

Schedule 26 – Designer Side Deed

Designer 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 (**Operator**)

[] (**Construction Contractor**)

[] (**Designer**)

MinterEllison

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Designer Side Deed

Northern Beaches Hospital

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|--|-----------|
| Details | 86 |
| Agreed terms | 88 |
| 1. Defined terms & interpretation | 88 |
| 1.1 Defined terms | 88 |
| 1.2 Interpretation | 88 |
| 1.3 No liability | 89 |
| 2. Provision of Design Documentation | 89 |
| 3. General | 89 |
| 3.1 Notices | 89 |
| 3.2 The State as a Public Authority | 91 |
| 3.3 Certification | 91 |
| 3.4 Governing Law | 91 |
| 3.5 Waiver | 91 |
| 3.6 Further acts and documents | 91 |
| 3.7 Consents | 91 |
| 3.8 No representation or reliance | 91 |
| 3.9 Counterparts | 92 |
| 3.10 Attorneys | 92 |
| Signing page | 93 |

Details

Date

Parties

| | |
|-----------------|--|
| Name | Health Administration Corporation , a corporation sole constituted under section 9 of the <i>Health Administration Act 1982</i> (NSW) |
| ABN | 45 100 538 161 |
| Short form name | HAC and, together with the NSLHD, the State |
| Notice details | [●] Facsimile: [●] Attention: [●] |

| | |
|-----------------|---|
| Name | Northern Sydney Local Health District |
| ABN | 63 834 171 987 |
| Short form name | NSLHD and, together with HAC, the State |
| Notice details | [●] Facsimile: [●] Attention: [●] |

| | |
|-----------------|--|
| Name | NBH Operator Co Pty Ltd ACN 169 029 181 in its capacity as trustee of the NBH Operating Trust |
| Short form name | Operator |
| Notice details | [●] Facsimile: [●] Attention: [●] |

| | |
|-----------------|---|
| Name | [Name] ACN [ACN #] |
| Short form name | Construction Contractor |
| Notice details | [●] Facsimile: [●] Attention: [●] |

| | |
|-----------------|---|
| Name | [Name] ACN [ACN #] |
| Short form name | Designer |
| Notice details | [●] Facsimile: [●] Attention: [●] |

Background

A The State 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 and the Construction Contract have entered into the Construction Contract to carry out the Construction Works.
- C The Designer and the Construction Contractor have or will enter into [*the design contract(s)*] to carry out design work in connection with the Construction Works.
- D The parties have agreed to regulate the exercise of their various rights and obligations in connection with the Project Deed, Construction Contract and [*the design contract(s)*] on the terms of this document.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in the city of Sydney, New South Wales.

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 deed.

Construction Contract has the meaning given to it in the Project Deed.

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

Delivery Joint Venture has the meaning given to it in the Project Deed.

Design Development Process has the meaning given to it in the Project Deed.

Design Documentation means all:

- (a) design documentation (including material calculations, designs, design information, design standards, concrete mix designs, design reports, durability reports, specifications, plans, programs, models, samples, prototypes, calculations, drawings, graphs, shop drawings, digital records, test results, engineering and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means, which are required for the performance of the Operator's Activities, or which the Operator or any other person creates in performing the Operator's Activities; and
- (b) computer software (including both source code and object code versions),

in each case in respect of the Project Works.

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

Law has the meaning given to it in the Project Deed.

NSLHD means Northern Sydney Local Health District.

Operator Related Party has the meaning given to it in the Project Deed.

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

Project Works has the meaning given to it in the Project Deed.

State means HAC and the NSLHD.

State Related Party has the meaning given to it in the Project Deed.

1.2 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 1.2, except for the purposes of this deed:

- (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 deed'; and
- (c) references in clause 1.2 of the Project Deed to 'the Operator' shall be read as references to 'the Operator, the Construction Contract and the Designer'.

1.3 No liability

Subject only to the terms of the Project Deed in respect of the Operator, notwithstanding the terms of this deed:

- (a) the State shall not be liable to the Operator, the Construction Contractor or the Designer under this deed; and
- (b) neither the Operator, the Construction Contractor nor the Designer shall have any entitlement under this deed,

against the State or any State Related Party.

2. Provision of Design Documentation

- (a) Subject to paragraph (b), the Designer:
 - (i) agrees to provide soft and hard copies of any of the Design Documentation as may be reasonably requested by the State during the Design Development Process;
 - (ii) consents to the provision of any of the Design Documentation by the Operator or Construction Contractor in accordance with the terms of the Construction Contract or Project Deed (as applicable).
- (b) The State may only exercise its right to request Design Documentation from the Designer under paragraph (a)(i) if:
 - (i) it has accrued a current and presently existing right to terminate the Project Deed in accordance with clause 78.2 of the Project Deed; and
 - (ii) it has an equivalent right to request the Design Documentation from the Delivery Joint Venture or Operator in accordance with clause 80 of the Construction Contract or Project Deed (as applicable).
- (c) The Designer agrees and acknowledges that the State is licensed to use any Design Documentation provided under paragraph (a) in accordance with its rights under clause 80.1(i)(i) of the Project Deed or clause 80.1(j)(i) of the Construction Contract (as applicable).
- (d) For the avoidance of doubt, the State is not liable to make any payment for the provision of Design Documentation in accordance with this deed.

3. General

3.1 Notices

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

- (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:

Address:

Fax No:

For the attention of:

The Operator

Name:

Address:

Fax No:

For the attention of:

The Construction Contractor

Name:

Address:

Fax No:

For the attention of:

The Designer

Name:

Address:

Fax No:

For the attention of:

- (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 3.1(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.

3.2 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, the Construction Contractor and the Designer acknowledge and agree that, without limiting clause 3.2(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 deed and will not entitle the Operator, the Designer or the Construction Contractor to make any Claim against the State.
- (c) The parties agree that clauses 3.2(a) and 3.2(b) are taken not to limit any liability which the State would have had to the Operator or the Construction Contractor under this deed as a result of a breach by the State of a term of this deed but for clauses 3.2(a) and 3.2(b) of this deed.

3.3 Certification

For the purposes of this deed, 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.

3.4 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.

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

3.6 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 deed.

3.7 Consents

A consent required under this deed from the State may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

3.8 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 deed, except for representations or inducements expressly set out in this deed.

- (b) Each party acknowledges and confirms that it does not enter into this deed 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 deed.

3.9 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.

3.10 Attorneys

Each person who executes this deed 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 deed, no notice of the revocation of the power of attorney under which he or she executes this deed.

Signing page

EXECUTED as a deed.

[Execution clauses to be inserted]