

Execution version

Confidential

Construction Side Deed

Northern Beaches Hospital

Health Administration Corporation and the Northern Sydney Local Health District (together the **State**)

NBH Operator Co Pty Ltd in its capacity as trustee of the NBH Operating Trust and in its capacity as agent for Operator B as contemplated under the Project Deed (**Operator**)

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

Leighton Contractors Pty Limited and Healthscope Operations Pty Ltd (together, the **Construction Contractor**)

Leighton Holdings Limited (**Construction Contractor Guarantor**)

MinterEllison

L A W Y E R S

LEVEL 19 AURORA PLACE 88 PHILLIP STREET SYDNEY NSW 2000
AUSTRALIA DX 117 SYDNEY
T +61 2 9921 8888 F +61 2 9921 8123
www.minterellison.com

Construction Side Deed

Northern Beaches Hospital

Details	5
Agreed terms	7
1. Defined terms & interpretation	7
1.1 Defined terms	7
1.2 Definitions in Project Deed	9
1.3 Interpretation	9
1.4 Exclusion of Civil Liability Act 2002 (NSW)	9
1.5 Multiple parties	9
1.6 Client Representative	10
1.7 Project Documents	10
1.8 No liability	10
1.9 Approvals and consents	10
1.10 Novation to State Nominee	11
2. Acknowledgements	11
2.1 By Construction Contractor and Construction Contractor Guarantor	11
2.2 By Construction Contractor and Construction Contractor Guarantor concerning State's rights	12
2.3 By Operator	12
3. Construction Contractor and Construction Contractor Guarantor Undertakings	13
3.1 Undertakings	13
3.2 Rectification	14
3.3 Reliance on representations and warranties	15
4. Operator's Undertaking	15
5. Appointment of Construction Contractor as principal contractor	15
6. Construction Contract	16
6.1 Information	16
6.2 Variations to the Construction Works	16
6.3 Termination by law or third party	17
6.4 No changes to Construction Contract	17
7. Other agreements	17
7.1 Project Deed	17
7.2 Access	17
7.3 Terms of access	17
7.4 Construction Contractor and Construction Contractor Guarantor's obligations	17
7.5 Artefacts	18
8. Operator Event of Default and Step In Rights	18
8.1 Notice of Operator Event of Default	18
8.2 Construction Contractor Statements	18

8.3	Warranty of accuracy	19
8.4	Verification of Construction Contractor Statements	19
8.5	Construction Contractor Statements to be conclusive evidence	19
8.6	Remedy of default	20
9.	Step In Rights	20
9.1	Assumption by State	20
9.2	Step In period	21
9.3	Step In using Additional Obligor	22
9.4	Novation	23
9.5	Step out	24
9.6	Construction Contractor	24
10.	Representations and Warranties	24
10.1	The State representations and warranties	24
10.2	General representations and warranties	25
10.3	Representations and warranties regarding the Construction Contract	26
10.4	Representations and warranties by Construction Contractor	26
10.5	Further assurances	26
10.6	Reliance on representations and warranties	26
11.	Undertakings	27
12.	Indemnities	27
12.1	Construction Contractor indemnity	27
12.2	Patents, copyright and other intellectual property rights indemnity	27
12.3	Operator indemnity	28
13.	Confidentiality	28
13.1	Keep confidential	28
13.2	Permitted Disclosure	28
13.3	Obligations Preserved	29
13.4	Disclosure by the State	29
14.	Termination of Project Deed or Assignment/Novation of Operator's Rights and Obligations	30
15.	Amendment and Assignment	30
15.1	Amendment	30
15.2	Assignment	30
16.	Dispute Resolution	30
17.	GST	31
18.	General	32
18.1	Notices	32
18.2	The State as a Public Authority	33
18.3	Certification	34
18.4	Cost of performing obligations	34
18.5	Governing Law	34
18.6	Amendments	34
18.7	Taxes	34
18.8	Waiver	34
18.9	Survival of certain provisions; no merger	34

18.10 Further acts and documents 35
18.11 Consents 35
18.12 No representation or reliance 35
18.13 Reading down 35
18.14 Severance 35
18.15 Remedies cumulative 35
18.16 Moratorium legislation 35
18.17 Entire agreement 35
18.18 Indemnities 36
18.19 Counterparts 36
18.20 Attorneys 36
18.21 Order of precedence 36
18.22 Aggregate Liability 36
Schedule 1 - Commercially Sensitive Information 38
Signing page 39

Details

Date

Parties

Name **Health Administration Corporation**, a corporation sole constituted under section 9 of the *Health Administration Act 1982 (NSW)*

ABN 45 100 538 161

Registration a corporation sole constituted under section 9 of the *Health Administration Act 1982 (NSW)*

Short form name **HAC** and, together with the NSLHD, the **State**

Notice details Chief Executive, Health Infrastructure
Level 8, 77 Pacific Highway
North Sydney NSW 2060
Facsimile: + 61 2 8904 1377
Attention: Sam Sangster

Name **Northern Sydney Local Health District**

ABN 63 834 171 987

Short form name **NSLHD** and, together with HAC, the **State**

Notice details Chief Executive, Northern Sydney Local Health District
PO Box 4007
Royal North Shore Hospital LPO
St Leonards NSW 2065
Facsimile: +61 2 9463 1029
Attention: Adjunct Associate Professor Vicki Taylor

Name **NBH Operator Co Pty Ltd**

ACN 169 029 181

Capacity and ABN In its capacity as trustee of the NBH Operating Trust (ABN 83 722 380 020) and in its capacity as agent for Operator B as contemplated under the Project Deed

Short form name **Operator**

Notice details Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: +61 3 9926 7553
Attention: General Counsel

Name **NBH Operator B Pty Ltd**

ACN 602 943 911

Short form name **Operator B**

Notice details Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: +61 3 9926 7553
Attention: General Counsel

Name **Leighton Contractors Pty Limited** ACN 010 221 486 and
Healthscope Operations Pty Ltd ACN 006 405 152
Short form name **Construction Contractor**
Notice details Leighton Contractors Pty Limited
Level 23, 52 Martin Place, Sydney NSW 2000
Facsimile: + 61 2 8045 1045
Attention: Anthony Armstrong, D&C Bid Director, Northern Beaches Hospital
Healthscope Operations Pty Ltd
Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: +61 3 9926 7553
Attention: General Counsel

Name **Leighton Holdings Limited**
ACN 004 482 982
Short form name **Construction Contractor Guarantor**
Notice details 472 Pacific Highway, St Leonards NSW 2065
Facsimile: +61 2 9925 6000
Attention: Vanessa Rees, Company Secretary

Background

- A The State, Operator B and the Operator have entered into the Project Deed under which the Operator will carry out or procure the carrying out of the Project Works on the Site.
- B The Operator (in its capacity as agent for Operator B as contemplated under the Project Deed only) and the Construction Contractor have entered into the Construction Contract to carry out the Construction Works.
- C The Operator (in its capacity as agent for Operator B as contemplated under the Project Deed only) and the Construction Contractor Guarantor are or will become parties to the Construction Contractor Guarantor Performance Guarantee.
- D The Construction Contractor Guarantor has agreed to grant to the State certain rights in relation to the Construction Contractor Guarantor Performance Guarantee.
- E The Construction Contractor and the Construction Contractor Guarantor have agreed to provide the State with the warranties set out in this document.
- F The parties have agreed to regulate the exercise of their various rights and obligations in connection with the Construction Contract on the terms of this document.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Additional Obligor means a company wholly owned by the State.

Additional Obligor Step In Notice has the meaning given to it in clause 9.1(a)(viii).

Additional Obligor Step Out Date has the meaning given to it in clause 9.3(d).

Assumption Date has the meaning given to it in clause 9.3(a).

Claim includes any suit, claim, action, demand, proceeding, penalty or fine (except to the extent contrary to public policy or law), order or adverse judgment (at common law or in equity or under statute) under, arising out of, or in any way in connection with this document.

Commercially Sensitive Information means any information:

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

including but not limited to the information described in Schedule 1.

Construction Contract Documents means the Construction Contract, each Construction Contract Security and this document.

Construction Contract Plans and Specifications means all drawings, specifications, designs, documents, data, methods of workings or other materials or processes brought into existence by or on behalf of the Construction Contractor in the performance of the Construction Works.

Construction Contract Security means each bank guarantee, insurance bond or other bonding or security issued in favour of the Operator (alone or jointly with third parties) to secure the Construction Contractor's obligations under the Construction Contract.

Construction Contract Termination Notice has the meaning given to that term in clause 8.1.

Construction Contractor Statements has the meaning given to it in clause 8.2.

Construction Works means the works the subject of the Construction Contract.

Controller means, in relation to a person's property:

- (a) a receiver or receiver and manager of that property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that property to enforce an Encumbrance.

Financiers Step In Period means the step in period under the Financiers Tripartite Deed.

Minor Change means an amendment, modification, variation, change or replacement of a minor or minor technical nature that does not increase or change the profile of the rights or liabilities of the State under the Project Deed.

Operator Event of Default means a breach or default by the Operator under the Construction Contract.

Operator Rights has the meaning given to that term in clause 9.3(b)(i)(A).

Permitted Change means:

- (a) a Minor Change;
- (b) Change or Additional Work directed or required by the State in accordance with the Project Deed; or
- (c) any amendment, modification, variation, change or replacement otherwise expressly permitted under the Project Deed (including an amendment determined under clause 87 (*Dispute Resolution*) of the Project Deed).

Power means any power, right, authority, discretion or remedy, whether express or implied.

Prohibited Entity means any person or entity which:

- (a) is a 'terrorist organisation' as defined in Part 5.3 of the *Criminal Code Act 1995* (Cth); or
- (b) is listed by the Minister for Foreign Affairs in the Government Gazette pursuant to Part 4 of the *Charter of the United Nations Act 1945* (Cth) which list as at the date of this document is available from the website of the Australian Department of Foreign Affairs and Trade; or
- (c) is listed on any other list of terrorist or terrorist organisations maintained pursuant to the rules and regulations of the Australian Department of Foreign Affairs and Trade or pursuant to any other Australian legislation.

Project Breach means a breach by the Operator of any of its obligations under the Project Deed.

Project Deed means the Project Deed between the State, Operator B and the Operator in relation to the Project titled '*Project Deed – Northern Beaches Hospital*' dated on or about the date of this document.

Receiver means a receiver or receiver and manager appointed by the State under the Project Security.

Recipient has the meaning given to that term in clause 17(c)(i).

Required Period means the period starting on the date of a Construction Contract Termination Notice and ending _____ later, provided that where the Security Trustee has exercised its rights to step in under the Financiers Tripartite Deed and is, during that Financiers Step In Period, observing and performing the Operator's obligations under (among other things) the Construction Contract (including the payment of any and all amounts to be paid to the Construction Contractor for performance by the Construction Contractor of the Construction Contract during the Financiers Step In Period), the Required Period shall be suspended during any Financiers Step In Period, and the unexpired part of the Required Period will start to run again from the day after the last day of such Financiers Step In Period, if the event which was the subject of the Construction Contract Termination Notice is still subsisting.

Statement Beneficiary means the State, an Additional Obligor or Receiver appointed under clause 9.

Step In Date means the date on which the State takes any action under clause 9.1(a).

Step In Period means the period from the Step In Date up to and including the earlier of:

- (a) the Step Out Date;
- (b) the date of any novation under clause 9.4;
- (c) the date of any termination of the Construction Contract for breach under clause 9.2(b); or
- (d) the date of expiry of the Construction Contract.

Step In Rights means the step in rights set out in clause 9.

Step Out Date means the date nominated in the notice given under clause 9.5(a).

Suitable Substitute Operator means a person nominated by the Client Representative and approved by the Construction Contractor (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Operator under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub contracts) which are sufficient to enable it to perform the obligations of the Operator under the Construction Contract.

Surviving Clauses has the meaning given to that term in clause 18.9.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by an Authority, together with any related interest, penalty, fine or other charge.

WHS Legislation means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW).

1.2 Definitions in Project Deed

Subject to clause 1.1, 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 of the Project Deed as if set out in its entirety in this clause 1.3, except for the purposes of this document:

- (a) clause 1.2(c) of the Project Deed will be deemed to be omitted;
- (b) references in clause 1.2 of the Project Deed to 'this document' shall be read as references to 'this document'; and
- (c) references in clause 1.2 of the Project Deed to 'the Operator' shall be read as references to 'the Operator and the Construction Contractor'.

1.4 Exclusion of Civil Liability Act 2002 (NSW)

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 Multiple parties

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party:

- (a) an obligation of those persons is joint and several;

- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.6 Client Representative

The State must procure that the parties to this document are notified, within 5 Business Days after the date of the appointment of the Client Representative, of the identity and address of the Client Representative, and, as soon as practicable, of any changes in the identity or address of the Client Representative.

1.7 Project Documents

The Construction Contractor and the Construction Contractor Guarantor each acknowledge that it has received a copy of the Project Deed.

1.8 No liability

Subject only to the terms of the Project Deed in respect of the Operator, the State shall not be liable to the Operator or the Construction Contractor or the Construction Guarantor under this document or otherwise and neither the Operator, the Construction Contractor nor the Construction Contractor Guarantor shall have any entitlement under this document or otherwise for an act or omission of the State or any State Related Party to the extent that the State's act or omission is caused by an act or omission of the Operator, an Operator Related Party, the Construction Contractor or the Construction Contract Guarantor. Nothing in this clause derogates from the express rights conferred on the Construction Contractor under this deed.

1.9 Approvals and consents

- (a) For the avoidance of doubt, in respect of all approvals, consents, decisions or exercises of discretion required to be given or made by the State or the Client Representative:

- (i) relating to, or arising under or in connection with this document;
- (ii) relating to the satisfaction of a condition precedent pursuant to the terms of this document; or
- (iii) sought in relation to or in connection with, or referable to, or determinative of, the occurrence of, any Project Breach,

and regardless of whether the requirement of the approval, consent, decision or exercise of discretion is express or implied, the State or the Client Representative (as the case may be), has or have the right to give or make its approval, consent or decision or exercise its discretion conditionally or unconditionally or to withhold its approval, consent, decision or exercise of discretion but in giving or withholding its approval, consent, decision or exercise of discretion, or in imposing any conditions, the State or the Client Representative (as the case may be) must act reasonably.

- (b) Without limitation, the State or the Client Representative will not be acting unreasonably if, in giving or withholding any approval or consent, or in imposing any conditions, the State or the Client Representative:
 - (i) acts in accordance with relevant government policies;
 - (ii) adopts a 'whole of government' approach; or
 - (iii) acts to protect its reputation.

1.10 Novation to State Nominee

The parties acknowledge that:

- (a) each of HAC and the NSLHD may separately, at any time, elect to assign or novate its rights and obligations under this document to any nominee being an agency of the State (**State Nominee**); and
- (b) if HAC or the NSLHD elects to assign or novate its rights and obligations under this document to a State Nominee:
 - (i) each of the parties consents to that assignment or novation;
 - (ii) the parties must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to HAC or the NSLHD (as applicable), the State Nominee, the Construction Contractor and the Construction Contract Guarantor) to give effect to that assignment or novation;
 - (iii) the State Nominee's rights and liabilities under this document will be supported by a guarantee from the NSW Government on terms no less favourable than those contained in the PAFA Act Guarantee; and
 - (iv) from the date of such assignment or novation to the State Nominee:
 - (A) this clause 1.10 will be deleted; and
 - (B) all references to 'the State' in this document will be deemed to include reference to the State Nominee in place of HAC or the NSLHD (as applicable).

2. Acknowledgements

2.1 By Construction Contractor and Construction Contractor Guarantor

The Construction Contractor and the Construction Contractor Guarantor each acknowledges and agrees:

- (a) (**grant of security by the Operator**): that the Operator may give a Security Interest, in the form of the Project Security, in favour of the State over all assets and undertakings of the Operator including the Operator's right, title and interests under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee or assign the Operator's right, title and interest under the Construction Contract or the Construction Contractor Guarantor Performance Guarantee to the State by way of security, and the Construction Contractor and the Construction Contractor Guarantor each consents to the security and any such assignment;
- (b) (**no Operator Event of Default**): that the grant of, or exercise by the State of its rights under the Project Security will not of itself contravene, or constitute an Operator Event of Default under the Construction Contract or Construction Contractor Guarantor Performance Guarantee, or entitle the Construction Contractor or Construction Contractor Guarantor to exercise any Power (including termination) under it;
- (c) (**Liabilities and obligations**): that nothing in the Project Security will cause the State or Client Representative to assume any liabilities or obligations under the Construction Contract or Construction Contractor Guarantor Performance Guarantee except as may result from their own acts or omissions in exercising rights or in performing or failing to perform obligations under the Construction Contract or Construction Contractor Guarantor Performance Guarantee as envisaged by this document;

- (d) (**notice of any other assignment**): that with the exception of the Project Security and the Security Interests granted in favour of the Debt Financiers to secure the obligations of the Operator and the Borrower under the Financing Facilities, it has not received notice of any other assignment or charge by the Operator of any right, title, interest in or benefit of the Operator under the Construction Contract or Construction Contractor Guarantor Performance Guarantee; and
- (e) (**set off**): that as of the date of this document, it has no knowledge of any right of set off or counterclaim which it may have against the Operator so as to diminish any money payable by it to the Operator under the Construction Contract or Construction Contractor Guarantor Performance Guarantee, except only where the right of set off or counterclaim is contained within the Construction Contract or Construction Contractor Guarantor Performance Guarantee.

2.2 By Construction Contractor and Construction Contractor Guarantor concerning State's rights

- (a) (**State's rights**) The Construction Contractor and the Construction Contractor Guarantor each acknowledges the State's rights under clauses 8 (State's easements), 52.9 (Disasters/Networking and Planning), 69 (Force Majeure), 77 (Operator Event of Default), 78 (Termination of this Document), 80 (Termination during the Development Phase), 81 (Termination during the Operating Term), 58 (Subcontracts) and 83 (State inspection) of the Project Deed.
- (b) (**Facilitation of rights**) The Construction Contractor agrees with the State that it will exercise its rights under the Construction Contract in a way which facilitates the effective exercise by the State of the rights referred to in clause 2.2(a) and will on reasonable notice permit the State or a Client Representative to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access pursuant to the State's rights referred to in clause 2.2(a).
- (c) (**Continued performance**) During the period in which the State is exercising a right referred to in clause 2.2(a) the State may in accordance with and subject to, the Project Deed and the Construction Contract, require the suspension or continuation of performance by the Construction Contractor of its obligations under the Construction Contract and if it does so, the Construction Contractor agrees that it will comply with this requirement and all reasonable directions of the State or a Client Representative in relation to the performance of the Construction Contract by the Construction Contractor during such period.
- (d) (**State not liable**) The requirement of the State that the Construction Contractor suspend or continue to perform its obligations under the Construction Contract and the giving of any direction under clause 2.2(c) will not be construed as an assumption by the State of any obligations of the Construction Contractor under or in relation to the Construction Contract.
- (e) (**Subcontracting**) The Construction Contractor will not subcontract any of its obligations under the Construction Contract without the prior written consent of the State, where so required pursuant to clause 58 of the Project Deed.

2.3 By Operator

The Operator is bound by, and must cooperate in the implementation of, this document. It acknowledges that this document is intended to benefit only the Construction Contractor, the Construction Contractor Guarantor and the State and does not in any way affect any obligation of the Operator under the Construction Contract or under any Project Document.

3. Construction Contractor and Construction Contractor Guarantor Undertakings

3.1 Undertakings

The Construction Contractor and the Construction Contractor Guarantor each undertakes and warrants for the benefit of the State as follows:

- (a) it will fully comply with all of its obligations under the Construction Contract and this document;
- (b) it is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by the Project Deed;
- (c) in the case of the Construction Contractor, it has exercised and will continue to exercise, in accordance with Good Industry Practice, the level of skill, care and diligence in performing its duties under the Construction Contract which may reasonably be expected of a contractor experienced in the performance of the same or similar works to the Construction Works, provided that, other than as expressly set out in this document, the Construction Contractor will have no greater obligations to the State by virtue of this document than it would have had if the State had been named as the Operator under the Construction Contract;
- (d) the Construction Works will be carried out and completed:
 - (i) in accordance with the Construction Contract and this document;
 - (ii) in accordance with the Consents and applicable Law;
 - (iii) in a good and workmanlike manner; and
 - (iv) using (including installing) materials, equipment and goods, that will be of the quality and standard specified in the Construction Contract, but if no standard is specified, new and of merchantable quality and which are and will remain at all relevant times fit for their purpose to the extent required under the Project Deed;
- (e) in the case of the Construction Contractor, it has exercised and will continue to exercise reasonable skill, care and diligence in connection with the selection and supervision of its employees, agents, subcontractors and suppliers;
- (f) if at any time it is called upon to do so by the State, it must:
 - (i) extend to the State any guarantee of performance by the Construction Contractor or any warranty provided to the Operator in accordance with the Construction Contract;
 - (ii) provide the State, or any person authorised by the State, with such information relating to the Construction Works as the State may reasonably require in accordance with clause 7.2; and
 - (iii) allow the State, or any person authorised by the State, on reasonable notice, to inspect the Construction Works as the State may reasonably require in accordance with clause 7.2;
- (g) the Construction Contractor will:
 - (i) take out and maintain all insurances as are required under the Construction Contract;

- (ii) otherwise comply with all of its obligations in relation to insurance in the Construction Contract;
- (iii) ensure that it does not do or omit to do anything and does not permit anything to be done or omitted to be done whereby any insurance policy taken out and maintained under the Construction Contract may be prejudiced;
- (iv) ensure that the insurances required to be taken out and maintained under the Construction Contract are valid and that the premiums for the current periods of insurance have been duly paid;
- (v) if required by the Project Deed ensure, to the extent permitted by Law, that the State is specified as a person to whom the insurance cover provided by an insurance policy taken out and maintained under the Construction Contract extends;
- (vi) keep the State informed in relation to any claims made in connection with an insurance policy taken out and maintained under the Construction Contract;
- (vii) do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due in respect of any insurance policy taken out and maintained under the Construction Contract at the cost of the Construction Contractor;
- (viii) not cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any insurance policy taken out and maintained under the Construction Contract unless it has first obtained the written consent of the State after giving 60 days prior written notice to the State; and
- (ix) immediately notify the State of any cancellation, lapse, material change, reduction or any rescinding of an insurance policy taken out and maintained under the Construction Contract and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Project;
- (h) it must not novate, assign or substitute any of its rights, obligations or interests in the Construction Contract or Construction Contractor Guarantor Performance Guarantee without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this document as if it were the Construction Contractor or Construction Contractor Guarantor (as applicable);
- (i) it will not do anything that may invalidate any insurance policy held by the State or the NSW Government in relation to the Site, or any indemnity to which the State or the NSW Government may be entitled from the New South Wales Treasury Managed Fund; and
- (j) it will promptly inform the State of any material default by the Operator under the Construction Contract.

3.2 Rectification

Any defects, omissions, other faults or instances of non-compliance with the Construction Contract, which are notified in writing by the State to the Construction Contractor during the Defects Liability Period must be made good by the Construction Contractor:

- (a) within the time stipulated by the State, such time to be reasonable having regard to the particular defect, omission, fault or non-compliance; or
- (b) if no time is stipulated, then as soon as reasonably practicable,

and at no cost to the State.

3.3 Reliance on representations and warranties

The Construction Contractor and the Construction Contractor Guarantor acknowledge and agree that the State entered into this document in reliance on the undertakings and warranties made in clause 3.1.

4. Operator's Undertaking

The Operator agrees not to take any action or omit to do anything which may cause the Construction Contractor to breach this document.

5. Appointment of Construction Contractor as principal contractor

(a) In this clause 5, the terms "construction project", "construction work", "principal contractor" and "workplace" have the same meanings given to those terms under the WHS Legislation.

(b) The parties agree that:

(i) to the extent that the work under the Construction Contract includes construction work, the State:

(A) engages the Construction Contractor as the principal contractor for the work under the Construction Contract; and

(B) authorises the Construction Contractor to have management and control of each workplace at which the work under the Construction Contract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and

(ii) the Construction Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation,

and the Construction Contractor's engagement and authorisation as a principal contractor will continue:

(iii) subject to clause 5(b)(iv), until the Date of Final Completion (unless sooner revoked by the State); and

(iv) in respect of any rectification work carried out under clause 46 of the Construction Contract that is construction work, during the period any such work is carried out.

(c) The Construction Contractor must:

(i) if any Law 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;
- (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 5(c)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (iii) 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 Construction Contractor commences such work.

6. Construction Contract

6.1 Information

- (a) The Construction Contractor and the Operator must provide copies of each of the following to the State, at the same time as it has been furnished or received by it under the Construction Contract:
 - (i) without limiting the rights and obligations of the Construction Contractor and the State in clause 8.1, any notice given under the Construction Contract to the Operator in connection with any Operator Event of Default;
 - (ii) all other documents issued by the Construction Contractor in relation to any Operator Event of Default;
 - (iii) if required by the State, copies of the records required to be maintained or notices required to be given by the Construction Contractor under the Construction Contract and any information related to the Construction Works which are reasonable for the State to require provided that such information is not Commercially Sensitive Information, unless the State is entitled to such Commercially Sensitive Information under the Project Deed; and
 - (iv) notification of any dispute under the Construction Contract.
- (b) The Construction Contractor and Operator must answer any reasonable questions which the State may ask in relation to anything disclosed pursuant to clause 6.1(a) within 10 Business Days of the initial notification of default in order to allow the State to understand the nature or potential consequences of that information.

6.2 Variations to the Construction Works

- (a) The parties agree that the Operator and/or the Construction Contractor may not, other than with respect to a Permitted Change:
 - (i) agree to vary the Construction Works;
 - (ii) act on any instruction which alone or together with other instructions has the effect of varying the Construction Works;
 - (iii) do or omit to do any other act which might otherwise:
 - (A) decrease the quality of the Construction Works; or
 - (B) increase the cost of the Construction Works, except for increases to the cost of the Construction Works caused by variations to the scope of the Construction Works that the State has approved in writing; or

- (iv) to the extent that it is within the Operator's or the Construction Contractor's power respectively to do so, permit any of the things in clause 6.2(a)(iii) to occur.
- (b) When seeking the State's consent to any such variation, the Operator must give to the State reasonable details of the proposed variation to the Construction Works.

6.3 Termination by law or third party

The Operator and the Construction Contractor each respectively agree to promptly notify the State if, by operation of law or for any other reason including an act or omission by any person, the Construction Contract is terminated.

6.4 No changes to Construction Contract

Subject only to a Permitted Change, the Operator and the Construction Contractor may not vary, amend or replace the Construction Contract.

7. Other agreements

7.1 Project Deed

The parties acknowledge and agree that the rights granted to the State under, and by virtue of this document, are in addition to the rights of State against the Operator under, and by virtue of, the Project Deed.

7.2 Access

The Construction Contractor and the Operator must at all times permit the State (including its nominees, employees, agents, consultants and contractors) full and free access to:

- (a) subject to the Project Deed, inspect the Site, the Construction Works, any place where the Construction Works are being carried out and any materials intended to be incorporated in the Construction Works but which are not on the Site; and
- (b) subject to the confidentiality and disclosure obligations in the Project Deed, take copies or extracts of all relevant documents and records which the Operator is entitled access to under the Construction Contract, subject to:
 - (i) the reasonable safety and other requirements of the Construction Contractor and Operator; and
 - (ii) the State ensuring as far as reasonably practicable that any such actions do not cause any unreasonable disruption of the Construction Works.

7.3 Terms of access

If the State (including its nominees, employees, agents, consultants and contractors) accesses the Site, it must first liaise with the site foreman or other representative of the Construction Contractor or the Operator in order to minimise disruption to the Construction Works.

7.4 Construction Contractor and Construction Contractor Guarantor's obligations

The Construction Contractor and the Construction Contractor Guarantor must:

- (a) in the case of the Construction Contractor, comply with its obligations under the Construction Contract as and when they fall due;
- (b) not enter into any contract, consultancy agreement or supply agreement in connection with the Construction Works whose terms are inconsistent with the Construction Contractor complying with its obligations to the State under this document;
- (c) not take any Security Interest over the Site or the Operator's rights under the Project Deed;

- (d) not lodge a caveat against the Site;
- (e) in the case of the Construction Contractor, not repudiate, release, surrender or discharge (except by performance) the Construction Contract;
- (f) not do anything which would or would be likely to render the Construction Contract invalid or unenforceable; and
- (g) in the case of the Construction Contractor, to the extent each of the following relates to, connects with or touches upon the Construction Works:
 - (i) subject to the confidentiality obligations in the Project Deed, consult with the State and provide such relevant information regarding the Construction Works and the Construction Contract from time to time as the State reasonably requests provided such information is not Commercially Sensitive Information, unless the State is entitled to such Commercially Sensitive Information under the Project Deed;
 - (ii) ensure that the Operator is granted an irrevocable licence to use the Construction Contract Plans and Specifications which enables the Operator, the State and any other person nominated by the State to complete the Construction Works; and
 - (iii) ensure that the terms of the Construction Contract include a provision entitling the Construction Contractor to novate the Construction Contract to the State, should the Construction Contract be terminated.

7.5 Artefacts

The parties acknowledge and agree that:

- (a) Artefacts may be found on, in or under the surface of the Site;
- (b) upon the discovery of an Artefact, the Construction Contractor and the Operator must (but without limiting the Construction Contractor's obligations, rights and entitlements under the Construction Contract):
 - (i) promptly notify the State of the discovery;
 - (ii) take all practical steps to prevent the Artefact being disturbed, damaged, removed or lost;
 - (iii) take all practicable precautions necessary to prevent Loss, removal of or damage to the Artefact;
 - (iv) comply with all Laws; and
- (c) as between the parties, any Artefact discovered on, in or under the surface of the Site are and will remain the property of the State.

8. Operator Event of Default and Step In Rights

8.1 Notice of Operator Event of Default

The Construction Contractor must not terminate or give notice terminating the Construction Contract without giving to the State at least _____ prior written notice (the **Construction Contract Termination Notice**) containing the matters in clause 8.2.

8.2 Construction Contractor Statements

As part of any Construction Contract Termination Notice, the Construction Contractor must submit statements to the State of:

- (a) the proposed termination date;

- (b) the nature and, to the best of the Construction Contractor's knowledge and belief, the amount of any monetary claim asserted by the Construction Contractor under or arising out of the Construction Contract against the Operator;
 - (c) the grounds for termination in reasonable detail;
 - (d) details of any amount owed by the Operator to the Construction Contractor:
 - (i) at the time of the Construction Contract Termination Notice; and/or
 - (ii) which will fall due on or prior to the end of the Required Period, under the Construction Contract; and
 - (e) [not used],
- (being the **Construction Contractor Statements**).

8.3 Warranty of accuracy

The Construction Contractor warrants to the State that the Construction Contractor Statements submitted by it under clause 8.2 will be, subject to unintended error which the Construction Contractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Construction Contractor considers itself entitled.

8.4 Verification of Construction Contractor Statements

The State may appoint a firm of independent chartered accountants or a firm of technical advisers to verify (at the cost of the Operator) the Construction Contractor Statements, and the Construction Contractor must, subject to such firm(s) executing an appropriate confidentiality agreement as the Construction Contractor may reasonably request, permit such firm(s) to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirm the accuracy and completeness of such Construction Contractor Statements.

8.5 Construction Contractor Statements to be conclusive evidence

- (a) (**Reliance**): Each Statement Beneficiary is entitled to rely on the Construction Contractor Statements for the purpose of determining the extent of the matters occurring prior to a Operator Event of Default which are required to be cured or remedied and the requirements to effect remedy of that Operator Event of Default by a Statement Beneficiary.
- (b) (**Conclusive evidence**): The Construction Contractor Statements will, to the extent provided in clauses 8.2 and 8.3 be conclusive evidence in favour of any Statement Beneficiary of all claims then known or which ought reasonably to have been known to the Construction Contractor arising out of or in connection with the Construction Contract prior to the date of the Construction Contract Termination Notice. The Construction Contractor agrees that any claim which has not been notified in writing to the State within 3 days of submission of a Construction Contractor Statement will be waived and abandoned by the Construction Contractor.
- (c) (**Claims against the Operator**): Clauses 8.5(a) and 8.5(b) are without prejudice to the rights of the Construction Contractor to pursue any claims against the Operator following the end of the Step In Period.
- (d) (**Disputes**): For the avoidance of doubt, a Construction Contractor Statement will not prevent any Statement Beneficiary from disputing the amount of any claim by the Construction Contractor or the existence of any default by the Operating Company under the Construction Contract. In the case of any such dispute:

- (i) the relevant Statement Beneficiary must pay the amount (if any) not in dispute;
- (ii) the dispute must be referred to expert determination in accordance with clause 16 of this document;
- (iii) upon resolution of the dispute, the parties must make payments as determined by the expert; and
- (iv) during the period of dispute resolution, all parties must continue to perform their obligations under this document and the Project Documents.

8.6 Remedy of default

- (a) The Construction Contractor undertakes, despite any provision of the Construction Contract, to provide to the State, no less frequently than once a week, full details as to whether an Operator Event of Default which is the subject of a Construction Contract Termination Notice has been remedied.
- (b) If an Operator Event of Default referred to in paragraph (a) is subsisting and has not been remedied, the State may (in its sole discretion) at any time during the Required Period make arrangements to remedy the breach. If it elects to make such arrangements, it must notify the Construction Contractor within a reasonable period of that election and, in any event, within the Required Period. If notified, the Construction Contractor agrees:
 - (i) to use its best endeavours to reach an agreement with the State in respect of the arrangements to remedy the breach; and
 - (ii) not to suspend the performance of its obligations under the Construction Contract unless the breach has not been remedied by the State within _____ of the later of expiry of the Debt Financier's cure period under clause 4.3 (b)(i)(C) of the Financiers Construction Contractor Tripartite Deed and the date of the Construction Contract Termination Notice; and
 - (iii) not to terminate the Construction Contract except, if an agreement is not reached within the Required Period, the Construction Contractor may exercise such right of termination subject to clauses 9.1 and 9.2.
- (c) The Construction Contractor acknowledges and agrees that any action taken by the State under this clause 8.6 will not be construed as an assumption by the State of the liabilities or obligations of the Operator under the Construction Contract.

9. Step In Rights

9.1 Assumption by State

- (a) Subject to clause 9.1(d), at any time:
 - (i) when the State may exercise its Step-In Rights under the Project Deed;
 - (ii) during which an Operator Termination Event is subsisting (whether or not a Construction Contract Termination Notice has been served); or
 - (iii) during the Required Period; or
 - (iv) otherwise as permitted under any Project Document,
 the State may:
 - (v) [not used];
 - (vi) [not used];

- (vii) take such action as is permitted by Law under the terms of the Project Documents;
or
- (viii) by notice to the Construction Contractor, procure that an Additional Obligor assumes jointly and severally with the Operator all of the Operator's rights and obligations under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee (**Additional Obligor Step-In Notice**).
- (b) The State must give the Construction Contractor two days' prior written notice of any action to be taken by it referred to in this clause 9, including, where relevant, reasonable details of the event which gave rise to the Step In Rights or the Operator Termination Event.
- (c) The Construction Contractor and the Construction Contractor Guarantor each acknowledges that the exercise by the State of a Step In Right under this clause 9 will not of itself contravene, or constitute an Operator Event of Default under the Construction Contract or Construction Contractor Guarantor Performance Guarantee or entitle the Construction Contractor or Construction Contractor Guarantor to exercise any Power (including termination) under it.
- (d) The State's rights to step in under this clause 9 will be postponed to the rights of the Security Trustee under the Financiers Tripartite Deed and the State will take no action under this clause 9 for so long as the Financiers Step In Period continues.

9.2 Step In period

- (a) Without prejudice to clause 9.1, but subject to clause 9.2(b), the Construction Contractor must not terminate the Construction Contract during the Step In Period on grounds:
 - (i) that the State has taken any action referred to in clause 9; or
 - (ii) arising prior to the Step In Date.
- (b) The Construction Contractor will be entitled to terminate the Construction Contract by written notice to the Operator and the State:
 - (i) if any amount:
 - (A) referred to in clause 8.2(d)(i) has not been paid to the Construction Contractor on or before the Step In Date;
 - (B) referred to in clause 8.2(d)(ii) arising after the Step In Date has not been paid on or before the date falling _____ after the date on which the liability for these amounts is notified to the State; and
 - (C) of which the Construction Contractor was not aware (having made proper enquiry) at the time of the Construction Contract Termination Notice, subsequently becomes payable and is not discharged on or before the date falling _____ after the date on which the liability for the amount is notified to the State,

provided that such amounts have been independently certified to the reasonable satisfaction of the State; or
 - (ii) on grounds arising after the Step In Date in accordance with the terms of the Construction Contract.
- (c) The Construction Contractor must deal with the State in place of the Operator during the Step In Period.

- (d) During the Step In Period, the Construction Contract will remain in full force and effect and the Construction Contractor must continue diligently to perform all of its obligations and procure the completion of the Construction Works in accordance with the Construction Contract as though the State were directly party to the Construction Contract in place of the Operator.
- (e) During the Step In Period, the State will be entitled to enforce all of the rights of the Operator under the Construction Contract in place of the Operator.

9.3 Step In using Additional Obligor

- (a) **(Assumption Date):** The Additional Obligor will become a party to the Construction Contract and the Construction Contractor Guarantor Performance Guarantee on the date on which the Additional Obligor Step In Notice is given to the Construction Contractor or such later date as the Construction Contractor and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During the Step In Period:
 - (i) the Additional Obligor will be jointly and severally:
 - (A) entitled with the Operator to exercise the rights, powers and discretions of the Operator under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee (excluding any accrued rights of the Operator in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Operator Rights**); and
 - (B) liable (subject to clause 9.5) with the Operator for the performance or non-performance of all the Operator's obligations under the Construction Contract or Construction Contractor Guarantor Performance Guarantee arising on or after the Assumption Date except as released in accordance with clause 9.3(e);
 - (ii) as between the Operator, the Construction Contractor, the Construction Contractor Guarantor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Construction Contractor and the Construction Contractor Guarantor and to exercise the Operator Rights;
 - (iii) the Operator acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Construction Contractor and the Construction Contractor Guarantor and in exercising Operator Rights;
 - (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals or consents given or made prior to the Assumption Date;
 - (v) clause 18.1 will apply to the Construction Contractor, the Construction Contractor Guarantor and the Additional Obligor as if the address, facsimile number and email address of the Additional Obligor were set out in addition to those of the Operator; and
 - (vi) the Construction Contractor and the Construction Contractor Guarantor will owe its obligations under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee (as applicable) to the Operator and the Additional Obligor jointly but the performance by the Construction Contractor or Construction Contractor Guarantor in favour of either the Operator or the Additional Obligor will be a good discharge of the relevant obligations under the

Construction Contract or Construction Contractor Guarantor Performance Guarantee.

- (c) **(No liability)**: The Additional Obligor will have no obligation to, and no liability in respect of, remedying any default or breach of the Operator under the Construction Contract or Construction Contractor Guarantor Performance Guarantee arising prior to the Assumption Date.
- (d) **(Additional Obligor Step Out Date)**: The Additional Obligor may at any time give the Construction Contractor not less than 30 days' notice terminating the Additional Obligor's obligations under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee (without affecting the continuation of the Operator's obligations or liabilities towards the Construction Contractor under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee). Such notice must specify the date on which it takes effect, which must be no earlier than the date 30 days after the date of the notice.
- (e) **(Release)**: On and from the Additional Obligor Step Out Date, between the Construction Contractor, the Construction Contractor Guarantor and the Additional Obligor, each of the Additional Obligor, the Construction Contractor and the Construction Contractor Guarantor will be released from all obligations under the Construction Contract and the Construction Contractor Guarantor Performance Guarantee (except for those obligations which have arisen during the Step In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed.

9.4 Novation

- (a) Subject to clause 9.4(b), at any time:
 - (i) during which an Operator Termination Event is subsisting; or
 - (ii) during the Step In Period,the State may, where it has terminated the Project Deed, with 30 days' prior written notice to the Construction Contractor, procure the novation of the Operator's rights and liabilities under the Construction Contract to a Suitable Substitute Operator.
- (b) The Construction Contractor must notify the State as to whether any person to whom the State proposes to novate the Operator's rights and liabilities under the Construction Contract is a Suitable Substitute Operator, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Construction Contractor to decide whether the proposed operator is a Suitable Substitute Operator.
- (c) The Construction Contractor must not unreasonably withhold or delay its decision on whether the proposed operator is a Suitable Substitute Operator.
- (d) On any novation referred to in clause 9.4(a) becoming effective:
 - (i) the Operator and (if applicable) the State will be released from any obligations arising under or in connection with the Construction Contract from that date (except for accrued liabilities and obligations) and the Suitable Substitute Operator will become liable for obligations arising on or after that date;
 - (ii) any then subsisting ground for termination of the Construction Contract by the Construction Contractor will be deemed to have no effect and any subsisting Operator Termination Notice will be automatically revoked;

- (iii) the Construction Contractor must enter into a side deed with the State and the Suitable Substitute Operator on substantially the same terms as this document; and
- (iv) as between the Operator and the Construction Contractor, the Construction Contractor will be released from any liabilities or obligations arising under or in connection with the Construction Contract from that date (except for any accrued liabilities or obligations).

9.5 Step out

- (a) The State may, at any time during the Step In Period, with at least 30 days' prior written notice to the Construction Contractor, terminate the Step In Period with effect from the date specified in that notice.
- (b) With effect from the Step Out Date nominated in the notice referred to in clause 9.5(a), the State will be released from any and all obligations and liabilities to the Construction Contractor:
 - (i) under the Construction Contract; and
 - (ii) under this document,provided that the State will be liable for any and all amounts referred to in clause 9.2(b)(i).
- (c) The release under clause 9.5(b) will not affect or prejudice the continuation of the Operator's obligations to the Construction Contractor under the Construction Contract.

9.6 Construction Contractor

- (a) Except in accordance with the terms of this document, the Construction Contractor acknowledges and agrees that:
 - (i) the State is not responsible for, and has no liability (actual or contingent); and
 - (ii) the Construction Contractor has no cause of action against the State,in relation to an Operator Event of Default, or any other event, act or omission of the Operator or any other party, in relation to the Construction Contract.
- (b) The Construction Contractor will, at the Operator's expense, take whatever action the State or a Suitable Substitute Operator taking a novation in accordance with clause 9.4(a) may require for perfecting any step in, novation or release under clauses 9.3, 9.4 or 9.5, including the execution of any novation or assignment, the transfer of any Construction Contract Security and the giving of any notice, order or direction and the making of any registration which, in each case, the State or Suitable Substitute Operator reasonably requires.
- (c) The Construction Contractor undertakes that it will not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Operator during any Required Period or Step In Period.
- (d) The Operator joins in this document to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this document.

10. Representations and Warranties

10.1 The State representations and warranties

The State represents and warrants that:

- (a) (**power**) it has the power to execute, deliver and perform its obligations under this document and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) (**Deed effective**) this document constitutes the State's valid, legal and binding obligations enforceable against the State in accordance with their terms subject to equitable remedies and Laws in respect of the enforcement of creditors' rights; and
- (c) (**no contravention**) the execution, delivery and performance of this document by the State will not contravene any Law to which the State is subject.

10.2 General representations and warranties

Each of the Operator and the Construction Contractor represents and warrants that:

- (a) (**status**) it is a company limited by shares under the Corporations Act;
- (b) (**power**) it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into the Construction Contract Documents, supply agreements, consultancy agreements and any other document entered into in respect of the Project to which it is expressed to be a party and to carry out the transactions contemplated by any one or more of them;
- (c) (**corporate**) it has taken all corporate action that is necessary or desirable to authorise its entry into the Construction Contract Documents to which it is a party and its carrying out the transactions that they contemplate;
- (d) (**Consents**) it holds each Consent that is necessary or desirable to:
 - (i) enable it to properly execute the Construction Contract Documents to which it is a party and to carry out the transactions that they contemplate;
 - (ii) ensure that the Construction Contract Documents to which it is a party are legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,
 and it is complying with any conditions to which any of these Consents is subject;
- (e) (**documents effective**) the Construction Contract Documents to which it is a party constitute its legal, valid and binding obligations, enforceable against it in accordance with their terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally) subject to any necessary stamping or registration;
- (f) (**no contravention**) neither its execution of the Construction Contract Documents to which it is a party nor the carrying out by it of the transactions that they contemplate, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (ii) contravene any Consent;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution;
- (g) (**information**) the information and reports (if any) that it has given to the State in connection with any Construction Contract Documents to which it is a party are true and

accurate in all material respects and not misleading in any material respect (including by omission);

- (h) **(no Controller)** no Controller is currently appointed in relation to any of its property; and
- (i) **(no trust)** except for the Operator in relation to the NBH Operating Trust, it is not entering into any Construction Contract Documents to which it is a party as trustee of any trust or settlement.

10.3 Representations and warranties regarding the Construction Contract

Each of the Construction Contractor and the Operator represents and warrants that:

- (a) **(termination)** it has no right to:
 - (i) terminate, rescind, repudiate or vary the Construction Contract; or
 - (ii) refuse to perform or observe any of its obligations under the Construction Contract;
- (b) **(Construction Contract not void)** the Construction Contract is not void, voidable by the Construction Contractor or unenforceable by the Operator;
- (c) **(entire agreement)** the Construction Contract Documents set out all of the agreements, arrangements and understandings between the Operator and, the Construction Contractor relating to the Project;
- (d) **(Operator Event of Default)** no Operator Event of Default has occurred;
- (e) **(Security Interest)** the Operator has not granted the Construction Contractor a Security Interest over the Site or any of the Operator's other assets; and
- (f) **(solvent)** it is solvent and there are reasonable grounds to expect that it will continue to be able to pay its debts as and when they fall due.

10.4 Representations and warranties by Construction Contractor

The Construction Contractor and the Construction Contractor Guarantor represents and warrants to the State that:

- (a) it has not entered into this document in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of the State (including any advice, warranty, representation or undertaking);
- (b) it is not a Prohibited Entity and is not owned or controlled by, or acts on behalf of, any Prohibited Entity; and
- (c) it will ensure that it complies with all anti-terrorism legislation in Australia including, without limitation, Part 4 of the *Charter of the United Nations Act 1945*(Cth) and Part 5.3 of the *Criminal Code Act 1995* (Cth).

10.5 Further assurances

Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.

10.6 Reliance on representations and warranties

Each party acknowledges that each other party executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this clause 10.

11. Undertakings

The Construction Contractor and Construction Contractor Guarantor must:

- (a) (**hold Consents**) obtain and maintain each Consent that is necessary or desirable to:
 - (i) execute the Construction Contract Documents to which it is a party and to carry out the transactions that they contemplate;
 - (ii) ensure that the Construction Contract Documents to which it is a party are legal, valid, binding and admissible in evidence;
 - (iii) enable it to properly carry on its business; and
 - (iv) must comply with any conditions to which any of these Consents is subject;
- (b) (**representations and warranties untrue**) notify the State upon becoming aware of any occurrence, event or circumstance which causes, or may reasonably be expected to cause, any of its representations or warranties to be incorrect or misleading in any material respect;
- (c) (**no administrator**) not appoint an administrator without notice to the State;
- (d) (**information**) promptly on request (and in any event within 5 Business Days) provide to the Client Representative any information relating to the financial condition, business, property, and affairs of itself and its related bodies corporate, the Construction Contract Documents and the Project, that the Client Representative reasonably requests;
- (e) (**no amendments**) other than a Permitted Change, not amend, waive, suspend (except to the extent it is entitled to under the Construction Contract), terminate, revoke or otherwise vary the terms of the Construction Contract Documents, the Construction Works or the Project, or enter into other agreements or arrangements with a party or parties to the Construction Contract Documents which relate to the subject matter of the Construction Contract Documents; and
- (f) (**no assignment**) not dispose of, declare a trust over or otherwise create an interest in its right, title or interest to or under any Construction Contract Document to which it is a party, or any part of a Construction Contract Document to which it is a party, without the prior written consent of the State.

12. Indemnities

12.1 Construction Contractor indemnity

The Construction Contractor indemnifies and holds harmless the State and their respective officers, employees, agents and representatives from and against all Claims and Losses and arising out of, or in connection with, a breach by the Construction Contractor of any of the representations and warranties given by it under clause 3.1 or a failure by the Construction Contractor to comply with any of its other obligations under this document or the Construction Contract.

12.2 Patents, copyright and other intellectual property rights indemnity

- (a) The Construction Contractor indemnifies the State from and against any liability or Loss arising from, and any Costs incurred in connection with Claims made by third parties against the State due to design, materials, documents and methods of working provided by the Construction Contractor in connection with the Construction Contract infringing any patent, copyright, registered design, trademark or name, or other protected right.

- (b) Where any patented articles, processes or inventions are supplied by or on behalf of the Construction Contractor in the execution of the work under the Construction Contract, the Construction Contractor shall indemnify the State from and against all Claims brought or made against the State by reason of the Construction Contractor infringing or being held to have infringed any patent rights in respect those articles, processes or inventions.

12.3 Operator indemnity

The Operator indemnifies the State against, and must pay the State on demand the amount of, all costs, losses, liabilities, claims, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement, of any rights under this document.

13. Confidentiality

13.1 Keep confidential

- (a) Subject to clause 13.2, the parties must keep confidential all matters relating to this document 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 document.
- (b) The parties acknowledge and agree that the Commercially Sensitive Information is of a confidential nature, including without limitation to any information provided under clause 11(d), and will be received, supplied and communicated in circumstances of confidence and on a commercial-in-confidence basis.

13.2 Permitted Disclosure

Clause 13.1 will not apply to:

- (a) the disclosure by the State of any information that is not Commercially Sensitive Information;
- (b) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party to this document;
- (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 13.1;
- (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 or prospective investors in, or prospective shareholders 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 and construction of the Project 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 Project Deed, provided that the exclusion in this clause 13.2(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 document;

- (h) any disclosure of information by the Client Representative to any other department, office or agency of the NSW Government;
- (i) any disclosure by the Client Representative of any document relating to this document and which the Operator or the Construction Contractor, as the case may be, (acting reasonably) has agreed with the Client Representative contains no Commercially Sensitive Information;
- (j) any disclosure of information by the Client Representative, the Operator or the Borrower to the Debt Financiers; or
- (k) any disclosure of information required by a stock exchange or a New South Wales or Commonwealth regulator.

13.3 Obligations Preserved

Where disclosure is permitted under clause 13.2, other than clauses 13.2(a), 13.2(c), 13.2(d), 13.2(g), 13.2(h) and 13.2(k), 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 document.

13.4 Disclosure by the State

- (a) Notwithstanding the other provisions of this clause 13 the parties acknowledge that:
 - (i) the Project Documents will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983 (NSW)*;
 - (ii) information concerning the Project Documents will be tabled in Parliament by or on behalf of the State and will be published in accordance with the Guidelines;
 - (iii) information concerning the Project Documents will be published on the State's contracts register in accordance with the GIPA Act; and
 - (iv) the State and the Client Representative may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) by entering into this document, the State has consulted with the Operator and the Construction Contractor in relation to the disclosure of all information concerning the Project Documents that is required to be disclosed by the State pursuant to Division 5 of Part 3 of the GIPA Act and the parties have confirmed to the State that this document does not contain Commercially Sensitive Information;
 - (ii) the State will notify the Operator and the Construction Contractor of any proposed disclosure of 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 13.4(b)(ii), the State will take reasonable steps to consult with the Operator and the Construction Contractor before disclosing Commercially Sensitive Information, including under the GIPA Act;
 - (iv) if, following:
 - (A) notification by the State in accordance with clause 13.4(b)(ii); or

- (B) consultation between the State and the Operator and the Construction Contractor in accordance with clause 13.4(b)(iii),

the Operator or the Construction Contractor objects to disclosure of some or all of the Commercially Sensitive Information, the Operator and the Construction Contractor (if relevant) must provide details of any such objection within 5 Business Days of 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 or the Construction Contractor pursuant to clause 13.4(b)(iv) in determining whether the Commercially Sensitive Information identified by the Operator or the Construction Contractor should be disclosed; and
- (vi) nothing in this clause 13.4(b) will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

14. Termination of Project Deed or Assignment/Novation of Operator's Rights and Obligations

If the Project Deed is terminated or the rights and obligations of the Operator are assigned or novated pursuant to the terms of any of the Project Documents, if required by the State:

- (a) the Operator must transfer, assign, novate or otherwise convey its respective interest in the Construction Contract to the State or the State's nominee at the State's election;
- (b) subject to clause 9.4, the Construction Contractor agrees to perform the Construction Contract for the benefit of the State or the relevant assignee or novatee; and
- (c) the Construction Contractor will enter into any document with the State or the relevant assignee or novatee and the Operator to formalise this arrangement.

15. Amendment and Assignment

15.1 Amendment

This Deed can only be amended, supplemented, replaced or novated by another document signed by the parties.

15.2 Assignment

- (a) The Construction Contractor and the Operator may only dispose of, declare a trust over or otherwise create an interest (other than the Project Security or the Finance Security) in its rights under this document with the consent of the State.
- (b) The State may dispose of, declare a trust over or otherwise create an interest in its rights under this document without the consent of any other party.

16. Dispute Resolution

- (a) Any dispute, difference, controversy or claim (**Dispute**) directly or indirectly based upon, arising out, relating to or in connection with this document (including any questions relating to the existence, validity or termination of this document) or any party's conduct before the date of this document, must be resolved only in accordance with clause 87 of the Project Deed.

- (b) Accordingly, the provisions of clause 87 of the Project Deed are incorporated into this document but as if the only persons party to the Project Deed are the parties to the relevant Dispute.

17. GST

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 17 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 17.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this document (other than under this clause 17) 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 17.
 - (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 17:
 - (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 document, it is authorised to do so as agent of the other and may issue or obtain a tax invoice in that capacity.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this document 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 17, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this document (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 17(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 17(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 document 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.
- (f) **(No merger)** This clause will not merge on completion or termination of this document.

18. General

18.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this document:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

The State

Name: Northern Sydney Local Health District
Address: PO Box 4007, Royal North Shore Hospital LPO, St Leonards NSW
2065
Fax No: +61 2 9463 1029
For the attention of: Adjunct Associate Professor Vicki Taylor

The Operator

Name: NBH Operator Co Pty Ltd (ACN 169 029 181) in its capacity as trustee of the NBH Operating Trust
Address: Level 1, 312 St Kilda Road, Melbourne VIC 3004
Fax No: +61 3 9926 7553
For the attention of: General Counsel

Operator B

Name: NBH Operator B Pty Ltd
Address: Level 1, 312 St Kilda Road, Melbourne VIC 3004
Fax No: +61 3 9926 7553
For the attention of: General Counsel

The Construction Contractor

Name: Leighton Contractors Pty Limited
Address: Level 23, 52 Martin Place, Sydney NSW 2000

Fax No: + 61 2 8045 1045

For the attention of: Anthony Armstrong, D&C Bid Director, Northern Beaches Hospital

And

Name: Healthscope Operations Pty Ltd

Address: Level 1, 312 St Kilda Road, Melbourne VIC 3004

Fax No: +61 3 9926 7553

For the attention of: General Counsel

The Construction Contractor Guarantor

Name: Leighton Holdings Limited

Address: 472 Pacific Highway, St Leonards NSW 2065

Fax No: +61 2 9925 6000

For the attention of: Vanessa Rees, Company Secretary

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 18.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day, or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

18.2 The State as a Public Authority

- (a) This Deed 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 and the Construction Contractor acknowledge and agree that, without limiting clause 18.2(a), anything which the State 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 the State under this document and will not entitle the Operator or the Construction Contractor to make any Claim against the State.
- (c) The parties agree that clauses 18.2(a) and 18.2(b) are taken not to limit any liability which the State would have had to the Operator or the Construction Contractor under this

document as a result of a breach by the State of a term of this document but for clauses 18.2(a) and 18.2(b) of this document.

18.3 Certification

For the purposes of this document, a copy of a document will be regarded as duly certified by a party if it is certified as a true copy by a director, secretary or general manager of that party.

18.4 Cost of performing obligations

Each party must perform its obligations under this document at its own cost, unless expressly provided otherwise.

18.5 Governing Law

This Deed 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.

18.6 Amendments

This Deed may only be varied by a Deed executed by or on behalf of each party.

18.7 Taxes

Subject to clause 17, the Operator:

- (a) must pay all taxes in respect of this document, the performance of this document and each transaction effected by or made under this document;
- (b) indemnifies each other party against liability arising from failure to comply with clause 18.7(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any taxes paid under this clause 18.7.

18.8 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 document 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 document.
- (b) A waiver or consent given by a party under this document 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 document operates as a waiver of another breach of that term or of a breach of any other term of this document.

18.9 Survival of certain provisions; no merger

- (a) Without limiting clause 18.18(a):
 - (i) clauses 12, 13, 18.1, 18.5 and 18.18, any indemnities given under this document and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this document; and
 - (ii) if this document 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 document occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.

18.10 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 document.

18.11 Consents

A consent required under this document 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 document expressly provides otherwise.

18.12 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 document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document 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 document.

18.13 Reading down

If a word, phrase, sentence, clause or other provision of this document 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.

18.14 Severance

Any provision of this document 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 document or affecting the validity or unenforceability of such provision in any other jurisdiction.

18.15 Remedies cumulative

The rights and remedies provided in this document 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 document.

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 the State.

18.17 Entire agreement

This Deed contains the entire agreement of the parties with respect to the transactions contemplated by it. There are no understanding, agreements, warranties or representations (express or implied) with respect to the transactions contemplated by this document except for those referred to in it.

18.18 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 the State under this document, it gives an equivalent indemnity and release to the NSW Government. The State holds for itself and on trust for the NSW Government the benefit of each such indemnity and release in this document.

18.19 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. All such counterparts taken together will be deemed to constitute one and the same instrument.

18.20 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her State to do so under that power of attorney and that he or she has, at the time of executing this document, no notice of the revocation of the power of attorney under which he or she executes this document.

18.21 Order of precedence

To the extent of any inconsistency between this document and any other document or agreement between the parties, subject to clause 1.3(d) of the Project Deed, this document will prevail.

18.22 Aggregate Liability

Despite any other provision of the Construction Contract or this deed:

- (a) the maximum aggregate liability of the:
 - (i) Construction Contractor under this document, the Construction Contract and other relevant Project Documents (including the Collateral Warranty); and
 - (ii) Construction Contractor Guarantor under this document and the Construction Contractor Guarantor Performance Guarantee,is no greater than the maximum liability of the Construction Contractor under the Construction Contract and for the avoidance of doubt the State is not permitted to recover, and neither the Construction Contractor or the Construction Contractor Guarantor will be liable to the State for, any loss that is not permitted to be recovered against the Construction Contractor under the Construction Contract; and
- (b) if there is a breach of the Construction Contract by the Construction Contractor, payment by or on behalf of the Construction Contractor:
 - (i) to the Operator of an amount in respect of the Construction Contractor's liability for that breach of the Construction Contract also satisfies, to the same extent, any claim by the State against the Construction Contractor for breach of this document; and

- (ii) to the State for an amount in respect of the Construction Contractor's liability for that breach of this document also satisfies, to the same extent, any claim by the Operator under the Construction Contract in respect of the same breach.

Signing page

EXECUTED as a deed.

HAC

Executed by the Secretary of the Ministry of Health for and on behalf of Health Administration Corporation pursuant to *section 50 of the Interpretation Act 1987* (NSW)

Secretary of the Ministry of Health ←

NSLHD

Executed by the Chief Executive of the Northern Sydney Local Health District for and on behalf of Northern Sydney Local Health District pursuant to *section 50 of the Interpretation Act 1987* (NSW)

Chief Executive of the Northern Sydney Local Health District ←

Operator

Executed by NBH Operator Co Pty Ltd in its capacity as trustee of the NBH Operating Trust in accordance with Section 127 of the *Corporations Act 2001*

Signature of director ←

Signature of director/company secretary (Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

Operator B

Executed by NBH Operator B Pty Ltd in accordance with Section 127 of the *Corporations Act 2001*

Signature of director ←

Signature of director/company secretary (Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

Construction Contractor

Signed sealed and delivered for and on behalf of **Leighton Contractors Pty Ltd** by its Attorneys under a Power of Attorney dated **9 December 2014** (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:

Signature of Attorney

Name of Attorney

Signature of witness

Name of Witness in full

Signature of Attorney

Name of Attorney

Signature of witness

Name of Witness in full

Executed by Healthscope Operations Pty Ltd in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)



Construction Contractor Guarantor

Signed sealed and delivered for and on behalf of **Leighton Holdings Limited** by its Attorneys under a Power of Attorney dated **22 October 2014** (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:

.....
Signature of Attorney

.....
Name of Attorney

.....
Signature of witness

.....
Name of Witness in full

.....
Signature of Attorney

.....
Name of Attorney

.....
Signature of witness

.....
Name of Witness in full