifecycle Contribution** means:

- (a) if the State is the party responsible for the management of the Common Areas and the Shared Infrastructure, the Operator Proportion (Lifecycle); or
- (b) if the Operator is the party responsible for the management of the Common Areas and the Shared Infrastructure, the State Proportion (Lifecycle),

(as relevant) and multiplied by the amount identified in the Building Lifecycle Model for the relevant Financial Year.

**Lifecycle Cost** means the cost of the capital item and the direct cost of carrying out any Lifecycle where the direct cost shall include in the direct labour costs, equipment hire costs and consumables but excluding any management or other overhead costs and any other costs which would necessarily be incurred to carry out and complete a Lifecycle activity.

**Main Body** means the Project Deed between the State, the Operator and Operator B in relation to the Project titled '*Project Deed – Northern Beaches Hospital*' dated [*date*].

**Make Good Works** means all works involved in:

- (a) subject to clause 16.2 of Part C of this Schedule 22, removing the Operator's Property (other than those items owned by the State), from the Private Patient Portion and repairing any damage done to the Private Patient Portion by removing the Operator's Property;
- (b) removing any wiring and cabling installed by the Operator since the Lease Commencement Date, back to the switchboard;
- (c) removing supplementary air conditioning units in the Private Patient Portion and associated cabling and pipework, to the extent installed by the Operator since the Lease Commencement Date;
- (d) recarpeting those parts of the Private Patient Portion which are usually carpeted with carpet approved by the State (who must not unreasonably withhold its approval);
- (e) repainting the internal painted surfaces of the Private Patient Portion with two coats of premium quality paint;
- (f) replacing damaged ceiling tiles and grids in or above the Private Patient Portion;
- (g) removing all of the Operator's signage from the Private Patient Portion and anywhere else in the Facility and repairing any damage done to the Private Patient Portion or the Facility by removing those signs;
- (h) reinstating any structural changes made by the Operator or its predecessor in title;
- (i) removing all rubbish and stored goods and leaving the Private Patient Portion clean;
- (j) replacing all broken light tubes and globes in the Private Patient Portion; and
- (k) complying with clause 91 of Part D of this Schedule 22.

**OC Shared Area** means the OC Shared Clinical Areas and the OC Shared Non-Clinical Support Areas.

**OC Shared Clinical Areas** means the areas specified as such in a Services Election Notice.

**OC Shared Clinical Services** means the Services to be provided by the Operator in the OC Shared Clinical Areas.

**OC Shared Non-Clinical Support Areas** means the areas specified as such in a Services Election Notice.

**OC Shared Non-Clinical Support Services** means the Services to be provided by the Operator in the OC Shared Non-Clinical Support Areas.

**OC Sinking Fund Model** means the model agreed or determined pursuant to clause 5 of Part C of this Schedule 22, for the OC Shared Clinical Areas and the OC Shared Non-Clinical Support Areas, as updated from time to time in accordance with this Schedule 22.

**Operator's Business** means the business carried on in the Private Patient Portion by the Operator.

**Operator's Contribution** means for a Financial Year the amount 'TC' in the following formula:

State to select either  
Option 1 if net, or  
Option 2 if semi gross:

OPTION 1:

$$TC = \frac{LAP \times D \times O}{LAB \times Y}$$

where:

- LAP = the LA of the Private Patient Portion  
LAB = the LA of the Facility  
D = the number of days of the Private Patient Portion Term in that Financial Year  
O = the Outgoings for that Financial Year  
Y = the number of days in that Financial Year.

OPTION 2:

$$TC = \frac{LAP \times D \times (O - B)}{LAB \times Y}$$

where:

- LAP = LA of the Private Patient Portion  
LAB = the LA of the Facility  
D = the number of days of the Private Patient Portion Term in that Financial Year  
O = the Outgoings for that Financial Year  
B = Outgoings for the year  
Y = the number of days in that Financial Year.

**Operator Sinking Fund Contribution** means the Operator Proportion multiplied by the amount identified in the SC Sinking Fund Model for the relevant Financial Year.

**Operator's Property** means:

- (a) all plant and equipment, fixtures, fittings, furniture, furnishings and decorations and other property in, on or fixed to the Private Patient Portion that is not State's Property nor Shared Infrastructure; and
- (b) the plant and equipment, fixtures, fittings, furniture, furnishings and decorations and other property in the Private Patient Portion nominated by the State to the Operator which are:
  - (i) owned by the State;
  - (ii) in the nature of trade or tenant's fixtures (including electrical wiring and cabling); and
  - (iii) made available by the State by way of incentive for the benefit of the Operator during any part of the Private Patient Portion Term.

**Operator Proportion** means the Appropriate Activity Measure for services performed by the State for the Operator as a percentage of the total aggregate of all such services performed by the State in the previous Financial Year.

**Operator Proportion (Lifecycle)** means the total aggregate area of the Private Patient Portion as a percentage of the total aggregate area of the Facility.

**Option Exercise Date** has the meaning given to it in clause 1.2 of Part B of this Schedule 22.

**Outgoings** means the total of amounts properly paid or payable during a Financial Year in connection with the ownership, operation, management, maintenance and administration of the Site and the Facility (except expenses of a capital nature or relating to structural matters), such as:

- (a) all:
  - (i) rates;
  - (ii) land tax or tax of a similar nature calculated on the basis that the Site is the only land owned by the State;
  - (iii) other levies and taxes (except income tax and capital gains tax); and
  - (iv) other fees charges or duties,levied by an authority on the State (or in relation to which the State is otherwise liable) in respect of any part of the Facility or the Site;
- (b) insurance payments including premiums for policies covering:
  - (i) insurance of the Facility against all usual risks to the full reinstatement value;
  - (ii) plate glass;
  - (iii) public liability;
  - (iv) workers' compensation;
  - (v) loss of rents; and
  - (vi) machinery breakdown;
- (c) all costs in connection with the following for Common Areas:
  - (i) operating and non structural repair maintenance and repair of the Common Areas;
  - (ii) consumables and services for Common Areas;
  - (iii) providing security and caretaking services to the Facility (but not to the Private Patient Portion);
  - (iv) cleaning the Common Areas and facade of the main hospital building and other non lettable parts of the Facility;
  - (v) cleaning the Facility's exterior windows;
  - (vi) complying with the requirements of any authority in relation to the certification of essential services to the Facility, such as an annual fire safety statement (to the extent not part of the Shared Infrastructure);
  - (vii) complying with the BEED Act and creating and implementing environmental management plans for the Facility;
  - (viii) providing and caring for indoor and outdoor plants in the Common Areas;
  - (ix) controlling pests and vermin in the Facility and on the Site; and
  - (x) reasonable management costs,but excluding any costs associated with the carrying out and completion of Lifecycle.

- (d) all costs in connection with the following for Shared Infrastructure:
- (i) utilities charges and associated charges;
  - (ii) operating and non structural repair of electricity, gas, water and other services;
  - (iii) consumables and services for lighting, air conditioning, heating and cooling, ventilation, music, sanitary conveniences, fire fighting and prevention systems and emergency generators;
  - (iv) providing any of the Shared Infrastructure (to the extent not part of the Building Lifecycle Model); and
  - (v) security systems,
- but excluding any costs associated with the carrying out and completion of Lifecycle.
- (e) all costs in connection with maintaining, repairing, testing and replacing:
- (i) the Shared Infrastructure; and
  - (ii) the furnishings and finishes in the Common Areas,
- but excluding any costs associated with the carrying out and completion of Lifecycle.

**Outgoings Budget** means the budget for Outgoings for each Financial Year provided under clause 10 of Part C of this Schedule 22.

**Payment Date** means the Lease Commencement Date and then the first day of each subsequent month until the Private Patient Portion Expiration Date.

**Permitted Use** means use as a private hospital subject to and in accordance with this Schedule 22.

**Personal Property** has the same meaning as in the PPSA.

**Post Operating Term Associated Commercial Facilities** means:

- (a) the retail and commercial facilities; and
- (b) the GP Clinic and Private Consulting Suites,

to be operated within the Designated Commercial Areas in accordance with this Schedule 22 and the Post-Operating Term Private Patient Portion Lease. To avoid doubt, the Car Park is excluded from Post Operating Term Associated Commercial Facilities.

**Post Operating Term Associated Commercial Facilities Plan** means the Post Operating Term Project Plan of that name prepared in accordance with the reasonable requirements of the State and this Schedule 22, and updated in accordance with this Schedule 22.

**Post Operating Term Commercially Sensitive Information** means

- (a) any information relating to the Operator's cost structure or profit margins;
- (b) any information relating to any of the Operator's Proprietary Material; or
- (c) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Operator or the Operator's shareholders, financiers or subcontractors.

**Post Operating Term Key Subcontract** means any Post Operating Term Subcontract which is identified by the State and notified in writing to the Operator as a 'Post Operating Term Key Subcontract'.



**Post Operating Term Key Subcontractor** means each Post Operating Term Subcontractor who is a party to a Post Operating Term Key Subcontract.

**Post Operating Term Material Subcontract** means:

- (a) a Post Operating Term Key Subcontract; or
- (b) any other Post Operating Term Subcontract (including in respect of Post Operating Term Associated Commercial Facilities):
  - (i) the term of which exceeds seven years;
  - (ii) relating to Services to be provided by the Operator which are nominated by the Client Representative as being critical services; or
  - (iii) in respect of which the total amount payable to the relevant Post Operating Term Subcontractor, and its Related Bodies Corporate, under that Post Operating Term Subcontract and other Post Operating Term Subcontracts exceeds or is likely to exceed \$1,000,000 per annum (Indexed); or
- (c) any other Post Operating Term Subcontract which is identified by the State and notified in writing to the Operator as a 'Post Operating Term Material Subcontract'.

**Post Operating Term Material Subcontractor** means:

- (a) each Post Operating Term Key Subcontractor; and
- (b) without limiting paragraph (a) above, each Post Operating Term Subcontractor who is a party to a Post Operating Term Material Subcontract.

**Post-Operating Term Private Patient Portion Lease** means the lease of the Private Patient Portion the form of which is contained at Annexure 2 to this Schedule 22.

**Post Operating Term Project Plans** means:

- (a) the Private Patient Portion Handover Plan;
- (b) any Post Operating Term Associated Commercial Facilities Plan;
- (c) Work Health and Safety Management Plan as it relates to the Private Patient Portion and the OC Shared Areas;
- (d) Business Continuity Plan as it relates to the Private Patient Portion and the OC Shared Areas;
- (e) Compensable Patient Strategy as it relates to the Private Patient Portion and the OC Shared Areas;
- (f) Shared Portion and Post-Operating Term Concession Strategy as it relates to the Private Patient Portion and the OC Shared Areas;
- (g) Stakeholder Engagement and Communications Strategy as it relates to the Private Patient Portion and the OC Shared Areas; and
- (h) any other project plans in respect of the Private Patient Portion or the OC Shared Areas reasonably required by the State.

**Post Operating Term Subcontract** means each Post Operating Term Key Subcontract, each Post Operating Term Material Subcontract and any other contract or agreement entered into by the Operator and / or any Post Operating Term Subcontractor in connection with the performance of the Operator's Business or the Services to be provided by the Operator, or any part of them (including the operation of the Post Operating Term Associated Commercial Facilities).

**Post Operating Term Subcontractor** means each of the Post Operating Term Material Subcontractors and any other subcontractor of any level (including suppliers, tradespersons and consultants) involved in the performance the Operator's Business or the Services to be provided by the Operator, or any part of them or the operation of the Post Operating Term Associated Commercial Facilities.

**PPS Items** means any item of Personal Property:

- (a) which is not an interest excluded from the operation of the PPSA by section 8(1) of the PPSA;
- (b) which is owned or will be owned by the Operator or leased or will be leased by the Operator (other than from the State);
- (c) which is situated on the Private Patient Portion; and
- (d) of which the State can become owner under this Schedule 22.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Private Patient Portion Handover Assets** means Private Patient Portion.

**Private Patient Portion Lifecycle Program** means the lifecycle program in respect of the Private Patient Portion, as set out in Annexure 5 to this Schedule 22.

**Project Document** means:

- (a) this Schedule 22;
- (b) to the extent expressly given effect in this Schedule 22, the Main Body;
- (c) the Construction Side Deed;
- (d) the Parent Company Side Deed;
- (e) the Financiers Tripartite Deed;
- (f) the Independent Verifier Deed;
- (g) the Designer Side Deed;
- (h) each Post Operating Term Material Subcontract and any guarantee given in connection with it;
- (i) each Collateral Warranty;
- (j) the Project Security;
- (k) the Parent Company Guarantee;
- (l) the Operator Holding Company Guarantee; and
- (m) the Post-Operating Term Private Patient Portion Lease; and
- (n) any other document which the parties agree (in writing) is a Project Document.

**Public Areas** means those parts of the Site not being the Private Patient Portion.

**Rent** means the yearly rent to be agreed or determined pursuant to this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.

**Required Notice Period** means, in respect of a Service specified in the first column of the table in Annexure 3 to this Schedule 22, the period specified in the in the second column of the table.

**Rules** means the State's rules for managing the Facility which are notified to the Operator on or prior to the Lease Commencement Date, as updated by the State (acting reasonably) and notified to the Operator from time to time.

**SC Shared Clinical Areas** means the areas specified as such in a Services Election Notice.

**SC Shared Non-Clinical Support Areas** means the areas specified as such in a Services Election Notice.

**SC Sinking Fund Model** means the model agreed or determined pursuant to clause 5 of Part C of this Schedule 22, for the SC Shared Clinical Areas and the SC Shared Non-Clinical Support Areas, as updated from time to time in accordance with this Schedule 22.

**Security Interest** has the same meaning as in the PPSA.

**Service or Services** means for the service or services agreed or determined pursuant to clause 3.2 of Part C of this Schedule 22, to be provided by either the Operator or the State (as the case may be) to the other party pursuant to the terms of this Schedule 22.

**Service Price** means the cost (without double counting) of providing a relevant Service, which shall be the aggregate of:

- (a) the costs borne by the relevant Shared Area and directly allocable to either the Operator or the State; and
- (b) a proportion of:
  - (i) the direct labour costs and other operating expenditure (such as consumables and the costs of contractors) that will be or are (in each case) reasonably and properly incurred in the provision of the Service; and
  - (ii) the relevant Outgoings for the Shared Area,

where the proportion is based on:

- (iii) for Shared Clinical Areas, the proportion (measured using the relevant activity measure) of one party's use by reference to the other party's (in the previous 12 month period); and
- (iv) for Shared Non-Clinical Areas, the proportion that the relevant common service area bares in relation to the total area of the Facility,

which, to avoid doubt, excludes any capital expenditure of any kind (including any item that would constitute Lifecycle or which a sinking fund contribution is to be made).

**Shared Areas** means that part of the Facility referred to as the 'Shared Portion' in the Main Body and, for the purposes of this Schedule 22, includes:

- (a) Shared Clinical Areas; and
- (b) Shared Non-Clinical Support Areas.

**Shared Clinical Area** means the:

- (a) OC Shared Clinical Areas; and
- (b) SC Shared Clinical Areas.

**Shared Infrastructure** means:

- (a) central plant;
- (b) engineering services that are not confined to Private Patient Portion nor to Public Areas;

- (c) security services; and
- (d) the services provided by Authorities, the State or others to the Facility or the Site, including (if provided) electricity, gas, water, sewerage, air conditioning, lifts, escalators, fire control and communications together with all plant and equipment relating to those services.

**Shared Non-Clinical Support Areas** means the:

- (a) OC Shared Non-Clinical Support Areas; and
- (b) SC Shared Non-Clinical Support Areas.

**Sinking Fund Activities** means:

- (a) the periodic redecoration and capital replacement of all items forming part of the Shared Clinical Areas or Shared Non-Clinical Support Areas, or the plant and infrastructure forming part of those areas, and having:
  - (i) a design life of more than three years (as demonstrable by reference to objective evidence); and
  - (ii) a cost per item of more than \$1,200 (inclusive of GST) (Indexed); and
- (b) the periodic replacement of FF&E or other equipment, medical equipment, fixtures, fittings, furniture, furnishings and decorations and other property in, on or fixed to the Shared Clinical Areas or Shared Non-Clinical Support Areas or forming part of those areas, and having:
  - (i) a design life of more than three years (as demonstrable by reference to objective evidence); and
  - (ii) a cost per item of more than \$400 (inclusive of GST) (Indexed),

but, in each case, excluding:

- (c) routine maintenance including lubrication, cleaning, easing and adjusting, inspections (including insurance inspections) and replacement of minor items including, without limitation, filters, belts and re-lamping (Consumables);
- (d) scheduled and regular cleaning (internal, external and plant);
- (e) all statutory obligations;
- (f) testing of entire systems;
- (g) compliance with manufacturers' and/or suppliers' maintenance instructions; and
- (h) provision of tools and equipment required to perform the elements of the maintenance service described in this definition,

and, to avoid doubt, shall not include any Lifecycle or items contained within the Building Lifecycle Model.

**Sinking Fund Cost** means the cost of the capital item and the direct cost of carrying out any Sinking Fund Activities where the direct cost shall include in the direct labour costs, equipment hire costs and consumables but excluding any management or other overhead costs and any other costs which would necessarily be incurred to carry out and complete a Sinking Fund Activity.

**State Proportion** means the Appropriate Activity Measure for services performed by the Operator for the State as a percentage of the total aggregate of all such services performed by the Operator in the previous Financial Year.

**State Proportion (Lifecycle)** means the total aggregate area of the Public Hospital as a percentage of the total aggregate area of the Facility.

**State Sinking Fund Contribution** means the State Proportion multiplied by the amount identified in the OC Sinking Fund Model for the relevant Financial Year.

**State's Property** means the State's fixtures, fittings and other property in, on or fixed to the Private Patient Portion.

**Step-In Event** means:

- (a) an event or circumstance which:
  - (i) prevents the performance of the Operator's Business under normal circumstances;
  - (ii) poses a serious threat to, or causes or is reasonably likely to cause material damage or material disruption to:
    - (A) the health or safety of persons;
    - (B) the Environment;
    - (C) any real or personal property; or
    - (D) the safe and secure performance of the Operator's Business, the operation of the Private Patient Portion or the performance of Services to be provided by the Operator or the State;
  - (iii) will require the provision of Services or alternate services materially greater than that required by this Schedule 22; or
  - (iv) requires the State to exercise any of its responsibilities or functions at Law; or
- (b) a Step-In Event as contemplated by clause 21 or 22.1 of Part C,

whether or not caused by a breach by the Operator of any of its obligations under any Project Document.

## 2.2 Schedule 22 Interpretation

- (a) References to clauses in this Schedule 22 are references to a clause contained in that same particular Part of this Schedule as the clause, unless expressly stated to the contrary.
- (b) To avoid doubt, if a term beginning in upper case is not defined in this Schedule, it shall have the meaning given to that term in the Main Body.
- (c) To the extent of any inconsistency, ambiguity or discrepancy between this Schedule 22, the Post-Operating Term Private Patient Portion Lease and the Main Body, and where it is impossible to give effect to the express intent of each document, the order of priority of application is:
  - (i) on and from the Option Exercise Date until the day immediately before the Lease Commencement Date:
    - (A) this Schedule 22, other than Part D; and
    - (B) the Main Body; and
  - (ii) on and from the Lease Commencement Date:
    - (A) this Schedule 22; and
    - (B) the Post-Operating Term Private Patient Portion Lease.

# Part B – Application of this Schedule 22

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## 1. Application

### 1.1 Failure to exercise Put/Call Option

If none of the Early Handover Put Option, the Operator Call Option or the State Put Option has been exercised, there is no obligation on the part of either party to comply with this Schedule 22 and it shall be of no effect.

### 1.2 Exercise of Early Handover Option, Operator Call Option or State Put Option

- (a) Subject to clause 1.1 of Part D of this Schedule 22 on and from the earlier of the date on which:
- (i) the Early Handover Put Option is validly exercised in accordance with clause 82 of the Main Body;
  - (ii) the Operator Call Option is validly exercised in accordance with clause 93 of the Main Body; or
  - (iii) the State Put Option is validly exercised in accordance with clause 94 of the Main Body,

(the **Option Exercise Date**) the parties will be bound by, and shall comply with, this Schedule 22 and (on and from the Lease Commencement Date) the Post-Operating Term Private Patient Portion Lease.

- (b) Except to the extent expressly provided otherwise in this Schedule 22, and without prejudice to any rights, remedies, obligations and liabilities of either party in relation to matters that occur prior to the Lease Commencement Date (including those which accrue after the Lease Commencement Date), the Main Body (including all schedules and exhibits, except for this Schedule 22) shall be of no effect on and from the Lease Commencement Date.

### 1.3 Cessation

Save where this Schedule 22 expressly states otherwise, the provisions of this Schedule 22 shall cease to apply on the Private Patient Portion Expiration Date, without prejudice to any rights, obligations and liabilities of either party in relation to any matters that occur prior to the Private Patient Portion Expiration Date.

## 2. Licence to occupy

- (a) On and from the Lease Commencement Date, the State will grant the Operator a non-exclusive licence to occupy the Shared Areas for the purposes of the Operator:
- (i) providing the services agreed or determined pursuant to Part C of this Schedule 22; and
  - (ii) complying with its obligations in this Schedule 22 (or arising under or in connection with it).
- (b) The licence granted pursuant to clause 2(a) of this Part B is personal to the Operator. The Operator must not sub-let, sub-licence or otherwise deal with its rights in respect of the Shared Areas without the consent of the Client Representative, such consent not to be unreasonably withheld or delayed provided the sub-lessee or sub-licensee is reputable.

- (c) The licence granted pursuant to clause 2(a) of this Part B shall cease to apply on the Private Patient Portion Expiration Date, without prejudice to either parties rights in relation to any matters that occur prior to the Private Patient Portion Expiration Date. If pursuant to Part C of this Schedule 22 the State gives notice to terminate the provision of a Service by the Operator, the licence granted pursuant to clause 2(a) of this Part B shall (in relation to the Shared Areas from which those Services are being provided) terminate on and from the date upon which those Services are to cease.

## Part C – Services and other matters

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### 1. [Not used]

### 2. General obligations during Post-Operating Term Private Patient Portion Lease

- (a) On and from the Lease Commencement Date, the Operator must not use the Private Patient Portion or any Shared Area for any purpose other than the Permitted Use.
- (b) The Operator must ensure that, at all times during the term of the Post-Operating Term Private Patient Portion Lease, it is capitalised by equity in an amount not less than 20% of the construction price of the Private Patient Portion Works, contributed to the Operator (either directly or indirectly) by way of ordinary shares or units or intercompany subordinated debt.
- (c) Without limiting its other obligations under this Schedule 22, the Operator warrants that, as at and from the Lease Commencement Date and for the remainder of the Private Patient Portion Term, the Private Patient Portion will be Fit for Intended Purposes by reference to the technology and intended use of the Private Patient Portion as at the Date of Operational Readiness.
- (d) On and from the Lease Commencement Date, the Operator:
  - (i) must at all times maintain a Hospital Licence in respect of the Private Patient Portion, which Hospital Licence must be in form and substance sufficient to operate the Private Patient Portion and provide the Services;
  - (ii) is only entitled to provide services to Compensable Patients which are complementary to, and do not interfere with, the Services provided from the State Asset;
  - (iii) must ensure that the provision of the services and the performance of its obligations under the Post-Operating Term Private Patient Portion Lease and Schedule 22 are in no way prejudiced or compromised;
  - (iv) do all things necessary to ensure that the Private Patient Portion is able to, and does, operate to its full capacity in accordance with the Private Patient Portion role delineation as at the Lease Commencement Date and the Compensable Patient Strategy at all times, regardless of the presence of any disaster or emergency situation and any other circumstances; and
  - (v) must ensure that any naming rights granted in respect of any part of the Private Patient Portion do not endure beyond the term of the Operator's leasehold interest in the Private Patient Portion.
- (e) On and from the Lease Commencement Date:
  - (i) the Operator shall permit the State to access the OC Shared Clinical Areas in common with the Operator and the Operator shall provide, and the State shall have the right to purchase, the relevant services from the Operator that are performed in the OC Shared Clinical Areas;



- (ii) the Operator shall permit the State to access the OC Shared Non-Clinical Support Areas in common with the Operator and the Operator shall provide, and the State shall have the right to purchase, the relevant non-clinical support services from the Operator that are performed in the OC Shared Non-Clinical Support Areas; and
- (iii) the Operator must comply with all Laws and the requirements of all Authorities in connection with the:
  - (A) Private Patient Portion;
  - (B) Operator's Business;
  - (C) Operator's Property; and
  - (D) Operator's use and occupation of the Private Patient Portion.
- (f) The Operator must ensure that, at all times on and from the Lease Commencement Date, it:
  - (i) complies with the terms and conditions of its Hospital Licence;
  - (ii) ensures that any Adverse Licence Condition is promptly and unconditionally addressed or rectified and removed or withdrawn;
  - (iii) on request, provides to the State full and certified copies of the Hospital Licence;
  - (iv) procures and maintains the issue of a provider number for the Private Patient Portion and the making of a declaration under section 121-5 of the *Private Health Insurance Act 2007* (Cth) that the Private Patient Portion is a private hospital; and
  - (v) provides the State with a copy of any report relating to the Accreditation Requirements received from the Australian Council on Healthcare Standards (or other accrediting body that provides any of the Accreditation Requirements) upon request by the State.
- (g) The Operator must comply with the Rules.
- (h) On and from the Lease Commencement Date:
  - (i) the State shall permit the Operator to access the SC Shared Clinical Areas in common with the State and the State shall provide, and the Operator shall have the right to purchase, the relevant services from the State that are performed in the SC Shared Clinical Areas; and
  - (ii) the State shall permit the Operator to access the SC Shared Non-Clinical Support Areas in common with the State and the State shall provide, and the Operator shall have the right to purchase, the relevant non-clinical support services from the State that are performed in the SC Shared Non-Clinical Support Areas,

in each case, to the extent reasonably necessary for the Operator to perform its Services and to receive the Services being performed by the State.

### 3. Determining Services

#### 3.1 State election

- (a) On the:
  - (i) Option Exercise Date, in the case that the Early Handover Put Option is validly exercised in accordance with clause 82 of the Main Body; or

- (ii) date which is 24 months prior to the Public Patient Portion Expiration Date, in the case of the valid exercise of the Operator Call Option in accordance with clause 93 of the Main Body or the State Put Option in accordance with clause 94 of the Main Body,

the State shall provide written notice to the Operator of:

- (iii) the Services to be provided by the Operator and the OC Shared Clinical Areas to be controlled by the Operator in order to provide such Services;
- (iv) the Services to be provided by the State and the SC Shared Clinical Areas to be controlled by the State in order to provide such Services;
- (v) the Services to be provided by the Operator and the OC Shared Non-Clinical Areas to be controlled by the Operator in order to provide such Services; and
- (vi) the Services to be provided by the State and the SC Shared Non-Clinical Areas to be controlled by the State in order to provide such Services,

(such notice being the **Services Election Notice**).

- (b) The Services Election Notice shall be prepared by the State and subject to clause 3.1(c), the contents of the notice may be determined by the State in its sole discretion.
- (c) A Services Election Notice must only specify:
  - (i) OC Shared Clinical Areas and the OC Shared Non-Clinical Areas;
  - (ii) SC Shared Clinical Areas and the SC Shared Non-Clinical Areas; and
  - (iii) services to be supplied from an area where, at the time of the Services Election Notice, that area is being used to supply the same or substantially the same services, and the State shall have no discretion in relation to such matters.

For the avoidance of doubt, the State cannot revise the physical demarcation of the Shared Areas through a Services Election Notice.

### **3.2 Services to be supplied by each party**

- (a) Within a reasonable period of time following receipt by the Operator of the Services Election Notice, the Operator and the State shall engage in good faith negotiations to agree:
  - (i) in relation to the Operator, the:
    - (A) specific services to be supplied by the Operator to the State from the OC Shared Clinical Areas;
    - (B) specific services to be supplied by the Operator to the State from the OC Shared Non-Clinical Support Areas;
    - (C) if applicable, the specific services to be supplied by the Operator in relation to the Common Areas and the Shared Infrastructure consequent upon the issue of a Management Services Notice pursuant to clause 4 of this Part C;
    - (D) the standards of performance or service for the specific services agreed pursuant to clauses 3.2(a)(i)(A), 3.2(a)(i)(B) and 3.2(a)(i)(C). For the avoidance of doubt, the State shall (acting reasonably) be entitled to specify any standard of performance or service it requires in respect of the specific services to be provided by the Operator, provided that the standard

of performance or service specified must not exceed the standard of performance or service in respect of the same or substantially similar services that were being supplied from the relevant Shared Area in the 18 month period prior to the receipt of the Services Election Notice; and

- (E) the Service Price applicable to those services; and
- (ii) in relation to the State, the:
  - (A) specific services to be supplied by the State to the Operator from the SC Shared Clinical Areas;
  - (B) specific services to be supplied by the State to the Operator from the SC Shared Non-Clinical Support Areas;
  - (C) if applicable, the specific services to be supplied by the State in relation to the Common Areas and the Shared Infrastructure pursuant to clause 4 of this Part C;
  - (D) the standards of performance for the specific services agreed pursuant to clauses 3.2(a)(ii)(A), 3.2(a)(ii)(B) and 3.2(a)(ii)(C). For the avoidance of doubt, the Operator shall (acting reasonably) be entitled to specify any standard of performance or service it requires in respect of the specific services to be provided by the State, provided that the standard of performance or service specified must not exceed the standard of performance or service in respect of the same or substantially similar services that were being supplied from the relevant Shared Area in the 18 month period prior to the receipt of the Services Election Notice; and
  - (E) the Service Price applicable to those services.
- (a1) As an example, the Services Election Notice may specify that the Operator:
  - (i) will provide catering services for the Facility as a Service; and
  - (ii) will control the kitchen areas as OC Shared Non-Clinical Areas for the purpose of providing such catering services.

Continuing this example, the negotiations undertaken pursuant to clause 3.2 of this Part C will likely include such matters as the frequency of food service, specific food options for patients, food quality and standards, and cost.

The parties agree that this paragraph (a1) has been included to assist the parties by way of explanation and is of no legal effect.

- (b) The 'Service Price' shall be Indexed (which shall be taken into account by the parties in the negotiations contemplated by clause 3.2(a)).
- (c) If the parties have not agreed the matters referred to in clause 3.2(a) by the date that is 60 Business Days from receipt by the Operator of the Services Election Notice, the matter shall be referred to an Expert for expert determination pursuant to clause 25 and the Expert shall ensure that:
  - (i) the specific services to be supplied from an area shall be the same or substantially the services that were being supplied from that area in the 18 month period prior to the receipt of the Services Election Notice; and

- (ii) the standards of service or performance for those services in the period on and from the Public Patient Portion Expiration Date shall be Good Operating Practice at the time.
- (d) To avoid doubt, both the allocation of Services to a particular party, and the allocation of the Shared Areas shall (subject to clause 3.1(c)) remain as set out in the Services Election Notice and the Expert shall have no jurisdiction to revise the allocation of Services or the Shared Areas other than to ensure compliance with clause 3.1(c).
- (e) Once the matters in clause 3.2(a) have been agreed or determined, they shall become the 'Services' and the 'Service Price' for the purposes of this Schedule 22 and shall be documented accordingly in a legally binding agreement prepared by the State, which the Operator must promptly execute.
- (f) On and from the Lease Commencement Date (whether pursuant to the State exercising the Early Handover Put Option, the Operator exercising the Operator Call Option or the State exercising the State Put Option) until such time as the Services and Models are agreed or determined, the Operator shall provide the services required by the State and the State must ensure that the Operator is in no better and no worse position than it would have been in had the Services been performed during the Operating Term.

#### 4. Management of the Common Areas and Shared Infrastructure

- (a) On and from the Lease Commencement Date, the Operator shall be responsible for the management of the Common Areas and the Shared Infrastructure unless the State issues a notice pursuant to clause 4(b). From the Lease Commencement Date and unless and until a notice is issued by the State pursuant to clause 4(b), the State will grant the Operator a non-exclusive licence to occupy the Common Areas and the Shared Infrastructure for the purpose of managing the Common Areas and the Shared Infrastructure.
- (b) The State may assume management responsibility for the Common Areas and the Shared Infrastructure by service of a notice (**Management Services Notice**) on the Operator. Any Management Services Notice shall be issued simultaneously with the Services Election Notice and must relate to both the Common Areas and the Shared Infrastructure. Upon the issue of a Management Services Notice, the Operator shall be relieved from the obligation to comply with clause 4(a) and the State shall assume responsibility for the management of the Common Areas and the Shared Infrastructure.
- (c) The party responsible for the management of the Common Areas and the Shared Infrastructure (**Party A**) shall:
  - (i) carry out and complete or procure the carrying out and completion of all Lifecycle and manage the Building Lifecycle Model in each case pursuant to clause 8.4(c);
  - (ii) undertake its management responsibilities in accordance with Good Industry Practice; and
  - (iii) permit the other party (**Party B**) to access and use:
    - (A) the Common Areas; and
    - (B) subject to obtaining the prior consent of Party A (such consent not to be unreasonably withheld or delayed), the Shared Infrastructure,

for the purposes, in the event that Party B is the Operator, of performing its obligations, or exercising its rights, under or in connection with this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.

## 5. Establishing the Models

### 5.1 Creating the Models

- (a) Following determination of the Services and the relevant Service Price pursuant to clause 3 the parties shall agree or determine the:
- (i) OC Sinking Fund Model;
  - (ii) SC Sinking Fund Model; and
  - (iii) Building Lifecycle Model,
- (together the '**Models**') as provided for in this clause 5.
- (b) Within 40 Business Days following the date upon which the Services and the Service Price have each been agreed or determined, the Operator shall provide the State with the proposed Models (in each case) fully developed for the period from the Lease Commencement Date until the expiry of the Private Patient Portion Term.
- (c) The proposed OC Sinking Fund Model and SC Sinking Fund Models shall each:
- (i) identify the items of Sinking Fund Activities to be undertaken;
  - (ii) adopt the commonly evidenced practice for a State hospital facility providing services the same as or similar to those at the Public Hospital;
  - (iii) identify the Sinking Fund Costs of the Sinking Fund Activities specified in (or otherwise underpinning) in the relevant Models, being the Operator's proper estimates of the amounts that will have to be expended in respect of Sinking Fund Activities for each of the Shared Clinical Areas and the Shared Non-Clinical Support Areas for the Private Patient Portion Term; and
  - (iv) take proper account of all relevant circumstances for the relevant Shared Areas. Such circumstances shall include, without limitation:
    - (A) the proven durability of the elements comprising the Shared Areas;
    - (B) the ability of the furniture, fixtures and equipment (including medical equipment) comprising the Shared Areas to be maintained in accordance with Good Operating Practice;
    - (C) the Operator's relevant obligations under this Schedule 22; and
    - (D) Good Industry Practice,and shall provide a month by month break-down of forecast Sinking Fund Activities and the Sinking Fund Costs associated with completing those activities. The forecast is to cover the remainder of the Private Patient Portion Term.
- (d) The proposed Building Lifecycle Model shall:
- (i) identify the items of Lifecycle to be undertaken;
  - (ii) adopt the commonly evidenced practice for a State hospital facility providing services the same as or similar to those at the Public Patient Portion; and
  - (iii) identify the Lifecycle Cost of that Lifecycle, being the Operator's proper estimates of the amounts that will have to be expended in respect of Lifecycle for the Common Areas and Shared Infrastructure and all associated infrastructure for the Private Patient Portion Term; and

- (iv) take proper account of all relevant circumstances for the relevant area. Such circumstances shall include, without limitation:
  - (A) the proven durability of the elements comprising the Common Areas and Shared Infrastructure;
  - (B) the ability of the buildings and equipment comprising the Common Areas and Shared Infrastructure to be maintained to a standard which would reasonably be expected of a public hospital maintained in accordance with Good Operating Practice;
  - (C) the Operator's relevant obligations under this Schedule 22; and
  - (D) Good Industry Practice,

and shall provide a month by month break-down of forecast Lifecycle items and the cost of completing those items. The forecast is to cover the remainder of the Private Patient Portion Term.

- (e) The State shall, acting reasonably and taking into account all of the information provided by the Operator in accordance with clauses 5.1(c) and 5.1(d), be entitled (acting reasonably) to object to any element of a proposed Model. Any such objection shall be made within 40 Business Days of receipt of the relevant Model. Following any such objection, the Operator shall amend the proposed Model and re-submit it to the State as soon as reasonably practicable and in any event within 40 Business Days of receipt of the State's objection.
- (f) On and from:
  - (i) the receipt of a revised version of a proposed Model; or
  - (ii) if no objection has been made by the State pursuant to clause 5.1(e), on and from the expiry of the 40 Business Day period after receipt by the State of the Models pursuant to clauses 5.1(b),

the State and Operator shall meet as necessary and engage in good faith negotiations to seek to agree the proposed Models. If the parties have not agreed the contents of the Models or a Model by the date that is 3 months prior to the Public Patient Portion Expiration Date, the matter shall be referred to an Expert for expert determination pursuant to clause 25.

- (g) As agreed or determined, the proposed Models shall become the OC Sinking Fund Model, the SC Sinking Fund Model and the Building Lifecycle Model.

## 6. State as Principal Contractor

Notwithstanding clause 59.11 of the Main Body but subject to clause 7A of this Part C of Schedule 22, the State may, at any time during the term of the Post-Operating Term Private Patient Portion Lease, in its discretion, elect to be the Principal Contractor for the whole or any part of any 'construction work' (as defined in the WHS Legislation) .

## 7A. Principal Contractor – Private Patient Portion

- (a) In this clause 7A, the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings given to those terms under the WHS Legislation. For the purposes of the WHS Legislation and this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, the work under this Schedule 22 and the

Post-Operating Term Private Patient Portion Lease and the work under any Post Operating Term Subcontract is taken to be part of the same 'construction project'.

- (b) Where any work under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease or any Post Operating Term Subcontract to be performed in respect of the Private Patient Portion during the term of the Post-Operating Term Private Patient Portion Lease includes construction work, then, prior to the commencement of that work:
  - (i) the Operator must notify the State of the nature of the work and the identity of each Relevant Entity by notice in writing;
  - (ii) the Operator must either act as the principal contractor or provide to the State an agreement from a Relevant Entity to act as principal contractor for such work; and
  - (iii) if the Operator is not the principal contractor and the Operator has complied with sub-paragraph (ii), the State must appoint the Relevant Entity as principal contractor in respect of that work and authorise the Relevant Entity to have management and control of the workplace at which the relevant work is to be performed and to discharge the duties of a principal contractor under the WHS Legislation.
- (c) The Operator warrants to the State that any party it nominates to act as principal contractor under clause 7A(b) will be sufficiently skilled, qualified and experienced to undertake the role of principal contractor having regard to the size, scale and location of the works.
- (d) The Operator must:
  - (i) ensure that any principal contractor it nominates to act complies with its duties under the WHS Legislation and require the principal contractor to ensure that any Post Operating Term Subcontractor that it engages complies with its duties under the WHS Legislation;
  - (ii) ensure that if any Law (including a Law in the state or territory in which the Private Patient Portion is situated or work under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease or a Post Operating Term Subcontract is carried out) requires that:
    - (A) a person:
      - (I) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
      - (II) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
    - (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
  - (iii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 7A(d)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

- (iv) if requested by the State or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work, health and safety (as the case may be) to the satisfaction of the State before the Operator or the Post Operating Term Subcontractor (as the case may be) commences such work.

## 7. Subcontracted Services

- (a) Not less than 24 months and not later than 12 months prior to the Public Patient Portion Expiration Date, the Operator and the State shall engage in good faith negotiations to agree the approach (in a manner consistent with the requirements of the Handover Plan) to be taken to Post Operating Term Key Subcontractors who have been performing services for the Operator in the period prior to the Public Patient Portion Expiration Date or Early Handover Date (as relevant).
- (b) If the parties fail to agree the approach to be taken to Post Operating Term Key Subcontractors pursuant to clause 7(a), the risk and responsibility of dealing with that Subcontractor shall remain with the Operator.
- (c) To the extent that the State provides written notice to the Operator within 12 months of the Public Patient Portion Expiration Date that the State wishes to take a novation of a Post Operating Term Key Subcontract, the Operator shall procure that such a novation occurs on or before the Public Patient Portion Expiration Date and at no cost to the State.

## 8. The Models

### 8.1 Updating Sinking Fund Models and Building Lifecycle Model

- (a) Not later than 40 Business Days prior to the commencement of each Financial Year following the Public Patient Portion Expiration Date (with the exception of the first Financial Year):
  - (i) the Operator must submit to the State an updated OC Sinking Fund Model for the current and each following Financial Year until the Private Patient Portion Expiration Date;
  - (ii) the State must submit to the Operator an updated SC Sinking Fund Model for the current and each following Financial Year until the Private Patient Portion Expiration Date; and
  - (iii) the party responsible for the management of the Common Areas and the Shared Infrastructure shall submit to the other party, an update of the Building Lifecycle Model for the current and each following Financial Year until the Private Patient Portion Expiration Date,

in either case the update shall identify the effect of the proposed changes to the then current Models.

- (b) Each party shall have the right to approve an updated Model that has been submitted to it and such approval shall not be unreasonably withheld or delayed. It shall be unreasonable to withhold an approval if the updated Model:
  - (i) proposes changes to the relevant Model in accordance with Good Operating Practice and adopt the commonly evidenced practice for a State hospital facility providing services the same as or similar to those provided at the Facility;



- (ii) contains proper estimates of the amounts that will have to be expended in respect of Lifecycle or Sinking Fund Activities (as applicable); and
- (iii) takes proper account of all relevant circumstances for the relevant area. Such circumstances shall include, without limitation:
  - (A) the proven durability of the elements comprising the relevant area;
  - (B) the ability of the buildings and equipment comprising the relevant area to be maintained to a standard which would reasonably be expected of a public hospital maintained in accordance with Good Operating Practice;
  - (C) the Operator's relevant obligations under this Schedule 22; and
  - (D) Good Industry Practice.
- (c) If a proposed updated Model is approved, as so approved it shall become the then current Model.

## 8.2 Payments for Sinking Fund and Lifecycle

Within 21 days of the commencement of each Financial Year:

- (a) the State shall pay to the Operator the State Sinking Fund Contribution;
- (b) the Operator shall pay to the State the Operator Sinking Fund Contribution; and
- (c) the party that is not responsible for the management of the Common Areas and the Shared Infrastructure shall pay to the party that is responsible for the Common Areas and Shared Areas, the Lifecycle Contribution.

## 8.3 Account and Drawdown

- (a) On receipt by the Operator of each State Sinking Fund Contribution and (if relevant) Lifecycle Contributions, the Operator must place such monies into a dedicated interest bearing account approved by the State in the name of the Operator (**Reserve Account**). Any interest earned on the Reserve Account is for the account of the Operator. To avoid doubt, the Lifecycle Payment Account can be used as the Reserve Account.
- (b) The Operator must procure that the financial institution with which the Reserve Account is established:
  - (i) is notified of, and consents to, the State's security over the Reserve Account in accordance with the Project Security; and
  - (ii) agrees not to exercise any right of set-off or combination of accounts in relation to the Reserve Account.
- (c) The Operator may only use and withdraw amounts credited to the Reserve Account to pay for Sinking Fund Activities and/or Lifecycle.
- (d) The Operator must upon reasonable prior notice give the State records of expenditure from the Reserve Account sufficient to enable the State to readily reconcile that expenditure against the Models.
- (e) Subject to any express provisions relating to compensation that might be payable on early termination, any credit balance standing in the Reserve Account as at the expiry of the Private Patient Portion Term will be for the account of the State.
- (f) Insofar as the State receives Operator Sinking Fund Contributions and (if relevant) Lifecycle Contributions, the State shall be under no obligation to place such monies into a dedicated interest bearing account.

## 8.4 Carrying out and completing Sinking Fund Activities or Lifecycle

- (a) The Operator shall carry out and complete the Sinking Fund Activities identified in the OC Sinking Fund Model:
  - (i) in accordance with Good Industry Practice and Good Operating Practice; and
  - (ii) in such manner so as not unduly to interfere with or disrupt the use of the Facilities (including the OC Shared Clinical Areas and the OC Shared Non-Clinical Support Areas) by the State.
- (b) The State shall carry out and complete the Sinking Fund Activities identified in the SC Sinking Fund Model:
  - (i) in accordance with Good Industry Practice and Good Operating Practice; and
  - (ii) in such manner so as not unduly to interfere with or disrupt the use of the Facilities (including the SC Shared Clinical Areas and the SC Shared Non-Clinical Support Areas) by the Operator.
- (c) The party responsible for the management of the Common Areas and the Shared Infrastructure shall carry out and complete the Lifecycle activities identified in the Building Lifecycle Model:
  - (i) in accordance with Good Industry Practice and Good Operating Practice; and
  - (ii) in such manner so as not unduly to interfere with or disrupt the use of the Common Areas and the Shared Infrastructure.
- (d) The Operator shall, at all times, perform its obligations under this Schedule 22 having regard to the highest standard of Patient care and safety at all times.
- (e) To the extent Sinking Fund Activities are not identified in the relevant Model, they must be funded without access to the Model and by the party responsible for undertaking them (unless otherwise agreed by the parties).

## 8.5 Title and Materials

- (a) As between the Operator and the State, title in any materials, goods, plant or equipment intended to form part of the:
  - (i) Sinking Fund Activities undertaken by the State in the SC Shared Clinical Areas and the SC Shared Non-Clinical Support Areas shall vest in the State;
  - (ii) Lifecycle (whether undertaken by the State or the Operator) in the Facility shall vest in the State; and
  - (iii) Sinking Fund Activities undertaken by the Operator in the OC Shared Clinical Areas and the OC Shared Non-Clinical Support Areas shall:
    - (A) vest in the State to the extent the activities result in fixtures or fittings; and
    - (B) vest in the Operator to the extent the activities relate to chattels or other objects that are not fixtures or fittings.
- (b) To the extent that the Operator carries out Sinking Fund Activities in the OC Shared Clinical Areas and/or the OC Shared Non-Clinical Support Areas, the Operator warrants that there will be no legal or equitable encumbrance over any materials, goods, plant or equipment title of which has vested in the State in accordance with clause 8.5(a)(i) and 8.5(a)(ii) and the Operator shall indemnify and keep indemnified the State against any losses or claims arising out of any breach of this warranty.

## **8.6 Warranties in relation to Sinking Fund and Lifecycle**

- (a) The Operator shall use all reasonable endeavours to:
  - (i) enforce any warranties it may have in relation to Sinking Fund Activities or Lifecycle items it has expended monies on, as and when reasonably necessary; and
  - (ii) ensure that the benefit of such warranties (so long as they remain valid) are assignable without restriction to the State at the Private Patient Portion Expiration Date.
- (b) The Operator shall not do anything which may vitiate the warranties referred to in clause 8.6(a).

## **9. Provision of Services**

### **9.1 Service Obligations of Operator**

- (a) Subject to clause 9.3, the Operator shall provide the Services to the State from the OC Shared Clinical Areas and the OC Shared Non-Clinical Support Areas in accordance with, and as agreed or determined pursuant to, clause 3.2.
- (b) In providing the Services the Operator shall:
  - (i) ensure that at all times there is sufficient properly maintained and functioning equipment (including all medical equipment) at the Private Patient Portion to enable the Operator to provide the Services in accordance with the terms of this Schedule 22 and, to avoid doubt, shall replace any equipment upon expiry of its useful life in accordance with Good Industry Practice or, in the case of medical equipment, in accordance with Good Operating Practice; and
  - (ii) maintain and repair equipment in accordance with the manufacturer's guidance.

### **9.2 Services Obligations of State**

- (a) Subject to clause 9.3, the State shall provide the Services to the Operator from the SC Shared Clinical Areas and the SC Shared Non-Clinical Support Areas in accordance with, and as agreed or determined pursuant to, clause 3.2.
- (b) In providing the Services the State shall:
  - (i) ensure that at all times there is sufficient properly maintained and functioning equipment (including all medical equipment) at the Public Patient Portion to enable the State to provide the Services in accordance with the terms of this Schedule 22 and, to avoid doubt, shall replace any equipment upon expiry of its useful life in accordance with Good Industry Practice or, in the case of medical equipment, in accordance with Good Operating Practice; and
  - (ii) maintain and repair equipment in accordance with the manufacturer's guidance.

### **9.3 Notice to cease Services**

- (a) The State may (in its sole and absolute discretion) serve not less than 12 months' prior notice on the Operator specifying that the State no longer requires the Operator to provide all or any Service to the State. To the extent the State serves such a notice, the Operator shall cease to provide the specified Services pursuant to any such notice.
- (b) The State may give written notice to the Operator notifying the Operator of its intention to cease providing Services to the Operator, provided that such notice must specify the date on which the State will cease to provide the relevant Service (such date of cessation not to

occur earlier than the Required Notice Period after the date of the notice issued pursuant to this paragraph (b) in respect of the relevant Service).

- (c) To the extent the State serves a notice pursuant to either clause 9.3(a) or 9.3(b), the Operator shall not be entitled to any compensation of any kind.
- (d) The State Sinking Fund Contribution, the Operator Sinking Fund Contribution and the Lifecycle Contribution shall be adjusted to the extent that the State Proportion, the Operator Proportion, the State Proportion (Lifecycle) or the Operator Proportion (Lifecycle) vary as a result of a notice served under this clause.

## 10. Outgoings

### 10.1 Operator to Pay 'Operator's Contribution'

- (a) Save where the Operator is responsible for the management of the Common Areas and Shared Infrastructure, the Operator must pay the Operator's Contribution for each Financial Year, in accordance with the provisions of this clause 10.
- (b) Where the Operator is responsible for the management of the Common Areas and Shared Infrastructure, the State shall pay the Outgoings (minus the Operator's Contribution) to the Operator.

### 10.2 Outgoings Budget

- (a) The Operator will prepare and provide to the State a budget for the Outgoings for the first Financial Year after the Public Patient Portion Expiration Date, as soon as practicable after the commencement of that Financial Year.
- (b) Thereafter the party responsible for the management of the Common Areas and Shared Infrastructure will prepare and give to the other party a budget for the Outgoings for the following Financial Years, as soon as practicable, but in any event before the end of each Financial Year.

### 10.3 Content of Outgoings Budget

A budget given under clause 10.2 must include:

- (a) reasonable details of each of the items comprising the Outgoings; and
- (b) a calculation of the Operator's Contribution based on the Outgoings Budget.

### 10.4 State right to vary Outgoings Budget

- (a) The State can vary the Outgoings Budget at any time during a Financial Year by notice to the Operator. The notice must contain details of any change in the Operator's Contribution.
- (b) If the variation to the Outgoings Budget by the State under clause 10.4(a), when aggregated with all previous such variations made to the Outgoings Budget during the relevant Financial Year, would cause the aggregate Outgoings specified in the budget to exceed by more than the aggregate Outgoings specified in the Outgoings Budget for the previous Financial Year (Indexed), the Operator may dispute the variation by referring the matter to an Expert for expert determination pursuant to clause 25.

### 10.5 Outgoings by Instalments

- (a) The Operator must pay the Operator's Contribution by instalments in advance on each Payment Date. Each instalment is to be one-twelfth of the Operator's Contribution for the relevant Financial Year, based on the Outgoings Budget (or any variation to the Outgoings Budget under clause 10.4). If an instalment is for a period of less than one month, the

instalment for that period will be apportioned at a daily rate for the relevant Financial Year.

- (b) If required pursuant to clause 10.1(b), the State must pay the Outgoings (minus the Operator's Contribution) by instalments in advance on each Payment Date. Each instalment is to be one-twelfth of Outgoings (minus the Operator's Contribution) for the relevant Financial Year, based on the Outgoings Budget (or any variation to the Outgoings Budget under clause 10.4). If an instalment is for a period of less than one month, the instalment for that period will be apportioned at a daily rate for the relevant Financial Year.

## **10.6 Delayed Budget**

If the Outgoings Budget in any Financial Year has not been provided to the Operator by the State before the first Payment Date in that Financial Year:

- (a) the Operator must pay an instalment equal to the instalment payable on the last Payment Date of the previous Financial Year on each Payment Date until the Outgoings Budget has been provided to the Operator by the State; and
- (b) on the first Payment Date after the Outgoings Budget in any Financial Year has been provided to the Operator by the State, the Operator must pay the difference between what it has paid under paragraph (a) and what it should have paid (and the State must repay the Operator any overpayment) if the Outgoings Budget had been provided before the first Payment Date of that Financial Year.

## **10.7 Statement of actual Outgoings**

Within three months after the end of a Financial Year the State must give the Operator a statement (**State's statement**) containing:

- (a) reasonable details of the actual Outgoings for the previous Financial Year;
- (b) the State's calculation of the Operator's Contribution based on the actual Outgoings;
- (c) if the aggregate of the Outgoings is more than the Outgoings Budget, the amount the Operator owes the State for the Operator's Contribution for the previous Financial Year; and
- (d) if the aggregate of the Outgoings are less than the Outgoings Budget, the amount the State owes to the Operator.

## **10.8 Reconciliation during term**

On the first Payment Date after the State gives the Operator the State's statement, the Operator must pay any shortfall (or the State must credit the Operator with any overpayment) of the Operator's Contribution for the previous Financial Year.

## **10.9 Reconciliation after term**

If the State's statement is provided to the Operator after the expiration or termination of the Post-Operating Term Private Patient Portion Lease, the Operator must pay any shortfall (or the State must repay the Operator any overpayment) of the Operator's Contribution for the previous Financial Year within 28 days of the statement being provided.

## 11. [Not used]

## 12. Payment for Services

### 12.1 Payment by State for Services

- (a) The State shall pay to the Operator the relevant Service Price for the Services that the State has received within and from the OC Shared Clinical Areas and the OC Shared Non-Clinical Support Areas.
- (b) The payment pursuant to clause 12.1(a) shall be made in accordance with the terms set out in Annexure 4 to this Schedule 22.
- (c) The Service Price payable by the State shall be Indexed.

### 12.2 Payment by Operator for Services

- (a) The Operator shall pay to the State the relevant Service Price for the Services that the Operator has received within and from the SC Shared Clinical Areas and the SC Shared Non-Clinical Support Areas.
- (b) The payment pursuant to clause 12.2(a) shall be made in accordance with the terms set out in Annexure 4 to this Schedule 22.
- (c) The Service Price payable by the Operator shall be Indexed.

## 13. Payment conditions

### 13.1 Payments

- (a) The Operator must pay amounts payable by it under this Schedule 22:
  - (i) by electronic funds transfer to the bank account nominated from time to time by the State or by any other method the State reasonably requires and notifies to the Operator;
  - (ii) in the case of periodic payments, by the relevant Payment Date;
  - (iii) without set-off, counterclaim or deduction; and
  - (iv) to the State or as the State directs.
- (b) The State must pay amounts payable by it under this Schedule 22:
  - (i) by electronic funds transfer to the bank account nominated from time to time by the Operator or by any other method the Operator reasonably requires and notifies to the State;
  - (ii) in the case of periodic payments, by the relevant Payment Date; and
  - (iii) to the Operator or as the Operator directs.

## **13.2 Interest**

- (a) To avoid doubt, the provisions in relation to Default Rate in the Main Body shall apply in relation to any failure to pay money when due.
- (b) If either party does not pay any money payable to the other party within seven days after the due date, the party failing to pay (Defaulting Payer) must pay interest on the overdue money. The interest:
  - (i) is payable at an annual rate which is 3% above the rate per annum charged by the bank bill rate for overdraft accommodation for amounts exceeding \$100,000 determined on the first day of each month for the period for which interest is to be calculated;
  - (ii) is calculated monthly on the first day of each month on the amount (if any) owing by the Defaulting Payer;
  - (iii) accrues daily from the due date for payment of the relevant amount until the date of payment;
  - (iv) is payable on demand; and
  - (v) is capitalised on the last day of each month if not paid.

## **14. Insurance**

### **14.1 Operator's insurance**

The Operator must take out and maintain the insurances specified in, and in accordance with, Part D of Schedule 5 to the Main Body in the period on and from the Lease Commencement Date.

### **14.2 Application to Lease**

The parties will discuss and agree how the provisions of this clause 14 shall apply in relation to the Post-Operating Term Private Patient Portion Lease, it being the intention that the same level of obligation, risk transfer, and protection for both parties shall prevail in respect of the Post-Operating Term Private Patient Portion Lease as it does in relation to the provisions of this clause 14.

## **15. Loss and damage**

### **15.1 Preservation of other indemnities and operation of this clause**

- (a) This clause 15 is without prejudice to any indemnity, liability, loss, damage, claim or other right (whether actual or contingent, present or future) which the State has or may have the benefit of pursuant to the Main Body. For the avoidance of doubt, the indemnities in clauses 7.12 and 72 of the Main Body continue to apply after the Lease Commencement Date in relation to matters that occur prior to the Lease Commencement Date, provided that the State's entitlement under this clause 15 shall reduce its entitlement under clauses 7.12 and 72 of the Main Body to the extent that to do otherwise would amount to the Operator being required to pay the same amount twice.
- (b) This clause 15 applies in relation to any act, matter or thing to the extent that it arises on or after the Lease Commencement Date.

### **15.2 Risk of loss or damage**

Except as expressly provided in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, from the Lease Commencement Date until the Private Patient Portion Expiration Date, the Operator bears the risk of destruction, Loss or damage to the Private Patient Portion,

including the risk of any destruction, Loss or damage caused by any person, but the Operator does not bear the risk of such destruction, Loss or damage where the destruction, Loss or damage is the direct result of:

- (a) a fraudulent, unlawful or negligent act or omission of the State or any State Related Party;  
or
- (b) a breach by the State of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.

### **15.3 Operator's indemnity**

The Operator must, subject to clauses 15.4 and 15.12, be responsible for, and must release and indemnify the Indemnified State Parties on demand from and against each of:

- (a) any Claim or Loss in respect of:
  - (i) death, disease, illness or injury to any person;
  - (ii) loss of or damage to property (including property belonging to the State or for which it is responsible); and
  - (iii) third party suits, claims, actions, demands, proceedings, penalties, costs, charges or expenses to the extent only that it is an Insured Liability (excluding any Claim or Loss in respect of a suit, claim, action or proceeding initiated by an Indemnified State Party),

which may arise out of, or in consequence of:

- (iv) the performance or non-performance by the Operator of its obligations under this Schedule 22 or any Project Document;
  - (v) the condition of the Private Patient Portion, the OC Shared Clinical Areas, the OC Shared Non-Clinical Support Areas, or the presence on or possession of or access to the OC Shared Clinical Areas, the OC Shared Non-Clinical Support Areas Site, the Common Areas, the Facility by the Operator or any Operator Related Party; or
  - (vi) subject to clause 9.5 of Part D of this Schedule 22, any Contamination of or Pollution occurring on or from the Private Patient Portion, or to the extent caused or contributed to by the Operator after the Lease Commencement Date, any Contamination of or Pollution occurring on or from the, the Site, Extra Land or the Facility; and
- (b) any Claim or Loss suffered by or incurred in connection with any:
    - (i) breach or failure to comply with the terms of any Project Document by the Operator or any Operator Related Party; or
    - (ii) negligent, or unlawful acts or omissions or wilful misconduct by the Operator or any Operator Related Party.

### **15.4 Operator not liable**

The Operator will not be obliged to release or indemnify the Indemnified State Parties under a Project Document for any Claim, Loss or Liability to the extent that the Claim, Loss or Liability is:

- (a) caused by negligent or unlawful acts or omissions or wilful misconduct of any Indemnified State Party, where such Claim, Loss or Liability did not occur as a result of a failure by the Operator to provide the Services or operate the Shared Areas or the Private Patient Portion in accordance with this Schedule 22 or the Post-Operating Term Private Patient Portion Lease;



- (b) caused by a breach of the State of its express obligations under a Project Document;
- (c) caused by the Operator following the express directions of any Indemnified State Party with respect to its obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, where such directions are given in accordance with those documents;
- (d) caused by any fraudulent or negligent act or omission of any Indemnified State Party; or
- (e) caused by an Excluded Event or any other risk expressly accepted by the State under an express provision of a Project Document in respect of which the Operator has complied with its obligations under the State Project Documents.

This clause 15.4 does not limit the Operator's rights under this document with respect to Excluded Events.

## 15.5 Insured Liability

For the purposes of this clause 15, **Insured Liability** means:

- (a) where the Operator, an Operator Related Party or an Indemnified State Party has an entitlement to recover or be indemnified in respect of Indirect Loss under an Insurance:
  - (i) the amount or amounts actually recovered by the Operator, the Operator Related Party or the Indemnified State Party (as applicable) from; and
  - (ii) the amount or amounts for which the Operator, the Operator Related Party or the Indemnified State Party is otherwise actually indemnified by,
 the insurer or insurers of such Insurance; and
- (b) where, but for:
  - (i) the failure of the Operator to comply with its obligations under clause 14 to obtain an Insurance;
  - (ii) the insolvency of the insurer or insurers of such Insurance; or
  - (iii) any act or omission by the Operator or an Operator Related Party (including any misrepresentation, non-disclosure, breach of a duty to the insurer, breach of the terms and conditions of any Insurance or failure to comply with those terms or conditions) not caused or contributed to by any act or omission of any Indemnified State Party which has resulted in a loss of or reduction of the recovery or indemnity under an Insurance,

the Operator, an Operator Related Party or an Indemnified State Party would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Insurance in respect of Indirect Loss, the amount or amounts which the Operator, the Operator Related Party or the Indemnified State Party (as applicable) would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Insurance.

## 15.6 No circularity (Insured Liability)

Nothing in this Schedule 22 operates to exclude or limit the Operator's liability to the extent to which it is an Insured Liability.

## 15.7 Damage by the State or State Related Parties

The State will only be liable to the Operator for any destruction, loss of or damage caused to the Private Patient Portion if and to the extent that such destruction, loss or damage arose as a result of the negligence, wilful misconduct, breach or default or other act or omission of the State or a State Related Party.

## **15.8 Responsibility for Related Parties**

The Operator will be responsible, as against the State, for the acts or omissions of the Operator Related Parties as if they were the acts or omission of the Operator and subject to clause 15.7, the State will be responsible, as against the Operator, for the acts or omissions of the State Related Parties as if they were the acts or omissions of the State.

## **15.9 Claims procedure**

- (a) Where the State wishes to make an indemnity demand under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease on the Operator in respect of a Claim, the State must give notice of the relevant Claim as soon as reasonably practicable, setting out full particulars of the Claim (provided that failure to give such notice shall not affect the Operator's indemnity obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, except to the extent the Operator is precluded or prejudiced by such failure).
- (b) The State must exercise all rights and remedies reasonably available to it in respect of such Claim to mitigate such Claim and must advise the Operator, at the Operator's request, of the status of any such action.
- (c) Subject to the rights of insurers under the Insurances, the Operator may investigate, and may defend or compromise in good faith in a commercially reasonable manner any Claim for which indemnification is sought under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, and the State must cooperate with all reasonable requests of the Operator and the insurer in connection with such action, provided that no Claim is compromised without the prior written consent of the State.

## **15.10 Costs of Claims**

The Operator must, if it wishes to have conduct of any Claim, give reasonable security to the State for any cost or liability arising out of the conduct of the Claim by the Operator.

## **15.11 Operator's obligations for the benefit of the State**

- (a) Where the Operator:
  - (i) is obliged to do something or comply with an obligation; or
  - (ii) not to do something,for the benefit of the State, the Operator agrees that it will be taken to have also agreed to do that thing or comply with that obligation, or not to do that thing for the benefit of the State, to the intent that the State may exercise all rights that arise by virtue of the Operator's failure to comply with any obligation owing to the State as if that obligation was owed to the State.
- (b) Any damage or loss incurred by the State as a result of a failure of the Operator to comply with any such obligation will be taken to be loss or damage which the State may recover from the Operator, as if the Operator had expressly undertaken to comply with that obligation for the benefit of the State.

## **15.12 Indirect Loss exclusion**

- (a) Subject to clause 15.12(c), but otherwise despite any other provision of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, neither the Operator nor any Operator Related Party has any Liability to any Indemnified State Party, nor will any Indemnified State Party be entitled to make any Claim, in respect of Indirect Loss incurred or sustained by the Indemnified State Party as a result of any act or omission of the

Operator or any Operator Related Party (whether negligent or otherwise) or as a result of a breach of the Project Documents by the Operator.

- (b) Subject to clause 15.12(c), but otherwise despite any other provision of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, neither the State nor any Indemnified State Party has any Liability to the Operator or any Operator Related Party, nor will the Operator or any Operator Related Party be entitled to make any Claim, in respect of Indirect Loss incurred or sustained by the Operator or Operator Related Party as a result of any act or omission of the State or any Indemnified State Party (whether negligent or otherwise) or as a result of a breach of the Project Documents by the State.
- (c) Clauses 15.12(a) and (b) do not apply in respect of any Insured Liability.

### **15.13 Indemnities generally**

- (a) Each indemnity in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease is an on demand continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (d) Where the Operator gives any indemnity or release under any of the Project Documents, it gives an equivalent indemnity and release to the NSW Government, and the State holds for itself and on trust for the NSW Government the benefit of each such indemnity and release in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.

### **15.14 Operator's risk**

Subject to this clause 15, the Operator occupies the Private Patient Portion and enters and uses the Site and the Facility at its own risk.

## **16. Yielding up and making good**

### **16.1 Condition Report**

The State and Operator acknowledge that a report as to the condition of the Private Patient Portion as at the Lease Commencement Date (but before the installation of the Operator's fitout) has been prepared and signed by the State and Operator.

### **16.2 Make Good Works**

On or by the earlier of the Private Patient Portion Expiration Date and the date the Post-Operating Term Private Patient Portion Lease ends, the Operator must:

- (a) have completed in a proper and workmanlike manner all the Make Good Works and procured that the Private Patient Portion are in a fit and suitable state and condition so as to enable the State to run and administer a top performing public hospital therefrom, unless the State gives a notice to the Operator that the State does not require some or all of the Make Good Works to be completed or this hand-back standard to be met;
- (b) subject to the requirements of the Make Good Works, ensure the Private Patient Portion is in a condition consistent with the Operator having complied with all of its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease; and

- (c) vacate the Private Patient Portion and give the State all keys, access cards and other security devices for the Private Patient Portion which have been issued to the Operator or the Operator's Associates.

### **16.3 Operator's property**

The Operator may not remove Operator's Property which:

- (a) is part of structural work done by the Operator to the Private Patient Portion, unless the State gives the Operator a notice to remove it or unless, as a condition of its consent to the Operator doing the structural work, the State stipulated that it must be removed; or
- (b) is to remain on the Private Patient Portion under a condition imposed by the State when approving of the Operator's works on the Private Patient Portion.

### **16.4 Operator's property abandoned**

If the Operator does not remove any Operator's Property in accordance with this section, then the State may:

- (a) treat it as abandoned and either keep it as its own or dispose of it as the State sees fit at the Operator's expense; or
- (b) remove it and store it at the Operator's expense.

## **17. Operator's general obligations**

### **17.1 [Not used]**

### **17.2 [Not used]**

### **17.3 Operator Related Parties**

The Operator must ensure that the Operator Related Parties comply with the Operator's obligations under the Post-Operating Term Private Patient Portion Lease and Schedule 22.

### **17.4 Environmental Protection**

Without limitation to clause 9 of Part 2, Part D of this Schedule 22, if the Operator pollutes the Private Patient Portion or any other part of the Facility the Operator must promptly:

- (a) undertake all audits, tests, surveys and other investigations necessary to determine the nature and extent of the pollution;
- (b) notify the State immediately of the nature and extent of the pollution and the steps the Operator proposes to take to control and remove the pollution;
- (c) do everything reasonably necessary to control and remove the pollution from the Private Patient Portion and any other part of the Facility; and
- (d) pay the State's costs, charges and expenses in connection with:
  - (i) monitoring the Operator's actions; and
  - (ii) satisfying the State that the Operator has complied with the Operator's obligations,under this clause 17.4.

## 18. State's Obligations

### 18.1 Hospital buildings operation

- (a) The State must (except to the extent that the Operator is responsible) use reasonable endeavours to keep:
  - (i) Shared Infrastructure available to the Private Patient Portion during Service Hours;
  - (ii) the Common Areas clean; and
  - (iii) (except to the extent that the Operator is responsible) the Facility in good repair (fair wear and tear excepted).
- (b) If the Operator is responsible for these matters, the Post-Operating Term Private Patient Portion Lease will be drafted accordingly.

### 18.2 Insurance, rates and laws

The State must:

- (a) keep current during the Private Patient Portion Term those insurances in connection with the Facility which the State would ordinarily take out (which may be none if the State self-insures at the time);
- (b) pay the land tax and all local government and water rates in connection with the Site; and
- (c) comply with all laws and the requirements of all Authorities applicable to it in connection with the Site and the Facility (except for those laws and requirements with which the Operator must comply under the Post-Operating Term Private Patient Portion Lease). To avoid doubt, the requirements of the Hospital Licence are a matter entirely for the Operator.

### 18.3 State's Breach

- (a) If the State breaches its obligations under this clause 18, the Operator must give the State a notice specifying the breach and requiring the State to remedy the breach.
- (b) The Operator may not terminate the Post-Operating Term Private Patient Portion Lease if the State does not comply with this clause 18.3.

### 18.4 State Intervention

If the Operator does not do something it is obliged to do under the Post-Operating Term Private Patient Portion Lease, or, in the State's reasonable opinion, the Operator does not do it properly, the State may do that thing at the Operator's expense after giving reasonable notice to the Operator.

## 19. Assigning, subletting, charging

### 19.1 Assignment, Change in Control

Clause 86 of Part D of this Schedule 22 shall apply in relation to assignment and change in control in the period from the Lease Commencement Date until the Private Patient Portion Expiry Date.

### 19.2 Subletting

The Operator must not assign, sub-let, transfer or otherwise deal with the Private Patient Portion except:

- (a) that any sub-lease, sessional licence or other dealing entered into with a third party prior to the Lease Commencement Date and which was undertaken pursuant to the terms of the

Main Body may continue for the duration of the term of that sub-lease, sessional licence or other dealing (unless terminated earlier), including any extension or renewal of that term pursuant to the terms of that sub-lease, sessional licence or other dealing;

- (b) in accordance with clause 56.2 of Part D of this Schedule 22; or
- (c) with the prior written consent of the State.

### **19.3 PPSA**

The Operator:

- (a) charges the PPS Items in favour of the State to secure the State's rights and performance of the Operator's obligations under this Schedule 22 including where the Operator abandons PPS Items; and
- (b) agrees with the State that:
  - (i) the Operator waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement related to any Security Interest created under this Schedule 22; and
  - (ii) to the extent permitted under the PPSA, the State need not give notice to or account to the Operator or any other person or deal with Collateral in a particular way when enforcing a Security Interest in relation to this Schedule 22.

### **19.4 Charging Operator's Property**

Without the State's consent, the Operator must not mortgage, encumber, or create any right in the nature of a security or Security Interest in the Operator's Property, other than in favour of the State.

### **19.5 No other dealings**

The Operator must not share the use and occupation of the Private Patient Portion or deal with its interest in this Schedule 22 in anyway except as set out in this clause 19.

## **20. Operator works**

- (a) Without limitation to clauses 67B, 67C or 67D of Part D of this Schedule 22, the Operator must not carry out works to the Private Patient Portion except:
  - (i) non-structural, refurbishment, replacement or maintenance works, which do not, other than temporarily for the purposes of those works, adversely impact:
    - (A) the Private Patient Portion by reducing its capacity to provide clinical services; and
    - (B) the Services or reduce the volume of clinical services capable of being provided in or from the Private Patient Portion; or
  - (ii) otherwise with the prior written consent of the State.
- (b) If the State approves any works under this clause 20 the Operator must ensure that the works it does are done:
  - (i) in a proper and workmanlike manner;
  - (ii) by contractors approved by the State (who must act reasonably);
  - (iii) without disturbing other occupiers of the Facility; and
  - (iv) in accordance with:

- (A) any reasonable conditions imposed by the State (including as to payment of its costs);
- (B) any plans, specifications or schedule of finishes approved by the State (who must act reasonably);
- (C) all laws and the requirements of all Authorities; and
- (D) the State's other reasonable requirements and directions.

## 21. Damage and destruction

### 21.1 Interpretation

In this clause 21, the Private Patient Portion does not include the State's Property.

### 21.2 State's notice

If the Facility is destroyed, or damaged so that the Operator cannot access, occupy or use the Private Patient Portion or the Shared Areas, or a substantial part of either of them, then:

- (a) a Step-In Event will be deemed to have occurred, pursuant to which the State may exercise its rights under clause 60 of Part D of this Schedule 22; and
- (b) within six months after the destruction or damage occurs, the State (in its sole and absolute discretion) must give the Operator a notice which either:
  - (i) terminates this Schedule 22 and the Post-Operating Term Private Patient Portion Lease on a date at least one month after the date the State gives the notice. If the destruction or damage was caused by an Excluded Event, the State must, upon termination of this Schedule 22 pursuant to this paragraph (b)(i), pay to the Operator the Termination Payment described in section 5.2 of Schedule 12 to the Main Body, in accordance with the terms of that Schedule;
  - (ii) states that the State intends to reinstate the Facility so that the Private Patient Portion or the Shared Areas (as applicable) are fit for the Operator to access, occupy and use and specifies a date by which the State reasonably estimates that the Facility will be reinstated; or
  - (iii) invites the Operator at its cost to reinstate:
    - (A) the Private Patient Portion; and
    - (B) to the extent agreed by the State (acting reasonably) such part of the Facility (other than the Private Patient Portion) as is required for the Private Patient Portion to be fit for the Operator to access, occupy and use.

For the avoidance of doubt, the Operator is under no obligation to reinstate the Private Patient Portion or the Facility on the invitation of the State under this paragraph (b)(iii).

### 21.3 Operator's notice

If the State gives a notice under clause 21.2(b)(ii) and the Operator believes that the State is not taking all reasonable steps to reinstate the Facility as expeditiously as possible, then the Operator may give the State a notice requiring the State to make the Private Patient Portion or the Shares Areas (as applicable) fit for the Operator to access, occupy and use within a reasonable time after the Operator gives the notice.

## **21.4 Operator may terminate**

If the State does not:

- (a) issue the notice referred to in clause 21.2(b) within six months after the destruction or damage occurs, the Operator may terminate this Schedule 22 and the Post-Operating Term Private Patient Portion Lease with immediate effect on written notice to the State; or
- (b) comply with the Operator's notice under clause 21.3, the Operator may terminate this Schedule 22 and the Post-Operating Term Private Patient Portion Lease on one month's written notice to the State unless the State can demonstrate that it is taking all reasonable steps to reinstate the Facility as expeditiously as possible.

If this Schedule 22 and the Post-Operating Term Private Patient Portion Lease is terminated by the Operator pursuant to clauses 21.4(a) or 21.4(b), and the destruction or damage was caused by an Excluded Event, the State must pay to the Operator the Termination Payment described in section 5.2 of Schedule 12 to the Main Body in accordance with the terms of that Schedule.

## **21.5 Payments reduced**

Subject to clause 21.6, the Operator may reduce any payments under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease by a proportion equal to the Operator's loss of amenity of the Private Patient Portion or the Shared Areas (as applicable) for the period beginning on the day the destruction or damage occurs and ending on the day this Schedule 22 or the Post-Operating Term Private Patient Portion Lease is terminated under this clause 21 or the day the Private Patient Portion or the Shared Areas (as applicable) are fit for the Operator to access, occupy and use.

## **21.6 Dispute about payments**

If the State and the Operator cannot agree on the proportion by which the Operator may reduce its payments within seven days, then either party may ask the President of the Australian Property Institute to nominate a valuer to determine the appropriate proportion. The Operator must continue making all payments under this Schedule 22 without reducing them until the amount by which they are to be reduced is agreed on or determined.

## **21.7 Adjustments**

On the first Payment Date after the proportion referred to in clauses 21.5 and 21.6 is agreed or determined, the Operator must pay the State any shortfall (or the State must credit the Operator with any overpayment) from and including the day the destruction or damage occurs to but excluding that Payment Date.

## **21.8 Destruction or damage caused by Operator**

The Operator may not terminate this Schedule 22 or the Post-Operating Term Private Patient Portion Lease under clause 21.4 or reduce payments under clause 21.5 to the extent:

- (a) the damage is caused or contributed to by; or
- (b) rights under an insurance policy in connection with the Facility are prejudiced or an Insurance is cancelled or a claim is refused by the insurer because of,

the negligence or default of the Operator or the Operator Related Parties. This does not affect other rights the State may have in connection with the events specified in this clause 21.8.

## **21.9 State need not repair**

This clause 21 does not oblige the State to rebuild or repair the Facility or the Private Patient Portion unless it elects (in its sole and absolute discretion) to do so under clause 21.2(b)(ii).



## 21.10 Damage to Facility only

- (a) If the Facility is substantially damaged, but clause 21.2 does not apply, the State may, within six months after the damage occurs, give the Operator a notice terminating this Schedule 22 on a date at least one month after the date the State gives the notice and the parties are released from their obligations under this Schedule 22 from the date of termination.
- (b) If the State issues a notice under paragraph (a), the State must pay to the Operator the Termination Payment described in section 4.3 of Schedule 12 to the Main Body in accordance with the terms of that Schedule.

## 21.11 Reinstatement by the State

If the State elects to reinstate the Facility under clause 21.2(b)(ii):

- (a) without limiting Part D of Schedule 5 to the Main Body and subject to paragraph (b), the Operator must pay to the State all insurance proceeds and amounts received by it in respect of the relevant destruction or damage under the Project Insurances agreed in accordance with Part D of Schedule 5 to the Main Body (other than insurance proceeds and amounts received in respect of loss of profits and revenue replacement), provided that such proceeds and amounts must be applied by the State towards the cost of reinstatement in accordance with clause 21.2(b)(ii);
- (b) to the extent the aggregate of any insurance proceeds and amounts paid by the Operator to the State under paragraph (a) are insufficient to cover the costs to the State of reinstating the Private Patient Portion, the State may request that the Operator pays to the State any shortfall as a debt due and payable on demand;
- (c) if the State requests that the Operator pays to the State any shortfall pursuant to paragraph (b), the Operator may elect (in its sole and absolute discretion) to either:
  - (i) pay to the State any shortfall as a debt due and payable on demand; or
  - (ii) not pay to the State the shortfall, in which case the State may elect (in its sole and absolute discretion) to either:
    - (A) pay any shortfall itself in order to reinstate the Facility in accordance with clause 21.2(b)(ii); or
    - (B) terminate this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, in which case the Operator is under no obligation to pay to the State any insurance proceeds and amounts received by it in respect of the relevant destruction or damage; and
- (d) if paragraph (c)(i) or (c)(ii)(A) applies, the Operator will be relieved of its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease to the extent agreed by the State (acting reasonably) in the context of the reinstatement of the Facility.

## 21.12 Reinstatement by the Operator

If the Operator elects to reinstate the Facility following an election by the State under clause 21.2(b)(iii):

- (a) the State must pay to the Operator all insurance proceeds and amounts received by it in respect of the relevant destruction or damage in respect of:
  - (i) the Private Patient Portion; and

- (ii) such other part of the Facility which is agreed to be reinstated pursuant to clause 21.2(b)(iii)(B),

(other than insurance proceeds and amounts received in respect of loss of profits and revenue replacement), which proceeds and amounts must be applied by the Operator towards the cost of reinstatement of the Private Patient Portion and such other part of the Facility;

- (b) to the extent that such proceeds or amounts are necessary to reinstate:

- (i) the Private Patient Portion; and
- (ii) such other part of the Facility which is agreed to be reinstated pursuant to clause 21.2(b)(iii)(B),

the Operator is entitled to apply insurance proceeds and amounts received by it in respect of the destruction or damage which would otherwise be payable by the Operator to the State under the terms of the Project Insurances agreed in accordance with Part D, Schedule 5 to the Main Body, towards the cost of reinstatement of the Private Patient Portion and such other part of the Facility; and

- (c) the Operator will be relieved of its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease to the extent agreed by the State (acting reasonably) in the context of the relevant destruction or damage.

### **21.13 No other payment**

Other than as expressly provided in clauses 21.2(b)(i), 21.4, 21.11 and 21.12, no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State, in respect of the termination of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease under this clause 21.

## **22. Default and termination**

### **22.1 Operator's default**

- (a) The Operator is in default and the State may (upon written notice and with immediate effect) terminate the provision of all Services contemplated by this Part C if:
  - (i) there is a right to terminate the Post-Operating Term Private Patient Portion Lease;
  - (ii) the Operator has failed to pay any amount pursuant to this Schedule 22 to the State on time, and the State has given the Operator a notice specifying the amount owing and requiring the Operator to pay it within seven days after the notice is given;
  - (iii) an Insolvency Event occurs in respect of the Operator or the Parent Company, and the State has given the Operator a notice requiring the Operator or the Parent Company (as applicable) to prove to the State's satisfaction within seven days after the notice is given that it is no longer subject to the Insolvency Event; or
  - (iv) the Operator has not complied with any other obligation under this Schedule 22, and in the State's reasonable opinion the non-compliance can be remedied, and the State has given the Operator a notice specifying the non-compliance and requiring the Operator to remedy it within a reasonable time after the date the notice is given.
- (b) Without limiting clause 21, the State may terminate the Post-Operating Term Private Patient Portion Lease if:

- (i) the Operator ceases to hold a Hospital Licence and/or any other requisite authorisations;
- (ii) there is a right to terminate Services pursuant to clause 22.1(a) of Part C;
- (iii) the Operator has failed to pay the Operator Sinking Fund Contribution, or the Operator's Contribution, to the State on time, and the State has given the Operator a notice specifying the amount owing and requiring the Operator to pay it within seven days after the notice is given;
- (iv) an Insolvency Event occurs in respect of the Operator or the Parent Company and the State has given the Operator a notice requiring the Operator or the Parent Company (as applicable) to prove to the State's satisfaction within seven days after the notice is given that it is no longer subject to the Insolvency Event; or
- (v) the Operator has not complied with any other obligation under the Post-Operating Term Private Patient Portion Lease, and in the State's reasonable opinion the non-compliance can be remedied, and the State has given the Operator a notice specifying the non-compliance and requiring the Operator to remedy it within a reasonable time after the date the notice is given.

In the event that the Operator does not comply with a notice given by the State under this clause 22.1, a Step-In Event will also be deemed to have occurred, pursuant to which the State may exercise its rights under clause 60 of Part D of this Schedule 22.

- (c) If the State terminates the Post-Operating Term Private Patient Portion Lease or the provision of Services under paragraph (a) or (b) above, the State must pay to the Operator the Termination Payment described in section 3.9 of Schedule 12 to the Main Body in accordance with the terms of that Schedule.

## **22.2 Essential Terms**

- (a) If the State terminates the Post-Operating Term Private Patient Portion Lease and this Schedule 22 under clause 22.1 because the Operator has not complied with an essential term of the Post-Operating Term Private Patient Portion Lease and the State re-enters and takes possession of the Private Patient Portion, the Operator indemnifies the State against any Claims arising because the State will not receive the benefit of the Operator performing its obligations under the Post-Operating Term Private Patient Portion Lease from the date of the termination until the Private Patient Portion Expiration Date.
- (b) The Operator's obligations under the following provisions of the Post-Operating Term Private Patient Portion Lease are essential terms for the purposes of paragraph (a):
  - (i) clause 5 (Use of Premises);
  - (ii) clause 7.1 (Prohibitions);
  - (iii) clause 8 (Sublease and other dealings); and
  - (iv) clause 15 (Costs and expenses).

### 22.3 Effect of termination

Upon termination of the Services pursuant to a termination right in this Schedule 22, clause 23 shall apply.

## 23. Preparing for Handover of Private Patient Portion Handover Assets

### 23.1 Private Patient Portion Handover Condition

**Private Patient Portion Handover Condition** means the required condition of the Private Patient Portion Handover Assets upon Private Patient Portion Handover, which:

- (a) if it occurs on the Private Patient Portion Expiration Date:
  - (i) is the condition for a building commensurate with its age, having been maintained in accordance with Good Operating Practice;
  - (ii) allows the State to provide health services at the Private Patient Portion Handover Assets with a lifecycle effective age that is the aggregate of the balance of the original Private Patient Portion Term (if any) and ; and
  - (iii) does not prevent the State or another operator from procuring and maintaining a Hospital Licence for a period that is the aggregate of the balance of the Private Patient Portion Term (if any) and ;
- (b) if it occurs on an Early Private Patient Portion Handover Date:
  - (i) is the condition that the Class A Private Patient Portion Handover Assets and the Class B Private Patient Portion Handover Assets were in as at Operational Readiness (assuming all Defects and Outstanding Items had been rectified in accordance with the Operator's obligations under any Project Document), fair wear and tear for a building of its age excepted;
  - (ii) allows the State to provide health services at the Class A Private Patient Portion Handover Assets and the Class B Private Patient Portion Handover Assets with a lifecycle effective age that is the aggregate of the Compliant Lifecycle Effective Age as at the Early Private Patient Portion Handover Date, and three years; and
  - (iii) does not prevent the State or another operator from procuring and maintaining a Hospital Licence for a three-year period commencing on that Early Private Patient Portion Handover Date;
- (c) is a condition which it would have been in if all of the Operator's obligations under any Project Document and this Schedule 22 (or any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease had been complied with; and
- (d) is otherwise in a condition which satisfies the requirements of section 6 of the Design Parameters in respect of the Private Patient Portion Handover Assets.

If this Schedule 22 is terminated on an Early Private Patient Portion Expiration Date as a result of the State exercising its rights under clause 78.5 of Part D of this Schedule 22, then the aggregate cost to the Operator of providing the Private Patient Portion Handover Assets in the Private Patient Portion Handover Condition as required under clauses 23.1(b)(ii) and (iii) will be a debt due and payable by the State to the Operator.

### 23.2 Handover Audit

- (a) Without prejudice to any other provision of this Schedule 22, approximately:

- (i) four years (**First Scheduled Private Patient Portion Handover Inspection**); and
- (ii) every 6 months after the First Scheduled Private Patient Portion Handover Inspection,

prior to the Private Patient Portion Expiration Date; or

- (iii) if this Schedule 22 and the Post-Operating Term Private Patient Portion Lease is to be terminated prior to the natural expiry of the Private Patient Portion Term, such shorter period before the Early Private Patient Portion Handover Date as is required by the State,

the Client Representative may require an Independent Assessor to carry out a project audit of the Private Patient Portion Handover Assets (**Private Patient Portion Handover Audit**).

- (b) The Independent Assessor will inspect the Private Patient Portion Handover Assets and notify the State and the Operator in writing of:
  - (i) whether the Private Patient Portion Handover Assets has been and is being maintained by the Operator in accordance with its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease;
  - (ii) whether the Private Patient Portion Handover Assets will, as at the Private Patient Portion Expiration Date or the Early Private Patient Portion Handover Date (as applicable), be in a condition which satisfies the Private Patient Portion Handover Condition; and
  - (iii) the rectification, maintenance and remediation works (if any) required to be carried out by the Operator before the Private Patient Portion Expiration Date to:
    - (A) bring the condition of the Private Patient Portion Handover Assets to the condition they would have been in had the Operator complied with its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease; and
    - (B) ensure that on the Private Patient Portion Expiration Date or the Early Private Patient Portion Handover Date (as applicable), the Private Patient Portion Handover Assets will meet the Private Patient Portion Handover Condition;
  - (iv) a reasonable period within which the Operator must carry out such work under clause 23.2(b)(iii); and
  - (v) the aggregate of the amount (if any) without double counting required to be expended (including by way of rectification or make good) or reserved against during or for the balance of the period up until the Private Patient Portion Expiration Date or the Early Private Patient Portion Handover Date (as applicable) to ensure that the Private Patient Portion Handover Assets is in the Private Patient Portion Handover Condition, and that any breaches in relation to the condition of the Private Patient Portion Handover Assets by the Operator of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease have been rectified, on the Private Patient Portion Expiration Date or the Early Private Patient Portion Handover Date (as applicable) (less any amounts which will be paid by the Operator during that period for any scheduled maintenance or lifecycle replacements to be performed during the period).
- (c) The aggregate amount calculated under clause 23.2(b)(v) updated by each subsequent Private Patient Portion Handover Audit less the amount calculated in accordance with

clause 91.7 in Part D of this Schedule 22 will be the **Private Patient Portion Relevant Amount**.

- (d) The cost of each Private Patient Portion Handover Audit will be shared equally by the State and the Operator.
- (e) If the Operator disputes the Independent Assessor's decision under clause 23.2(b), the Operator may refer those aspects of the matter in dispute to an Expert for expert determination pursuant to clause 25.

### **23.3 Return Condition Bond**

- (a) Within 20 Business Days after the Client Representative notifying the Operator of the results of a Private Patient Portion Handover Audit, the Operator must provide the Client Representative a Return Condition Bond in favour of the State which:
  - (i) has a face value of the Private Patient Portion Relevant Amount; and
  - (ii) satisfies the requirements of clause 12.7 of the Main Body, as if that clause continues to apply.
- (b) If the Operator fails to provide a Return Condition Bond, the Private Patient Portion Relevant Amount shall be moneys owing to the State.

### **23.4 Private Patient Portion Handover Plan**

- (a) The Operator must prepare, update and submit the Private Patient Portion Handover Plan to the Client Representative not later than 18 months prior to the Private Patient Portion Expiration Date (or immediately, if Private Patient Portion Handover will occur on an Early Private Patient Portion Handover Date) and (for the avoidance of doubt) the provision of clause 13 in Part D of this Schedule 22 will apply in respect of the Private Patient Portion Handover Plan.
- (b) The Private Patient Portion Handover Plan must, without limitation, address the handover of equipment and the handover of services.

## **24. Notices and other communications**

### **24.1 Service of notices**

A notice, demand, consent, approval or communication under this Schedule 22 (**Notice**) must be:

- (a) in writing, in English and signed by an authorised person; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the notice details of the Information table, as varied by any Notice given by the recipient to the sender.

### **24.2 Effective on receipt**

A Notice given in accordance with clause 24.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless the recipient immediately informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### **24.3 Statutory Notice**

If the law requires the State to give a notice in a particular form before terminating the Post-Operating Term Private Patient Portion Lease then the notice required by law will be sufficient to satisfy the State's obligations under clause 24.1.

## **25. Expert Determination**

- (a) The provisions of Part A of Annexure 1 to this Schedule 22 shall apply in relation to any matter referred to the Expert for expert determination.
- (b) Without limitation to paragraph (a), the provisions of Part B of Annexure 1 to this Schedule 22 shall otherwise apply, in accordance with their terms, to any dispute, difference, controversy or claim.

# Part D – Incorporated Main Body Provisions

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## 1. Application of this Part D

### 1.1 General

Part 2 of this Part D contains provisions from the Main Body which apply on and from the Lease Commencement Date and over the remainder of the Private Patient Portion Term. These provisions:

- (a) have been amended as necessary and appropriate to give effect to their application during the Private Patient Portion Term; and
  - (b) appear below using the numbering from the Main Body,
- in each case, for ease of reference and identification.

### 1.2 [Not used]

### 1.3 Interpretation

In this Part D:

- (a) a reference to a clause in Part 2, is a reference to a clause that appears in Part 2 of this Part D; and
- (b) a reference to this Schedule 22 "or arising out of or in connection with it" or any similar or analogous phrase is a reference to those matters which must be agreed or determined pursuant to Parts A, B and C of this Schedule 22.



## 2. Main Body Provisions

### 2.6 Compliance with Law

- (a) Each party must comply with all Laws, Policies and requirements of all Authorities applicable to its obligations in respect of this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, including the requirements of the Licensing Authority and the Hospital Licence.
- (b) The Operator must promptly give the Client Representative copies of:
  - (i) all notices, orders or directions given to or received by it, its Related Bodies Corporate or Post Operating Term Material Subcontractors in connection with this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease pursuant to any Law or the requirement of any Authority; and
  - (ii) all documents given by it or its Related Bodies Corporate or Post Operating Term Material Subcontractors to an Authority in connection with this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease pursuant to any Law or the requirement of any Authority.

### 2.7 Operator's Business risks

Unless otherwise expressly provided in this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, the Operator accepts all risks in connection with the Operator's Business, including as to:

- (a) clinical responsibility for all Services to be provided by the Operator and services to Compensable Patients;
- (b) the demand for services among Compensable Patients;
- (c) the demand for, and actual volume of, Services to be provided by the Operator;
- (d) its rights in respect of the Private Patient Portion being contingent on its performance of its obligations under the Project Documents, including in relation to the Services;
- (e) the establishment, closure or modification of any (public or private) hospital, health facility or health service within New South Wales or the NSLHD;
- (f) changes to Law relating to private health insurance, or the private health insurance market;
- (g) the procurement and requirements of, and changes to, the Hospital Licence;
- (h) attracting and retaining an appropriately skilled workforce at all times during the Private Patient Portion Term;
- (i) carrying out all elements of the Operator's Business;
- (j) the condition of the Facility as at the Lease Commencement Date;
- (k) whether or not the Private Patient Portion is suitable for the Permitted Use;
- (l) Environmental Liabilities;
- (m) increases in the price of FF&E;
- (n) whether the actual revenue and profit derived by the Operator from the Operator's Business is less than the revenue and profit estimated by the Operator;
- (o) the interface between the Operator and any State Appointed Operator;

- (p) obtaining and maintaining all necessary Consents; and
- (q) obtaining all necessary additional consents or approvals from Authorities.

## **2.8 Exclusion of Civil Liability Act 2002 (NSW)**

- (a) To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, howsoever such rights, obligations or liabilities are sought to be enforced.
- (b) The Operator agrees that:
  - (i) in each Post Operating Term Key Subcontract, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to that Post Operating Term Subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
  - (ii) it must require and ensure that each Post Operating Term Subcontractor will include in any further Post Operating Term Subcontract, provisions that, to the extent permitted by Law, each such further Post Operating Term Subcontract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further Post Operating Term Subcontract howsoever such rights, obligations or liabilities are sought to be enforced.

## **2.9 Acts or omissions of the Operator**

Without limiting clause 2.7, if this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease confers on the Operator a right to make a Claim against the State or State Related Parties, the Operator is nonetheless barred from making any such Claim to the extent that the event for which the Operator is entitled to bring a Claim was caused or contributed to by any:

- (a) negligent act or omission of the Operator or an Operator Related Party; or
- (b) breach by the Operator or an Operator Related Party of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable).

## **2.10 Car Park and Post Operating Term Associated Commercial Facilities**

The Operator acknowledges that:

- (a) the State has no liability for any Claim or Loss, delay or any other effects which the Operator suffers or incurs in connection with any act or omission of:
  - (i) the Car Park Operator or other counterparty to the Car Park Management Deed (or their assignees or successors); or
  - (ii) any operator (or its assignee or successor) of a Post Operating Term Associated Commercial Facility who is party to a sublease or other document entered into by the Operator.

...

## 4. Hospital Licensing

...

### 4.2 Operator acknowledgments

- (a) The Operator acknowledges that no representation, warranty or advice of any kind has been or is given by or on behalf of the State or any of the State Related Parties in respect of:
- (i) the procurement or maintenance (or extension, if applicable) of a Hospital Licence; or
  - (ii) the accuracy, suitability, fitness for purpose, completeness or adequacy of any documentation or materials prepared by or on behalf of the Operator in connection with the procurement or maintenance (or extension, if applicable) of a Hospital Licence.
- (b) The Operator acknowledges that by entering into this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, it is solely responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
- (i) the procurement or maintenance (or extension, if applicable) of a Hospital Licence;
  - (ii) the requirements of this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease in respect to the design of the Facility (or any part of it) conflicting with the requirements of the Licensing Authority such that the requirements of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable) would prevent the procurement or maintenance (or extension, if applicable) of the Hospital Licence; and
  - (iii) ensuring that a Hospital Licence remains in force at all times on and from Lease Commencement Date.
- (c) The Operator warrants that, prior to the Lease Commencement Date, it:
- (i) satisfied itself that there is nothing in this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (including any Post Operating Term Project Plans or other plans for the provision of the Services to be provided by the Operator) which is inconsistent with, or would prevent it from procuring, maintaining (or extending, if applicable), a Hospital Licence in the manner and in accordance with the requirements in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease;
  - (ii) examined, and relied solely upon its own investigations, assessment, skill, expertise and enquiries in respect of all information relevant to the risks, contingencies and other circumstances having an effect on its capacity to procure or maintain (or extend, if applicable) a Hospital Licence;
  - (iii) satisfied itself as to the correctness and sufficiency of the Private Patient Portion and the Operator's Business and the Post Operating Term Project Plans to satisfy the Accreditation Requirements and, in respect of the procurement or maintenance (or extension, if applicable) of a Hospital Licence, the requirements of the Licensing Authority, and has made adequate allowance for the costs of complying with such requirements;

- (iv) informed itself of all matters relevant to the procurement or maintenance (or extension, if applicable) of a Hospital Licence; and
  - (v) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the Facility and its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, in each case by reference to the Accreditation Requirements and, in respect of the procurement or maintenance (or extension, if applicable) of a Hospital Licence, the requirements of the Licensing Authority.
- (d) The Operator acknowledges that it is aware that the State has entered into this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease relying upon the warranties, acknowledgments and agreements in this clause 4.2.
- (e) The Operator has no Claim against the State or any State Related Party in respect of any breach by the Operator of this clause 4.2.

## 5. General representations, warranties and undertakings

### 5.1 Representations and warranties

- (a) **(By the State)** The State represents and warrants that:
- (i) it has the power to execute, deliver and perform its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease and all necessary action has been taken to authorise such execution, delivery and performance;
  - (ii) the obligations of the State under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease are valid and binding obligations enforceable against the State in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, Laws relating to the enforcement of creditors' rights;
  - (iii) the execution, delivery and performance of the Post-Operating Term Private Patient Portion Lease will not contravene any Law to which the State is subject; and
  - (iv) subject to the Reserved Matters, the State has full and proper right to use, licence and lease the Facility in accordance with this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.
- (b) **(By the Operator and Operator B)** The Operator and Operator B each represent and warrant that:
- (i) it is a company, duly incorporated in Australia and is existing under Australian law;
  - (ii) it has the capacity and power to execute, deliver and perform its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
  - (iii) in respect of the Operator only, the information provided by the Operator to the State or the State's Employees and Agents in connection with this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient

Portion Lease is true, accurate and complete in all material respects and not misleading (including by omission) in any material respect;

- (iv) the obligations of the Operator or Operator B (as applicable) under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease are valid, legal and binding obligations enforceable against the Operator or Operator B (as applicable) in accordance with their terms subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
  - (v) the execution, delivery and performance of the Post-Operating Term Private Patient Portion Lease by the Operator or Operator B (as applicable) will not contravene any Law to which the Operator or Operator B (as applicable) is subject, or any deed or arrangement binding on the Operator or Operator B (as applicable);
  - (vi) except as specified in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, it is not acting as trustee of any settlement or as agent for or on behalf of any other entity;
  - (vii) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
  - (viii) no circumstances, proceedings or obligations exist or are threatened which may have a material adverse effect upon the Operator or Operator B (as applicable), or the ability of either of the Operator or Operator B (as applicable) to perform its financial or other obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (c) Each representation and warranty contained in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease:
- (i) is made on the Lease Commencement Date; and
  - (ii) will be deemed to be repeated on each anniversary of the Lease Commencement Date,
- with references to the facts and circumstances then subsisting.
- (d) Each party enters into (i) the agreements between them which arise out of or in connection with this Schedule 22 (or arising out of or in connection with it) and (ii) the Post-Operating Term Private Patient Portion Lease (in each case) in reliance upon the warranties and representations made by the others in this Schedule 22.

### **5.1A Additional trustee warranties by the Operator**

The Operator represents and warrants to the State that:

- (a) it has been validly appointed as trustee of the NBH Operating Trust;
- (b) it is the only trustee of the NBH Operating Trust;
- (c) no action has been taken or is proposed to remove it as trustee of the NBH Operating Trust;
- (d) it is not in default under the Trust Deed or any of the documents constituting or governing the NBH Operating Trust;
- (e) no action has been taken, or is proposed to terminate or wind up the NBH Operating Trust;

- (f) the copies of the Trust Deed and other documents constituting or governing the NBH Operating Trust which have been delivered to the State are true copies of those documents, are not inaccurate and contain the documents and records relevant to the terms of the NBH Operating Trust;
- (g) it has power under the Trust Deed to enter into and observe its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease and it has entered into this Schedule 22 and the Post-Operating Term Private Patient Portion Lease in its capacity as trustee of the NBH Operating Trust;
- (h) it is to the commercial benefit of the NBH Operating Trust that it enters into this Schedule 22 and the Post-Operating Term Private Patient Portion Lease in its capacity as trustee of the NBH Operating Trust;
- (i) it has, in full force and effect, the authorisations necessary to enter into this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, to perform obligations under them and to allow them to be enforced (including, without limitation, under the Trust Deed, and its constitution);
- (j) it has a right to be fully indemnified out of the Trust Fund in respect of the obligations incurred by it under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease;
- (k) it has not breached any of its obligations as trustee of the NBH Operating Trust under the Trust Deed;
- (l) it is not in material breach or default of any material Trust Deed obligations in connection with its operations or assets;
- (m) no vesting date (as defined in the Trust Deed) for the NBH Operating Trust has been determined by it or any prior trustee of the NBH Operating Trust;
- (n) it and its directors and other officers have complied with their respective obligations in connection with the NBH Operating Trust;
- (o) the State's rights under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease rank in priority to the Trustee's Lien and the interests of the beneficiaries under the NBH Operating Trust;
- (p) ensure that the State has a right of subrogation to the Trustee's Indemnity;
- (q) it has full power and authority to enter into and bind the NBH Operating Trust to this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, which are expressed to be binding on the NBH Operating Trust; and
- (r) no other party to either of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease which are expressed to be binding on the NBH Operating Trust is acting as a fiduciary for the NBH Operating Trust.

## 5.2 Fit for Intended Purposes warranty

- (a) Without limiting its other obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, the Operator warrants that as at and from Lease Commencement Date and for the duration of the Private Patient Portion Term, the Private Patient Portion and, to the extent the State does not issue a notice under clause 4(b) of Part C of this Schedule 22, the Common Areas and Shared Infrastructure, will be Fit for Intended Purposes by reference to the technology

and intended use of the Private Patient Portion and, if applicable, the Common Areas and Shared Infrastructure, as at the Date of Operational Readiness; and

- (b) The Operator acknowledges and agrees that to the extent that the Licensing Authority requirements or the Hospital Licence specifies or prescribes a minimum requirement, the performance of the Services to be provided by the Operator, or the operation of the Private Patient Portion in compliance with such minimum requirements may not of itself be sufficient for the Operator to discharge its obligations pursuant to this clause 5.2.

### **5.3 Operator general undertakings**

The Operator must:

- (a) immediately upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings or Tax claim, which may adversely affect the Operator's Business, or the Operator's Post Operating Term Key Subcontractor's ability to perform its obligations under this Schedule 22 (or arising out of or in connection with it) or the agreements arising out of or in connection with this Schedule 22, or the Post-Operating Term Private Patient Portion Lease, have been commenced or threatened, give the State notice (including written particulars) of such litigation, arbitration, administrative or adjudication or mediation proceedings;
- (b) provide to the State promptly upon request, all documents provided by the Operator or a Consortium Entity to the Australian Securities Exchange (and which are generally available to the public) or which the Operator or a Consortium Entity is required by Law to issue to its shareholders, debenture holders or holders of its other marketable securities (as defined in the Corporations Act);
- (c) not without the prior written consent of the State (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Operator to perform its obligations under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease;
- (d) not cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia; and
- (e) not undertake the performance of its obligations under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease for the provision of the Services to be provided by the Operator or the operation of the Facility (including any OC Shared Areas) otherwise than through itself or a Post Operating Term Subcontractor.

#### **5.3A Operator trustee undertakings**

The Operator must:

- (a) comply fully with all of its obligations as trustee of the NBH Operating Trust, whether imposed under the Trust Deed or, in all material aspects, at law;
- (b) ensure that no waiver or revocation of the Trust Deed is made, whether formally or by conduct;
- (c) not amend, or agree to amend, or permit or allow to be amended, the Trust Deed or any other document constituting or governing the NBH Operating Trust except with the prior written consent of the State;

- (d) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Trust Deed or allow the early determination of the NBH Operating Trust;
- (e) only exercise its right to be paid or reimbursed out of Trust Property pursuant to its Trustee's Indemnity in relation to the proper performance by the Operator of its duties as trustee of the NBH Operating Trust;
- (f) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:
  - (i) the termination of the NBH Operating Trust or the termination, rescission or revocation of the Trust Deed;
  - (ii) the resettlement of any Trust Property; or
  - (iii) the resignation, retirement, removal or replacement of it as trustee of the NBH Operating Trust or the appointment of an additional trustee of the NBH Operating Trust;
- (g) ensure that:
  - (i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Trust Deed);
  - (ii) its Trustee's Lien will have priority over the rights of the beneficiaries of the NBH Operating Trust; and
  - (iii) it will not do anything that will result in any of the circumstances set out in clauses 5.3A(f)(i) or (ii) above;
- (h) not do anything (or permit anything to be done) which:
  - (i) results or may result in registration of the NBH Operating Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or
  - (ii) restricts or limits or may restrict or limit the State's rights of subrogation to the Trustee's Indemnity; and
- (i) ensure that the execution by the Operator of, and performance of their obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease does not result in:
  - (i) an encumbrance or restriction of any kind being created or imposed on the Operator as trustee of the NBH Operating Trust other than under the Operator / HAC Security;
  - (ii) any person being relieved of an obligation to the Operator as trustee of the NBH Operating Trust;
  - (iii) an obligation of the Operator as trustee of the NBH Operating Trust being accelerated;
  - (iv) any breach of any obligation, agreement or financing facility to which the Operator as trustee of the NBH Operating Trust is a party; or
  - (v) any person having a right to terminate or amend (whether or not subject to any other terms of conditions) any agreement with or rights of the Operator as trustee of the NBH Operating Trust.



## 6. Client Representative

### 6.1 Appointment of Client Representative

- (a) The State must ensure that at all times there is appointed, a natural person to be the Client Representative.
- (b) The Client Representative will:
  - (i) exercise the powers, duties, discretions and authorities as are:
    - (A) delegated by the State to be exercised by the Client Representative under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease as agent for the State to the extent of the delegation and in compliance with the delegation; or
    - (B) expressed in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease to be exercised by the Client Representative; and
  - (ii) have the full power and authority, subject to the powers of delegation by the State, to act for and on behalf of and to bind the State under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease to the extent of the delegation and in compliance with the delegation.

### 6.2 Notification of details of Client Representative

- (a) The State must procure that the Operator is notified as soon as practicable of any changes in the identity or address of the Client Representative.
- (b) To the extent that the State delegates its powers, duties, discretions and authorities to the Client Representative under clause 6.1(b)(i)(A), the State must notify the Operator of the delegation and the extent of that delegation.
- (c) Nothing in this clause 6 restricts the ability of the State to replace the Client Representative at any time.

### 6.3 Delegation by Client Representative

- (a) The Client Representative may from time to time:
  - (i) appoint one or more representatives to assist the Client Representative in exercising his or her powers, duties, discretions or authorities; or
  - (ii) vary or terminate in whole or part the appointment of, or the powers, duties, discretions or authorities of such representatives.
- (b) The appointment of a representative by the Client Representative does not prevent the Client Representative from exercising any of his or her powers, duties, discretions and authorities.
- (c) The Client Representative must, as soon as practicable after any appointment of a representative in accordance with clause 6.3(a), notify the Operator Representative of such appointment and the extent of such appointment.
- (d) Any action taken by such representative which is within the scope of their appointment will be deemed to be an act of and will bind the Client Representative and the State.

### 6.4 Management of Project Documents

- (a) The Operator must comply with the directions of the Client Representative made under, or purported to be made under, a provision of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.

- (b) A direction of the Client Representative includes any instruction, order, request, requirement, or authorisation of the Client Representative and may be given orally. If given orally, a direction must be promptly confirmed in writing by the Client Representative.
- (c) Actions of the Client Representative and its delegates in accordance with this clause 6 are binding on the State to the extent set out in clause 6.1(b)(ii), including where rights and obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease are expressed to be rights and obligations of the Client Representative. If the Client Representative fails to comply with the obligations in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease that are expressed to be the obligations of or the responsibility of the Client Representative, such failure will be deemed to be a failure of the State.
- (d) No direction or consent of the Client Representative is to be taken as approval of any Services to be provided by the Operator that do not conform to this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, and the Client Representative has no authority orally to waive any provision of, or release the Operator from, its obligation under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease. Without limiting clause 93, any such approval, waiver or release must be expressly identified as such, can only be given in writing, and is only effective if signed by the Client Representative and no delegate of the Client Representative is authorised or empowered to give any such approval, waiver or release.

## **6.5 Operator Representative**

The Operator must:

- (a) ensure that at all times there is appointed a natural person to be the Operator Representative, who:
  - (i) may exercise the powers, duties, discretions and authorities of the Operator under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease as agent for the Operator; and
  - (ii) will have the full power and authority to act for and on behalf of and to bind the Operator under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease; and
- (b) notify the State as soon as practicable in the identity or address of the Operator Representative.

Actions of the Operator Representative are binding on the Operator.

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## **9. Contamination**

### **9.1 General notice of Contamination**

- (a) Each party must advise the other party as soon as it becomes aware of:
  - (i) any Contamination in, on or under the Facility; or
  - (ii) any Contamination which has emanated or is emanating from the Facility,
 at any time during the Private Patient Portion Term, regardless of whether a Contamination Remediation Notice has been issued in respect of that Contamination.

- (b) If the State or the Operator receives a Contamination Remediation Notice, it must provide to the other party and the Client Representative:
  - (i) a copy of the Contamination Remediation Notice within seven days after receipt of the Contamination Remediation Notice; and
  - (ii) copies of all reports, invoices and other documents relating to the party's compliance with the Contamination Remediation Notice and any other information relating to the Contamination Remediation Notice or the party's compliance with it within 7 days following a request by another party or the Client Representative.

## 9.2 Operator obligation to Remediate Contamination

The Operator must:

- (a) in accordance with this clause 9.2, Remediate:
  - (i) any Contamination in, on, or under; or
  - (ii) any Contamination which has emanated, or is emanating from, the Private Patient Portion;
- (b) without limiting its obligations arising out of or in connection with this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, Remediate Contamination referred to in clause 9.2(a):
  - (i) in accordance with the relevant Remediation Action Plan;
  - (ii) without limiting clause 9.2(b)(i), if a Contamination Remediation Notice (regardless of to whom the notice is issued or addressed) is issued in respect of the Private Patient Portion, promptly and in accordance with the requirements set out in the Contamination Remediation Notice; and
  - (iii) without limiting clauses 9.2(b)(i) to 9.2(b)(iii) (inclusive), in a manner and to a standard necessary to ensure that the Private Patient Portion is suitable for the Operator's Business and the provision of the Services to be provided by the Operator and otherwise the proposed use of the Private Patient Portion; and
- (c) comply with all binding requirements of an Authority in respect of any Contamination referred to in clause 9.2(a) or any Remediation of any such Contamination.

## 9.3 Submission of Remediation Action Plan

- (a) Promptly on becoming aware of any Contamination referred to in clause 9.1 or any Contamination Remediation Notice in clause 9.1(b), the Operator must submit to the Client Representative for the Client Representative's review a plan regarding the Remediation of that Contamination (**Remediation Action Plan**).
- (b) A Remediation Action Plan submitted in accordance with paragraph (a) must include details of:
  - (i) all investigations carried out or to be carried out in relation to the Contamination;
  - (ii) the location of the Contamination;
  - (iii) the quantity and type of Contamination;
  - (iv) any proposed works to effect the Remediation;
  - (v) the proposed timeframe for the execution of the proposed Remediation works; and
  - (vi) the estimated costs to be incurred in executing the Remediation Action Plan.

#### **9.4 State response to Remediation Action Plan**

- (a) The State must, within 20 Business Days after receipt of the relevant Remediation Action Plan:
  - (i) review that Remediation Action Plan and return it marked 'No Comment'; or
  - (ii) request the Operator to amend that Remediation Action Plan and provide details of the amendments requested.
- (b) The Operator must not Remediate Contamination under any proposed Remediation Action Plan or amended Remediation Action Plan until that plan is returned to the Operator by the State with the statement 'No Comment'.
- (c) If the Operator refuses to accept any amendments to the proposed Remediation Action Plan as requested by the State pursuant to clause 9.4(a), the State may elect to carry out the Remediation works itself or engage a third party to do so.
- (d) If the State elects to carry out the Remediation works itself or engages a third party to do so:
  - (i) the State must ensure that the Remediation works are executed in accordance with all relevant Laws and Consents; and
  - (ii) subject to clause 9.5, the costs reasonably incurred by the State in executing the Remediation works are moneys owing by the Operator to the State.

#### **9.5 The Operator's entitlement to compensation for Remediation**

Subject to clauses 9.6 and 9.7, the Operator will be entitled to compensation from the State for the direct costs properly and reasonably incurred by the Operator in Remediating Contamination to the extent required by clause 9.2(a) if and to the extent that:

- (a) the Contamination was caused or contributed to by the State or a State Related Party after the Lease Commencement Date (to the extent of that contribution);
- (b) the Operator has submitted a Remediation Action Plan in accordance with clause 9.3;
- (c) the State has reviewed any proposed Remediation Action Plan and returned it to the Operator without any comment or marked 'No Comment';
- (d) the Operator has Remediated the Contamination in accordance with the Remediation Action Plan reviewed in accordance with clause 9.5(d);
- (e) the Operator has used all reasonable endeavours to minimise the Liabilities incurred by the Operator in Remediating the Contamination; and
- (f) the Operator has otherwise complied with the Client Representative's reasonable directions in relation to the relevant Contamination,

except to the extent that:

- (g) the Operator was required to manage or mitigate against the risk of such Contamination and did not do so;
- (h) a competent and experienced contractor, acting reasonably in the circumstances, would have taken preventative measures to prevent or minimise the risk and the Operator did not do so; or

- (i) the Contamination has occurred as a result of or was contributed to by any act or omission of the Operator or any Operator Related Party or the breach by the Operator of an obligation under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease.

Subject to this clause 9.5 and clause 9.7, the Operator will not be entitled to relief from its obligations under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease or compensation in connection with, Contamination, the Remediation of Contamination or any Contamination Remediation Notice.

## **9.6 Exclusions**

The Operator will not be entitled to compensation from the State under clause 9.5 for the direct costs reasonably incurred by the Operator in connection with:

- (a) any investigations of the Facility carried out or procured by the Operator to determine the presence of Contamination;
- (b) any costs for the management, handling or disposal of General Solid Waste from the Private Patient Portion; or
- (c) any delay or disruption to the Operator's Business resulting from any Contamination.

## **9.7 Calculation of compensation**

- (a) Subject to clauses 9.5 and 9.7(b), the State must pay to the Operator the direct costs reasonably incurred by the Operator in Remediating Contamination referred to in clause 9.5.
- (b) The compensation payable to the Operator pursuant to clause 9.5(a) will be reduced to the extent the Contamination, the consequential Remediation works or the legal obligation to execute the Remediation works occurred or the costs incurred by the Operator in connection with the Contamination or Remediation arose as a result of or were contributed to by any act or omission of the Operator or an Operator Group or an Operator Related Party (other than the Operator acts or omissions expressly permitted under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease).

## **9.8 Release by the Operator**

Subject to clauses 9.5 and 9.7, the Operator releases the State and State Related Parties from all Liabilities and Claims arising out of or in respect of Contamination existing in, on, or under, or migrating onto or emanating from, the Private Patient Portion.

## **9.10 Assist the State**

The Operator must provide all information and assistance required by the Client Representative in order for the State to discharge any obligation it has under legislation in connection with Contamination in, on, or under, or which has emanated or is emanating from the Private Patient Portion.

## **9.11 Environmental audit**

- (a) The Operator must undertake a Contamination Assessment at or around the time the Handover Audit is undertaken pursuant to clause 9.1.4.
- (b) The Contamination Assessment must confirm that any Contamination in, on, or under, or which has emanated or is emanating from the Private Patient Portion does not present a risk of harm to the Environment or the Private Patient Portion, and is suitable for the provision of the Services to be provided by the Operator and otherwise the proposed use of the Private Patient Portion.

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## 13. Post Operating Term Project Plans

### 13.1 Purpose

The intended purposes of the Post Operating Term Project Plans include:

- (a) to demonstrate to the State that the Operator has the understanding, capacity and capability at all times to perform the Operator's Business safely and in accordance with the requirements of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease; to ensure that the Services to be provided by the Operator and the Private Patient Portion comply with the requirements of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease;
- (b) to define responsibilities, resources and processes for planning, performing and verifying that the Operator's Business and the Services to be provided by the Operator satisfy the requirements of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease; and
- (c) to allow the State to understand how the Operator will achieve the performance outcomes specified in this Schedule 22 and the Post-Operating Term Private Patient Portion Lease and otherwise fulfil its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.

### 13.2 Preparation of Post Operating Term Project Plans

The Operator must:

- (a) prepare each Post Operating Term Project Plan based on the reasonable requirements of the State; and
- (b) submit each Post Operating Term Project Plan (including each updated Post Operating Term Project Plan) to the State in a manner and at a rate which:
  - (i) will give the Client Representative a reasonable opportunity to review the submitted Post Operating Term Project Plans within the 20 Business Day period referred to in clause 13.5(a)(ii); and
  - (ii) is otherwise in accordance with this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.

### 13.3 Fitness for purpose

The Operator warrants that each Post Operating Term Project Plan will at all times be fit for its purposes.

### 13.4 Updated Project Plans

Without limiting the other obligations of the Operator under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, the Operator must:

- (a) review and, if necessary or if otherwise required by this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, update the Post Operating Term Project Plans to take account of events or circumstances which will, or may, affect the manner in which the Operator carries out the Operator's Business and the Services to be provided by the Operator including:
  - (i) changes to the manner in which the Services to be provided by the Operator are being provided or the Private Patient Portion is being used;

- (ii) Changes in Law, Consents and Policies;
  - (iii) deficiencies in or omissions from the Post Operating Term Project Plans;
  - (iv) changes in the requirements of Authorities or providers of Utilities;
  - (v) changes to work practices;
  - (vi) changes in Good Industry Practice or Good Operating Practice; and
  - (vii) any breach or potential breach of the warranty in clause 13.3;
- (b) promptly submit each Post Operating Term Project Plan updated under clause 13.4(a) to the Client Representative;
  - (c) without limiting clause 13.4(a), update each Post Operating Term Project Plan at the times required by the Post Operating Term Project Plan Schedule 22 and the Post-Operating Term Private Patient Portion Lease and provide such updated Post Operating Term Project Plans to the Client Representative;
  - (d) not update any Post Operating Term Project Plan in a manner which makes the State's obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease more onerous or increases any liability or potential liability of the State or a State Related Party; and
  - (e) ensure that any updated Post Operating Term Project Plans:
    - (i) are based upon;
    - (ii) impose standards, levels of service, scope and requirements that are equal to, greater or higher than those imposed by; and
    - (iii) provide an equal or greater level of detail than,
 

the initial versions of the Post Operating Term Project Plans (where applicable) and any version of the Post Operating Term Project Plan which has been submitted to the State and in respect of which the State has not given a notice under clause 13.5(a)(ii).

### **13.5 State may review Post Operating Term Project Plans**

- (a) Without limiting the Client Representative's other rights in respect of a Post Operating Term Project Plan under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, the Client Representative may at any time:
  - (i) review any Post Operating Term Project Plan submitted under this clause 13 (including under clauses 13.2, 13.4 and 13.6); and
  - (ii) within 20 Business Days after the submission of the Post Operating Term Project Plan, notify the Operator if the Client Representative has reasonably formed the view that the Post Operating Term Project Plan does not comply with the requirements of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (b) If the Operator receives a notice in accordance with clause 13.5(a)(ii), the Operator must, within 20 Business Days, submit the revised Post Operating Term Project Plan to the Client Representative in which case the provisions of this clause 13.5 will reapply to the revised Post Operating Term Project Plan.
- (c) The exercise (or failure to exercise) by the Client Representative of any of its rights under this clause 13.5 will not preclude the State from subsequently asserting that the Post

Operating Term Project Plan does not comply with the requirements of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.

- (d) For the purposes of a review under this clause 13.5, if requested by the Client Representative, the Operator must:
- (i) make available to the Client Representative all relevant records held by the Operator and the Operator's Post Operating Term Subcontractors in relation to the Post Operating Term Project Plan; and
  - (ii) provide all reasonable assistance to the Client Representative during the review including attending reviews and meetings.

### **13.6 State may request updates**

If the Client Representative has reasonably formed the view that:

- (a) any Post Operating Term Project Plan does not comply with the requirements of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease (including Good Industry Practice or Good Operating Practice); or
- (b) the Operator has not updated any Post Operating Term Project Plan in accordance with the requirements of clause 13.4(a),

the Client Representative may by written notice request that the Operator amend or update the Post Operating Term Project Plan specifying:

- (c) the reasons why such updating is required (or why the Post Operating Term Project Plan does not comply with this Schedule 22 or the Post-Operating Term Private Patient Portion Lease); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the Operator must:

- (e) amend or update the Post Operating Term Project Plan as requested by the State and in the manner required by this Schedule 22 or the Post-Operating Term Private Patient Portion Lease; and
- (f) submit the amended or updated Post Operating Term Project Plan to the State within the time specified under clause 13.6(d).

### **13.7 Implementation and compliance**

- (a) The Operator must comply with each Post Operating Term Project Plan which has been submitted to the State and for which the State has not given a notice under clause 13.5(a)(ii).
- (b) The Operator must allow the Client Representative access to the Post Operating Term Project Plans and any related contract management systems of the Operator to enable monitoring and auditing by the State provided that the State will carry out such inspection, monitoring and auditing in a manner which does not unreasonably interfere with the Operator's Business.

### **13.8 No relief**

The Operator will not be relieved from compliance with any of its obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease or from any of its liabilities whether under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease or otherwise according to Law as a result of:



- (a) compliance by the Operator with its obligations under this clause 13 including the implementation of, and compliance with any Post Operating Term Project Plans; or
- (b) any failure by the Client Representative, or anyone else acting on behalf of the State, to detect any non-compliance including where any failure arises from any negligence on the part of the Client Representative or any other person.

Compliance by the Operator with its obligations under this clause 13 (including clause 13.7) is not evidence of compliance by the Operator with its other obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.

### **13.9 Handover Plan – Appendix A**

Notwithstanding any other provision in this Schedule 22, the Post-Operating Term Private Patient Portion Lease or any other Project Document to which the State is a party, the Handover Plan – Appendix A (as defined in the Main Body and as verified by the State Surveyor pursuant to clause 32.3 of the Main Body) forms a part of this Schedule 22 and is binding on the Operator and the State for the purposes of demarcating the Public Patient Portion, Private Patient Portion, Shared Areas, Designated Commercial Areas, Private Consulting Suites and GP Clinic within the Facility. Neither party may amend the Handover Plan – Appendix A without the prior written consent of the other party.

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## **50. Facility**

### **50.1 General Facility provisions**

- (a) The Facility may be accessed by the Operator only for the purpose of gaining access to the Private Patient Portion and the Shared Areas and otherwise exercising its rights or performing its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.
- (b) The Operator must comply with State- and health-wide smoking and healthy living policies at the Facility as if the Facility was a NSW public hospital and must ensure that the Personnel required for the Operator's Business or delivering the Services to be provided by the Operator and Hospital Users in the Private Patient Portion and the Shared Areas comply with this requirement.
- (c) The State may (acting reasonably) refuse admittance to, or require the removal or non-admittance of, any person (other than individuals employed or engaged by the Operator or individuals employed or engaged by a Post-Operating Term Subcontractor, who are addressed in clause 59) from the Facility whose presence poses, or is reasonably believed by the State to pose, a risk to the health or well-being of the Hospital Users. Such action does not relieve the Operator of any of its obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (d) If the State refuses admittance or requires the removal of a person under clause 50.1(c) or otherwise under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, the Operator must, at its own cost, promptly remove the person and if the person is removed under clause 59.1(c)(v), arrange a replacement for that person.

# 51 Fundamental obligations

- (a) During the Private Patient Portion Term, the Operator must conduct the Operator's Business and provide the Services to be provided by the Operator in accordance with this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, including:
  - (i) in accordance with the Post Operating Term Project Plans;
  - (ii) in accordance with Good Operating Practice and ensuring that for the duration of the Private Patient Portion Term the Private Patient Portion is Fit For Intended Purpose; and
  - (iii) in accordance with all Health Policies applicable to the operation of a private health facility (as that term is defined in the Hospitals Act) and all other Health Policies as notified by the State to the Operator from time to time.

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# 52 Provision of Services and Operations

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## 52.2 Inappropriate transfer

- (a) The Operator must not, subject to paragraph (c), inappropriately transfer a Compensable Patient to a public health service or facility.
- (b) For the purposes of this clause 52.2, an inappropriate transfer will occur where a Compensable Patient:
  - (i) with a condition that is consistent with the role delineation of the Private Patient Portion required by this Schedule 22 is transferred to a public health service or facility; or
  - (ii) is transferred to any public health service or facility, and that Compensable Patient's required level of care exceeds the role delineation for the receiving service or facility,

but does not include, for the avoidance of doubt, transfers relating to a reversal of Patient election from being a Compensable Patient to a public Patient provided that, in relation to that reversal and Episode of Care, the Operator:

  - (iii) complies at all times with the NHRA; and
  - (iv) certifies to the State that the relevant reversal and resulting Episode of Care resulted from 'unforeseen circumstances' (as defined in the NHRA).
- (c) The Operator may transfer a Compensable Patient to a public health service or facility if there is an urgent and critical clinical need to do so having regard to Good Operating Practice, provided that this will still constitute an inappropriate transfer for the purposes of this clause 52.2 if it would otherwise satisfy the criteria in paragraph (b).
- (d) The State is entitled to recover from the Operator the net cost to the State of treating any Compensable Patient who has been inappropriately transferred to a public health service or facility in accordance with clauses 12.2 and 13 of Part C of this Schedule 22.

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## 52.6 Medicare principles

- (a) The parties acknowledge the provisions of the Medicare Act, the Health Insurance Act and of the NHA whereby medical principles and commitments have been agreed between the parties to the NHA.
- (b) The Operator further acknowledges and agrees that:
  - (i) those principles and commitments and any amendments to them and any future Medicare principles and commitments agreed between those same parties will be honoured and observed in the operation of the Private Patient Portion, including a person's right to choose to be treated as a public patient; and
  - (ii) the Operator must do all things necessary to facilitate, and not do anything to prejudice, the State's rights and entitlements under the Medicare Act, Health Insurance Act and the NHA, including not claiming a Medicare benefit (as that term is defined in the Health Insurance Act) in relation to the delivery of a Service for which the Operator is paid by the State under this Schedule 22.

...

## 52.11 Private Patient Portion

At all times in respect of the Private Patient Portion and the Services to be provided by the Operator, the Operator:

- (a) must maintain a Hospital Licence in respect of the Private Patient Portion and (if required at law) the Shared Areas;
- (b) must ensure that the clinical and other activities performed by or on behalf of the State within or from the Facility are in no way prejudiced or compromised;
- (c) is only entitled to provide services to Compensable Patients which are complementary to, and do not interfere with, the Services provided by or on behalf of the State from the Facility;
- (d) must ensure that the role delineation of services offered to Compensable Patients at the Private Patient Portion and the Shared Areas is not less than the role delineation of the equivalent Services then being provided or available to be provided by or on behalf of the State from the Facility;
- (e) must use its best endeavours to maximise the number of Patients who elect to use their private health insurance or are otherwise converted to being Compensable Patients at all times;
- (f) must do all things necessary to ensure that the Private Patient Portion is able to, and does, operate to its full capacity in accordance with:
  - (i) the Private Patient Portion role delineation referred to in paragraph (d); and
  - (ii) without limiting paragraph (d), the Compensable Patient Strategy,in each case at all times, regardless of the presence of any Disaster or emergency situation and any other circumstances;
- (g) must ensure at all times that the number of Beds designated for use by Compensable Patients is not less than 173;

- (i) must ensure that any naming rights granted in respect of any part of the Private Patient Portion comply with the requirements of the signage specification, and do not endure beyond the term of the Operator's leasehold interest in the Private Patient Portion.

...

## 54. Reporting, Notification and Medical Records

### 54.1 Fundamental reporting obligations

The Operator must give the State all reports and information specified in, and at the times specified in, the Reporting Schedule.

### 54.2 Notification of safety issues

The Operator must:

- (a) identify and enquire into:
  - (i) any activity performed or occurrence at the Private Patient Portion or the Shared Areas which may:
    - (A) give rise to health and safety risks for the Hospital Users, or any of their officers, employees, agents or consultants; or
    - (B) adversely affect the provision of services by or on behalf of the State from the Facility; and
  - (ii) any accidents or other incidents involving any (or any risk of) loss, injury or damage to persons (including death) or property of any kind, which occurs on or about the Facility to the extent only the Operator has actual knowledge of such accident or other incident (provided that the Operator must in such circumstances make reasonable enquiries to ascertain whether the State has actual knowledge of such accident or other incident);
- (b) in the case of the matters referred to in paragraph (a)(i), give the Client Representative written notice of each such matter as soon as reasonably practicable after it is identified; and
- (c) in the case of the matters referred to in paragraph (a)(ii), give the Client Representative a detailed written report of such matters as soon as reasonably practicable after such accident or incident occurs.

### 54.3 Notification of industrial issues

The Operator must:

- (a) keep the Client Representative regularly informed of any industrial action which may affect the Private Patient Portion or the Services to be provided by the Operator;
- (b) promptly inform the Client Representative of:
  - (i) any industrial action which causes the Operator to suspend or cease any significant part of the Operator's Business or the Services to be provided by the Operator; and
  - (ii) what action or measures (including settlement) the Operator has taken or proposes to take to overcome, or minimise the effects of, such industrial action; and

- (c) promptly inform the Client Representative of any industrial action affecting the Operator or any Post Operating Term Subcontractor or any employees of either of them which may affect the operation of the Facility.

...

#### **54.5 Notification of damage, defect and other incident**

- (a) The Operator must advise the Client Representative promptly in writing of any material damage or repairs affecting the Facility of which the Operator is aware, and the action the Operator proposes to take to correct that material damage or disrepair, and the estimated time that correction will require.
- (b) For the purposes of this clause 54.5, material damage or repairs means any damage the cost of repair of which is in excess of \$50,000 (Indexed).
- (c) The Operator must immediately inform the Client Representative of any other incident which causes the Operator to suspend or cease carrying out all or any significant part of the Operator's Business or the Services to be provided by the Operator from the Private Patient Portion or which may significantly adversely affect the State's activities in the balance of the Facility.

#### **54.6 Monitoring and records**

- (a) The Operator will promptly provide to the Client Representative copies of all information, records or documents which the State reasonably requires in relation to the:
  - (i) OC Shared Areas;
  - (ii) Services to be provided by the Operator; or
  - (iii) Operator's compliance with its obligations under clauses 52.11(d), 52.11(f), 52.11(g) and 52.11(h) of this Part D; and
- (b) The Operator must retain all records and statements in relation to the Private Patient Portion and the Shared Areas for at least five years after the Operator's obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease have ended.

...

#### **54.8 Other reporting and notification obligations**

The Operator must:

- (a) give the State, if the State is, or is likely to become, liable to pay a Termination Payment, reasonable details of each component of that amount and the way in which the component was calculated, promptly after being requested to do so by the State;
- (b) give the State, as soon as practicable, copies of:
  - (i) all notices and other documents given or received by the Operator, the Parent Company or an Equity Investor to or from the Australian Securities and Investments Commission or the Australian Stock Exchange Limited; and
  - (ii) all other notices to Equity Investors and all notices from an Equity Investor to the holder of any securities issued by the Equity Investor;
- (c) promptly give the State such other information relating to the Private Patient Portions and the Services to be provided by the Operator as the State may reasonably require from time to time;

- (d) give the State as soon as practicable certified copies of all notices of default, breach or dispute given or received by it under any document relating to the Facility from any counterparty to those documents; and
- (e) advise the State as soon as practicable after an event has occurred which, to the Operator's actual knowledge, could in any way materially prejudice the State's rights under this Schedule 22, the Post-Operating Term Private Patient Portion Lease or its activities at the Facility by reason of the exercise of rights available to third parties arising from any contractual arrangement.

## **54.9 Medical Records**

- (a) All Medical Records delivered to the Operator by the State from time to time during the Private Patient Portion Term remain the property of the NSLHD. The NSLHD and its successors are entitled to access the Medical Records at all times.
- (b) The Operator acknowledges and agrees that:
  - (i) Medical Records delivered to it by the State may be subject to the GIPA Act and the Privacy Legislation and may be required to be delivered to the State under the GIPA Act or the Privacy Legislation if required for the purposes of the GIPA Act or the Privacy Legislation; and
  - (ii) it will provide all assistance reasonably required by the State in relation to the processing of any applications made under the GIPA Act.
- (c) The Operator must, at all times during the Private Patient Portion Term, ensure that:
  - (i) the Medical Records of all Public Patients bear appropriate identification as is agreed by the State and the Operator from time to time;
  - (ii) subject to clauses 54.9(a) and 54.9(b) and to clause 92.3, all Medical Records of Public Patients remain the property of the State; and
  - (iii) copies of any Medical Records which are in the Operator's possession are provided to other health care facilities in the event that the Public Patient to which they relate is transferred to or treated from that facility.
- (d) The Operator must, as required by the State or any Authority or any other private hospital or public hospital (as defined in the Hospitals Act) make the Medical Records of all Public Patients treated at the Facility available in a manner consistent with State requirements.

...

## **56. Post Operating Term Associated Commercial Facilities**

### **56.2**

### **56.3 [Not used]**

### **56.4 General obligations**

- (a) Subject to clause 56.6, the Operator must use its best endeavours (and procure that any person operating a Post Operating Term Associated Commercial Facility uses its best endeavours) to pursue all opportunities available to it in respect of the Post Operating Term Associated Commercial Facilities and, to the greatest extent possible, ensure that:
  - (i) all available space within the Designated Commercial Areas is appropriately utilised;
  - (ii) there are sufficient Post Operating Term Associated Commercial Facilities within the Designated Commercial Areas to conveniently meet the needs of the State, State Related Parties and Hospital Users; and
  - (iii) Post Operating Term Associated Commercial Facilities are operated so as to optimise their usage and amenity for the State, the State Related Parties and other Hospital Users.
- (b) The Operator must, in respect of each Post Operating Term Associated Commercial Facility, deliver to the Client Representative (or procure the delivery to the Client Representative by the relevant Post Operating Term Subcontractor) the Post Operating Term Associated Commercial Facilities Plan updated to incorporate that Post Operating Term Associated Commercial Facility, prior to the date the relevant Post Operating Term Associated Commercial Facility is made available for use.
- (c) The Post Operating Term Associated Commercial Facilities Plan must be updated at any time that a material change occurs in the nature of the trading activities or business of a Post Operating Term Associated Commercial Facility (including to the nature of trade, material expansion or contraction or a merger, amalgamation or temporary closure).
- (d) In operating the Post Operating Term Associated Commercial Facilities, the Operator must comply (and procure that any person operating a Post Operating Term Associated Commercial Facility complies) with the Post Operating Term Associated Commercial Facilities Plan.

## **56.5 Presentation of Post Operating Term Associated Commercial Facilities**

The Operator must ensure (and procure that any person operating or managing a Post Operating Term Associated Commercial Facility within the Designated Commercial Areas ensures) that:

- (a) all Post Operating Term Associated Commercial Facilities within the Designated Commercial Areas are clean, tidy and well presented; and
- (b) unless the Client Representative otherwise agrees:
  - (i) all stock and supplies are delivered, and all waste is removed; and
  - (ii) all maintenance or other servicing of any Post Operating Term Associated Commercial Facility is done (unless there is an emergency or an issue of health and safety),

at times and in a manner to minimise the effect on the Facility.

## **56.6 Restrictions**

The Operator must:

- (a) ensure that in operating a Post Operating Term Associated Commercial Facility it (or procures that any other person operating a Post Operating Term Associated Commercial Facility):
  - (i) only undertakes activities which are complementary to being located at a public and private hospital;
  - (ii) does not at any time sell alcohol or tobacco products;
  - (iii) operates a business which actively supports and does not violate the Health Policies or:
    - (A) the NSW Government's 'Plan for Preventing Overweight and Obesity in Children, Young People & their Families 2009 – 2011';
    - (B) the NSW Health policy directive entitled 'Live Life Well @ Health: Healthier Food and Drink Choices - Staff and Visitors in NSW Health Facilities'; and
  - (iv) does not operate a business which does not provide any amenity to the Facility or any Hospital User,  
at or from the Facility; and
- (b) not otherwise use, and must ensure that no other person otherwise uses, the Post Operating Term Associated Commercial Facilities to operate any business or activity which may be offensive to the State, a State Related Party or other Hospital Users.

## **56.7**



## **56.8 Risk**

The Operator assumes all operating risks associated with the Post Operating Term Associated Commercial Facilities (including revenue risk) and will pay all outgoings which relate to the Post Operating Term Associated Commercial Facilities including Utilities.

...

## 58. Post Operating Term Subcontracts

### 58.1 Subcontracting

- (a) The Operator must not subcontract any of the OC Shared Clinical Services or OC Shared Non-Clinical Support Services, except under the Parent Company Subcontract and otherwise in accordance with this clause 58.
- (b) The Operator is not relieved of any of its Liabilities or obligations under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease as a result of any subcontracting of the Services to be provided by the Operator, the operation or maintenance of the Private Patient Portion or the approval of any Post Operating Term Subcontractor, and the Operator is at all times responsible for the performance of all Post Operating Term Subcontractors.

### 58.2 Post Operating Term Subcontract requirements

- (a) The Operator must promptly provide to the Client Representative a copy of each Post Operating Term Material Subcontract entered into or proposed to be entered into involving any of the Services to be provided by the Operator to the State.
- (b) The Operator must ensure that no Post Operating Term Key Subcontractor is engaged in connection with the Services to be provided by the Operator or the operation or maintenance of the Private Patient Portion without the Operator and the relevant Post Operating Term Key Subcontractor having delivered to the Client Representative a duly executed side deed in respect of its Post Operating Term Key Subcontract.

### 58.3 Subcontracting obligations

The Operator must:

- (a) comply with its obligations under and enforce the terms of any Post Operating Term Subcontract to which it is a party;
- (b) ensure that the relevant Post Operating Term Subcontractor complies with the obligations imposed on the Post Operating Term Subcontractor under the Post Operating Term Subcontract to which it is a party;
- (c) not later than the tenth day of each month provide to the Client Representative:
  - (i) a statutory declaration, signed by an authorised officer of the Operator, confirming that all amounts payable under Post Operating Term Subcontracts to which it is a party which fell due for payment in the month immediately preceding have been paid or otherwise discharged by the Operator except for those amounts genuinely in dispute; and
  - (ii) details of each formal dispute with a Post Operating Term Material Subcontract or arising in connection with the Operator's Business or the Services to be provided by the Operator arising out of or in connection with this Schedule 22;
- (d) not without the Client Representative's prior written consent permit any variation or amendment to, departure from, termination or assignment or replacement of:
  - (i) a Post Operating Term Key Subcontract; or
  - (ii) a Post Operating Term Material Subcontract, where it may impact the rights of the State or the ability of the Operator to satisfy its obligations under this Schedule 22 or arising out of or in connection with it, or the Post-Operating Term Private Patient Portion Lease;

- (e) give the Client Representative notice of the termination or material amendment of a Post Operating Term Material Subcontract immediately upon the Operator becoming aware of such termination or material amendment;
- (f) not without the Client Representative's prior written consent, compromise or waive any claim it may have against a Post Operating Term Material Subcontractor, where it may impact the rights of the State or the ability of the Operator to satisfy its obligations under this Schedule 22 (or arising out of or in connection with it), or the Post-Operating Term Private Patient Portion Lease;
- (g) not engage any new subcontractor, who would become a Post Operating Term Key Subcontractor on such engagement, without the State's prior written consent;
- (h) ensure that each Post Operating Term Subcontract in respect of Post Operating Term Associated Commercial Facilities contains terms reflecting the Post Operating Term Associated Commercial Facilities Plan;
- (i) ensure that each Post Operating Term Key Subcontract contains terms confirming that such Post Operating Term Key Subcontract is entered into subject to the terms of the relevant side deed entered into pursuant to clause 58.2(b) (including any step-in rights of the State); and
- (j) ensure that each Post Operating Term Material Subcontract contains terms such that:
  - (i) the Post Operating Term Material Subcontract is terminable or able to be novated to the State at the option of the State upon termination of the Private Portion Lease; and
  - (ii) the relevant Post Operating Term Material Subcontractor has no Claim against the State in respect of such termination.

#### **58.4 Ability to perform obligations**

The Operator must ensure that each Post Operating Term Subcontractor is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by this Schedule 22 or arising out of or in connection with it and the Post-Operating Term Private Patient Portion Lease.

#### **58.5 Insurance**

The Operator must ensure that no Post Operating Term Subcontractor in connection with the Operator's Business, the Services to be provided by the Operator or the operation or maintenance of the Private Patient Portion is engaged by it (either directly or indirectly) without the relevant Post Operating Term Subcontractor:

- (a) having taken out workers' compensation insurance; and
- (b) being insured for public liability insurance and professional indemnity insurance.

#### **58.6 Agreed form**

Unless otherwise agreed in writing by the Client Representative, each Post Operating Term Key Subcontract must remain in the form agreed by the State on or prior to the Lease Commencement Date.

#### **58.7 Amendment and termination**

The Operator agrees that, no amendment to, departure from, termination or assignment or replacement of a Post Operating Term Material Subcontract made without the written consent of the Client Representative will be binding on the State or affect or prejudice the rights of the State

against the Operator under this Schedule 22 or arising out of or in connection with it or the Post-Operating Term Private Patient Portion Lease, or under a side deed, or in any other way.

## 59. Employment at the Private Patient Portion generally

### 59.1 Responsibility for Workforce Matters and Industrial Relations Matters

- (a) Subject to this clause 59, the Operator is solely responsible for the management of all Workforce Matters and Industrial Relations Matters in connection with the Operator's Business and in delivering the Services to be provided by the Operator pursuant to this Schedule 22 or arising out of or in connection with it, provided that the Operator must comply with any reasonable direction of the State in relation to any Workforce Matter or Industrial Relations Matter.
- (b) Other than as expressly provided in this Schedule 22 or arising out of or in connection with it or the Post-Operating Term Private Patient Portion Lease, the Operator is entirely responsible for the engagement of all Personnel required for the Operator's Business or delivering the Services to be provided by the Operator. The Operator must ensure that all Personnel are paid all amounts, and receive all benefits, including but not limited to remuneration, allowances, performance payments, incentive payments, superannuation contributions, annual leave, personal/carer's leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance, to which the Personnel are or become entitled.
- (c) Without limitation, the Operator must:
  - (i) when reasonably requested to do so by the State, attend meetings to discuss Workforce Matters and Industrial Relations Matters;
  - (ii) keep the State informed of all Workforce Matters and Industrial Relations Matters that may affect the ability of the Operator to perform its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, and promptly provide any relevant information to the State;
  - (iii) ensure that Post Operating Term Subcontractors are aware of and meet the terms of employment prescribed in any applicable industrial instrument, or any other statutory or legal obligation applying to Personnel who are engaged in connection with the Operator's Business or delivering the Services to be provided by the Operator. This includes payment of wages, superannuation, taxes and any other payments or contributions required by Law to be made in respect of employees, and all tax deductions required by Law;
  - (iv) ensure that Personnel do not engage in workplace behaviour which contravenes the Operator's policies in relation to workplace behaviour and fitness for work; and
  - (v) remove any Personnel from the Private Patient Portion within 24 hours of the State reasonably requesting that it do so.
- (d) The Operator must provide evidence of its compliance with this clause 59.1 if requested by the State to do so.

## 59.2 Operator's obligations in respect of all Personnel

- (a) The Operator must ensure that, at all times, all Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator:
  - (i) are properly authorised, qualified, accredited (including, where applicable, registered), skilled, trained and experienced to discharge their duties;
  - (ii) are fit to carry out their duties;
  - (iii) comply with applicable Laws, including the *Child Protection (Working with Children) Act 2012* (NSW), where applicable;
  - (iv) are attired in a clean, well maintained and appropriate uniform that complies with the WHS Legislation, as well as identification badges or labels and appropriate safety equipment;
  - (v) comply with any directions of the State or the Client Representative given under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease; and
  - (vi) act in good faith in the discharge of their duties.
- (b) Prior to engaging any Personnel to carry out the Operator's Business or the Services to be provided by the Operator, the Operator must satisfy itself that they are fit and proper persons to carry out the Services, including by requiring such Personnel to undergo pre-employment health screening and provide a National Police Certificate and/or working with children check clearance under the *Child Protection (Working with Children) Act 2012* (NSW), where appropriate.
- (c) The Operator must provide Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator with a formal induction and staff handbooks, which include appropriate policies dealing with equal employment opportunity, discrimination, harassment, bullying and work health and safety issues.

...

## 59.6 VMOs

The Operator must make its own arrangements with all VMOs involved in the Operator's Business.

## 59.7 Independent contractors and Post Operating Term Subcontractors

- (a) The Operator and all Post Operating Term Subcontractors are independent contractors and nothing contained in this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease will be construed as constituting any relationship with the Indemnified State Parties other than, with respect to the Operator and the State, that of principal and independent contractor, nor will it be construed as creating any relationship whatsoever between any Indemnified State Party and the Post Operating Term Subcontractors or the Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator.
- (b) Neither the Operator nor any Post Operating Term Subcontractors, nor any of their employees, are or will be deemed, by virtue of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, or any Post Operating Term Subcontract, to be employees of any Indemnified State Party.
- (c) The Operator indemnifies, and must procure that any Post Operating Term Subcontractor indemnifies, and at all times holds the Indemnified State Parties fully and effectively

indemnified, in each case on demand, against any Loss or Claim arising directly or indirectly out of or in connection with any claim that any Indemnified State Party is the employer of the Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator.

- (d) Without limiting clauses 59.7(a), 59.7(b) or 59.7(c), the Operator is responsible for, and must procure that any Post Operating Term Subcontractor is responsible for:
- (i) remuneration and benefits, including performance payments, incentive payments, superannuation contributions, annual leave, personal/carer's leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance;
  - (ii) group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and
  - (iii) any payment upon termination of service,
- payable to or in respect of the Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator.

### **59.8 Operator's obligations in respect of Post Operating Term Subcontractors**

- (a) Other than as expressly provided in this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, the Operator must procure that every Post Operating Term Subcontractor will:
- (i) be entirely responsible for the employment of its employees;
  - (ii) comply with the same obligations and requirements as required of the Operator under clause 59.2, including without limitation the obligation to offer employment to NSW Service Health Employees; and
  - (iii) comply with any reasonable request by the State for information about the Post Operating Term Subcontract or any other matter in connection with the Operator's Business or the Services to be provided by the Operator.

### **59.9 No Claims as a result of changes in terms of employment**

Any Liability of the Operator arising from any change in terms of employment arising from any cause must be satisfied by the Operator at its own cost.

### **59.10 No Claims as a result of Industrial Relations Matters**

- (a) Unless otherwise provided expressly in this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, the Operator is responsible for any Liability it incurs or delay or disruption it suffers arising out of, or in connection with, any Workforce Matter or Industrial Relations Matter.
- (b) The Operator has a continuing obligation to inform itself of and manage:
- (i) all Workforce Matters and Industrial Relations Matters relevant to the Operator's Business and the Services to be provided by the Operator; and
  - (ii) all matters relevant to the Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator.

...

### **59.12 Work Health and Safety**

- (a) The Operator must perform the Operator's Business and the Services to be provided by the Operator:

- (i) safely and in a manner that, so far as it is reasonably practicable, does not put at risk the health and safety of persons; and
- (ii) in a manner that protects property,

and if the Client Representative reasonably considers that there is a risk to the health and safety of people or damage to property arising from the Operator's Business or the Services to be provided by the Operator, the Client Representative may direct the Operator to change its manner of working or to cease working.

- (b) The Operator must:
  - (i) in relation to the Operator's Business and delivering the Services to be provided by the Operator:
    - (A) ensure that it complies with all Laws and other requirements of this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease for work, health, safety and rehabilitation management;
    - (B) require all Post Operating Term Subcontractors to comply with their obligations referred to in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease and under the WHS Legislation; and
    - (C) ensure that it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work, health and safety duty in relation to the same matter;
  - (ii) notify the Client Representative immediately (and in any event, within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Operator's Business or delivering the Services to be provided by the Operator that are required to be notified under the WHS Legislation and procure that the Client Representative is notified as soon as reasonably practicable (and in any event, no later than the following Business Day) of all major injury incidents sustained within the Private Patient Portion;
  - (iii) institute systems to obtain regular written assurances from all Post Operating Term Subcontractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
  - (iv) provide the written assurances referred to in clause 59.12(b)(iii), together with written assurances from the Operator about the Operator's ongoing compliance with the WHS Legislation, to the Client Representative;
  - (v) provide the Client Representative with a written report of all work, health, safety and rehabilitation matters (including matters concerning or arising out of, or in connection with, this clause 59.12) or any other relevant matters as the Client Representative may require from time to time;
  - (vi) cooperate with all Post Operating Term Subcontractors and the State to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
  - (vii) ensure that it does not do anything or fail to do anything that would cause any Indemnified State Party to be in breach of the WHS Legislation; and

- (viii) require that each Post Operating Term Subcontract includes provisions equivalent to this clause 59.12.
- (c) Without limiting the Operator's obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, insofar as the Operator, in carrying out the Operator's Business or the Services to be provided by the Operator, is:
  - (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the WHS Act applies;
  - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the WHS Act applies;
  - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the WHS Act applies;
  - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the WHS Act applies; or
  - (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the WHS Act applies,the Operator must comply with the applicable obligations under the WHS Legislation.

## **60. Emergencies and State Step-In**

### **60.1 Client Representative may instruct**

If a Step-In Event occurs, the Client Representative may instruct the Operator to immediately suspend performance of all or part of the Services to be provided by the Operator (or direct that the Operator's Business or the Services to be provided by the Operator are performed in a specified manner and/or in accordance with the Client Representative's directions), or alternative services are undertaken by the Operator, as and when required by the Client Representative, in each case to the extent necessary to ensure that the Step-In Event is dealt with and normal provision of the Operator's Business or the Services to be provided by the Operator resumes as soon as is reasonably practicable.

### **60.2 Payment for additional or alternative services**

The Operator will bear the cost of any additional or alternative services provided by the Operator to the extent to which the relevant Step-In Event arose (directly or indirectly) as a result of any negligence, wilful misconduct, breach or default of the Operator or Operator Related Party.

### **60.3 State Step-In**

If:

- (a) the Operator fails to promptly remedy a breach which has given rise to a Step-In Event and the Client Representative reasonably believes that action must be taken in respect of the Step-In Event;
- (b) the State directs a suspension of the Services to be provided by the Operator (or directs that the Operator's Business or the Services to be provided by the Operator are performed in a specified manner and/or in accordance with the Client Representative's directions) pursuant to clause 60.1, or the Operator is unable or unwilling to provide additional or alternative services requested under clause 60.1, and the Client Representative reasonably believes that action must be taken in respect of the Step-In Event; or



- (c) the Client Representative reasonably believes that the Operator must suspend provision of the Services to be provided by the Operator (or directs that the Operator's Business or the Services to be provided by the Operator are performed in a specified manner and/or in accordance with the Client Representative's directions) or the State must take step in action in response to a Step-In Event or to discharge a legislative, public or constitutional duty,

the State may exercise the Step-In Rights in accordance with the procedure set out in Schedule 8 of the Main Body (mutatis mutandis and as if it applied at the relevant time).

#### **60.4 Post Operating Term Subcontractors and employees**

- (a) If a Step-In Event occurs, the Operator and the Post Operating Term Subcontractors must fully cooperate with the State to facilitate the continued operation of the Private Patient Portion.
- (b) If requested by the Client Representative, the Operator must make its employees who are working at the Private Patient Portion when the Step-In Event occurs available to the State or another operator to continue working at the Facility, or provide equivalent services in an alternative location.

...

### **66. Third Party Infrastructure**

#### **66.1 Third Party Infrastructure**

To the extent reasonably required for the performance of its services in connection with the Public Patient Portion only, the State may engage Other Contractors to construct Third Party Infrastructure or perform work on the Private Patient Portion, or in the vicinity of, the Shared Areas or the Common Areas at any time during the Private Patient Portion Term.

#### **66.2 Interface Protocols**

- (a) The State must:
  - (i) procure that any Other Contractor engaged by the State under clause 66.1 enters into; and
  - (ii) use reasonable endeavours to ensure that those Other Contractors complies with, an Interface Protocol with the Operator.
- (b) The Operator must enter into an Interface Protocol procured by the State under clause 66.2(a) with any Other Contractor.

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### **67B Type 3 Planned Expansion**

- (a) The Operator may at any time after the Lease Commencement Date issue a Type 3 Planned Expansion Notice attaching a Type 3 Planned Expansion Plan to the State.
- (b) Subject to this clause 67B and clause 67D of Part D of this Schedule 22, the Operator may implement the relevant Type 3 Planned Expansion on the basis set out in the Type 3 Planned Expansion Notice delivered under clause 67B(a).
- (c) The Type 3 Planned Expansion Plan provided under clause 67B(a) must contain and address the matters referred to in Schedule 45 to the Main Body in form and content reasonably acceptable to the State.

- (d) The Operator must not implement the Type 3 Planned Expansion referred to in the Type 3 Planned Expansion Notice delivered under clause 67B(a), unless and until:
- (i) the Operator has provided any additional information reasonably required by the State in connection with the proposed Type 3 Planned Expansion following receipt by the State of the Type 3 Planned Expansion Notice under clause 67B(a);
  - (ii) the State (acting reasonably) is satisfied the implementation of the proposed Type 3 Planned Expansion could not reasonably be expected to:
    - (A) have an adverse impact on the provision of Services, the operation of the Public Patient Portion or the ability of the Operator to perform its obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease;
    - (B) materially adversely affect the Operator's ability to perform its other obligations under the Project Documents;
    - (C) give rise to an increase or adverse change in the profile of the risks or liabilities of the State under the Project Documents (whether actual or contingent, but for the avoidance of doubt excluding any increased compensation or Termination Payment payable in connection with any completed Type 3 Planned Expansion under this clause following a relevant voluntary termination by the State under this Schedule 22);
    - (D) without limitation to any reasonably described loss of space contemplated expressly in the Planned Expansion Plan, otherwise adversely affect the ability of the State to undertake a future Expansion of the Public Patient Portion or the Shared Areas; or
    - (E) unless such cost will be funded by the Operator on terms reasonably acceptable to the State, increase the cost to the State of undertaking a future Expansion of the Public Patient Portion or the Shared Areas, including relating to the provision of Utilities or a step-change in infrastructure that may be required to implement any such future expansion;
  - (iii) there is no subsisting default under clause 22.1 of Part C or this Schedule 22;
  - (iv) the State (acting reasonably) is satisfied the Operator has obtained committed funding for the relevant Type 3 Planned Expansion on market terms;
  - (v) the Operator has produced evidence satisfactory to the State (acting reasonably) that all necessary Consents in respect of the proposed Type 3 Planned Expansion have been or will, when reasonably required, be obtained and there are no Adverse Licence Conditions or other adverse impacts on the Consents relating to the Public Patient Portion or Shared Areas triggered by, or as a result of, the proposed Type 3 Planned Expansion;
  - (vi) the State is satisfied (acting reasonably) the Operator will bear all risks and costs (including lifecycle costs) associated with the implementation of the Type 3 Planned Expansion and will not be entitled to make any Claim against the State arising out of, or in any way in connection with, the implementation of the Type 3 Planned Expansion;
  - (vii) the period for delivery of a procurement notice in respect of a Public Expansion under, and as contemplated by, clause 67C(b) has expired (where triggered in

connection with delivery of the Type 3 Planned Expansion Notice under clause 67C(a)); and

- (viii) the parties have undertaken a design process consistent and equivalent in all respects with the principles and clauses set out in clause 19 of the Main Body (insofar as that clause applied in respect Private Patient Portion Works); and
- (ix) if the Type 3 Planned Expansion proposes, contemplates or requires the entrance, access, passing across or otherwise the use by any person of the Retained Green Space, the State is satisfied (acting reasonably) that any Contamination in, on or under the Retained Green Space will be remediated or otherwise treated to the extent reasonably necessary in accordance with clause 67D.

## 67C Joint capacity review

- (a) Following receipt of a Type 3 Planned Expansion Notice by the State under clause 67B(a), or at any other time at the request of the State, the parties (acting in good faith) will for a period of 90 days (or such longer period agreed by the parties) undertake a joint review of the equivalent capacity and expansion needs of the Public Patient Portion and/or the Shared Areas (**Joint Capacity Review**) in light of (if applicable) any proposed Type 3 Planned Expansion.
- (b) Without limitation to any of its other rights under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, the State may, within 90 days following a Joint Capacity Review, deliver a notice to the Operator to procure the expansion of all or a part of the Public Patient Portion and/or the Shared Areas (**Public Expansion**). Any compensation or reimbursement to which the Operator may be entitled in respect of the implementation of a Public Expansion will be determined in good faith negotiations between the parties, provided that the Operator must take all steps reasonable to take advantage of any cost, construction or programme efficiencies or synergies arising as a result of the relevant Type 3 Planned Expansion occurring at or about the same time.
- (c) Nothing in this Schedule 22 shall prevent the State procuring a Public Expansion by engaging or contracting with a person other than the Operator.

## 67D Use of the Retained Green Space

- (a) If and to the extent that a Type 3 Planned Expansion proposes, contemplates or requires the entrance, access, passing across or otherwise the use by any person of the Retained Green Space, the Operator must, in the Type 3 Planned Expansion Notice, provide all reasonable details of the entrance, access, passing across or otherwise the use so proposed, contemplated or required.
- (b) The Operator must not enter, access, pass across or otherwise use, or permit an Operator Related Party to enter, access, pass across or otherwise use the Retained Green Space in connection with the implementation of a Type 3 Planned Expansion unless the State, in its sole and absolute discretion, approves.
- (c) If the State approves the entrance, access, passing across or otherwise the use of the Retained Green Space in accordance with paragraph (b):
  - (i) the Operator must procure the remediation (or any other treatment agreed with the State) of any Contamination in, on or under the Retained Green Space to the extent reasonably necessary for the proposed entrance, access, passing across or otherwise the use of the Retained Green Space; and

- (ii) the State must obtain a clearance certificate under the *Work Health and Safety Regulation 2011* (NSW) or equivalent replacement Legislation in respect of any asbestos in the Retained Green Space, and any other Consent required, for the proposed entrance, access, passing across or otherwise the use of the Retained Green Space.
- (d) The State will pay the direct costs of the remediation (or other agreed treatment) of Contamination in, on or under the Retained Green Space undertaken pursuant to paragraph (c), except to the extent that the Contamination has occurred as a result of or was otherwise caused by any act or omission of the Operator or any Operator Related Party or the breach by the Operator of an obligation under the Project Documents.

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## 69. Excluded Event

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### 69.9 Termination for Excluded Event

- (a) Subject to clause 69.9(b), if:
  - (i) the parties are unable to agree on appropriate terms to mitigate the effects of the Excluded Event and facilitate the continued performance of this Schedule 22 or arising out of or in connection with it and the Post-Operating Term Private Patient Portion Lease; and
  - (ii) the Excluded Event is continuing or its consequences remain such that the affected party has been or is unable to comply with a material part of its obligations under this Schedule 22 or arising out of or in connection with it or the Post-Operating Term Private Patient Portion Lease for a continuous period of 180 days,then, subject to clause 69.9(b), either party may terminate the Post-Operating Term Private Patient Portion Lease by giving 20 Business Days' prior written notice to the other party.
- (b) The Operator may only terminate this Schedule 22 or the Post-Operating Term Private Patient Portion Lease during the period the Operator is able to recover under its advance consequential loss insurance or business interruption insurance policies (or would be able to recover under those policies if the Operator had complied with its insurance obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease or made a proper claim) for any Liability suffered as a consequence of the relevant Excluded Event.
- (c) If either party terminates the Post-Operating Term Private Patient Portion Lease and this Schedule 22 in accordance with this clause 69.9, the State must pay to the Operator the Termination Payment described in section 5.2 of Schedule 12 to the Main Body in accordance with the terms of that Schedule.

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## 78. Termination of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease

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## 78.5 Voluntary Termination

- (a) The State may elect, at any time and in its sole and absolute discretion, to terminate this Schedule 22 and the Post-Operating Term Private Patient Portion Lease by prior written notice (**Voluntary Termination Notice**) to the Operator stating that the State is terminating this Schedule 22 and the Post-Operating Term Private Patient Portion Lease under this clause 78.5, provided that it has given not less than 3 years' written notice of the termination to the Operator.
- (b) If the State issues a Voluntary Termination Notice, the Operator's rights and obligations in respect of the Private Patient Portion will terminate on the date specified in that notice (which must not be less than 3 years from the date of such notice).
- (c) If the State issues a Voluntary Termination Notice under paragraph (a), the State must pay to the Operator the Termination Payment described in section 4.3 of Schedule 12 to the Main Body in accordance with the terms of that Schedule.

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## 83. State inspection

- (a) The Client Representative and/or its representatives may carry out or procure the carrying out of an inspection of the Private Patient Portion or any part of it, to assess whether the Operator is complying with its obligations under this Schedule 22 or arising out of or in connection with it and the Post-Operating Term Private Patient Portion Lease.
- (b) When carrying out any inspection, the Client Representative and its representatives must cause the minimum disruption reasonably practicable to the Operator's Business and the provision of the Services to be provided by the Operator, and must comply with the reasonable safety and security requirements of the Operator. The Operator must provide reasonable assistance to the Client Representative in carrying out the inspection, including providing access to any systems, registers, manuals, relevant records, plans and programs maintained in relation to the Private Patient Portion.
- (c) The cost of any inspection carried out in accordance with this clause 83, except where paragraph (d) applies or an Operator default or termination event under clause 22.1 of Part C has occurred and is continuing, will be borne by the State. The Operator must give the Client Representative any reasonable assistance required by the Client Representative from time to time during the carrying out of any inspection.
- (d) If an inspection shows that the Operator has not complied or is not complying with its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, the Client Representative:
  - (i) must notify the Operator of the details of the non-compliance;
  - (ii) must specify a reasonable period within which the Operator must carry out appropriate rectification and/or remedy activities; and
  - (iii) will be entitled to be reimbursed by the Operator for the cost of the inspection and any reasonable administrative costs incurred by the State in relation to the inspection if the inspection shows that the Operator has not complied with, or is not materially complying with, its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.

- (e) The Operator must at its own cost carry out such rectification and/or remedy activities within the period specified by the Client Representative, and the Client Representative may carry out or procure the carrying out of an additional inspection to assess compliance with the requirement to carry out such rectification and/or remedy activities.

## 84. Accounting and audit

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### 84.5 Audit

- (a) At any time up to six months after the last day of the Private Patient Portion Term, the State may perform an audit of the Operator's Records and inspect the Private Patient Portion to identify the Operator's compliance with any of its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.
- (b) Without limiting clause 84.6(a), the parties acknowledge and agree that, notwithstanding any provision of this Schedule 22 (or any provision agreed or determined pursuant to the operation of this Schedule 22) or any provision of the Post-Operating Term Private Patient Portion Lease (in each case) to the contrary:
  - (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW)(or any substituted legislation) are not limited or affected by the terms of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease and each party submits to those powers and responsibilities;
  - (ii) the State or the Operator may be the subject of an audit by the Auditor-General pursuant to the *Public Finance and Audit Act 1983* (NSW); and
  - (iii) without limiting clause 84.6(b)(i), the Operator covenants with the State that it will, at its own cost, cooperate and comply with the directions of the Auditor-General and the State in relation to any audit referred to in clause 84.6(b)(ii).

## 85. Information and confidentiality

### 85.1 Keep confidential

- (a) Subject to clause 85.2, the parties must keep confidential all matters relating to this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease and must use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating to this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.
- (b) Subject to clause 85.2, the parties must not make any public disclosures, announcements or statements in relation to the Private Patient Portion without the State's prior consent (which will not be unreasonably withheld).
- (c) The parties acknowledge and agree that the Post Operating Term Commercially Sensitive Information is of a confidential nature and will be received, supplied and communicated in circumstances of confidence and on a commercial-in-confidence basis.
- (d) The Operator:
  - (i) must not, and must ensure that its Personnel involved in the Operator's Business or delivering the Services to be provided by the Operator do not disclose any

personal, confidentiality or other information of Patients (including Medical Records) or their Consumers; and

- (ii) must otherwise maintain the confidentiality of all Medical Records and other information of Patients in accordance with the Hospitals Act, the Privacy Legislation and all other applicable Law.

## **85.2 Permitted disclosure**

Clause 85.1 will not apply to:

- (a) the disclosure by the State of any information that is not Post Operating Term Commercially Sensitive Information;
- (b) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party;
- (c) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of breach of clause 85.1;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction), including in accordance with the GIPA Act;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any disclosure of information to any prospective permitted assigns, prospective investors in, prospective shareholders of, or prospective debt financiers of the Operator or the Borrower, in each case to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any disclosure by the Client Representative of information relating to the design, construction, operation and maintenance of the Private Patient Portion and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new or replacement contractor, its advisers and lenders should the State decide to re-tender the Private Patient Portion, provided that the exclusion in this clause 85.2(g) does not apply to:
  - (i) the Parent Company's Proprietary Material; or
  - (ii) any information which is commercially sensitive in that it has a unique characteristic to the Operator; or the Parent Company,

unless the State procures that the recipient of that information is subject to the same obligation of confidentiality as that contained in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease;

- (h) any disclosure of information by the Client Representative to any department, office or agency of the NSW Government including, for the avoidance of doubt, the Licensing Authority;
- (i) any disclosure of information in connection with the Private Patient Portion by the State (including Post Operating Term Commercially Sensitive Information), provided the information is marked as confidential, the State uses reasonable endeavours to inform the recipient that the relevant information is confidential, and such disclosure is:
  - (i) as authorised in writing by the Operator;
  - (ii) to any Minister;

- (iii) in accordance with all Laws;
- (iv) by the Minister for Health, the Premier of New South Wales, the Treasurer, the NSW Ministry of Health and Aging of New South Wales (including the Secretary of Health or any chief executive of the Department of Health and Aging of New South Wales) or NSW Treasury in the performance of their functions or the discharge of their duties, including in responding to any questions, making a public statement, or releasing information in relation to a matter of public interest;
- (v) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the State; and
- (vi) in accordance with the *Ombudsman Act 1976* (Cth);
- (j) any disclosure by the Client Representative of any document relating to this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease and which the Operator or the Post Operating Term Subcontractor, as the case may be, (acting reasonably) has agreed with the Client Representative contains no Post Operating Term Commercially Sensitive Information;
- (k) any disclosure of information by the Client Representative, the Operator or the Borrower to the Debt Financiers; or
- (l) any disclosure of information required by a stock exchange or a New South Wales or Commonwealth regulator.

### **85.3 Obligations preserved**

Where disclosure is permitted under clause 85.2, other than clauses 85.2(a), 85.2(c), 85.2(d), 85.2(g), 85.2(h), 85.2(i) and 85.2(l), the party providing the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease.

### **85.4 Disclosure by the State**

- (a) Notwithstanding the other provisions of this clause 85, the parties acknowledge that:
  - (i) this Schedule 22 (or any agreement that is generated pursuant to it) and the Post-Operating Term Private Patient Portion Lease may be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
  - (ii) this Schedule 22 (or any agreement that is generated pursuant to it) and the Post-Operating Term Private Patient Portion Lease and information concerning the this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease may be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
  - (iii) the State and the Client Representative may make this Schedule 22 (or any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease (other than the Post Operating Term Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
  - (i) by entering into any agreement that is generated pursuant to this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, the State has consulted with the Operator in relation to the disclosure of all information concerning this



Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease that is required to be disclosed by the State pursuant to Division 5 of Part 3 of the GIPA Act and that is not Post Operating Term Commercially Sensitive Information;

- (ii) the State will notify the Operator of any proposed disclosure of Post Operating Term Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
- (iii) following notification by the State in accordance with clause 85.4(b)(ii), the State will take reasonable steps to consult with the Operator before disclosing Post Operating Term Commercially Sensitive Information, including under the GIPA Act;
- (iv) if, following:
  - (A) notification by the State in accordance with clause 85.4(b)(ii); or
  - (B) consultation between the State and the Operator in accordance with clause 85.4(b)(iii),

the Operator objects to disclosure of some or all of the Post Operating Term Commercially Sensitive Information, the Operator must provide details of any such objection within five Business Days after the date the Operator received notification from the State or the date on which the consultation process concluded (as relevant);

- (v) the State may take into account any objection received from the Operator pursuant to clause 85.4(b)(iv) in determining whether the Post Operating Term Commercially Sensitive Information identified by the Operator should be disclosed; and
- (vi) nothing in this clause 85.4 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

## **85.5 Exploitation of information**

The Operator must not make use of this Schedule 22 (or any agreement entered into with the State pursuant to it), the Post-Operating Term Private Patient Portion Lease, or any information issued or provided by or on behalf of the State in connection with this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease otherwise than for the purposes of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, except with the written consent of the Client Representative.

## **85.6 Expiry**

On or before the Private Patient Portion Expiration Date, the Operator must ensure that copies of all documents or computer records in its possession, custody or control which contain information relating to a Hospital User or the State's Employees and Agents, including any documents in the possession, custody or control of any Post Operating Term Subcontractor, are delivered up to the Client Representative, provided that such delivery is made in accordance with Law.

## **86. Assignment or Change of Control**

### **86.1 Assignment**

- (a) Subject to any express provision of this Schedule 22 (or express provision of any agreement arising out of or in connection with this Schedule 22) or the Post-Operating Term Private Patient Portion Lease, neither party may, without the prior written consent of

the other party, assign, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest under this Schedule 22 (or any agreement entered into with the State pursuant to it) or the Post-Operating Term Private Patient Portion Lease, provided always that an assignment by HAC or the NSLHD of its interest to any other governmental body, agency or department (in each case, constituting the NSW Government or supported by a guarantee from the NSW Government on terms no less favourable than those contained in the PAFA Act Guarantee) will not require the parties' prior written consent.

- (b) The provisions of clause 86.1(a) do not apply to the granting of Security Interests in accordance with the Financing Agreements.

## **86.2 Change in Control**

- (a) Subject to clause 86.2(e), the Operator must not permit any Change in Control of the Operator or Operator B without the prior written consent of the State (in its absolute discretion).
- (b) Any notice seeking the consent of the State to a Change in Control to which clause 86.2(b) applies must include:
  - (i) the identity of each person proposed to acquire Control;
  - (ii) the address of each person proposed to acquire Control;
  - (iii) the extent and nature of the proposed Change in Control; and
  - (iv) all other information necessary for the State to determine:
    - (A) whether to consent to the Change in Control of the relevant entity; or
    - (B) the probity or other investigations (if any) the State wants to undertake in respect of such persons proposed to acquire Control.
- (c) The State must, within 10 Business Days (or such longer period as the State reasonably requires, given the nature of the information provided in the Operator's notice) of receiving a notice under paragraph (c), notify the Operator whether:
  - (i) the State consents to the proposed Change in Control;
  - (ii) the State does not consent to the proposed Change in Control (and the reasons for this); or
  - (iii) the State needs to conduct a probity or other investigation in connection with the Change in Control prior to making a determination whether or not to consent to the Change in Control.
- (d) For the purposes of clause 86.2(b):
  - (i) any change in beneficial or legal ownership of any equity interests (including shares or units) that are listed on a prescribed financial market; and
  - (ii) any transfer of equity interests by a person to another Equity Investor or a Related Body Corporate of an Equity Investor,will be disregarded.

## **86.3 Change in Control of Post Operating Term Material Subcontractors**

- (a) If a Change in Control of a Post Operating Term Material Subcontractor (other than the Parent Company) has occurred, the Operator must promptly notify the Client Representative.

- (a1) Notwithstanding anything else contained in this clause 86, if a Change in Control of a Post Operating Term Material Subcontractor is comprised by events or circumstances which would otherwise be permitted under clause 86.2 in respect of the Operator, such Change in Control shall be permitted without restriction.
- (b) The Operator will provide to the Client Representative in its notification under this clause 86.3:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which has caused or constituted the Change in Control; and
  - (ii) all other information necessary for the State to determine whether to exercise its rights under clause 86.3(c), in relation to the Change in Control of the Post Operating Term Material Subcontractor.
- (c) Within 20 Business Days of receipt of a notice and information under clause 86.3(b), the State must notify the Operator whether it approves or rejects the Change in Control.
- (d) The State may approve or reject the Change in Control at its absolute discretion if clause 86.3(e) applies and must otherwise:
  - (i) act reasonably in approving or rejecting the Change in Control; and
  - (ii) approve a Change in Control in the event of:
    - (A) any change in beneficial or legal ownership of any equity interests (including shares or units) that are listed on a prescribed financial market;
    - (B) any transfer of equity interests by a person to its Associate; or
    - (C) any transfer of equity interests between persons or entities who are existing shareholders of the entity.
- (e) If the State determines that it does not approve of the Change in Control, because:
  - (i) the person or entity which now exercises Control of the relevant Post Operating Term Material Subcontractor is not a reputable entity or person to properly carry out the obligations of the relevant Post Operating Term Material Subcontractor;
  - (ii) as a result of the Change in Control, the relevant Post Operating Term Material Subcontractor no longer:
    - (A) has sufficient expertise and ability; or
    - (B) is of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the relevant Post Operating Term Material Subcontractor;
  - (iii) the person or entity which now exercises Control of the relevant Post Operating Term Material Subcontractor is an unsuitable entity or person, having regard to the activities or business of that entity or person, and their compatibility with the obligations of the relevant Post Operating Term Material Subcontractor; or
  - (iv) the State, acting reasonably, believes that the Change in Control will result in a Conflict of Interest,

the Operator must, at its own cost, terminate any Post Operating Term Material Subcontract with that Post Operating Term Material Subcontractor and re-tender those

Project Works or Services being provided by that Post Operating Term Material Subcontractor, within 60 days.

- (f) If the State determines that it does not approve of the Change in Control for a reason other than that specified in clause 86.3(e) then, subject to clause 86.3(h):
  - (i) the Operator must at its own cost, terminate any Post Operating Term Material Subcontract with that Post Operating Term Material Subcontractor and re-tender those Project Works or Services being provided by the Post Operating Term Material Subcontractor, within 60 days; and
  - (ii) the State will pay to the Operator:
    - (A) any costs associated with terminating any relevant Post Operating Term Subcontract reasonably incurred by the Operator as a direct result of the termination. Such costs will include redundancy payments for employees of the Post Operating Term Material Subcontractor and any demobilisation costs that have been incurred as a result of termination incurred by the Post Operating Term Material Subcontractor; and
    - (B) any costs reasonably incurred and directly associated with the entry into the Post Operating Term Subcontracts with a replacement Post Operating Term Material Subcontractor and any increased costs to the Operator in performing those Post Operating Term Subcontracts with the relevant Post Operating Term Material Subcontractor.
- (g) The exercise of the State's rights under clause 86.3(c) or 86.3(f) will not relieve the Operator of any of its obligations under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.
- (h) The State may not exercise its rights under clause 86.3(c) or 86.3(f) if the Change in Control was approved in writing by the State prior to the date of the Post-Operating Term Private Patient Portion Lease.

#### **86.4 Other restrictions**

- (a) Subject to clause 86.4(c), the Operator must not lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with the whole or any part of the Private Patient Portion, except:
  - (i) as expressly permitted in accordance with this Schedule 22 (or any agreement arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease;
  - (ii) the grant by the Operator to the Post Operating Term Key Subcontractor of a sub-lease or licence of a part of the Private Patient Portion; or
  - (iii) as otherwise consented to by the State.
- (b) Without limiting clause 86.4(a) and notwithstanding any other part of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, the Operator may not at any time licence, license, transfer, sell, dispose of, part with possession of, or otherwise deal with any part of the Private Patient Portion which would prejudice the State's ability to operate the Facility.
- (c) The restrictions in clause 86.4(b) on leasing and licensing do not apply to or prevent the grant of leases or licences in respect of the Post Operating Term Associated Commercial Facilities contemplated by this Schedule 22.

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## **88. Notification of Claims**

### **88.1 Notices of Claims**

Subject to any provisions of this Schedule 22 (or any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease containing a specific notice requirement, the State will not be liable for any Loss of, or upon any Claim by, the Operator arising out of or in any way in connection with any direction, instruction, notice or any other act or omission of the State or any other fact, matter or thing under, arising out of or in connection with the Private Patient Portion or the Operator's Business unless the Operator gives the State the notices required by clause 88.2 and, if applicable, clause 88.3.

### **88.2 Prescribed notices**

The notices referred to in clause 88.1 are:

- (a) a written notice from the Operator which must be given to the Client Representative within the earlier of:
  - (i) 15 Business Days after when the Operator first became aware of the events on which the Loss or Claim is based; or
  - (ii) 45 Business Days after the first occurrence of the event on which the Loss or Claim is based (provided that, if the Operator reasonably demonstrates that the event is not something of which it ought reasonably to have been aware within that 45 Business Day period, the period for submission of the notice will be extended to 15 Business Days after the Operator first become aware of, or ought reasonably to have become aware of, that event),  
  
in which the Operator states that it intends to submit a Claim and the event upon which the Claim will be based; and
- (b) a written Claim by the Operator to be given to the Client Representative within 20 Business Days after giving notice under clause 88.2(a) and which must include:
  - (i) detailed particulars of the facts on which the Claim is based;
  - (ii) the legal basis for the Claim, whether based on a term of this Schedule 22 (or any agreement entered into arising out of or in connection with the operation of this Schedule 22), the Post-Operating Term Private Patient Portion Lease or otherwise, and if based on a term of this Schedule 22 (or any agreement entered into arising out of or in connection with the operation of this Schedule 22) or the Post-Operating Term Private Patient Portion Lease, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated, including any Loss.

### **88.3 Continuing events**

If the events upon which the Claim under clause 88.2(b) is based or the consequences of the events are continuing, the Operator must continue to give information required by clause 88.2(b) within 14 Business Days after the end of each calendar month after the written claim under clause 88.2(b) was submitted, until the events or consequences have ceased.

## 89. Conflicts of Interest

### 89.1 Performance of obligations

The Operator must ensure that it acts, and procure that the Operator's Employees and Agents, its Post Operating Term Subcontractors and its Post Operating Term Subcontractor's employees, agents, contractors, consultants and authorised officers act, at all times in good faith.

### 89.2 Disclosure

The Operator must:

- (a) immediately notify the State in writing of any Conflict of Interest;
- (b) provide a management plan specifying to the State's satisfaction (acting reasonably) the manner in which the Operator proposes to manage the Conflict of Interest identified in a notice under clause 89.2(a) (**Post Operating Term Conflict Management Plan**); and
- (c) comply with that Post Operating Term Conflict Management Plan.

...

## 91. Preparing for Handover of Private Patient Portion

...

### 91.4 Notification of Handover Audit

- (a) The Client Representative must notify the Operator in writing a minimum of 10 Business Days in advance of the date it wishes the Independent Assessor to carry out the Handover Audit.
- (b) The Client Representative must consider in good faith any reasonable request by the Operator for the Handover Audit to be carried out on a different date if such request is made at least five Business Days prior to the notified date and the Operator (acting reasonably) is able to demonstrate that carrying out the Handover Audit on the notified date would materially prejudice the Operator's ability to perform the Operator's Business or the Services to be provided by the Operator.

### 91.5 Minimise disruption

- (a) The Client Representative must use its reasonable endeavours to procure that the Independent Assessor in carrying out the Handover Audit minimises any disruption caused to the Operator's Business or the provision of the Services to be provided by the Operator.
- (b) The Operator must afford the Independent Assessor (free of charge) any reasonable assistance required by the Independent Assessor during the carrying out of the Handover Audit.

### 91.6 Rectification work

The Operator must carry out the required rectification, maintenance or remediation work notified pursuant to clause 23.2(b)(iii) of Part C of this Schedule 22:

- (a) to the satisfaction of the Independent Assessor;
- (b) in accordance with all applicable Laws; and
- (c) so as to satisfy the standards and other requirements applicable to the State Asset under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease,

within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work will be at its own expense.

## 91.7 Reduction of the Relevant Amount

- (a) If and to the extent that the Operator carries out the required rectification, maintenance or remediation within the specified period as notified pursuant to clause 23.2(b)(iv) of Part C of this Schedule 22 to the satisfaction of the Independent Assessor, the Relevant Amount will be reduced by the amount reserved in the Relevant Amount for undertaking the relevant work.

## 91.8 Failure to carry out work

- (a) If and to the extent that the Operator fails to carry out the necessary rectification, maintenance or remediation work to the appropriate level of professional care, in accordance with Good Industry Practice and to the satisfaction of the Independent Assessor, and within the specified period as notified pursuant to clause 23.2(b)(iv) of Part C of this Schedule 22, the State will be entitled to carry out itself, or procure, such rectification, maintenance or remediation work, and the cost of such rectification, maintenance or remediation work will be a debt due and payable against the Operator to the State.
- (b) The State may deduct or set off that amount against any amount otherwise payable by the State to the Operator, or may take any other enforcement action available to it including under the security provided under clause 23.3 of Part C of this Schedule 22, in respect of an unpaid debt owed to it.

## 91.9 State Election

The State may, by giving the Operator reasonable prior notice at any time after a Handover Audit, relieve the Operator from its obligation to:

- (a) carry out any work identified under clause 23.2(b)(iii) of Part C of this Schedule 22; or
- (b) undertake any part of the lifecycle refurbishment program set out in the OC Sinking Fund Model, SC Sinking Fund Model or Building Lifecycle Model, in which case the State will no longer be required to pay the State Sinking Fund Contribution in respect of those obligations which the Operator has been relieved from performing.

...

## 92. Handover obligations

### 92.1 Handover Obligations

Without limiting its obligations under clause 92.3, on the Private Patient Portion Expiration Date or the Early Private Patient Portion Handover Date (as applicable), the Operator must:

- (a) hand over the Private Patient Portion (including all rights, title and interest in the Private Patient Portion) to the State or its nominee (**Post Operating Term State Appointed Operator**) free from any encumbrances and in a state and condition which complies with the Handover Condition and the Handover Plan;
- (b) transfer to the State or its nominee all rights, title, interest and warranties in plant and equipment, including relevant plant and building engineering services, a 3-month supply of maintenance spare parts for the FF&E and a 1-month supply of consumables for the FF&E, required to allow the State or its nominee to operate, maintain and repair the Private Patient Portion (as applicable) to the standards required in accordance with

Schedule 22 (or any agreement arising out of or in connection with it) free from any encumbrances; and

- (c) deliver to the State or its nominee:
  - (i) all manuals, records (including Medical Records), plans and other information under the control of the Operator which are relevant to the design, construction, commissioning, operation, maintenance or repair of the Private Patient Portion;
  - (ii) a complete set of Project Plans (in electronic and hard copy format) which is up to date as at the Private Patient Portion Expiration Date or the Early Private Patient Portion Handover Date (as applicable);
  - (iii) all other data recorded for the provision of the Services to be provided by the Operator and the operation of the Private Patient Portion during the Private Patient Portion Term;
  - (iv) all valid and unexpired warranties, guarantees and similar documentation (in hard copy) obtained for materials and workmanship for the Private Patient Portion; and
  - (v) a licence to use a copy of all software applications (excluding off the shelf software) necessary to perform the Services to be provided by the Operator,

which will, in each case and without further action by any party, immediately vest in and become the absolute property of the State or the New Operator.

...

### 92.3 Services handover

- (a) Upon the Private Patient Portion Expiration Date or Early Private Patient Portion Handover Date (as applicable) the Operator must:
  - (i) **(access)** provide the State with all access to the Private Patient Portion that the State requires in order to exercise its rights under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease;
  - (ii) **(novation)** procure the novation to the State or its nominee of:
    - (A) such contracts for works or services to which it or a Post Operating Term Subcontractor is a party as they relate to the Services to be provided by the Operator to the State pursuant to Schedule 22 as the State may nominate;
    - (B) any leases, subleases and licences agreed to by the State; and
    - (C) any warranties in respect of FF&E and Consumables;
  - (iii) **(Intellectual Property Rights)** grant or procure the grant to the State or its nominee of such Intellectual Property Rights as will enable the State or its nominee to be in a position to maintain and repair the Private Patient Portion to the standards stated in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, with minimum disruption;
  - (iv) **(Consents)** must do all acts and things necessary to enable the State (or its nominee) to have transferred or obtained all Consents necessary for the operation, maintenance and repair of the Private Patient Portion;
  - (v) **(operations)** do all other acts and things to enable the State (or its nominee) to be in a position to deliver the Services to be provided by the Operator at the standards



stated in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, with minimum disruption; and

- (vi) **(Branding)** subject to clause 81, remove all logos, branding and similar marks belonging to or relating to the Operator, an Operator Related Party, a Consortium Entity or a Post Operating Term Subcontractor from all places within or adjacent to the Private Patient Portion (other than as specified by the State), and make good any damage caused by that removal.
- (b) Without limiting clause 92.3(a), the Operator must, before the end of the Private Patient Portion Term, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for the Private Patient Portion to the State or its nominee in accordance with the Handover Plan including:
  - (i) meeting with the State and such other persons notified by the State not less than 12 months prior to the commencement of the Service Handover Period to attempt to agree arrangements associated with the Handover of the Private Patient Portion and the Services to be provided by the Operator;
  - (ii) providing access to its operations for the purpose of familiarisation;
  - (iii) providing sufficient information as is required to ensure the safety and quality of Patient care;
  - (iv) providing sufficient information to the State or its nominee to determine the status and condition of the Private Patient Portion, any works programs in place at the time and the Operator's workforce profile; and
  - (v) providing reasonable assistance to the State in securing the supply to the State of goods and services to the extent that such supply is necessary for the operation of all or any part of the Private Patient Portion or provision of the Services to be provided by the Operator.

#### **92.4 Utilities**

Upon the Private Patient Portion Expiration Date or Early Private Patient Portion Handover Date (as applicable) the Operator must:

- (a) make all arrangements (including making any payments as required under paragraph (b)) to ensure the continuing supply of any Utilities to the Private Patient Portion;
- (b) ensure that all Utilities in respect of the Private Patient Portion are fully paid for to the Private Patient Portion Expiration Date or Early Private Patient Portion Handover Date (as applicable) (or arrangements to the satisfaction of the State are made in respect of such payments, whether due and payable);
- (c) provide to the State records and information in form satisfactory to the State (acting reasonably) in respect of the supply, usage, metering and payments made in respect of Utilities in respect of the Private Patient Portion over:
  - (i) the 3 years immediately preceding the Private Patient Portion Expiration Date or Early Private Patient Portion Handover Date (as applicable); or
  - (ii) if shorter, the whole of the Private Patient Portion Term; and
- (d) make all arrangements to ensure that, on and from the Private Patient Portion Expiration Date or Early Private Patient Portion Handover Date (as applicable), all correspondence (including invoices) in respect of Utilities in respect of the Private Patient Hospital are issued solely to the State.

...

## **92.6 Duty to co-operate**

During the final three months prior to the Private Patient Portion Expiration Date or Early Private Patient Portion Handover Date (as applicable), and in any case for a period of twelve months thereafter, the Operator must co-operate fully with the transfer of responsibility for the Services to be provided by the Operator and the operation of the Private Patient Portion to the State or any new contractor (**New Operator**), including:

- (a) in respect of hand over, transfer or delivery of the Private Patient Portion, equipment, services and related rights, records and other materials in accordance with clauses 92.1 to 92.3(c) (inclusive);
- (b) liaising with the Client Representative and/or any New Operator, and providing reasonable assistance and advice concerning the Services to be provided by the Operator and the operation of the Private Patient Portion and its transfer to the State or to such New Operator; and
- (c) allowing any such New Operator access (at reasonable times and on reasonable notice) to the Private Patient Portion but not so as to interfere with or impede the Operator's Business or the provision of the Services to be provided by the Operator.

## **92.7 Transfer of responsibility**

The Operator must facilitate the smooth transfer of responsibility for the Services to be provided by the Operator and the operation of the Private Patient Portion to a New Operator or to the State, as the case may be, and the Operator must take no action at any time during the Private Patient Portion Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

...

# **96. Notices**

## **96.1 Notices to the State**

A notice, consent or other communication to be sent, provided or issued to the State under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease must, unless expressly provided otherwise in this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, be issued to the NSLHD.

## **96.2 How to give a notice**

A notice, consent or other communication under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address and in respect of any notice of default or termination issued by either party under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease only, must only be delivered or sent in accordance with this paragraph (c)(i);
  - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or

- (iii) sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address.

### **96.3 When a notice is given**

A notice, consent or other communication that complies with this clause 96 is regarded as given and received:

- (a) if it is delivered or sent by fax:
  - (i) by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
  - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day;
- (b) if it is sent by mail:
  - (i) within Australia, two Business Days after posting; or
  - (ii) to or from a place outside Australia, five Business Days after posting; and
- (c) if it is sent by email:
  - (i) by 5.00pm (local time in the place of receipt) on a Business Day, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; or
  - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day, on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party sending the email from the recipient.

### **96.4 Address for notices**

A person's address and fax number are those as set out in the notice details of this the Post-Operating Term Private Patient Portion Lease, or as the person notifies the sender.

### **96.5 Communications by email**

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 96.4(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 96. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 96.1(c)(iii) will only form part of a communication under this clause 96 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this Schedule 22 or the Post-Operating Term Private Patient Portion Lease:
  - (i) to ensure that their respective firewall and/or mail server (as applicable):
    - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received;
    - (B) does not trap any messages in the spam filter which:
      - (I) in the case of notices sent by the State to the Operator, have been sent from [hinfra.health.nsw.gov.au](mailto:hinfra.health.nsw.gov.au) or [health.nsw.gov.au](mailto:health.nsw.gov.au); and

- (II) in the case of notices sent by the Operator to the State have been sent from healthscope.com.au; and
- (C) automatically sends a receipt notification to the sender upon receipt of a message; and
- (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

## **96.6 Electronic collaboration system**

- (a) The parties will use best endeavours to establish an agreed electronic collaboration system for the transmission of notices, consents and other communications under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease prior to the Lease Commencement Date.
- (b) Subject to any contrary agreement pursuant to clause 96.5(a), this clause 96 will apply to any notice given by any party to another party under this Schedule 22 or the Post-Operating Term Private Patient Portion Lease notwithstanding any electronic collaboration system used by the parties in connection with the Facility.

## **97. Taxes**

### **97.1 Liability for Taxes**

- (a) Subject to clause 97.2, the Operator must indemnify the State and the State Related Parties against, and must pay to the State and the State Related Parties on demand the amount of, all Taxes (including Rates, Land Tax and stamp duty) incurred in connection with:
  - (i) the negotiation, preparation, execution, stamping and registration of (i) any agreement entered into between the parties which arises out of or in connection with this Schedule 22 and (ii) the Post-Operating Term Private Patient Portion Lease;
  - (ii) the transactions that this Schedule 22 (or which arise out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease contemplate; and
  - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Schedule 22 (or arising out of or in connection with the agreements which arise out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease.
- (b) If the State notifies the Operator within 10 Business Days after execution of the Post-Operating Term Private Patient Portion Lease that it will attend to lodgement and stamping of the Post-Operating Term Private Patient Portion Lease, the Operator must promptly deliver all executed copies of the documents in its possession to the State to enable it to arrange lodgement and must cooperate with the State to arrange stamping, payment of any assessment and to dispute an assessment (at the State's cost) in accordance with the State's directions.
- (c) On and from the Lease Commencement Date:
  - (i) the State must pay all Rates and Land Tax, if any, in respect of that part of the Site which forms the State Asset; and

- (ii) the Operator must pay all Rates and Land Tax, if any, in respect of the remainder of the Site,

provided in each case that if part of the Site becomes subject to Rates or Land Tax as a result of any Post Operating Term Associated Commercial Facilities, the Operator must pay for such Rates and/or Land Tax and may arrange for the relevant Rates and Land Tax to be invoiced to the relevant user and paid direct to the Authority by the relevant user.

## 97.2 GST

### (a) **(Interpretation):**

- (i) Except where the context suggests otherwise, terms used in this clause 97.2 have the meanings given to those terms by the GST Law (as amended from time to time).
- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 97.2.
- (iii) Unless otherwise expressly stated, all consideration to be provided under this Schedule 22 (or in relation to agreements arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease (other than under this clause 97.2) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 97.2.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (v) For the purposes of this clause 97.2:
  - (A) references to the 'State' means the Health Administration Corporation (**HAC**) or Northern Sydney Local Health District (**NSLHD**) as the case may be; and
  - (B) to the extent HAC or NSLHD makes a supply or acquisition on behalf of the other in accordance with this Schedule 22 (or in relation to agreements arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, it is authorised to do so as agent of the other and may issue or obtain a tax invoice or recipient created tax invoice, as the case may be, in that capacity.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this Schedule 22 (or under any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)** Subject to the remainder of this clause 97.2(d), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease (except where it is expressly stated to be inclusive of GST):
  - (i) any party (**Recipient**) that is required to provide consideration for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable

on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

- (ii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 97.2(c)(i).
- (d) **(Variation of GST):**
  - (i) If the GST Amount recovered by the Supplier from the Recipient under clause 97.2(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease within seven days after the Supplier becomes aware of the adjustment event.
- (e) **(Exclusion of GST from calculations)** If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of that other amount or revenue stream net of GST.
- ...
- (p) **(No merger)** This clause will not merge on completion or termination of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease.

## 98. General

### 98.1 State as a Public Authority

- (a) This Schedule 22 (and any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State to exercise any of its functions and powers pursuant to any Law.
- (b) The Operator acknowledges and agrees that, without limiting clause 98.1(a), anything which the State does, fails to do or purports to do pursuant to their functions and powers under any Law will be deemed not to be an act or omission by the State under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease and will not entitle the Operator to make any Claim against the State.
- (c) The parties agree that clauses 98.1(a) and 98.1(b) are taken not to limit any liability which the State would have had to the Operator under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease as a result of a breach by the State of a term of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease but for clauses 98.1(a) and 98.1(b).

...

### **98.3 Certification**

For the purposes of this Schedule 22 (or any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, a copy of a document will be regarded as duly certified by the Operator if it is certified as a true copy by a director, secretary or general manager of the Operator.

### **98.4 Cost of performing obligations**

- (a) Subject to clause 98.4(b), each party must perform its obligations under this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease at its own cost, unless expressly provided otherwise.
- (b) The Operator must, upon demand, pay to the State, and keep the State indemnified against, their costs, expenses, duties and fees arising from or incidental to:
  - (i) any consent, deed, agreement, approval or waiver obtained from the State under or in relation to this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, or any amendment to this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (other than any consent or approval expressly contemplated by this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease) to which the State is a party at the request of the Operator;
  - (ii) the taking of successful enforcement action by the State pursuant to this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, including the fees of all professional consultants properly incurred by the State (including legal costs on a full indemnity basis); and
  - (iii) obtaining reports from any consultant engaged by the State in respect of any circumstance described in clauses 98.4(b)(i) or 98.4(b)(ii).

### **98.5 Governing Law**

This Schedule 22 is governed by and must be construed according to the Law applying in New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts.

### **98.6 Amendments**

This Schedule 22 may only be varied by a deed executed by or on behalf of each party, except that amendments to the Post Operating Term Project Plans may be made as expressly contemplated by this Schedule 22 without the need for any amending instrument.

### **98.7 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable).
- (b) A waiver or consent given by a party under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease operates as a waiver of another breach of that term or of a breach of any other term of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable).

#### **98.8 Survival of certain provisions; no merger**

- (a) Without limiting clause 72.12:
  - (i) clauses 4, 5, 54, 85, 88, 89, 91, 92, 96, 97, 98 and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of the Post-Operating Term Private Patient Portion Lease; and
  - (ii) if the Post-Operating Term Private Patient Portion Lease is rescinded or terminated, no party will be liable to any other party except:
    - (A) under the Surviving Clauses; or
    - (B) in respect of any breach of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease. All rights and obligations under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease survive the execution and delivery of any transfer or other document which implements any transaction under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable).

#### **98.9 Survival and repetition of representations and warranties**

The representations and warranties given by the Operator in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease:

- (a) survive execution of each Project Document; and
- (b) in respect of clauses 5.1(b)(i) to 5.1(b)(xii), 5.2 and 13.3 are repeated on each anniversary of the Lease Commencement Date, in each case with respect to the facts and circumstances then subsisting.

#### **98.10 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.

#### **98.11 Consents**

A consent required under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease from the State, a State Related Party or the Client Representative may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable) expressly provides otherwise.



## **98.12 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease, except for representations or inducements expressly set out in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.
- (b) Each party acknowledges and confirms that it does not enter into this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease.

## **98.13 Reading down**

If a word, phrase, sentence, clause or other provision of this Schedule 22 (or any agreement arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease would otherwise be unenforceable, illegal or invalid the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

## **98.14 Severance**

Any provision of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease (as applicable) or affecting the validity or enforceability of such provision in any other jurisdiction.

## **98.15 Exercise of remedies**

- (a) If the Operator breaches any of its obligations under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, the State may exercise any or all of the rights and powers and pursue any or all of the remedies available to them under the Project Documents and/or enforce any other legal or equitable remedy available under applicable Law.
- (b) Each and every right, power and remedy of the State will be cumulative and in addition to any other right, power and remedy, whether under this Schedule 22, the Post-Operating Term Private Patient Portion Lease or applicable Law, which may be exercised by the State and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.
- (c) No delay or omission by the State in the exercise of any right, power or remedy will impair such right, power or remedy or constitute a waiver of the relevant breach.

## **98.16 Remedies cumulative**

The rights and remedies provided in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease are cumulative and are not exclusive of any rights or remedies provided by Law or any other agreement, except to the extent expressly provided in this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease (as applicable).

## **98.17 Moratorium legislation**

Unless application is mandatory by Law, any present or future Law will not apply to this Schedule 22 (or arising out of or in connection with it) and the Post-Operating Term Private Patient Portion

Lease so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the State.

### **98.18 Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this Schedule 22 (or any agreement arising out of or in connection with it) and the Post-Operating Term Private Patient Portion Lease:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

...

### **98.21 Relationship between the State and the Operator**

Nothing in, or contemplated by, this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease will be construed or interpreted as:

- (a) constituting a relationship between the State and the Operator, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the State to the Operator or the Operator Related Parties in relation to or arising out of this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease, other than to comply with the obligations (if any) expressly stated to be assumed by the State under this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease on a good faith basis.

### **98.22 Contract documents to be in English**

All documentation in computer readable or other written forms brought (whether before or after the Lease Commencement Date) or required to be brought into existence as part of, or for the purpose of, performing the Operator's Business and the Services to be provided by the Operator must be written in the English language.

### **98.23 Vienna convention**

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this Schedule 22 (or arising out of or in connection with it) or the Post-Operating Term Private Patient Portion Lease.

# Annexure 1 – Expert Determination and Dispute Resolution

---

## Part A

### 1. Selection of Expert

- (a) Within seven Business Days after a matter is referred to expert determination, the parties must exchange lists, in writing, of three persons (in order of preference) who, if appointed, would satisfy the requirements of paragraph 1(d) of this Part A, from whom the expert is to be chosen in order of preference.
- (b) Any person that appears on both lists under paragraph 1(a) of this Part A will be appointed as the Expert to determine the Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that referred the Dispute for Expert Determination will be appointed as the Expert.
- (c) If no person appears on both lists, the party that referred the Dispute for Expert Determination must procure the Australian Centre for International Commercial Arbitration to nominate an individual to act as the Expert to determine the Dispute.
- (d) It is the intention of each party that the Expert appointed to determine any Dispute will be a person with appropriate skills having regard to the nature of the matters the subject of that Dispute.
- (e) Neither party will be entitled to challenge the appointment of any Expert under this paragraph on the basis that the Expert does not satisfy the requirements of paragraph 1(d) of this Part A.
- (f) The parties must enter into an Expert Determination Agreement with the Expert.
- (g) Each agreement entered into pursuant to paragraph 1(f) of this Part A will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).

### 2. Rules of expert determination

The expert determination process will be administered, and the Expert will be required to act, in accordance with the terms of the Expert Determination Agreement.

### 3. Expert finding

- (a) The determination of any expert must be in writing and will be final and binding on the parties.
- (b) Upon any submission, in writing, by either party to the Expert and to the other party, the Expert may amend the determination to correct:
  - (i) a clerical mistake;
  - (ii) an error from an accidental omission;
  - (iii) a miscalculation of figures or a mistake in the description of any matter, person or thing; or
  - (iv) a defect in form.

## 4. Liability of Expert

Each party agrees:

- (a) that the Expert will not be liable in respect of the Expert Determination, other than in the case of fraud on the part of the Expert; and
- (b) to indemnify the Expert from and against all Claims, other than in the case of fraud on the part of the Expert, that may be made against the Expert by any person in respect of the appointment of the Expert to determine the Dispute.

## Part B

### 1. Disputes generally

Subject to paragraph 7, any dispute, difference, controversy or claim (Dispute) directly or indirectly based upon, arising out of, relating to or in connection with this Schedule 22 or the Post-Operating Term Private Patient Portion Lease (including any questions relating to the existence, validity or termination of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease) or any party's conduct before the date of this Schedule 22 or the Post-Operating Term Private Patient Portion Lease, must be resolved in accordance with this paragraph 1.

### 2. Notice of Dispute

- (a) If any Dispute arises between the State and the Operator, any party to the Dispute may, within the time required by paragraph 2(b), give the other party written notice of the Dispute, specifying:
  - (i) the Dispute;
  - (ii) particulars of the party's reasons for being dissatisfied; and
  - (iii) the position which the party believes is correct.
- (b) The written notice under paragraph 3(a) must be given to the other party within 20 Business Days after the Dispute arising.

### 3. Executive negotiation

- (a) Where a notice of Dispute is given under paragraph 2, the Dispute must be referred to the relevant Executive Negotiators and the Executive Negotiators must, within five Business Days after the date on which the notice of Dispute was given under paragraph 2, commence meetings and negotiations with a view to resolving the Dispute.
- (b) If the Executive Negotiators:
  - (i) have not resolved the Dispute; or
  - (ii) have not reached agreement upon a procedure to resolve the Dispute,within 20 Business Days after the date on which the notice of Dispute was given under paragraph 2 (or such longer period of time as the Executive Negotiators or the parties to the Dispute may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute.

## 4. Arbitration Rules

If a Dispute is referred to arbitration under paragraph 3, the arbitration will be conducted in accordance with the following procedure:

- (a) the arbitration will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules;
- (b) the seat of the arbitration will be Sydney, Australia;
- (c) the number of arbitrators will be agreed or determined pursuant to Article 8 of the ACICA Arbitration Rules;
- (d) the language of the arbitration will be English;
- (e) the parties to the Dispute agree:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of the Dispute;
  - (ii) that any arbitration conducted pursuant to this paragraph will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) where appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;
    - (D) the consolidation of proceedings, when requested;
    - (E) the joinder of parties, when requested;
    - (F) the length of any hearing, if any; and
    - (G) the number of experts, if any, each party to the Dispute is permitted to appoint;
- (f) subject to this paragraph 4, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages;
- (g) the arbitral tribunal has the power, on the application of any party to a Dispute, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to the Dispute must consent to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration;
- (h) any award of the arbitral tribunal will be final and binding upon the parties to the Dispute;
- (i) this arbitration agreement is governed by and must be construed according to the Laws applying in New South Wales;
- (j) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this paragraph 4; and

- (k) the arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

## 5. Payments

The State may withhold payment of that part of any amount which is the subject of a Dispute.

## 6. Operator to continue performing obligations

Despite the existence of any Dispute, the parties must, except as expressly provided otherwise, continue to perform their respective obligations under this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.

## 7. Urgent relief

Nothing in this Part B will prejudice the right of a party to seek urgent injunctive or declaratory relief from a Court.

## 8. Survive termination

This Part B will survive termination of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease.

# Annexure 2 – Post-Operating Term Private Patient Portion Lease

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Form: 07L  
Licence: 03-09-102  
Licensee: Minter Ellison

**LEASE**  
**New South Wales**  
**Real Property Act 1900**

Leave this space clear. Affix additional pages to the top left-hand corner.

**PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.**

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased  
Part folio identifier 1/1189406, being [insert name of Private Patient Portion buildings], being at [insert street address of buildings on Private Patient Portion]

(B) LODGED BY

Document  
Collection  
Box

Name, Address or DX, Telephone, and Customer Account Number, if any

Customer Account Number: 123438 S

CODE

L

Reference: REM:VXB 20-7737061

(C) LESSOR

**HEALTH ADMINISTRATION CORPORATION ABN 45 100 538 161**

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): \_\_\_\_\_

(E) LESSEE

[ ]

(F)

**TENANCY:**

(G) 1. **TERM:**

2. **COMMENCING DATE:**

3. **TERMINATING DATE:**

4. With an **OPTION TO RENEW** for a period of N.A.  
set out in clause N.A. of N.A.

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE A** hereto.

8. Incorporates the provisions set out in N.A. with the Land and Property  
Management Authority as No(s). N.A.



9. The **RENT** is set out in N.A No. N.A of N.A

DATE: \_\_\_\_\_

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence. [See note\*\* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

-----  
Signature of witness

-----  
Signature of authorised officer

-----  
Name of witness

-----  
Authorised officer's name  
As delegate of the HEALTH ADMINISTRATION CORPORATION pursuant to section 21(1) of the Health Administration Act, 1982 and I hereby certify that I have no notice of the revocation of such delegation.

-----  
Address of witness

-----  
Authority of officer  
HEALTH ADMINISTRATION CORPORATION  
Signing on behalf of

*Note: where applicable, the lessor must complete the statutory declaration below.*

(I) STATUTORY DECLARATION \*

I solemnly and sincerely declare that-

- 1. The time for the exercise of option to \_\_\_\_\_ in expired lease No. \_\_\_\_\_ has ended; and
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900

Made and subscribed at \_\_\_\_\_ in the State of New South Wales on \_\_\_\_\_  
in the presence of \_\_\_\_\_ of \_\_\_\_\_

Justice of the peace  Practising Solicitor  Other qualified witness (specify)

\*\* who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person *OR* I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months *OR* I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was.....

\* ~~Signature of witness~~ A qualified witness cannot be provided at lodgment. ~~Signature of lessor~~ Signature of lessor should be signed and witnessed prior to lodgment. \*\* If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

\*\*s11 / RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation. Minter Ellison | Ref: 30-6251246 Lease

# Annexure A | Private Patient Portion Lease

## Northern Beaches Hospital

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# Information table

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## Date

## Parties

Name **Health Administration Corporation ABN 45 100 538 161**  
a corporation sole constituted under section 9 of the *Health Administration Act 1982* (NSW)

Short form name **Landlord**

Notice details **[insert details]**  
Facsimile: **[insert details]**  
Attention: **[insert details]**

Name **NBH Operator Co Pty Ltd in its capacity as trustee of the NBH Operating Trust**

ACN 169 029 181

Capacity and ABN In its capacity as trustee of the NBH Operating Trust ABN 83 722 380 020

Short form name **Tenant**

Notice details **[insert details]**  
Facsimile: **[insert details]**  
Attention: **[insert]**

## Items

**Item 1** **The Premises**

Part folio identifier 1/1189406, being **[insert name of Private Patient Portion buildings]**, being at **[insert street address of buildings on Private Patient Portion]**

**Item 2** **The Lease Term**

[]

**Item 3** **Commencement Date**

**Item 4**

**Item 5** **Rent**

Not applicable

**Item 6**

**Item 7****Permitted Use**

The provision of services to Compensable Patients at and from the Private Patient Portion and the provision of other services as specified in Schedule 22

## Background

- A The Landlord and the Tenant have entered into Schedule 22 for the maintenance and operation of the Premises.
- B The Landlord agrees to grant and the Tenant agrees to take a lease of the Premises on the terms in this Lease and Schedule 22.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Defined terms

In this Lease unless otherwise indicated by the context or subject matter or unless otherwise defined in this Lease, capitalised terms have the meaning given to them in Schedule 22 and:

**Claim** includes any claim, demand, remedy, suit injury, damage, loss, Cost, liability, action, proceeding, right of action and claim for compensation.

**Commencement Date** means the date on which this Lease commences set out in Item 3.

**Common Areas** has the meaning given in Schedule 22.

**Cost** includes any reasonable and proper cost, charge, expense, outgoing, payment or other expenditure of any nature whatever, including, where appropriate, all legal fees.

**Excluded Event** means an act of God, civil commotion, riot, war, earthquake, lightning, storm or tempest.

**Facility** means all improvements on the Site.

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the Tenant, under the same or similar circumstances, acting, in each case, in accordance with all laws.

**Item** means the relevant item number in the Information Table to this Lease.

**Landlord** means the Landlord named in this Lease and the person for the time being entitled to the Lease reversion when the Lease ends and where the context permits, includes a servant, agent or employee of the Landlord.

**Lease Term** means the term of this Lease set out in Item 2 commencing from and including the Commencement Date.

**Lifecycle** has the meaning in Schedule 22.

**Licensed Areas** means:

- (a) the areas subject of the licence granted to the Operator pursuant to clause 2(a) of Part B of Schedule 22; and
- (b) to the extent applicable, the areas subject of the licence granted to the Operator pursuant to clause 4(a) of Part C of Schedule 22.

**Party** means a party to this Lease.

**Permitted Use** means the permitted use of the Premises set out in Item 7.

**Premises** means the buildings described in Item 1.

**Project Deed** means the document entitled '*Project Deed – Northern Beaches Hospital*' entered into between, among others, the Landlord and the Tenant dated [ ] for the finance, design,

construction, commissioning, repair, maintenance and refurbishment of the Facility constructed on the Site and to provide other services.

**Rent** means the rent set out in Item 5 of the Information Table.

**Schedule 22** means the document entitled '*Occupation and sharing post expiry - Northern Beaches Hospital*' which takes effect in accordance with clauses 82.7 or 95 of the Project Deed.

**Shared Infrastructure** has the meaning given in Schedule 22.

**Site** means the land described as [Lot [            ] of DP [            ]].

**Tenant** means the tenant named in this Lease and includes its successors and permitted assigns, and where the context permits, includes a servant, agent, employee, contractor and invitee of the Tenant.

**Tenant's Property** has the meaning given to the phrase 'Operator's Property' in Schedule 22.

**this Lease** or **the Lease** means this lease and includes all schedules, parts, appendices, annexures and exhibits to it.

## 1.2 Interpretation

In this Lease headings are inserted for convenience of reference only and will be ignored in construing this Lease, and unless the context otherwise requires:

- (a) words importing the singular number include the plural and vice versa, a gender includes both genders and words importing persons include partnerships, trusts, corporations, joint ventures, unincorporated associations, unincorporated or statutory bodies, other entities and Governmental Agencies;
- (b) references to clauses and Annexures are references to clauses of, and annexures to, this Lease, references to paragraphs and sub-paragraphs are references to paragraphs and sub-paragraphs (respectively) within the clause of this Lease in which they are situated, in each case unless expressly stated otherwise;
- (c) references in an Annexure to a clause 'in the Agreement' or 'in this Lease' is a reference to the relevant one of clauses of this Lease;
- (d) references to any legislation or to any section or provision of any legislation include any modification or re-enactment of, or any legislative provision substituted for, and all legislation, regulations and statutory instruments under, such legislation;
- (e) references to any agreement or document (including this Lease) are to the agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Lease or that other agreement or document;
- (f) references to writing include a facsimile transmission and any means of representing or reproducing words, figures, drawings or symbols in a tangible and permanently visible form;
- (g) references to conduct include an omission, statement or undertaking, whether or not in writing;

- (h) references to an authority, institute, association, instrumentality, Governmental Agency, statutory body or body politic (each a person) are:
  - (i) if that person is reconstituted, renamed or replaced, deemed to refer to that person as reconstituted, renamed or replaced;
  - (ii) if the powers or functions of that person are transferred to, or assumed by, another person, deemed to refer to that other person; or
  - (iii) if that person ceases to exist, deemed to refer to the person which substantially serves the same purposes or object of that person who has ceased to exist;
- (i) references to an act of parliament will include any regulations, rules, by-laws and orders made under that act;
- (j) references to any party to this Lease or any other document include its successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (k) references to 'includes', 'include' and 'including' are to be read as if followed by '(without limitation)';
- (l) references to months are references to calendar months;
- (m) where a word or phrase is defined, any other capitalised grammatical form of that word or phrase has a corresponding meaning;
- (n) references to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (o) references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (p) references to an amount for which a person is contingently liable include an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises;
- (q) nothing in this Lease is to be interpreted against a party solely on the ground that the party put forward this Lease or any part of it;
- (r) where an obligation or Liability is imposed on the Tenant under this Lease, that obligation or Liability is not to be limited or affected by an obligation or Liability imposed in another provision of this Lease, unless expressly stated;
- (s) where a right or remedy is conferred on the Landlord under this Lease, that right or remedy is in addition to, and not in substitution of or to be limited or affected by, a right or remedy conferred on the Landlord in another provision of this Lease or otherwise at Law, unless expressly stated;
- (t) the term 'may' when used in the context of a right or remedy exercisable by the Landlord or a delegate of the Landlord means that the Landlord or its delegate can exercise that right or remedy in its sole and absolute discretion and the Landlord or its delegate has no obligation to the Tenant to do so unless expressly stated;



- (u) where this Lease provides that 'the Tenant is not entitled to Claim' or 'the Tenant has no Claim' or similar words are used, the Tenant will be deemed to have released and forever discharged the Landlord from all Claims which it has or at any time might have or, but for the release, might have had in connection with the relevant subject matter, and the Landlord will have no Liability whatsoever in connection with the relevant subject matter;
- (v) the Landlord and the Tenant agree that:
  - (i) the terms contained in Schedule 22 and this Lease constitute the whole of the agreement in respect of the Premises between the Landlord and the Tenant and, subject to the terms of Schedule 22 and this Lease, all previous negotiations and agreements are negatived;
  - (ii) subject to the terms of Schedule 22 and this Lease, no further terms are to be implied or arise between the Landlord and the Tenant by way of collateral or other agreement made by or on behalf of the Landlord or by or on behalf of the Tenant on or before or after the execution of Schedule 22 and this Lease, and any implication or collateral or other agreement is excluded and negatived;
  - (iii) subject to Schedule 22, no information, representation or warranty by the Landlord was supplied or made with the intention or knowledge that it would be relied on by the Tenant in entering into this Lease;
  - (iv) subject to Schedule 22, no information, representation or warranty (expressly or implied) has been relied on or will be relied on by the Tenant in entering into and performing its obligations pursuant to this Lease; and
  - (v) all representations and warranties (express or implied) as to matters relating to this Lease or the Premises are to the extent permitted by Law expressly negatived unless, and then only to the extent that, such matters are the subject of the express terms of Schedule 22;
- (w) this Lease is governed by and construed according to the Laws of New South Wales. The parties irrevocably submit to the non exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them;
- (x) where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises shall for the purposes of this Lease be the next Business Day;
- (y) each provision of this Lease continues to have full force and effect until it is satisfied or completed; and
- (z) this Lease means the lease granted under clause 2 of this Lease and includes any renewal of it, holding over or under it or any equitable lease or lease at law evidenced by the terms of this Lease, and irrespective of the Lease not being effective as a Lease or not being registered.

### 1.3 Exclusion of statutory provisions

- (a) The covenants, obligations and powers implied in leases by sections 84, 84A, 85, 86, 122, 130, 133B and Column 1 of Part 2 of Schedule 4 of the *Conveyancing Act 1919* (NSW) do not apply to and are not implied in this Lease unless expressly included.

- (b) Part 4 of the *Civil Liability Act 2002* (NSW) does not apply to any claims by the Landlord against the Tenant.
- (c) So far as it is possible to do so, the application of any moratorium or Law affecting the operation of this Lease, or any rights of the Landlord, is excluded.

#### **1.4 Moratorium**

To the extent permitted by Law, the application to this Lease or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Lease Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any party is excluded and negated.

#### **1.5 Order of precedence**

To the extent that this Lease expressly requires the Tenant to comply with Schedule 22, if there is any ambiguity, discrepancy or inconsistency between any provisions of this Lease and Schedule 22, the terms of Schedule 22 shall prevail.

## **2. Lease of Premises**

### **2.1 Lease of Premises for Lease Term**

- (a) The Landlord leases the Premises to the Tenant for the Lease Term subject to the terms and conditions of Schedule 22 and this Lease.
- (b) Pursuant to and subject to the terms of Schedule 22, the Landlord grants the Tenant a non-exclusive licence for no consideration to use the Licensed Areas for the Lease Term.

### **2.2 Landlord reservations**

Subject to the terms of Schedule 22, the Landlord reserves to itself and the Landlord's servants, agents and contractors the right to create any registered or unregistered easement or other right through or around the Premises.

### **2.3 Landlord's access rights**

- (a) The Landlord and the Tenant acknowledge and agree to give the rights of access to the Premises which the Landlord reserves to itself under Schedule 22.
- (b) The Tenant acknowledges and agrees that the exercise by the Landlord of the rights of access to the Premises under Schedule 22:
  - (i) will not give rise to any right to the Tenant to terminate this Lease or make any Claim against the Landlord; and
  - (ii) will not release the Tenant from its obligations pursuant to this Lease, provided that the Landlord will use reasonable endeavours to ensure that it does not materially interfere with the capacity of the Tenant to perform its obligations or exercise its rights under Schedule 22 or this Lease.

## **3. Rent**

If demanded, the Tenant must pay the Rent in advance to the Landlord on each anniversary of the Commencement Date.

## 4. Goods and services tax

Clause 97.2 of Schedule 22, Part D, applies to this document as if set out in this document.

## 5. Use of Premises

The Tenant must not use the Premises or the Licensed Areas for any purpose other than the Permitted Use.

## 6. Tenant's rights

### 6.1 Quiet enjoyment

Subject to the Landlord's rights and to the Tenant complying with the Tenant's obligations under this Lease, the Tenant may use and occupy the Premises without interruption by the Landlord or any person claiming through the Landlord.

### 6.2 Common Areas

Subject to this Lease, the Tenant may use the Common Areas for their intended purposes in common with the Landlord and others.

### 6.3 Access

Subject to complying with the Landlord's security procedures for the Facility, the Tenant may have access to the Premises, the Licensed Areas and the Facility 24 hours a day seven days a week, including, to the extent necessary to access the Premises, across the land.

### 6.4 Ceiling cavity, cable ducts and risers

Subject to this Lease and the Landlord's approval (who must act reasonably), the Tenant may use the ceiling cavity above the Premises, cable ducts and the risers in the Facility to install communication cables and conduits for utilities to the Premises.

## 7. Tenant's obligations

### 7.1 Prohibitions

The Tenant must not:

- (a) obstruct access to, overload or otherwise interfere with or damage Shared Infrastructure;
- (b) damage or destroy anything on the Site;
- (c) do anything dangerous, noxious, offensive or illegal on the Site;
- (d) do anything to pollute the Site or its environment;
- (e) without the Landlord's approval, keep or use dangerous materials on the Premises;
- (f) place any Tenant's Property or other items such as containers, pallets, skips and waste outside the Premises;
- (g) create any nuisance which, in the Landlord's reasonable opinion, may adversely affect owners or occupiers of neighbouring land or other occupiers of the Facility; or
- (h) leave a vehicle in any part of the Common Areas or in a non-designated area, including any pick up or delivery area.

## 7.2 Dangerous materials

If the Tenant seeks the Landlord's approval to keep or use a dangerous material on the Premises, the Tenant must:

- (a) give the Landlord evidence that all relevant Authorities have approved the dangerous material being kept or used on the Premises;
- (b) if the approval of Authorities is subject to conditions, comply with those conditions;
- (c) pay the Landlord's costs (including the expert's fees) of consulting experts to satisfy the Landlord that the Tenant has done everything necessary for the dangerous material to be kept safely on the Premises; and
- (d) pay to the Landlord the amount of the increase in the premium payable under any of the Landlord's insurances of the Facility.

## 7.3 BEED Act

The Tenant must cooperate with the Landlord at the Landlord's cost to enable the Landlord to comply with the BEED Act, if it applies to the Facility or the Premises, including providing relevant information, providing access for the Landlord's reporting purposes and complying with any environmental management plan reasonably required by the Landlord.

## 7.4 BEEC

If the BEED Act applies to the Premises, and the Landlord is not exempt under the BEED Act from obtaining a BEEC, the Tenant acknowledges that it received a BEEC from the Landlord before it entered into this Lease.

## 8. Sublease and other dealings

- (a) The Landlord and the Tenant agree that the Tenant has no right to deal with all or any part of its interest in this Lease or the Premises (including by way of assignment, sub-lease, licence, trust or the grant of any Security Interest) except to the extent allowed under Schedule 22.
- (b) The Tenant may sublease the areas identified as the Designated Commercial Areas (as defined in the Project Deed) for the Associated Commercial Facilities in accordance with the terms of Schedule 22.

## 9. Landlord's covenant

If the Tenant pays the Rent and observes and performs in a timely fashion its obligations under this Lease and Schedule 22, the Tenant may occupy and enjoy the Premises during the Lease Term without any interruption by the Landlord or by any Person claiming through the Landlord except as provided in Schedule 22 and this Lease.

## 10. Easements

Subject to the terms of Schedule 22, the Landlord may grant rights of support and easements, dedicate land and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Governmental Agency or Utility provider as the Landlord thinks fit for the purpose of:

- (a) public or private access to the Premises;
- (b) support of structures erected on adjoining land; or
- (c) the provision of services.

The Landlord must not exercise its rights under this clause to derogate from the enjoyment of the rights of the Tenant under this Lease.

## 11. Maintenance of Premises and Facility

### 11.1 Repair and replace

Without prejudice to the Tenant's obligations in relation to undertaking of Lifecycle activities (if any), the Operator must:

- (a) keep the Premises and the Operator's Property in:
  - (i) good repair; and
  - (ii) in no less a condition than the areas constituting the Premises were in at the Commencement Date,  
  
except to the extent that any disrepair or lesser condition is caused by an Excluded Event, reasonable wear and tear or a defect in the structure of the Facility;
- (b) repaint (or otherwise appropriately finish) the internal surfaces of the Premises, and repair or replace damaged or worn floor coverings, whenever reasonably necessary so as to keep the Premises looking clean and tidy;
- (c) repair damage to the Premises caused or contributed to by the act, omission, negligence or default of the Tenant; and
- (d) repair or, if necessary, replace any damaged or broken entry doors on or leading directly to the Premises.

### 11.2 Equipment exclusively servicing the Premises

If there is any plant and equipment exclusively servicing the Premises, the Tenant must maintain it in accordance with Good Industry Practice.

### 11.3 No Lessor obligation

Unless specified otherwise in Schedule 22, the Landlord has no obligation to repair or maintain the Premises.

## 12. Cleaning

The Tenant must:

- (a) keep the Premises and everything in them clean, tidy and free of refuse and vermin, supply all consumable items required for the Premises and comply with the Landlord's directions in that regard;
- (b) enter into and keep in force during the Lease Term a contract to clean the Premises with a contractor approved by the Landlord and ensure that the contractor complies with the Landlord's reasonable directions in connection with its conduct;

- (c) keep rubbish awaiting removal from the Premises in appropriate containers in the Premises which cannot be seen from the Common Areas; and
- (d) comply with the Landlord's reasonable directions about disposing of, storing and recycling rubbish.

## 13. Schedule 22

The Tenant must, at all times during the Lease Term, comply with its obligations and liabilities as Operator under Schedule 22.

## 14. Termination of Lease

- (a) Save for the rights expressly stated in this clause 14, to the extent permitted by law, neither party shall have any right to terminate this Lease.
- (b) Subject to any earlier determination in accordance with clause 14(c), this Lease shall terminate at 11.59pm on the last day of the Lease Term and neither party will have any Claim against the other arising out of or in respect of such termination other than any Claim that that party may have arising out of or relating to Schedule 22.
- (c) If Schedule 22 is ended for any reason this Lease will end on the same day as Schedule 22 ends and neither party will have any Claim against the other arising out of or in respect of such termination other than any Claim that that party may have in accordance with Schedule 22.
- (d) This Lease may not be terminated by the Landlord or the Tenant whether for breach or otherwise unless Schedule 22 is also terminated concurrently.

## 15. Costs and expenses

Subject to clause 98.4 of Schedule 22, Part D, the Tenant will, upon demand, pay to the Landlord, and keep the Landlord indemnified against, its costs, expenses, duties and fees of or incidental to:

- (a) any consent, deed, agreement, approval or waiver obtained from the Landlord under or in relation to this Lease and any sublease, or any amendment to the Lease and any sublease made to which the Landlord is a party at the request of the Tenant;
- (b) the taking of enforcement action by the Landlord pursuant to the Lease or any sublease, including the fees of all professional consultants properly incurred by the Landlord (including legal costs on a full indemnity basis); and
- (c) obtaining reports from any consultant engaged by the Landlord in respect of any circumstance described in paragraphs (a) and (b) above.

## 16. Miscellaneous

### 16.1 Alterations

This Lease may be altered only in writing signed by each party.

## **16.2 Approvals and consents**

Except where this Lease expressly states otherwise, a party may withhold or give conditionally any approval or consent under this Lease.

## **16.3 Duty**

Any duty (including fines, penalties and interest) in connection with this Lease or any transaction contemplated by this Lease, must be paid by the Tenant.

## **16.4 Severability**

A term or part of a term of this Lease that is illegal or unenforceable may be severed from this Lease and the remaining terms or parts of the term of this Lease continue in force.

## **16.5 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **16.6 Entire agreement**

This Lease and Schedule 22 constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

# Annexure 3 – Required Notice Periods

| No. | Service provided in Shared Area  | Required Notice Period |
|-----|--|------------------------|
| 1.  | Hard FM  |                        |
| 2.  | Medical Records  |                        |
| 3.  | Staff Amenities  |                        |
| 4.  | Pathology (TPP)  |                        |
| 5.  | Kitchen  |                        |
| 6.  | Mortuary   |                        |
| 7.  | Loading Dock   |                        |
| 8.  | Back-of-House / Facilities Management /<br>Bedstorage / Biomedical engineering |                        |
| 9.  | Volunteers & Patient Reps  |                        |
| 10. | ED-Medical Imaging   |                        |
| 11. | Medical Imaging Inc Nuclear Medicine (TPP)                                     |                        |
| 12. | Pharmacy (TPP)   |                        |
| 13. | Day Medical Unit   |                        |
| 14. | Dialysis Unit  |                        |
| 15. | Recovery   |                        |
| 16. | Shared DSU   |                        |
| 17. | Shared ICU/HDU   |                        |
| 18. | SSD  |                        |
| 19. | Shared Paediatric Inpatient Unit   |                        |
| 20. | Shared Maternity   |                        |
| 21. | Shared Birthing Suite  |                        |
| 22. | SCN – Shared   |                        |
| 23. | Administration   |                        |



# Annexure 4 – Payment and invoicing requirements

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## 1. Interpretation

In this Annexure 4:

- (a) “GST” includes goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any like tax, and in addition, includes any interest or penalty imposed on or in relation to any GST that becomes payable under section 2(c) of this Annexure 4;
- (b) “GST Law” means the same as GST Law means in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth), as amended or replaced from time to time;
- (c) “Operator Payments” means each payment of the Service Price for the Services that the Operator receives within and from the SC Shared Clinical Areas and SC Shared Non-Clinical Support Areas under clause 12.2 of Part C of this Schedule 22;
- (d) “Pricing Schedule” means the schedule of Service Prices to be agreed by the parties in accordance with clause 3.2 of Part C of Schedule 22 in respect of the Services to be supplied by the Operator to the State, and the State to the Operator;
- (e) “State Payments” means each payment of the Service Price for the Services that the State receives within and from the OC Shared Clinical Areas and OC Shared Non-Clinical Support Areas clause 12.1 of Part C of this Schedule 22; and
- (f) any term used in this Annexure 4 which is defined in the GST Law has the same meaning in this Annexure 4, unless the context requires otherwise.

## 2. Fees payable

- (a) The party receiving a Service (the **Recipient**) must pay the Service Price to the party supplying the relevant Service (the **Supplier**) set out in the Pricing Schedule.
- (b) All amounts referred to in this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, unless otherwise stated, are exclusive of any GST.
- (c) A recipient of a taxable supply under or in connection with this Schedule 22 and the Post-Operating Term Private Patient Portion Lease must, in addition to paying the GST exclusive amount for that supply:
  - (i) pay to the supplier an amount equal to any GST payable on that supply by the supplier, without deduction or set-off of any other amount; and
  - (ii) make that payment as and when the GST exclusive amount or part of it must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.
- (d) Despite any other provision of this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, if either party is required to reimburse to the other or indemnify the other for any cost, expense or other amount (or part) that the other party has incurred or

will incur in connection with this Schedule 22 and the Post-Operating Term Private Patient Portion Lease, the amount must be reduced by any part of that amount which is recoverable by the other party (or representative member if this is not the other party) by way of an input tax credit or other like set off.

**3. No other amounts**

The only amounts payable by the Recipient in respect of a Service will be the amounts specified in section 2(a) of this Annexure 4 and any applicable GST. All other costs, charges, fees and expenses for or arising out of or in connection with the provision of Services must be paid by the Supplier.

**4. Invoice requirements**

- (a) The obligation of the Recipient to pay the Supplier arises on delivery by the Supplier of a tax invoice in the format required by the law to the Recipient for the supply. The tax invoice must include sufficient details to enable the Recipient to determine whether the amount invoiced is accurate.
- (b) Invoices are to be sent to the address nominated by the State and the Operator at the Lease Commencement Date (unless and until either party notifies the other of an alternative address, in which case invoices are to be sent to that address).

**5. Payment terms**

The Recipient must pay the Supplier for the amount invoiced within 45 days after the invoice is received.

**6. Disputing amounts**

- (a) If the Recipient does not agree with any part of an account, it must immediately give the Supplier a written notice stating that it is disputing the account and giving reasons. If the Supplier's response does not satisfy the Recipient the dispute must be mediated in accordance with Annexure 1 of this Schedule 22.
- (b) If the Recipient disputes its obligation to pay any amount in the invoice, the Recipient may withhold that part of the invoice amount until such time as the dispute is resolved.

The Operator must provide its Australian Business Number (ABN) and details of its GST registration status to the State prior to the Lease Commencement Date.

# Annexure 5 – Private Patient Portion Lifecycle Program

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| <b>Year (i)</b> | <b>Class A Private Patient Portion Handover Assets</b> | <b>Class B Private Portion Handover Assets</b> | <b>Total</b>       |
|-----------------|--|--|--------------------|
| <b>2018/19</b>  | \$1,385  | -  | <b>\$1,385</b>     |
| <b>2019/20</b>  | \$59,241   | -  | <b>\$59,241</b>    |
| <b>2020/21</b>  | \$55,393   | \$34,743                                       | <b>\$90,135</b>    |
| <b>2021/22</b>  | \$71,833   | \$1,542  | <b>\$73,375</b>    |
| <b>2022/23</b>  | \$188,196  | \$53,290                                       | <b>\$241,486</b>   |
| <b>2023/24</b>  | \$84,980   | \$42,371                                       | <b>\$127,350</b>   |
| <b>2024/25</b>  | \$117,618  | \$197,665                                      | <b>\$315,283</b>   |
| <b>2025/26</b>  | \$1,029,788  | \$250,217                                      | <b>\$1,280,006</b> |
| <b>2026/27</b>  | \$135,745  | \$289,613                                      | <b>\$425,357</b>   |
| <b>2027/28</b>  | \$668,514  | \$381,958                                      | <b>\$1,050,471</b> |
| <b>2028/29</b>  | \$39,051   | \$163,638                                      | <b>\$202,689</b>   |
| <b>2029/30</b>  | \$171,355  | \$782,917                                      | <b>\$954,272</b>   |
| <b>2030/31</b>  | \$1,609,588  | \$623,287                                      | <b>\$2,232,876</b> |
| <b>2031/32</b>  | \$242,289  | \$734,501                                      | <b>\$976,789</b>   |
| <b>2032/33</b>  | \$631,223  | \$174,567                                      | <b>\$805,791</b>   |
| <b>2033/34</b>  | \$1,650,590  | \$245,602                                      | <b>\$1,896,192</b> |
| <b>2034/35</b>  | \$214,386  | \$365,293                                      | <b>\$579,679</b>   |
| <b>2035/36</b>  | \$779,966  | \$171,628                                      | <b>\$951,594</b>   |
| <b>2036/37</b>  | \$112,446  | \$139,980                                      | <b>\$252,425</b>   |
| <b>2037/38</b>  | \$576,492  | \$638,057                                      | <b>\$1,214,548</b> |
| <b>2038/39</b>  | \$932,936  | \$121,734                                      | <b>\$1,054,670</b> |

# Signing page

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**EXECUTED** as an agreement.

*[Signature clauses to be inserted prior to execution]*