

Parent Company 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**)

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

[] (**Parent Company**)

[] (**Operator Holding Company**)

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Parent Company Side Deed

Northern Beaches Hospital

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

Name **Northern Sydney Local Health District**
ABN 63 834 171 987
Short form name **NSLHD** and, together with HAC, the **State**
Notice details

Name **NBH Operator Co Pty Ltd**
ACN 169 029 181
Capacity and ABN In its capacity as trustee of the NBH Operating Trust ABN [●]
Short form name **Operator**
Notice details

Name **NBH Operator B Pty Ltd**
ACN 602 943 911
Short form name **Operator B**
Notice details

Name **[Name] ACN [ACN #]**
Short form name **Parent Company**
Notice details

Name **[Name] ACN [ACN #]**
Short form name **Operator Holding Company**
Notice details

Background

- A The State, Operator B and the Operator have entered into the Project Deed under which the Operator will provide or procure the provision of the Services at the Facility.
- B The Operator and the Parent Company have entered into the Parent Company Subcontract for the provision of the Parent Company Services.
- C The Parent Company and the Operator Holding Company have agreed to provide the State with the warranties set out in this Deed.
- D The parties have agreed to regulate the exercise of their various rights and obligations in connection with the Parent Company Subcontract on the terms of this Deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Additional Obligor means any entity nominated as such by the State.

Additional Obligor Step In Notice has the meaning given to it in clause 8.1(a)(viii).

Additional Obligor Step Out Date has the meaning given to it in clause 8.3(d).

Assumption Date has the meaning given to it in clause 8.3(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 Deed.

Commercially Sensitive Information means any information:

- (a) relating to the Financing Facilities;
- (b) relating to the Operator or the Parent Company's cost structure or profit margins;
- (c) relating to any of the Operator or the Parent Company'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 Parent Company or the Operator's or Parent Company's shareholders, financiers or subcontractors,

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

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.

Deed means this deed.

Encumbrance means a mortgage, charge, pledge, lien, hypothecation or title retention arrangement, a right of set off or right to withhold payment of a deposit or other money, a notice under section 255 of the *Income Tax Assessment Act 1936* (Cth), subdivision 260 A in schedule 1 to the *Taxation Administration Act 1953* (Cth) or any similar Legislation, or an easement, restrictive covenant, caveat or similar restriction over property, or an agreement to create any of them or to allow any of them to exist.

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 Parent Company Subcontract.

Operator Rights has the meaning given to that term in clause 8.3(b)(i)(A).

Parent Company Services means the services the subject of the Parent Company Subcontract.

Parent Company Statements has the meaning given to it in clause 7.2.

Parent Company Subcontract Documents means the Parent Company Subcontract, each Parent Company Subcontract Security and this Deed.

Parent Company Subcontract 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 Parent Company in the performance of the Parent Company Services.

Parent Company Subcontract 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 Parent Company's obligations under the **Parent Company Subcontract**.

Parent Company Subcontract Termination Notice has the meaning given to that term in clause 7.1.

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 Deed 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 [*date*].

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 16(c)(i).

Required Period means the period starting on the date of a Parent Company Subcontract Termination Notice and ending 60 days 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 Parent Company Subcontract (including the payment of any and all amounts to be paid to the

Parent Company for performance by the Parent Company of the Parent Company Subcontract 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 Parent Company Subcontract Termination Notice is still subsisting.

Statement Beneficiary means the State, an Additional Obligor or Receiver appointed under clause 8.

Step In Date means the date on which the State takes any action under clause 8.1(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 8.4;
- (c) the date of any termination of the Parent Company Subcontract for breach under clause 8.2(b); or
- (d) the date of expiry of the Parent Company Subcontract.

Step In Rights means the step in rights set out in clause 8.

Step Out Date means the date nominated in the notice given under clause 8.5(a).

Suitable Substitute Operator means a person nominated by the Client Representative and approved by the Parent Company (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 Parent Company Subcontract; 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 Parent Company Subcontract.

Supplier has the meaning given to that term in clause 16.

Surviving Clauses has the meaning given to that term in clause 17.9.

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 Deed that are defined in the Project Deed have the same meanings in this Deed.

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 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 and the Parent Company'.

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

1.5 Multiple parties

If a party to this Deed is made up of more than one person, or a term is used in this Deed 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 Deed 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 Parent Company and the Operator Holding Company 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 Parent Company or the Operator Holding Company under this Deed or otherwise and neither the Operator, the Parent Company nor the Operator Holding Company shall have any entitlement under this Deed 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 Parent Company or the Operator Holding Company. Nothing in this clause derogates from the express rights conferred on the Parent Company under this document.

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 Deed;
 - (ii) relating to the satisfaction of a condition precedent pursuant to the terms of this Deed; 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 Deed 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 Deed 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 Parent Company and the Operator Holding Company) 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 Deed will be deemed to include reference to the State Nominee in place of HAC or the NSLHD (as applicable).

1.11 Relations between Operator B and Operator

Clause 1.11 of the Project Deed applies to this document as if set out in full in this document, with any necessary amendments.

2. Acknowledgements

2.1 By Parent Company and Operator Holding Company

The Parent Company and the Operator Holding Company 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 Parent Company Subcontract or assign the Operator's right, title and interest under the Parent Company Subcontract to the State by way of security, and the Parent Company and the Operator Holding Company 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 Parent Company Subcontract, or entitle the Parent Company or Operator Holding Company 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 Parent Company Subcontract except as may result from their own acts or omissions in exercising rights or in performing or failing to perform obligations under the Parent Company Subcontract as envisaged by this Deed;
- (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 Parent Company Subcontract; and
- (e) **(set off)** that as of the date of this Deed, 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 Parent Company Subcontract, except only where the right of set off or counterclaim is contained within the Parent Company Subcontract.

2.2 By Parent Company and Operator Holding Company concerning State's rights

- (a) **(State's rights)** The Parent Company and the Operator Holding Company 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 Parent Company agrees with the State that it will exercise its rights under the Parent Company Subcontract 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 Parent Company Subcontract, require the suspension or continuation of performance by the Parent Company of its obligations under the Parent Company Subcontract and if it does so, the Parent Company 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 Parent Company Subcontract by the Parent Company during such period.
- (d) **(State not liable)** The requirement of the State that the Parent Company suspend or continue to perform its obligations under the Parent Company Subcontract 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 Parent Company under or in relation to the Parent Company Subcontract.

- (e) (**Subcontracting**) The Parent Company will not subcontract any of its obligations under the Parent Company Subcontract 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 Deed. It acknowledges that this Deed is intended to benefit only the Parent Company, the Operator Holding Company and the State and does not in any way affect any obligation of the Operator under the Parent Company Subcontract or under any Project Document.

3. Parent Company and Operator Holding Company Undertakings

3.1 Undertakings

The Parent Company and the Operator Holding Company each undertakes and warrants for the benefit of the State as follows:

- (a) [not used];
- (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 Parent Company, it has exercised and will continue to exercise, in accordance with Good Operating Practice, the level of skill, care and diligence in performing its duties under the Parent Company Subcontract which may reasonably be expected of a contractor experienced in the performance of the same or similar works to the Parent Company Services, provided that, other than as expressly set out in this Deed, the Parent Company will have no greater obligations to the State by virtue of this Deed than it would have had if the State had been named as the Operator under the Parent Company Subcontract;
- (d) the Parent Company Services will be carried out and completed:
 - (i) in accordance with the Parent Company Subcontract and this Deed;
 - (ii) in accordance with the Activity Schedule, the Performance Schedule, the Reporting Schedule and the Payment Schedule;
 - (iii) in accordance with the Services Plans and the Services Specification;
 - (iv) in accordance with Good Operating Practices and the Quality Assurance Management Plan;
 - (v) in accordance with the Australian Industry Participation Plan, the Work Health and Safety Management Plan, the Business Continuity Plan and each Operational Plan;
 - (vi) in accordance with the Project Plans;
 - (vii) ensuring that for the duration of the Operating Term the Facility is Fit For Intended Purpose; and
 - (viii) in accordance with all applicable Health Policies as notified by the State to the Operator from time to time.
- (e) in the case of the Parent Company, 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 Parent Company or any warranty provided to the Operator in accordance with the Parent Company Subcontract;
 - (ii) provide the State, or any person authorised by the State, with such information relating to the Parent Company Services as the State may reasonably require in accordance with clause 6.2; and
 - (iii) allow the State, or any person authorised by the State, on reasonable notice, to inspect the Parent Company Services as the State may reasonably require in accordance with clause 6.2;
- (g) the Parent Company will:
 - (i) take out and maintain all insurances as are required under the Parent Company Subcontract;
 - (ii) otherwise comply with all of its obligations in relation to insurance in the Parent Company Subcontract;
 - (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 Parent Company Subcontract may be prejudiced;
 - (iv) ensure that the insurances required to be taken out and maintained under the Parent Company Subcontract 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 Parent Company Subcontract extends;
 - (vi) keep the State informed in relation to any claims made in connection with an insurance policy taken out and maintained under the Parent Company Subcontract;
 - (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 Parent Company Subcontract at the cost of the Parent Company;
 - (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 Parent Company Subcontract 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 Parent Company Subcontract 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 Parent Company Subcontract 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 Deed as if it were the Parent Company or Operator Holding Company (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 the Facility, or any indemnity to which the State or the NSW Government may be entitled from the New South Wales Treasury Managed Fund;
- (j) it will promptly inform the State of any material default by the Operator under the Parent Company Subcontract; and
- (k) that it will not undertake any 'construction work' (as defined in the WHS Legislation) on behalf of the Operator or otherwise at the Site without the State's prior written consent.

3.2 Reliance on representations and warranties

The Parent Company and the Operator Holding Company acknowledge and agree that the State entered into this Deed 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 Parent Company to breach this Deed.

5. Parent Company Subcontract

5.1 Information

- (a) The Parent Company 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 Parent Company Subcontract:
 - (i) without limiting the rights and obligations of the Parent Company and the State in clause 8.1, any notice given under the Parent Company Subcontract to the Operator in connection with any Operator Event of Default;
 - (ii) all other documents issued by the Parent Company 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 Parent Company under the Parent Company Subcontract and any information related to the Parent Company Services 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 Parent Company Subcontract.
- (b) The Parent Company and Operator must answer any reasonable questions which the State may ask in relation to anything disclosed pursuant to clause 5.1(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.

5.2 Variations to the Parent Company Services

- (a) The parties agree that the Operator and/or the Parent Company may not, other than with respect to a Permitted Change:
 - (i) agree to vary the Parent Company Services;

- (ii) act on any instruction which alone or together with other instructions has the effect of varying the Parent Company Services;
 - (iii) do or omit to do any other act which might otherwise:
 - (A) decrease the quality of the Parent Company Services; or
 - (B) increase the cost of the Parent Company Services, except for increases to the cost of the Parent Company Services caused by variations to the scope of the Parent Company Services that the State has approved in writing; or
 - (iv) to the extent that it is within the Operator's or the Parent Company's power respectively to do so, permit any of the things in clause 5.2(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 Parent Company Services.

5.3 Termination by law or third party

The Operator and the Parent Company 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 Parent Company Subcontract is terminated.

5.4 No changes to Parent Company Subcontract

Subject only to a Permitted Change, the Operator and the Parent Company may not vary, amend or replace the Parent Company Subcontract.

6. Other agreements

6.1 Project Deed

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

6.2 Access

The Parent Company 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 and the Facility, the Parent Company Services, any place where the Parent Company Services are being carried out and any materials intended to be incorporated in the Parent Company Services but which are not on the Site or at the Facility; 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 Parent Company Subcontract, subject to:
 - (i) the reasonable safety and other requirements of the Parent Company and Operator; and
 - (ii) the State ensuring as far as reasonably practicable that any such actions do not cause any unreasonable disruption of the Parent Company Services.

6.3 Terms of access

If the State (including its nominees, employees, agents, consultants and contractors) accesses the Site or the Facility, it must first liaise with the Operator Representative or other representative of

the Parent Company or the Operator in order to minimise disruption to the Parent Company Services.

6.4 Parent Company and Operator Holding Company's obligations

The Parent Company and the Operator Holding Company must:

- (a) in the case of the Parent Company, comply with its obligations under the Parent Company Subcontract as and when they fall due;
- (b) not enter into any contract, consultancy agreement or supply agreement in connection with the Parent Company Services whose terms are inconsistent with the Parent Company complying with its obligations to the State under this Deed;
- (c) not take any Security Interest over the Site, the Facility or the Operator's rights under the Project Deed;
- (d) not lodge a caveat against the Site;
- (e) in the case of the Parent Company, not repudiate, release, surrender or discharge (except by performance) the Parent Company Subcontract;
- (f) not do anything which would or would be likely to render the Parent Company Subcontract invalid or unenforceable; and
- (g) in the case of the Parent Company, to the extent each of the following relates to, connects with or touches upon the Parent Company Services:
 - (i) subject to the confidentiality obligations in the Project Deed, consult with the State and provide such relevant information regarding the Parent Company Services and the Parent Company Subcontract 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 Parent Company Subcontract Plans and Specifications which enables the Operator, the State and any other person nominated by the State to complete the Parent Company Services; and
 - (iii) ensure that the terms of the Parent Company Subcontract include a provision entitling the Parent Company to novate the Parent Company Subcontract to the State, should the Parent Company Subcontract be terminated.

6.5 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 Parent Company and the Operator must (but without limiting the Parent Company's obligations, rights and entitlements under the Parent Company Subcontract):
 - (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.

7. Operator Event of Default and Step In Rights

7.1 Notice of Operator Event of Default

The Parent Company must not terminate or give notice terminating the Parent Company Subcontract without giving to the State at least 60 days' prior written notice (the **Parent Company Subcontract Termination Notice**) containing the matters in clause 7.2.

7.2 Parent Company Statements

As part of any Parent Company Subcontract Termination Notice, the Parent Company must submit statements to the State of:

- (a) the proposed termination date;
- (b) the nature and, to the best of the Parent Company's knowledge and belief, the amount of any monetary claim asserted by the Parent Company under or arising out of the Parent Company Subcontract against the Operator;
- (c) the grounds for termination in reasonable detail;
- (d) the likely or anticipated effect on the provision of the Parent Company Services;
- (e) details of any amount owed by the Operator to the Parent Company:
 - (i) at the time of the Parent Company Subcontract Termination Notice; and/or
 - (ii) which will fall due on or prior to the end of the Required Period, under the Parent Company Subcontract; and
- (f) [not used],

(being the **Parent Company Statements**).

7.3 Warranty of accuracy

The Parent Company warrants to the State that the Parent Company Statements submitted by it under clause 7.2 will be, subject to unintended error which the Parent Company agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Parent Company considers itself entitled.

7.4 Verification of Parent Company 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 Parent Company Statements, and the Parent Company must, subject to such firm(s) executing an appropriate confidentiality agreement as the Parent Company 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 Parent Company Statements.

7.5 Parent Company Statements to be conclusive evidence

- (a) (**Reliance**) Each Statement Beneficiary is entitled to rely on the Parent Company Statements for the purpose of determining the extent of the matters occurring prior to an 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 Parent Company Statements will, to the extent provided in clauses 7.2 and 7.3 be conclusive evidence in favour of any Statement Beneficiary of all claims then known or which ought reasonably to have been known to the Parent Company arising out of or in connection with the Parent Company Subcontract prior to the date of the Parent Company Subcontract Termination Notice. The Parent Company agrees that any claim which has not been notified in writing to the State within 3 days of submission of a Parent Company Statement will be waived and abandoned by the Parent Company.
- (c) (**Claims against the Operator**) Clauses 7.5(a) and 7.5(b) are without prejudice to the rights of the Parent Company to pursue any claims against the Operator following the end of the Step In Period.
- (d) (**Disputes**) For the avoidance of doubt, a Parent Company Statement will not prevent any Statement Beneficiary from disputing the amount of any claim by the Parent Company or the existence of any default by the Operator under the Parent Company Subcontract. 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 15 of this Deed;
 - (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 Deed and the Project Documents.

7.6 Remedy of default

- (a) The Parent Company undertakes, despite any provision of the Parent Company Subcontract, 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 Parent Company Subcontract 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 Parent Company within a reasonable period of that election and, in any event, within the Required Period. If notified, the Parent Company 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 Parent Company Subcontract unless the breach has not been remedied by the State within 20 Business Days of the later of expiry of the Debt Financiers' cure period under clause 5.3(b) of the Financiers Parent Company Tripartite Deed and the date of the Parent Company Subcontract Termination Notice; and
 - (iii) not to terminate the Parent Company Subcontract except, if an agreement is not reached within the Required Period, the Parent Company may exercise such right of termination subject to clauses 8.1 and 8.2.

- (c) The Parent Company acknowledges and agrees that any action taken by the State under this clause 7.6 will not be construed as an assumption by the State of the liabilities or obligations of the Operator under the Parent Company Subcontract.

8. Step In Rights

8.1 Assumption by State

- (a) Subject to clause 8.1(d), at any time:
 - (i) when the State may exercise Step-In Rights under the Project Deed;
 - (ii) during which an Operator Termination Event is subsisting (whether or not a Parent Company Subcontract Termination Notice has been served);
 - (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 Parent Company, procure that an Additional Obligor assumes jointly and severally with the Operator all of the Operator's rights and obligations under the Parent Company Subcontract (**Additional Obligor Step In Notice**).
- (b) The State must give the Parent Company two days' prior written notice of any action to be taken by it referred to in this clause 8, including, where relevant, reasonable details of the event which gave rise to the Step In Rights or the Operator Termination Event.
- (c) The Parent Company and the Operator Holding Company each acknowledges that the exercise by the State of a Step In Right under this clause 8 will not of itself contravene, or constitute an Operator Event of Default under the Parent Company Subcontract or entitle the Parent Company or Operator Holding Company to exercise any Power (including termination) under it.
- (d) The State's rights to step in under this clause 8 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 8 for so long as the Financiers Step In Period continues.

8.2 Step In period

- (a) Without prejudice to clause 8.1, but subject to clause 8.2(b), the Parent Company must not terminate the Parent Company Subcontract during the Step In Period on grounds:
 - (i) that the State has taken any action referred to in this clause 8; or
 - (ii) arising prior to the Step In Date.
- (b) The Parent Company will be entitled to terminate the Parent Company Subcontract by written notice to the Operator and the State:
 - (i) if any amount:

- (A) referred to in clause 7.2(e)(i) has not been paid to the Parent Company on or before the Step In Date;
- (B) referred to in clause 7.2(e)(ii) arising after the Step In Date has not been paid on or before the date falling 30 days after the date on which the liability for these amounts is notified to the State; and
- (C) of which the Parent Company was not aware (having made proper enquiry) at the time of the Parent Company Subcontract Termination Notice, subsequently becomes payable and is not discharged on or before the date falling 30 days 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 Parent Company Subcontract.
- (c) The Parent Company must deal with the State in place of the Operator during the Step In Period.
- (d) During the Step In Period, the Parent Company Subcontract will remain in full force and effect and the Parent Company must continue diligently to perform all of its obligations and procure the completion of the Parent Company Services in accordance with the Parent Company Subcontract as though the State were directly party to the Parent Company Subcontract 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 Parent Company Subcontract in place of the Operator.

8.3 Step In using Additional Obligor

- (a) (**Assumption Date**) The Additional Obligor will become a party to the Parent Company Subcontract on the date on which the Additional Obligor Step In Notice is given to the Parent Company or such later date as the Parent Company 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 Parent Company Subcontract (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 8.5) with the Operator for the performance or non-performance of all the Operator's obligations under the Parent Company Subcontract arising on or after the Assumption Date except as released in accordance with clause 8.3(e);
 - (ii) as between the Operator, the Parent Company, the Operator Holding Company and the Additional Obligor, only the Additional Obligor is authorised to deal with the Parent Company and the Operator Holding Company 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 Parent Company and the Operator Holding Company 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 17.1 will apply to the Parent Company, the Operator Holding Company 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 Parent Company and the Operator Holding Company will owe its obligations under the Parent Company Subcontract to the Operator and the Additional Obligor jointly but the performance by the Parent Company or Operator Holding Company in favour of either the Operator or the Additional Obligor will be a good discharge of the relevant obligations under the Parent Company Subcontract.
- (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 Parent Company Subcontract arising prior to the Assumption Date.
- (d) **(Additional Obligor Step Out Date)** The Additional Obligor may at any time give the Parent Company not less than 30 days' notice terminating the Additional Obligor's obligations under the Parent Company Subcontract (without affecting the continuation of the Operator's obligations or liabilities towards the Parent Company under the Parent Company Subcontract). 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 Parent Company, the Operator Holding Company and the Additional Obligor, each of the Additional Obligor, the Parent Company and the Operator Holding Company will be released from all obligations under the Parent Company Subcontract (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.

8.4 Novation

- (a) Subject to clause 8.4(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 Parent Company, procure the novation of the Operator's rights and liabilities under the Parent Company Subcontract to a Suitable Substitute Operator.
- (b) The Parent Company must notify the State as to whether any person to whom the State proposes to novate the Operator's rights and liabilities under the Parent Company Subcontract 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 Parent Company to decide whether the proposed operator is a Suitable Substitute Operator.
- (c) The Parent Company 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 8.4(a) becoming effective:

- (i) the Operator and (if applicable) the State will be released from any obligations arising under or in connection with the Parent Company Subcontract 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 Parent Company Subcontract by the Parent Company will be deemed to have no effect and any subsisting Operator Termination Notice will be automatically revoked;
- (iii) the Parent Company must enter into a side deed with the State and the Suitable Substitute Operator on substantially the same terms as this deed; and
- (iv) as between the Operator and the Parent Company, the Parent Company will be released from any liabilities or obligations arising under or in connection with the Parent Company Subcontract from that date (except for any accrued liabilities or obligations).

8.5 Step out

- (a) The State may, at any time during the Step In Period, with at least 30 days' prior written notice to the Parent Company, 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 8.5(a), the State will be released from any and all obligations and liabilities to the Parent Company:
 - (i) under the Parent Company Subcontract; and
 - (ii) under this Deed,
 provided that the State will be liable for any and all amounts referred to in clause 8.5(b)(i).
- (c) The release under clause 8.5(b) will not affect or prejudice the continuation of the Operator's obligations to the Parent Company under the Parent Company Subcontract.

8.6 Parent Company

- (a) Except in accordance with the terms of this Deed, the Parent Company acknowledges and agrees that:
 - (i) the State is not responsible for, and has no liability (actual or contingent); and
 - (ii) the Parent Company 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 Parent Company Subcontract.
- (b) The Parent Company will, at the Operator's expense, take whatever action the State or a Suitable Substitute Operator taking a novation in accordance with clause 8.4(a) may require for perfecting any step in, novation or release under clauses 8.3, 8.4 or 8.5, including the execution of any novation or assignment, the transfer of any Parent Company Subcontract 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 Parent Company 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 Deed 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 Deed.

9. Representations and Warranties

9.1 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 Deed and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(Deed effective)** this Deed 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 Deed by the State will not contravene any Law to which the State is subject.

9.2 General representations and warranties

Each of the Operator and the Parent Company 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 Parent Company Subcontract 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 Parent Company Subcontract 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 Parent Company Subcontract Documents to which it is a party and to carry out the transactions that they contemplate;
 - (ii) ensure that the Parent Company Subcontract 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 Parent Company Subcontract 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 Parent Company Subcontract 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 Parent Company Subcontract 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 Parent Company Subcontract Documents to which it is a party as trustee of any trust or settlement.

9.3 Representations and warranties regarding the Parent Company Subcontract

Each of the Parent Company and the Operator represents and warrants that:

- (a) **(termination)** it has no right to:
 - (i) terminate, rescind, repudiate or vary the Parent Company Subcontract; or
 - (ii) refuse to perform or observe any of its obligations under the Parent Company Subcontract;
- (b) **(Parent Company Subcontract not void)** the Parent Company Subcontract is not void, voidable by the Parent Company or unenforceable by the Operator;
- (c) **(entire agreement)** the Parent Company Subcontract Documents set out all of the agreements, arrangements and understandings between the Operator and, the Parent Company 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 Parent Company a Security Interest over the Site, the Facility 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.

9.4 Representations and warranties by Parent Company

The Parent Company and the Operator Holding Company represents and warrants to the State that:

- (a) it has not entered into this Deed 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).

9.5 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 Deed.

9.6 Reliance on representations and warranties

Each party acknowledges that each other party executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 9.

10. Undertakings

The Parent Company and Operator Holding Company must:

- (a) (**hold Consents**) obtain and maintain each Consent that is necessary or desirable to:
 - (i) execute the Parent Company Subcontract Documents to which it is a party and to carry out the transactions that they contemplate;
 - (ii) ensure that the Parent Company Subcontract 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 Parent Company Subcontract 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 Parent Company Subcontract), terminate, revoke or otherwise vary the terms of the Parent Company Subcontract Documents, the Parent Company Services or the Project, or enter into other agreements or arrangements with a party or parties to the Parent Company Subcontract Documents which relate to the subject matter of the Parent Company Subcontract 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 Parent Company Subcontract Document to which it is a party, or any part of a Parent Company Subcontract Document to which it is a party, without the prior written consent of the State.

11. Indemnities

11.1 Parent Company indemnity

The Parent Company 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 Parent Company of any of the representations and

warranties given by it under clause 3.1 or a failure by the Parent Company to comply with any of its other obligations under this Deed or the Parent Company Subcontract.

11.2 Patents, copyright and other intellectual property rights indemnity

- (a) The Parent Company 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 Parent Company in connection with the Parent Company Subcontract 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 Parent Company in the execution of the work under the Parent Company Subcontract, the Parent Company shall indemnify the State from and against all Claims brought or made against the State by reason of the Parent Company infringing or being held to have infringed any patent rights in respect those articles, processes or inventions.

11.3 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 Deed.

12. Confidentiality

12.1 Keep confidential

- (a) Subject to clause 12.2, the parties must keep confidential all matters relating to this Deed 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 Deed.
- (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 10(d), and will be received, supplied and communicated in circumstances of confidence and on a commercial-in-confidence basis.

12.2 Permitted Disclosure

Clause 12.1 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 Deed;
- (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 12.1;
- (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 12.2(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 Deed and which the Operator or the Parent Company, 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.

12.3 Obligations Preserved

Where disclosure is permitted under clause 12.2, other than clauses 12.2(a), 12.2(c), 12.2(d), 12.2(g), 12.2(h) and 12.2(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 Deed.

12.4 Disclosure by the State

- (a) Notwithstanding the other provisions of this clause 12 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 Deed, the State has consulted with the Operator and the Parent Company 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 Parent Company 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 12.4(b)(ii), the State will take reasonable steps to consult with the Operator and the Parent Company before disclosing Commercially Sensitive Information, including under the GIPA Act;
- (iv) if, following:
 - (A) notification by the State in accordance with clause 12.4(b)(ii); or
 - (B) consultation between the State and the Operator and the Parent Company in accordance with clause 12.4(b)(iii),the Operator or the Parent Company objects to disclosure of some or all of the Commercially Sensitive Information, the Operator and the Parent Company (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 Parent Company pursuant to clause 12.4(b)(iv) in determining whether the Commercially Sensitive Information identified by the Operator or the Parent Company should be disclosed; and
- (vi) nothing in this clause 12.4(b) will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

13. 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 Parent Company Subcontract to the State or the State's nominee at the State's election;
- (b) subject to clause 8.4, the Parent Company agrees to perform the Parent Company Subcontract for the benefit of the State or the relevant assignee or novatee; and
- (c) the Parent Company will enter into any document with the State or the relevant assignee or novatee and the Operator to formalise this arrangement.

14. Amendment and Assignment

14.1 Amendment

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

14.2 Assignment

- (a) The Parent Company 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 Deed 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 Deed without the consent of any other party.

15. Dispute Resolution

- (a) Any dispute, difference, controversy or claim (**Dispute**) directly or indirectly based upon, arising out, relating to or in connection with this Deed (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 Deed but as if the only persons party to the Project Deed are the parties to the relevant Dispute.

16. GST

- (a) (**Interpretation**):
 - (i) Except where the context suggests otherwise, terms used in this clause 16 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 16.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this document (other than under this clause 16) 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 16.
 - (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 16:
 - (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 16, 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 16(c)(i).
- (d) (**Variation of GST**):
- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 16(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 Deed 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 Deed.

17. General

17.1 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: Northern Sydney Local Health District

Address:

Fax No:

For the attention of:

The Operator

Name:

Address:

Fax No:

For the attention of:

The Parent Company

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 17.1(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.

17.2 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 Parent Company acknowledge and agree that, without limiting clause 17.2(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 or the Parent Company to make any Claim against the State.
- (c) The parties agree that clauses 17.2(a) and 17.2(b) are taken not to limit any liability which the State would have had to the Operator or the Parent Company under this Deed as a result of a breach by the State of a term of this Deed but for clauses 17.2(a) and 17.2(b) of this Deed.

17.3 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.

17.4 Cost of performing obligations

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

17.5 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.

17.6 Amendments

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

17.7 Taxes

Subject to clause 16, the Operator:

- (a) must pay all taxes in respect of this Deed, the performance of this Deed and each transaction effected by or made under this Deed;
- (b) indemnifies each other party against liability arising from failure to comply with clause 17.7(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 17.7.

17.8 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 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.

17.9 Survival of certain provisions; no merger

- (a) Without limiting clause 17.18(a):
 - (i) clauses 11, 12, 17.1, 17.5 and 17.18, any indemnities given under this Deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this Deed; and
 - (ii) if this Deed 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 Deed occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

17.10 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 Deed.

17.11 Consents

A consent required under this Deed 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 Deed expressly provides otherwise.

17.12 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 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.

17.13 Reading down

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

17.14 Severance

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

17.15 Remedies cumulative

The rights and remedies provided in this Deed 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 Deed.

17.16 Moratorium legislation

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

17.17 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 Deed except for those referred to in it.

17.18 Indemnities

- (a) Each indemnity in this Deed is an on demand continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (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 Deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Deed.
- (d) Where a party gives any indemnity or release to the State under this Deed, 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 Deed.

17.19 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.

17.20 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.

17.21 Order of precedence

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

17.22 Aggregate Liability

Despite any other provision of the Parent Company Subcontract or this deed, but without limitation or prejudice to the Parent Company Guarantee or the Operator Holding Company Guarantee:

- (a) the maximum aggregate liability of the:
 - (i) Parent Company under this document, the Parent Company Subcontract, the Parent Company Subcontract Security and the Collateral Warranty granted by the Parent Company in favour of the State; and
 - (ii) Operator Holding Company under this document,is no greater than the maximum liability of the Parent Company under the Parent Company Subcontract and, notwithstanding anything else, nothing in this document is intended to render the Parent Company liable for any Indirect Loss that the Operator would not be liable for pursuant to the application of clause 72.11; and
- (b) if there is a breach of the Parent Company Subcontract by the Parent Company, payment by or on behalf of the Parent Company:
 - (i) to the Operator of an amount in respect of the Parent Company's liability for that breach of the Parent Company Subcontract also satisfies, to the same extent, any claim by the State against the Parent Company for breach of this document; and
 - (ii) to the State for an amount in respect of the Parent Company's liability for that breach of this document also satisfies, to the same extent, any claim by the Operator under the Parent Company Subcontract in respect of the same breach.

Nothing in this clause 17.22 shall limit the Parent Company's liability for obligations or liabilities of the Parent Company under the Parent Company Subcontract which arise from or would have arisen from unenforceable obligations or liabilities under the Parent Company Subcontract (if those obligations or liabilities had not been voided, avoided or unenforceable), subject to such liability not exceeding the liability that the Parent Company would have had if the obligations and liabilities had not been unenforceable obligations.

Schedule 1 - Commercially Sensitive Information

Signing page

EXECUTED as a deed.

[Execution clauses to be inserted]