

# Operator / HAC Security

## Northern Beaches Hospital

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Health Administration Corporation (**HAC**)

NBH Operator Co Pty Ltd in its personal capacity and in its capacity as trustee of the NBH Operating Trust (**Operator**)

NBH Operator B Pty Ltd (**Operator B**)

NBH Borrower Pty Ltd (**Borrower**)

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<b>Details</b>	<b>17</b>
<b>Agreed terms</b>	<b>19</b>
<b>1. Defined terms &amp; interpretation</b>	<b>19</b>
1.1 Definitions	19
1.2 Definitions in Project Deed	21
1.3 Interpretation	21
1.4 Exclusion of Civil Liability Act	22
1.5 Novation to State Nominee	22
1.6 Consent	22
1.7 Inconsistency	22
1.8 Grantor as trustee	22
<b>2. Grant of Security</b>	<b>22</b>
2.1 The charge	22
2.2 Priority	23
2.3 Financiers Tripartite Deed	23
2.4 Nature of charge	23
<b>3. Representations, warranties and undertakings by the Grantors</b>	<b>23</b>
3.1 Representations and warranties	23
3.2 Trust representations and warranties	24
3.3 Repetition of representations and warranties	25
<b>4. General undertakings</b>	<b>25</b>
4.1 Satisfaction of Obligations by Grantors	25
4.2 General undertakings	25
<b>5. Collateral and Dealings</b>	<b>26</b>
5.1 Restrictions in relation to Collateral	26
5.2 Default subsisting	27
5.3 HAC assumes no obligations	27
5.4 Documents of title and other securities	27
5.5 Protection of Collateral	28
5.6 Dealing with Proceeds	28
<b>6. Grantors' liability and exclusion of rights</b>	<b>28</b>
6.1 Indemnity	28
6.2 Principal and independent obligation	29
6.3 Exclusion of subrogation and other rights	29
<b>7. Rights to demand payment and exercise powers</b>	<b>30</b>
<b>8. Appointment of Receiver</b>	<b>30</b>

8.1	Appointment	30
8.2	Removal	30
8.3	More than one Receiver	30
8.4	Remuneration of Receiver	30
8.5	Agent of the Grantor	30
8.6	Indemnity	30
<b>9.</b>	<b>Powers of Receiver</b>	<b>30</b>
<b>10.</b>	<b>HAC's powers</b>	<b>33</b>
10.1	Exercise of Powers	33
10.2	Act jointly	33
10.3	Power of attorney	33
10.4	HAC may make good any default	34
10.5	Workcare, WorkCover and worker's compensation	34
10.6	PPSA provisions	34
10.7	Investigating Experts	35
<b>11.</b>	<b>Time periods</b>	<b>35</b>
11.1	Exclusion of time periods	35
11.2	Mandatory notice period	35
<b>12.</b>	<b>Application of money</b>	<b>35</b>
12.1	Priority of payments	35
12.2	Money received	36
12.3	Application of payments or credits	36
12.4	Reliance on certificate	36
12.5	Compensation	36
12.6	Suspense account	37
<b>13.</b>	<b>Liability, release and indemnity</b>	<b>37</b>
13.1	Continuing obligation	37
13.2	Settlement conditional	37
13.3	Grantors' liability not affected	37
13.4	Release of Collateral	37
13.5	Waiver by Grantors	38
13.6	No liability for loss	38
13.7	No liability to account	38
13.8	No conflict	38
13.9	No notice or enforcement	38
13.10	Indemnity	38
13.11	Protection of persons dealing with HAC or Receiver	39
<b>14.</b>	<b>Payments</b>	<b>39</b>
14.1	Money repayable as agreed or on demand	39
14.2	Payment of interest	39
14.3	Capitalisation of interest	40
14.4	Merger	40
14.5	No deduction for taxes and no set off or counterclaim	40
<b>15.</b>	<b>Termination of this document</b>	<b>40</b>

<b>16. Notices</b>	<b>40</b>
<b>17. Dispute resolution</b>	<b>40</b>
<b>18. General provisions</b>	<b>41</b>
18.1 Assignment	41
18.2 Waiver	41
18.3 HAC as an Authority	41
18.4 Indemnities	41
18.5 Indemnity held on trust	41
18.6 Amendments	42
18.7 Surviving provisions	42
18.8 Severability of provisions	42
18.9 No merger	42
18.10 Contra proferentem	42
18.11 Further assurance	42
18.12 Counterparts	43
18.13 Registration	43
18.14 Governing Law and jurisdiction	43
18.15 Jurisdiction	43
18.16 Moratorium legislation	43
18.17 Attorneys	43
18.18 Confidentiality	43
<b>Schedule 1 – Serial Numbered Property</b>	<b>45</b>
<b>Signing page</b>	<b>46</b>

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# Details

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## Date

## Parties

Name **Health Administration Corporation**  
ABN 45 100 538 161  
Registration a corporation sole constituted under section 9 of the *Health Administration Act 1982 (NSW)*  
Short form name **HAC**  
Notice details Address: [•]  
Facsimile: [•]  
Attention: [•]

Name NBH Operator Co Pty Ltd in its personal capacity and in its capacity as trustee of the NBH Operating Trust  
Short form name **Operator** and, together with Operator B and the Borrower, a **Grantor**  
ACN 169 029 181  
Notice details Address: [•]  
Email: [•]  
Attention: [•]

Name NBH Operator B Pty Ltd  
Short form name **Operator B** and, together with the Operator and the Borrower, a **Grantor**  
ACN 602 943 911  
Notice details Address: [•]  
Email: [•]  
Attention: [•]

Name NBH Borrower Pty Ltd  
Short form name **Borrower** and, together with the Operator and Operator B, a **Grantor**  
ACN 602 943 895  
Notice details Address: [•]  
Email: [•]  
Attention: [•]

# Background

- A The background to the Project is set out in the Project Deed.
- B This document sets out the terms on which each Grantor grants a first ranking charge to HAC over its entire assets and undertakings as security for the performance of its obligations under each Project Document.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Definitions

The following words or phrases, where they appear in this document, have the following meaning unless the context requires otherwise:

**Attorney** means an attorney appointed by HAC under this document.

**Capital** means, in respect of a Grantor, the uncalled and called but unpaid nominal or premium capital of that Grantor.

**Charged Debts** means, in respect of a Grantor, all debts whether actual or contingent at any time owing to that Grantor together with all books or documents of account or records evidencing or recording such debts, including:

- (a) any accounts that arise from that Grantor granting a right, or providing services, in the ordinary course of its business whether or not that Grantor is the person to whom the right is granted or the services are provided;
- (b) any accounts that are proceeds of inventory; and
- (c) any other accounts (as defined in the PPSA).

**Circulating Asset** has the meaning given in section 340(1)(a) of the PPSA.

**Collateral** means, in respect of a Grantor, all of that Grantor's present and future property of any kind, including interests, rights and proceeds and anything else in respect of which that Grantor has at any time sufficient rights to grant a Security Interest, including all of the following:

- (a) the assets, undertaking and goodwill of the business of that Grantor;
- (b) the Capital;
- (c) (in respect of the Operator only) the Trust Property; and
- (d) all property acquired or held by that Grantor for the purposes of or in connection with the Project.

**Deal** means sell, convey, assign, transfer, lease, licence or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Collateral.

**Debt Proceeds** means, in respect of a Grantor, the proceeds of realisation of its Charged Debts.

**Default** means the occurrence of any of the following events:

- (a) HAC has elected, by notice in writing under clause 78 (Termination) of the Project Deed, to terminate the Project Deed in connection with an Operator Termination Event; or
- (b) HAC is entitled to exercise or enforce its Step-In Rights under clause 60 (Emergencies and State Step-in) or to exercise or enforce its rights under clause 78.4 (State action following Operator Termination Event) of the Project Deed.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.

**Insolvency Provisions** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or beneficiaries of trusts or any Law of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Insurances** means the insurances required to be taken out or maintained by the Operator under the Project Deed.

**Marketable Securities** has the meaning given to it in section 9 of the Corporations Act.

**Obligations** means all the liabilities and obligations of each Grantor to HAC under or in connection with the Project Documents, whether such liabilities and obligations:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence upon or after the date of this document;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Default or Operator Termination Event,

and irrespective of:

- (g) whether a Grantor is liable or obligated solely, jointly or jointly and severally with another person; or
- (h) the capacity in which HAC and a Grantor comes to owe or be owed such liability or obligation.

It includes the Super Priority Obligations.

**Permitted Encumbrance** means:

- (a) an Encumbrance created under a Project Document;
- (b) each Finance Security;
- (c) the Encumbrance created in the document entitled “General Security Deed (Borrower/Operator)” dated on or about the date of this document between the Operator (in its personal capacity and in its capacity as trustee for the NBH Operating Trust) (as ‘Grantor’) and the Borrower (as ‘Secured Party’);
- (d) the Encumbrance created in the document entitled “General Security Deed (Operator/Operator B)” dated on or about the date of this document between Operator B (as ‘Grantor’) and the Operator (in its personal capacity and in its capacity as trustee for the NBH Operating Trust) (as ‘Secured Party’);
- (e) a lien that arises solely by operation of Law in the ordinary course of ordinary business, where the amount secured is not overdue or is being diligently contested in good faith;



- (f) a lien or other Encumbrance for the unpaid balance of purchase money arising in the ordinary course of day to day trading under a contract entered into in the ordinary course of ordinary business and on the supplier's standard or usual terms; and
- (g) an Encumbrance to which HAC has given its prior written consent, including under the Financiers Tripartite Deed, but in each case only to the extent it secures Financial Indebtedness in amounts to which HAC has given consent.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on HAC, a Receiver or any Attorney or agent appointed under this document, by any Project Document or by Law.

**Power of Attorney** means each power of attorney created under clause 10.3.

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

**PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).

**Project Deed** means the project deed in relation to the *Northern Beaches Hospital* between, among others, HAC and the Operator dated on or about the date of this document.

**Receiver** means a receiver or receiver and manager appointed by HAC under this document, and, if more than one, then each of them, and also any servant, agent or delegate of any of them.

**Secured Money** means, at any time, all money the payment or repayment of which then forms part of the Obligations.

**Security Interest** has the meaning given to that term in section 12 of the PPSA.

**Serial Numbered Property** means personal property that may or must be described by serial number in a financing statement under the PPSA or the PPS Regulations.

**Super Priority Obligation** has the meaning given in the Financiers Tripartite Deed.

## 1.2 Definitions in Project Deed

Subject to clauses 1.1, 1.3(d) and 1.3(e), terms used in this document that are defined in the Project Deed have the same meanings in this document.

## 1.3 Interpretation

The parties agree to be bound by clause 1.2 (Interpretation) of the Project Deed as if set out in its entirety in this clause 1.3, except that for the purposes of this document:

- (a) clause 1.2(c) of the Project Deed will be deemed to be omitted;
- (b) all references in clause 1.2 of the Project Deed to 'this document' or 'the Project Deed' shall be read as references to 'this document';
- (c) unless stated otherwise, all interest, amounts in the nature of interest (including discount amounts) and fees are to be calculated on a daily basis and a year of 365 days;
- (d) a reference to 'proceeds' includes, where the context permits, any proceeds as that term is defined in the PPSA; and
- (e) each of the terms 'ADI', 'ADI Account', 'advance', 'future advance', 'purchase money security interest', 'chattel paper', 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPSA.

- (f) a reference to an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises;
- (g) where an obligation or Liability is imposed on a Grantor under this document, that obligation or Liability is not to be limited or affected by an obligation or Liability imposed in another provision of this document, unless expressly stated; and
- (h) where a right or remedy is conferred on HAC under this document, 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 HAC in another provision of this document or otherwise at Law unless expressly stated.

#### **1.4 Exclusion of Civil Liability Act**

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 document howsoever such rights, obligations or liabilities are sought to be enforced.

#### **1.5 Novation to State Nominee**

Clause 1.8 (Novation to State Nominee) of the Project Deed is incorporated into this document as if set out in full, except that for the purposes of this document all references to 'this document' shall be read as references to 'this document'.

#### **1.6 Consent**

A consent or approval under this document from HAC or the Client Representative may be given or withheld, or may be given subject to such conditions (other than the payment of money), as HAC or the Client Representative (in its absolute discretion) thinks fit, unless this document expressly provides otherwise.

#### **1.7 Inconsistency**

Notwithstanding any other provision of this document, HAC must not exercise any Power under this document in a manner inconsistent with its obligations under the Project Deed.

#### **1.8 Grantor as trustee**

If a Grantor is trustee of a trust:

- (a) this document and each obligation it incurs under this document binds it in its personal capacity and as trustee of the trust; and
- (b) HAC has recourse to all of the Grantor's Collateral, including the Grantor's Trust Property, when seeking to recover the Secured Money, whether that property is owned by the Grantor beneficially or held by it as trustee.

## **2. Grant of Security**

### **2.1 The charge**

- (a) By this document, each Grantor charges to HAC all of its Collateral to secure the due and punctual performance, observance and fulfilment of the Obligations and the due and punctual payment in full to HAC of all the Secured Money.
- (b) This charge constitutes a Security Interest which attaches to the Collateral at the times prescribed by the PPSA. For the purposes of section 20(2)(b) of the PPSA (but without

limiting the meaning of 'Collateral' in this document), this security interest is taken in all of each Grantor's present and after-acquired property.

## 2.2 Priority

- (a) Subject to the Financiers Tripartite Deed, this charge is a first ranking security and takes priority over all other Encumbrances given by a Grantor or as otherwise required by Law.
- (b) Nothing in this document may be construed as an agreement or consent by HAC to:
  - (i) subordinate a Security Interest created under this document in favour of any person;
  - (ii) any Security Interest other than any Permitted Encumbrance attaching to, or being created in, any Collateral;
  - (iii) defer or postpone the date of attachment of a Security Interest created under this document in any Collateral;
  - (iv) any personal property becoming an accession to any Collateral; or
  - (v) any Collateral becoming an accession or affixed to any asset that is not Collateral.

## 2.3 Financiers Tripartite Deed

Despite any other provision in this document, HAC's rights in accordance with this document, including the exercise of any Power by HAC, a Receiver or an Attorney, are subject to the provisions of the Financiers Tripartite Deed.

## 2.4 Nature of charge

- (a) If for any reason it is necessary to determine the nature of this charge, subject to clause 2.4(b), it is a fixed charge over all Collateral.
- (b) To the extent that any of the Collateral consists of Charged Debts, Debt Proceeds or inventory, this charge will operate as a floating charge in respect of that property until either HAC gives notice fixing the charge to the relevant Grantor or a Default occurs.

# 3. Representations, warranties and undertakings by the Grantors

## 3.1 Representations and warranties

Each Grantor represents and warrants for the benefit of HAC that:

- (a) **(Power)**: it has the power to execute, deliver and perform its obligations under or as contemplated by this document and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) **(Obligations binding)**: this document is its valid and binding obligation, enforceable against it in accordance with its terms, subject only to a court's exercise of its discretion in relation to equitable remedies and to the application of Laws which affect creditors' rights generally;
- (c) **(No contravention)**: the execution by it of, the performance by it of its obligations under, and the compliance by it with the provisions of, this document does not and will not contravene any existing Law to which it is subject;
- (d) **(Good title)**: it has good right and title to charge its Collateral in the manner provided in this document; and

- (e) **(No Encumbrances):** its Collateral is free of all Encumbrances other than a Permitted Encumbrance;
- (f) **(Consents):** all Consents required to be obtained by it in connection with the execution, delivery and performance of this document, the transactions contemplated by this document and the legality, validity and enforcement of this document have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Consents or aware of any fact or circumstance which may cause any of those Consents to be suspended, forfeited, cancelled or rendered void;
- (g) **(Information for financing statement):** HAC has received from it all information reasonably requested by HAC to complete the financing statement (or financing change statement if necessary) for this document and that information is true and correct in all respects;
- (h) **(No foreign property):** all of its Collateral is situated in Australia;
- (i) **(Serial Numbered Property):**
  - (i) the information in Schedule 1 is, at the date of this document, true and correct and includes the details of all of its Serial Numbered Property; and
  - (ii) the information provided as a consequence of:
    - (A) its obligation under clause 4.2(1)(v); or
    - (B) HAC's request under clause 5.1(f),
 is true and correct and includes all the details of all of its Serial Numbered Property; and
- (j) **(Consumer property):** none of its Collateral is consumer property.

### 3.2 Trust representations and warranties

The Operator represents and warrants to HAC that:

- (a) **(Legal owner):**
  - (i) it is the sole trustee and sole legal owner of all of the Trust Property of the NBH Operating Trust;
  - (ii) it will be the sole trustee and sole legal owner of any property it acquires as Trust Property of the NBH Operating Trust;
  - (iii) no person other than itself and the beneficiaries of the NBH Operating Trust hold or is entitled to hold an interest in the Trust Property of the NBH Operating Trust other than under a Permitted Encumbrance; and
  - (iv) it has no interest in any property other than Trust Property and its corporate property;
- (b) **(Priority):** the rights of HAC under this document rank in priority to the rights of the beneficiaries of the NBH Operating Trust;
- (c) **(Proper administration):** it enters into each Project Document to which it is a party as part of the proper administration of the NBH Operating Trust by it and for the beneficiaries of the NBH Operating Trust;

- (d) **(No default or breach)**: it is not, and never has been, in default under its Trust Deed in a manner that will prejudice the availability of the Trustee's Indemnity; and
- (e) **(No present entitlement)**: no beneficiary of the NBH Operating Trust is presently entitled to the distribution of any capital of the NBH Operating Trust.

### 3.3 Repetition of representations and warranties

The representations and warranties under clauses 3.1 and 3.2 are made and given on the date of this document and each of them is taken to be repeated on the first Business Day of each Quarter commencing after the date of this document whilst any Secured Money remains outstanding or any Obligation remains unfulfilled (whether or not then due for payment or fulfilment, respectively), with reference to the facts and circumstances then subsisting at those dates.

## 4. General undertakings

### 4.1 Satisfaction of Obligations by Grantors

Each Grantor must punctually perform, observe and fulfil the Obligations and pay the Secured Money relating to it in the manner provided in any Project Document.

### 4.2 General undertakings

- (a) **(Maintain status)** Each Grantor will maintain its status as a company limited by shares under the Corporations Act.
- (b) **(Comply with laws)** Each Grantor will comply with all Laws applicable to it, including by paying when due all Taxes for which it or its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it has made adequate reserves for them).
- (c) **(No administrator)** No Grantor will appoint an administrator without first giving notice to HAC.
- (d) **(Stamping)** Each Grantor will ensure that this document is stamped for the proper amount in each state and territory of Australia in which this document is required to be stamped.
- (e) **(Financial Indebtedness)** No Grantor will incur any Financial Indebtedness other than as permitted under any Financing Agreement.
- (f) **(Restriction on guarantees)** No Grantor will enter into any bond, guarantee or indemnity in favour of any person other than:
  - (i) under the Financing Agreements; or
  - (ii) as permitted under clause 4.2(e).
- (g) **(Charge not prohibited)** Each Grantor will use best endeavours to ensure that:
  - (i) the Financing Agreements;
  - (ii) the Subcontracts;
  - (iii) each contract entered into by it after the date of this document; and
  - (iv) each contract to which it is party as at the date of this document and which is renewed or substantially renegotiated after the date of this document,does not prohibit it from charging or mortgaging its rights under or in respect of that contract by means of this document.

- (h) **(Change of business)** No Grantor will make or threaten to make any material change in the nature of its business as conducted at the date of this document.
- (i) **(Arm's length terms)** No Grantor will enter into any transaction with any person who is not a Grantor otherwise than on arm's length terms and for full commercial value.
- (j) **(No set-off)** No Grantor will directly or indirectly claim, exercise or attempt to exercise a right of set-off, deduction or counterclaim (whether its or any other person's right) against HAC except as expressly permitted under the State Project Documents.
- (k) **(Details of Grantor)** Without limiting any restrictions contained in the Financing Agreements, no Grantor will change any of its details as set out in the 'Details' section of this document without giving HAC 14 days' prior written notice; and provide to HAC, on request, a certified copy of each source or source document necessary (in HAC's opinion), for the purposes of the PPS Regulations, to verify the information in the 'Details' section of this document (or any part of it) or to otherwise register one or more financing statements in relation to any Security Interest in the Collateral created by this document.
- (l) **(Notify details of or changes relating to Collateral)** A Grantor will notify HAC promptly:
  - (i) if any of its Collateral becomes a fixture;
  - (ii) if any of its personal property which is not Collateral and which is subject to a Security Interest that has attached becomes an accession to any Collateral;
  - (iii) on HAC's request, of the present location of any of its Collateral;
  - (iv) if it acquires, or enters into an agreement to acquire, any intermediated securities, investment instruments, negotiable instruments or chattel paper; and
  - (v) of the acquisition of any Serial Numbered Property which forms part of its assets and, in respect of that Serial Numbered Property, all the details referred to in Schedule 1.
- (m) **(No Default)** Each Grantor will ensure that no Default occurs.

## 5. Collateral and Dealings

### 5.1 Restrictions in relation to Collateral

Without HAC's prior consent, except as may be expressly permitted or required under the Project Deed, a Grantor must not:

- (a) **(No Encumbrances)** create, purport or attempt to create or permit to exist any Encumbrance however ranking, other than a Permitted Encumbrance, over any part of its Collateral;
- (b) **(No sale, lease etc.)** except in accordance with or as permitted by the provisions of the Financing Agreements, Deal with any part of its Collateral which is for the time being subject to the fixed charge or is not otherwise a Circulating Asset;
- (c) **(Charged Debts and accounts)** except in accordance with or as permitted by the provisions of the Financing Agreements or the Project Documents, Deal with or permit any set off or combination of accounts in respect of any of its Charged Debts;

- (d) **(Not to prejudice)** do or permit any act, omission or thing whereby any substantial part of its Collateral becomes liable to surrender, forfeiture or cancellation;
- (e) **(Accessions and fixtures)** allow any of its Collateral to become an accession or fixture to any asset (other than land) that is not Collateral (or otherwise subject to a Security Interest in favour of HAC) or to be affixed to any land (other than any freehold interest in land in respect of which HAC has a first-ranking registered mortgage);
- (f) **(Serial Numbered Property):**
  - (i) change any serial number in respect of any of its Serial Numbered Property; or
  - (ii) if, at the time this document is signed by it, or if HAC so requests, at the time of that request, its Collateral includes any Serial Numbered Property, complete Schedule 1 and provide it to HAC; or
- (g) **(Ordinary course)** deal with or attempt to Deal with any part of its Collateral which is a Circulating Asset under this document other than in the ordinary course of its ordinary business or in accordance with and as permitted by the requirements of the Project Documents and the Financing Agreements.

## 5.2 Default subsisting

If a Default subsists:

- (a) each Security Interest created under this document will become immediately enforceable, and any rights of a Grantor to Deal with its Collateral (other than through a Receiver appointed under this document) immediately cease; and
- (b) HAC may seize any Collateral and/or dispose of any Collateral in such manner and generally on such terms and conditions as HAC thinks desirable, and otherwise do anything that a Grantor could do in relation to its Collateral.

This clause is without limitation to section 6 of Schedule 8 of the Project Deed.

## 5.3 HAC assumes no obligations

HAC will not by virtue of this document or the exercise of any Power have assumed any obligation of a Grantor under any Consents or Law.

## 5.4 Documents of title and other securities

Each Grantor will:

- (a) **(Lodgement)** except to the extent otherwise agreed in the Financiers Tripartite Deed, lodge with HAC all documents of title, all certificates, scrip and other indicia of its title or interest in any Marketable Securities, all negotiable instruments other than cheques, all chattel paper forming part of its Collateral and all other documents of title to the whole or part of its Collateral, immediately on receipt of the same;
- (b) **(Security Interests: policies and practices)** take all steps necessary to ensure that all Security Interests which it holds are attached, enforceable and continuously perfected under the PPSA until the obligations they secure are satisfied or they are released for value where a failure to implement the relevant policies and practices or to take the necessary steps could have a Material Adverse Effect;

- (c) **(Protection of Collateral)** at the request of HAC, effect all registrations that HAC, acting reasonably, considers necessary or desirable for the preservation, protection or recovery of the Collateral; and
- (d) **(PMSIs)** as and when reasonably requested by HAC, provide HAC with written details of any property in which it has rights that is, or is capable of being, subject to a purchase money security interest in favour of any third party and the amount secured.

## 5.5 Protection of Collateral

At the request of HAC, a Grantor will take or defend all legal proceedings that HAC considers necessary or desirable for the preservation, protection or recovery of the Collateral.

## 5.6 Dealing with Proceeds

- (a) At the request of HAC, which request may be made at any time and from time to time, a Grantor will (provided it is able to do so under the Financing Agreements):
  - (i) open and maintain an ADI Account or ADI Accounts with an ADI approved by HAC; and
  - (ii) deposit all Debt Proceeds into that ADI Account, but no other money.
- (b) Each Grantor acknowledges that if, at the time a request is made in accordance with clause 5.6(a), its Charged Debts and its Debt Proceeds represent circulating assets (as defined in section 340(1) of the PPSA), its licence to Deal with that property will cease.
- (c) HAC may issue a direction to a Grantor in respect of the ADI Account or Accounts opened as required in accordance with clause 5.6(a) and the deposited money:
  - (i) requiring that a representative of HAC (as determined by HAC) will be the signatory of the ADI Account or ADI Accounts and will be able to direct withdrawals from such ADI Accounts without further consent from that Grantor; and
  - (ii) prohibiting that Grantor from requesting or making any withdrawal or other dealing with that money or stipulating the manner in which that money may be dealt with.
- (d) Until a request under clause 5.6(a) is made or a direction is given by HAC under clause 5.6(c), a Grantor will be free to withdraw and apply that money in the ordinary course of its ordinary business.

# 6. Grantors' liability and exclusion of rights

## 6.1 Indemnity

- (a) Subject to clauses 6.1(b) and 6.1(c), each Grantor (other than the Operator) indemnifies HAC against, and must pay to HAC on demand amounts equal to, any Loss (including loss of profit) arising as a result of or in connection with:
  - (i) a Grantor failing to pay any Secured Money (or money which would be Secured Money if it were recoverable) on time;
  - (ii) a Grantor failing to observe or perform the Obligations on time;
  - (iii) an Insolvency Event in relation to a Grantor; or



- (iv) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from a Grantor, or a liability or obligation in respect of the Obligations not being enforceable against a Grantor,

for any reason and whether or not a Grantor or HAC knew or ought to have known anything about those matters.

- (b) The aggregate liability of a Grantor under this clause 6.1 will not exceed the aggregate liability of the Operator and Operator B under the Project Documents.
- (c) The liability of a Grantor under this clause 6.1 in respect of a breach of the Project Documents by the Operator or Operator B (as applicable) shall not be greater than the liability of the Operator and Operator B (as applicable) under the Project Documents in respect of the breach.
- (d) Nothing in this document is intended to render a Grantor liable for the same loss twice for the one breach of the Project Deed by the Operator or Operator B (as applicable), or for any Indirect Loss that the Operator is not liable for pursuant to the application of clause 72.11 of the Project Deed.

## **6.2 Principal and independent obligation**

This document comprises principal and independent obligations of each Grantor and is not ancillary or collateral to, or affected by, any other obligation.

## **6.3 Exclusion of subrogation and other rights**

Until there are no Obligations or Secured Money, and HAC is satisfied that HAC will not have to repay any money received by it, each Grantor must not (either directly or indirectly):

- (a) claim, exercise or attempt to exercise a right of set off or counterclaim or any other right or raise any defence which might reduce or discharge its liability under this document; or
- (b) claim or exercise a right of subrogation or contribution or otherwise claim the benefit of a charge or Encumbrance created by this document or any other Project Document, irrespective of whether or not that charge or Encumbrance:

- (i) relates to the Secured Money;
- (ii) is given by it; or
- (iii) is in favour or for the benefit of HAC,

and any money the it receives in breach of this paragraph (b), to the extent of the unsatisfied liability to HAC which is secured under that charge or Encumbrance, will be held on trust for HAC and must be paid promptly to HAC; or

- (c) unless expressly permitted in a Project Document or HAC has given a direction to do so (in which case it must do so in accordance with the direction as trustee for HAC):
  - (i) prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Liquidation of the Parent Company; or
  - (ii) demand, or accept payment of, any money owed to the it by the Parent Company, and any such money it receives to the extent of its unsatisfied liability to HAC, will be held on trust for HAC and must be paid promptly to HAC.

## 7. Rights to demand payment and exercise powers

If a Default subsists HAC may, at its option and notwithstanding any delay or previous waiver of the right to exercise that option, demand the immediate payment of the Secured Money and exercise any Power.

## 8. Appointment of Receiver

### 8.1 Appointment

While a Default subsists, HAC may appoint any person or persons to be the Receiver of the whole or part of the Collateral.

### 8.2 Removal

In case of the removal, retirement or death of any Receiver, HAC, subject to this clause 8, may appoint another person or persons in the Receiver's place.

### 8.3 More than one Receiver

If more than one person is appointed as the Receiver of the whole or any part of Collateral, HAC may specify whether the appointment, and the Powers of each appointee, will at its option be joint, or joint and several, and failing such specification, the appointment and the powers of each person will be deemed to be joint and several.

### 8.4 Remuneration of Receiver

HAC may fix the remuneration of any Receiver at such rate as HAC from time to time determines, which rate will not exceed the standard hourly rate from time to time charged by the firm of which the Receiver is a member for work of the level conducted by the Receiver.

### 8.5 Agent of the Grantor

Every Receiver will be the agent of the relevant Grantor and, subject to all applicable Laws, the relevant Grantor will be solely responsible for all acts and omissions by, and the remuneration of, the Receiver.

### 8.6 Indemnity

HAC may give such indemnities to the Receiver and an Attorney concerning the performance of the Receiver's or Attorney's duties as are permitted by Law. If HAC is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

## 9. Powers of Receiver

In addition to powers conferred by statute and any other Powers, the Receiver will have all of the following powers in relation to the Collateral with respect to which the Receiver has been appointed:

- (a) **(to take possession)** to take possession or control of, or to make use of, the whole or any part of the Collateral, or to relinquish such possession or control;
- (b) **(to convert to money)** to convert, liquidate and reduce the whole or any part of the Collateral into money;
- (c) **(to lease)** whether or not the Receiver has taken possession, to lease or licence in the name of a Grantor or otherwise the whole or any part of the Collateral for any period and on any terms, or to vary or terminate a lease or licence;

- (d) **(to carry on business)** to carry on or concur in carrying on any business then conducted by a Grantor, and to effect all Insurances and do all acts which a Grantor might do in the ordinary conduct of such business for the protection or improvement of the whole or part of the Collateral;
- (e) **(to employ)** to employ consultants, professional advisers, sub-contractors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested, and that person may charge for his or her services as if he or she had been independently retained at such salaries or remuneration as the Receiver thinks fit), and to act on any advice given by that person;
- (f) **(to conduct works)** to repair, renew, replace, renovate or clean the Collateral, to erect any new buildings or make any improvements to any land forming part of the Collateral, and to demolish, alter, rebuild or extend any existing improvements on the Collateral. All outlays and expenses paid or incurred by the Receiver in this regard will be deemed to form part of the Secured Money;
- (g) **(to sell property)** whether or not the Receiver has taken possession, to sell or concur in selling all or any of the Collateral by public auction, private treaty or tender, for cash or on credit, in one lot or in parcels, with or without special conditions or stipulations as to title, or the time and the mode of payment of purchase money, and on such other terms as the Receiver thinks fit, with power to allow deferred payment of any part of the purchase money, whether or not secured by an Encumbrance from the purchaser and with full power to buy in and to rescind or vary any contract for sale, and to resell without being responsible for loss including a right to require that the purchaser assume all or any obligations of a Grantor under the Project Documents, whether those obligations are present or future, actual or contingent;
- (h) **(contracts for sale)** to exercise all or any rights, powers and remedies of a Grantor under any contract for sale, and to execute those contracts, any applications for transfer, transfers, assignments and assurances of all or any part of the Collateral in the name and on behalf of that Grantor or otherwise, and to do all other acts and things for implementing and completing any sale that the Receiver deems necessary;
- (i) **(to sever and sell fixtures)** to sever fixtures belonging to a Grantor and to sell those separately from any other part of the Collateral;
- (j) **(to invest proceeds against contingencies)** if any part of the Secured Money is contingent, to invest, deposit or hold any part of the Collateral in a form or mode of investment for the time being as the Receiver in its absolute discretion thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until such part of the Secured Money ceases to be contingent;
- (k) **(to enter into contracts)** to enter into any contract or arrangement with any person for any purpose connected with this document or the whole or any part of the Collateral or in furtherance of any Power (other than a contract for borrowing or raising of funds), on such terms and conditions as the Receiver in its absolute discretion thinks fit including, without limitation, granting or conferring options to, in favour of or exercisable by, any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with, the whole or any part of the Collateral;
- (l) **(to perform contracts)** to perform, observe and carry out, enforce specific performance of, exercise or refrain from exercising, obtain the benefit of and to vary or rescind, a

Grantor's rights and powers under all contracts and rights forming part of the Collateral or entered into in the exercise of any Power;

- (m) **(to take proceedings)** to institute, conduct or defend any proceedings in Law, equity or bankruptcy, and to submit to arbitration, mediation or conciliation in the name of a Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;
- (n) **(to compromise)** to make any settlement, arrangement or compromise regarding any action or dispute arising in connection with the Collateral, and to grant to any person involved in any action or dispute or other indulgence, and to execute, such releases or discharges in connection with any action or dispute as the Receiver thinks expedient in the interests of HAC;
- (o) **(to appeal)** to appeal against or to enforce any judgment or order;
- (p) **(to bankrupt debtors and wind-up companies)** to make debtors bankrupt and to wind-up companies and to do all things in connection with any bankruptcy or winding up which the Receiver thinks is necessary for the recovery or protection of the whole or part of the Collateral, or for the security or other benefit of HAC;
- (q) **(to delegate)** with the consent of HAC, to delegate to any person for such time or times as HAC approves, any of the Powers, including this power of delegation;
- (r) **(to file)** to file all certificates, registrations and other documents and to take any and all action on behalf of a Grantor which HAC or the Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of that Grantor and HAC in respect of any agreement for sale, and to obtain for HAC all of the benefits of this document and any Project Document, and, in particular, the placing of that Grantor into liquidation or the appointment of a Receiver will be deemed to be an event against which HAC may protect its rights;
- (s) **(to make calls on Capital)** to call and get in Capital;
- (t) **(to operate bank accounts)** to open or operate any bank account in the name of a Grantor whether alone or jointly to the exclusion of that Grantor, and to deposit or withdraw any money to the credit of that account, and to sign and endorse or to authorise others to sign and endorse in the name of that Grantor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (u) **(to do all other things necessary)** to do all things necessary to perform, observe and fulfil any of the covenants on the part of a Grantor contained in this document; and
- (v) **(Receiver's discretion)** subject to duties owed by the Receiver to a Grantor and its creditors at Law which may not be excluded by contract, to do all other acts and things without limitation as the Receiver thinks expedient in the interests of HAC,

and any further powers and discretions as HAC confers on the Receiver by notice to the Receiver for the purposes referred to in this clause 9.

## 10. HAC's powers

### 10.1 Exercise of Powers

If a Default subsists, HAC and its Attorney may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the Powers conferred on a Receiver or which would be conferred on a Receiver if appointed, as if those Powers had been expressly conferred on HAC;
- (b) exercise all other Powers; and
- (c) appoint an agent or joint and several agents and delegate such powers to it or them (in which case clauses 8.1, 8.4 and 8.6 will apply as if it or they were appointed as the Receiver).

### 10.2 Act jointly

HAC, its Attorney or the Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by any other holder of an Encumbrance of the whole or part of the Collateral or by any receiver appointed by that other holder of an Encumbrance, and may enter into and give effect to agreements and arrangements with that other holder of an Encumbrance or receiver as HAC or the Receiver thinks fit.

### 10.3 Power of attorney

- (a) **(Acts requested by HAC)** As from the date of this document, for the purpose of doing any act which a Grantor is required to do under this document, each Grantor irrevocably appoints HAC, and each agent and attorney from time to time of HAC, and any Receiver appointed under this document, severally, as its attorney, with power to:
  - (i) do all acts which are required to be done by it under this document and which it has failed to do within 20 Business Days of being requested by notice in writing to do so by HAC; and
  - (ii) appoint (and remove at will) at any time any person as a substitute for an attorney.
- (b) **(Acts while certain circumstances subsist)** Each Grantor irrevocably appoints HAC, each agent and attorney from time to time of HAC, and any Receiver appointed under this document, severally, as its attorney, with power while a Default subsists to:
  - (i) do all acts which are required to be done by it under this document or another Project Document or to exercise any Power;
  - (ii) take further action and to execute further instruments which are, or are in the reasonable opinion of HAC, necessary to perfect the Encumbrance created by this document; and
  - (iii) appoint (and remove at will) at any time any person as a substitute for an attorney.
- (c) **(Ratification and confirmation)** Each Grantor ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of its attorney under this Power of Attorney.
- (d) **(Duration)** Each Grantor declares that this Power of Attorney will continue until the discharge of this document.

#### **10.4 HAC may make good any default**

If a Grantor defaults in satisfying any of the Obligations, HAC may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of HAC to make good or to attempt to make good that default to the satisfaction of HAC. Each Grantor will take all steps which HAC, acting reasonably, requests to facilitate the exercise by HAC of its rights under this clause 10.4. HAC will not be a mortgagee or secured party in possession simply as a result of the exercise of its rights under this clause 10.4.

#### **10.5 Workcare, WorkCover and worker's compensation**

HAC may from time to time debit and charge to a Grantor all costs, charges and expenses, legal or otherwise, including premiums for insurance and compensation and other money paid or payable by HAC or any Receiver appointed by HAC or any attorney of that Grantor appointed under any Legislation relating to Workcare, WorkCover and/or workers compensation.

#### **10.6 PPSA provisions**

- (a) To the extent permitted by law, and in respect of each Security Interest created by this document:
  - (i) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (A) HAC need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
    - (B) sections 142 and 143 of the PPSA are excluded;
  - (ii) for the purposes of section 115(7) of the PPSA, HAC need not comply with sections 132 and 137(3) of the PPSA; and
  - (iii) each Grantor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this document.
- (b) Where HAC has Powers in addition to, or existing separately from, those in Chapter 4 of the PPSA, those Powers will continue to apply and are not limited or excluded (or otherwise adversely affected) by the PPSA, notwithstanding anything else in this clause 10.6.
- (c) If HAC exercises a Power in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless HAC states otherwise at the time of exercise. However, this clause does not apply to a Power which can only be exercised under the PPSA.
- (d) Nothing in this clause prohibits HAC or any Receiver from giving a notice under the PPSA or any other law.
- (e) For the purposes of section 153 of the PPSA, HAC appoints each Grantor as its nominee, and authorises (until the registration is transferred to HAC) each Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of a Grantor which is:
  - (i) evidenced or created by chattel paper or a Project Document;
  - (ii) perfected by registration under the PPSA; and
  - (iii) transferred to HAC under this document.

## 10.7 Investigating Experts

HAC may, at any time while a Default subsists, appoint accountants, insolvency practitioners or other experts (**Investigating Experts**) to investigate and report on the affairs and financial position of a Grantor. Each Grantor:

- (a) authorises, and agrees to give all reasonable assistance to, the Investigating Experts to undertake the investigation, and must pay the Investigating Experts' costs on demand by HAC; and
- (b) authorises the disclosure to HAC and its advisers of all information and documentation in connection with the investigation.

## 11. Time periods

### 11.1 Exclusion of time periods

Neither HAC nor any Receiver need give a Grantor any notice or demand or allow time to elapse before exercising a right under this document or conferred by Law (including a right to sell) unless the notice, demand or lapse of time is required by Law and cannot be excluded, or is otherwise expressly required by this document.

### 11.2 Mandatory notice period

If the Law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this document or conferred by Law may be exercised, then:

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by HAC; or
- (b) when the Law provides that a period of notice or lapse of time may be stipulated or fixed by this document, then one day is stipulated and fixed as that period of notice or lapse of time including (if applicable) as the period of notice or lapse of time during which:
  - (i) a Default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of other obligations under this document; and
  - (ii) a notice or request for payment of the Secured Money or the observance of other obligations under this document must remain not complied with before HAC or a Receiver may exercise its rights.

## 12. Application of money

### 12.1 Priority of payments

Subject to clause 9 (Priority of Security and Tripartite Rights) of the Financiers Tripartite Deed, all money received by HAC, its Attorney or the Receiver as a result of the exercise of the Powers may be applied:

- (a) (**incidental to exercise of Powers**) in payment of all fees, costs, charges, expenses and disbursements incurred in or incidental to the exercise or performance or attempted exercise or performance of any of the Powers;
- (b) (**outgoings**) in payment of any other outgoings as HAC, its Attorney or the Receiver thinks fit;

- (c) **(Receiver)** in payment to the Receiver of any remuneration (whether by way of commission or otherwise);
- (d) **(Indemnities)** in payment to HAC, an Attorney or a Receiver of any amount necessary to give effect to any indemnity contained in this document;
- (e) **(payment of prior encumbrances)** in payment of other Encumbrances of which HAC is aware to the extent to which they have priority to this document, in the order of their priority;
- (f) **(payment of Secured Money)** in payment of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;
- (g) **(subsequent encumbrances)** in payment of subsequent Encumbrances of which HAC is aware to the extent to which they have priority after this document, in the order of their priority; and
- (h) **(surplus)** if there is any surplus (which will belong to the relevant Grantor but will not carry interest), in payment to that Grantor.

## 12.2 Money received

In applying any money towards satisfaction of the Secured Money, a Grantor will be credited only with so much of the money available for that purpose as will be actually received by HAC, its Attorney or the Receiver in relation to the relevant Collateral and not required for whatever reason to be disgorged, any credit to be dated from the time of receipt. It is acknowledged that the amount of money actually received in relation to relevant Collateral may be a function of the amount attributed to the Collateral by HAC, its Attorney or the Receiver.

## 12.3 Application of payments or credits

Each of HAC, its Attorney and the Receiver has an absolute discretion to apply any payment or credit received by it under this document (and, to the extent relevant, attributed to the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account the Secured Money became secured, notwithstanding any principle or presumption of Law to the contrary or any direction given at the time of receipt, and without the need to communicate its election to any person.

## 12.4 Reliance on certificate

In making any payment to any other holder of an Encumbrance under clause 12.1, HAC, its Attorney and the Receiver may rely on a certificate from that holder of an Encumbrance as to the amount secured, and are not bound to enquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Encumbrance.

## 12.5 Compensation

If any compensation becomes payable for Collateral, HAC may:

- (a) apply the sum received on account of any compensation, at HAC's option, in or towards repayment of the Secured Money;
- (b) make, enforce, settle or compromise any claims relating to compensation; and
- (c) execute any necessary assurances and releases in the name of the relevant Grantor and HAC.

If any compensation comes into the hands of a Grantor before a final irrevocable discharge of this document, that Grantor must immediately pay it to HAC.



## 12.6 Suspense account

- (a) HAC may credit money received in or towards satisfaction of the Obligations (including dividends received in any liquidation) to a suspense account. HAC may keep the money in that account for as long as, and at whatever interest rate, HAC thinks fit. HAC may apply the money (including interest) to ensure the performance of the Obligations whenever HAC thinks fit.
- (b) If the Obligations have been fully and finally performed and HAC is satisfied that the payment or discharge is not liable to be set aside, avoided or reversed, then the balance standing to the credit of the suspense account and any accrued interest must be paid to or for the account of the relevant Grantor and HAC will not have any further liability in relation to it.

## 13. Liability, release and indemnity

### 13.1 Continuing obligation

Subject to clause 13.4, this document constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation, or any other matter or thing.

### 13.2 Settlement conditional

Any settlement or discharge between HAC and a Grantor is conditional on any security or payment given or made to HAC by that Grantor or any other person in relation to the Obligations not being avoided, repaid or reduced by virtue of any Insolvency Provision. If the security or payment is avoided, repaid or reduced, HAC is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from that Grantor subsequently as if that settlement or discharge had not occurred.

### 13.3 Grantors' liability not affected

This document and the Liability and responsibility of each Grantor and HAC's rights against each Grantor under this document or otherwise according to Law, will not be affected or discharged by any of the following:

- (a) **(indulgence)** the granting to a Grantor or to any other person of any time or other indulgence or consideration;
- (b) **(Project Documents)** HAC failing or neglecting to recover by the realisation of any Project Documents, other Encumbrance or otherwise any of the Secured Money relating to a Grantor;
- (c) **(laches)** any other laches, acquiescence, delay, act, omission or mistake on the part of HAC or any other person;
- (d) **(release)** the release, discharge, abandonment or transfer, whether wholly or partially and with or without consideration, of any Project Document, other Encumbrance, judgment or negotiable instrument held from time to time or recovered by HAC from or against a Grantor or any other person; or
- (e) **(any other thing)** any other matter or thing.

### 13.4 Release of Collateral

HAC will, upon application by a Grantor, grant a release of that Grantor's Collateral from this document, if at the time the release is to be provided, none of the Secured Money is owing

(whether actually, contingently or prospectively) and none of the Obligations remain to be performed.

### **13.5 Waiver by Grantors**

To the extent permitted by Law, each Grantor waives in favour of HAC and any of the State Related Parties any requirement that HAC take any action or exhaust any right against any other person before enforcing this document against that Grantor.

### **13.6 No liability for loss**

To the extent permitted by Law, none of HAC, any of the State Related Parties, its Attorney or any Receiver will have any Liability, nor will a Grantor be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from, HAC, any of the State Related Parties, its Attorney or any Receiver arising out of or in respect of or in connection with, any omission, delay or mistake or any loss or irregularity in or about the exercise or attempted exercise, non-exercise or purported exercise of any Power, except for fraud or an unlawful or wilful act or omission and each Grantor will be deemed to have released and forever discharged HAC, the State Related Parties, its Attorney and any Receiver from any such Claim or Liability.

### **13.7 No liability to account**

To the extent permitted by Law, none of HAC, any of the State Related Parties, its Attorney or any Receiver will, by reason of HAC, any of the State Related Parties, its Attorney or the Receiver entering into possession of the whole or part of the Collateral, be liable to account as mortgagee or secured party in possession, or for anything except actual receipts (and, if relevant, attributed to the Collateral), or be liable for any loss on realisation or for any default, omission, delay or mistake for which a mortgagee or secured party in possession might be liable.

### **13.8 No conflict**

HAC, any of the State Related Parties, its Attorney and any Receiver may exercise any Power notwithstanding that the exercise of that Power involves a conflict between any duty owed to a Grantor by HAC, any of the State Related Parties, its Attorney or that Receiver and any duty owed by HAC, any of the State Related Parties, its Attorney or that Receiver to any other person, or the interests of HAC, any of the State Related Parties, its Attorney or that Receiver. No contract will be void or voidable by virtue of any such conflict of duty or interest, and none of HAC, any of the State Related Parties, its Attorney or any Receiver will be liable to account to a Grantor or any other person for any money or property as a result of such conflict.

### **13.9 No notice or enforcement**

HAC need not give any notice of the security created by this document to any debtor of a Grantor, or to any purchaser, or to any other person, or to enforce payment of any money payable to a Grantor, or realise any of the Collateral, or to take any steps or proceedings for that purpose.

### **13.10 Indemnity**

Each Grantor bears all risks with respect to, and must indemnify HAC, the State Related Parties, its Attorney and any Receiver on demand against any Claim or Liability (including any Claim made by, or Liability to, a third party) which HAC, any of the State Related Parties, its Attorney or any Receiver suffers or incurs arising out of or in respect of or in connection with:

- (a) the exercise, attempted exercise or non-exercise of any Power under this document, including those consequent on any mistake, oversight, error of judgment or want of

prudence on the part of HAC, any of the State Related Parties, its Attorney or any Receiver, unless the same is due to fraud or an unlawful or wilful act or omission;

- (b) an indemnity given by HAC to a Receiver or administrator of a Grantor;
- (c) a consequence of the occurrence of a circumstance entitling HAC to appoint a Receiver under this document; and
- (d) any act or omission for which HAC, any of the State Related Parties, its Attorney or any Receiver is exonerated by this document,

including legal costs (on a full indemnity basis) incurred in defending any action or proceeding relating to a matter the subject of this indemnity.

### **13.11 Protection of persons dealing with HAC or Receiver**

No person acquiring any money or asset from, or paying or handing over any money or asset to, or otherwise dealing with, HAC, any of the State Related Parties, the Receiver or any Attorney, or to whom is tendered for registration an instrument executed by HAC, any of the State Related Parties, the Receiver or any Attorney, will be:

- (a) bound to inquire:
  - (i) whether a circumstance entitling HAC to appoint a Receiver under this document has occurred;
  - (ii) whether any of the Secured Money is owing or payable;
  - (iii) whether the Receiver or an attorney has been properly appointed;
  - (iv) as to the propriety or regularity of the exercise or purported exercise of any Power; or
  - (v) as to any other matter or thing;
- (b) affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- (c) concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication of any money or asset,

and the irregular, improper or unnecessary exercise of any Power will be, as regards the protection of any such person, deemed to be authorised by each Grantor and valid.

## **14. Payments**

### **14.1 Money repayable as agreed or on demand**

Unless otherwise provided in the Project Deed, the Secured Money will be payable by each Grantor to HAC in Australian dollars on the due date (or if no date is specified, immediately on demand by HAC).

### **14.2 Payment of interest**

The Grantors will pay interest on the Secured Money which is due and payable to HAC but unpaid in accordance with any Project Document or, in the absence of any relevant provision, at the Default Rate calculated daily from, but excluding, the date upon which or the expiration of the period within which they should have been paid to, and including, the date upon which the moneys are paid.

### **14.3 Capitalisation of interest**

HAC may capitalise any interest which has become due and owing in accordance with any Project Document or, in the absence of any relevant provision, then at such periods of not less than one calendar month and from such dates as HAC elects. The accumulation of capitalised interest may continue until the Secured Money has been paid in full notwithstanding any composition, compromise judgment or order in respect of any person or any other thing.

### **14.4 Merger**

If the liability of a Grantor to pay to HAC any of the Secured Money becomes merged in any judgment or order, as an independent obligation that Grantor will pay interest at the rate which is the higher of that payable under this document and that fixed by or payable under that judgment or order.

### **14.5 No deduction for taxes and no set off or counterclaim**

All payments to HAC by a Grantor under any Project Document, whether of interest or other amounts, will (except as provided for in a Project Document) be:

- (a) free of any set off or counterclaim; and
- (b) without deduction or withholding for any present or future Tax unless that Grantor is compelled by law to deduct or withhold the same, in which case that Grantor will pay to HAC any additional amounts necessary to enable HAC to receive, after all deductions and withholding for such Tax, a net amount equal to the full amount which would otherwise have been payable had no such deduction or withholding been required to be made.

## **15. Termination of this document**

- (a) Unless the Project Deed is extended by agreement between the parties to it, this document will terminate on the latest of:
  - (i) performance and satisfaction of all of the Obligations;
  - (ii) the end of the Term; and
  - (iii) the date on which all Secured Money has been paid in full.
- (b) The termination of this document does not affect the rights of any party which have accrued to that party before the date of termination.

## **16. Notices**

Clause 96 (Notices) of the Project Deed is incorporated into this document as if set out in full, except that for the purposes of this document all references to 'this document' shall be read as references to 'this document'.

## **17. Dispute resolution**

If any dispute or difference of opinion arises between the parties under this document, each party may refer any such matter for resolution in accordance with this clause 17 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clause 87 of the Project Deed are incorporated into this document but as if:

- (a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this document.

## 18. General provisions

### 18.1 Assignment

Except as expressly contemplated by this document or pursuant to a Permitted Encumbrance, no Grantor may assign or transfer any of its rights or obligations under this document.

### 18.2 Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### 18.3 HAC as an Authority

- (a) This document will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of HAC to exercise any of its functions and powers pursuant to any Law.
- (b) Each Grantor acknowledges and agrees that, without limiting clause 18.3(a), anything which HAC does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by HAC under this document and will not entitle a Grantor to make any Claim against HAC.
- (c) The parties agree that clauses 18.3(a) and 18.3(b) are taken not to limit any liability which HAC would have had to a Grantor under this document as a result of a breach by HAC of a term of this document but for clauses 18.3(a) and 18.3(b) of this document.

### 18.4 Indemnities

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document.
- (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 document.
- (c) A party must pay on demand any amount it must pay under an indemnity in this document.
- (d) Where a party gives any indemnity or release to HAC under this document, it gives an equivalent indemnity and release to the NSW Government. HAC holds for itself and on trust for the NSW Government the benefit of each such indemnity and release in this document.

### 18.5 Indemnity held on trust

HAC and each Grantor each declares and acknowledges that:

- (a) each indemnity referred to in this document in favour of any of the State Related Parties, any Attorney and any Receiver is held on trust by HAC for the benefit of any of the State Related Parties, any Attorney or any Receiver respectively from the date of this document; and

- (b) the consent of any of the State Related Parties, any Attorney and any Receiver for whom each indemnity referred to in this document is held on trust by HAC in accordance with clause 18.5(a) will not be required for any amendment to, or waiver of rights under, a Project Document.

## **18.6 Amendments**

No amendment or variation of this document is valid or binding on a party unless made in writing and executed by each party.

## **18.7 Surviving provisions**

- (a) An indemnity given under this document survives the termination of this document.
- (b) Any rights or obligations accrued as a result of a Default survive termination of this document.

## **18.8 Severability of provisions**

Any provision of this document that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this document nor affect the validity or enforceability of that provision in any other jurisdiction.

## **18.9 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## **18.10 Contra proferentem**

In the interpretation of this document, no rule of construction applies to the disadvantage of one party on the basis that it put forward this document or any part of it.

## **18.11 Further assurance**

- (a) Each party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to the Project Documents to which it is party (including this document) and the rights and obligations of the parties to them.
- (b) Without limiting clause 18.11(a), if HAC determines that a Project Document (or a transaction related to a Project Document) is or contains a Security Interest, each Grantor agrees to promptly do anything (including obtaining consents, providing information, signing and producing documents and amending any Project Document or executing any new document) which HAC reasonably requires for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) enabling HAC to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by HAC;
  - (iii) removing any financing statement which is registered against a Grantor in relation to any Security Interest which is not a Permitted Encumbrance;
  - (iv) obtaining possession or control of any Collateral for the purpose of perfecting HAC's Security Interest in that Collateral by possession or control, except where HAC's possession or control of that Collateral would reasonably be expected to

unduly restrict the ability of a Grantor to observe and perform the Project Documents; or

- (v) enabling HAC to exercise rights in connection with the Security Interest.

### **18.12 Counterparts**

This document may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

### **18.13 Registration**

HAC may register this document, or any financing statement or financing change statement relating to this document, in the manner prescribed by law to ensure the full efficacy of this document as an Encumbrance to HAC in all relevant jurisdictions.

### **18.14 Governing Law and jurisdiction**

- (a) This document will be governed by and construed in accordance with the Laws applying in New South Wales.
- (b) Each Security Interest created under this document is governed by the laws of New South Wales, except to the extent that a Security Interest is created under this document in any personal property described in section 237(2) of the PPSA, in which case the law determined by the PPSA will govern the Security Interest in that property.

### **18.15 Jurisdiction**

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

### **18.16 Moratorium legislation**

Unless application is mandatory by Law, any present or future Law will not apply to this document so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to HAC.

### **18.17 Attorneys**

Each of the attorneys executing this document states that they have no notice of the revocation of their power of attorney.

### **18.18 Confidentiality**

- (a) Subject to clause 18.18(b), if any Grantor is a debtor as defined in the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and not to disclose that information to anyone.
- (b) Clause 18.18(a) does not apply to any disclosure of information or documents:
  - (i) in any proceeding arising out of or in connection with this document to the extent that the disclosure is deemed by the disclosing party necessary to protect its interests;
  - (ii) where the information is in the public domain other than as a result of a breach by that disclosing party of this clause 18.18;
  - (iii) if required to do so under a binding order of any Authority or any procedure for discovery in any proceedings;

- (iv) if the disclosing party reasonably believes it is required to do so by any law or stock exchange (except that this paragraph does not permit HAC to disclose any information of the kind referred to in section 275(1) of the PPSA to the extent that disclosure can be resisted under section 275(6) of the PPSA);
  - (v) otherwise as required or permitted by any Project Document;
  - (vi) to a disclosing party's Related Bodies Corporate, its legal advisors and its consultants as long as it advises them of the confidential nature of the information or documents or that nature is clear from the circumstances of the disclosure;
  - (vii) by HAC to a proposed assignee or transferee of any rights or obligations under any Project Document or to any sub-participant or other person with whom any other transaction may be entered into under which payments may be made by reference to any Project Document or a Grantor;
  - (viii) by HAC, with the Operator's prior written consent; or
  - (ix) by a Grantor, with HAC's prior written consent.
- (c) Each party authorises disclosures made by the other party in accordance with clause 18.18(b)(i) to 18.18(b)(vii) provided that the disclosure is not otherwise prohibited under any Project Document.



# Schedule 1 – Serial Numbered Property

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# Signing page

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**EXECUTED** as a Deed.

*[Execution clauses to be inserted]*