

Confidential

Project 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**)

Project Deed

Northern Beaches Hospital

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Details

Date

Parties

Name **Health Administration Corporation**
ABN 45 100 538 161
Registration a corporation sole constituted under section 9 of the *Health Administration Act 1982* (NSW)
Short form name **HAC** and, together with the NSLHD, the **State**
Notice details Chief Executive, Health Infrastructure
Level 8, 77 Pacific Highway
North Sydney NSW 2060
Facsimile: (02) 8904 1377
Email: sam.sangster@health.nsw.gov.au
Attention: Sam Sangster

Name **Northern Sydney Local Health District**
ABN 63 834 171 987
Short form name **NSLHD** and, together with HAC, the **State**
Notice details Chief Executive
Northern Sydney Local Health District
PO Box 4007
Royal North Shore Hospital LPO
St Leonards NSW 2065
Facsimile: (02) 9463 1029
Email: Vicki.taylor@health.nsw.gov.au
Attention: Adjunct Associate Professor Vicki Taylor

Name **NBH Operator Co Pty Ltd**
ACN 169 029 181
Capacity and ABN In its capacity as trustee of the NBH Operating Trust ABN 83 722 380 020
Short form name **Operator**
Notice details Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: 61 3 9926 7553
Email: healthscope@northernbeacheshospital.com.au
Attention: General Counsel

Name **NBH Operator B Pty Ltd**
ACN 602 943 911
Short form name **Operator B**
Notice details Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: 61 3 9926 7553
Email: healthscope@northernbeacheshospital.com.au
Attention: General Counsel

Background

- A The State has invited proposals from the private sector for the Project and, based on the proposals submitted in response to that invitation, selected the proposal of Operator B and the Operator.
- B The State, Operator B and the Operator have agreed on the terms and conditions pursuant to which:
 - (i) the Operator will provide the Services in accordance with the terms and conditions of this document; and
 - (ii) the Operator will finance (during the Development Phase), and Operator B will design and construct the Project Works.

Agreed terms

Part A – Interpretation and introductory matters

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Abatement Regime means the arrangements, methods and calculations for abating the Monthly Service Payment as set out in section 6 of the Payment Schedule.

Acceleration Acceptance Notice has the meaning given to that term in clause 23.7.

Acceleration Notice has the meaning given to that term in clause 23.7.

Accessible means, in respect of a suitably qualified person, that that person is rostered, on-call or otherwise available to be immediately contactable for the purposes of the provision of appropriate advice or intervention.

Accreditation means accreditation by the Operator in accordance with the Accreditation Requirements.

Accreditation Requirements means all requirements which must be complied with to enable the Operator to do or obtain the following:

- (a) comply with the mandatory National Safety and Quality Health Service Standards;
- (b) accreditation by the Accrediting Body;
 - (i) in respect of the National Safety and Quality Health Service Standards; and
 - (ii) in respect of the National Standards for Mental Health Services;
- (c) registration with and accreditation by the NATA;
- (d) accreditation with appropriate specialist medical colleges and other institutions in relation to the provision of the TTER Services, including training to JMOs; and
- (e) registration with or accreditation, licensing or approval by any other Authority:
 - (i) which is:
 - (A) required for the Services to be provided from the Facility;
 - (B) otherwise required pursuant to or inferred from this document;
 - (C) as otherwise required by any Law; or
 - (D) notified to the Operator or publicly available;
 - (ii) and of which:
 - (A) the Operator or any other Operator Related Party is aware; or
 - (B) a party experienced and competent in the performance of works similar to the Public Patient Portion Works or the provision of services similar to the Services would reasonably be expected to have been aware.

Accrediting Body means ACHS, or any equivalent accrediting organisation who has been approved by both the ACSQHC and the State.

Accrued Liabilities Payment has the meaning given to it in clause 36.7.

ACHS means the Australian Council on Healthcare Standards and, if that body ceases to exist, its successor or any alternative body recognised by the public hospital system in New South Wales.

ACHS Clinical Indicator Program means the national ACHS program so described that examines data sourced from a broad range of clinical speciality areas, which covers both public and private health systems, and includes clinical indicators relevant to inpatient, outpatient and community health facilities.

ACHS Clinical Indicator Report means the report generated six-monthly by the ACHS following submission of data by healthcare organisations, which are provided to individual healthcare organisations and compare the healthcare organisations' results with national aggregated and national peer results at that time.

ACHS EQUIP National Program means the program so entitled which was developed by the ACHS and includes the 10 National Safety and Quality Health Service Standards and the additional 5 ACHS EQUIP standards (Standards 11 to 15) (or any equivalent accreditation program required by the State).

ACHS Peer Hospitals means the grouping of 'like' organisations for comparison according to the ACHS stratification variables.

ACSQHC means the Australian Commission on Safety and Quality in Health Care and, if that body ceases to exist, its successor or any alternative body recognised by the public hospital system in New South Wales.

Act of Prevention means an act or omission by the State (in its capacity as counterparty to the Project Documents) or a State Related Party:

- (a) not being an act or omission:
 - (i) expressly permitted or allowed for by the Project Documents; and
 - (ii) which occurs within a timeframe permitted or allowed for by the Project Documents,

except to the extent the act or omission is caused or contributed to by a breach by the Operator of the Project Documents or any negligent or unlawful act or omission of the Operator or an Operator Related Party, including any breach, act or omission in connection with the Operator's obligations in respect of Other Contractors (excluding the Operator Related Parties); or

- (b) not being the exercise by the State or the NSW Government of any of its functions and powers pursuant to any Law.

Action Plan is defined in section 6.1(a) of the Payment Schedule.

Activity Profile means the type and volume of Services which the State determines that it will contract to purchase in each Operating Year in accordance with the Activity Schedule and the Payment Schedule, as may be amended from time by agreement between the parties during an Operating Year.

Activity Schedule means the activity schedule set out in Schedule 16.

Actual Service Volume means the actual volume for each Service Category as determined in accordance with section 2.1(e) of the Payment Schedule.

Additional Operational Readiness Tests has the meaning given to that term in clause 30.2.

Additional Technical Completion Tests has the meaning given to that term in clause 26.2.

Additional Work means any work requiring Capital Expenditure to be carried out within the Facility or on the Site during the Operating Term, including any change in, expansion of or addition to the Facility but excluding:

- (a) works in relation to the Third Party Infrastructure or the Car Park;
- (b) life cycle maintenance and refurbishment contemplated by this document or required for performance of the Services or the operation of the Facility;
- (c) the Project Works or any Change in respect of the Project Works;
- (d) any modification as a consequence of a Health Initiative; and
- (e) any modification to the Public Patient Portion arising in connection with a Change to Services which is notified under clause 64.3(d).

Additional Work Request has the meaning given to that term in clause 65.1.

Adjoining Property means any land or property adjoining or in close proximity to or in the vicinity of the Site or the Extra Land and each and every part of such land or property, including improvements on the land such as walls, fencing, buildings and infrastructure on, under or within such land or property.

Adjustment Note has the meaning given in the GST Law.

Admitted Patient means a Patient who has undergone the Facility's formal admission process to receive treatment or care which (for the avoidance of doubt) may be provided over a period of time and which can occur within the Facility or (in the case of a hospital-in-the-home Patient) in that Patient's home, and **Admitted** has a corresponding meaning.

Admitted Services means Services provided to Admitted Patients.

Adult Mental Health Services means the services described in section 5.5(a) of the Services Specification.

Adverse Licence Condition means any special condition specified in a Hospital Licence from time to time with which the Operator must comply.

Adverse Rights means all (if any) interests, rights, affectations, encumbrances, easements, covenants (including any rights, easements and other affectations or encumbrances in respect of conduits) and other restrictions on use (excluding rights of light and air):

- (a) affecting or impacting the Site, the Extra Land or the Retained Green Space; and
- (b) noted on the titles to the Site, the Retained Green Space or otherwise of which the Operator has actual knowledge as at the date of this document,

and includes, in respect of the Site, any Site Encumbrances. Notwithstanding the above, Adverse Rights shall exclude affectations in respect of the Retained Green Space.

Affected Services is defined in section 3.4 of the Payment Schedule.

AIHW means the Australian Institute of Health and Welfare.

Allied Health means health care practitioners with formal education and clinical training who are credentialed through certification, registration and/or licensing, and includes audiologists, clinical psychologists, dietitians, medical librarians, occupational therapists, orthoptists, orthotists & prosthetists, physiotherapists, podiatrists, social workers, speech pathologists and pastoral care.

Ambulatory Care means care provided to:

- (a) Non-Admitted Patients; or
- (b) Patients of community-based, non-hospital health care services.

AMPLAN means the 'Ambulance State Major Incident / Disaster Plan' issued by the NSW Government as amended, superseded, updated or replaced from time to time.

Anaesthetics Services means the services described in section 5.8(e) of the Services Specification.

Annual Notice means the notice issued by the State pursuant to section 1 of the Activity Schedule and includes any agreed amendment or rescission of that Annual Notice during an Operating Year.

Annual Report has the meaning given to it in section 6.1(a) of the Reporting Schedule.

Annual Works Plan means the plan of that name prepared by the Operator which sets out the Operator's comprehensive plan for the implementation of each of the Asset Maintenance Plan and the Asset Lifecycle Plan in each Operating Year, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

APAC means the Acute / Post Acute Care service provided by the NSLHD.

Applicable Cure Period has the meaning given to that term in clause 77.4(c).

Approval in Principle means the approval in principle of the Facility, issued by the Licensing Authority pursuant to section 7 of the Hospitals Act.

Approved Cure Plan means a Draft Cure Plan that is approved by the State under clause 77.4(b)(i).

Approved Prevention Plan has the meaning given to that term in clause 77.6(c).

APRA means the Australian Prudential Regulation Authority.

AR-DRGs means the Australian admitted patient classification system referred to as 'Australian Refined Diagnosis Related Groups', which provides a method of counting the number and type of patients treated in a hospital, as applied by NSW Health.

Artefacts means any fossils, bones, artefacts, coins, articles of antiquity, structures, objects or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or things otherwise of value.

Asset Event means any event or occurrence which does, or is reasonably likely to, have a material adverse impact on the fabric or operation of the Facility, whether caused by a breach of the Operator's obligations under this document or otherwise which it becomes aware of.

Asset Lifecycle Plan means the plan setting out the lifecycle and refurbishment program for the Facility (including all FF&E) during the Operating Term, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Asset Maintenance Plan means the plan setting out the maintenance works (planned and reactive) program for the Facility (including all FF&E) during the Operating Term, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Asset Management Strategy means the Operator's strategy for asset management, comprising each of:

- (a) the Asset Maintenance Plan;
- (b) the Asset Lifecycle Plan; and
- (c) Annual Works Plan.

Asset Solution Plan means each of the following:

- (a) the Construction Management Plan;
- (b) the Technical Completion Plan;
- (c) the FF&E Plan;
- (d) the Asset Management Strategy;
- (e) the Handover Plan; and
- (f) the Private Patient Portion Handover Plan.

Asset Solution Plan Requirements means, for each Asset Solution Plan, the requirements for such Project Plan specified in Part A of the Asset Solution Plans Schedule.

Asset Solution Plans Schedule means Schedule 38.

Associated Commercial Facilities means:

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

to be designed, constructed, financed and commissioned by the Operator as part of the Private Patient Portion Works and to be operated within the Designated Commercial Areas in accordance with this document. For the avoidance of doubt, the Car Park is excluded from Associated Commercial Facilities.

Associated Commercial Facilities Plan means the Project Plan of that name referred to in Schedule 41, prepared in accordance with the Commercial Plan Requirements and this document, and updated in accordance with this document.

Asylum Seeker means a person who has arrived in Australia on a form of temporary visa and has lodged an application for refugee status.

ATS means the scale known as the 'Australasian Triage Scale' for counting and describing the patients presented in an Emergency Department commensurate with their clinical urgency, as applied by NSW Health.

Ausgrid means the corporation of that name constituted under the *Energy Services Corporations Act 1995* (NSW).

Australian Industry Participation Plan means the Project Plan of that name referred to in the General Plans Schedule, prepared in accordance with the General Plan Requirements and this document, and updated in accordance with this document.

Austrroads means the association of Australian and New Zealand road transport and traffic authorities.

Authority means:

- (a) any governmental, semi-governmental or local authority, administrative or judicial body or tribunal with the relevant jurisdiction, department, commission, council, public authority, agency, inspectorate, ministry, official or public or statutory person;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Operator's Activities; or
- (c) any other person having jurisdiction over, or ownership of, any Utilities, the Utility Service Works or any part of the Site or the Project Works,

and includes the Regulator and the Licensing Authority.

Award means an award or a registered or certified agreement of the New South Wales Industrial Relations Commission or the Fair Work Commission, and any agreement including a workplace or enterprise agreement between an individual or group of individuals and an employer that is approved, lodged, registered or certified under any Law applying in New South Wales.

Award Terms and Conditions means the terms and conditions contained in any Award.

Background IP has the meaning given to it in clause 51(e).

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

Bank Bill Rate, for a period, means the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30am then the Bank Bill Rate will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Base Case means (as applicable):

- (a) the Whole Project Base Case;
- (b) the Base Case – Private Business; and
- (c) the Base Case – State Asset.

Base Case – Private Business means the base case financial model, in the agreed form, in respect of the Private Patient Portion during the Private Patient Portion Term, as amended from time to time in accordance with this document.

Base Case – State Asset means the base case financial model, in the agreed form, in respect of the State Asset during the Operating Term, as amended from time to time in accordance with this document.

Base Case Equity Return means the nominal blended internal rate of return to Equity Investors (before Equity Investor tax, but after Operator tax), expressed as a percentage, as stated in the Base Case – State Asset.

Base Case Project Return has the meaning given to it in the Termination Payment Schedule.

Bed means a suitably located and equipped bed, chair, trolley or cot where financial and human resources are provided for Admitted Patient care and which:

- (a) includes all items listed in section 1 of Schedule 43; and
- (b) excludes all items listed in section 2 of Schedule 43.

Bed Day means the number of days between admission and discharge of a Patient, excluding any leave days and provided that one Bed Day will be allocated in respect of:

- (a) same day Episodes of Care; and
- (b) admissions occurring on one day with discharge the following day but within a 24 hour period.

Beneficial Change in Law means a Change in Law which results or would, if implemented, result in a Change Saving.

Bond means:

- (a) the Construction Bond;
- (b) the Defects Liability Bond;
- (c) the Operating Term Bond;
- (d) any Return Condition Bond; and
- (e) any replacement bond provided under clauses 12.8, 12.9, 12.10 or 12.13.

Borrower means NBH Borrower Pty Ltd (ACN 602 943 895).

Building Code means the Building Code of Australia as adopted by Law and any other requirements of the EP&A Act and associated regulations of that legislation in relation to buildings.

Burns Services means the services described in section 5.4(b) of the Services Specification.

Business Continuity Management Plan means the Project Plan of that name referred to in the General Plans Schedule, prepared in accordance with the General Plan Requirements and this document, and updated in accordance with 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.

By-Laws means the local government, State or other regulations or by-laws for the Facility which are in use at the Facility from time to time.

Capital Cost Proposal Schedule means the schedule setting out a detailed breakdown of the capital cost of performing the Project Works, the State Allocation of Shared Portion and the Operator Allocation of Shared Portion as at the date of this document as set out in Schedule 35 and updated from time to time in accordance with clauses 20.4 or 21.2.

Capital Expenditure means, at any time, expenditure which would be classified as capital expenditure in accordance with the then current Australian accounting standards issued by the Australian Accounting Standards Board, or any successor or replacement of such body, on behalf of the professional accounting bodies.

Capped Services means those Service Categories or elements of Service Categories which are defined as 'Capped Services' in section 1(b)(x) of the Activity Schedule.

Capped Volume is defined in section 2.4(a) of the Payment Schedule.

Car Park means the car park to be designed, constructed, financed and commissioned by the Operator as part of the Private Patient Portion Works. For the avoidance of doubt, the Car Park is excluded from Associated Commercial Facilities.

Car Park Management Deed means the document entitled '*Car Park Management Deed – Northern Beaches Hospital*' entered into between the State, the Operator and the Car Park Operator on or about the date of this document.

Car Park Operator means NBH Car Park Operator Pty Ltd (ACN 602 943 902) in its capacity as trustee for the NBH Car Park Operating Trust, or such other replacement contractor as the Operator may appoint to operate the Car Park or any part of it in accordance with the Car Park Management Deed.

Car Park Plan means the Project Plan of that name referred to in the Commercial Plans Schedule, prepared in accordance with the Commercial Plan Requirements and this document, and updated in accordance with this document and the Car Park Management Deed.

Car Park Site means that part of the Site on which the Car Park is constructed as part of the Private Patient Portion Works.

Cardiology Services means the services described in section 5.3(b) of the Services Specification.

Carer has the same meaning given to it in the *Carers (Recognition) Act 2010* (NSW).

Catchment Area means the local catchment area for the Services which incorporates the local government areas of Manly, Pittwater and Warringah.

Category Migration Fee means, in respect of each category of Migrating Employee referred to in the table in the definition of 'Migration Fee', the amount calculated by multiplying the Migration Fee for that category and the number of Migrating Employees who fall into that category.

Centre of Excellence means a team, area, institution or place that:

- (a) provides leadership, best practice care, research, support and training for a focus area;
- (b) has a level of expertise required to elevate the significance of the product or services being offered, which is demonstrated by producing the best outcomes; and
- (c) is heavily involved in new developments and innovative ways of working.

Certified Construction Documentation has the meaning given to that term in clause 19.9(c).

Change means any change or variation to:

- (a) the Services, the way in which the Services are delivered, the introduction of new Services or the cessation of existing Service Payment Categories;
- (b) Certified Construction Documentation;
- (c) the Site;
- (d) the Development Activities;
- (e) the Public Patient Portion;
- (f) the Private Patient Portion;
- (g) the Shared Portion; or
- (h) the other Operator's Activities,

and includes any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (or to the sequencing or timing of them), but excludes:

- (i) any increase or decrease in the volume of the Services (other than a decrease in the volume of the Services required by the State in an Annual Notice which is in contravention of section 2(c) of the Activity Schedule);
- (j) any change to the Services which is the subject of an Annual Notice which has been properly issued by the State in accordance with the Activity Schedule other than:
 - (i) changes in the Role Delineation that require Capital Expenditure for a physical change to the Facility (provided the Operator must give the State at least 30 Business Days' notice before incurring any such Capital Expenditure, together with reasonable details of the proposed Capital Expenditure); or
 - (ii) changes which otherwise require a change in Services delivery method (other than changes to Services delivery made for the purposes of ensuring compliance with contemporary practice, Good Operating Practice or Good Industry Practice;
- (k) the implementation of any Health Initiative by the Operator in accordance with clause 52.10 (except as contemplated by clause 52.10(f));
- (l) replacement of NWAUs as the unit of measure for the State Price in accordance with section 3(b) of the Activity Schedule and section 3.3(e) of the Payment Schedule;
- (m) replacement of the State Price with the National Efficient Price or otherwise in accordance with section 3.3 of the Payment Schedule;
- (n) a change to a Health Policy or the introduction of any new Health Policy pursuant to clause 51(a)(vii);
- (o) any Demand Variation; and
- (p) any direction or notification issued by the State under clause 52.9 in relation to Disasters or Disaster Measures.

Change Approval means a notice entitled '*Change Approval*' issued by the State under clauses 67.3 or 67.4.

Change in Consent means a change to a condition of a Consent which is binding at Law.

Change in Control means, in respect of an entity, any event occurs, at any time, such that any person (whether alone or together with any associates) ceases to or commences to, directly or indirectly have Control of that entity.

Change in Law means a change to or the coming into effect or implementation after the date of this document of:

- (a) Legislation;
- (b) a Policy; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent, which affects the Public Patient Portion Works or the provision of Services, other than any Legislation or Policy which, on the date of this document, has been published, of which public notice has been given or a party experienced and competent in the delivery of works and/or services similar to the Public Patient Portion Works or the Services would have reasonably foreseen or anticipated,

but does not include:

- (d) a Change;
- (e) a change in the Hospitals Act which specifically relates to private hospitals;
- (f) a change to the Medicare Act;
- (g) a change to the terms of the Hospital Licence or a requirement of the Licensing Authority;
- (h) the imposition of any conditions in respect of the Hospital Licence;
- (i) the implementation of any Health Initiative;
- (j) a change to a Health Policy or the introduction of any new Health Policy pursuant to clause 51(a)(vii);
- (k) a change in the market for private health insurance;
- (l) the introduction of a carbon pollution reduction scheme, in whatever form; or
- (m) a change in Law in respect of private health insurance or to the private health insurance market.

Change in Management means a change in the senior employees of the Operator or Parent Company who carry out the management functions of the Operator or Parent Company, or a change in the chief executive officer of the Operator or Parent Company who is responsible for the Public Patient Portion.

Change Notice means a notice referred to in clause 64.3.

Change Notice Price has the meaning given to that term in clause 64.2(a).

Change Order means a notice entitled '*Change Order*' issued by the State under clause 64.6.

Change Procedure means the procedure set out in clause 64.

Change Proposal means a proposal referred to in clauses 63.1, 63.4 or 67.1.

Change Savings means, in relation to a Change, the amount of the Estimated Cost Effect if that amount is a negative number.

Chief Executive Performance Notice is defined in clause 59.4.

Child and Adolescent Mental Health Services or **CAMHS** means the services described in section 5.5(b) of the Services Specification.

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

Client Representative means the person appointed pursuant to clause 6.1(a).

Clinical Excellence Commission means the body of that name established under the *Health Services Act 1997* (NSW) (or any body replacing or superseding that body).

Clinical Haematology Services means the services described in section 5.3(f) of the Services Specification.

Clinical Incident means an event or circumstance resulting from health care which could have, or did lead to, unintended or unnecessary harm to a Patient or Consumer.

Clinical Network means a group of health professionals in specialist health care areas who contribute within an organised structure of clinical networks to undertake a range of quality improvement activities with a focus on improving care.

Clinical Services means the services described in the Services Specification (other than in sections 4.3 and 5.8 of the Services Specification) as directed, reviewed, adjusted and amended in accordance with the Activity Schedule (including the Annual Notice), the Payment Schedule or otherwise in accordance with any Change or under the Project Documents and includes (for the avoidance of doubt) the TTER Services.

Clinical Services Delivery Plan means the plan prepared by the Operator which set out the Operator's Clinical Services delivery methodology, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

Clinical Support Services means all services of a clinical nature which are necessary to support the provision of the Clinical Services in accordance with this document including those listed in sections 4.3 and 5.8 of the Services Specification.

Clinical Support Services Delivery Plan means the plan prepared by the Operator which set out the Operator's Clinical Support Services delivery methodology, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

CMO means the Chief Medical Officer for the Facility.

COAG means the Council of Australian Governments.

Collateral Warranty means a collateral warranty given in favour of the State by a Material Subcontractor in the form of the deed in Schedule 30, or such other form satisfactory to the State (acting reasonably).

Commercial Plan means each of the following:

- (a) the Performance Management Plan;
- (b) the Shared Portion and Post-Operating Term Strategy;
- (c) the Compensable Patient Strategy;
- (d) the Associated Commercial Facilities Plan; and
- (e) the Car Park Plan.

Commercial Plan Requirements means, for each Commercial Plan, the requirements for such Project Plan specified in Part A of the Commercial Plans Schedule.

Commercial Plans Schedule means Schedule 41.

Commercially Sensitive Information means:

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

including but not limited to the information described in Schedule 36.

Common Areas has the meaning given to it in Schedule 22.

Community Participation Council means the community advisory council constituted and maintained in accordance with clause 52.7.

Compensable Patient means a Patient whose costs of treatment are funded by the Patient themselves or by a third party including a private health insurer or compensating party such as the Department of Veterans Affairs, WorkCover or the MAA, but not including the State.

Compensable Patient Strategy means the Project Plan of that name referred to in the Commercial Plans Schedule, prepared in accordance with the Commercial Plan Requirements and this document, and updated in accordance with this document.

Compensable TTER Services is defined in clause 59.13(c).

Compensation Event means each of:

- (a) a breach by the State of its obligations under this document or any other State Project Document which adversely affects the ability of the Operator to perform any of its obligations or exercise any of its rights under the Project Documents;
- (b) a Qualifying Change in Law;
- (c) the exercise by the State of its Step-In Rights;
- (d) a Native Title Claim resulting in the Operator or the Construction Contractor being directed, ordered or required by the State, a court or tribunal or by Law to suspend or cease to perform any of the Operator's Activities (or to change the way it does so);
- (e) the creation of a Site Encumbrance pursuant to clause 8 which:
 - (i) adversely affects the ability of the Operator to perform any of its obligations or exercise any of its rights under the Project Documents; and
 - (ii) was not identified in an Information Document;
- (f) a direction by the State to the Operator to contest a condition or requirement of the Stage 2 Development Consent pursuant to clause 18.4(a), except where the Operator fails to contest a condition or requirement of the Stage 2 Development Consent in breach of its obligations under this document;
- (g) a direction by the State to the Operator to contest a condition or requirement of a Consent pursuant to clause 10.3(c), except where the Operator fails to contest a condition or requirement of the Consent in breach of its obligations under this document;
- (h) any change or modification to the Stage 2 Development Consent granted by the Development Consent Authority in response to a request by the State for that change or modification under clause 18.5;
- (i) the discovery of Contamination on Site that:
 - (i) was caused or contributed to by the State or a State Related Party after the date of this document (to the extent of that contribution); and
 - (ii) the Operator is required to Remediate pursuant to this document, a Contamination Remediation Notice or Law,

except to the extent that:

- (iii) the Operator was required to manage or mitigate against the risk of such Contamination and did not do so;
 - (iv) a competent and experienced contractor, acting reasonably in the circumstances, would have taken preventative measures to prevent or minimise the risk and the Operator did not do so; or
 - (v) the Contamination has occurred as a result of or was contributed to by any act or omission of the Operator or any Operator Related Party or the breach by the Operator of an obligation under the Project Documents;
- (j) the discovery of an Artefact on or under the surface of the Site which results in the Operator being directed, ordered or required by the State, a court or tribunal or by Law to suspend or cease to perform any of the Operator's Activities or change the way it performs any of the Operator's Activities, provided that the Operator has been required to suspend or cease to perform the Operator's Activities or change the way it performs any of the Operator's Activities for a period of 10 days or more or to incur additional costs exceeding \$50,000 (in aggregate), except to the extent that:
- (i) the direction is caused or contributed to by a breach by the Operator of the Project Documents, a breach by a Key Subcontractor of a Key Subcontract or any negligent or unlawful act or omission of the Operator or an Operator Related Party; or
 - (ii) the Artefact is identified in any Site Information Documents; and
- (k) either of the end dates for the approval processes specified in Schedule 44 is exceeded, by any period greater than 10 days, but only to the extent of any failure by the State to discharge the obligations specified in the column entitled "Deliverables for State Activities" in Schedule 44 within the periods set out in Schedule 44 and such failure is not as a result of any act or omission of the Operator or an Operator Related Party, including any failure of the Operator to perform its obligations in the periods identified in Schedule 44 or otherwise in accordance with this document,

but not to the extent that such event:

- (l) has occurred or arisen (directly or indirectly) as a result of or in connection with any action or omission (as the case may be), including any breach of obligations under this document or any other Project Document, by the Operator or an Operator Related Party; or
- (m) is within the reasonable control of the Operator or an Operator Related Party.

Concluded Event means a Failure that is stated to be 'Concluded' in the KPI Table.

Conditions Precedent means the conditions set out in Schedule 1.

Conflict of Interest includes, but is not limited to:

- (a) the holding of any office;
- (b) the possession of any property;
- (c) the engagement in any business, trade or calling; and
- (d) the owing of any obligations by virtue of any contract, agreement or relationship,

by the Operator, any Operator's Employees and Agents, a Subcontractor or a Subcontractor's employee, agent, contractor, consultant or authorised officer whereby, directly or indirectly, duties or interests are or might be created in conflict with the Operator's duties and interests under this document.

Conflict Management Plan has the meaning given to that term in clause 89.2(b).

Consents means all permits, authorisations, accreditations (including the Accreditation Requirements), approvals, licences, exemptions, clearances, consents, permissions, notifications, applications, filings, registrations, lodgements, deeds, certificates, directions, declarations or exemptions, or similar decisions of any kind which are required from, by or with an Authority for the performance of the Project (including the Services) or any part of it, including, for the avoidance of doubt, the Hospital Licence required to be obtained pursuant to clause 4 and the requirements of the Licensing Authority in connection with the procurement of the Approval in Principle or the procurement and maintenance of the Hospital Licence.

Consortium Entity means:

- (a) the Operator;
- (b) the Parent Company; and
- (c) the Key Subcontractors.

Construction Bond has the meaning given to that term in clause 12.1(a)(i).

Construction Contract means the design and construction contract between the Operator and the Construction Contractor relating to the Project Works or any part of it.

Construction Contractor means the Delivery Joint Venture, or such other replacement contractor or contractors as the Operator may, subject to clause 58, appoint to carry out the Project Works, or any part of the Project Works.

Construction Contractor Guarantor means Leighton Holdings Limited (ACN 004 482 982) or such other party as may be substituted for the Construction Contractor Guarantor in accordance with the Project Documents.

Construction Contractor Guarantor Performance Guarantee has the meaning given to it in clause 12.2.

Construction Documentation Report means the report by that name, prepared in accordance with the Design Parameters and the Construction Management Plan, and submitted for review pursuant to clause 19.8.

Construction Licence means the licence granted by the State to the Operator in accordance with clause 7.1(a)(i).

Construction Management Plan means the Project Plan of that name referred to in the Asset Solution Plans Schedule, prepared and updated in accordance with the Asset Solution Plan Requirements and this document, and comprising each of:

- (a) the Quality Management Plan;
- (b) the Environmental Management Plan;
- (c) the Site-specific Safety Management Plan;
- (d) the Workplace Relations Management Plan;
- (e) the Design Management and Stakeholder Engagement Plan; and

(f) the Design Management Strategy.

Construction Report means each report provided in accordance with clause 20.4.

Construction Side Deed means the side deed between the State, the Operator, the Construction Contractor and the Construction Contractor Guarantor or any replacement of such document entered into in accordance with the Project Documents, substantially in the form of Schedule 25.

Consumables means all items acquired or required for the purpose of providing the Services that would normally be consumed or expended within 12 months of purchase or are for a single use.

Consumer means any actual or potential recipient of:

- (a) Health Services from the State Asset; or
- (b) services from the Private Patient Portion.

Contamination has the meaning given to it in section 5 of the CLM Act.

Contamination Assessment means an assessment of the nature and extent of Contamination.

Contamination Remediation Notice means any notice or direction issued under any Law by any Authority relating to the Environment requiring a person to take measures to Remediate any Contamination in, on, under or emanating from the Site, the Extra Land or the Facility or any other action regarding Contamination in, on, under or emanating from the Site including a clean-up order, site contamination assessment order or any other site remediation order issued under the relevant Legislation.

Contract Price has the meaning given to it in the Construction Contract.

Control means:

- (a) 'Control' as defined in the Corporations Act;
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest (as defined in section 608 of the Corporations Act) in more than 20% of the securities,

of an entity.

Conversion KPI means the KPI set out in Section 2(b) of the Performance Schedule entitled 'Compensable Patients through the ED'.

Coronary Care Services means the services described in section 5.3(b) of the Services Specification.

Corporations Act means the *Corporations Act 2001* (Cth).

Corrective Action Plan means a plan prepared in accordance with clause 23.6.

Counterparties means each person other than the State who is a counterparty to a Project Document.

Counterparty Details means, in respect of each Counterparty:

- (a) a certified copy of its constitution (or other constituent documents);
- (b) in the case of a trustee, a certified copy of the trust deed of the trust it enters into the Project Document as trustee for;

- (c) a certified copy of any powers of attorney under which the person executed each Project Document to which it is a party;
- (d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations under each Project Document; and
- (e) names and specimen signatures of the authorised officers of the Counterparty and any other person authorised to take action or give notices for or on behalf of the Counterparty under the Project Documents.

CPI means the Consumer Price Index (All Groups) for Sydney published quarterly by the Australian Bureau of Statistics or, if clause 1.7 applies, the index determined in accordance with that clause.

CPI MHS means the Sydney CPI Medical and Hospital Services Index published quarterly by the Australian Bureau of Statistics.

CPI Multiplier Annual (C), at any time, means the most recently published December Quarter CPI at that time, divided by the CPI for the December Quarter 2013.

CPI Multiplier Quarterly (C), at any time, means the most recently published CPI at the end of the relevant Quarter, divided by the CPI for the December Quarter 2013.

Critical Care Services means the services described in section 5.2 of the Services Specification.

Current Project Program means the Project Program which:

- (a) includes all amendments required by the Client Representative pursuant to clause 14.3 or otherwise made in accordance with the updated Project Programs delivered pursuant to clauses 13.4, 25.1 or 29.1; and
- (b) has not been superseded by a subsequent Project Program.

Daily LD Rate means, for the avoidance of doubt, without limitation to the State LD Cap and clause 42.6(a):

- (a) where notice under clause 23.4(a) is given more than 12 months prior to the Date for Transfer Completion,
- (b) where notice under clause 23.4(a) is given more than 6 months and up to 12 months prior to the Date for Transfer Completion,
- (c) where notice under clause 23.4(a) is given less than 6 months prior to the Date for Transfer Completion (or if no such notice is given), and
- (d) for the avoidance of doubt, the Operator will not be liable to pay unliquidated damages for delay at Law in respect of any period following the Date for Transfer Completion.

Dangerous Goods has the same meaning as in the latest edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail.

Date for Completion means each of the Date for Technical Completion, the Date for Operational Readiness, the Date for Transfer Completion or the Date for Final Completion.

Date for Final Completion means _____ as may be extended under the terms of this document.

Date for Operational Readiness means 16 October 2018, as may be extended under the terms of this document.

Date for Technical Completion means _____ as may be extended under the terms of this document.

Date for Transfer Completion means _____ as may be extended under the terms of this document.

Date of Final Completion means the date on which Final Completion occurs in accordance with this document.

Date of Operational Readiness means the date on which Operational Readiness occurs in accordance with this document.

Date of Technical Completion means the date on which Technical Completion occurs in accordance with this document.

Date of Transfer Completion means the date on which Transfer Completion occurs in accordance with this document.

Day Surgery Services means the services described in section 5.4(a) of the Services Specification.

Debt means the principal amounts properly drawn down under the Financing Agreements, including accrued interest and fees payable, and deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of the Operator, Borrower or any Debt Financier and related to the Project but does not include default interest, equity shareholder loans, amounts in the nature of equity or subordinated debt or amounts payable or receivable under any hedging/swap arrangements relevant to the Project.

Debt Financiers means the providers of any facilities, derivative, financial arrangements or accommodation provided from time to time, in accordance with the Financing Agreements, to the Borrower or the Operator for the purpose of carrying out the Project Works and may, where the context permits, include any agent or trustee of such Debt Financiers.

Default Notice is the notice given under clause 77.3.

Default Rate means, in respect of a period, a rate equivalent to 3% per annum above the Bank Bill Rate for that period.

Default Termination Payment means the payment calculated in accordance with section 3 of the Termination Payment Schedule.

Defect means any latent or patent defect in any of the Project Works, the Facility or the Car Park, or any part of them, attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials, plant or machinery used in the carrying out of the Project Works, or any part of them;
- (c) defective installation of anything in or on the Facility or the Car Park or any part of them or in or on the Site, having regard to Good Industry Practice and to applicable standards and codes of practice current at the date of such installation;
- (d) defective preparation of the Site, or
- (e) any failure to comply with the Design Parameters or with any obligation under this document in relation to design and construction of the Project Works.

Defects Liability Bond has the meaning given to that term in clause 12.1(a)(ii).

Defined Benefits Superannuation Payment means the payment calculated in accordance with section 7 of the Payment Schedule.

Delay Costs means any costs incurred by the Operator arising directly as a result of a delay to the achievement of Operational Readiness by the Original Date for Operational Readiness as determined in accordance with the ECE Schedule, and excluding Prolongation Costs and Finance Delay Costs.

Delivery Joint Venture means the unincorporated joint venture between Healthscope Operations Pty Ltd (ACN 006 405 152) and Thiess Pty Ltd (ACN 010 221 486) formed under the Joint Venture Contract.

Demand Management Obligations means the Operator's obligations set out in:

- (a) Clause 52.11(f), (g), (h) and (i);
- (b) the Compensable Patient Strategy and the Clinical Services Plan (as they relate to the management of public patient demand);
- (c) the Performance Threshold for the Conversion KPI;
- (d) the Demand Management Plan; and
- (e) any action plan agreed under section 5(c)(5) of the Activity Schedule,

and any other obligation in the Project Documents or Project Plans which, if properly implemented, would have an impact on public patient volumes.

Demand Management Plan means the Project Plan of that name referred to in the Operational Plans Schedule, prepared in accordance with the Operational Plan Requirements and this document, and updated or varied in accordance with this document.

Demand Variation is defined in section 5(c)(4) of the Activity Schedule.

Department of Veterans' Affairs means the Commonwealth Department of Veterans' Affairs.

Dermatology Services means the services described in section 5.3(c) of the Services Specification.

Design Departure means any element of the Design Documentation which deviates from the RFP Design Proposal (including contrary to clause 19.4(b)(iii)) or does not meet or satisfy the Design Parameters.

Design Development Process means the process for the development of the RFP Design Proposal, via the Detailed Design Report and the Construction Documentation Report, in order to prepare the Certified Construction Documentation, to be implemented in accordance with clause 19, the Construction Management Plan and the Construction Management Plan.

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.

Design Management and Stakeholder Engagement Plan means the Project Plan of that name comprising part of the Construction Management Plan, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Design Management Strategy means the Project Plan of that name comprising part of the Construction Management Plan, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Design Parameters means the design parameters in respect of the Facility and the Car Park, as set out in Schedule 6.

Design Review Period has the meaning given to that term in clause 19.8(c)(iii).

Designated Commercial Area means the areas within the Site designated as such in the Handover Plan – Appendix A, as verified by the survey conducted pursuant to clause 32.3.

Designated Commercial Areas Revenue Share Payment means the periodic payment determined in accordance with section 8 of the Payment Schedule.

Designer means a person (other than the Construction Contractor) who is responsible for preparing the design for one or more elements of the Project Works, including a Key Designer.

Designer Side Deed means each side deed between the State, the Operator and a Key Designer or any replacement of such document entered into in accordance with the Project Documents, substantially in the form of Schedule 26.

Detailed Design Report means the report by that name, prepared in accordance with the Design Parameters and the Construction Management Plan, and submitted for review pursuant to clause 19.7.

Detention Centre Detainee has the meaning given to ‘detainee’ in section 5 of the *Migration Act 1958* (Cth).

Development Activities means all things that the Operator is, or may be, required to carry out or do to achieve Operational Readiness of the Project Works, including all things:

- (a) in connection with the design, construction, completion, testing and commissioning of the Project Works; and
- (b) to otherwise comply with its obligations under this document with respect to the Project Works.

Development Consent Authority means, in relation to the Stage 1 Development Application or the Stage 2 Development Application (as applicable), the authority with jurisdiction to assess and/or determine the Stage 1 Development Application or the Stage 2 Development Application (as applicable) in accordance with the EP&A Act.

Development Phase means the period commencing on Financial Close and ending on the Date of Operational Readiness.

Development Phase Quality Standards means:

- (a) the standards, policies, guidelines, instructions and other procedures set out in the requirements of the Licensing Authority in respect of the procurement of Approval in Principle and a Hospital Licence;
- (b) the standards, policies, guidelines, instructions and other procedures set out in, or otherwise expressly referred to in the Design Parameters;
- (c) the Health Facility Guidelines;

- (d) all Accreditation Requirements;
- (e) the National Safety and Quality Health Service Standards issued by the ACSQHS (or any equivalent standards required by the State);
- (f) the relevant standards, codes and guides of Standards Australia and Standards New Zealand (or, where an Australian Standard or a New Zealand Standard does not exist, the relevant British Standard or International Standard);
- (g) to the extent they do not conflict with the standards, codes or guides published by the WorkCover Authority of NSW, the standards, codes and guides published by the National Occupational Health and Safety Commission and SafeWork Australia;
- (h) 'NEPM: Assessment of Site Contamination, Schedules A and B (Dec 1999)' published by the National Environment Protection Council;
- (i) all standards, codes and guides published by the WorkCover Authority of NSW, WorkSafe NSW or a successor of either body;
- (j) the requirements of the Licensing Authority (including the terms of the Hospital Licences);
- (k) all requirements of Utility providers and Authorities; and
- (l) all other standards, codes, specifications and requirements relevant to the Project Works, the Facility or the Car Park, as may be amended from time to time.

Development Site means that part of the Site having an area of approximately 4.6 hectares as is shown on the Site Plan.

Diagnostic Imaging Services means the services described in section 5.8(c) of the Services Specification.

Direct TT Services means those elements of the TTER Services where the sole purpose of the activity is teaching or training.

Direct TT Services Amount means the calculation of funding to be provided for Direct TT Services in line with the NSW Teaching and Training Costing Methodology as varied, updated or superseded from time to time.

Disaster means an occurrence, whether or not due to natural causes, that causes loss of life, injury, distress or danger to persons, or loss of, or damage to, property.

Disaster Management Plan means the Project Plan of that name referred to in the Operational Plans Schedule, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

Disaster Measures means the Services to be provided in accordance with section 4.3 of the Services Specification.

Discount Bracket means each individual discount bracket referred to in the 'Initial Discount %' and each of the 'Further Discount' columns of the Discounted Price Table.

Discounted Price means the price payable by the State in respect of each Service Category as determined in accordance with section 3.1(b) of the Payment Schedule.

Discounted Price Table means the table set out in section 3.2(a) of the Payment Schedule.

Disposables means rubbish, Waste, waste products and refuse, and surplus materials created or separated by virtue of the Project Works, or the provision of Services, or otherwise the operation of the Facility.

Disposition means the status of the Patient at the end of a Non-Admitted Patient Emergency Department Episode of Care.

Dispute has the meaning given to it in clause 87.1.

Draft Cure Plan means a draft plan describing the actions and measures which, in respect of an Operator Event of Default, the Operator will diligently pursue to Remedy that Operator Event of Default (including the proposed cure period).

Draft Prevention Plan means a draft plan describing the actions and measures which, in respect of an Operator Event of Default, the Operator will diligently pursue to address the underlying cause of the Operator Event of Default and prevent similar Operator Events of Default from occurring in the future.

Ear, Nose and Throat Services or **ENT Services** means the services described in section 5.4(c) of the Services Specification.

Early Handover Date means the date, determined pursuant to clause 78.8, on which the State Asset is subject to Handover as a result of termination of this document.

Early Handover Put Option means an option for the State to require the Operator to lease the Private Patient Portion under the Post-Operating Term Private Patient Portion Lease.

Early Private Patient Portion Handover Date means the date on which the Private Patient Portion is subject to Private Patient Portion Handover as a result of termination of:

- (a) this document; or
- (b) the Operator's rights and obligations in respect of the Private Patient Portion.

ECE Event means any event for which the Operator will be entitled to be paid the Estimated Cost Effect in accordance with the ECE Schedule, which includes (unless specified otherwise in this document):

- (a) a Compensation Event;
- (b) a Change implemented under clause 63; or
- (c) Additional Works.

ECE Schedule means the schedule as set out in Schedule 11.

Elective Activity means clinically necessary, non-emergency procedures (including surgical procedures) which are:

- (a) performed by a suitably qualified medical practitioner;
- (b) the subject of a choice made by either the patient or doctor; and
- (c) scheduled procedures,

and Non-Elective Activity has a corresponding meaning.

Elective Surgery Targets means:

- (a) a yearly average target of 100% of Public Patients waiting for surgery seen within the clinically recommended time; and
- (b) the average overdue wait time target (in days) of 0 for those who are still waiting for their elective surgery and are ready for care, and have waited beyond the clinically recommended time for surgery,

according to the clinical urgency category (as defined by the AIHW from time to time) to which the relevant Public Patient is allocated.

Eligible Person has the same meaning as that expression has in the *Health Insurance Act 1973* (Cth).

Embedded TTER Services means those elements of the TTER Services that occur in conjunction with patient care.

Emergency Access Target means a 4 hour emergency access target where 90% of all Public Patients presenting to the Emergency Department per month will either physically leave the Emergency Department for admission to the Facility, be referred to another hospital for treatment or be discharged within 4 hours.

Emergency Department or **ED** means the dedicated area in the Public Patient Portion that is:

- (a) organised and administered to provide emergency care to those in the community who perceive the need for or are in need of acute or urgent care; and
- (b) licensed or otherwise recognised as an 'emergency department' by the State.

Emergency Medicine Services means the service described in section 5.2(a) of the Services Specification.

Emergency Services means:

- (a) New South Wales public emergency services (such as police, ambulance or fire); and
- (b) Commonwealth Government protective services.

Emergency Step-In Event means a Step-In Event described in paragraph (a)(ii) of the definition of 'Step-In Event'.

Emissions and Energy Data means:

- (a) any data, information, records and reports of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to the Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any data, information, records and reports of the type that a registered corporation or any other person may be entitled to provide to the Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other data, information, records and reports concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by any other Law to keep or provide to any Authority.

EMPLAN means the 'NSW State Emergency Management Plan' issued by the NSW Government as amended, superseded, updated or replaced from time to time.

Endocrinology Services means the services described in section 5.3(d) of the Services Specification.

Environment means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) flora and fauna;

- (d) any organic or inorganic matter and any living organism including humans;
- (e) human made or modified structures and areas;
- (f) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
- (g) ecosystems with any combinations of the above.

Environmental Hazard means a state of danger to human beings, property or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Law means any Law:

- (a) relating to the storage, handling or transportation of Waste, Dangerous Goods or Hazardous Substances; or
- (b) which has as one of its purposes or effects the protection of the Environment.

Environmental Liabilities means any of the following Liabilities:

- (a) all costs and Losses associated with undertaking any necessary action to Remediate Contamination ordered or required by an Authority of any land, building or waters;
- (b) any compensation or other monies that an Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all costs or Losses incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages, costs, Losses and interest, payable under an Environmental Law.

Environmental Management Plan means the Project Plan of that name comprising part of the Construction Management Plan, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Environmental Notice means any direction, order, demand or other requirement to take any action or refrain from taking any action in respect of the Site, the Extra Land, the Project Works or the Facility or its use:

- (a) from any Authority;
- (b) whether written or otherwise; and
- (c) in connection with any Environmental Law.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Episode of Care means a period of care in a hospital or other healthcare facility for a single type of care such as acute care, rehabilitation or palliative care.

Equity Investor means a person who holds an equity interest (whether directly or indirectly) in the Operator and/or a provider of subordinated debt (which is, in substance, equivalent to equity) to the Operator and, as at the date of this document, includes the Parent Company.

ESD means environmentally sustainable development.

Estimated Cost Effect means the cost effect of an event or variation calculated in accordance with the ECE Schedule.

Excision Area is defined in clause 7.3.

Excision Notice is defined in clause 7.3.

Executive Negotiators means:

- (a) in relation to the Operator, the Chief Executive of the Operator Holding Company; and
- (b) in relation to the State, the chief executive of the NSLHD (or her delegate, nominee or representative),

(or their delegates with authority to bind the Operator or the State (as relevant)).

Existing Hospital means each of Manly Hospital and Mona Vale Hospital.

Existing Infrastructure means, as at the date of this document, those buildings, fixtures, infrastructure, supporting structures and media for Utilities and other structures within or adjacent to the Site, and which may be affected by the Project Works.

Expansion means any infrastructure on or near the Site which increases the capacity of all or a part of the Public Patient Portion, the Private Patient Portion or the Shared Portion.

Expiration Date means (as applicable):

- (a) the Public Patient Portion Expiration Date; or
- (b) the Private Patient Portion Expiration Date.

Extra Land means land that is the subject of any Extra Land Right.

Extra Land Rights has the meaning given to that term in clause 7.5(a).

Facility means all improvements on the Site.

Facility Agent means National Australia Bank Limited (ACN 004 044 937).

Failure means a failure to meet the Target for any KPI.

Failure Abatement means the abatement with respect to Failures determined in accordance with the Abatement Regime.

Failure Period is the period to which the stated number of Failure Points apply for each relevant KPI in the event of a Failure, as stated in the KPI Table (and, for the avoidance of doubt, the Failure Period that applies to a particular Failure is the Failure Period in which the Failure occurs).

Failure Point Amount means (indexed in accordance with section 6.2(c) of the Payment Schedule).

Failure Points means the points used in the calculation of the Failure Abatements in accordance with section 6 of the Payment Schedule.

Fair Market Value means the amount at which an asset could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

FF&E means all Medical Equipment and Non-Medical FF&E which is:

- (a) used or proposed to be used at or in relation to:
 - (i) the provision of Services; or
 - (ii) the Public Patient Portion or the Shared Portion; or
- (b) necessary to satisfy the FFP Warranty in respect of the Public Patient Portion or the Shared Portion.

FF&E Inventory means an inventory list of all FF&E together with information relating to:

- (a) whether each item is either:
 - (i) owned by the Operator; or
 - (ii) the subject of an FF&E Lease;
- (b) for items referred to in paragraph (a)(i):
 - (i) the purchase price;
 - (ii) the date of purchase; and
 - (iii) the Written Down Value as at the date of the FF&E Inventory;
- (c) for items referred to in paragraph (a)(ii):
 - (i) the FF&E Lease commencement date;
 - (ii) the term of the FF&E Lease;
 - (iii) the original capitalised value of the FF&E Lease;
 - (iv) the current capitalised value of the FF&E Lease as at the date of the FF&E Inventory;
 - (v) the sum of payments already made under the FF&E Lease as at the date of the FF&E Inventory;
 - (vi) the sum of outstanding payments due under the FF&E Lease as at the date of the FF&E Inventory;
 - (vii) details of the lessor; and
 - (viii) whether the FF&E Lease is considered a finance lease or operating lease under standard accounting practices;
- (d) whether each item constitutes State Funded FF&E;
- (e) whether the usage of each item is or was shared between the Public Patient Portion and the Private Patient Portion, and the relevant proportion of that shared usage; and
- (f) such evidence as the State may reasonably require in relation to the proportionate shared use of, and (if applicable) capital contribution made by the Operator to, each item referred to in paragraph (e).

FF&E Lease means a lease, hire, hire-purchase, managed equipment service or other finance or similar arrangement entered into in respect of any FF&E.

FF&E List means the list of FF&E set out in the FF&E Plan, as updated during the Development Phase in accordance with clause 21.

FF&E Plan means the plan setting out the Operator's requirements for, and strategy for procuring, FF&E, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

FFP Warranty means the warranty set out in clause 5.2.

Final Completion means the stage at which:

- (a) Transfer Completion has been achieved; and
- (b) where all of the Final Completion Criteria have been satisfied to the reasonable satisfaction of the Independent Verifier.

Final Completion Certificate means a certificate issued by the Independent Verifier under clause 44.3(b), substantially in the form of the final completion certificate set out in Schedule 4.

Final Completion Criteria means:

- (a) the completion criteria in respect of Final Completion set out in Schedule 7; and
- (b) the further criteria for Final Completion set out in any Transition Plan or the Project Program.

Final Completion Payment has the meaning given to it in clause 49.

Final Completion Plan means the Project Plan of that name referred to in the Transition Plans Schedule, prepared in accordance with the Transition Plan Requirements and this document, and which, alongside each other Transition Plan, identifies certain criteria for the achievement of Final Completion.

Final Completion Tests means those tests specified in the Transition Plans which are required to be successfully completed prior to Final Completion.

Finance Delay Costs means additional Debt or equity financing costs (calculated at the rate of the Debt costs) incurred by the Operator or the Borrower as a direct consequence of a delay to the achievement of Transfer Completion by the Original Date for Transfer Completion. This does not include Prolongation Costs or Delay Costs.

Finance Delay Costs Payment Date means the date on which Finance Delay Costs are payable by the Borrower under the Financing Agreements as notified by the Operator to the State in accordance with the ECE Schedule.

Finance Security means each of the Security Interests granted in favour of the Debt Financiers to secure the obligations of the Operator and the Borrower under the Financing Facilities.

Financial Close means the date on which each of the Conditions Precedent have been satisfied or waived in accordance with clause 3.1.

Financial Indebtedness means any indebtedness, present or future, actual or contingent, in respect of moneys borrowed or raised, or any financial accommodation whatsoever, including under the Financing Agreements, or under or in respect of any bill, acceptance, guarantee, discounting arrangement, redeemable share or stock, hedging / swap arrangements, finance or capital lease, hire purchase arrangement, the deferred purchase cost of any asset or service, or any obligation to deliver goods or provide services paid for in advance by any financier or in respect of any financing transaction.

Financial Year means each calendar year ending 30 June.

Financiers Construction Contractor Tripartite Deed means the document to be entered into between the Construction Contractor, the Construction Contractor Guarantor, the Security Trustee and the Operator.

Financiers Parent Company Tripartite Deed means the document to be entered into between the Operator, the Parent Company, the Car Park Operator and the Security Trustee.

Financiers Tripartite Deed means the deed to be entered into between the State, the Operator, the Debt Financiers or, as the context may require, any replacement of such document entered into in accordance with the Project Documents in a form satisfactory to the State.

Financing Agreements means each of the following documents in the agreed form, and any additions to or replacements of such agreements, in accordance with clause 70.1:

- (a) the Syndicated Facility Agreement;
- (b) each interest rate hedging agreement entered into on or about Financial Close between a Debt Financier and the Borrower as contemplated in the Syndicated Facility Agreement;
- (c) each fee letter entered into on or about Financial Close between a Debt Financier and the Borrower;
- (d) the Security Trust Deed;
- (e) each Finance Security;
- (f) Financiers Construction Contractor Tripartite Deed;
- (g) Financiers Parent Company Tripartite Deed;
- (h) any document entered into in relation to any Refinancing in accordance with clause 70;
- (i) any document that the parties agree is a Financing Agreement for the purposes of this document; and
- (j) any document entered into or provided under or in connection with, or for the purpose of amending or novating, any of the documents from (a) to (g) above.

Financing Facilities means the facilities, financial arrangements or accommodation provided, or to be provided in accordance with the Financing Agreements, to the Operator or the Borrower for the purpose of carrying out the Project Works.

First Scheduled Handover Inspection has the meaning given to it in clause 91.2(a)(i).

First Scheduled Private Patient Portion Handover Inspection has the meaning given to it in clause 23.2(a)(i) of Schedule 22, Part C.

Fit for Intended Purpose means:

- (a) fit for the purposes reasonably ascertainable from this document; and
- (b) that:
 - (i) the Facility is fit for the provision of the Services and the operation of the Facility in accordance with this document, (including the Services Specification and the Services Plans);
 - (ii) the Facility is fit for the provision of services to Compensable Patients in accordance with this document; and
 - (iii) each of the Public Patient Portion, the Shared Portion, the Private Patient Portion and the Car Park will, on and from the Date of Operational Readiness and

throughout the remainder of the Term or the Private Patient Portion Term (as applicable), comply with all requirements of the Hospital Licence,

and, without limiting paragraphs (a) and (b) means, among other things, that the Project Works, when completed, will be designed and constructed in compliance with:

- (c) all health and safety requirements contained in the WHS Legislation;
- (d) all Accreditation Requirements;
- (e) other Quality Standards; and
- (f) the Sustainability Requirements.

Fixed Non-Medical FF&E means all items of furniture, fixtures, fittings and equipment which are permanently plumbed, wired or fixed to the Public Patient Portion or the Shared Portion, which do not fall within the definition of Medical Equipment, Loose Non-Medical FF&E or Consumables.

Flexibility and Expansion Report means that part of the RFP Design Proposal, the Detailed Design Report and the Construction Documentation Report which describes the future flexibility and expansion capacity of the Facility.

Force Majeure Event means the occurrence of a Relief Event in respect of which relief has been granted pursuant to clause 62 and which:

- (a) exists or occurs or the impacts of which exist or occur, or can reasonably be expected to exist or occur, for a continuous period exceeding 180 days; and
- (b) directly causes either party to be unable to comply with a material part of its obligations under this document,

and which:

- (c) could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this document;
- (d) is not caused or contributed to by a failure by the Operator or any other Operator Related Party to comply with Good Industry Practice, Good Operating Practice or its other obligations under this document; or
- (e) is not within the reasonable control of the Operator or an Operator Related Party.

Force Majeure Termination Payment means the payment calculated in accordance with section 5 of the Termination Payment Schedule.

FTE means full time equivalent human resources.

Funded Completion Date means

Further Services means the 'Further Services' purchased by the State in accordance with section 5 of the Activity Schedule.

Further Services Fee means the fee payable by the State in relation to the Further Services as determined in accordance with section 4 of the Payment Schedule.

Gastroenterology Services means the services described in section 5.3(e) of the Services Specification.

General Change in Law means a Change in Law which is not a Project-Specific Change in Law.

General Medicine Services means the services described in section 5.3(a) of the Services Specification.

General Plan means each of the following:

- (a) the Project Management Plan;
- (b) the Stakeholder Engagement and Communications Strategy;
- (c) the Quality Assurance Management Plan;
- (d) the Australian Industry Participation Plan;
- (e) the Work Health and Safety Management Plan; and
- (f) the Business Continuity Management Plan.

General Plan Requirements means, for each General Plan, the requirements for such Project Plan specified in Part A of the General Plans Schedule.

General Plans Schedule means Schedule 37.

General Solid Waste has the meaning given in the Waste Classification Guidelines issued by the Department of Environment, Climate Change and Water (December 2009 revision).

General Surgery Services means the services described in section 5.4(a) of the Services Specification.

Geriatric Medicine Services means the services described in section 5.5(d) of the Services Specification.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the Operator or a Subcontractor, as the case may be, under the same or similar circumstances, acting, in each case, in accordance with all Laws, Consents and Development Phase Quality Standards.

Good Operating Practice means:

- (a) complying with all Laws, Consents and Operating Term Quality Standards;
- (b) providing the Health Services with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent service provider performing services similar to the Health Services under conditions comparable to those applicable to the Project, including ensuring that the Health Services are provided:
 - (i) in accordance with the Accreditation Requirements and professional standards set by relevant peak professional bodies;
 - (ii) using reliable, contemporary, sustainable and safe operating practices;
 - (iii) in accordance with a technology or methodology that, through experience and research, has proven to reliably lead to a desired result such that it is now endorsed by the relevant professional bodies as best practice; and
 - (iv) using proper equipment, tools and procedures;
- (c) ensuring that sufficient clinical, operation and maintenance personnel are available and are adequately experienced and trained to ensure compliance with this document;

- (d) ensuring that adequate materials, resources and supplies are available to ensure provision of the Services in accordance with the requirements of this document under normal conditions and reasonably anticipated abnormal conditions;
- (e) using reasonable endeavours to continually meet advancements in technology and improve the standards and quality of the Health Services, maintenance, refurbishment and repair of the Facility and the manner in which they are carried out; and
- (f) providing the Non-Clinical Support Services with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor providing Services similar to the Services under conditions comparable to those applicable to the Project, including using:
 - (i) maintenance, refurbishment and repair practices to ensure that the Facility is functioning as designed and Fit for Intended Purpose;
 - (ii) reliable, contemporary, sustainable and safe operating practices;
 - (iii) proper equipment, tools and procedures;
 - (iv) workmanship and materials which are Fit for Intended Purpose; and
 - (v) replacement parts that are new.

GP means a general medical practitioner.

GP Clinic has the meaning given to it in clause 56.7(a)(ii)(B).

GST means:

- (a) the same as in the GST Law; and
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guidelines means each of:

- (a) the NSW Government Procurement Policy dated July 2004;
- (b) the NSW Government Procurement Policy: Office of Financial Management Policy and Guidelines Paper TPP04-1 dated July 2004;
- (c) the NSW Code;
- (d) the NSW Guidelines;
- (e) the NSW PPP Guidelines;
- (f) the NSW Government Tendering Guidelines dated December 2011; and
- (g) the National Private Public Partnership Policy and Guidelines dated November 2008,

each as amended, augmented or replaced from time to time.

Gynaecology Services means the services described in section 5.4(d) of the Services Specification.

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

Handover means the handover of the State Asset by the Operator to the State in accordance with this document.

Handover Audit has the meaning given to that term in clause 91.2.

Handover Condition has the meaning given to that term in clause 91.1.

Handover Plan means the Project Plan of that name referred to in the Asset Solution Plans Schedule, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document and the Car Park Management Deed.

Handover Plan – Appendix A means appendix A to the Handover Plan in the form agreed by the parties on or about the date of this document.

Hazardous Substance means any substance which would or might reasonably be expected to cause an Environmental Hazard.

Health Executive Service means comprises the positions described in section 121B of the *Health Services Act 1997* (NSW).

Health Facility Guidelines means the '*Australasian Health Facility Guidelines*' published by the Australasian Health Infrastructure Alliance, as amended, supplemented, superseded or replaced from time to time.

Health Infrastructure means Health Infrastructure ABN 89 600 377 397 as a division of the Health Administration Corporation ABN 45 100 538 161, a corporation sole constituted by section 9 of the *Health Administration Act 1982* (NSW).

Health Initiative means any health initiative, reform, scheme or program which is intended to:

- (a) relieve pressure on, or otherwise improve, Public Patient service provision in New South Wales through the implementation of procedures to address (among other things):
 - (i) alternative methods of care and treatment away from hospital;
 - (ii) early discharge;
 - (iii) models for the provision of Non-Admitted Services; or
 - (iv) other ambulatory services;
- (b) improve Integration;
- (c) improve safety, quality and efficiency in the delivery of healthcare and lead to improved health outcomes for Patients;
- (d) explore better ways of delivering services to and for Patients;
- (e) improve management of and dealing with repeat Patients;
- (f) facilitate and improve Patient flow and experience;
- (g) improve standards to the same level as or above other hospitals in NSW;
- (h) respond to specific health reform agenda as mandated by the NSW Government or the Commonwealth government;
- (i) encourage the delivery of care so as to avoid or substitute hospital admission;
- (j) increase involvement in Commonwealth or NSW Government processes and programs; or
- (k) encourage participation as key stakeholders in whole of system service delivery planning, initiative development and implementation (including in respect of models of care);

and which includes as at the date of this document the PBS.

Health Insurance Act means *Health Insurance Act 1973* (Cth).

Health Policy means any rule, guideline, regulation, policy, standard, procedure, directive, circular or requirement relating to the operation of a private health facility (as that term is defined in the Hospitals Act) or the provision to a Public Patient of a service included in the Health Services, as may be published by the NSW Government or the Commonwealth from time to time, as amended, updated, superseded or replaced from time to time, except to the extent notified by the State.

Health Services means the Clinical Services and all other services necessary to support the Clinical Services, including the Clinical Support Services but which (for the avoidance of doubt) does not include:

- (a) the Patient Transfer Services; and
- (b) the Non-Clinical Support Services.

Hospital Chief Executive means the person from time to time who is the most senior permanent employee of the Operator with day to day management responsibility for the Public Patient Portion, or any contractor appointed by the Operator to carry out such a role.

Hospital Licence means a licence granted to the Operator or the Parent Company from time to time to operate the Facility as a private health facility under Part 2 of the Hospitals Act and provide the Services, and includes:

- (a) any variation, renewal, reinstatement, regrant of or statement of condition or dispensation to that licence; and
- (b) any replacement or substitute licence.

Hospital User means any person who falls within any of the following categories:

- (a) Patients;
- (b) Consumers;
- (c) Carers;
- (d) any of:
 - (i) the State;
 - (ii) the Client Representative or a State Related Party; and
 - (iii) officers, employees, agents and contractors (excluding the Operator and any Operator associate) of the State (including the State or a hospital board established under the Hospitals Act),

in their capacity of acting for and on behalf of the State and who enter onto the Site or are otherwise engaged by the State in the exercise of the State's rights or the performance of its obligations under the Project Documents;

- (e) Visitors excluding any Operator Related Party; and
- (f) volunteers.

Hospitals Act means the *Private Health Facilities Act 2007* (NSW).

IHPA means the Independent Hospital Pricing Authority established under the *National Health Reform Act 2011* (Cth) (or any body replacing or superseding that body).

Illegality Event means the occurrence of any of the following events:

- (a) the Operator or a Key Subcontractor ceasing to hold a Consent or breaching applicable Law, and the Client Representative reasonably forms the view that such failure or breach is material to the performance of the Operator's obligations under this document and is not remedied within 30 days after the earlier of:
 - (i) the date on which the Client Representative notifies the Operator of the breach; or
 - (ii) the date on which the Operator becomes aware of the breach; or
- (b) any Project Document being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against the Operator or any other person (other than the State) other than as contemplated by or permitted in accordance with the Project Documents, or a Project Document becomes invalid, illegal, void or voidable in any material respect, and the event is not remedied within 30 days after the relevant event occurring.

Immunology Services means the services described in section 5.3(g) of the Services Specification.

IM&T means information management and technology.

IM&T Plan means the plan of that name prepared by the Operator which sets out the Operator's IM&T systems methodology, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

IM&T Requirements means the requirements for IM&T at the Public Patient Portion and the Shared Portion as set out in Schedule 15 and in the IM&T Plan.

IM&T Systems means the hardware, software and platforms owned by, and under the operation and management of the Operator, as further described in the IM&T Requirements.

Incomplete Works has the meaning given to that term in clause 81.7.

Indemnified State Party means each of the State, the State Related Parties, the NSW Government and its officers, employees and agents.

Independent Assessor means an independent expert selected and appointed by:

- (a) the parties; or
- (b) failing agreement between the parties, the President of the Australian Institute of Quantity Surveyors.

Independent Verifier means the person appointed from time to time under the Independent Verifier Deed.

Independent Verifier Deed means the deed to be entered into by the Independent Verifier, the State and the Operator substantially in the form of Schedule 33.

Indexed means indexed in accordance with clause 1.6.

Indirect/Infrastructure TT Services means those TTER Services that are 'back office' administrative and coordination activities undertaken by the Operator that are essential to facilitate teaching or training.

Indirect/Infrastructure TT Services Amount has the meaning given in clause 59.13(a)(iv).

Indirect Loss means any of the following Losses or Liabilities (whether direct or indirect):

- (a) loss of profits;

- (b) loss of revenue;
- (c) loss of income;
- (d) loss of production;
- (e) loss of business;
- (f) loss of business opportunity;
- (g) loss of contract;
- (h) loss of goodwill;
- (i) loss of use of property;
- (j) failure to realise anticipated savings;
- (k) direct or indirect funding or financing costs; or
- (l) penalties payable under agreements other than this document,

but does not include:

- (m) loss arising from a claim by, or liability of an Indemnified State Party to, a third party (except to the extent that the liability is in respect of Indirect Loss to an Other Contractor or sub-licensee of Proprietary Materials under a contract claim);
- (n) Insured Liability;
- (o) loss in respect of death, disease, illness or personal injury;
- (p) loss arising from any criminal acts or fraud on the part of the Operator or an Operator Related Party;
- (q) loss arising from wilful misconduct on the part of the Operator or an Operator Related Party;
- (r) loss which is the subject of the indemnities set out in clauses 7.12, 59.7(c) or 19.16(f);
- (s) costs the State is entitled to recover under clause 52.2(d);
- (t) any other moneys expressly payable to the Operator or the State under the Project Documents; or
- (u) any liability to the extent to which, by law, the parties cannot limit or contract out of.

Industrial Action means industrial action of any description including industrial action involving:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;
- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work; or
- (c) a failure or refusal by any person employed or engaged by the Operator or the Construction Contractor to attend for work.

Industrial Relations Matter means any matter arising out of, or in connection with, the Facility or the Services and which relates to:

- (a) a claim for any payment for or on behalf of any employee of any member of the Operator or a Subcontractor;
- (b) a claim for any payment for or on behalf of any employee of a Subcontractor;
- (c) a claim for any payment in the nature of a site allowance;
- (d) any demand for terms of employment in excess of or outside the scope of relevant Awards or orders;
- (e) a claim arising out of, or in connection with, safety, work procedures, negotiated contracts or agreements, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, working calendar, site allowances and bonuses now and in the future to become allowable or payable within the relevant industry (including a claim in respect of any of those matters described above which arises out of any change in Awards or work practices);
- (f) any reduction in the relevant industry working hours per week; or
- (g) any Industrial Action.

Industrial Waste means any Waste arising from commercial, industrial or trade activities and any Waste containing Hazardous Substances.

Infectious Diseases Services means the services described in section 5.3(h) of the Services Specification.

Information Document means:

- (a) any information, data or Material provided to the Operator or any Operator Related Party by or on behalf of the State prior to the date of this document; and
- (b) any other information, data or Material which is referred to or incorporated by reference in information or a document referred to in paragraph (a), unless such information or document is otherwise expressly stated to form part of this document.

Initial Demand Management Plan means the initial Demand Management Plan as agreed between the parties after 1 March 2023.

Initial Project Plan means:

- (a) each Project Plan contained in each of the General Plans Schedule, the Asset Solution Plans Schedule, the Transition Plans Schedule, the Operational Plans Schedule and the Commercial Plans Schedule as at the date of this document; and
- (b) in the case of the Demand Management Plan, means the Initial Demand Management Plan.

Inpatient has the same meaning as the term 'Admitted Patient'.

Inpatient Services means those Services which are provided to Inpatients.

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- (a) if an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;

- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the Client Representative before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) if a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the Client Representative before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) if a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
- (e) if a party or any other person appoints an administrator to the party, or takes any step to do so;
- (f) if a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand;
- (g) if a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the State, except in any case referred to in this paragraph (g) for the purposes of a solvent reconstruction or amalgamation permitted by this document; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Insured Liability has the meaning given to that term in clause 72.4.

Integrate and **Integration** have a corresponding meaning to the Integrated Health Services.

Integrated Community and **Hospital Services** means the services described in section 5.5 of the Services Specification.

Integrated Health Services means health services which:

- (a) operate as part of a broader state-wide health system and state-wide network of services;
- (b) help people to stay healthy and gain access to timely, high quality, patient centred care in ways that are:
 - (i) user friendly;
 - (ii) achieve the desired results; and
 - (iii) provide value for money;
- (c) deliver coordinated, high quality health service to the communities services by the NSLHD;
- (d) support the NSLHD's teaching, training and research roles;

- (e) enable the NSLHD to outline its roles and responsibilities as a key member organisation of a wider NSW public health network of services and support organisations; and
- (f) promote accountability to government and the community.

Intellectual Property Rights means all present and future rights throughout the world conferred by Law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results in the industrial, commercial, scientific, literary or artistic fields, including confidential information and the right to have confidential information kept confidential, whether or not registrable, registered or patentable, including:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights,

but excluding Moral Rights.

Intensive Care Services means the services described in section 5.2(b) of the Services Specification.

Interest Period has the meaning given to that term in the Syndicated Facility Agreement.

Interface Protocol means:

- (a) any protocol entered into between the Operator and a State Appointed Operator pursuant to clause 92.1(b);
- (b) in respect of any Third Party Infrastructure Works, any protocol entered into by the Operator pursuant to clause 66.2;
- (c) in respect of any works carried out by an Other Contractor, any protocol entered into pursuant to clauses 63.6(d); and
- (d) in respect of any Additional Works, any protocol entered into by the Operator pursuant to clause 65.1(h)(v),

being a protocol relating to interface and co-ordination issues including:

- (e) design, construction, maintenance, services and operation management, co-ordination and compatibility;
- (f) timing and programming of works, services and other activities;
- (g) access arrangements to Site and the Facility;
- (h) connections to and use of Utility Infrastructure and other facilities;
- (i) processes and procedures for managing and minimising impacts and interface issues;
- (j) the continued, uninterrupted provision of the Services;
- (k) exchange of information and dispute resolution; and
- (l) any other matters reasonably required by the Client Representative,

and satisfying the interface principles specified in Schedule 47.

Interim State Price is defined in section 1(c)(1) of the Activity Schedule.

Jemena means SGSP (Australia) Assets Pty Ltd ABN 60 126 327 624 and its Related Bodies Corporate.

JMO means a junior medical officer being:

- (a) an intern;
- (b) a doctor in a vocational training position;
- (c) a medical officer with less than three years post-graduating experience; or
- (d) a resident or training registrar (other than a service registrar).

JMO Minimum Number is defined in clause 59.5(b).

JMO Salary Payment means the payment determined in accordance with section 10 of the Payment Schedule.

Joint Capacity Review has the meaning given to it in clause 67A.2(a).

Joint Venture Contract means the document entitled '*Joint Venture Contract*' between Healthscope Operations Pty Ltd (ACN 006 405 152) and Leighton Contractors Pty Ltd (ACN 000 893 667) dated on or about the date of this document.

Key Designer means each of the following Designers:

- (a) BVN Architecture;
- (b) Hyder Consulting;
- (c) 360 Consulting;
- (d) LFA (Pacific) Pty Limited;
- (e) Renzo Tonin & Associates;
- (f) JCA Lift Consultants;
- (g) Cundall Johnston and Partners;
- (h) ACOR Consultants Pty Ltd;
- (i) Aurecon;
- (j) Aviation Professional Services Pty Ltd;
- (k) Fredon Air;
- (l) Star Electrical Company Pty Ltd;
- (m) Axis Plumbing Group;
- (n) Tyco International Ltd;
- (o) Wormald Australia;
- (p) Philip Chun & Associates;
- (q) Lampson (Australia) Pty Ltd;
- (r) GHD Australia;
- (s) Reward; and
- (t) Redback Health Services.

Key Performance Indicator or **KPI** means each or any of the KPIs set out in the KPI Table.

Key Personnel means:

- (a) in relation to the position nominated in Schedule 3, the personnel notified by the Operator to the State in accordance with clause 59.3(a) or, in the case of the Hospital Chief Executive, clause 59.4; and
- (b) where a person referred to in paragraph (a) is replaced in accordance with clause 59.3 or, in the case of the Hospital Chief Executive, clause 59.4, the replacement personnel approved by the Client Representative in accordance with the applicable clause.

Key Subcontract means each of:

- (a) the Construction Contract;
- (b) the Parent Company Subcontract; and
- (c) any other Subcontract which is identified by the State and notified in writing to the Operator as a 'Key Subcontract'.

Key Subcontractor means each of:

- (a) the Construction Contractor;
- (b) the Parent Company;
- (c) any other Subcontractor engaged in the provision of the Clinical Services or Clinical Support Services; and
- (d) each other Subcontractor who is a party to a Key Subcontract.

Key Subcontractor Guarantor means:

- (a) the Construction Contractor Guarantor;
- (b) Operator Holding Company; and
- (c) any other person who provides a guarantee in respect of the performance of a Subcontractor and who is identified by the State and notified in writing to the Operator as a 'Key Subcontractor Guarantor'.

KPI Tables means the tables set out in sections 2(a) and 2(b) of the Performance Schedule.

Land Tax means land tax payable in accordance with the provisions of each of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

Law means:

- (a) Legislation;
- (b) common law or principles of equity; and
- (c) requirements and Consents of Authorities (including conditions in respect of those Consents).

LEC Act means the *Land and Environment Court Act 1979* (NSW).

Legislation means, in relation to New South Wales or the Commonwealth of Australia:

- (a) any act of parliament or statute;
- (b) any subordinate legislation, rules, regulations or By-Laws; and

- (c) guidelines and codes of practice of the Commonwealth or New South Wales governments or local councils and authorities with which the Operator is legally required to comply.

Level means a clinical service level within the Role Delineation.

Level 5 Hospital means a hospital with a level 5 role delineation as set out in the Role Delineation.

Liability includes any liability of any kind whether debt, cost (including legal costs, deductibles or increased premiums), expense, damage, compensation or charge, whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to Legislation or otherwise at Law;
- (d) present; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Licensing Authority means any appropriate authority, person, body or delegate empowered to administer the Hospitals Act.

Lifecycle Fee means the fee calculated in accordance with section 5 of the Payment Schedule.

Lifecycle Payment Account has the meaning given to it in clause 55.4(b).

Lifecycle Refurbishment Works means capital works associated with lifecycle refurbishment or lifecycle replacement of any part of the building fabric or FF&E as required to meet the Operator's obligations under this document and the Asset Lifecycle Plan, but excluding:

- (a) all maintenance works (whether planned, reactive or otherwise);
- (b) all grounds maintenance works;
- (c) the maintenance, replacement, refurbishment or purchase of Consumables; and
- (d) any Changes or Additional Work.

Live Work means electrical work performed in circumstances in which the part of the electrical equipment the subject of the electrical work is energised.

Loose Non-Medical FF&E means all items of loose furniture and portable equipment required for the initial fitout and ongoing operation of the Public Patient Portion or the Shared Portion in accordance with this document, which, in each case, do not fall within the definition of Medical Equipment, Fixed Non-Medical FF&E or Consumables.

Loss means any claim or loss suffered by any person, whether:

- (a) arising from or in connection with any proceeding or claim or not;
- (b) liquidated or not;
- (c) present; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

LPI means Land and Property Information (NSW).

Maternal, Neonatal and Women's Health Services means the services described in section 5.6 of the Services Specification.

Maternity Services means the services described in section 5.6(a) of the Services Specification.

Maximum Payment Amount or **MPA** means the fee calculated in accordance with section 2.3 of the Payment Schedule.

Medical Equipment means any item of equipment (and any related or supporting IM&T (including, for the avoidance of doubt, software)) required by the Operator for use at or in relation to the State Asset for the direct provision of Health Services to Public Patients that has a depreciable life greater than one year and is not a Consumable.

Medical Officer means a registered medical practitioner employed or contracted by a hospital.

Medical Oncology Services means the services described in section 5.3(i) of the Services Specification.

Medical Records means all medical, clinical and other Patient records and information relating to the provision of Services to Public Patients under this document, whether written, computerised or stored by any other means, including:

- (a) a Public Patient's medical history and complaints;
- (b) the physicians physical findings; and
- (c) the results of diagnostic tests and procedures, medications and therapeutic procedures.

Medical Services means the services described in section 5.3 of the Services Specification.

Medicare Act means the *Medicare Agreements Act 1992* (Cth).

Medicare Local means companies accredited under the Medicare Locals Accreditation Standards.

Mental Health Legal Status means a Patient's status as 'voluntary patient' or 'involuntary patient' under the *Mental Health Act 2007* (NSW).

Mental Health Services means the Adult Mental Health Service, Child and Adolescent Mental Health Service and Older Persons Mental Health Service described in section 5.5 of the Services Specification.

MHDAO means the Mental Health Drug and Alcohol Office.

Migrating Employees means all NSW Health Service Employees who accept an offer of employment from the Operator or any Subcontractor, as the case may be.

Migrating Terms and Conditions means the terms and conditions of employment of Migrating Employees on transfer to the Operator, as required by clause 36 of this document.

Migration means the transfer of employment of a Migrating Employee to the Operator.

Migration Date means the date on which the employment of a Migrating Employee terminated with the NSW Health Service and commenced with the Operator.





Migration Payment means the payment which is:

- (a) the aggregate of the Category Migration Fee for all categories of Migrating Employee referred to in the table in the definition of 'Migration Fee'; and
- (b) calculated by reference to clause 36.14(b),

which is made by the State to the Operator as part of the Final Completion Payment in consideration for maintenance, in respect of Migrating Employees, of existing employment terms and conditions.

Minister means a minister acting for and on behalf of the Crown in right of the State of New South Wales.

Mona Vale Hospital means the hospital known as 'Mona Vale Hospital', located at Coronation Street, Mona Vale, New South Wales.

Monthly Activity Report is the report required in accordance with section 3.3(a) of the Reporting Schedule.

Monthly Performance Report means the monthly performance report defined in section 2.7 of the Reporting Schedule.

Monthly Service Abatement is defined in section 6.2 of the Payment Schedule.

Monthly Service Payment means the payment from the State to the Operator determined in accordance with section 1 of the Payment Schedule.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Moral Rights Consent means a consent by the owner of such rights substantially in the form of Schedule 32.

MVUCC means the 'Mona Vale Urgent Care Centre'.

NATA means the National Association of Testing Authorities.

National Efficient Price means the 'National Efficient Price' or its equivalent published by the IHPA from time to time.

National Police Certificate means a certificate issued by any relevant state or federal police force which lists a person's court outcomes and / or pending charges that are deemed disclosable as at the date of issue of the certificate.

National Public Private Partnership Policy and Guidelines means the Australian government National Public Private Partnership Policy and Guidelines dated December 2008, as amended or updated from time to time.

National Safety and Quality Health Service Standards means the 10 standards so entitled which have been developed by ACSQHC in consultation and collaboration with jurisdictions, technical experts and a wide range of stakeholders including health professionals and patients (or any equivalent safety and quality health service standards required by the State).

National Standards for Mental Health Services means the standards so entitled which were developed by ACHS, the then Community Health Accreditation and Standards Program and the Area Integrated Mental Health Service Standards and released by the Department of Health and Ageing (DoHA) in September 2010 (or any equivalent mental health service standards required by the State).

National Weighted Activity Unit or **NWAU** means the national weighted activity units used by the State from time to time in the classification and counting of Public Patient services, and notified to the Operator in the Annual Notice.

Native Title Claim means any claim or application under any Law relating to native title, including any application under section 61 of the *Native Title Act 1993* (Cth).

NBH Operating Trust means the "NBH Operating Trust" established under the Trust Deed.

Neonatal Services means the services described in section 5.6(b) of the Services Specification.

Neurology Services means the services described in section 5.3(j) of the Services Specification.

Neurosurgery Services means the services described in section 5.4(e) of the Services Specification.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

NHA means the National Healthcare Agreement which came into effect from 25 July 2012, as varied or substituted by agreement between the State and Commonwealth governments from time to time.

NHRA means the COAG 'National Health Reform Agreement' entered into in or around August 2011, as varied, updated, substituted or superseded from time to time.

Non-Admitted Patient means a Patient who is not an Admitted Patient and includes (for the avoidance of doubt) Emergency Department Patients and Ambulatory Care Patients.

Non-Admitted Services means services provided to patients who do not undergo a formal admission process and do not occupy a hospital bed, including services provided within in-hospital outpatient clinics, community based clinics and within patients' homes, and **Non-Admitted** has a corresponding meaning.

Non-Clinical Support Services means all things necessary to support the delivery of the Health Services in accordance with this document, including facility management services but which does not (for the avoidance of doubt) include the Clinical Support Services.

Non-Clinical Support Services Delivery Plan means the plan or plans prepared by the Operator which set out the Operator's Non-Clinical Support Services delivery methodology, prepared in

accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

Non-Development Site means that part of the Site having an area of approximately 1 hectare as is shown on the Site Plan.

Non-Medical FF&E means:

- (a) Fixed Non-Medical FF&E; and
- (b) Loose Non-Medical FF&E.

Non-NSW Health Service Employees means all employees in the NSW Health Service other than a NSW Health Service Employee (including but not limited to temporary and casual employees, members of the Health Executive Service and JMOs) and who accept an offer of employment from the Operator.

Notice of Final Completion means a duly completed certificate in the form of the notice of technical completion set out in Schedule 4.

Notice of Operational Readiness means a duly completed certificate in the form of the notice of technical completion set out in Schedule 4.

Notice of Technical Completion means a duly completed certificate in the form of the notice of technical completion set out in Schedule 4.

Notice of Transfer Completion means a duly completed certificate in the form of the notice of technical completion set out in Schedule 4.

Notice to Proceed means a notice referred to in clause 64.6(f).

NSLHD means Northern Sydney Local Health District.

NSLHD Service Agreement means the '*2013/14 NSLHD Service Agreement*' between the State and the NSLHD as superseded, replaced or updated from time to time.

NSW Code has the meaning given to it in clause 11.2(a).

NSW Government means the Crown in right of the State of New South Wales and its agencies.

NSW Guidelines has the meaning given to it in clause 11.1.

NSW Health means HAC, the NSLHD, the Ministry of Health and any other body or organisation under the control and direction of the Minister for Health or the Secretary of Health.

NSW Health Performance Framework means the '*Performance Framework 2013-2014*' published by the State as superseded, replaced or updated from time to time.

NSW Health Service has the same meaning as it has in the *Health Services Act 1997* (NSW).

NSW Health Service Employees means all Permanent Employees in the NSW Health Service, except members of the Health Executive Service (which, for the avoidance of doubt, does not include the Community Health and Sub-Acute functions at the Mona Vale Hospital), who perform functions at an Existing Hospital that transfer to the Facility or whose primary role involves providing services to an Existing Hospital that will be provided by the Operator.

NSW HEALTHPLAN means the document so described, with Policy ID PD2009_008, dated December 2009 that identifies NSW Health's emergency management arrangements to coordinate a whole of health response in the event of an emergency, as amended, updated, superseded or replaced from time to time.

NSW PPP Guidelines means the NSW Public Private Partnerships Guidelines dated August 2012, as amended or updated from time to time.

Nuclear Medicine Services means the services described in section 5.8(d) of the Services Specification.

Older Persons Mental Health Services means the services described in section 5.5(c) of the Services Specification.

Onsite means, in respect of staff, services or resources, that they are located within or provided from the Facility.

Operating Month means each calendar month from the later of:

- (a) the Date for Operational Readiness; and
- (b) the Date of Operational Readiness,

until the end of the Term or the Private Patient Portion Term, provided that if the Date for Operational Readiness or the Date of Operational Readiness (as applicable) falls part way through a calendar month, the first Operating Month begins on the Date for Operational Readiness or the Date of Operational Readiness (as applicable) and ends at the end of that calendar month, and the last Operating Month will begin on the first day of the calendar month in which the relevant Expiration Date falls and end on the relevant Expiration Date. Each other Operating Month will begin on the first day of each calendar month and end on the last day of that calendar month.

Operating Suite means the suite described in section 5.8(f) of the Services Specification.

Operating Term means the period from and including the Date of Operational Readiness until the end of the Term. The terms Operating Term and '**Operating Phase**' are used interchangeably in the RFP and the Project Documents.

Operating Term Bond has the meaning given to it in clause 12.4(a).

Operating Term Quality Standards means:

- (a) the standards, policies, guidelines, instructions and other procedures set out in the requirements of the Licensing Authority in respect of the procurement of Approval in Principle and a Hospital Licence;
- (b) the standards, policies, guidelines, instructions and other procedures set out in, or otherwise expressly referred to in, the Performance Schedule (including the KPIs), the Services Specification or an Operational Plan;
- (c) the Health Facility Guidelines;
- (d) the National Safety and Quality Health Service Standards issued by the ACSQHS (or any equivalent standards required by the State);
- (e) the NSW Patient Safety and Clinical Quality Program (PD2005_608);
- (f) standards from NSW Health, the ACSQHC, the ACHS, the State and the National Standards for Mental Health Services, or other standards chosen by the State as updated from time to time;
- (g) all Accreditation Requirements;
- (h) the relevant standards, codes and guides of Standards Australia and Standards New Zealand (or, where an Australian Standard or a New Zealand Standard does not exist, the relevant British Standard or International Standard);

- (i) the current Activity Profile as updated from time to time in accordance with this document;
- (j) all requirements of the *Carers (Recognition) Act 2010* (NSW) as amended, updated or substituted from time to time;
- (k) all standards, codes and guides published by the WorkCover Authority of NSW, WorkSafe NSW or a successor of either body;
- (l) to the extent they do not conflict with the standards, codes or guides published by the WorkCover Authority of NSW, the standards, codes and guides published by the National Occupational Health and Safety Commission and SafeWork Australia;
- (m) all requirements of Utility providers and Authorities;
- (n) ACHS EQuIPNational Program (as amended or substituted from time to time);
- (o) the standards, policies, guidelines, instructions and other procedures set out in, or otherwise expressly referred to in the Design Parameters; and
- (p) all other standards, codes, specifications and requirements relevant to the delivery of the Services and the operation and maintenance of the Facility,

as may be amended from time to time.

Operating Term Private Patient Portion Lease means the lease of the Private Patient Portion by the State to the Operator in the form of Schedule 21, as amended in accordance with this document.

Operating Term Works means any works to be undertaken by the Operator during the Operating Term, including any Additional Work but excluding rectification of any Defects.

Operating Year means each Financial Year from the later of:

- (a) the Date for Operational Readiness; and
- (b) the Date of Operational Readiness,

until the end of the Term or the Private Patient Portion Term, provided that if the Date for Operational Readiness or the Date of Operational Readiness (as applicable) falls part way through a Financial Year, the first Operating Year begins on the Date for Operational Readiness or the Date of Operational Readiness (as applicable) and ends at 30 June of that Financial Year and the last Operating Year will begin on the 1 July of the Financial Year in which the relevant Expiration Date falls and end on the relevant Expiration Date. Each other Operating Year will begin on 1 July and end on the following 30 June.

Operational Plan means each of the following:

- (a) Operational Service Delivery Strategy Plan;
- (b) Disaster Management Plan;
- (c) Safety, Quality and Risk Management Plan;
- (d) Clinical Services Delivery Plan;
- (e) Clinical Support Services Delivery Plan;
- (f) Non-Clinical Support Services Delivery Plan;
- (g) TTER Plan;
- (h) Workforce Plan;

- (i) IM&T Plan; and
- (j) Demand Management Plan.

Operational Plan Requirements means, for each Operational Plan, the requirements for such Project Plan specified in Part A of the Operational Plan Schedule.

Operational Plan Schedule means Schedule 40.

Operational Readiness means the stage at which:

- (a) Technical Completion has been achieved; and
- (b) all of the Operational Readiness Criteria have been satisfied to the reasonable satisfaction of the Independent Verifier.

Operational Readiness Certificate means a certificate issued by the Independent Verifier under clause 32.2(a)(i), substantially in the form of the operational readiness certificate set out in Schedule 4.

Operational Readiness Criteria means the completion criteria in respect of Operational Readiness set out in Schedule 7.

Operational Readiness Plan means the Project Plan of that name referred to in the Transition Plans Schedule, prepared in accordance with the Transition Plan Requirements and this document, and which, alongside each other Transition Plan, identifies certain criteria for the achievement of Operational Readiness.

Operational Readiness Report means the report of that name to be prepared by the Operator which identifies each of the Operational Readiness Criteria and provides details of the Operator's satisfaction of each of the Operational Readiness Criteria.

Operational Readiness Tests means those tests specified in the Operational Readiness Criteria which are required to be successfully completed prior to Operational Readiness and any Additional Operational Readiness Tests.

Operational Service Delivery Strategy Plan means the Project Plan of that name referred to in the Operational Plans Schedule, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

Operational Services Group means the committee established in accordance with clause 6.6(c).

Operations Management System has the meaning given to that term in the Services Specifications.

Operations Payment Claim means the Operator's payment claim issued pursuant to clause 55.3(a).

Operations Payment Statement means the statement of that name to be prepared by the State in accordance with clause 55.3(b).

Operator Allocation of Shared Portion means the amount specified in the Capital Cost Proposal Schedule as the capital cost of the Shared Portion which is paid for by the Operator.

Operator B's Employees and Agents means each of Operator B's employees, agents, contractors, Subcontractors, consultants and authorised officers of Operator B and those persons who are on the Site in connection with the performance of Operator's Activities (other than the State, the State's Employees and Agents and Agents and Visitors).

Operator Call Option means a call option granted by the State to the Operator to enter into the Post-Operating Term Private Patient Portion Lease.

Operator Delegate has the meaning given to it in clause 51(f).

Operator Event of Default means any event specified in clause 77.2.

Operator Group means the Operator and any Related Body Corporate identified as a member of the Operator Group in Schedule 34, and any Related Body Corporate which becomes a member of the Operator Group pursuant to a consent given in accordance with clause 86.2.

Operator Holding Company means NBH HoldCo 1 Pty Ltd (ACN 602 943 322) in its capacity as trustee for the NBH Holding Trust 1 or such other party as may be substituted for the Operator Holding Company in accordance with the Project Documents.

Operator Holding Company Guarantee means the parent company guarantee in the form set out in Schedule 28.

Operator Related Party means:

- (a) any of the Operator's Employees and Agents or a Related Body Corporate of the Operator;
- (b) any Subcontractor and any of their respective officers, employees (acting in the course of their employment) or agents in its capacity as a Subcontractor;
- (c) Operator B and the Car Park Operator; and
- (d) any person on or at any of the Site, the Extra Land, the Project Works, the Facility or the Car Park at the express or implied invitation of the Operator or a Subcontractor in connection with the performance of the Operator's Activities,

but does not include:

- (e) any Hospital User (other than Visitors on or at the Site, the Extra Land, the Project Works, the Facility or the Car Park at the express or implied invitation of the Operator for purposes unrelated to the operation of the Facility or the Car Park or the performance of Services); and
- (f) State Related Parties.

Operator Representative means the person from time to time appointed in accordance with clause 6.5.

Operator Termination Event means any of the events set out in clause 78.1.

Operator / HAC Security means the document entitled '*Operator / HAC Security – Northern Beaches Hospital*' to be entered into between HAC as chargee and the Operator, Operator B and the Borrower as chargors.

Operator's Activities means all things or tasks which the Operator or Operator B is, or may be, required to do to comply with its obligations under this document, whether or not the performance of such things or tasks is subcontracted by the Operator or Operator B to another person, including providing the Services, undertaking the Project Works and otherwise the Development Activities, and operating the Facility.

Operator's Employees and Agents means each of the Operator's employees, agents, contractors, Subcontractors, consultants and authorised officers of the Operator and those persons who are on the Site in connection with the performance of the Operator's Activities (other than the State, the State's Employees and Agents and Agents and Visitors).

Ophthalmology Services means the services described in section 5.4(f) of the Services Specification.

Original Date for Final Completion means

Original Date for Operational Readiness means 16 October 2018.

Original Date for Technical Completion means

Original Date for Transfer Completion means

Other Contractors means any contractor, consultant, tradesperson, supplier or other person engaged by the State, a State Related Party or a Relevant Agency to do work on or about the Site (excluding the Operator).

Outbreak means the occurrence of cases of disease in excess of what would normally be expected in a defined community, geographical area or season.

Outpatient means a Non-Admitted Patient who is not an Emergency Department Patient or an Ambulatory Care Patient.

Outpatient Services means those Services which are provided to Outpatients.

Outstanding Item means minor Defects which, in the reasonable opinion of the Independent Verifier (in consultation with the Client Representative) do not:

- (a) prevent the Project Works, the Facility or the Car Park from being lawfully used in accordance with its intended purpose;
- (b) prevent the Operator from satisfying the FFP Warranty;
- (c) prevent the Operator from delivering the Services in accordance with this document; and
- (d) if continuing to be present during the Operating Term, would not give rise to a Failure Abatement,

and the existence and rectification of which, in the reasonable opinion of the Independent Verifier (in consultation with the Client Representative) will not materially adversely affect the provision of the Services.

Paediatric Medicine Services means the services described in section 5.7(a) of the Services Specification.

Paediatric Services means the services described in section 5.7 of the Services Specification.

Paediatric Surgery Services means the services described in section 5.7(b) of the Services Specification.

PAFA Act means the *Public Authorities (Financial Arrangements) Act 1987* (NSW).

PAFA Act Guarantee means a guarantee made on or prior to Financial Close pursuant to section 22B of the PAFA Act in respect of the State's obligations under the Project Documents and the Car Park Project Documents (as defined in the Car Park Management Deed) referred to in clause 3.1(a)(ii).

Parent Company means Healthscope Operations Pty Ltd (ACN 006 405 152), or such other replacement contractor as the Operator may, subject to clause 58, appoint to operate the Facility or any part of it in accordance with clause 58.

Parent Company Guarantee means the parent company guarantee in the form set out in Schedule 28.

Parent Company Side Deed means the side deed between the State, the Operator and the Parent Company, or any replacement of such document entered into in accordance with the Project Documents, substantially in the form of Schedule 27.

Parent Company Subcontract means the contract entitled 'Management Services Agreement' between the Operator, the Car Park Operator and the Parent Company dated on or about the date of this document and any other contract entered into between the Operator, the Car Park Operator and the Parent Company for the provision of the Services to the Facility from time to time.

Parent Company Subcontractor means Subcontractors engaged by the Parent Company including Parent Company Suppliers.

Parent Company Supplier means a Subcontractor who is a party to a Subcontract with the Parent Company for the provision of any consumable goods or emergency services.

Pathology Services means the services described in section 5.8(a) of the Services Specification.

Patient means any person who is treated at or from the Facility, or is the recipient of a Service and includes any Public Patient or Compensable Patient.

Patient Transfer Fee means per patient.

Patient Transfer Payment means the payment calculated:

(a) by multiplying the Patient Transfer Fee and the number of patients the subject of Patient Transfer; and

(b) by reference to clause 38.2(b),

which is made by the State to the Operator as part of the Final Completion Payment in consideration for the performance by the Operator of the Patient Transfer Services.

Patient Transfer Period means the period commencing on the Date of Operational Readiness and expiring on the Date of Transfer Completion.

Patient Transfer Plan means the Project Plan of that name referred to in the Transition Plans Schedule, prepared in accordance with the Transition Plan Requirements and this document, and updated in accordance with this document, and which, alongside each other Transition Plan, identifies the criteria for the achievement of Transfer Completion.

Patient Transfer Services means the patient transfer services by which patients are discharged from the Existing Hospitals and physically transported to the Facility, to be performed by the Operator in accordance with this document and 'Patient Transfer' has a corresponding meaning.

Payment Schedule means the service payment calculation schedule set out in Schedule 20.

PBS means the Commonwealth pharmaceutical benefits scheme that is intended to subsidise the price of certain medicines.

Performance Audit Notice is defined in clause 53(e)(i).

Performance Auditor is defined in clause 53(e)(ii)(A).

Performance Data means the data referred to in sections 2.6 and 3.3 of the Reporting Schedule.

Performance Management Plan means the Project Plan of that name referred to in the Commercial Plans Schedule, prepared in accordance with the Commercial Plan Requirements and this document, and updated in accordance with this document.

Performance Regime means the Operating Term Quality Standards, the Performance Schedule (including the KPIs), the Reporting Schedule and the Abatement Regime.

Performance Schedule means the performance schedule set out in Schedule 18 as updated, amended or substituted by the State from time to time.

Performance Threshold means each performance threshold set out in the 'Performance Threshold' column of the KPI Table.

Permanent Employee means a full time or part time employee except for a temporary employee (including an employee who is employed for a term).

Permitted Hazardous Substances means paints, solvents, lubricants, cleaning fluids, diesel fuel and any other substance required to be used in the performance of the Project Works or the Services which is approved in writing by the Client Representative.

Personnel means:

- (a) all employees, agents and Subcontractors of the Operator;
- (b) all employees, agents and subcontractors of a Consortium Entity, where those employees, agents and subcontractors are involved in the performance of the Operator's obligations under this document; and
- (c) all employees and agents of the Subcontractors, where those employees and agents are involved in the performance of the Operator's obligations under this document.

Pharmacy Services means the services described in section 5.8(b) of the Services Specification.

Planned Expansion means the Expansion of all or a part of the Private Patient Portion in accordance with and as indicated in the Planned Expansion Plan, and comprising:

- (a) Type 1 Expansion, comprising minor expansion within the Facility which do not displace any Services and as shaded red on the Planned Expansion Plan; and
- (b) Type 2 Expansion, comprising roof extension and expansion within the Facility which requires displacement of Clinical Support and Non-Clinical Support Services, and as shaded hatched-red on the Planned Expansion Plan.

Planned Expansion Notice means written notification issued by the Operator to the State of its intention to initiate and implement all or a part of the Planned Expansion.

Planned Expansion Plan means the expansion plan set out in Schedule 45 as agreed between the Operator and the State at or prior to Financial Close, and including for the avoidance of doubt:

- (a) Type 1 Expansion, comprising minor expansion within the Facility which does not displace any Services and as shaded red on the Planned Expansion Plan;
- (b) Type 2 Expansion, comprising roof extension and expansion within the Facility which requires displacement of Clinical Support Services and Non-Clinical Support Services, and as shaded hatched-red on the Planned Expansion Plan; and
- (c) Type 3 Planned Expansion, comprising expansion of the Facility towards the east of Clinical Services, Clinical Support Services and Non-Clinical Support Services, and as shaded yellow on the Planned Expansion Plan,

and otherwise as updated by the Operator from time to time in accordance with this document.

Plastic and Reconstructive Surgery Services means the services described in section 5.4(h) of the Services Specification.

Policy means any binding rule, guideline, regulation, policy, standard, procedure, directive, circular or requirement relating to the execution of any part of the Project Works or the provision of a service included in the Services, as may be published by the NSW Government or the State from time to time, unless the State (in its absolute discretion) gives a written notice to the

Operator directing that the relevant matter does not constitute a Policy for the purposes of this document. For the avoidance of doubt, it excludes a Consent.

Pollution has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW).

Post-Operating Term Private Patient Portion Lease means the lease of the Private Patient Portion granted by the State to the Operator in accordance with clauses 82, 93 or 94, in the form set out in annexure 2 to Schedule 22.

Post State Capital Payment Phase has the meaning given to it in the Termination Payment Schedule.

Pre State Capital Payment Phase has the meaning given to it in the Termination Payment Schedule.

Privacy Legislation means the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth) and the "National Privacy Principles and the Privacy Commissioner's Guidelines on Privacy in the Private Health Sector" approved pursuant to section 95A of the *Privacy Act 1988* (Cth), the *Health Records and Information Privacy Act 2002* (NSW), and any other applicable Commonwealth or State legislation or guidelines relating to privacy.

Private Consulting Suites means the Associated Commercial Facilities referred to by that name in the Handover Plan – Appendix A (as verified by the survey conducted pursuant to clause 32.3).

Private Opportunity Payment means the fixed lump sum fee payable by the Operator to the State, being

Private Patient Portion means:

- (a) that part of the Facility as is dedicated to or used for the diagnosis, accommodation and treatment of Admitted and Non-Admitted Compensable Patients; and
- (b) the Associated Commercial Facilities,

each of which will be designed, constructed and commissioned as part of the Private Patient Portion Works and which is shown shaded in pink in the Handover Plan – Appendix A (as verified by the survey conducted pursuant to clause 32.3).

Private Patient Portion Design Documentation means any Design Documentation in respect of the Private Patient Portion Works.

Private Patient Portion Expiration Date means the date falling on the 40th anniversary of the Date for Operational Readiness.

Private Patient Portion Handover means the handover of the Private Patient Portion in accordance with this document.

Private Patient Portion Handover Audit has the meaning given to that term in clause 23.2 of Schedule 22, Part C.

Private Patient Portion Handover Condition has the meaning given to that term in clause 23.1 of Schedule 22, Part C.

Private Patient Portion Handover Plan means the plan of that name to be prepared by the Operator in accordance with this document which sets out the Operator's obligations in respect of the Private Patient Portion Handover, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Private Patient Portion Relevant Amount has the meaning given to it in clause 23.2(c) of Schedule 22, Part C.

Private Patient Portion Term means the period which begins on the date of this document and ends on the Private Patient Portion Expiration Date, or, if earlier, upon termination of:

- (a) this document; or
- (b) the Operator's rights and entitlements in respect of the Private Patient Portion in accordance with this document.

Private Patient Portion Works means the development, design, demolition and remediation works (if necessary), refurbishment, construction and commissioning of the Private Patient Portion, the Associated Commercial Facilities and the Car Park, including all site investigations and testing, all connection and installation of Utilities and the procurement of associated plant, equipment and materials (including all systems and software incorporated in, or necessary to enable their operation), all in accordance with the Project Documents and includes:

- (a) the Utility Service Works; and
- (b) any Changes directed or approved in accordance with the Change Procedure,

in each case to the extent that such are in respect of:

- (c) the Private Patient Portion; or
- (d) the Car Park.

Proceed at Risk Notice has the meaning given to that term in clause 20.3(b).

Procurement Proposal has the meaning given to that term in clause 65.1.

Project means:

- (a) the financing, design, construction and commissioning of the Project Works;
- (b) the achievement of Operational Readiness, Transfer Completion and Final Completion;
- (c) the provision of the Patient Transfer Services;
- (d) the provision of the Services;
- (e) the operation of the Facility and the Car Park;
- (f) handover of the State Asset at the Public Patient Portion Expiration Date;
- (g) handover of the Car Park in accordance with the Car Park Management Deed; and
- (h) handover of the Private Patient Portion on the Private Patient Portion Expiration Date,

each in accordance with this document, the Project Documents and, in respect of the Car Park, the Car Park Project Documents (as defined in the Car Park Management Deed).

Project Co-ordination Group means the committee established in accordance with clause 6.6(b).

Project Documents means:

- (a) this document;
- (b) the Construction Side Deed;
- (c) the Parent Company Side Deed;
- (d) the Financiers Tripartite Deed;

- (e) the Independent Verifier Deed;
- (f) each Designer Side Deed;
- (g) each Material Subcontract and any guarantee given in connection with it;
- (h) each Collateral Warranty;
- (i) the Project Security;
- (j) the Parent Company Guarantee;
- (k) the Operator Holding Company Guarantee;
- (l) the Operating Term Private Patient Portion Lease;
- (m) the Post-Operating Term Private Patient Portion Lease; and
- (n) any other document which the parties agree (in writing) is a Project Document.

Project Insurance means a policy or policies of insurance which the Operator has obtained or caused to be obtained or is obliged to obtain under clause 73.

Project IP has the meaning given to it in clause 51(f).

Project Management Plan means the Project Plan of that name referred to in the General Plans Schedule, which includes the Project Program, prepared in accordance with the General Plan Requirements and this document, and updated in accordance with this document.

Project Objectives means the objectives specified in clause 2.1.

Project Plan means each:

- (a) Asset Solution Plan;
- (b) Commercial Plan;
- (c) General Plan;
- (d) Operational Plan; and
- (e) Transition Plan.

Project Program means the detailed program, which forms part of the Project Management Plan, for the Operator's Activities to be undertaken to achieve Technical Completion, Operational Readiness, Transfer Completion and Final Completion, prepared in accordance with the General Plan Requirements and updated in accordance with this document.

Project Security means:

- (a) the Operator / HAC Security; and
- (b) each of the Security Interests granted by the Operator in favour of the State to secure performance of the Operator's obligations under this document and the other Project Documents,

in a form satisfactory to the State.

Project Works means each of the Public Patient Portion Works and the Private Patient Portion Works.

Project-Specific Change in Law means a Change in Law other than a Tax law of the Commonwealth of Australia, the terms of which apply to:

- (a) the Project or the Facility, and not to other similar projects in New South Wales;

- (b) the Operator, and not to other persons;
- (c) the Site, and not to any other:
 - (i) similarly situated land or facilities in New South Wales; or
 - (ii) land or facilities where similar activities to the Operator's Activities are undertaken in New South Wales; or
- (d) projects procured or established under the NSW PPP Guidelines or other policies of the State in respect of public private partnerships, and not to other projects.

For the avoidance of doubt, any discontinuation of the charitable or not-for-profit status of the Operator, the Parent Company or an Operator Related Party (or the failure to procure charitable or not-for-profit status) shall not constitute a Project-Specific Change in Law.

Projected Activity Schedule means Schedule 17 to this document.

Prolongation Costs means costs incurred by the Operator and payable to the Construction Contractor as a direct consequence of a delay to the achievement of Operational Readiness by the Original Date for Operational Readiness, but does not include Finance Delay Costs or Delay Costs incurred by parties other than the Construction Contractor.

Proposal means the proposal submitted by the Operator in response to the State's request for proposals to deliver the Project.

Proposed Base Case has the meaning given to that term in clause 76(a)(iv).

Proprietary Material means:

- (a) all Design Documentation and each Project Plan;
- (b) any Material prepared or created by or on behalf of the Operator or a Subcontractor in conjunction with any application for, or modification of, the Stage 2 Development Consent or other Consent; and
- (c) any other Material created by or on behalf of the Operator or a Subcontractor in connection with the provision of the Services or the design, construction, commissioning or operation (including maintenance or repair) of Project Works, the whole or any part of the Facility and any other Material required to use or maintain the whole or any part of the Facility, and, in each case, which is the subject of any Intellectual Property Right or Moral Right.

Proprietary Systems means the Parent Company's proprietary systems (including software developed and owned by the Parent Company in respect of the conduct of its businesses which is not available for purchase by third parties and including the policies and procedures developed by the Parent Company for general use in its businesses, even though amended for use on the Project).

Public Expansion has the meaning given to it in clause 67A.2(b).

Public Health Organisation has the meaning given to that term in the *Health Services Act 1997* (NSW).

Public Patient means:

- (a) an Eligible Person; or
- (b) a Qualifying Person,

who is treated at, in or from the Facility (except for the GP Clinic), other than a Compensable Patient.

Public Patient Portion means the Emergency Department and that part of the Facility as is:

- (a) dedicated to, or able to be dedicated to; or
- (b) required by the State to be able to be used for,

the diagnosis, accommodation and treatment of Public Patients and do not form part of the Shared Portion and includes:

- (c) the Private Patient Portion if the State exercises its rights under clause 78.5(c) to terminate only the Operator's rights and entitlements in respect of the Private Patient Portion; and
- (d) once completed or installed, any Additional Work, to the extent that they satisfy the criteria in paragraphs (a) and (b) above and do not form part of the Shared Portion,

and which is shown shaded in green in the Handover Plan – Appendix A (as verified by the survey conducted pursuant to clause 32.3).

Public Patient Portion Design Documentation means any Design Documentation in respect of the Public Patient Portion Works.

Public Patient Portion Expiration Date means the date falling on the 20th anniversary of the Date for Operational Readiness, subject to the exercise by the State of its option to extend the Term pursuant to clause 90, in which case the Public Patient Portion Expiration Date will be the last day of the additional period.

Public Patient Portion Works means the development, design, demolition and remediation works (if necessary), refurbishment, construction and commissioning of the Public Patient Portion and the Shared Portion, including all site investigations and testing, all connection and installation of Utilities and the procurement of associated plant, equipment and materials (including all systems and software incorporated in, or necessary to enable their operation), all in accordance with the Project Documents and includes:

- (a) the Utility Service Works; and
- (b) any Changes directed or approved in accordance with the Change Procedure;

in each case to the extent that such are in respect of:

- (c) the Public Patient Portion; or
- (d) the Shared Portion.

Qualifying Change in Law means a Project-Specific Change in Law or a General Change in Law, other than a General Change in Law with respect to Tax, which occurs after the date of this document and requires the Operator to incur:

- (a) Capital Expenditure in the Development Phase or the Operating Term; or
- (b) additional costs in the provision of Services in addition to that specified in the Whole Project Base Case or Base Case – State Asset.

For the avoidance of doubt, any discontinuation of the charitable or not-for-profit status of the Operator, the Parent Company or an Operator Related Party (or the failure to procure charitable or not-for-profit status) shall not constitute a Qualifying Change in Law.

Qualifying Person means any person, whether or not an Eligible Person, who:

- (a) is a Refugee, Asylum Seeker or Detention Centre Detainee;

- (b) requires care or treatment for tuberculosis; or
- (c) is a resident of a country other than Australia and who, under an agreement between the Government of the Commonwealth and the Government of that other country, is to be treated, for the purposes of the provision of medical, hospital or other care, as if the person was an Australian resident.

Quality Assurance Management Plan means the Project Plan of that name referred to in the General Plans Schedule, prepared in accordance with the General Plan Requirements and this document, and updated in accordance with this document.

Quality Management Plan means the Project Plan of that name comprising part of the Construction Management Plan, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Quality Standards means:

- (a) Development Phase Quality Standards; and
- (b) Operating Term Quality Standards.

Radiation Oncology Services means the services described in section 5.3(k) of the Services Specification.

Rates means all rates, taxes or charges or other amounts which any Authority levies by reference to the Facility, but excluding head works costs or other contributions levied by reference to the Project Works or the Services and excluding any Land Tax.

Rebate means the Australian Federal Government Private Health Insurance Rebate Scheme.

Records any information or documents created or procured by the Operator, the Parent Company or any Subcontractor in connection with delivering the Project including:

- (a) the Project Plans;
- (b) the Medical Records;
- (c) the audited accounts
- (d) National Police Certificates;
- (e) all records and information relating to the effects of a Force Majeure Event; and
- (f) books of account, computer print-outs, records, correspondence, invoices, instructions, plans, drawings, receipts and memoranda, whatever the form, including information stored by computer and other devices.

Rectifiable Event means a Failure that is stated to be a 'Rectifiable' in the KPI Table.

Referral Network means a network with Public Health Organisations and health services, for the efficient and effective transfer of patients between Public Health Organisations and hospitals.

Refinancing means any of the following:

- (a) any amendment to or restatement or replacement of any Financing Agreement;
- (b) the exercise of any right, or the request for any waiver or consent, under any Financing Agreement or Project Document to which the State is not a party; or
- (c) any other step, arrangement or new contractual or financing arrangement that has a substantially similar effect to that described in paragraph (a) or (b),

that is likely to change the type, amount, pricing, tenor, terms for payment or repayment or hedging of the financial accommodation in connection with the Project, but does not include:

- (d) the syndication or subscription of any debt under the Financing Agreements that is contemplated at the date of Financial Close or, following a Refinancing, that is contemplated at the date of that Refinancing;
- (e) the change in control or sell down of any bonds in an arm's length transaction at market value;
- (f) disposals of investments or commitments of debt or equity in an arm's length transaction at market value;
- (g) any amendment to or reinstatement or replacement of or waiver or consent under any Financing Agreement which is a direct result of an amendment, reinstatement, replacement, waiver or consent to cure any actual or potential event of default or review event under any Financing Agreement; or
- (h) the entry into of derivative transactions contemplated to be entered into on or before Financial Close by the Financing Agreements or, following a Refinancing, contemplated to be entered into in connection with that Refinancing; or
- (i) Permitted Amendments (as defined in the Financiers Tripartite Deed).

Refugee has the meaning given to that term in Article 1 of the UN Convention and Protocol Relating to the Status of Refugees 1951 and people who have had like-experiences.

Regulator means the Regulator established under the *Clean Energy Regulator Act 2011* (Cth).

Reimbursement Payment means the payment (if any) determined in accordance with section 9 of the Payment Schedule.

Related Body Corporate has the meaning given to that term in the Corporations Act but where 'subsidiary' has the meaning given to it in this document.

Relevant Agency means each of Roads and Maritime Services, Sydney Water Corporation, Transport for NSW and Ausgrid.

Relevant Amount has the meaning given to it in clause 91.2(c).

Relevant Entity means a party who is to perform construction work (as defined in the WHS Legislation).

Relief Event means:

- (a) fire, explosion, storm, lightning, cyclone, hurricane, tempest, mudslide, landslide, flood, ionising radiation, earthquakes, droughts declared as a state of emergency and high seas inundation;
- (b) without limiting paragraph (a), a natural disaster that occurs on or prior to the Date of Operational Readiness and causes loss or damage to the Site or the Project Works;
- (c) war (declared or undeclared), armed conflict, riot, civil commotion (including protests), act of sabotage, act of a public enemy or other like activities;
- (d) a 'terrorist act' (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this document);
- (e) nuclear, biological or ionising contamination or (subject to compliance by the Operator with its obligations under clauses 52.9 and 62(d)) community-wide pandemics;

- (f) failure by any Authority or a provider of gas, water, sewage or electricity utilities to carry out works or provide services to the Site which it is obliged by Law to carry out or provide, where the Operator has complied fully with Good Operating Practice in respect of the procurement, maintenance and deployment of back-up utilities services;
- (g) an Act of Prevention which adversely affects the ability of the Operator to perform any of its obligations or exercise any of its rights under the Project Document;
- (h) any event or occurrence which occurs after the Date of Operational Readiness and causes loss or damage to the Site, the Public Patient Portion or the Shared Portion;
- (i) any blockade or embargo which directly affects the Site, the Project Works or the provision of Services at the Facility;
- (j) any Industrial Action within Australia which affects:
 - (i) the construction or facilities management industry or a significant sector of it; and
 - (ii) the Site or the Facility (as relevant);
- (k) during the Development Phase, any event or occurrence which deprives a party of possession of or access to the Site that it is entitled to under this document when the same is outside the control of either the State, a State Related Party or the Operator other than any event or occurrence arising from the Reserved Matters;
- (l) works or services performed by the State or Other Contractor pursuant to clauses 63.6, 65.1(h)(iii) or 66.1 which prevents, hinders or disrupts the provision of Services or otherwise the Operator's Activities; or
- (m) a period (whether individually or collectively) specified in the column entitled "Deliverables for State Activities" in Schedule 44 is exceeded, but not to the extent that would constitute a Compensation Event under paragraph (k) of the definition of Compensation Event,

but not to the extent that such event:

 - (n) could have been prevented or its consequences overcome by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this document;
 - (o) is caused or contributed to by a failure by the Operator or any other Operator Related Party to comply with Good Industry Practice, Good Operating Practice or its other obligations under this document; or
 - (p) is within the reasonable control of the Operator or an Operator Related Party.

Remaining Maximum Payment Amount means the value calculated in accordance with section 2.1(b) of the Payment Schedule.

Remedial Period means the relevant remedial period (if any) set out in the KPI Table.

Remediate means:

- (a) investigate, remove, disperse, destroy, reduce, dispose of, neutralise, treat, cap or monitor, mitigate or contain Contamination of land, and
- (b) eliminate or reduce the hazard arising from Contamination of land.

Remediation Action Plan has the meaning given to it in clause 9.3(a), as may be updated from time to time by the Operator in accordance with this document.

Remedy:

- (a) subject to paragraph (b), is defined in section 6.1(a) of the Payment Schedule; and
- (b) in respect of an Operator Event of Default, means to remedy or cure the Operator Event of Default or otherwise overcome the consequences of the Operator Event of Default.

Renal Medicine Services means the services described in section 5.3(l) of the Services Specification.

Repeated Failure means the occurrence of the number of Failures within the period specified in the column entitled 'Repeated Failure' in the KPI Table (measured on a rolling basis) which, in the State's reasonable opinion, has arisen due to the same underlying cause.

Reporting Schedule means the reporting schedule set out in Schedule 19, as amended, updated or substituted by the State from time to time.

Reputable Insurers means an insurance company having the Required Rating.

Required Rating means a credit rating, or in the case of an insurer, a financial security rating, of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or such other credit rating as the State may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Research includes biochemical research, health policy research, translational research, population health research, bioinformatics, biostatistics and clinical trials, and may be qualitative or quantitative.

Research Amount has the meaning given in clause 59.13(a)(v).

Research Services means all direct and indirect Research activities undertaken by FTE who are funded to support and undertake Research related to Public Patient Services, excluding those which require delivery of patient care (for example, the delivery of clinical trials).

Reserved Matters means all (if any) Adverse Rights, and any other affectations or encumbrances shown on or described in the Information Documents provided to the Operator by or on behalf of the State prior to the date of this document.

Respiratory Medicine Services means the services described in section 5.3(m) of the Services Specification.

Restricted Service means any Service which is listed as 'restricted' in the Annual Notice.

Retained Green Space means the area shaded hatched green in the Site Plan, and having an area of approximately 1.5 hectares.

Return Condition Bond means a Bond provided pursuant to clause 91.3 or clause 23.3 of Schedule 22, Part C, provided that Return Condition Bonds under both of those clauses may concurrently be on issue.

RFP means the Request for Proposals issued by the State in respect of the Project on 29 November 2013.

RFP Design Proposal means the RFP Design Proposal prepared by the Operator in accordance with the Design Parameters and updated in accordance with this document.

RGS Asbestos Management Plan means the plan provided to the Operator by the State in accordance with clause 7.4A.

RGS Asbestos Management Plan Date means the date the RGS Asbestos Management Plan is provided to the Operator in accordance with clause 7.4A.

RGS Licence has the meaning given to it in clause 7.4A(a).

Rheumatology Services means the services described in section 5.3(n) of the Services Specification.

RMO means a resident medical officer.

Roads and Maritime Services means the statutory body of that name constituted under the *Transport Administration Act 1988* (NSW).

Role Delineation means the 'Guide to the Role Delineation of Health Services' (or its replacement or equivalent) published by NSW Health from time to time which, as at the date of this document, is the 3rd edition, as amended and updated from time to time.

Routine Consent means:

- (a) a compliance certificate granted under section 73 of the *Sydney Water Act 1994* (NSW);
- (b) a Consent granted by Ausgrid, Sydney Water Corporation, Jemena, Roads and Maritime Services or Transport for NSW;
- (c) a Consent required under any of the following:
 - (i) sections 23-15(1), 23-15(2) and 23-99 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or regulations 23-15.01 and 23-15.02 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth);
 - (ii) section 23 of the *Business Names Registration Act 2011* (Cth);
 - (iii) *Copyright Act 1968* (Cth);
 - (iv) *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW) or *Dangerous Goods (Road and Rail Transport) Regulation 2009* (NSW);
 - (v) sections 4, 6, 7, 8, 9, 10 and 11 and schedule 3 of the *Energy Efficiency Opportunities Act 2006* (Cth), or regulations 1.3, 1.5, 2.1, 2.2, 3.1 and 3.2 and schedules 1 and 2 of the *Energy Efficiency Opportunities Regulations 2006* (Cth);
 - (vi) *Food Act 2003* (NSW) or *Food Regulation 2010* (NSW);
 - (vii) sections 5, 14 and 42 of the *Personally Controlled Electronic Health Records Act 2012* (Cth);
 - (viii) *Poisons and Therapeutic Goods Act 1966* (NSW) and *Poisons and Therapeutic Goods Regulation 2008* (NSW);
 - (ix) *Radiation Control Act 1990* (NSW) and *Radiation Control Regulation 2013* (NSW);
 - (x) regulations 7.07AA and 7.07A of the *Superannuation Industry (Supervision) Regulations 1994* (Cth); or
 - (xi) regulations 81 and 82 of the *Work Health and Safety Regulation 2011* (NSW);

- (d) a Consent relating to:
 - (i) construction temporary services;
 - (ii) construction communication services (including radios);
 - (iii) plant or equipment required on the Site;
 - (iv) Live Work;
 - (v) working at height;
 - (vi) confined access;
 - (vii) air conditioning cooling towers;
 - (viii) construction traffic or vehicle movements in respect of the agreed access points to the Site;
 - (ix) pressure vessels; or
 - (x) waste management; or
- (e) any other Consent that the State agrees is a Routine Consent.

Safety, Quality and Risk Management Plan means the Project Plan of that name referred to in the Operational Plans Schedule, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

SCP Conditions means each of the conditions set out in clause 47.3.

SCP Satisfaction Notice means the notice delivered pursuant to clause 47.4(c)(i).

Secretary of DPE means the Secretary of the NSW Department of Planning and Infrastructure.

Secretary of DPE's Requirements means the environmental assessment requirements issued by the Secretary of DPE in respect of the Project.

Secretary of Health means the Secretary of the NSW Ministry of Health.

Security Interest means any mortgage, pledge, lien, encumbrance, assignment, or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a 'security interest' as defined in section 12 of the *Personal Property Securities Act 2009* (Cth);
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Security Trust Deed means the security trust deed to be entered into between, amongst others, the Security Trustee, the Debt Financiers, the Borrower and the Operator.

Security Trustee means National Australia Bank Limited (ACN 004 044 937) and any replacement security trustee appointed in accordance with the Financing Agreements.

Senior Governance Board means the body established in accordance with clause 89A.

Sentinel Event means any unanticipated event resulting in death, or serious physical or psychological injury, to a Patient, not related to the natural course of the Patient's illness.

Separation means the process by which an Inpatient completes an Episode of Care and is discharged from the Facility.

Service Category means the Service categories relevant for the payment of the Operator as identified in the table set out in section 4(a) to the Activity Schedule.

Service Fee means the fee determined in accordance with section 2 of the Payment Schedule.

Service Handover Period means the period:

- (a) in the case of the early termination of this document in accordance with its terms, commencing on the date on which the State serves a notice of termination on the Operator and ending on the Early Handover Date; and
- (b) in the case of the natural expiry of the Operating Term, the period commencing on the date which is six months prior to the expiry of the Operating Term and ending on the last day of the Operating Term.

Service Life means the estimated lifecycle or expected period of use of an asset for its intended purpose according to Good Operating Practice and Law.

Service Network means a defined integrated network of clinical services, established to ensure timely access to appropriate care for each resident in NSW.

Services means the Clinical Services and all other services necessary to support the Clinical Services, including the Clinical Support Services and the Non-Clinical Support Services but which (for the avoidance of doubt) does not include the Patient Transfer Services or services provided to Compensable Patients.

Services Commencement Date means the day after the Date of Operational Readiness.

Services Indexation Factor means the 'Services Indexation Factor' determined in accordance with section 3.3(c) of the Payment Schedule.

Services Invoice means a tax invoice for payment in the form agreed between the parties (each acting reasonably) after the date of this document which must contain a full break down of all elements of the Monthly Service Payments and any other items reasonably requested by the State.

Services Plans means the Clinical Services Delivery Plan, the Clinical Support Services Delivery Plan, the Non-Clinical Support Services Delivery Plan, the Demand Management Plan and the TTER Plan.

Services Specification means the specification for the Clinical Services, and, to the extent set out in Schedule 14, the Clinical Support Services, as varied from time to time in accordance with this document.

Shared Clinical Areas has the meaning given to it in Schedule 22.

Shared Infrastructure has the meaning given to it in Schedule 22.

Shared Non-Clinical Areas has the meaning given to it in Schedule 22.

Shared Portion and Post-Operating Term Strategy means the Project Plan of that name referred to in the Commercial Plans Schedule, prepared in accordance with the Commercial Plan Requirements and this document, and updated in accordance with this document.

Shared Portion means those parts of any infrastructure, services, facilities and equipment on the Facility which are shown shaded in grey in the Handover Plan – Appendix A (as verified by the survey conducted pursuant to clause 32.3), and are either:

- (a) as set out in the relevant part of the Capital Cost Proposal Schedule in relation to which both the State and the Operator have made or will make capital cost contributions pursuant

to the State Allocation of Shared Portion or Operator Allocation of Shared Portion (as applicable); or

- (b) constructed or installed as part of or ancillary to any Additional Work during the Operating Term in relation to which both the State and the Operator have or will make capital cost contributions,

and which the parties intend will be used for the provision of services to both Public Patients and Compensable Patients. This includes:

- (c) Common Areas;
- (d) Shared Infrastructure;
- (e) Shared Clinical Areas; and
- (f) Shared Non-Clinical Areas.

Side Deed means each of the Construction Side Deed, the Parent Company Side Deed and each Designer Side Deed and, where the context permits, any other side deed executed in accordance with clause 58.2(b) of this document, substantially in the form of (as applicable) Schedules 25, 26, 27 and 29.

Site means the land described in Part B of Schedule 42. It includes:

- (a) the Development Site; and
- (b) the Non-Development Site,

but excludes:

- (c) the Retained Green Space;
- (d) the Extra Land;
- (e) the Excision Area (following the State's exercise of its rights under clause 7.3);
- (f) during the Development Phase, any area which ceases to be subject of the Construction Licence in accordance with clause 7.1(e)(i); and
- (g) on and from the Date of Operational Readiness, the Car Park Site subdivided pursuant to the Subdivision Plan registered pursuant to the Operational Readiness Criteria.

Site Audit Statement means a site audit statement issued in accordance with the requirements of the CLM Act or similar written confirmation issued by the Site Auditor approving the use of the Site for the purposes specified in the Stage 2 Development Consent.

Site Auditor means a person who is accredited as a site auditor under the CLM Act and is appointed by the State from time to time for the purposes of providing a Site Audit Statement in respect of the Site.

Site Conditions means the conditions of the Site (whether latent or patent), including climatic, hydrological, geological, ecological, environmental, geotechnical, archaeological, and atmospheric, surface and subsurface conditions or characteristics, physical and structural conditions on, above or in the vicinity of the Site, conditions of roads, Utilities and other structures and infrastructure and vegetation on the Site.

Site Encumbrances has the meaning given to that term in clause 8.

Site Information Documents means the documents set out in Attachment A of the Design Parameters.

Site Plan means the plan set out in Part A of Schedule 42.

Site-specific Safety Management Plan means the Project Plan of that name comprising part of the Construction Management Plan, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Special Condition means any condition of a contract of employment entered into between the Parent Company and an employee of the Parent Company engaged at the Facility which would not generally be included in industry standard contracts of employment.

Staff Migration Plan means the Project Plan of that name referred to in the Transition Plans Schedule, prepared in accordance with the Transition Plan Requirements and this document, and which, alongside each other Transition Plan, identifies certain criteria for the achievement of Final Completion.

Staff Specialist means an employee of the NSW Health Service covered by the *Staff Specialists (State) Award*.

Stage 1 Development Application means the application for Stage 1 Development Consent prepared and submitted by the State prior to the date of this document.

Stage 2 Development Application means the application for Stage 2 Development Consent attached as Exhibit 3.

Stage 1 Development Consent means:

- (a) the consent or approval granted to the State by the Development Consent Authority under the EP&A Act prior to the date of this document in respect of certain works undertaken by the State on the Site prior to the date of this document; and
- (b) any modification of it.

Stage 2 Development Consent means:

- (a) the consent or approval granted or required to be granted by the Development Consent Authority under the EP&A Act in respect of the RFP Design Proposal (being the 'concept' design for the Project and the Project Works) and including the Subdivision Plan; and
- (b) any modification of it.

Stage 2 Documents means the documents comprising any Stage 2 Development Application, including (but not limited to) the draft Stage 2 Development Application and the detailed plans, specifications and any environmental impact statement relating to the Stage 2 Development Application.

Stakeholder Engagement and Communications Strategy means the Project Plan of that name referred to in the General Plans Schedule, prepared and updated in accordance with the General Plan Requirements and this document, and comprising each of:

- (a) the 'Consumer and Carer Engagement Subplan';
- (b) the 'Clinical (Services) and Workforce Engagement Subplan'; and
- (c) the 'Community Engagement Subplan'.

State means HAC and the NSLHD.

State Allocation of Shared Portion means the amount specified in the Capital Cost Proposal Schedule as the capital cost of the Shared Portion which is paid for by the State.

State Appointed Operator has the meaning given to that term in clause 92.1.

State Asset means:

- (a) the Public Patient Portion;
- (b) the Shared Portion; and
- (c) all other improvements on the Site,

but excluding:

- (d) the Private Patient Portion; and
- (e) the Car Park.

State Asset Licence means the licence granted by the State to the Operator in accordance with clause 7.1(a)(ii).

State Capital Payment means the payment to be made by the State to the Operator on satisfaction of the SCP Conditions or otherwise as described in clause 47, being an amount which is:

- (a) the State Contract Sum; plus
- (b) the State Funded FF&E Amount as at the Date of Technical Completion; less
- (c) the amount of _____ which is the amount of the State Funded FF&E Amount which is included in the State Contract Sum.

State Capital Payment Date means the last day of the 'Interest Period' (as that term is defined in the Syndicated Facility Agreement) which is at least 30 days after the Date of Transfer Completion.

State Change Proposal means a Change Proposal issued by the State under clause 63.1 or deemed to have been issued by the State under clause 63.4.

State Contract Sum means

State Disaster Services Plan means any State emergency or disaster services plan adopted or approved by the State from time to time, including any emergency or disaster services plan adopted or approved pursuant to the *State Emergency and Rescue Management Act 1989* (NSW), the Hospitals Act or any other Law.

State Funded FF&E means:

- (a) the FF&E being funded by the State as part of the State Capital Payment, as identified in the State Funded FF&E List; and
- (b) any FF&E which replaces FF&E to which paragraph (a) refers.

State Funded FF&E Amount means the aggregate capital cost (as specified in the Capital Cost Proposal Schedule) of all FF&E specified in the State Funded FF&E List, as amended in accordance with this document.

State Funded FF&E List means Part B of the FF&E List, as updated during the Development Phase in accordance with clause 21.3. The capital cost of each item of State Funded FF&E, as at the date of its inclusion in the State Funded FF&E List, is specified in the Capital Cost Proposal Schedule.

State LD Cap means

State Nominee has the meaning given to that term in clause 1.8(a).

State Price means, subject to section 3.3 of the Payment Schedule, the 'NSW State Price' for public patient activity per NWAU or its equivalent as issued by NSW Health from time to time.

State Project Documents means:

- (a) any Project Documents to which the State is a party; and
- (b) the PAFA Act Guarantee.

State Put Option means an option for the State to require the Operator to lease the Private Patient Portion under the Post-Operating Term Private Patient Portion Lease.

State Related Party means:

- (a) the Client Representative and any other person responsible for the administration or management or implementation of the Project, or any aspect of the Project, for and on behalf of the State; and
- (b) any of the State's Employees and Agents acting in the course of his or her employment or engagement,

but excludes in each case the Operator and any Operator Related Party.

State Surveyor means a person who is a registered surveyor and who is nominated by the Client Representative and appointed by the Operator to be the State Surveyor for the purposes of this document pursuant to clause 29.3.

State Works Site Plan means the plan set out in Exhibit 4 describing the 'Western Zone' and the 'Eastern Zone' of the Site.

State's Employees and Agents means employees, agents, contractors, subcontractors, consultants and authorised officers of the State involved in the Project.

Step-In Event means:

- (a) an event or circumstance which:
 - (i) prevents the performance of the Operator's Activities under normal circumstances;
 - (ii) poses a serious threat to, or causes or is likely to cause material damage or material disruption to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any real or personal property; or
 - (D) the safe and secure performance of the Operator's Activities, the operation of the Facility or the performance of Services;
 - (iii) will require the provision of Services or alternate services materially greater than that required by the Services Specifications; or
 - (iv) requires the State to exercise any of its responsibilities or functions at Law; or
- (b) a step-in event as contemplated by clause 77.7 and clause 69.6(b),

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

Step-In Rights means the step in rights in respect of a Step-In Event set out in clause 60.3.

Subcontract means each Key Subcontract, each Material Subcontract and any other contract or agreement entered into by the Operator and / or any Subcontractor in connection with the performance of the Services, the other Operator's Activities or any part of the Services or the other Operator's Activities (including the operation of the Associated Commercial Facilities).

Subcontractor means each of the Material Subcontractors and any other subcontractor of any level (including suppliers, tradespersons, consultants and VMOs) involved in the performance of any of the Services or the other Operator's Activities (including the operation of the Associated Commercial Facilities) but excludes Consumers and Parent Company Suppliers.

Subcontractor's Statement means a Subcontractor's Statement regarding worker's compensation, payroll tax and remuneration referred to in section 175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 *Industrial Relations Act 1996* (NSW).

Subdivision Plan means a plan of subdivision of the Site to create separate lots for the Car Park Site and the remainder of the Site.

Subsidiary has the meaning given to the term 'subsidiary' in the Corporations Act, but as if 'body corporate' included any entity and for the purposes of which any beneficial interests are treated as shares.

Sunset Date means the date that falls 12 months after the Original Date for Operational Readiness as extended only in accordance with clauses 61 and 64.

Surgical Services means the services described in section 5.4 of the Services Specification.

Sustainability Requirements means the requirements specified in section 4.15 of the Design Parameters.

Sydney Water Corporation means the statutory body of that name constituted under the *Sydney Water Act 1994* (NSW).

Syndicated Facility Agreement means the syndicated facility agreement to be entered into on or about the date of Financial Close between the Debt Financiers, the Operator, the Borrower and others.

Target means each performance target set out in the 'Target' column of the KPI Table.

Target Financial Close Date has the meaning given in clause 3.2(a).

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding, including the GST (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on net overall income.

Tax Invoice has the meaning given in the GST Law.

Taxable Supply has the meaning given in the GST Law.

Technical Completion means the stage of the Project Works where all of the Technical Completion Criteria have been satisfied to the reasonable satisfaction of the Independent Verifier.

Technical Completion Certificate means a certificate issued by the Independent Verifier under clause 28.5(a), substantially in the form of the technical completion certificate set out in Schedule 4.

Technical Completion Criteria means the criteria for achieving Technical Completion of the Project Works set out in Schedule 7.

Technical Completion Outstanding Item has the meaning given to that term in clause 28.6.

Technical Completion Report means the report of that name to be prepared by the Operator which identifies each of the Technical Completion Criteria applicable to the Project Works, and provides details of the Operator's satisfaction of each of those Technical Completion Criteria.

Technical Completion Test means those tests specified in the Technical Completion Plan which are required to be successfully completed prior to Technical Completion of the Project Works, and any Additional Technical Completion Tests.

Technical Completion Plan means the plan of that name referred to in Design Parameters and the Asset Solution Plans Schedule, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Term means the period which begins on the date of this document and ends on the earlier of the Public Patient Portion Expiration Date and the Early Handover Date.

Termination Date means the date of termination of this document.

Termination Notice has the meaning given to that term in clause 78.2.

Termination Payment means a Default Termination Payment, a Voluntary Termination Payment, a Force Majeure Termination Payment or any of them (as applicable).

Termination Payment Schedule means the schedule as set out in Schedule 12.

Therapeutic Goods Administration or **TGA** means the Therapeutic Goods Administration, ABN 40 939 406 804, being a Commonwealth regulatory agency for medical drugs and devices.

Third Party Infrastructure means infrastructure, not forming part of the Project, all or any part of which is constructed, or to be constructed, on or in the vicinity of the Site.

Third Party Infrastructure Works means any development, design, demolition, remediation, refurbishment, construction and commissioning works associated with establishment of Third Party Infrastructure.

Third Party TTER Funding is defined in clause 59.13(e)(iii).

Title Document means any original, duplicate or counterpart certificate or document of title, including any land certificate of title or any share certificate.

Transfer Completion means the stage at which:

- (a) Operational Readiness has been achieved; and
- (b) where all of the Transfer Completion Criteria have been satisfied to the reasonable satisfaction of the Independent Verifier.

Transfer Completion Certificate means a certificate issued by the Independent Verifier under clause 42.3(b), substantially in the form of the transfer completion certificate set out in Schedule 4.

Transfer Completion Criteria means:

- (a) the completion criteria in respect of Transfer Completion set out in Schedule 7; and
- (b) the further criteria for Transfer Completion set out in any Transition Plan or the Project Program.

Transition Period means the period between the Date of Technical Completion and the Date of Final Completion.

Transition Plan means each of the following:

- (a) the Transition Strategy;
- (b) the Operational Readiness Plan;
- (c) the Patient Transfer Plan;
- (d) the Staff Migration Plan; and
- (e) the Final Completion Plan.

Transition Plan Requirements means, for each Transition Plan, the requirements for such Project Plan specified in Part A of the Transition Plans Schedule.

Transition Plans Schedule means Schedule 39.

Transition Report means the report of that name to be prepared by the Operator which identifies each of the criteria specified in the Transition Strategy, the Patient Transfer Plan and the Staff Migration Plan for achieving Transfer Completion and Final Completion, and provides details of the Operator's satisfaction of such criteria.

Transition Strategy means the Operator's overall strategy for the achievement of each of Operational Readiness, Transfer Completion and Final Completion, prepared in accordance with the Transition Plan Requirements and this document, and updated in accordance with this document.

Transport for NSW means the statutory body of that name constituted under the *Transport Administration Act 1988* (NSW).

Treasurer means the treasurer of the State of New South Wales.

Triage means the essential function in an emergency department to ensure that multiple Patients who present simultaneously are treated in the order of their clinical urgency (being the need for time critical intervention; not necessarily severity).

Trust Deed means the trust deed dated 29 April 2014, signed by the Operator.

Trust Fund means all the present and future undertakings, assets and rights of the Operator as trustee of the NBH Operating Trust including all real and personal property, choses in action and goodwill.

Trust Property means all present and future undertakings, assets, property and rights comprising the trust fund of the NBH Operating Trust.

Trustee's Indemnity means, in relation to the Operator and the NBH Operating Trust, the present and future rights and interest of the Operator in respect of the:

- (a) the administration of the NBH Operating Trust;
- (b) the Operator's right of indemnity from the Trust Property of the NBH Operating Trust or from any beneficiary of the NBH Operating Trust; and
- (c) the Trustee's Lien in respect of the NBH Operating Trust,

any all moneys paid or payable under or in respect of any such right or interest.

Trustee's Lien means, in relation to the Operator and the NBH Operating Trust, any equitable lien or other Security Interest held by or granted to the Operator securing the Trustee's Indemnity or any other present or future interest of it as trustee in respect of the Trust Property, the NBH Operating Trust or any beneficiary of the NBH Operating Trust.

TTER Plan means the Project Plan of that name referred to in the Operational Plans Schedule, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

TTER Resourcing Report is defined in clause 59.13(a).

TTER Services means those services specified in section 4.4 of the Services Specification and which, for the avoidance of doubt, includes the Direct TT Services, Indirect/Infrastructure TT Services, Research Services and Embedded TTER Services.

TTER Service Report is defined in clause 59.13.

TTER Services Amount is defined in clause 59.13(c)(i).

Two Entity Structure means the inclusion of Operator B as a party to this document and any rights and obligations of Operator B under this document (including without limitation the inclusion of clause 1.11), that limit, relieve or derogate from (or may limit, relieve or derogate from) the position that the Operator is at all times fully responsible for and Liable to the State for the performance of all obligations (other than obligations imposed on the State) under this document.

Type 3 Planned Expansion means the Type 3 Planned Expansion of all or a part of the Private Patient Portion in accordance with and as indicated in the Planned Expansion Plan, comprising expansion of the Facility towards the east of Clinical Services, Clinical Support Services and Non-Clinical Support Services, and as set out in a Type 3 Planned Expansion Plan.

Type 3 Planned Expansion Notice means a notice issued by the Operator to the State under clause 67B in respect of a proposed Type 3 Planned Expansion.

Type 3 Planned Expansion Plan means that part of the Planned Expansion Plan comprising the Type 3 Planned Expansion (as that term is described in the definition of Planned Expansion Plan), and otherwise as delivered in accordance with clause 67B.

Unidentified Pre-existing Contamination means any Contamination of the Site which is in existence prior to the date of this document and:

- (a) which is not identified, contemplated by or foreshadowed in:
 - (i) any Stage 2 Document;
 - (ii) any Site Information Documents; or
 - (iii) any Information Document;
 - (iv) any investigations carried out by or on behalf of Operator or any Subcontractor on the Site prior to the date of this document; and
- (b) which a competent and experienced contractor carrying out activities similar to the Operator's Activities, acting in accordance with Good Industry Practice, would not have identified.

Uninsurable means, in relation to a risk, either that:

- (a) insurance required pursuant to clause 73.1 is not available in the recognised international insurance market with reputable insurers of good standing (including the minimum credit rating specified in this document) for projects in Australia in respect of that risk at the time that insurance ought to be obtained and coverage is not available under the *Terrorism Insurance Act 2003* (Cth) or similar legislative scheme; or

- (b) the insurance premium payable for insuring that risk is at such a level, or the terms and conditions are such, that the risk is not generally being insured against in the international insurance market with reputable insurers of good standing by prudent, competent and experienced providers in Australia of services similar to the Services in respect of a similar facility at the time at which the insurance was sought to be obtained.

Uninsurable Material Risk has the meaning given to that term in clause 75.3(a).

Uninsurable Risk has the meaning give to that term in clause 75.1(b).

Urgent Care Alternate Strategies Services means those services and activities referred to in sections 4.1(i), 5.2(a)(iii) (fifth bullet point) and 5.7(a)(iii) (fourth bullet point) of the Services Specification, and any additional or substituted services and activities approved by the State in writing from time to time.

Urology Services means the services described in section 5.4(i) of the Services Specification.

Utilities means any utility service, including water, electricity, gas, telecommunications and electronic communications (including voice and data), drainage, sewerage and stormwater services.

Utility Infrastructure means all infrastructure, plant and equipment for delivering Utilities that is owned or controlled by a provider of Utilities.

Utility Service Works means works to install, vary, maintain, use, repair, alter, replace and to pass or convey Utilities through any pipes, ducts, conduits or wires leading through the Site and the construction, modification, or relocation of Utilities all of which are to be designed and constructed by the Operator.

Vascular Services means the services described in section 5.4(j) of the Services Specification.

Verification Certificate means a certificate in the form of Schedule 2.

Visitor means any person who enters the Facility or the Site (including for the purposes of attending the Facility or patronising the Car Park).

VMOs are visiting medical officers.

Voluntary Termination Payment means the payment calculated in accordance with section 4 of the Termination Payment Schedule.

Waste has the meaning given to that term in the Protection of the *Environment Operations Act 1997* (NSW).

Whole Project Base Case means the base case financial model, in the agreed form, in respect of the Project (including in respect of the Project Works and the Facility) over the Private Patient Portion Term, as amended from time to time in accordance with this document.

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

WHS Legislation means legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the *Work Health and Safety Regulation 2011* (NSW).

Work Health and Safety Management Plan means the Project Plan of that name referred to in the General Plans Schedule, prepared in accordance with the General Plan Requirements and this document, and updated in accordance with this document.

WorkCover means the WorkCover Authority of NSW constituted under the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

Workforce Matters means all matters relating to the employment or engagement of Personnel at the Facility, including but not limited to WHS incidents or issues.

Workforce Migration Committee has the meaning given to it in clause 36.1(b).

Workforce Plan means the Project Plan of that name referred to in the Operational Plans Schedule, prepared in accordance with the Operational Plan Requirements and this document, and updated in accordance with this document.

Workplace Relations Management Plan means the Project Plan of that name comprising part of the Construction Management Plan, prepared in accordance with the Asset Solution Plan Requirements and this document, and updated in accordance with this document.

Written Down Value means the amount at which an asset is recognised after deducting accumulated depreciation as determined in accordance with the Australian Accounting Standards and generally accepted industry practice.

1.2 Interpretation

In this document, headings and subheadings are for convenience only and do not affect interpretation, and the following rules apply in interpreting this document unless the context makes it clear that a rule is not intended to apply:

- (a) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (b) **person** includes an individual, body politic, the estate of an individual, a corporation, a statutory or other authority, a state, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) **party** refers to the State or the Operator, and **parties** refers to the State and the Operator;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) references to a **document** includes any agreement (as so defined) in writing or any certificate, notice, instrument or document of any kind;
- (f) a reference to a document (including this document and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, supplemented, ratified or replaced from time to time;
- (g) references to any legislation or to any section or provision of it includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, By-Laws, regulations of and other statutory instruments (however described) issued under it;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) a reference to:
 - (i) a clause, schedule, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of this document;

- (ii) a paragraph is a reference to a paragraph within the clause of this document in which that reference is situated; and
- (iii) this document includes all schedules, exhibits, attachments and annexures to it;
- (j) references to **agreement** include any Security Interest, guarantee, undertaking, deed, agreement or arrangement, whether or not in writing;
- (k) references to writing include any means of representing or reproducing words, figures, drawings or symbols in a tangible and permanently visible form;
- (l) references to conduct include an omission, statement or undertaking, whether or not in writing;
- (m) references to the State, an authority, institute, association, instrumentality, statutory body or body politic (each a person) are:
 - (i) if that person is reconstituted, renamed or replaced, deemed to refer to that person as reconstituted, renamed or replaced;
 - (ii) if the powers or functions of that person are transferred to, or assumed by, another person, deemed to refer to that other person; or
 - (iii) if that person ceases to exist, deemed to refer to the person which substantially serves the same purpose or object of that person who has ceased to exist;
- (n) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (o) if the day on or by which anything is to be done under this document is not a Business Day, that thing must be done no later than the next Business Day;
- (p) except as otherwise provided in this document or a reference is made to 'Business Days', **day** means a calendar day;
- (q) except as otherwise provided in this document, a reference to a **month** is a reference to a calendar month;
- (r) except as otherwise provided in this document, a reference to a **year** is a reference to a calendar year;
- (s) where a right or remedy is conferred on the State under this document, that right or remedy is in addition to, and not in substitution of or to be limited or affected by, a right or remedy conferred on the State in another provision of this document or otherwise at Law, unless expressly stated;
- (t) the expressions 'including', 'includes' and 'include' have the meaning as if followed by 'without limitation';
- (u) the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (v) all accounting terms used in this document will have the meaning given to those terms under, and all calculations and determinations as to financial matters will be made in accordance with, accounting principles and practices generally accepted in Australia from time to time consistently applied;
- (w) if more than one requirement is imposed on the Operator whether under this document or otherwise applies in respect of any part of the Project, then, without limiting clause 1.3, all requirements must be satisfied. If there are requirements that are mutually exclusive, then

the requirement which imposes the highest standard on, or is otherwise most stringent or exacting in its requirements of, the Operator is to apply;

- (x) any provision of this document which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law;
- (y) the term 'may' when used in the context of a power or right exercisable by the State or a delegate of the State means the State or its delegate or its delegate (as applicable) can exercise that right or power in its sole and absolute discretion and the State or its delegate (as applicable) has no obligation to the Operator to do so;
- (z) a reference to \$ or **dollar** is to Australian currency;
- (aa) a reference to time is a reference to Sydney time;
- (bb) except as otherwise provided, a reference to an amount in this document is a reference to the amount excluding GST;
- (cc) a provision which is expressed to be 'subject to' another provision of this document will apply without limiting the operation of the other provision;
- (dd) references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (ee) nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or any part of it; and
- (ff) all warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Operator in the Project Documents are cumulative and none will be given a limited construction by reference to any other.

1.3 Resolution of ambiguities

- (a) (**Inconsistency**) If there is any ambiguity, discrepancy or inconsistency:
 - (i) within or between any provisions of this document;
 - (ii) within or between any provisions of any other Project Document; or
 - (iii) within or between any provisions of this document and any provisions of any other Project Document,

subject to clause 1.3(d), the interpretation which prevails, to the extent of the ambiguity, discrepancy or inconsistency, is that which imposes the higher standard on, or is otherwise more stringent or exacting in its requirements of, the Operator.

- (b) (**Notification of inconsistency**) Subject to clause 1.3(a), if the Operator identifies an ambiguity, discrepancy or inconsistency:
 - (i) within or between any provisions of this document;
 - (ii) within or between any provisions of any other Project Document; or
 - (iii) within or between any provisions of this document and any provisions of any other Project Document,

it must provide written details of the ambiguity, discrepancy or inconsistency to the State as soon as possible and in no case later than five Business Days after becoming aware of the ambiguity, discrepancy or inconsistency and:

- (iv) it must provide such written notice in accordance with this clause 1.3(b) prior to taking any further action in relation to the relevant item; and
 - (v) such written notice must include the Operator's proposed resolution (in accordance with clause 1.3(a)) to the ambiguity, discrepancy or inconsistency.
- (c) **(Client Representative to direct the Operator)** Following service of a written notice by either party, the Client Representative will, within 20 Business Days, direct the Operator as to how to resolve the ambiguity, discrepancy or inconsistency in accordance with clause 1.3(a), and the Operator:
- (i) must comply with any such direction; and
 - (ii) is not entitled to make any Claim arising from in or connection with any direction, or failure to give a direction, under this clause 1.3(c).
- (d) **(Inconsistency between Financiers Tripartite Deed and other Project Documents)** If there is an ambiguity, discrepancy or inconsistency between the Financiers Tripartite Deed and any other Project Document, the Financiers Tripartite Deed prevails to the extent of the ambiguity, discrepancy or inconsistency.
- (e) **(Annual Notice)** If there is a discretion in relation to the inclusion, exclusion, applicability or relevance of any aspect of a Health Service which is described in the Role Delineation, the State may in its Annual Notice or otherwise by written notice to the Operator during or prior to an Operating Year, specify the extent to which the Operator must comply with that aspect of the Role Delineation in relation to the provision of the Health Services during the relevant Operating Year.

1.4 PPP Policy and Guidelines

- (a) In respect of the principles and other guidance materials published from time to time by the Australian government under its National Public Private Partnership Policy and Guidelines or the NSW Government under its NSW PPP Guidelines, or any related policies, however named, which deal with public and private sector partnerships and arrangements for the provision of infrastructure and services (collectively, the **Principles**):
- (i) this document and the Project Documents do not purport to, and do not incorporate, the Principles;
 - (ii) to the extent any particular Principles are expressly incorporated into the provisions of the Project Documents, they may not be, and are not required to be, incorporated in identical terms to the Principles as published by the Australian government or the NSW Government; and
 - (iii) except to the extent expressly incorporated in this document or the Project Documents, the Principles will not be implied into the terms of this document or the Project Documents.
- (b) The Operator acknowledges and agrees to the matters stated in clause 1.4(a).

1.5 Schedules 34 to 41, 43, 44, 45, 47, Exhibits and Project Plans

The Operator acknowledges and agrees that:

- (a) Schedules 34 to 41 (inclusive) (which include, for the avoidance of doubt, the Initial Project Plans), Schedules 43 to 45 (inclusive), Schedule 47, Exhibits 1 to 4 (inclusive) to this document and the Project Plans are documents that were required to be prepared by the Operator in accordance with the RFP and this document; and

- (b) any obligations on the State or a State Related Party in Schedules 34 to 41 (inclusive) (which include, for the avoidance of doubt, the Initial Project Plans), Schedules 43 to 45 (inclusive), Schedule 47, Exhibits 1 to 4 (inclusive) or the Project Plans will not be binding on the State or any State Related Party unless a corresponding obligation is expressly imposed on the State under clauses 1 to 98 of this document, or Schedules 1 to 33, 42 or 46 to this document or any other Project Document.

1.6 Indexation

- (a) Unless otherwise specified in the Payment Schedule, all amounts to be 'Indexed' under this document are indexed by multiplying the relevant number by the relevant CPI multiplier.
- (b) For the purpose of clause 1.6(a), the relevant CPI multiplier will be the CPI MHS, the CPI Multiplier Quarterly (C) or the CPI Multiplier Annual (C) (as the case may be) where specified in this document.

1.7 Changes to indexes

The following rules apply to all indexation under this document unless otherwise specified in the Payment Schedule:

- (a) if there is a change in the coverage of the index from that applying at the date of this document and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and:
 - (i) there is a change in its coverage and it is not linked to another index; or
 - (ii) there is a change in its periodicity,the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine:
 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term's use in this document,and that determination is final and binds the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this document and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this document, in terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this document and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not provide a conversion factor, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this document, and that calculation is final and binds the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) publishes another index which is:
 - (i) a replacement of that index; and

- (ii) linked to the index,

the defined term must be re-calculated to the same reference base as the replacement index;

- (f) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this document, and that calculation is final and binds the parties;
- (g) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binds the parties; and
- (h) if a Change in Law causes a material aberration in the index, the index will be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined by an independent expert in accordance with clause 87.

1.8 Novation to State Nominee

The parties acknowledge that:

- (a) each of HAC and the NSLHD may separately, at any time, elect to novate its rights and obligations under this document to any nominee being an agency of the NSW Government (**State Nominee**) provided that the State Nominee's rights and liabilities will be supported by a guarantee from the NSW Government on terms no less favourable than those contained in the PAFA Act Guarantee;
- (b) if HAC or the NSLHD elects to novate its rights and obligations under this document to a State Nominee:
 - (i) the Operator consents to that novation;
 - (ii) the Operator 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) and the State Nominee) to give effect to that novation;
 - (iii) from the date of such novation, all references to 'the State' in this document will be deemed to include reference to the State Nominee in place of HAC or the NSLHD (as applicable); and
 - (iv) 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.

1.9 No obligation to review

- (a) Neither the State nor the Client Representative assumes or owes any duty of care or other responsibility to the Operator to review, or if it does review it, in reviewing, any document, plan (including any Project Plan), agreement, report, Consent, notice or other communication submitted by the Operator pursuant to any Project Document for errors, omissions or compliance with any Project Document.

- (b) No review of, comments upon, or notice in respect of, or any failure to review, comment upon or give any notice in respect of, any such document, plan (including any Project Plan), agreement, report, Consent, notice or other communication submitted by the Operator or any other direction, comment, acceptance, rejection or other act or omission of the State or the Client Representative will:
 - (i) relieve the Operator from, or alter or affect, the Operator's liabilities, obligations or responsibilities whether under any Project Document or otherwise according to Law;
 - (ii) impose any duty of care or other responsibility on the State whether under any Project Document or otherwise according to Law; or
 - (iii) prejudice or limit the State's rights against the Operator whether under any Project Document or otherwise according to Law.

1.10 Reasonable endeavours

If the State is required under the terms of this document to exercise 'best endeavours', 'reasonable endeavours', 'act reasonably' or give 'reasonable assistance', the Operator acknowledges that:

- (a) the State will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) the State cannot guarantee the relevant outcome; and
- (c) the State, by undertaking to exercise 'reasonable endeavours', 'act reasonably' or give 'reasonable assistance', does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Documents if the State regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the interests of the Project Documents; or
 - (iv) act in any other way that the State regards as not in the public interest.

1.11 Relations between Operator B and Operator

- (a) Operator B appoints the Operator to act as its agent under and in connection with the design and construction of the Project Works in accordance with this document (**Agent Powers**). The Operator acknowledges that all design and construction obligations it accepts under this document (which includes, for the avoidance of doubt, all obligations under this document for which corresponding obligations exist under, or which are the subject of, the Construction Contract), it accepts as agent for Operator B, as contemplated under this clause 1.11.
- (b) Operator B authorises the Operator to do all things which this document requires in respect of, or which are incidental or ancillary to, the Agent Powers.
- (c) The parties agree and acknowledge that where both the Operator and Operator B are subject of an obligation under a State Project Document, it will not be a defence to, or prejudicial to, any Claim, breach of obligation (however described), Operator Event of Default, Operator Termination Event or other right or remedy of the State under the State Project Documents against either the Operator or Operator B if either or both of the Operator or Operator B, or that an act or omission of either the Operator or Operator B,

has caused or contributed to any Claim, breach of obligation (however described), Operator Event of Default or Operator Termination Event.

- (d) For the avoidance of doubt, the Construction Licence granted pursuant to clause 7.1(a)(i) is granted to the Operator in its capacity as agent for Operator B and in its personal capacity as the long term operator of the Facility.

1.12 Two Entity Structure

- (a) The parties agree and acknowledge that the Two Entity Structure is not intended to, and the Project Documents will be construed so as not to, increase the risks or Liabilities (whether actual or contingent) for or of the State in relation to the Project.
- (b) If the State (acting reasonably) believes that the Two Entity Structure results or is likely to result in any increase in the risks or Liabilities (whether actual or contingent) for the State in relation to the Project solely as a result of the Two Entity Structure, the State may give the Operator a notice requiring the Two Entity Structure to be amended to the extent necessary to ensure there is no such increase in the risks or Liabilities (whether actual or contingent) to the State.
- (c) The Operator agrees to do anything reasonably requested by the State in a notice given under paragraph (b), or otherwise modify the Two Entity Structure to ensure that there is no increase in the risks or Liabilities (whether actual or contingent) for the State in relation to the Project solely as a result of the Two Entity Structure.

2. Project parameters

2.1 Project Objectives

The State and the Operator acknowledge and agree that their strategic objectives for the Project are to:

- (a) deliver the best quality integrated health services and clinical outcomes to the community of the Northern Beaches area of Sydney and the State;
- (b) integrate health care to Public Patients and Compensable Patients from a single Facility to maximise the range and breadth of services available to the community of the Northern Beaches of Sydney;
- (c) provide health care teaching, training, education and research within the Facility as part of the NSLHD;
- (d) consolidate existing health services in the Frenchs Forest location to create critical mass, thus improving accessibility to health services;
- (e) deliver an integrated public and private health care facility to maximise the range and breadth of health services available to the community of the Northern Beaches area of Sydney; and
- (f) to address the demand and cost impact of current and future health services by enabling a sustainable health system by changing the patterns of supply and demand. This will be achieved by utilising the location of the Facility, its operational and design innovation and digital hospital technologies.

2.2 Purpose of this document

The purpose of this document is to achieve the Project Objectives and to:

- (a) provide for the performance of the Services, and the finance (during the Development Phase), design, construction, management, maintenance and operation of the Facility; and

- (b) ensure that:
 - (i) Services are continuously provided at all times during the Term;
 - (ii) the Facility is and continues to be Fit for Intended Purpose; and
 - (iii) the Facility is operated by the Operator, having regard to the Project Objectives.

2.3 Adherence to Project Objectives

- (a) Each party must, in accordance with and subject to the provisions of this document, perform its obligations under this document having regard to the Project Objectives.
- (b) Where a party to this document (the **First Party**) is entitled to assert against the other party to this document any claim or to obtain any benefit, relief or remedy, pursuant to or arising out of this document, the First Party will be obliged to take reasonable and appropriate steps to mitigate, prevent or eliminate the effects of the event or circumstance in respect of which the claim, benefit, relief or remedy has arisen including:
 - (i) the provision of Services in accordance with clauses 61(c) or 62(d) (as applicable); and
 - (ii) where the First Party is the Operator, comply with all reasonable directions of the State concerning the subject of the claim, benefit, relief or remedy or its consequences.

The other party's Liability to the First Party will be reduced to the extent the First Party fails to comply with its obligations under this paragraph (b).

2.4 Operator acknowledgments

- (a) The Operator acknowledges that, except as expressly provided by this document, no representation, warranty or advice of any kind has been or is given by or on behalf of the State or any of the State Related Parties in respect of the accuracy, adequacy, suitability, completeness, fitness for purpose or current application of the Information Documents and that no State Related Party assumes any duty of care or other responsibility for any such Information Document or any other information, data or material.
- (b) The Operator hereby releases and, in respect of clause 2.4(b)(i) indemnifies, the State and each State Related Party, on demand, from and against any Loss or Claim incurred, suffered or arising from:
 - (i) any reliance or use by the Operator or any Operator Related Party on Information Documents, including any information, data or material which is 'misleading or deceptive' (within the meaning of those terms in section 18 of schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of state or territory legislation);
 - (ii) any ambiguity, discrepancy, inconsistency, inaccuracy, omission, unsuitability, unfitness for any purpose or inadequacy or incompleteness of any kind whatsoever in the Information Documents; and
 - (iii) any failure to make available to the Operator any information, data, material or other information relating to the Project except where such failure constitutes a breach by the State or a State Related Party (as applicable) of its express obligations under a Project Document.
- (c) The Operator warrants that prior to the date of this document, it:

- (i) satisfied itself that there is nothing in the Services Specification, the Services Plans, the Design Parameters or the RFP Design Proposal which is ambiguous, constitutes a discrepancy or is inconsistent with, or would prevent it from performing and satisfying, its obligations under this document, and that there is no ambiguity, discrepancy, inconsistency, inaccuracy, omission, unsuitability, unfitness for any purpose or inadequacy, incompleteness, defect or omission in the Services Specification, the Services Plans or the Design Parameters which may prevent Services being provided in accordance with this document or the Facility from being Fit for Intended Purpose;
- (ii) examined this document, the Site, and any other information that was made available by the State, or any other person on behalf of the State, to the Operator for the purpose of submitting a proposal for the Project;
- (iii) examined, and relied solely upon its own investigations, assessment, skill, expertise and enquiries in respect of all information relevant to the risks, contingencies and other circumstances having an effect on its proposal for the Project and its obligations under the Project Documents;
- (iv) satisfied itself as to the correctness and sufficiency of its proposal, including the RFP Design Proposal, to satisfy its obligations under the Project Documents, has made adequate allowance for the costs of complying with all the obligations of the Operator, and of all matters and things necessary for the performance of the Services, the due and proper performance and completion of the Project Works and the operation of the Facility in accordance with the Project Documents;
- (v) informed itself of all matters relevant to the employment of labour in the provision of Services, and at the Site, the Extra Land, the Project Works and the Facility and all industrial matters relevant to the provision of Services, and relevant to the Site, the Extra Land, the Project Works, the Facility and the operation of the Facility; and
- (vi) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (A) relating to the subject matter of Information Documents; and
 - (B) for design purposes and otherwise,
 and for this purpose was given access to such parts of the Site as it required.
- (d) The Operator:
 - (i) acknowledges that the Information Documents do not form part of this document;
 - (ii) warrants that it did not in any way rely upon:
 - (A) any Information Document or any other information, data, representation, statement or document made, or provided to the Operator, by the State or anyone on behalf of the State; or
 - (B) the accuracy, adequacy, suitability, fitness for purpose or completeness of such Information Document or any other information, data, representation, statement or document,
 for the purposes of entering into this document;
 - (iii) agrees that it enters into this document solely based on its own independent investigations, interpretations, deductions, information and determinations; and

- (iv) acknowledges that it is aware that the State has entered into this document relying upon the warranties, acknowledgments and agreements in this clause 2.4.
- (e) The Operator acknowledges and agrees that:
 - (i) the Operator accepts full liability for the Services Specifications, the Services Plans and the Design Parameters, and for the performance of its obligations under the Project Documents and it will not be relieved of any of its obligations under this document, or otherwise arising out of or in connection with the Project, notwithstanding:
 - (A) that the Design Parameters, the Services Specification and Schedules 37 to 41 (inclusive) were proposed by the State;
 - (B) the review by the State at any time (including prior to the date of this document) of the Services Plans;
 - (C) the existence, in the Design Parameters, the Services Specification or the Services Plans, of requirements which are ambiguous, constitute a discrepancy or are inconsistent with, or compliance with which would prevent the Operator from performing and satisfying, its obligations under this document; or
 - (D) the existence of, or any ambiguity, discrepancy, inconsistency, inaccuracy, omission, unsuitability, unfitness for any purpose, incompleteness, defect or omission in, the Design Parameters, Services Specification or the Services Plans which may prevent:
 - (I) Services being provided in accordance with this document;
 - (II) the procurement of Approval in Principle or the Hospital Licence; or
 - (III) the Facility (as constructed or refurbished) from being Fit for Intended Purposes;
 - (ii) the Operator has been given full and adequate opportunity to undertake a review and investigation of the Design Parameters and Services Specification, and Project Documents, and identify and correct all such ambiguities, discrepancies, inaccuracies, omissions, unsuitabilities, unfitness for any purpose, inadequacies, incompleteness, inconsistencies, defects and omissions, prior to the date of this document; and
 - (iii) the Operator will not, subject to the express provisions of this document to the contrary, be entitled to any compensation or relief under the Project Documents as a result of any such ambiguities, discrepancies, inaccuracies, omissions, unsuitability, unfitness for any purpose, inadequacies, inconsistencies, defects or omissions.
- (f) The Operator acknowledges and agrees that neither the State nor any State Related Party has any liability for any damage, expense, Loss or Liability which the Operator suffers or incurs in respect of the incorrectness, inadequacy, unsuitability, or inaccuracy of any assumption by any person made in the calculation of the investment in the Project or elsewhere relating to:
 - (i) taxation requirements;
 - (ii) the availability of taxation rulings;

- (iii) Project revenue, including the demand for clinical services from Compensable Patients; or
- (iv) Project costs, including the costs of providing the Services, financing (during the Development Phase), designing, constructing, commissioning and maintaining the Project Works and the Facility, and operating the Facility,

except where that incorrectness, inadequacy, unsuitability or inaccuracy is due to, or constitutes, a Compensation Event or the Operator is otherwise expressly entitled to compensation under this document.

2.5 Appointment of Operator

- (a) The State appoints the Operator to carry out the Project in accordance with and subject to the terms of the Project Documents.
- (b) Subject to clause 3, this document, and the rights and obligations of the parties under it, will take effect on the execution of this document by the parties.

2.6 Compliance with Law

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

2.7 Project risks

Unless otherwise expressly provided in this document, the Operator accepts all risks in connection with the Project, including as to:

- (a) clinical responsibility for all Services and services to Compensable Patients;
- (b) the demand for services among Compensable Patients;
- (c) the demand for, and actual volume of, Services and the requirements of the Activity Profile, the Services Specification and the Role Delineation in respect of such Services;
- (d) its rights in respect of the Private Patient Portion being contingent on its performance of its obligations under the Project Documents, including in relation to the Services;
- (e) the establishment, closure or modification of any (public or private) hospital, health facility or health service within New South Wales or the NSLHD;
- (f) changes to Law relating to private health insurance, or the private health insurance market;
- (g) the procurement and requirements of, and changes to, the Approval in Principle and the Hospital Licence;
- (h) attracting and retaining an appropriately skilled workforce at all times during the Term and the Private Patient Portion Term;
- (i) carrying out all elements of the Project;

- (j) the condition of the Site as at the date of this document;
- (k) whether or not the Site is suitable for the Project or the Project Works;
- (l) Environmental Liabilities;
- (m) increases in the price of FF&E from the price set out in the Capital Cost Proposal Schedule;
- (n) whether the actual cost of the Project is greater than the cost of the Project as estimated by the Operator;
- (o) whether the actual revenue and profit derived by the Operator from the Project is less than the revenue and profit from the Project estimated by the Operator;
- (p) the interface between the Operator, the Parent Company and any State Appointed Operator;
- (q) obtaining and maintaining all necessary Consents; and
- (r) obtaining all necessary additional consents or approvals from Authorities.

2.8 Exclusion of Civil Liability Act 2002 (NSW)

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

2.9 Acts or omissions of the Operator

Without limiting clause 2.7, if a State Project Document confers on the Operator a right to make a Claim against the State or State Related Parties, the Operator is nonetheless barred from making any such Claim to the extent that the event for which the Operator is entitled to bring a Claim was caused or contributed to by any:

- (a) negligent act or omission of the Operator or an Operator Related Party; or
- (b) breach by the Operator or an Operator Related Party of any State Project Document.

2.10 Car Park and Associated Commercial Facilities

The Operator acknowledges that:

- (a) the State has no liability for any Claim or Loss, delay or any other effects which the Operator suffers or incurs in connection with any act or omission of:

- (i) the Car Park Operator or other counterparty to the Car Park Management Deed (or their assignees or successors); or
 - (ii) any operator (or its assignee or successor) of an Associated Commercial Facility who is party to a sublease or other document entered into by the Operator; and
- (b) each of the Car Park Operator, any other counterparty to the Car Park Management Deed or the operator of an Associated Commercial Facility (or their assignees or successors) is relying upon the Operator to perform its obligations under this document to enable them to perform to their respective obligations to State.

2.11 State works

- (a) The State must:
- (i) complete the works specified in Exhibit 4 in respect of the 'Western Zone' (as shown in the State Works Site Plan) and obtain a clearance certificate under the *Work Health and Safety Regulation 2011* (NSW) or equivalent replacement Legislation in respect of any asbestos in the 'Western Zone' by no later than 2 February 2015; and
 - (ii) complete the works specified in Exhibit 4 in respect of the 'Eastern Zone' (as shown in the State Works Site Plan) and obtain a clearance certificate under the *Work Health and Safety Regulation 2011* (NSW) or equivalent replacement Legislation in respect of any asbestos in the 'Eastern Zone' by no later than 2 March 2015.
- (b) Despite anything to the contrary in this document or another State Project Document:
- (i) the Construction Licence shall exclude the 'Western Zone' (as shown in the State Works Site Plan) until 2 February 2015;
 - (ii) the Construction Licence shall exclude the 'Eastern Zone' (as shown in the State Works Site Plan) until 2 March 2015; and
 - (iii) the Construction Contractor will not be entitled to accept its appointment as principal contractor pursuant to clause 59.11 until:
 - (A) in respect of the 'Western Zone' (as shown in the State Works Site Plan), 2 February 2015; and
 - (B) in respect of the 'Eastern Zone' (as shown in the State Works Site Plan), 2 March 2015.

3. Conditions Precedent

3.1 Commencement of obligations

- (a) The rights and obligations of the parties under this document (other than under this clause 3.1 and clause 3.2) will not commence unless and until:
- (i) this document and the other Project Documents entered into or to be entered into by the State have received the approval of the Treasurer of New South Wales under section 20 of the PAFA Act; and
 - (ii) the PAFA Act Guarantee has been executed by the NSW Government and the State.

- (b) The rights and obligations of the parties under clauses 1, 2, 3, 5, 6, 58, 70, 85, 86, 87, 88, 89, 96, 97 and 98, and the Schedules to the extent necessary to give effect to those clauses, will commence on the date of this document.
- (c) The rights and obligations of the parties under this document and each other Project Document which have not commenced pursuant to clause 3.1 will commence when the Conditions Precedent have been:
 - (i) satisfied; or
 - (ii) other than in respect of item 17 of Schedule 1, waived in writing by the State.

3.2 Satisfaction of Conditions Precedent

- (a) The Operator must procure the satisfaction of the Conditions Precedent (other than item 17 of Schedule 1) by 5.00pm on the date which is 35 Business Days after the date of this document or such later date as the Client Representative may specify in accordance with this document (**Target Financial Close Date**).
- (b) If the Conditions Precedent (other than item 17 of Schedule 1) have not been satisfied (or waived in writing by the State) by 5.00pm on the Target Financial Close Date, the Client Representative may:
 - (i) terminate this document and each other Project Document at any time after the Target Financial Close Date and this document will then be without further effect, except, subject to clause 3.2(c), in relation to rights and obligations arising before such termination; or
 - (ii) extend the Target Financial Close Date.
- (c) If this document is terminated pursuant to clause 3.2(b)(i) then no party will have any Claim against any other party under or in respect of the Project Documents or in respect of any Loss suffered or incurred in connection with the Project, except for any Claim arising from or in relation to a breach of any provision of this document referred to in clause 3.1(a).
- (d) The Operator must notify the Client Representative promptly of each Condition Precedent that the Operator considers to be satisfied. The Client Representative must then promptly give the Operator written notice as to whether it agrees that the Condition Precedent has been satisfied.
- (e) Other than in respect of a Designer who is a party to a Designer Side Deed delivered to the State in accordance with item 1 of Schedule 1, the Operator undertakes to:
 - (i) procure a Designer Side Deed from each Key Designer, validly executed by all parties to it (other than the State) and delivered; and
 - (ii) provide at least one original of that document to the State,
within:
 - (iii) three months of Financial Close in the cases of ACOR Consultants Pty Ltd and Aurecon; or
 - (iv) 10 Business Days of the relevant Key Designer being formally engaged by the Operator or a Key Subcontractor, in respect of any other Key Designer.

4. Hospital Licensing

4.1 Operator to pursue and maintain Approval in Principle, Hospital Licence

- (a) The Operator must:
 - (i) diligently pursue, or procure that the Parent Company diligently pursues:
 - (A) Approval in Principle; and
 - (B) subsequently, a Hospital Licence,each in a form and substance sufficient to provide the Services and services to Compensable Patients at the Facility in accordance with this document;
 - (ii) during the Development Phase, provide quarterly written progress updates to the Client Representative in respect of the procurement of a Hospital Licence;
 - (iii) at all times during the Development Phase, maintain the Approval in Principle (including by procuring timely extensions of it);
 - (iv) procure a Hospital Licence as a condition precedent to Operational Readiness; and
 - (v) at all times during the Operating Term and, subsequently during the remainder of the Private Patient Portion Term, maintain a Hospital Licence.
- (b) The Operator must promptly notify the Independent Verifier and the Client Representative upon the successful procurement of:
 - (i) the Approval in Principle (or any extension of it); and
 - (ii) a Hospital Licence.
- (c) The Operator must promptly notify the Client Representative if the Approval in Principle or the Hospital Licence lapses or an extension request in respect of it is not granted.
- (d) Notwithstanding the achievement of Technical Completion or the satisfaction of the Operational Readiness Criteria, the parties acknowledge and agree that each of:
 - (i) the procurement of a Hospital Licence by the Operator or the Parent Company; and
 - (ii) the notification required to be made pursuant to clause 4.1(b)(ii),are conditions precedent to achieving Operational Readiness.

4.2 Operator acknowledgments

- (a) The Operator acknowledges that no representation, warranty or advice of any kind has been or is given by or on behalf of the State or any of the State Related Parties in respect of:
 - (i) the procurement of Approval in Principle or a Hospital Licence; or
 - (ii) the accuracy, suitability, fitness for purpose, completeness or adequacy of the RFP Design Proposal, any other Design Documentation or other documentation or materials prepared by or on behalf of the Operator or the Parent Company in connection with the procurement of Approval in Principle or a Hospital Licence.
- (b) The Operator acknowledges that by entering into this document, it is solely responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:

- (i) the procurement of Approval in Principle and a Hospital Licence;
 - (ii) addressing, during the Design Development Process, any conditions to which Approval in Principle is subject;
 - (iii) the requirements of this document in respect to the design of the Facility (or any part of it) conflicting with the requirements of the Licensing Authority such that the requirements of this document would prevent the procurement (or extension, if applicable) of Approval in Principle or the Hospital Licence;
 - (iv) ensuring that Approval in Principle remains current at all times until a Hospital Licence is issued; and
 - (v) ensuring that a Hospital Licence remains in force at all times on and from Operational Readiness.
- (c) The Operator warrants that, prior to the date of this document, it:
- (i) satisfied itself that there is nothing in this document (including the Services Specification, Role Delineation, the Services Plans, the other Project Plans, the Design Parameters or the RFP Design Proposal which is inconsistent with, or would prevent it from procuring, Approval in Principle or a Hospital Licence in the manner and in accordance with the requirements in this document;
 - (ii) prepared its RFP response, developed its proposed model of Patient care in respect of the Facility, and prepared and progressed the RFP Design Proposal, each in accordance with the requirements of the Licensing Authority in respect of the procurement of the Approval in Principle and a Hospital Licence;
 - (iii) examined, and relied solely upon its own investigations, assessment, skill, expertise and enquiries in respect of all information relevant to the risks, contingencies and other circumstances having an effect on its capacity to procure or maintain Approval in Principle and a Hospital Licence;
 - (iv) satisfied itself as to the correctness and sufficiency of its proposal (including the RFP Design Proposal, all other Design Documentation and the Project Plans) to satisfy the Accreditation Requirements and, in respect of the procurement of Approval in Principle and a Hospital Licence, the requirements of the Licensing Authority, and has made adequate allowance for the costs of complying with such requirements;
 - (v) informed itself of all matters relevant to the procurement of Approval in Principle and a Hospital Licence; and
 - (vi) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the Services Specification, Role Delineation, the Design Parameters, the RFP Design Proposal and otherwise its obligations under this document, in each case by reference to the Accreditation Requirements and, in respect of the procurement of Approval in Principle and a Hospital Licence, the requirements of the Licensing Authority.
- (d) The Operator acknowledges that it is aware that the State has entered into this document relying upon the warranties, acknowledgments and agreements in this clause 4.2.
- (e) The Operator has no Claim against the State or any State Related Party in respect of any breach by the Operator of this clause 4.2.

5. General representations, warranties and undertakings

5.1 Representations and warranties

- (a) **(By the State)** The State represents and warrants that:
- (i) it has the power to execute, deliver and perform its obligations under the Project Documents and all necessary action has been taken to authorise such execution, delivery and performance;
 - (ii) the Project Documents to which the State is party are the State's valid and binding obligations enforceable against the State in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, Laws relating to the enforcement of creditors' rights;
 - (iii) the execution, delivery and performance of the Project Documents to which the State is a party by the State will not contravene any Law to which the State is subject; and
 - (iv) subject to the Reserved Matters, the State has or will have full and proper right to use, licence and lease the Site and the Facility for the purposes of the Project in accordance with the Project Documents to which it is a party.
- (b) **(By the Operator and Operator B)** The Operator and Operator B each represent and warrant that:
- (i) it is a company, duly incorporated in Australia and is existing under Australian law;
 - (ii) it has the capacity and power to execute, deliver and perform its obligations under the Project Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (iii) in respect of the Operator only, the information provided by the Operator to the State or the State's Employees and Agents in connection with the Project Documents is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
 - (iv) the legal and beneficial ownership of each member of the Operator Group, and the Operator Group structure, are as set out in Schedule 34, subject to changes consented to by the State in accordance with clause 86.2;
 - (v) the Project Documents to which the Operator or Operator B (as applicable) is a party are the Operator's or Operator B's (as applicable) valid, legal and binding obligations enforceable against the Operator or Operator B (as applicable) in accordance with their terms subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
 - (vi) the execution, delivery and performance of the Project Documents by the Operator and Operator B (as applicable) will not contravene any Law to which the Operator is subject, or any deed or arrangement binding on the Operator or Operator B (as applicable);
 - (vii) each of the Operator and Operator B has not at any time since its incorporation and does not conduct any business other than the Project;
 - (viii) except as specified in this document, it is not acting as trustee of any settlement or as agent for or on behalf of any other entity;

- (ix) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
 - (x) neither the Operator nor Operator B (as applicable) is in default of its obligations under any Project Document to which the Operator or Operator B (as applicable) is expressed to be a party;
 - (xi) no Operator Termination Event has occurred and is continuing;
 - (xii) no circumstances, proceedings or obligations exist or are threatened which may have a material adverse effect upon the Operator or Operator B (as applicable) or its ability to perform its financial or other obligations under any Project Document or Subcontract to which the Operator or Operator B (as applicable) is expressed to be a party;
 - (xiii) prior to the date of this document, it had no knowledge of any part of the proposal by any other proponent for the Project and has not directly or indirectly communicated any part of its proposal for the Project to any other proponent; and
 - (xiv) it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Project to the effect that it will pay money to or confer any benefit upon any other proponent as a result of entering into this document or providing its proposal for the Project.
- (c) Each representation and warranty contained in this document:
- (i) is made on the date of this document; and
 - (ii) other than those contained in clauses 5.1(b)(iv), 5.1(b)(xiii) and 5.1(b)(xiv), will be deemed to be repeated on the date of Financial Close and on each anniversary of the date of this document,
- with references to the facts and circumstances then subsisting.
- (d) Each party enters into this document in reliance upon the warranties and representations made by the others in this document.

5.1A Additional trustee warranties by the Operator

The Operator represents and warrants to the State that:

- (a) it has been validly appointed as trustee of the NBH Operating Trust;
- (b) it is the only trustee of the NBH Operating Trust;
- (c) no action has been taken or is proposed to remove it as trustee of the NBH Operating Trust;
- (d) it is not in default under the Trust Deed or any of the documents constituting or governing the NBH Operating Trust;
- (e) no action has been taken, or is proposed to terminate or wind up the NBH Operating Trust;
- (f) the copies of the Trust Deed and other documents constituting or governing the NBH Operating Trust which have been delivered to the State are true copies of those documents, are not inaccurate and contain the documents and records relevant to the terms of the NBH Operating Trust;

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

5.2 Fit for Intended Purposes warranty

- (a) Without limiting its other obligations under this document, the Operator warrants that:
 - (i) as at and from the Date of Operational Readiness and for the duration of the Term, the Public Patient Portion, the Shared Portion and the Car Park will be Fit for Intended Purposes by reference to the Law, technology and intended use of the Public Patient Portion, the Shared Portion and the Car Park as at the Date of Operational Readiness; and
 - (ii) as at and from the Date of Operational Readiness and for the duration of the Private Patient Portion Term, the Private Patient Portion will be Fit for Intended Purposes by reference to the Law, technology and intended use of the Private Patient Portion as at the Date of Operational Readiness.
- (b) The Operator acknowledges and agrees that to the extent that the Design Parameters, the Services Specification, Licensing Authority requirements or the Hospital Licence specifies or prescribes a minimum requirement, the performance of Services, or the delivery of the Public Patient Portion, the Private Patient Portion, the Car Park and the Shared Portion in compliance with such minimum requirements may not of itself be sufficient for the Operator to discharge its obligations pursuant to this clause 5.2.

5.3 Operator general undertakings

The Operator must:

- (a) immediately upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings or Tax claim, which may adversely affect the Project, or the Operator's or a Key Subcontractor's ability to perform its obligations under the Project Documents, have been commenced or threatened, give the State notice (including written particulars) of such litigation, arbitration, administrative or adjudication or mediation proceedings;
- (b) provide to the State promptly upon request, all documents provided by the Operator or a Consortium Entity to the Australian Securities Exchange (and which are generally available to the public) or which the Operator or a Consortium Entity is required by Law to issue to its shareholders, debenture holders or holders of its other marketable securities (as defined in the Corporations Act);
- (c) not without the prior written consent of the State (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Operator to perform its obligations under the Project Documents;
- (d) not cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia;
- (e) not undertake the performance of its obligations under the Project Documents for the provision of the Services, the Project Works or the operation of the Facility otherwise than through itself or a Subcontractor;
- (f) not without the prior written consent of the State incorporate any company or purchase or acquire or subscribe for any shares in any company, save where such company is involved in the provision of the Services, the Project Works or the operation of the Facility;
- (g) not without the prior written consent of the State make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Project Documents and/or Financing Agreements;
- (h) produce a legal opinion or such evidence as reasonably required by the State on request to satisfy the State that its rights under the Project Documents rank in priority to the Trustee's Lien and interests of the beneficiaries under the NBH Operating Trust;
- (i) not change or cease its business or start any other business other than that to be carried on by it under the Project Documents; and
- (j) not, without the prior written consent of the State (not to be unreasonably withheld or delayed):
 - (i) incur any Financial Indebtedness;
 - (ii) sell or dispose of any of its assets; or
 - (iii) enter into any transaction or arrangement,otherwise than in the performance of the Operator's obligations under this document or the exercise of its rights under the Project Documents or the Financing Agreements.

5.3A Operator trustee undertakings

The Operator must:

- (a) comply fully with all of its obligations as trustee of the NBH Operating Trust, whether imposed under the Trust Deed or, in all material aspects, at law;
- (b) ensure that no waiver or revocation of the Trust Deed is made, whether formally or by conduct;
- (c) not amend, or agree to amend, or permit or allow to be amended, the Trust Deed or any other document constituting or governing the NBH Operating Trust except with the prior written consent of the State;
- (d) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Trust Deed or allow the early determination of the NBH Operating Trust;
- (e) only exercise its right to be paid or reimbursed out of Trust Property pursuant to its Trustee's Indemnity in relation to the proper performance by the Operator of its duties as trustee of the NBH Operating Trust;
- (f) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:
 - (i) the termination of the NBH Operating Trust or the termination, rescission or revocation of the Trust Deed;
 - (ii) the resettlement of any Trust Property; or
 - (iii) the resignation, retirement, removal or replacement of it as trustee of the NBH Operating Trust or the appointment of an additional trustee of the NBH Operating Trust;
- (g) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents or the Financing Agreements;
- (h) ensure that:
 - (i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Trust Deed);
 - (ii) its Trustee's Lien will have priority over the rights of the beneficiaries of the NBH Operating Trust; and
 - (iii) it will not do anything that will result in any of the circumstances set out in clauses 5.3A(f)(i) or (ii) above;
- (i) unless otherwise permitted under the Project Documents or the Financing Agreements, not permit any of the beneficiaries of the NBH Operating Trust to use, occupy, or enjoy or possess any of the Trust Property or Title Documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the NBH Operating Trust to possession;
- (j) not blend or mix its Trust Property with any other property in respect of which it has been appointed trustee;
- (k) not operate any business other than as trustee of the NBH Operating Trust;
- (l) not acquire any Trust Property other than in the name of the Operator as trustee of the NBH Operating Trust;

- (m) not allow any redemption, cancellation or repurchase of any units in the NBH Operating Trust other than as permitted by the Project Documents;
- (n) not take any step to release a unitholder of the NBH Operating Trust from the obligation to pay up units;
- (o) not do anything (or permit anything to be done) which:
 - (i) results or may result in registration of the NBH Operating Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or
 - (ii) restricts or limits or may restrict or limit the State's rights of subrogation to the Trustee's Indemnity; and
- (p) ensure that the execution by the Operator of, and performance of their obligations under the Project Documents does not result in:
 - (i) an encumbrance or restriction of any kind being created or imposed on the Operator as trustee of the NBH Operating Trust other than under the Operator / HAC Security;
 - (ii) any person being relieved of an obligation to the Operator as trustee of the NBH Operating Trust;
 - (iii) an obligation of the Operator as trustee of the NBH Operating Trust being accelerated;
 - (iv) any breach of any obligation, agreement or financing facility to which the Operator as trustee of the NBH Operating Trust is a party; or
 - (v) any person having a right to terminate or amend (whether or not subject to any other terms of conditions) any agreement with or rights of the Operator as trustee of the NBH Operating Trust.

6. Client Representative

6.1 Appointment of Client Representative

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

6.2 Notification of details of Client Representative

- (a) The State must procure that the Operator is notified within five Business Days after the date of this document 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.

- (b) To the extent that the State delegates its powers, duties, discretions and authorities to the Client Representative under clause 6.1(b)(i)(A), the State must notify the Operator of the delegation and the extent of that delegation.
- (c) Nothing in this clause 6 restricts the ability of the State to replace the Client Representative at any time.

6.3 Delegation by Client Representative

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

6.4 Management of Project Documents

- (a) The Operator must comply with the directions of the Client Representative made under, or purported to be made under, a provision of a Project Document.
- (b) A direction of the Client Representative includes any instruction, order, request, requirement, or authorisation of the Client Representative and may be given orally. If given orally, a direction must be promptly confirmed in writing by the Client Representative.
- (c) Actions of the Client Representative and its delegates in accordance with this clause 6 are binding on the State to the extent set out in clause 6.1(b)(ii), including where rights and obligations under the Project Documents are expressed to be rights and obligations of the Client Representative. If the Client Representative fails to comply with the obligations in this document that are expressed to be the obligations of or the responsibility of the Client Representative, such failure will be deemed to be a failure of the State.
- (d) No direction or consent of the Client Representative is to be taken as approval of any Services that do not conform to this document (including the Services Specification and Services Plans), and the Client Representative has no authority orally to waive any provision of, or release the Operator from, its obligation under the Project Documents. Without limiting clause 98.7, any such approval, waiver or release must be expressly identified as such, can only be given in writing, and is only effective if signed by the Client Representative and no delegate of the Client Representative is authorised or empowered to give any such approval, waiver or release.

6.5 Operator Representative

The Operator must:

- (a) appoint and ensure that at all times there is appointed a natural person to be the Operator Representative, who:

- (i) may exercise the powers, duties, discretions and authorities of the Operator under the Project Documents as agent for the Operator; and
 - (ii) will have the full power and authority to act for and on behalf of and to bind the Operator under the Project Documents; and
- (b) notify the State within five Business Days after the date of this document of the identity and address of the Operator Representative and of any changes as soon as practicable in the identity or address of the Operator Representative.

Actions of the Operator Representative are binding on the Operator.

6.6 Co-ordination groups

- (a) For the purpose of furthering the Project Objectives and maintaining good relations between the State and the Operator, the parties must establish, and convene meetings of, the Project Co-ordination Group and the Operational Services Group in accordance with this clause 6.6.
- (b) Before the Operator commences the Public Patient Portion Works, and until the Date of Final Completion, the State and the Operator must establish a committee (to be known as the **Project Co-ordination Group**) comprising:
- (i) three representatives of the Operator;
 - (ii) two representatives of the State; and
 - (iii) the Client Representative.

The members shall agree as to the chairperson of the Project Co-ordination Group.

- (c) Before the Date of Final Completion and until the Private Patient Portion Expiration Date, the State and the Operator must establish a committee (to be known as the **Operational Services Group**) comprising:
- (i) three representatives of the Operator;
 - (ii) two representatives of the State; and
 - (iii) the Client Representative.
- (d) The members shall agree as to the chairperson of the Operational Services Group.
- (e) For the avoidance of doubt:
- (i) the Project Co-ordination Group and the Operational Services Group may operate concurrently; and
 - (ii) a person may be a member of both the Project Co-ordination Group and the Operational Services Group.
- (f) The Project Co-ordination Group must meet at such frequency as is agreed by the Client Representative and the Operator to discuss and review any matters relating to the Project Works including:
- (i) development, design, construction and commissioning issues;
 - (ii) the Project Program and each Interface Protocol;
 - (iii) preparation of and compliance with the Project Plans;
 - (iv) issues arising from the reports or documents provided by the Operator to the Client Representative, including the Construction Reports; and

- (v) the resolution of any dispute referred to it under clause 6.6(n).
- (g) The Operational Services Group must meet at such frequency as is agreed by the Client Representative and the Operator, to discuss any matters relating to the Facility, including:
 - (i) the provision of the Services;
 - (ii) the Activity Profile, the Services Specification and Role Delineation;
 - (iii) the operation and management of the Facility;
 - (iv) preparation of and compliance with the Project Plans;
 - (v) issues arising from the reports or documents provided by the Operator to the State, including the Monthly Performance Report, Operations Payment Claim and other notices and reports given under clause 53 and the Reporting Schedule;
 - (vi) the continuous improvement obligations under the Services Specification;
 - (vii) Health Initiatives and Disaster Measures;
 - (viii) facilities management and maintenance issues generally; and
 - (ix) the resolution of any dispute referred to it under clause 6.6(n).
- (h) The Operator must ensure that:
 - (i) its representatives attend each meeting of the Project Co-ordination Group or the Operational Services Group (as applicable) which is convened; and
 - (ii) each meeting of the Project Co-ordination Group or the Operational Services Group is minuted, and such minutes are circulated to all members of the Project Co-ordination Group or the Operational Services Group (as applicable) promptly after the relevant meeting.
- (i) The Client Representative may appoint a nominee to attend meetings of the Project Co-ordination Group or the Operational Services Group (as applicable) if the Client Representative cannot attend for any reason. For the purposes of this clause 6.6, a reference to the Client Representative will include a nominee of the Client Representative.
- (j) Members of the Project Co-ordination Group or the Operational Services Group (as applicable) may, at their own cost, arrange for such advisers, consultants and subcontractors, as they require from time to time to attend meetings of the Project Co-ordination Group or the Operational Services Group (as applicable), as notified to and agreed by the Client Representative.
- (k) Meetings of the Project Co-ordination Group or the Operational Services Group (as applicable) must be conducted in such manner and in accordance with such procedures as its members may from time to time agree, provided that the Client Representative, at least one representative from the Operator, and at least one representative from the State must be present in order for there to be a quorum at a meeting of the Project Co-ordination Group or the Operational Services Group (as applicable).
- (l) The Project Co-ordination Group and the Operational Services Group (as applicable) will not have any legal responsibility to the State or the Operator and will not have any power to require the State or the Operator to act or refrain from acting in any way.
- (m) The decisions of the Project Co-ordination Group or the Operational Services Group (as applicable) do not affect the rights or obligations of either the State or the Operator under any of the Project Documents, except as set out in this clause 6.6.

- (n) If any dispute arises between the Operator and the State, a party may by notice to all other parties refer the dispute to the Project Co-ordination Group (during the Development Phase) or the Operational Services Group (at all other times) for resolution. The referral notice must specify in reasonable detail the nature of the dispute.
- (o) A decision of the Project Co-ordination Group or the Operational Services Group (as applicable) in respect of matters referred to it under clause 6.6(n) may only be made by unanimous agreement of the members of the Project Co-ordination Group or the Operational Services Group (as applicable).
- (p) If a dispute is referred to the Co-ordination Group or the Operational Services Group (as applicable), the Project Co-ordination Group or the Operational Services Group (as applicable) will meet to resolve the dispute. If the dispute is not resolved within 5 Business Days, either the State or the Operator may refer the dispute to the Executive Negotiators in accordance with clause 87.4(a).

7. Sites

7.1 Site access

- (a) The State grants the Operator and the Operator's Employees and Agents and (in respect of the Construction Licence only) Operator B and Operator B's Employees and Agents, in accordance with and subject to this clause 7.1 on and from the day after Financial Close until the Date of Operational Readiness, a licence to enter, occupy and use:
 - (i) (subject to clauses 2.11(b)(i) and 2.11(b)(ii)) until the Date of Operational Readiness, the Site, to the extent reasonably necessary for the performance of the Project Works (the **Construction Licence**); and
 - (ii) from the Date of Operational Readiness until the Public Patient Portion Expiration Date, the Public Patient Portion and the Shared Portion, to the extent reasonably necessary for the performance of the Services and the discharge of the Operator's obligations under this document (**State Asset Licence**).
- (b) The State agrees to grant to the Operator:
 - (i) on and from the Date of Operational Readiness until the Public Patient Portion Expiration Date, the Operating Term Private Patient Portion Lease in accordance with clause 34; and
 - (ii) on and from the Public Patient Portion Expiration Date until the Private Patient Portion Expiration Date, the Post-Operating Term Private Patient Portion Lease in accordance with clauses 93 or 94.
- (c) The Construction Licence granted in accordance with clause 7(a)(i) is granted in consideration of the receipt by the State of a licence fee of \$10 (receipt of which is acknowledged by the State).
- (ca) The State Asset Licence granted in accordance with clause 7.1(a)(ii) is granted in consideration of the receipt by the State of a licence fee of \$10 (receipt of which is acknowledged by the State).
- (d) Each of the Construction Licence and the State Asset Licence is subject to:
 - (i) the statutory right of any Authority or provider of Utilities to have access to the Site, the Project Works and the Facility;

- (ii) the Client Representative's right to enter the Site for the purpose of inspecting any part of the Site, provided that the Client Representative complies with the Operator's and Operator B's reasonable site safety and security requirements;
 - (iii) the rights of the State and the State Related Parties to enter, occupy and use the Site, the Project Works and the Facility to exercise the State's rights under this document;
 - (iv) the right of the State, during the Development Phase, to require the Operator and Operator B (as applicable) to surrender any part of the Site pursuant to clause 7.1(e); and
 - (v) Adverse Rights.
- (e) The State may, at any time during the Development Phase:
- (i) notify the Operator and Operator B that their Construction Licence will no longer apply to any part of the Site either permanently or temporarily, provided that such action will not adversely affect the ability of the Operator or Operator B to perform their obligations under the Project Documents. The Operator and Operator B must surrender the relevant part of the Site to the State five Business Days after service of the notice referred to in this clause 7.1(e)(i), at which time the relevant part of the Site will cease to be part of a Site for the purposes of the Project Documents; or
 - (ii) grant a concurrent licence, lease or right to access, occupy or use any part of any Site, provided that such action will not adversely affect the ability of the Operator or Operator B to perform its obligations under the Project Documents.
- (f) The Operator and Operator B acknowledge and agree that, except to the extent a Compensation Event applies, the State has no liability for any Claim or Loss, delay or any other effects which the Operator, Operator B or the Subcontractors suffer or incur in connection with the activities set out in clauses 7.1(a), 7.1(c) or 7.1(e) and the Operator and Operator B will not be entitled to any compensation or relief under the Project Documents for such Claim, Loss, delay or any other effect.
- (g) Each of the Construction Licence and the State Asset Licence granted to the Operator and, where applicable, Operator B under this document:
- (i) is personal to the Operator and Operator B (as applicable);
 - (ii) is non-exclusive;
 - (iii) will not operate or be deemed to operate in any way as a demise of any part of the Site or the Facility and the Operator and Operator B (as applicable) is not entitled to any estate, right or interest in the Site or the Facility or any part of the Site or the Facility other than the rights created by the provisions of this document; and
 - (iv) does not create a relationship of landlord and tenant between the parties.

7.2 State licence during Operating Term

On and from the Date of Operational Readiness until the Public Patient Portion Expiration Date or Early Handover Date (as applicable), the Operator grants to the State, the State Related Parties and any other person authorised by the State, a non-exclusive, free of charge licence (including the right to sub-license) to access or use the Site or the Facility to perform its obligations and exercise its rights in accordance with the Project Documents or with Law.

7.3 Restrictions on use of Non-Development Site

- (a) Notwithstanding anything else in this document or any other Project Document, the Operator must ensure that:
 - (i) no permanent structures are constructed on the Non-Development Site;
 - (ii) no fixture, fitting or equipment which is permanently plumbed, wired or fixed is installed on the Non-Development Site;
 - (iii) on and from the Date of Technical Completion, the Non-Development Site is:
 - (A) maintained in accordance with the Non-Clinical Support Services Delivery Plan and the Asset Management Strategy; and
 - (B) not used for the temporary or permanent storage of building materials, fixtures, fittings, equipment, Consumables or Disposables or other items, without the State's prior written consent.
- (b) Without limiting its rights under clause 7.1(e), the State reserves its right to require the Operator, with no less than 10 Business Days' notice (**Excision Notice**), to surrender all or part of the Non-Development Site (the **Excision Area**) (whether pursuant to a sublease or surrender of the Construction Licence or the State Asset Licence or otherwise).
- (c) Following the issue of an Excision Notice:
 - (i) the parties must take all steps necessary to give effect to the surrender of the Excision Area including:
 - (A) registration of a plan of subdivision at LPI to create separate lots for the Non-Development Site and the remainder of the Site;
 - (B) in the case of a sublease of the Excision Area to the State, enter into and procure the registration of a sublease, to be prepared by the State incorporating the terms set out in clause 7.3(d) below; and
 - (C) in the case of a partial surrender of the Construction Licence or the State Asset Licence, enter into and (if required) procure the registration of a deed of partial surrender of licence (as applicable) to be prepared by the State;
 - (ii) for the purposes of this document and any other Project Document, the definition of 'Site' shall, without further action, be deemed to be amended to exclude the Excision Area;
 - (iii) the State may commence and undertake works on or from the Excision Area;
 - (iv) the Operator must provide such assistance to the State and any of the State's contractors in relation to the performance of any such works procured by the State by third parties including providing such rights of access to the Facility or the Site as may reasonably be required by the State; and
 - (v) the State must use reasonable endeavours not to (and use reasonable endeavours to ensure that its contractors do not) materially and unreasonably interfere with the provision of the Services and the other Operator's Activities.
- (d) Where the State elects to take a sublease of the Excision Area, the sublease will be on terms reasonably required by the State, which will include the following:
 - (i) annual rent of \$1 per annum (if demanded);

- (ii) a term comprising the balance of the Term (less one day) or any shorter period required by the State;
 - (iii) a permitted use allowing the construction and operation of the works or services as specified by the State;
 - (iv) access to and egress from the Excision Area over all parts of the Site and the Facility reasonably required by the State; and
 - (v) assumption by the State of site and construction risk relating to the Excision Area.
- (e) For the avoidance of doubt, the Operator is not entitled to any compensation for the loss or diminution of the value of the Non-Development Site land, or its interest in the Non-Development Site land, arising from the State's exercise of its rights under this clause 7.3 other than as expressly set out in this document.

7.4A Use of the Retained Green Space

- (a) **(RGS Licence)** The State grants the Operator and the Operator's Employees and Agents, in accordance with and subject to this clause 7.4A on and from the day after 2 March 2015 (which is the handover date by the State to the Operator of the 'Eastern Zone' (as shown in the State Works Site Plan)) until the Public Patient Portion Expiration Date, a licence to enter, occupy and use the Retained Green Space to the extent reasonably necessary for, subject to this clause 7.4A, the performance of maintenance works on the Retained Green Space in accordance with the Non-Clinical Support Services Delivery Plan and the Asset Management Strategy **(RGS Licence)**.
- (b) **(RGS Licence consideration)** The RGS Licence granted in accordance with clause 7.4A is granted in consideration of the receipt by the State of a licence fee of \$10 (receipt of which is acknowledged by the State).
- (c) **(No other use of Retained Green Space without State consent)** Subject to clause 67C but notwithstanding anything else in this document or any other Project Document, the Operator must not use, or permit an Operator Related Party to use the Retained Green Space for a purpose other than that specified in paragraph (a) without the State's prior written consent.
- (d) **(RGS Asbestos Management Plan)** The State will provide the RGS Asbestos Management Plan to the Operator on or before 2 March 2015 in form and substance reasonably satisfactory to the Operator (acting reasonably).
- (e) **(Obligations during and after remediation)** On and from the RGS Asbestos Management Plan Date:
 - (i) at its cost and risk, the State must remove or remediate the asbestos contemplated to be removed or remediated under the RGS Asbestos Management Plan, in accordance with the terms of that plan;
 - (ii) without limitation to subparagraph (i) but provided the Operator and the State (each acting reasonably) first agree it is safe to do so, the Operator must ensure the Retained Green Space is maintained in accordance with the Non-Clinical Support Services Delivery Plan and the Asset Management Strategy; and
 - (iii) each party acknowledges that for so long as both parties have ongoing active obligations under this paragraph (e) which require them to be actively present or working on the Retained Green Space, each party will use its reasonable endeavours to facilitate performance of the other party's obligations and work co-

operatively in and around the Retained Green Space to ensure such purpose is achieved.

- (f) **(All other contamination Unidentified Pre-Existing Contamination)** Notwithstanding anything else contained in this document, the parties agree that any asbestos which is not removed or remediated by the State under paragraph (e)(i) shall be treated as Unidentified Pre-Existing Contamination for all purposes associated with this document and clause 9 and the Compensation Event regime would apply on their terms accordingly in respect of such contamination.
- (g) **(RGS Licence conditions)** The RGS Licence is subject to:
 - (i) the statutory right of any Authority or provider of Utilities to have access to the Retained Green Space;
 - (ii) the Client Representative's right to enter the Retained Green Space for the purpose of inspecting any part of the Retained Green Space, provided that the Client Representative complies with the Operator's reasonable site safety and security requirements;
 - (iii) the rights of the State and the State Related Parties to enter, occupy and use the Retained Green Space to exercise the State's rights under this document or at Law;
 - (iv) the right of the State to require the Operator to surrender any part of the Site pursuant to clause 7.4A(h); and
 - (v) Adverse Rights.
- (h) **(State rights)** The State may at any time:
 - (i) notify the Operator that its RGS Licence will no longer apply to any part of the Retained Green Space either permanently or temporarily, provided that in such an event the Operator will be relieved of its obligations under clause 7.4A(e) in respect of the relevant part of the Retained Green Space for such period as the relevant part is surrendered pursuant to this clause 7.4A(h)(i). The Operator must surrender the relevant part of the Retained Green Space to the State five Business Days after service of the notice referred to in this clause 7.4A(h)(i), at which time the relevant part of the Retained Green Space will cease to be subject of the RGS Licence; or
 - (ii) subject to this document, grant a concurrent licence, lease or right to access, occupy or use any part of any or the Retained Green Space.
- (i) **(Liability of the State)**
 - (i) Subject to subparagraph (i)(ii), but without limitation to the express obligations set out in, and other terms of, this clause 7.4A, the Operator acknowledges and agrees that the State otherwise has no liability for any Claim or Loss, delay or any other effects which the Operator or its Subcontractors suffer or incur in connection with the activities set out in clauses 7.4A(a), 7.4A(e) or 7.4A(h) and the Operator will not be entitled to any compensation or relief under the Project Documents for such Claim, Loss, delay or any other effect; and
 - (ii) the State acknowledges and agrees that to the extent any cost, risk, expense or other liability which the Operator would have in the usual course in connection with performing its maintenance obligations under clause 7.4A(a), are increased as a result of asbestos contamination present in the Retained Green Space, the State shall promptly reimburse the Operator for the amount of that increase in

accordance with the express payment provisions of this document (but without any double counting).

- (j) **(RGS Licence conditions)** The RGS Licence granted to the Operator under this document:
 - (i) is personal to the Operator;
 - (ii) is non-exclusive;
 - (iii) will not operate or be deemed to operate in any way as a demise of any part of the Retained Green Space and the Operator is not entitled to any estate, right or interest in the Retained Green Space or any part of the Retained Green Space other than the rights created by the provisions of this document; and
 - (iv) does not create a relationship of landlord and tenant between the parties.
- (k) **(No doubt)** For the avoidance of doubt:
 - (i) the State may commence and undertake works on or from the Retained Green Space, provided that any such works do not, or would not when completed, materially adversely impact the Operator's ability to undertake an Expansion subject of the Planned Expansion Plan;
 - (ii) the Operator must provide such reasonable assistance to the State and any of the State's contractors in relation to the performance of any such works procured by the State by third parties, including providing such rights of access to the Retained Green Space, the Facility or the Site as may reasonably be required by the State; and
 - (iii) the State must use reasonable endeavours not to (and use reasonable endeavours to ensure that its contractors do not) materially and unreasonably interfere with the provision of the Services and the other Operator's Activities, or the maintenance of the Retained Green Space by the Operator in accordance with the RGS Licence and paragraph (e)(ii).
- (l) **(State restricted)** The State must not license, transfer, sell, dispose of, part with possession of or otherwise deal with its interest in the whole or any part of the Retained Green Space without the prior written consent of the Operator.

7.4 General Site undertakings

- (a) Except to the extent expressly provided otherwise in this document, the Operator must make good, if applicable, in accordance with the Project Program and this document, any disturbance or damage caused to any part of the Site, the Extra Land or the Facility in connection with the Operator's or a Subcontractor's entry, occupation or use of the Site, the Extra Land or the Facility.
- (b) Except to the extent expressly provided otherwise in this document, the Operator:
 - (i) must avoid or minimise unnecessary interference with the passage of people and vehicles and the operations and activities carried out of, on or from Adjoining Property;
 - (ii) must promptly deliver to the Client Representative a copy of every notice received by the Operator which affects the Site, the Extra Land or any Adjoining Property;
 - (iii) is solely responsible for any person who enters the Site, the Extra Land or the Facility;

- (iv) must not except as permitted under the Construction Licence, the State Asset Licence, the RGS Licence the Operating Term Private Patient Portion Lease or the Post-Operating Term Private Patient Portion Lease, do or permit to be done on any part of the Site, the Extra Land, the Facility or the Retained Green Space (as applicable) anything which may cause a nuisance, annoyance, disturbance or damage to the Site, the Extra Land, the Facility, the Retained Green Space or any Adjoining Property;
- (v) must not do or permit to be done on any part of the Site anything which may:
 - (A) interfere with the access of the State, the State's Employees and Agents to the Site; or
 - (B) cause the State to breach any of its obligations under any Adverse Rights to which the Construction Licence, the State Asset Licence, the Operating Term Private Patient Portion Lease, the RGS Licence or the Port-Operating Term Private Patient Portion Lease are subject;
- (vi) must not without the prior written consent of the Client Representative, exhibit on any part of the exterior of any part of the Site, the Extra Land or the Facility any notice, sign, signboard or advertisement;
- (vii) must not do anything to cause any part of the Site, the Extra Land, the Facility or any Adjoining Property to become unclean or untidy except:
 - (A) in accordance with the Project Program; or
 - (B) where permitted in the course of performing any Services or operating or maintaining the Facility;
- (viii) must not breach any statutory or other lawful requirements relating to the Operator's use, access and occupation of the Site, the Extra Land or the Facility;
- (ix) must not enter into or grant or agree to enter into or grant any rights or other arrangements with any person or persons relating to all or any part of the Site, the Extra Land or the Facility except as permitted by this document;
- (x) during the Development Phase, must not use the Site for any purpose other than as provided under clause 7.1(a); and
- (xi) must not do anything in or about the Site, the Extra Land or the Facility which may constitute a breach of the Operator's obligations under the NSW Code or the NSW Guidelines.

7.5 Extra Land Rights

The Operator acknowledges and agrees that:

- (a) the Operator must procure for itself and at its own cost any rights to access, use or occupy any land (other than the Site) which is necessary or which it may deem requisite or necessary for the Project (**Extra Land Rights**);
- (b) the use and occupation of and access to any Extra Land by the Operator, the Operator Related Parties and the Subcontractors pursuant to any Extra Land Rights is the sole responsibility and risk of the Operator;
- (c) the State has no liability for any Claim, Loss, delay or any other effects which the Operator, any Operator Related Party or any Subcontractors suffers or incurs due to:
 - (i) the identification of Extra Land or Extra Land Rights; or

- (ii) the Operator's inability to obtain any Extra Land Rights or access to any Extra Land or restrictions on the Operator's use or occupation of or access to any Extra Land or any Extra Land Rights;
- (d) the Operator will not, subject to the express provisions of this document to the contrary, be entitled to any compensation or relief under the Project Documents for any such Claim, Loss, delay or any other effect on the ability of the Operator or its Subcontractors to comply with the Operator's obligations under this document caused by inability to identify Extra Land or Extra Land Rights or obtain access to Extra Land or restrictions on the Operator's use or occupation of or access to any Extra Land or any Extra Land Rights; and
- (e) the Operator must provide to the State:
 - (i) a properly executed release, which the Operator must use best endeavours to obtain on terms satisfactory to the State, from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, the Extra Land; or
 - (ii) a statement signed by the Operator to the effect that, despite the best endeavours of the Operator, such owner or occupier has failed or refused to sign such a release.

7.6 Site Condition

Subject to the express provisions of this document:

- (a) the State makes no representation and gives no warranties, and the Operator accepts entire responsibility (including any financial or other consequences which result whether directly or indirectly) in relation to:
 - (i) without limiting clause 2.4, the suitability of the Site for the Project and the Operator's proposed use of the Site, and the Operator represents and warrants that:
 - (A) it has made its own appraisal of the Site for the Project and its proposed use of the Site;
 - (B) it has had the opportunity to investigate, and has entered into this document with full knowledge of (other than in relation to any Consent) and subject to, all Adverse Rights and Reserved Matters;
 - (C) it has satisfied itself in all respects of all requirements for the completion of the Project, including the requirements of the Project Program; and
 - (D) the Adverse Rights and Reserved Matters will not prejudice the Operator's ability to complete the Project Works or provide the Services;
 - (ii) the Site in its current location, state and physical condition (including latent and patent defects in the Site); and
 - (iii) Site Conditions, including any existing Contamination or Artefacts, Existing Infrastructure and other things on or adjacent to the Site, including the existence, location, condition and availability of Utilities, and the suitability or otherwise of any Existing Infrastructure on or in the Site for carrying out the Project Works and providing the Services; and
- (b) subject to any other express provision in this document to the contrary, the Operator may not make any objection or Claim for compensation against the State, delay the carrying out of the Project Works or obtain relief from any aspect of the Services, or terminate this document because of anything in connection with:

- (i) any of the matters referred to in clause 7.6(a);
- (ii) Loss, Liability, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Site except to the extent caused or contributed to by the State or a State Related Party after the date of this document;
- (iii) the presence in or on the property of Contamination except to the extent any Contamination was caused or contributed to by the State or a State Related Party after the date of this document;
- (iv) the condition or existence or non-existence of Utilities; or
- (v) any action or non-action by any person.

7.7 Security

Without limiting the obligations under the Design Parameters, from the day after Financial Close until the end of the Term, the Operator will have full responsibility for:

- (a) the security of the Site; and
- (b) any Adjoining Property to the extent to which connection and installation of Utilities or any other part of the Public Patient Portion Works or the Private Patient Portion Works is being carried out by the Operator.

7.8 General environmental obligations

- (a) Without limiting clause 9, in undertaking the Operator's Activities, the Operator must:
 - (i) comply with, and ensure that each Subcontractor complies with, all:
 - (A) Environmental Laws; and
 - (B) relevant industry standards and codes of practice;
 - (ii) obtain and comply with, and ensure that each Subcontractor obtains and complies with, all requirements of any Consents required in order to release or emit anything from the Site, the Extra Land or the Facility into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise;
 - (iii) not Contaminate or cause Pollution to the Site, the Extra Land, the Facility or Adjoining Property, or any part of them;
 - (iv) take reasonable precautions to prevent the migration of Contamination to or from the Site;
 - (v) not use the Site, the Extra Land or the Facility, or allow any Subcontractor to use the Site, the Extra Land or the Facility so that:
 - (A) any Industrial Waste or Hazardous Substance is brought on to the Site, the Extra Land or the Facility;
 - (B) any Industrial Waste or Hazardous Substance is handled in a manner which is likely to cause an Environmental Hazard; or
 - (C) any other substance is released from, deposited to, or emanates from, the Site, the Extra Land or the Facility such that a state of Contamination occurs;
 - (vi) at all times carry out, and ensure that each of the Construction Contractor and the and the Parent Company carries out, the Operator's Activities in an environmentally responsible manner, in accordance with Good Industry Practice

and Good Operating Practice, and so as to keep the Site, the Extra Land or the Facility in a good and safe condition so that they do not present a risk to the health or safety of any person or a risk of harm to the Environment;

- (vii) ensure, in accordance with Good Industry Practice and Good Operating Practice, the safety of people and the protection of the Environment from harm;
- (viii) notify the Client Representative in writing immediately if, in the course of the Operator's Activities:
 - (A) an incident occurs which could be a breach of an Environmental Law or Consent regarding the Environment or Environmental Document;
 - (B) the Operator becomes aware of a Site Condition that differs materially from the Site Conditions described in the Information Documents and the measures to be taken by the Operator in relation to that Site Condition;
 - (C) the Operator becomes aware that a complaint has been made in relation to Contamination of or Pollution of or from the Site, the Extra Land or the Facility;
 - (D) the Operator becomes aware of any information, fact or circumstance where, if the State were to be aware of such information, fact or circumstance, the State would be required to notify any Authority of that information, fact or circumstance pursuant to any Environmental Law (without limiting any other obligation of the Operator in relation to the information, fact or circumstances); or
 - (E) the Operator notifies any Authority of any matter pursuant to any Environmental Law, in which case the Operator must provide the State with a copy of such notification and any subsequent correspondence with the Authority in relation to the subject of the notification;
- (ix) provide the Client Representative with any information held or controlled by the Operator relating to any Contamination affecting, or Pollution of or from, any part of the Site, the Extra Land or the Facility;
- (x) undertake all necessary Remediation work on the Site so that the Site does not present a risk of harm to the Environment and is suitable for the proposed use as the Facility;
- (xi) promptly comply with any Environmental Notice served on the Operator or Subcontractor or the State:
 - (A) during the Term, if such Environmental Notice relates to the Project Works or Public Patient Portion;
 - (B) during the Private Patient Portion Term, if such Environmental Notice relates to the Private Patient Portion or the Car Park;
 - (C) during the Private Patient Portion Term, if relating to Contamination of, Pollution of or from or the disposal of Waste to the Site, the Extra Land or the Facility for which the Operator is responsible (by act or omission); and
 - (D) after the Term or the Private Patient Portion Term (as applicable), if relating to Contamination of, Pollution of or from or the disposal of Waste to the Site, the Extra Land or the Facility at any time during the Term or

the Private Patient Portion Term (as applicable) by the Operator or a Subcontractor;

- (xii) within seven days after receipt of any Environmental Notice served on the Operator, provide a copy of the same to the Client Representative and promptly provide to the Client Representative copies of all reports, invoices and other documents relating to the Operator's compliance with the Environmental Notice and any other information relating to the Environmental Notice or the Operator's compliance with it as the Client Representative may request; and
 - (xiii) indemnify the State and each State Related Party on demand from and against any Claim or Loss brought against, suffered or incurred by the State or a State Related Party arising out of or in any way in connection with a breach by the Operator of its obligations under this clause 7.8.
- (b) The Operator will not be in breach of clauses 7.8(a)(iii) or 7.8(a)(v) by virtue of bringing onto, or storing on, the Site or the Facility Permitted Hazardous Substances for the purposes of carrying out its obligations under this document, provided that such Permitted Hazardous Substances are procured, used and stored in accordance with Good Industry Practice and in compliance with applicable Law.

7.9 Liability under the NGER Legislation

- (a) Without limiting any other clause in this document, the Operator acknowledges and agrees that, if the Operator's Activities constitute a 'facility' within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and the Operator will comply with any obligations arising in respect of the Operator's Activities under the NGER Legislation.
- (b) If, despite clause 7.9(a), the State incurs, or but for this clause 7.9 would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the Operator's Activities, and the NGER Legislation provides that such liability can be transferred by the State to the Operator, the Operator must, upon the written request of the State, do all things reasonably necessary to transfer the liability to the Operator.

7.10 Provision of Emissions and Energy Data to the State

- (a) The Operator must provide the Operator's Emissions and Energy Data to the Client Representative:
 - (i) within 10 Business Days after receiving written notice from the State indicating that it requires the Operator's Emissions and Energy Data to be provided; and
 - (ii) on each occasion that the Operator is required to provide the Operator's Emissions and Energy Data to a Authority under the NGER Legislation or any other Law.
- (b) The Operator acknowledges and agrees that the State may use the Operator's Emissions and Energy Data for any purpose as it sees fit.

7.11 Reporting Emissions and Energy Data

- (a) This clause 7.11 applies if, despite the operation of clause 7.9, the State incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the Operator's Activities.
- (b) If the State notifies the Operator in writing that the Operator is required to provide the Operator's Emissions and Energy Data to the State, the Operator must:

- (i) provide the Operator's Emissions and Energy Data to the State in the same manner, form and level of detail, based on the same methods and at the same times:
 - (A) as if the Operator was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to any Authority and the State was that Authority;
 - (B) in accordance with the requirements or approvals of any Authority and any directions by the State; and
 - (C) without limiting clauses 7.11(b)(i)(A) or (B), as may be required to enable the State:
 - (I) to discharge, as and when they fall due, any obligations that it may have to provide the Operator's Emissions and Energy Data to any Authority; and
 - (II) to provide to the Regulator any Operator's Emissions and Energy Data that it may be entitled to provide concerning any greenhouse gas project;
 - (ii) keep all such Operator's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 7.11(b)(i);
 - (iii) retain records of its activities that are the basis of the Operator's Emissions and Energy Data for any Financial Year, for a period of not less than seven years from the end of the year in which the relevant activities take place; and
 - (iv) permit the Operator's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the State or any Authority, and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 7.11(b)(ii) and (iii)) and answering questions.
- (c) Without limiting clause 7.11(b), the Operator must assist the State to comply with the NGER Legislation in relation to any aspect of the Operator's Activities.
- (d) The Operator acknowledges and agrees that:
- (i) the Operator's Emissions and Energy Data is provided to the State:
 - (A) to discharge any obligations that the State may have to provide such Emissions and Energy Data to a Authority; and
 - (B) so that the State may provide to the Regulator any Operator's Emissions and Energy Data that it may be entitled to provide concerning any greenhouse gas project;
 - (ii) the State may provide or otherwise disclose the Operator's Emissions and Energy Data to any Authority; and
 - (iii) nothing in this clause 7.11 is to be taken as meaning that the State has agreed to perform on behalf of the Operator any obligation that the Operator itself might have had under any legislative requirement regarding the provision of Emissions and Energy Data to any Authority including any obligation under the NGER Legislation).

7.12 Indemnity

The Operator must at all times indemnify the State and the State Related Parties on demand from and against any Claim or Loss incurred or suffered by the State or a State Related Party as a consequence of:

- (a) the Operator's breach of its obligations; or
- (b) any inaccuracy or omission in information provided to the State,

under clauses 7.9, 7.10 and 7.11.

7.13 Native Title Claim

- (a) If there is a Native Title Claim with respect to the Site or any part of it, the Operator must continue to perform its obligations under this document, unless otherwise:
 - (i) directed by the Client Representative;
 - (ii) ordered by an Authority; or
 - (iii) required by Law.
- (b) For the purposes of clause 7.13(a)(i), the Client Representative may by written notice direct the Operator to suspend any or all of its obligations under this document until such time as the Client Representative gives the Operator further written notice.
- (c) If there is a Native Title Claim with respect to the Site, the Operator must, at the request of the Client Representative, provide all reasonable assistance in connection with the State's involvement with such Native Title Claim (including giving to the State and any other person authorised by the State, access to the Site or that part of the Site which is the subject of the Native Title Claim when reasonably required by the State for that purpose).

7.14 Utilities

- (a) The Operator must:
 - (i) make necessary enquiries as to the location of any Existing Infrastructure located above or below the surface of the Site, and liaise with the owner of those services and the relevant Utilities provider as to the need for the potential relocation, protection or decommissioning of that Existing Infrastructure (as applicable);
 - (ii) undertake, or ensure that the owners of the relevant Existing Infrastructure located above or below the surface of the Site undertake the location, relocation and protection of all the Existing Infrastructure as is required for the purposes of the Project;
 - (iii) decommission, in consultation with the relevant Utilities provider, any Existing Infrastructure located above or below the surface of the Site which is redundant or will be redundant upon Operational Readiness or otherwise required to be decommissioned in accordance with this document;
 - (iv) enter into all agreements with the Utilities providers for the provision of the Utilities to the Site during the Development Phase for the performance of the Project Works;
 - (v) arrange and pay for any extension, relocation, adjustment, connection, obtaining, provision and, during the Operating Term, separate metering of any Utilities which the Operator needs to perform its obligations under the Project Documents;

- (vi) ensure that, during the Operating Term and following the end of the Term, all Utilities are metered separately as between the State Asset and the remainder of the Facility;
- (vii) ensure the continuous supply of Utilities to the Site and the Facility at all times during the Term; and
- (viii) pay for usage by the Operator and the Operator Related Parties of Utilities used in carrying out the Project Works and the Services, operating the Facility and carrying out its other obligations under the Project Documents.

7.15 Ownership of certain property

- (a) Without limiting clause 7.8, if the Operator removes any material (excluding Disposables) from the Site (whether or not required by any Authority) then, unless otherwise required by Law, prescribed by this document or directed by the Client Representative, as between the Operator and the State, ownership in all such material remains the property of the State.
- (b) Ownership of Disposables transfers to the Operator immediately upon the relevant material leaving the Site or the Facility.

7.16 Other activities

The Operator acknowledges that it is aware that:

- (a) occupiers of land in the vicinity of the Site may carry out other noisy activities;
- (b) roads in the vicinity of the Site may be temporarily closed during periods when certain events or activities occur and for the purpose of carrying out maintenance and repair; and
- (c) local and regional events and activities may temporarily interfere with the Operator's use of the Site and, subject to the express terms of this document, will not entitle the Operator to make any Claim against the State or a State Related Party.

7.17 Site co-ordination- other developments

The Operator:

- (a) acknowledges that:
 - (i) the Adjoining Property may be the subject of construction and development activities, including in connection with Third Party Infrastructure Works and Utility Service Works; and
 - (ii) the State may establish a process to manage site co-ordination issues during the construction phase of other developments; and
- (b) agrees to liaise and cooperate with, and assist the State in that process.

7.18 Noise

The Operator must:

- (a) ensure that any person involved in the performance of the Services, or the carrying out of the Project Works complies with any applicable Laws with respect to noise suppression methods for building, construction or other machinery used in performing the Services, or carrying out the Project Works; and
- (b) subject to the Operator's rights under any Law and this document, minimise the inconvenience or interference to any owner or occupier of Adjoining Property, including

by complying with all requirements set out in the Design Parameters in respect of noise management (however described).

7.19 Crane usage

- (a) Subject to clause 7.19(b), the Operator must ensure that any cranes used for construction of the Project Works remain fully on the Site and the Extra Land. Nothing in this clause restricts the boom swing of any crane being above land outside the boundaries of the Site or the Extra Land subject to all necessary approvals having been obtained by the Operator from the appropriate Authorities and any relevant owners, lessees or occupiers of Adjoining Property to permit the same.
- (b) If, in accordance with ordinary construction practices, the Operator needs to locate any crane outside of the Site or the Extra Land, the Operator must obtain all relevant Consents before it may do so.

7.20 Naming, branding and marketing

- (a) The Facility will be called '*The Northern Beaches Hospital*' (or such other name approved by the Client Representative from time to time).
- (b) The parties must, with respect to provision of signage, branding and advertising structures and components within the Site and at the Facility at all times, comply with the Design Parameters and the Stakeholder Engagement and Communications Strategy.

8. State's easements

The State may at any time grant easements and other rights over the Site and restrictions on use burdening the Site (**Site Encumbrances**) provided that the State notifies the Operator of its intention to grant the Site Encumbrance, giving reasonable details of the proposed location and terms of the Site Encumbrance.

9. Contamination

9.1 General notice of Contamination

- (a) Each party must advise the other party as soon as it becomes aware of:
 - (i) any Contamination in, on or under the Site, the Extra Land or the Facility; or
 - (ii) any Contamination which has emanated or is emanating from the Site, the Extra Land or the Facility,at any time during the Term, regardless of whether a Contamination Remediation Notice has been issued in respect of that Contamination.
- (b) If the State or the Operator receives a Contamination Remediation Notice, it must provide to the other party and the Client Representative:
 - (i) a copy of the Contamination Remediation Notice within seven days after receipt of the Contamination Remediation Notice; and
 - (ii) copies of all reports, invoices and other documents relating to the party's compliance with the Contamination Remediation Notice and any other information relating to the Contamination Remediation Notice or the party's compliance with it within 7 days following a request by another party or the Client Representative.

9.2 Operator obligation to Remediate Contamination

The Operator must:

- (a) in accordance with this clause 9.2, Remediate:
 - (i) any Contamination in, on, or under; or
 - (ii) any Contamination which has emanated, or is emanating from, the Site, the Extra Land or the Facility;
- (b) without limiting its obligations to undertake the Operator's Activities in accordance with all Laws or relevant Consents, Remediate Contamination referred to in clause 9.2(a):
 - (i) in accordance with the relevant Remediation Action Plan;
 - (ii) without limiting clause 9.2(b)(i), if a Contamination Remediation Notice (regardless of to whom the notice is issued or addressed) is issued in respect of the Site, the Extra Land or the Facility, promptly and in accordance with the requirements set out in the Contamination Remediation Notice;
 - (iii) if required by a Consent or Law, as is necessary or as required to enable the Site Auditor to issue a Site Audit Statement; and
 - (iv) without limiting clauses 9.2(b)(i) to 9.2(b)(iii) (inclusive), in a manner and to a standard necessary to ensure that the Site, the Extra Land and the Facility are suitable for the provision of the Services and otherwise the proposed use of the Site and the Facility; and
- (c) comply with all binding requirements of an Authority in respect of any Contamination referred to in clause 9.2(a) or any Remediation of any such Contamination.

9.3 Submission of Remediation Action Plan

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

9.4 State response to Remediation Action Plan

- (a) The State must, within 20 Business Days after receipt of the relevant Remediation Action Plan:
 - (i) review that Remediation Action Plan and return it marked 'No Comment'; or
 - (ii) request the Operator to amend that Remediation Action Plan and provide details of the amendments requested.

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

9.5 The Operator's entitlement to compensation for Remediation

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

- (a) the Contamination:
 - (i) is Unidentified Pre-Existing Contamination; or
 - (ii) migrated to the Site or the Facility after the date of this document; or
 - (iii) was caused or contributed to by the State or a State Related Party after the date of this document (to the extent of that contribution);
- (b) the Operator has submitted a Change Proposal to the Client Representative in accordance with the Change Procedure;
- (c) the Operator has submitted a Remediation Action Plan in accordance with clause 9.3;
- (d) the State has reviewed any proposed Remediation Action Plan and returned it to the Operator without any comment or marked 'No Comment';
- (e) the Operator has Remediated the Contamination in accordance with the Remediation Action Plan reviewed in accordance with clause 9.5(d);
- (f) the Operator has used all reasonable endeavours to minimise the Liabilities incurred by the Operator in Remediating the Contamination; and
- (g) the Operator has otherwise complied with the Client Representative's reasonable directions in relation to the relevant Contamination,

except to the extent that:

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

- (j) the Contamination has occurred as a result of or was contributed to by any act or omission of the Operator or any Operator Related Party or the breach by the Operator of an obligation under the Project Documents.

Subject to this clause 9.5 and clauses 9.7 and 61 (to the extent only it relates to paragraph (i) of the definition of Compensation Event), no Compensation Event or Relief Event will arise in respect of, and the Operator will not be entitled to relief from its obligations under this document or compensation in connection with, Contamination, the Remediation of Contamination or any Contamination Remediation Notice.

9.6 Exclusions

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

- (a) any investigations of the Site or the Facility carried out or procured by the Operator to determine the presence of Contamination;
- (b) any costs for the management, handling or disposal of General Solid Waste; or
- (c) without limitation to clause 61 (to the extent only it relates to paragraph (i) of the definition of Compensation Event), any delay or disruption to the Operator's Activities resulting from any Contamination.

9.7 Calculation of compensation

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

9.8 Release by the Operator

Subject to clauses 9.5, 9.7 and 61 (to the extent only it relates to paragraph (i) of the definition of Compensation Event), the Operator releases the State and State Related Parties from all Liabilities and Claims arising out of or in respect of Contamination existing in, on, or under, or migrating onto or emanating from, the Site, the Extra Land or the Facility.

9.9 Remediation Action Plan

- (a) The Operator must amend and update the Remediation Action Plan in accordance with the requirements of the Site Auditor until the Date of Final Completion to meet the standards required by Law.
- (b) The Operator must provide copies of all updated Remediation Action Plans to the Client Representative immediately upon the updated Remediation Action Plan being endorsed by the Site Auditor.

9.10 Assist the State

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

9.11 Environmental audit

- (a) The Operator must undertake a Contamination Assessment:
 - (i) prior to the issue of the Notice of Technical Completion; and
 - (ii) at or around the time the last Handover Audit is undertaken pursuant to clause 91.2(a).
- (b) Each Contamination Assessment must confirm that any Contamination in, on, or under, or which has emanated or is emanating from the Site, the Extra Land or the Facility does not present a risk of harm to the Environment or the Site, and is suitable for the provision of the Services and otherwise the proposed use of the Site, the Extra Land and the Facility.
- (c) The Operator must, if required by a Consent or Law, obtain prior to (as applicable):
 - (i) issuing the Notice of Technical Completion; or
 - (ii) the Public Patient Portion Expiration Date or Early Handover Date (as applicable),
a Site Audit Statement, which must confirm that the Site, the Extra Land and Facility is suitable for the provision of the Services and otherwise the proposed use of the Site, the Extra Land and the Facility.

9.12 Artefacts

All Artefacts discovered on or under the surface of the Site will, as between the State and the Operator, be the absolute property of the State. The Operator must:

- (a) at its expense, take every precaution to prevent Artefacts being removed, disturbed, damaged or destroyed until appropriate arrangements for dealing with, or removing, the Artefacts have been made;
- (b) immediately upon discovery of any Artefact notify the Client Representative of such discovery;
- (c) comply with any Consent or Law relating to the Artefact;
- (d) without limiting clause 9.12(c) above, comply with any directions or orders to suspend or cease undertaking the Project Works or the Services or operating the Facility, or to perform additional work or services, imposed by the State, a court or tribunal or required by Law upon the State or the Operator in respect of such Artefact; and
- (e) continue to perform its obligations under this document, except to the extent compliance with this clause prevents such performance.

10. Approvals and Consents

10.1 Consents

- (a) The Operator must:
 - (i) in a timely manner prior to submission to the relevant Authority, submit all applications for Consents or changes to Consents (other than applications for Routine Consents or changes to Routine Consents) to the State for approval (which approval must not be unreasonably withheld by the State); and
 - (ii) in a timely manner obtain and, once obtained, maintain (or, as applicable, procure the obtaining and maintenance of) all Consents, perform its obligations, exercise its rights and carry out the Project so as not to cause a breach of the terms of any of the Consents in effect from time to time.

- (b) This clause 10.1 does not in any way limit the Operator's obligations under clauses 4 or 16, or any other provision of this document in respect of obtaining and maintaining Consents.
- (c) If the State does not notify the Operator in writing of its approval (or rejection) of an application for Consent or change to a Consent submitted to the State under clause 10.1(a)(i) within 20 Business Days after receipt from the Operator of that application or change, it will be deemed to have no comment for the purposes of this clause.

10.2 Copies of Consents

The Operator must provide to the Client Representative (and, during the Development Phase, the Independent Verifier) a copy of every Consent obtained in relation to the Project and any amendments to or notices relating to such Consents.

10.3 Conditions and costs of Consents

- (a) The Operator must at its own cost and risk comply with, carry out and fulfil all conditions and requirements imposed under or in connection with all Consents, including payment of relevant fees, contributions and levies but excluding conditions and those parts of conditions that, under Law, can only be performed by the owner of the affected land, such as the transfer or dedication of land.
- (b) Where an Authority provides, or indicates that it will provide, a Consent subject to certain conditions, the Operator may contest the imposition of such conditions, but only if such contest:
 - (i) is made in good faith by appropriate proceedings;
 - (ii) does not involve any material risk to the provision of Services or otherwise to the delivery of the Project in accordance with the Project Documents;
 - (iii) is made at no cost to the State and does not expose the State to any potential Loss or Claim;
 - (iv) is permitted by, and is conducted in accordance with, applicable Law; and
 - (v) is conducted by and in the name of the Operator,and provided that while any such contest remains to be finally determined, the Operator must comply with the terms of the Consent provided.
- (c) Where the Client Representative gives written direction within 10 Business Days after receipt of an advice regarding a proposed condition to a Consent, to contest the imposition of that condition, the Operator must contest the imposition of such condition, provided that the State will provide the Operator with reasonable assistance relating to the contest as may be requested by the Operator.
- (d) The Operator must keep the State informed of the progress and nature of any contest under this clause 10.3, and must consult in good faith with the Client Representative regarding the conduct of any such contest.
- (e) Where a condition to a Consent necessitates a Change the Operator must, subject to the provisions of this clause 10.3, implement the Change in accordance with clause 64.
- (f) Except as expressly provided in this clause 10.3, the Operator must not (and will procure that any Operator Related Party, does not) without the prior written consent of the Client Representative apply for or agree to any change, relaxation or waiver of any Consent, or of any condition attached to it.

The Operator indemnifies the State and each State Related Party, on demand, from and against any Loss or Claim incurred, suffered or arising from a contest by the Operator against the imposition of conditions in respect of a Consent (excluding in respect of any contest undertaken by the Operator pursuant to clause 10.3(c) which directly relates to a condition that could not reasonably be expected to have an adverse impact on the functionality of the Project or the Operator's obligations under the Project Documents).

10.4 Landowner Consent

The State, in its capacity as landowner, agrees to sign such documents and promptly provide such authorisations, consents and approvals as are required by Law to enable the Operator to lodge any applications for Consents with a Development Consent Authority.

11. NSW Code and NSW Guidelines

11.1 Reference

In addition to terms defined in this document, terms used in this clause 11 have the same meaning as is attributed to them in the New South Wales Government Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

11.2 Primary obligation

- (a) In carrying out the Operator's Activities, the Operator must at all times comply with, and meet any obligations imposed by, the NSW Government Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Guidelines.
- (b) The Operator must notify the Construction Compliance Unit (**CCU**) and the State of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Operator engages a Subcontractor or consultant, the Operator must ensure that Subcontract or consultancy contract imposes on the Subcontractor or consultant equivalent obligations to those in this clause 11.2 (under the heading 'NSW Code and NSW Guidelines'), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Operator must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

11.3 Access and information

- (a) The Operator must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Operator must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises (or part thereof) controlled by the Operator, including but not limited to the Site and the Facility;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Project;

- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by the Operator, its subcontractors, consultants, and related entities.

- (c) The Operator, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

11.4 Sanctions

- (a) The Operator warrants that at the time of entering into this document, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) If the Operator does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the NSW Government (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Operator, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

11.5 Compliance

- (a) The Operator bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Operator is not entitled to make any Claim from the State or the NSW Government for such costs.
- (b) Compliance with the NSW Code and the NSW Guidelines does not relieve the Operator from responsibility to perform the Operator's Activities and any other obligation under this document, or from liability for any Defect in the Project Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) Where a Change is proposed, and that Change may, or may be likely to, affect compliance with the NSW Code and the NSW Guidelines, the Operator must immediately notify the Client Representative of the Change, or likely change and specify:
 - (i) the circumstances of the proposed Change;
 - (ii) the extent to which compliance with the NSW Code and the NSW Guidelines will be, or is likely to be, affected by the Change; and

- (iii) what steps the Operator proposes to take to mitigate any adverse impact of the Change (including any amendments it proposes to the Work Health and Safety Management Plan); and
- (d) the State will direct the Operator as to the course it must adopt within 10 Business Days of receiving notice.

12. Security

12.1 Development Phase Bonds

- (a) The Operator must procure Bonds from the Construction Contractor in favour of the Operator for the following amounts and durations:
 - (i) subject to clauses 12.5 and 12.8, a Bond for a period commencing not later than the date of Financial Close and terminating not earlier than three months after the Date of Operational Readiness for an amount not less than 5% of the Contract Price (**Construction Bond**); and
 - (ii) subject to clause 12.9, a Bond for an amount not less than 2.5% of the Contract Price, for a period expiring no earlier than 12 months after the Date of Operational Readiness (**Defects Liability Bond**).
- (b) The Operator must procure the Construction Bond on or prior to the date of Financial Close.
- (c) The Operator must procure the Defects Liability Bond:
 - (i) within 5 Business Days after the Date of Operational Readiness; and
 - (ii) as a precondition to the Operator releasing the Construction Bond in accordance with clause 12.5.

12.2 Construction Contractor Guarantor Performance Guarantee

The Operator must, as a condition precedent to Financial Close, procure the Construction Contractor Guarantor to sign and deliver to the Operator a performance guarantee (in form and substance satisfactory to the State) in favour of the Operator in respect of the obligations of the Construction Contractor under the Construction Contract (**Construction Contractor Guarantor Performance Guarantee**).

12.3 Parent Company and Operator Holding Company Guarantees

The Operator must, as a condition precedent to Financial Close, procure the Parent Company and the Operator Holding Company to sign and deliver to the State the Parent Company Guarantee and the Operator Holding Company Guarantee, both in favour of the State.

12.4 Operating Term Bonds to the State

The Operator must provide the State with:

- (a) a Bond in favour of the State in the amount of _____ prior to the Date of Operational Readiness (**Operating Term Bond**), as a condition precedent to the achievement of Operational Readiness; and
- (b) Bonds for the amount referred to in clause 91.3(a) and clause 23.3 of Schedule 22, Part C, in each case within the periods specified in those clauses.

12.5 Release of Construction Bond

The Operator may only release the Construction Bond to the Construction Contractor on or after the Date of Operational Readiness if:

- (a) the Operator has been provided with the Defects Liability Bond in accordance with clause 12.1(a)(ii); and
- (b) there are no Outstanding Items.

To the extent there are Outstanding Items after the Date of Operational Readiness, the Construction Bond must at all times until those Outstanding Items are rectified (in accordance with the requirements of this document) have a face value equal to not less than 5% of the aggregate value of those Outstanding Items. Once all Outstanding Items are completed and certified (in accordance with the requirements of this document), and clause 12.5(a) has been complied with, the Operator may release the Construction Bond in accordance with its terms by returning it to the Construction Contractor.

12.6 Release of other Bonds

Subject to the State's right to have recourse to the relevant Bond, the State must release:

- (a) the Operating Term Bond on the Public Patient Portion Expiration Date or the Early Handover Date (as applicable);
- (b) any Return Condition Bond on the last to occur of:
 - (i) the date that the Return Condition Bond in respect of the next Handover Audit or Private Patient Portion Handover Audit (as applicable) is provided in accordance with clause 12.4;
 - (ii) the first date on which all the required rectification, maintenance or remediation work identified by the Independent Assessor under clause 91.2(b) or clause 23.2, Schedule 22, Part C has been carried out to the reasonable satisfaction of the Independent Assessor in accordance with clause 91.6; and
 - (iii) the date which falls 20 Business Days after the Public Patient Portion Expiration Date, Private Patient Portion Expiration Date, or Early Handover Date or Early Private Patient Portion Handover Date (as applicable).

12.7 Requirements of Bonds

Each Bond must be:

- (a) to the extent that the Bond is issued in favour of the State, in the form of Schedule 13 to this document or such other form as the State may approve;
- (b) at all times provided by:
 - (i) a Major Australian Bank; or
 - (ii) a bank acceptable to the State (acting reasonably),that maintains the Required Rating and is regulated by APRA;
- (c) payable at an office of the issuer in Sydney (or such other place as the State may approve); or
- (d) to the extent that the Bond is issued in favour of the State, provided as a cash equivalent to the State.

12.8 Replacement of Construction Bond

- (a) The Operator must, no later than two months before the expiry of the Construction Bond, if the Date of Operational Readiness has not at that time occurred (or, if it has occurred, but there are Outstanding Items not completed as contemplated by clause 12.5), procure the issue of a replacement Bond in its favour and in the form and for the amount of the

Construction Bond it is replacing and which expires no earlier than 8 months after its date of issue.

- (b) The Operator must repeat compliance with paragraph (a) in respect of the relevant Construction Bond at all times until the later of:
 - (i) the Date of Operational Readiness;
 - (ii) the date on which the Operator procures the Defects Liability Bond in accordance with clause 12.1(a)(ii); and
 - (iii) all Outstanding Items are complete (in accordance with the requirements of this document).
- (c) If the circumstances described in clause 12.10(d) apply in respect of the Construction Bond, the Operator must procure that the Construction Bond is replaced in accordance with that clause.

12.9 Replacement of Defects Liability Bond

- (a) If 1 month prior to the expiry of the Defects Liability Bond there are Defects in respect of the Facility which are the subject of remedial works pursuant to clause 46 or a dispute under that clause, the Operator must procure replacement of the Defects Liability Bond in the form of the Defects Liability Bond it is replacing but which:
 - (i) is in an amount no less than 120% of the amount required to cure the Defects the subject of remedial works pursuant to clause 46 or a dispute under that clause, as reasonably determined by the Independent Assessor; and
 - (ii) expires 1 month after the later of the date (such date to be reasonably determined by the Client Representative in its sole and absolute discretion and notified to the Operator) on which:
 - (A) that Defect or Defects are likely to be rectified; and
 - (B) the last of the disputes in respect of such Defect or Defects is likely to be resolved.
- (b) No later than two weeks prior to the expiry of the replacement Defects Liability Bond referred to in clause 12.9(a), if any such Defect or Defects has not been rectified or the last dispute in respect of such Defect or Defects has not been resolved or determined, the Operator must procure the issue of a further replacement Defects Liability Bond in the form of the Defects Liability Bond it is replacing and which expires no earlier than 6 months after its date of issue.
- (c) The Operator must repeat compliance with clause 12.9(b) in respect of the Defects Liability Bond at all times until the later of 20 Business Days after:
 - (i) the date on which the Defect or Defects identified in clause 12.9(a) has been rectified; and
 - (ii) the date on which the last of the Disputes in respect of such Defect or Defects is resolved by agreement between the parties or determined under clause 87.
- (d) If the circumstances described in clause 12.10(d) apply in respect of the Defects Liability Bond, the Operator must procure that the Defects Liability Bond is replaced in accordance with that clause.

12.10 Replacement of Bonds generally

- (a) Not less than one month before the expiry of any Bond issued to the State, the Operator must procure the issue to the State of a replacement Bond which:
- (i) must have a face value equal to that of the Bond being replaced (unless the expiring Bond has been drawn upon by the State, in which case the replacement Bond will be for an amount equal to the undrawn amount of the expiring Bond); and
 - (ii) must satisfy the requirements of clause 12.7,
- and the State must promptly surrender the expiring Bond to the Operator following receipt by the State of the replacement Bond.
- (b) If the Operator fails to replace any Bond when required under clause 12.10(a), the State may make a demand on the Bond which is to expire.
- (c) The State may hold the proceeds of any Bond on which it makes a demand in accordance with clause 12.10(b) as security in lieu of the replacement Bond until the replacement Bond is replaced in accordance with clause 12.10(a).
- (d) If the issuer of a Bond ceases to have the Required Rating or ceases to be the holder of a current licence issued by APRA, then the Operator must:
- (i) promptly notify the State of that circumstance; and
 - (ii) within 20 Business Days after being requested to do so, procure the issue of a replacement Bond which must have a face value equal to that of the Bond being replaced (unless the Bond being replaced has been drawn upon, in which case the replacement Bond will be for an amount equal to the undrawn amount of the Bond being replaced) and must satisfy the requirements of clause 12.7,
- and, if the Bond has been issued to the State, the State must promptly surrender the original Bond to the Operator following the issue of the replacement Bond.
- (e) If the Operator fails to replace any Bond when required under clause 12.10(d), the State may make a demand on the Bond or require that the Operator make a demand on the Bond (as applicable).

12.11 Call on Construction Bond or Defects Liability Bond

- (a) If the Operator fails to:
- (i) achieve Operational Readiness by the Date for Operational Readiness and if such failure has not been remedied or is not being remedied in accordance with a plan approved by the State;
 - (ii) rectify or complete all Outstanding Items within the time period specified in this document; or
 - (iii) rectify any Defect as soon as is reasonable given the nature of the Defect pursuant to clause 45,

then, without limiting the State's rights under this document or at Law in respect of such failure (and following a failure by the Operator to pay such amounts in response to a claim by the State for payment of those amounts on an on-demand basis), the State may, subject to paragraph (b), require the Operator to call on the Construction Bond or the Defects Liability Bond to reimburse the State or the Operator for the reasonable costs and expenses incurred by the State or the Operator to rectify the failure, and the State may,

after first providing 10 Business Days' notice to the Operator, take or direct the Operator to take action to rectify the failure.

- (b) Nothing in this clause 12.11 limits:
 - (i) the Operator's obligations to achieve Operational Readiness, rectify all Defects, deliver the Services and rectify or complete the Outstanding Items in accordance with this document; or
 - (ii) any warranties given by the Operator under this document,and this clause 12.11 is without prejudice to the State's right to make a Failure Abatement.

12.12 No injunction

- (a) The State may make a demand under a Bond issued in its favour at any time and irrespective of whether the circumstances relating to the demand are:
 - (i) in dispute; or
 - (ii) subject to any dispute resolution procedure (including any dispute resolution procedure referred to in clause 87).
- (b) The Operator must not take any steps to injunct or otherwise restrain:
 - (i) the issuer of a Bond from paying the State pursuant to the Bond;
 - (ii) the State from making a demand under a Bond or receiving payment under a Bond; or
 - (iii) the State from using the proceeds of a Bond.

12.13 Proceeds of Bonds

- (a) Subject to clause 12.11, the State may only use the proceeds of any Bond, or claim on any Bond issued in its favour, to reimburse it for any Loss or Liability for which the Operator is liable, and in payment of any other moneys owing by the Operator to the State (including monies owing under any indemnity).
- (b) Any proceeds remaining will be repaid to the Operator in return for a replacement bond for the amount repaid and which satisfies the requirements of clause 12.7. The replacement bond will be regulated by this document as if it were the Bond the State made the demand on.

12.14 No interest

The State is not obliged to pay to the Operator interest on a Bond or the proceeds of a Bond.

12.15 No trust

If the State makes a demand under a Bond, it does not hold the proceeds on trust for the Operator.

13. Project Plans

13.1 Purpose

The intended purposes of the Project Plans include:

- (a) to demonstrate to the State that the Operator has the understanding, capacity and capability at all times to perform the Operator's Activities safely and in accordance with the requirements of this document;
- (b) to ensure that the Services and the Facility comply with the requirements of this document;

- (c) to define responsibilities, resources and processes for planning, performing and verifying that the Operator's Activities satisfy the requirements of this document; and
- (d) to allow the State to understand how the Operator will achieve the performance outcomes specified in this document, the Project Objectives and the purposes set out in clause 2.2 and otherwise fulfil its obligations under this document.

13.2 Preparation of Project Plans

The Operator must:

- (a) prepare each Project Plan based on the relevant Initial Project Plan (if any) or the requirements of the State in respect of that Project Plan as set out in (as applicable) the General Plan Requirements, the Asset Solution Plan Requirements, the Transition Plan Requirements, the Operational Plan Requirements and the Commercial Plan Requirements; and
- (b) submit each Project Plan (including each updated Project Plan) to the State in a manner and at a rate which:
 - (i) will give the Client Representative a reasonable opportunity to review the submitted Project Plans within the 20 Business Day period referred to in clause 13.5(a)(ii); and
 - (ii) is otherwise in accordance with this document.

13.3 Fitness for purpose

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

13.4 Updated Project Plans

Without limiting the other obligations of the Operator under this document, the Operator must:

- (a) review and, if necessary or if otherwise required by this document, update the Project Plans to take account of events or circumstances which will, or may, affect the manner in which the Operator carries out the Operator's Activities including:
 - (i) changes to the manner in which the Services are being provided or the Facility is being used;
 - (ii) the requirements of the Services Specification or the Design Parameters;
 - (iii) Changes in Law, Consents and Policies;
 - (iv) deficiencies in or omissions from the Project Plans;
 - (v) changes in the requirements of Authorities or providers of Utilities;
 - (vi) Changes;
 - (vii) changes to work practices;
 - (viii) changes in Good Industry Practice or Good Operating Practice;
 - (ix) in respect of the Compensable Patient Strategy, and without limiting subparagraph (viii) above, changes required to maximise the benefit of, and give best effect to, the Urgent Care Alternate Strategies Services;
 - (x) any breach or potential breach of the warranty in clause 13.3; and
 - (xi) in respect of TTER Services:

- (A) the TTER Services Amount and resulting changes required to the scope of the Direct TT Services, Indirect/Infrastructure TT Services, Research Services and Embedded TTER Services; and
 - (B) the matters set out in clauses 59.13(d) and 59.13(e)(i).
- (b) promptly submit each Project Plan updated under clause 13.4(a) to the Client Representative;
 - (c) without limiting clause 13.4(a), update each Project Plan at the times required by the Project Plan, the Asset Solution Plan Requirements, the Commercial Plan Requirements, the General Plan Requirements, the Operational Plan Requirements, the Transition Plan Requirements, the Services Specification, the Design Parameters or this document and provide such updated Project Plans to the Client Representative;
 - (d) not update any Project Plan in a manner which makes the State's obligations under the Project Documents more onerous or increases any liability or potential liability of the State or a State Related Party in connection with the Project; and
 - (e) ensure that any updated Project Plans:
 - (i) are based upon;
 - (ii) impose standards, levels of service, scope and requirements that are equal to, greater or higher than those imposed by; and
 - (iii) provide an equal or greater level of detail than,

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

13.5 State may review Project Plans

- (a) Without limiting the Client Representative's other rights in respect of a Project Plan under this document, the Client Representative may at any time:
 - (i) review any Project Plan submitted under this clause 13 (including under clauses 13.2, 13.4 and 13.6); and
 - (ii) within 20 Business Days after the submission of the Project Plan but without limiting clause 13.5(e), notify the Operator if the Client Representative has reasonably formed the view that the Project Plan does not comply with the requirements of this document.
- (b) If the Operator receives a notice in accordance with clause 13.5(a)(ii), the Operator must, within 20 Business Days, submit the revised Project Plan to the Client Representative in which case the provisions of this clause 13.5 will reapply to the revised Project Plan.
- (c) The exercise (or failure to exercise) by the Client Representative of any of its rights under this clause 13.5 will not preclude the State from subsequently asserting that the Project Plan does not comply with the requirements of this document.
- (d) For the purposes of a review under this clause 13.5, if requested by the Client Representative, the Operator must:
 - (i) make available to the Client Representative all relevant records held by the Operator and the Operator's Subcontractors in relation to the Project Plan; and

- (ii) provide all reasonable assistance to the Client Representative during the review including attending reviews and meetings.
- (e) For the purposes of the Demand Management Plan only and without limitation, it will be reasonable for the State to provide notification to the Operator under clause 13.5(a)(ii) if the Demand Management Plan submitted under this clause 13:
 - (i) is not reflective of demand management obligations:
 - (A) previously undertaken;
 - (B) presently being undertaken; or
 - (C) proposed to be undertaken in the relevant Operating Year,
 - by one or more similar hospitals in the NSW public health system in respect of services similar to the Services; or
 - (ii) does not account for the unique position of the Facility and the Project, including the location of the integrated Private Patient Portion,
 - or if compliance with or the implementation of the Demand Management Plan would result in the Operator being in contravention of its obligations under the Project Documents.

13.6 State may request updates

If the Client Representative has reasonably formed the view that:

- (a) any Project Plan does not comply with the requirements of this document (including Good Industry Practice or Good Operating Practice); or
- (b) in respect of the Compensable Patient Strategy, the requirements of clause 13.4(a)(ix) above, having regard to (among other things) any report submitted under section 2.6 of the Reporting Schedule; or
- (c) the Operator has not updated any Project Plan in accordance with the requirements of clause 13.4(a),

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

- (d) the reasons why such updating is required (or why the Project Plan does not comply with this document); and
- (e) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the Operator must:

- (f) amend or update the Project Plan as requested by the State and in the manner required by this document; and
- (g) submit the amended or updated Project Plan to the State within the time specified under clause 13.6(e).

13.6A Demand Management Plan Renewal Timeframe

- (a) Without limiting section 5(c)(5) of the Activity Schedule, the Demand Management Plan must be renewed annually by the Operator and the Operator must provide to the State a draft Demand Management Plan for the Upcoming Operating Year no later than 31

January each Operating Year, or more frequently as required to ensure accuracy and completeness as requirements are identified during the Operating Phase.

- (b) Any deviations from the previous Demand Management Plan are to be clearly identified by the Operator and provided to the Client Representative for approval.
- (c) The Operator must act reasonably and expeditiously in performing its obligations under this clause 13.6A, with the object of issuing the final Demand Management Plan for the Upcoming Operating Year at least three months prior to the commencement of the Upcoming Operating Year.
- (d) To the extent of any inconsistency between clauses 13.1 to 13.10 (inclusive) and this clause 13.6A, then this clause 13.6A will prevail to the extent of that inconsistency.

13.7 Implementation and compliance

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

13.8 No relief

The Operator will not be relieved from compliance with any of its obligations under this document or from any of its liabilities whether under this document or otherwise according to Law as a result of:

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

Compliance by the Operator with its obligations under this clause 13 (including clause 13.7) is not evidence of compliance by the Operator with its other obligations under this document.

13.9 Handover Plan – Appendix A

Notwithstanding any other provision in this document or any other State Project Document, the Handover Plan – Appendix A forms a part of this document and is binding on the Operator and the State for the purposes of demarcating the Public Patient Portion, Private Patient Portion, Shared Portion, Designated Commercial Areas, Private Consulting Suites and GP Clinic within the Facility. Neither party may amend the Handover Plan – Appendix A without the prior written consent of the other party, provided however that the State Surveyor may require changes to the Handover Plan – Appendix A to the extent necessary to give effect to the verification undertaken pursuant to clause 32.3.

13.10 Amendments to Car Park Plan and Handover Plan

Any amendment to the Car Park Plan or the Handover Plan made under this document will also apply to the Car Park Plan or the Handover Plan (as applicable) referred to in the Car Park Management Deed.

14. Project Program

14.1 Operator's Project Program obligations

The Operator must develop and complete the Project Program for the Project Works, and for the timely execution of each Transition Plan:

- (a) in accordance with the form of Project Program as set out in the General Plans Schedule;
- (b) by reference to, and in accordance with, the Project Management Plan;
- (c) by the date and in accordance with the requirements set out in the Design Parameters, the Construction Management Plan and this document;
- (d) in accordance with clause 14.2 and the General Plan Requirements;
- (e) in accordance with Good Industry Practice and in compliance with the Quality Assurance Management Plan;
- (f) so that the Facility and the Services are in accordance with or exceed the requirements of the Design Parameters, Services Plans, Services Specifications and Good Operating Practice;
- (g) so that the Facility, the Project Works comply with all applicable Consents, Policies and Law;
- (h) so as to comply with the warranties in clause 5.2; and
- (i) so that the Dates for Completion are achieved in a manner and pursuant to the timing requirements set out in this document.

Despite anything to the contrary in this document or another Project Document, the Project Program does not form part of this document.

14.2 Preparation of Project Program

- (a) The Operator must submit to the Client Representative for review by the Client Representative an updated Project Program as and when required under this document or the General Plan Requirements, each in hard copy and manipulable electronic format.
- (b) The draft Project Program documentation submitted in accordance with clause 14.2(a) must contain the following information:
 - (i) a critical path time line, including milestones, the Dates for Completion and interdependencies; and
 - (ii) any other information required by the General Plan Requirements.
- (c) If required by the Client Representative, the Operator must make available at the cost and expense of the Operator, such further information as the Client Representative may reasonably request relating to the development of the Project Program, in such form as the Client Representative may reasonably request (including copies of any works programs comprising the Project Program).
- (d) Without limiting its rights under clause 13, the Client Representative may review the draft Project Program documentation referred to in clause 14.2(b) or further information referred to in clause 14.2(c) and give the Operator comments, recommendations and representations regarding the draft Project Program documentation or further information (as relevant), provided that such comments, recommendations and representations are:

- (i) provided to the Operator within 15 Business Days after receipt of the draft Project Program documentation or further information (as relevant) by the Client Representative; and
 - (ii) otherwise limited to matters impacting upon the compliance of the draft Project Program documentation with the requirements of this document.
- (e) Without limiting the rights of the Client Representative under clause 13, if the Client Representative gives the Operator comments, recommendations and representations regarding the failure of the draft Project Program documentation to comply with the requirements of this document, the Operator must amend the draft Project Program documentation to reflect the Client Representative's comments, recommendations or representations and the draft Project Program documentation must be re-submitted in accordance with this clause 14.2.
- (f) The Operator acknowledges that participation by the Client Representative or any other representatives of the State or other stakeholders in the development process for the Operator's Activities or review of any documentation by the Client Representative in accordance with this document or any comments, recommendations or representations made by the Client Representative in accordance with this clause 14.2 are solely for the benefit of the State and the purpose of monitoring the performance of the Operator, and:
 - (i) the Client Representative, any other representatives of the State and other stakeholders are not under any obligation to participate in the development process for the Operator's Activities and will not, in reviewing the draft Project Program documentation or providing comments, recommendations or representations to the Operator in accordance with clause 14.2(d), assume any duty of care or other responsibility to ascertain errors, omissions, defects or non-compliance with this document;
 - (ii) the Operator is solely responsible for ensuring that the design and construction of the Facility complies with the Design Parameters, the requirements of the Licensing Authority and the Operator's other obligations under this document, and no action or inaction of the Client Representative or any other representatives of the State or other stakeholders in the development process for the Operator's Activities will be taken to constitute acceptance that the Project Program or any part of it is in compliance with the Design Parameters, the General Plan Requirements or the requirements of the Licensing Authority and the Operator's other obligations under this document; and
 - (iii) no action or inaction of the Client Representative or any other representatives of the State or other stakeholders in the development process for the Operator's Activities under this clause 14.2 will entitle the Operator to make any claim under this document or in any way relieve, alter, limit or change the Operator's obligations under the Project Documents.
- (g) If the Operator and the Client Representative are unable to agree, within 15 Business Days, to appropriate amendments to reflect the comments, recommendations or representations made to the Operator by the Client Representative in accordance with this clause 14.2, such dispute will be referred to the Independent Verifier for determination. The Independent Verifier must make a determination within 10 Business Days of any such referral or such other period as the parties agree (acting reasonably) having regard to the nature of the disagreement.

14.3 Project Program amendments

- (a) The Operator must update the Project Program:
- (i) promptly after the Certified Construction Documentation is agreed in accordance with clause 19.8;
 - (ii) upon the granting of any extension of time to the Operator in respect of a Date for Completion; and
 - (iii) monthly, or at such other time set out in the General Plan Requirements or as agreed between the parties until the end of the Transition Period,
- to take account of changes to the program and delays, including delays for which relief has been given under this document, provided that no alteration, addition or modification to a Project Program will adjust a Date for Completion unless such adjustment has been agreed or determined in accordance with clause 23.7 or clauses 61, 62, 63, 64 or 67.
- (b) The Operator must promptly submit:
- (i) the updated Project Program; and
 - (ii) an explanation of, and the reasons for, any change to the critical path time line (including milestones and interdependencies) contained in the updated Project Program,
- to the Client Representative as the Project Program is amended in accordance with this clause 14.3.
- (c) Without limiting the rights the State may have, if the Client Representative reasonably considers that activities undertaken in compliance with the updated portion of the Project Program may change the obligations of the State or a State Related Party, the Client Representative may within 10 Business Days after receipt of the updated Project Program by written notice direct the Operator to further amend the updated portions of the Project Program specifying:
- (i) the reasons why such amendments are required; and
 - (ii) the reasonable time within which such amendment must occur,
- and the Operator must:
- (iii) further amend the Project Program as directed by the Client Representative; and
 - (iv) submit the further developed, updated or amended Project Program to the Client Representative for review in accordance with this clause 14.3 within the time specified in the Client Representative's notice.
- (d) If so required in writing by the Client Representative, the Operator must meet and consult with relevant stakeholders in relation to amendments to the Project Program, after which the Client Representative may, under clause 14.3(c), request that the Operator make further amendments to the updated portion of the Project Program.
- (e) The Operator must not make any alteration, addition or modification to the Project Program other than in accordance with this clause 14.3, and clauses 13 and 63.

15. Quality Assurance Management Plan

- (a) The Operator must:
 - (i) audit its own compliance with the Quality Assurance Management Plan at intervals not exceeding three months and in accordance with the audit program which has been agreed to by the Client Representative at the date of this document;
 - (ii) have its compliance with the Quality Assurance Management Plan audited at intervals not exceeding twelve months by an independent auditor acceptable to the Client Representative;
 - (iii) permit the Client Representative or his or her representative to be present during such audits; and
 - (iv) deliver to the Client Representative an audit report, within a reasonable time of completion of each audit.
- (b) The State has the right, at any time, to audit, at its own cost:
 - (i) the Operator's compliance with the Quality Assurance Management Plan insofar as it applies to the Operator's Activities; and
 - (ii) the compliance by the Subcontractors with their respective quality assurance plans which have been prepared to enable the Operator to comply with its obligations under clauses 20.1(i)(ii) and 51(a)(iii).
- (c) If the audit performed by the State referred to in clause 15(b) reveals that:
 - (i) the Operator is not complying with the Quality Assurance Management Plan; or
 - (ii) any Subcontractor is not complying with their respective quality assurance plans referred to in clause 15(b)(ii),the Operator must reimburse the State for the costs of carrying out such an audit.
- (d) The Operator will not be relieved of any liability under this document as a result of:
 - (i) compliance with the quality assurance requirements under this document; or
 - (ii) anything which the State does or does not do with respect to the quality assurance requirements under this document, including auditing the Operator's or a Subcontractor's compliance with those requirements under clause 15(b).

Part B – Development Phase

16. Minimum equity until State Capital Payment

The Operator must ensure that at all times until the State Capital Payment Date, it is capitalised by equity (or a secured deferred equity commitment backed by a bond, letter of credit or similar instrument issued by a financial institution having the Required Rating) in an amount not less than 10% of the Contract Price, contributed to the Operator (either directly or indirectly) by way of ordinary shares, units or intercompany subordinated debt.

17. Independent Verifier

17.1 Appointment

Prior to the date of Financial Close, the Operator and the Client Representative must agree on the identity of the Independent Verifier and appoint the Independent Verifier in accordance with the terms of the Independent Verifier Deed.

17.2 Costs and expenses of the Independent Verifier

The costs and expenses of the Independent Verifier (including the professional fees of the Independent Verifier) will be paid in the following proportions:

- (a) 50% by the Operator; and
- (b) 50% by the State.

17.3 Replacement

- (a) If the Independent Verifier Deed is terminated before its scheduled expiry, or if any incumbent Independent Verifier ceases to act as Independent Verifier for the purposes of this document, the Operator and the Client Representative must, unless otherwise agreed by the Operator and the State, prior to termination or cessation, and in any case within 10 Business Days after the termination of the Independent Verifier Deed or cessation, whichever is applicable, appoint another person to act as Independent Verifier.
- (b) The replacement Independent Verifier must:
 - (i) have the appropriate qualifications and experience to act as an independent verifier;
 - (ii) have no interest or duty which conflicts with its role as Independent Verifier in respect of the Project;
 - (iii) not have acted, and must undertake not to act, for a Debt Financier or a Subcontractor; and
 - (iv) be able and prepared to act in accordance with the terms of the Independent Verifier Deed.
- (c) If the Client Representative and the Operator cannot agree, the parties will request that the National President of Engineers Australia (or its replacement or equivalent) nominate an Independent Verifier who meets the requirements set out in clause 17.3(b) and such Independent Verifier will be appointed as soon as practicable in accordance with the Independent Verifier Deed.

18. Stage 2 Development Consent

18.1 Stage 2 Development Application

- (a) The Operator has prepared the Stage 2 Development Application.
- (b) The Operator warrants that it has used, and will continue to use, its best endeavours to ensure that the Stage 2 Development Consent is obtained.
- (c) The State must provide reasonable assistance to the Operator to enable the Operator to apply for and obtain the Stage 2 Development Consents, but, for the avoidance of doubt, the State shall not be responsible for any activity which is the responsibility of the Operator as set out in the Responsibility Matrix.

18.2 Lodgement of Stage 2 Development Application

The Operator must submit the Stage 2 Development Application to the Development Consent Authority as a condition precedent to Financial Close.

18.3 Obligation to the State

- (a) The Operator must ensure that the State is promptly notified of:
 - (i) the contents of any communication or notice from the Development Consent Authority in respect of the Stage 2 Development Application; and
 - (ii) the grant of the Stage 2 Development Application, including details of any conditions or requirements to which the Stage 2 Development Application is subject.
- (b) The Operator must make available such further information regarding the Stage 2 Development Application and its progress as the Client Representative may reasonably request and in such form as the Client Representative may reasonably request.

18.4 Contesting Stage 2 Development Consent

- (a) Without limiting clause 18.5, where the Development Consent Authority grants, or indicates that it will grant, the Stage 2 Development Consent subject to conditions or requirements which the State wishes to challenge, the Client Representative may give the Operator a written direction within 10 Business Days after the Client Representative becomes aware of the grant of the Stage 2 Development Consent subject to the relevant condition or requirement to contest the imposition of that condition or requirement and the Operator must contest the imposition of that condition or requirement.
- (b) Where the Development Consent Authority grants, or indicates that it will grant, the Stage 2 Development Consent subject to conditions or requirements which the Operator wishes to contest, the Operator may contest the imposition of such conditions, but only if such contest:
 - (i) is made in good faith by appropriate proceedings;
 - (ii) is made at no cost to the State and does not expose the State to any potential Loss or Claim;
 - (iii) is permitted by, and is conducted in accordance with, applicable Law; and
 - (iv) is conducted by and in the name of the Operator,and provided that the Operator will have no Claim against the State in connection with the contest or the outcome of the contest.

- (c) The Operator must keep the State informed of the progress and nature of any contest to a condition or requirement of the Stage 2 Development Consent under this clause 18.4, and must consult in good faith with the Client Representative regarding the conduct of any such contest.
- (d) Except as expressly provided in this clause 18.4, the Operator must not (and will procure that any Operator Related Party does not) apply for or agree to any change, relaxation or waiver of the Stage 2 Development Consent, or of any condition or requirement of it without the prior written consent of the Client Representative.

18.5 Modification to the Stage 2 Development Consent

The Operator acknowledges and agrees that nothing in this clause 18 will limit the State's right to seek a change or modification to the Stage 2 Development Consent.

19. Design

19.1 Structure of Design Development Process

- (a) The Operator acknowledges that the Design Development Process involves the progression of the design of the Facility through the following stages:
 - (i) the RFP Design Proposal, as it exists at the date of this document;
 - (ii) the preparation by the Operator of a Detailed Design Report and accompanying Design Documentation in accordance with the Construction Management Plan;
 - (iii) the preparation by the Operator of a Construction Documentation Report and accompanying Design Documentation in accordance with the Construction Management Plan; and
 - (iv) the certification of the Design Documentation forming part of the Construction Documentation Report to form the Certified Construction Documentation.
- (b) The State and the Operator acknowledge and agree that, within the stages described in clause 19.1(a), the Design Documentation will be prepared and submitted for review in design packages, as generally described in the Construction Management Plan and Stakeholder Engagement and Communications Strategy. In clauses 19 and 20:
 - (i) reference to 'Design Documentation' is a reference to the Design Documentation comprised in each such package; and
 - (ii) a reference to 'Detailed Design Report' and 'Construction Documentation Report' is a reference to each report as it relates to each such package.
- (c) The Operator further acknowledges that the Design Documentation will be subject to review during the Design Development Process by the Independent Verifier and the Client Representative in accordance with this clause 19.

19.2 Purpose of Design Development Process

The Operator acknowledges and agrees that:

- (a) the purpose of the Design Development Process is to:
 - (i) optimise the design of the Facility; and
 - (ii) develop, refine and finalise the Design Documentation from the RFP Design Proposal to Certified Construction Documentation in accordance with the terms of this document;

- (b) the Design Development Process is a consultative process and due to the nature of the Project Works and the Services, is likely to be extensive;
- (c) in conducting the Design Development Process, it must adopt and otherwise use Good Industry Practice, which must include the submission of Design Documentation for review under this clause which is co-ordinated, complete and consistent with and a logical development of the design, and in a manner and at a rate which will give the Independent Verifier and the Client Representative a reasonable opportunity to review the submitted Design Documentation in accordance with this clause;
- (d) if required by the State or the Independent Verifier, it must:
 - (i) make available the appropriate design personnel to:
 - (A) explain the relevant Design Documentation and how it complies with the requirements of the Design Parameters; and
 - (B) provide such information regarding the relevant Design Documentation as the State or the Independent Verifier reasonably requests; and
 - (ii) deliver design presentation workshops at times and as reasonably requested by the Client Representative or the Independent Verifier and attended by all relevant personnel from the Operator's design team to the nominees of the Client Representative and the Independent Verifier on the status and detail of the relevant Design Documentation of any discrete design part or element in the Operator's Activities as requested;
- (e) without limiting its obligations under clause 4, in conducting the Design Development Process it must comply with the requirements of the Licensing Authority and the Construction Management Plan; and
- (f) the conduct of the Design Development Process itself does not constitute a Change or entitle the Operator to make any Claim against the State or any State Related Party arising out of in connection with the conduct of the Design Development Process.

19.3 Fundamental Design obligations

- (a) The Operator must design the Facility and prepare all of the Design Documentation:
 - (i) in accordance with the Construction Management Plan and Good Industry Practice;
 - (ii) in accordance with the Design Parameters and the RFP Design Proposal;
 - (iii) so that it complies with all of the requirements of the Licensing Authority and so as to obtain and comply with the Approval in Principle and the Hospital Licence and all other applicable Laws, Consents and Policies;
 - (iv) so as to satisfy the FFP Warranty;
 - (v) so that the Facility complies and will at all times comply with the Sustainability Requirements;
 - (vi) so that the Services are able to be provided in accordance with or so as to exceed the requirements of the Services Specification and the Services Plans, and otherwise in accordance with this document, and so that services are able to be provided to Compensable Patients in accordance with clause 52.11(d);
 - (vii) so that all other requirements of this document relevant to the design of the Facility are satisfied;

- (viii) by the dates specified in, and in accordance with, the Construction Management Plan or this document;
 - (ix) in accordance with clauses 19.6 to 19.13 (inclusive);
 - (x) so that:
 - (A) as at and from the Date of Operational Readiness and for the duration of the Term, the Public Patient Portion, the Shared Portion and the Car Park will be Fit for Intended Purposes by reference to the Law, technology and intended use of the Public Patient Portion, the Shared Portion and the Car Park as at the Date of Operational Readiness; and
 - (B) as at and from the Date of Operational Readiness and for the duration of the Private Patient Portion Term, the Private Patient Portion will be Fit for Intended Purposes by reference to the Law, technology and intended use of Private Patient Portion as at the Date of Operational Readiness; and
 - (xi) in accordance with Good Industry Practice, and in compliance with the applicable Quality Assurance Management Plan.
- (b) Where a requirement set out in the Design Parameters is not nominated as being mandatory, such requirement is a minimum requirement, which the Operator must meet or better. If the Operator seeks to better a minimum requirement it must identify, with the documentation submitted in accordance with clauses 19.2, 19.7 or 19.8 in respect of that requirement, the relevant requirement and details of how it has been bettered, and how such betterment will provide value for money to the State. Notwithstanding any other provision of this document, whether an item better the requirements of the Design Parameters and provides value for money, will be determined at the sole discretion of the Client Representative.

19.4 RFP Design Proposal

- (a) The Operator acknowledges that prior to the date of this document it prepared the RFP Design Proposal.
- (b) The Operator:
 - (i) accepts all responsibility for the feasibility, fitness for purpose and constructability of the RFP Design Proposal and bears absolutely all risks howsoever they may arise as a result of the use by the Operator of, or the reliance by the Operator upon, the RFP Design Proposal in performing the Operator's Activities and agrees that such use and reliance will not limit any of its obligations under this document;
 - (ii) warrants that the RFP Design Proposal has been prepared by the Operator and will be in compliance with, and otherwise satisfy the requirements of, the Licensing Authority, and will otherwise be fit for the purpose specified in or ascertainable from the Services Specification, the Design Parameters, the Project Plans and the Project Documents; and
 - (iii) warrants that in undertaking the Design Development Process or preparing the Design Documentation, it will not make any adjustments to the RFP Design Proposal that will reduce the size of the areas comprising the Public Patient Portion, the Private Patient Portion or the Shared Portion, change the size or configuration of the Public Patient Portion, the Private Patient Portion or the Shared Portion or otherwise reduce the:
 - (A) functional performance;

- (B) safety;
 - (C) durability;
 - (D) whole of life performance; or
 - (E) environment and sustainability performance,
- of any part of the Project Works or the Facility.
- (c) The Operator is solely responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
- (i) the design, construction, manufacture, installation, testing and commissioning of the Project Works in accordance with the RFP Design Proposal and the requirements of the Licensing Authority costing more or taking longer than anticipated; and
 - (ii) any differences between the Project Works which the Operator is required to design, construct, install, test and commission (excluding any differences which are the subject of a Change under clauses 63 or 67) and the RFP Design Proposal including:
 - (A) differences necessitated by any Site Conditions encountered; and
 - (B) differences required to ensure that the Project Works will:
 - (I) satisfy the requirements of the Licensing Authority and the Hospital Licence;
 - (II) be and remain Fit for Intended Purposes; and
 - (III) satisfy the requirements of this document,
- and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Operator may have made in relation to any of the matters set out in this clause 19.4(c).
- (d) The Operator warrants to the State that the RFP Design Proposal (and each constituent part of it) has been prepared by the Operator and that:
- (i) it remains responsible for ensuring that the Project Works will satisfy the requirements of the Licensing Authority and the Hospital Licence and of this document, despite the RFP Design Proposal;
 - (ii) if the Project Works are designed, constructed, installed and commissioned in accordance with the RFP Design Proposal, the Project Works will satisfy the requirements of the Licensing Authority and the Hospital Licence and this document; and
 - (iii) the Operator will carry out and complete the Operator's Activities in accordance with the RFP Design Proposal.

19.5 Role of the Independent Verifier

The parties acknowledge and agree that in reviewing Design Documentation submitted pursuant to this clause 19, the Independent Verifier shall be primarily concerned to ensure that the Design Documentation submitted:

- (a) is consistent with, and a logical development of, the RFP Design Proposal;
- (b) is not subject to the matters specified in clauses 19.6(d)(i) to 19.6(d)(v) (inclusive);

- (c) identifies in a manner consistent with Good Industry Practice the proposed locations of all FF&E identified in the FF&E List; and
- (d) is otherwise in accordance with clauses 19.3 and 19.6(c),

provided that nothing in this clause 19.5 shall prevent the Independent Verifier from:

- (e) issuing comments to the Operator pursuant to clause 19.6(b); or
- (f) rejecting the Construction Documentation Report pursuant to clause 19.9(a)(i),
- (g) in respect of or by reference to other matters, including in particular comments from, or consultation with, the Client Representative or others pursuant to clauses 19.6(a) and 19.8(c)(iii).

19.6 Review of Design Documentation generally

- (a) The Client Representative may, within 10 Business Days after the date on which the Detailed Design Report is submitted pursuant to clause 19.7 or any other Design Documentation is submitted to the Client Representative in accordance with this clause 19:
 - (i) subject to clause 19.10, make written comments to the Operator in respect of the Design Documentation; and
 - (ii) subject to clause 19.10, notify the Independent Verifier in writing (with a copy to the Operator) if the Design Documentation does not comply with the requirements of this document (including for the reasons set out in clause 19.6(d)), giving reasons why the Design Documentation does not comply with the requirements of this document.
- (b) Subject to clause 19.10, if the Independent Verifier, after taking into account any notification from the Client Representative under clause 19.6(a)(ii), considers that the Design Documentation does not comply with the requirements of this document it must, within 15 Business Days after the date on which the relevant Design Documentation is submitted to the Independent Verifier, notify the Operator of any non-compliances, giving reasons why the Design Documentation does not comply with the requirements of this document (including detailed particulars of the alleged non-compliance).
- (c) All Design Documentation (including the Detailed Design Report and the Construction Documentation Report) must:
 - (i) be consistent with and a logical development of any previous Design Documentation submitted to the State, the Client Representative or the Independent Verifier, subject to any changes to ensure compliance with this document; and
 - (ii) address any comments previously made by the Independent Verifier pursuant to clause 19.6(b).
- (d) Subject to clause 19.10 but otherwise without limitation, the Independent Verifier or the Client Representative may provide comments in respect of any Design Documentation if:
 - (i) it is incomplete or inaccurate, of poor quality, is ambiguous or unclear or otherwise is not in a condition to allow the State to adequately review it;
 - (ii) it does not comply with the relevant Laws, Consents, Policies or Quality Standards;

- (iii) it does not, in the reasonable opinion of the Independent Verifier or the Client Representative (as applicable), comply with the requirements of the Licensing Authority and having regard to the Design Parameters;
- (iv) it is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this document in respect of the submitted Design Documentation; or
- (v) of the view, acting reasonably, that the submitted Design Documentation will not enable the Operator to satisfy the FFP Warranty or any other relevant warranty given by it as set out in this document.

19.7 Submission and review of the Detailed Design Report

- (a) The Operator must, in accordance with the Construction Management Plan, submit to the Independent Verifier and the Client Representative, one electronic set of the Detailed Design Report which:
 - (i) is complete (by reference to the requirements for the Detailed Design Report as set out in the Design Parameters and the Construction Management Plan);
 - (ii) complies with clauses 19.3 and 19.6(c);
 - (iii) is accompanied by a certificate from the Operator addressed to each of the Independent Verifier and the Client Representative:
 - (A) setting out the manner in which the Detailed Design Report addresses:
 - (I) any conditions to which the Approval in Principle is subject; and
 - (II) comments made by the Independent Verifier (including having regard to any comments made by the Client Representative) in respect of prior submissions of Design Documentation;
 - (B) providing a progress update in respect of the procurement of a Hospital Licence, including details of any submissions made to the Licensing Authority or responses received from the Licensing Authority subsequent to the previous update delivered pursuant to clause 4.1(a)(ii);
 - (C) setting out the steps taken to engage with the local community or other stakeholders pursuant to the Stakeholder Engagement and Communications Strategy in developing the Detailed Design Report and identifying the manner in which the Detailed Design Report addresses any such stakeholder input; and
 - (iv) is certified by the Operator as complying with this document and the Design Parameters.
- (b) The Detailed Design Report submitted pursuant to paragraph (a) shall be subject to review in accordance with clause 19.6.

19.8 Submission and review of the Construction Documentation Report

- (a) The Operator must, in accordance with the Construction Management Plan (and in any event no earlier than the date which falls 70 Business Days after the submission of the Detailed Design Report for review pursuant to clause 19.7(a)), submit to the Independent Verifier and the Client Representative the Construction Documentation Report which:

- (i) is complete (by reference to the requirements for the Construction Documentation Report as set out in the Design Parameters and the Construction Management Plan);
 - (ii) complies with clauses 19.3, 19.6(c) and 19.8(b);
 - (iii) is accompanied by a certificate from the Operator addressed to each of the Independent Verifier and the Client Representative:
 - (A) setting out the manner in which the Construction Documentation Report addresses:
 - (I) any remaining conditions to which the Approval in Principle is subject; and
 - (II) comments made by the Client Representative or the Independent Verifier in respect of prior submissions of Design Documentation;
 - (B) providing a progress update in respect of the procurement of a Hospital Licence, including details of any submissions made to the Licensing Authority or responses received from the Licensing Authority subsequent to the previous update delivered pursuant to clauses 4.1(a)(ii) or 19.7(a)(iii)(A)(II); and
 - (C) setting out the subsequent steps taken to engage with the local community or other stakeholders in accordance with the Stakeholder Engagement and Communications Strategy in developing the Construction Documentation Report and identifying the manner in which the Construction Documentation Report addresses any such stakeholder input.
- (b) The Construction Documentation Report must also be:
- (i) certified by the Operator as:
 - (A) being appropriate for construction;
 - (B) complying with the requirements of the Licensing Authority in connection with the procurement of a Hospital Licence; and
 - (C) complying with this document, including Design Parameters;
 - (ii) certified by the Parent Company in the form specified in Schedule 4 as being acceptable to it (from an operational perspective) to enable it to perform the Services;
 - (iii) certified by the Car Park Operator in the form specified in Schedule 4 as being acceptable to it (from an operational perspective) to enable it to perform the Car Park Services (as defined in the Car Park Management Deed); and
 - (iv) certified by the Operator as not involving or constituting a change to the RFP Design Proposal or a Change unless it:
 - (A) is a Design Departure which has been identified pursuant to clause 19.12; or
 - (B) has been directed by the State by a Change Order or approved by the State by a Change Approval.

- (c) The Operator must:
- (i) submit to each of the Client Representative and the Independent Verifier one electronic set of the Construction Documentation Report, certified in accordance with clause 19.8(b) including amended versions so certified;
 - (ii) store a hard copy of the Construction Documentation Report in a secure location in accordance with the Construction Management Plan;
 - (iii) subject to clause 19.12(f)(i), allow 35 Business Days from the date the Construction Documentation Report is submitted to the Client Representative and the Independent Verifier in accordance with clause 19.8(c)(i) (**Design Review Period**) for the Client Representative (if it so desires) and the Independent Verifier to review the Construction Documentation Report, consult with others in respect of the Construction Documentation Report and to consult with the Operator and comment on that Construction Documentation Report;
 - (iv) allow five Business Days after the expiry of the Design Review Period for the Independent Verifier, after taking into account any comments or advice issued by the Client Representative pursuant to clause 19.8(c)(iii), to either provide certification or reject the Construction Documentation Report, in accordance with clause 19.9;
 - (v) not use the Construction Documentation Report for construction purposes except as permitted by clause 19.9(c) or clauses 19.10 and 20.3; and
 - (vi) not amend the contents of the Construction Documentation Report which has been submitted to the Client Representative and the Independent Verifier in accordance with clause 19.8(a) prior to its certification by the Independent Verifier pursuant to clause 19.9(a)(ii) unless it first submits the proposed amendments (duly certified pursuant to clause 19.8(b)) to the Client Representative and the Independent Verifier, and the process in this clause 19.8 has been reapplied to the proposed amendments. For the avoidance of doubt, any amendment of the contents of the Construction Documentation Report arising from any steps taken towards obtaining a Hospital Licence or satisfying the Accreditation Requirements or the requirements of the Licensing Authority as required under this document must also be re-submitted as set out in this clause 19.8(c)(vi).

19.9 Certified Construction Documentation

- (a) The State and the Operator acknowledge and agree that the Independent Verifier must, within five Business Days after the expiry of the Design Review Period, either:
- (i) subject to clause 19.10, reject the Construction Documentation Report submitted to it under this clause 19.9 if the Construction Documentation Report does not comply with the requirements of this document (including for a failure to comply with the requirements of clause 19.6(c) or for any of the reasons set out in clause 19.6(d)) and provide reasons for the rejection (including detailed particulars of the alleged non-compliance); or
 - (ii) certify the Construction Documentation Report by:
 - (A) including a notation on each document forming part of the Construction Documentation Report; and
 - (B) providing to the Client Representative and the Operator a certificate signed by the Independent Verifier in the form set out in Schedule 4.

- (b) Subject to clause 19.10, if the proposed Construction Documentation Report is rejected by the Independent Verifier under clause 19.9(a)(i), the Operator must promptly amend the Construction Documentation Report, re-submit the amended version in accordance with clause 19.8(a) and have it certified under clause 19.8(b), and after this the process in clause 19.8(c) will be reapplied to the amended Construction Documentation Report, save that the aggregate time period for the processes in clauses 19.8(c)(iii) and 19.8(c)(iv) will be 10 Business Days per package.
- (c) Subject to clauses 19.10 and 20.3, unless otherwise approved in writing by the Client Representative, the Operator may only use for construction purposes the contents of the Construction Documentation Report that has been:
 - (i) submitted to the Client Representative and the Independent Verifier under clauses 19.8(a) and 19.8(c) and the period referred to in clause 19.8(c)(iv) has expired without the Independent Verifier having rejected the Construction Documentation Report under clause 19.9(a)(i); or
 - (ii) certified by the Independent Verifier under clause 19.9(a)(ii),
(the **Certified Construction Documentation**).
- (d) The Operator must not amend the Certified Construction Documentation unless it first submits the proposed amendments (duly certified pursuant to clause 19.8(b)) to the Client Representative and the Independent Verifier, and the process in this clause 19.8 has been reapplied to the proposed amendments. For the avoidance of doubt, any amendment of the Construction Documentation Report arising from any steps taken towards obtaining a Hospital Licence or satisfying the Accreditation Requirements or the requirements of the Licensing Authority as required under this document must also be re-submitted as set out in this clause 19.9(d).
- (e) The Operator must give the Client Representative one hard copy set of all Certified Construction Documentation which it is entitled pursuant to this clause 19.9 to use for construction purposes in accordance with the requirements of the Design Parameters.

19.10 Proceed at risk

The Operator may proceed with the construction of the Project Works in accordance with clause 20.3.

19.11 Private Patient Portion Design Documentation

- (a) The parties acknowledge that any Design Documentation (including the Detailed Design Report and the Construction Documentation Report) submitted to the Independent Verifier or the Client Representative pursuant to this document includes Private Patient Portion Design Documentation.
- (b) Except as expressly set out in this document, the Operator is obliged to take account of or address a comment in respect of the Private Patient Portion Design Documentation by the Independent Verifier or the Client Representative only to the extent that such comment is accompanied by a notice from the Independent Verifier or the Client Representative under clause 19.11(c).
- (c) In providing comments in respect of any Design Documentation pursuant to their rights of review under this document and without limitation to clause 19.6(d), the Independent Verifier may (including having regard to any comments by the Client Representative) by written notice to the Operator identify to the Operator those of the comments in respect of the Private Patient Portion Design Documentation which, in the reasonable opinion of the

Independent Verifier, must be taken into account or addressed in the Design Development Process on the basis that:

- (i) the comment relates to an aspect of the Facility used for, or incidental to, the treatment of Public Patients;
- (ii) the comment relates to the capacity of the Private Patient Portion to:
 - (A) as a minimum, satisfy the demand for services from Compensable Patients; or
 - (B) satisfy the obligations of the Operator under the Compensable Patient Strategy; or
- (iii) the subject matter of the comment, if not addressed, may result in the Public Patient Portion Design Documentation not satisfying the requirements set out in this document or the Design Parameters in respect of the Public Patient Portion Design Documentation, or which may otherwise prevent the Operator from satisfying its obligations in respect of the Services or the FFP Warranty.
- (d) If a dispute arises under this clause 19.11, the matter must be referred for dispute resolution in accordance with clause 87.
- (e) Nothing in this clause 19.11 limits the Operator's obligations to design and construct the Private Patient Portion Works as required under this document.

19.12 Design Departures by the Operator

- (a) With any Design Documentation submitted for review under this document, the Operator must clearly and separately identify any proposed Design Departures in a schedule in a form reasonably acceptable to the Client Representative.
- (b) The Client Representative may accept or reject any proposed Design Departure.
- (c) If the Client Representative accepts a proposed Design Departure it may be on conditions determined by the Client Representative, including that any Change Savings must be paid by the Operator to the State and that the conditions of clause 64.4 must be satisfied.
- (d) If the Client Representative rejects the proposed Design Departure, the Operator must amend the relevant Design Documentation to comply with this document.
- (e) To the extent that the Client Representative accepts a proposed Design Departure in accordance with this clause 19.12, the Design Parameters will be varied to reflect the Design Departure.
- (f) Where a Design Departure is identified in Design Documentation submitted pursuant to clause 19.8(a):
 - (i) in respect of a Design Departure which is accepted pursuant to paragraph (b), the Design Review Period shall not expire until 10 Business Days after the Design Parameters are varied pursuant to clause 19.12(e); or
 - (ii) in respect of a Design Departure which is rejected pursuant to paragraph (b), the Operator must re-submit the amended Design Documentation in accordance with clause 19.8(a) and have it certified under clause 19.8(b), and after this the process in clause 19.8(c) will be reapplied to the amended Design Documentation.

19.13 Changes by the State during the Design Development Process

If the Operator believes that the development of the Design Documentation under this clause 19 has given rise to any proposal by the State for a Change, the Operator must notify the Client

Representative of the Change within 10 Business Days after the date on which it became aware or ought reasonably to have become aware of the proposed Change (and in any case prior to incorporating any such Change in the Certified Construction Documentation) and will not be entitled to make any Claim against the State or any State Related Party in respect of such a Change unless it notifies the State in accordance with this clause 19.13 and the State gives a written direction to the Operator to proceed to carry out the Change.

19.14 Discrepancies between State and Licensing Authority design requirements

Without limiting clause 4.2, the Operator must promptly notify the Client Representative and the Independent Verifier if the requirements of this document in respect to the design of the Facility (or any part of it) conflict with the requirements of the Licensing Authority such that the requirements of this document would prevent the procurement (or extension, if applicable) of Approval in Principle or the Hospital Licence.

19.15 Construction Management Plan

The Operator must update the Construction Management Plan:

- (a) promptly after the Certified Construction Documentation is agreed in accordance with clause 19.8;
- (b) upon the granting of any extension of time to the Operator in respect of the Date for Technical Completion or the Date for Operational Readiness; and
- (c) monthly, or at such other time set out in the Asset Solution Plan Requirements or as agreed between the parties until the Date of Operational Readiness,

to take account of changes to the program and delays, including delays for which relief has been given under this document, provided that no alteration, addition or modification to a Construction Management Plan will adjust a Date for Completion unless such adjustment has been agreed or determined in accordance with clause 23.7 or clauses 61, 62 63, 64 or 67.

19.16 Proprietary Materials

- (a) The Operator represents and warrants that:
 - (i) neither the development nor use for or in relation to the Project of any Proprietary Material (or any component or any modification, adaptation or derivative of any Proprietary Material) will infringe any Intellectual Property Rights, Moral Rights or other rights of any person or otherwise contravene any Law or give rise to any liability to make royalty or other payments to any person;
 - (ii) there is not, and the Operator must not create or allow, any Security Interest over any Intellectual Property Rights in any Proprietary Material (or any component or any modification, adaptation or derivative of any Proprietary Material) that prevents the Proprietary Material from being used in accordance with the licence granted under clause 19.16(b);
 - (iii) it holds all rights and interests (including all Intellectual Property Rights) in, or has obtained and will during the course of this document obtain (in respect of any future Intellectual Property Rights) all necessary licences, consents and waivers (including in respect of Moral Rights) relating to, any Proprietary Materials to be licensed to the State under clause 19.16(b) and is not, and will not be, prevented from so licensing these rights and interests;
 - (iv) it has the right to sub-license to the State, on the terms of clause 19.16(b), any Proprietary Material the Intellectual Property Rights or Moral Rights in which are owned by a third party; and

- (v) there has not, and will not be, any assignments, licences, options or other dealings with the Intellectual Property Rights or Moral Rights in the Proprietary Materials licensed to the State under the licence granted under clause 19.16(b), in a way that conflicts with or derogates from, or would conflict with or derogate from, these rights.
- (b) Subject to clause 51(h), the Operator gives to the State an irrevocable, perpetual, fully paid-up royalty free, non-exclusive licence to use (including to reproduce and adapt and to sub-license), anywhere in the world, any Proprietary Materials for the purposes of the Project or any other project involving, the provision of the Services or similar services, the Project Works, the Site and the Public Patient Portion.
- (c) The licence granted under clause 19.16(b):
 - (i) includes a licence of all the Intellectual Property Rights in the Proprietary Materials for the purposes referred to in clause 19.16(b);
 - (ii) includes the right to sub-licence use of any Proprietary Materials to any person for the purposes referred to in clause 19.16(b), including to any State Appointed Operator; and
 - (iii) will survive fundamental breach, repudiation, rescission, frustration, suspension, discharge, termination or expiration of this document.
- (d) The Operator may register or patent any registrable or patentable Intellectual Property Right which it:
 - (i) develops;
 - (ii) discovers; or
 - (iii) first reduces to practice,in respect of the Project to the extent this does not conflict with any other provision of the Project Documents, but in doing so, must not conflict with or derogate from the licence granted under clause 19.16(b).
- (e) The State acknowledges that, except as provided for under this clause 19.16, the Operator and applicable third parties retain ownership of the Intellectual Property Rights in all Proprietary Materials developed by the Operator or those third parties in connection with the Project, the Site and the Public Patient Portion.
- (f) The Operator will be responsible for, and will release and indemnify each of the State and the State Related Parties, and any sub-licensees permitted under the licence granted under clause 19.16(b), on demand, from and against all liability for:
 - (i) any Claims brought by any third party; and
 - (ii) any other Loss,which may arise out of, or in consequence of, an actual, potential or alleged breach of a representation or warranty given under clause 19.16(a). The indemnity in this clause 19.16(f) (and the related provisions in clauses 19.16(g) and 19.16(h)) will survive fundamental breach, repudiation, rescission, frustration, suspension, discharge, termination or expiration of this document.
- (g) If there is, or is likely to be, a Claim of the type described in clause 19.16(f), the Operator must, at its expense, use its best endeavours to:

- (i) modify or replace the Proprietary Materials or the aspect of the Facility that is subject of the Claim so that the infringement (or alleged infringement) is removed; and
 - (ii) if the modification or replacement under clause 19.16(g)(i) cannot be achieved, promptly procure the right for the State to continue to use the Proprietary Materials or the aspect of the Facility that is subject of the Claim.
- (h) Without limiting clause 19.16(g), where the State wishes to contest a claim of the type described in clause 19.16(f):
- (i) the State will give notice of the relevant Claim as soon as reasonably practicable setting out full particulars of the Claim;
 - (ii) the State may either:
 - (A) require that the Operator, at its own expense and with the assistance and cooperation of the State, have the conduct of the Claim, including its compromise or settlement; or
 - (B) at the Operator's expense and with the assistance and cooperation of the Operator, have the conduct of the Claim, including its compromise or settlement;
 - (iii) if the State wishes to have conduct of the Claim, the Operator will give reasonable security to the State for any cost or liability arising out of the conduct of the Claim by the State; and
 - (iv) if the State wishes the Operator to have conduct of the Claim, the Operator must not enter into any compromise or settlement of the Claim without the prior written consent of the State.

19.17 Moral Rights

The Operator, in respect of the Proprietary Material:

- (a) to the extent permitted by Law, will not, and will take all reasonable steps to ensure that the Operator's Employees and Agents do not, sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the date of this document) in respect of any Proprietary Material against:
 - (i) the State or the State Related Parties;
 - (ii) any Other Contractor; or
 - (iii) any third party to whom the State sub-licences (whether express or implied), or grants any other right to use, possess, modify, vary or amend any Proprietary Material;
- (b) will:
 - (i) other than in relation to Parent Company Subcontractors, procure; and
 - (ii) in relation to Parent Company Subcontractors, use reasonable endeavours to procure,

(without coercion) that all individuals who are, or are to be, or may be, authors of any Proprietary Material, sign, date and return to the Operator a Moral Rights Consent (in consideration for the payment of \$1 to that individual) prior to those individuals

commencing work on the creation of any Proprietary Material, or as soon as practicable thereafter, in which each such individual becomes bound by the obligations to the State as set out in the Moral Rights Consent, and to pay each such individual the sum of \$1 on behalf of the State;

- (c) will within five Business Days after a request by the State, provide to the State any Moral Rights Consent which is obtained pursuant to clause 19.17(b) as requested by the State; and
- (d) will maintain an up-to-date record of the names and contact details of each person who is an author of any Proprietary Material and the Proprietary Material of which such person is an author, and provide a copy of any updated records to the State upon request.

The parties acknowledge that the Operator has no obligations in connection with Moral Rights which may exist in respect of the Existing Facilities.

20. Facilities construction

20.1 Operator's obligation to construct

The Operator must carry out all of the Project Works:

- (a) so that the Services are able to be provided from the Facility in accordance with this document;
- (b) so that the Facility complies with this document;
- (c) by the dates specified in the Project Program and otherwise in compliance with the Project Management Plan;
- (d) in accordance with the Design Parameters and this document;
- (e) in accordance with Good Industry Practice, and using good quality new and undamaged materials and with a level of skill, care and due diligence reasonably expected of the engineering and construction profession for facilities in the nature of the Facility;
- (f) so that the Project Works do not damage the Site, Adjoining Property or Existing Infrastructure;
- (g) so that the Project Works (as constructed) comply and will at all times comply with the Sustainability Requirements;
- (h) so that:
 - (i) the Public Patient Portion Works (as constructed), the Public Patient Portion, the Shared Portion and the Car Park are from Operational Readiness, and will remain at all times during the Term, Fit for Intended Purpose; and
 - (ii) the Private Patient Portion Works (as constructed) and the Private Patient Portion are from Operational Readiness, and will remain at all times during the Private Patient Portion Term, Fit for Intended Purpose; and
- (i) in accordance with:
 - (i) the Certified Construction Documentation;
 - (ii) all applicable Project Plans (including the Australian Industry Participation Plan, the Work Health and Safety Management Plan and the Construction Management Plan and the Quality Assurance Management Plan);
 - (iii) all applicable Consents, Policies and Law; and

- (iv) the Building Code.

20.2 Private Patient Portion Works

- (a) The carrying out of the Private Patient Portion Works must not in any way affect or interfere with the provision of the Services in accordance with this document.
- (b) The Operator must update the Certified Construction Documentation as necessary to reflect any changes to the nature or status of the Private Patient Portion Works (including changes made to comply with the requirements of the Licensing Authority). The Operator must submit any revisions, modifications or updated versions of the Certified Construction Documentation to the Client Representative and the Independent Verifier for review in accordance with clause 19.5.

20.3 Proceed at risk

- (a) Subject to clauses 20.3(b) and 20.3(c), provided the Operator has submitted the relevant Detailed Design Report (for the avoidance of doubt, for the relevant design package) under clause 19.7 and the State has been given 10 Business Days to provide comments, the Operator may proceed with the construction of the Project Works at its own risk, notwithstanding that the Independent Verifier has not certified the relevant Design Documentation (or a part of, or amendment to, the Design Documentation) in accordance with clause 19.9(a)(ii).
- (b) The Operator may only proceed with the construction of the Project Works in accordance with clause 20.3(a) if the Operator has submitted to the Client Representative and the Independent Verifier a written notice of its intention to proceed with the construction of the Project Works at its own risk, which includes an express acknowledgement of the application of clause 20.3(d) (**Proceed at Risk Notice**).
- (c) If the Operator proceeds with the construction of the Project Works at its own risk in accordance with clause 20.3(a):
 - (i) nothing in this clause 20.3 will limit or otherwise affect:
 - (A) the rights of the Client Representative or the Independent Verifier under clause 19; or
 - (B) the Operator's obligations to submit the Construction Documentation under clauses 19.8(a) and 19.8(c) and procure certification from the Independent Verifier under clause 19.9(a)(ii);
 - (ii) the Independent Verifier may, in addition to its rights under clause 19, direct the Operator to amend, rectify, change or modify the partially constructed Project Works to resolve any issues identified by the Independent Verifier as part of its review under clause 19; and
 - (iii) the Operator must promptly comply with any direction given by the Independent Verifier pursuant to clause 20.3(c)(ii).
- (d) The Operator is not entitled to make any Claim against the State or any State Related Party, and the State and the State Related Parties will have no Liabilities to the Operator, arising out of or in connection with the exercise by the Operator of its right to proceed at risk pursuant to this clause 20.3.

20.4 Construction Reports

The Operator must give the Client Representative, no later than the fifth Business Day of each calendar month, during the Development Phase, a report (**Construction Report**) which includes:

- (a) details of the progress of the Development Phase, with a comparison to the progress projected in the Project Program;
- (b) any revised Project Program prepared in accordance with clauses 13 or 14.3;
- (c) in respect of the Public Patient Portion Works only, details of expenditure and significant items which may impact the Project Program, and any adjustment to the Operator's progressive payment or drawdown schedules;
- (d) in respect of the Public Patient Portion Works only, a report on Subcontractor status, giving details of each Subcontractor package budget, contract value, works program, work performed, payments made, outstanding claims, progress against budget and program and any disputes with Subcontractors;
- (e) any changes to the Capital Cost Proposal Schedule;
- (f) a report on any serious accident or dangerous occurrences during the preceding month; and
- (g) a report on the progress of any work undertaken by an Authority for the purposes of extension, adjustment or relocation of Utilities in connection with the Project Program.

20.5 Client Representative's right to enter and inspect

- (a) Subject to clause 20.5(c), the Client Representative or its representatives may enter the Site and inspect the Project Works on the Site, and any drawings, documents, test results, samples and specifications used in relation to such Project Works, at any reasonable time and upon reasonable notice, but must not cause unnecessary disruption to the Operator, any Subcontractor or any other authorised user of the Site, and must comply with the reasonable safety and security requirements of the Operator and the relevant Construction Contractor. The Operator must provide all reasonable assistance to the Client Representative and/or its representative in the exercise of their rights as set out in this clause 20.5(a).
- (b) The Operator must procure that the Client Representative and its representatives are afforded an opportunity to attend site meetings relating to the Project Works at least monthly and that agendas for such site meetings are sent to the Client Representative at least five Business Days in advance of the meetings and (whether or not the Client Representative or its representatives have attended) that a copy of the minutes of site meetings is promptly supplied to the Client Representative.
- (c) If a Step-In Event occurs, the Client Representative will be entitled to exercise the rights described in clause 20.5(a) at any time and without giving the Operator prior notice.
- (d) The cost of any inspection carried out by the Client Representative or its representatives pursuant to clause 20.5(a) will be borne by the State unless the inspection shows that the Project Works have not been carried out in accordance with the Design Parameters or the requirements of this document.

20.6 Client Representative's right to comment

- (a) Based on the information provided to the Client Representative in accordance with clause 20.4 or any inspection carried out in accordance with clause 20.5, the Client Representative may give the Operator written comments, recommendations and representations regarding the Project Works, provided that such comments are limited to matters impacting upon the compliance of the Project Works with the requirements of this document.

- (b) If the Client Representative gives the Operator written comments, recommendations and representations regarding the Project Works, the Client Representative and the Operator must, if required by the Client Representative, meet to discuss and establish the rectifications or changes required to the Project Works (as applicable).
- (c) If the Operator and the Client Representative are unable to agree to appropriate rectifications or changes to reflect the written comments, recommendations or representations made to the Operator by the Client Representative in accordance with this document, such dispute will be dealt with in accordance with clause 87.
- (d) The Operator acknowledges that the rights of review, inspection and comment granted to the Client Representative in accordance with clauses 20.4, 20.5 and 20.6 are solely for the benefit of the State, and the Client Representative is not under any obligation to review reports or, in respect of the Project Works, inspect such works or make comments, and will not, in reviewing reports or inspecting the Site, the Project Works, assume any duty of care or responsibility to ascertain errors, omissions, defects or non-compliance with this document.

21. FF&E during the Development Phase

21.1 Requirements for FF&E

- (a) This clause 21 sets out the Operator's obligations in relation to the purchase, supply, transfer, locating, installation and commissioning of FF&E during the Development Phase in order to achieve:
 - (i) Technical Completion;
 - (ii) Operational Readiness;
 - (iii) Transfer Completion; and
 - (iv) Final Completion.
- (b) The Operator's rights and obligations in relation to the maintenance of FF&E during the Operating Term are set out in clause 68.

21.2 FF&E generally

- (a) The Operator:
 - (i) must comply with the FF&E Plan;
 - (ii) acknowledges that prior to the date of this document it prepared the FF&E List;
 - (iii) acknowledges that the State will make no payment in respect of FF&E specified on the FF&E List unless such FF&E is State Funded FF&E (in respect of which clauses 21.3 and 47 apply);
 - (iv) warrants that, as at the date of this document, the FF&E List includes all FF&E required by the Operator and the Parent Company to provide the Services during the Operating Term;
 - (v) subject to clause 21.3 in respect of State Funded FF&E, must update the FF&E List to reflect the outcome of the Design Development Process set out in clause 19 within 10 Business Days after certification of the Certified Construction Documentation in accordance with clause 19.9(c);

- (vi) without limiting clauses 21.2(a)(iv) or 21.2(a)(v) but subject to clause 21.3 in respect of State Funded FF&E, must update the FF&E Plan (including the FF&E List):
 - (A) to address any comments provided by the Client Representative with respect to FF&E in accordance with this document;
 - (B) as necessary to ensure that the Operator will satisfy the FFP Warranty; and
 - (C) to ensure that, on and from the Date of Operational Readiness:
 - (I) Services are able to be provided from the Facility in accordance with this document; and
 - (II) services to Compensable Patients are able to be provided from the Facility in accordance with this document;
- (vii) other than for the purposes of meeting its obligations under clause 21.2(a)(vi) or in carrying out a Change:
 - (A) without limiting clause 21.3, must not materially change the quantity or quality of an item identified in the FF&E List (where such materiality is measured against the performance outcome of the FF&E) after the date of this document; or
 - (B) if the FF&E List as at the date of this document identifies a generic piece of FF&E and does not prescribe a particular item of FF&E to be purchased, must not procure an item identified in the FF&E List for less than the price identified in the Capital Cost Proposal Schedule for that item without the prior written approval of the Client Representative provided that prior written approval will not be required where the price for the relevant FF&E in the FF&E List is the recommended list price and the recommended list price for that item at the time of procurement is not less than the price identified in the Capital Cost Proposal Schedule for that item but the Operator has been able to negotiate a lower purchase price;
- (viii) must make the final selection of those items of the FF&E marked as having 'high technical obsolescence risk' in the FF&E List as late as reasonably possible in the Development Phase, to better ensure that as at the date on which the Operating Term commences the Operator has procured the most technically up to date items of the FF&E marked as having 'high technical obsolescence risk' in the FF&E List, without delaying the Operator in achieving Technical Completion, Operational Readiness, Transfer Completion or Final Completion;
- (ix) must update the Capital Cost Proposal Schedule at any time that the FF&E List is updated in accordance with clauses 21.2 or 21.3;
- (x) must procure the FF&E as identified in the FF&E List (amended only in accordance with clauses 21.2 or 21.3 or otherwise as a result of a Change);
- (xi) must install or locate (as the case may be) the FF&E in accordance with the Certified Construction Documentation;
- (xii) must commission and successfully test the FF&E in accordance with the Project Program, the Design Parameters, the Technical Completion Plan and the Operational Readiness Plan; and

- (xiii) ensure that all FF&E will be either:
 - (A) owned by the Operator; or
 - (B) the subject of an FF&E Lease:
 - (I) which includes a right for it to assign and novate its rights and obligations in accordance with the agreement to the State (or its nominee) prior to the end of the term of that agreement or on termination of this document;
 - (II) which will not terminate, be suspended or impose more onerous terms on the Operator or the State if the State was to exercise any of its rights in accordance with the Project Documents;
 - (III) which specifies that the FF&E the subject of that FF&E Lease may be transferred to the State free of encumbrances;
 - (IV) which allows security to be taken over it;
 - (V) the term of which does not extend beyond the Term, unless otherwise agreed by the State; and
 - (VI) is able to be terminated in the circumstances set out in clause ~~92.2(h)~~92.2(h).
- (b) The Operator acknowledges and agrees that, subject to clauses 63 and 67, it is not entitled to make any Claim against the State arising out of or in connection with updating FF&E List in accordance with this clause 21.

21.3 State Funded FF&E List

- (a) The Operator:
 - (i) acknowledges that prior to the date of this document it prepared the State Funded FF&E List as part of the FF&E List;
 - (ii) must ensure that the State Funded FF&E List specifies in respect of each item of FF&E whether such FF&E forms part of the Shared Portion or the Public Patient Portion;
 - (iii) acknowledges and agrees that the Capital Cost Proposal Schedule cannot be amended for any increase in the capital cost of an item of State Funded FF&E against the capital cost of that item at the time of its inclusion in the State Funded FF&E List. The State Funded FF&E Amount will not increase in response to an increase in the capital cost of an item on the State Funded FF&E List; and
 - (iv) must not add items to the State Funded FF&E List after the date of this document unless:
 - (A) the addition, once made, would not cause the State Funded FF&E Amount to exceed the State Funded FF&E Amount as at the date of this document;
 - (B) the addition to the State Funded FF&E List arises solely as a result of a State Proposed Change; or
 - (C) the State, in its absolute discretion, permits the addition by written consent (provided that any such request for consent is submitted to the State no later than the date which is 50 Business Days prior to the Date for

Technical Completion and the State is given no less than 25 Business Days to consider the request).

- (b) If, at any time prior to the date which is 50 Business Days prior to the Date for Technical Completion, the Operator reasonably forms the view that any State Funded FF&E is not required, it must:
 - (i) if the relevant FF&E is Medical Equipment with a capital cost (as set out in the Capital Cost Proposal Schedule) of _____ or less (and, when aggregated with each other item of Medical Equipment deleted from the State Funded FF&E List pursuant to this clause 21.3(b)(i), has a capital cost (as set out in the Capital Cost Proposal Schedule) of _____ or less), delete the item from the State Funded FF&E List (in which case the State Funded FF&E Amount is automatically adjusted accordingly); or
 - (ii) if paragraph (b)(i) does not apply, submit a Change Proposal pursuant to clause 67.1.
- (c) Clause 67 applies to any Change Proposal submitted pursuant to clause 21.3(b)(ii), except that the State shall be entitled to 100% of any Change Savings by way of a reduction in the State Funded FF&E Amount.
- (d) The Operator must provide to the Client Representative an amended State Funded FF&E List promptly upon any amendment of the State Funded FF&E List pursuant to clauses 21.3(a)(iv) or 21.3(b).

21.4 Other documents

Without limiting clause 21.2(a)(xiii), the Operator must not enter into any document that would prevent the transfer of FF&E to the State or a State Appointed Operator as required under this document.

22. Design and Construction warranties

In addition to, and without limiting any other warranty given by the Operator under this document, the Operator warrants that:

- (a) **(Project Objectives and Services)** the RFP Design Proposal and the design and construction of the Facility is consistent with, and facilitates and does not impair the achievement of the Project Objectives and the objectives set out in clause 2.1 and the delivery of the Services in accordance with this document;
- (b) **(Design Parameters etc)** it has checked and carefully considered the requirements of the Licensing Authority, the Project Plans, the Design Parameters and other requirements of this document, in respect to design and construction;
- (c) **(design)** the design of the Facility will be completed in accordance with the requirements of this document and so that the Operator satisfies:
 - (i) the requirements of the Licensing Authority;
 - (ii) the FFP Warranty;
 - (iii) the Sustainability Requirements; and
 - (iv) and any design requirements to be satisfied in respect of the procurement of the Hospital Licence;

- (d) **(full liability for design)** its obligations under, and the warranties given in, this clause 22 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Facility notwithstanding:
 - (i) the RFP Design Proposal and any other design work carried out by Operator or by others prior to the date of this document and incorporated into this document; or
 - (ii) any review or approval of, comment upon, or failure to comment on such design by the Client Representative, the State or anyone on its behalf;
- (e) **(construction)** construction in accordance with the Certified Construction Documentation will ensure that:
 - (i) Technical Completion will be achieved by the Date for Technical Completion;
 - (ii) Operational Readiness will be achieved by the Date for Operational Readiness;
 - (iii) the Operator will satisfy the FFP Warranty and the Sustainability Requirements; and
 - (iv) the Operator will otherwise be able to discharge its obligations and satisfy its warranties under this document;
- (f) **(WHS Legislation)** the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements contained in the WHS Legislation; and
- (g) **(Parent Company)** the Operator has consulted with the Parent Company prior to preparing the RFP Design Proposal (and each constituent part of it) and prior to designing and constructing the Facility and warrants that the design and construction of the Facility will be completed in accordance with all requirements of the Parent Company necessary to enable the Parent Company to satisfy its obligations under the Parent Company Subcontract.

23. Time for delivery

23.1 Due dates

The Operator must:

- (a) achieve Technical Completion by the Date for Technical Completion;
- (b) achieve Operational Readiness by the Date for Operational Readiness;
- (c) achieve Transfer Completion by the Date for Transfer Completion;
- (d) achieve Final Completion by the Date for Final Completion; and

consistent with its obligations under clauses 23.1(a) to 23.1(d), regularly and diligently progress the Development Activities.

23.2 Monitoring progress

- (a) The Client Representative may, at any time, require the Independent Verifier to review the progress of the Project Works to determine whether the status and progress of the Project Works is likely to have a material adverse effect on the ability of Operator to achieve Technical Completion by the Date for Technical Completion, Operational Readiness by the Date for Operational Readiness or the Sunset Date, or Final Completion by the Date for Final Completion, in each case for the purposes of determining whether an Operator Termination Event has occurred or is likely to occur.

- (b) The Client Representative must advise the Operator of any such request for a determination by the Independent Verifier under clause 23.2(a).
- (c) The Operator must provide such assistance and further information as the Independent Verifier reasonably requires to make a determination under clause 23.2(a).

23.3 Completion not achievable by the relevant date

- (a) If, after a review of the progress of the Project Works the Independent Verifier reasonably forms the view that the Operator will not achieve Technical Completion by the Date for Technical Completion, Operational Readiness by the Date for Operational Readiness or the Sunset Date, or Final Completion by the Date for Final Completion, the Independent Verifier must issue a certificate to this effect to the Operator and the Client Representative.
- (b) Any Dispute in relation to a review under this clause 23.3 may be referred by either party for resolution by an expert in accordance with clause 87.

23.4 Delays

- (a) If the Operator becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Technical Completion, Operational Readiness, Transfer Completion or Final Completion, the Operator must give the State:
 - (i) a notice setting out detailed particulars of the delay; and
 - (ii) unless the delay has arisen from a Compensation Event (in which case clause 61(b) will apply) or a Relief Event (in which case clause 62(c) will apply), a detailed Corrective Action Plan in accordance with clause 23.6,in each case as soon as reasonably practicable.
- (a1) For the purposes of a notice given under paragraph (a) for determining the applicable Daily LD Rate in connection with clause 42.5, such notice must contain an estimate of delay in respect of the achievement of Transfer Completion which is reasonable in the opinion of both the Independent Verifier and the Client Representative (each acting reasonably) having regard to any Project Program contingency that may be available to the Operator to overcome or minimise the delay and any re-sequencing the Operator could reasonably effect through the remainder of the Project Program.
- (b) If the State reasonably believes (including as a consequence of a review undertaken by the Independent Verifier under clause 23.2) that the Operator will be delayed in achieving Technical Completion, Operational Readiness, Transfer Completion or Final Completion, the State may give notice to that effect to the Operator, and the Operator must then give the State a detailed Corrective Action Plan in accordance with clause 23.6.
- (c) The Operator must take all reasonable steps to:
 - (i) prevent the cause of any delay to the Development Activities; and
 - (ii) avoid or minimise the consequences of any delay.

23.5 Failure to achieve Technical Completion or Operational Readiness

- (a) If the Operator fails to achieve Technical Completion by the Date for Technical Completion or Operational Readiness by the Date for Operational Readiness, it will, no later than 5 Business Days after such failure, produce a report in writing to the Client Representative setting out:

- (i) the reasons why Technical Completion was not achieved by the Date for Technical Completion or Operational Readiness was not achieved by the Date for Operational Readiness (as applicable); and
 - (ii) the date by which Technical Completion or Operational Readiness will be achieved (as applicable).
- (b) If the Operator fails to achieve Technical Completion by the Date for Technical Completion or Operational Readiness by the Date for Operational Readiness, the Client Representative may give written notice to the Operator requiring the Operator to promptly prepare and submit a Corrective Action Plan within 10 Business Days after the date of that notice for the Client Representative's approval.
- (c) The Operator must take all reasonable steps to avoid or minimise the consequences of any delay.

23.6 Corrective Action Plan

- (a) Each Corrective Action Plan which the Operator must provide pursuant to this document must be submitted to the State within 10 Business Days of the date on which the Operator becomes obliged to prepare, give, submit or provide that Corrective Action Plan and must describe in detail the current state of the Project Works, and the actions and measures the Operator will diligently pursue for remedying or curing the failure to achieve Completion (as applicable), or to avoid, mitigate or minimise the consequences of the delay, including acceleration of the Project Works, and an updated Project Program.
- (b) Within 10 Business Days after receipt of a draft Corrective Action Plan, the Client Representative must either (in its discretion):
 - (i) approve the draft Corrective Action Plan by notifying the Operator; or
 - (ii) reject the draft Corrective Action Plan by notifying the Operator and providing reasons to the Operator for its decision.
- (c) If the Client Representative approves a draft Corrective Action Plan the Operator must comply with and diligently pursue the remedy or cure of the failure in accordance with the Corrective Action Plan and amend the Project Program accordingly. Nothing in this clause 23.6 limits the Client Representative's rights under clause 14.3.
- (d) If the Client Representative rejects a draft Corrective Action Plan pursuant to clause 23.6(b)(ii), the Client Representative and the Operator must meet to discuss and establish a Corrective Action Plan.
- (e) If the Operator and the Client Representative are unable to agree to a Corrective Action Plan or the amendments to be made to the Project Program in accordance with this clause 23.6, such dispute will be dealt with in accordance with clause 87.
- (f) The Operator will not be relieved of any obligation, liability or responsibility under this document or otherwise arising under Law by virtue of any notice given under this clause 23.6 or the implementation of any Corrective Action Plan.
- (g) Without limiting clause 77.2(1), if a Compensation Event or a Relief Event prevents the Operator from complying with a Corrective Action Plan, the Operator must, as soon as reasonably practicable, provide a revised Corrective Action Plan to the Client Representative and this clause 23.6 will apply to that revised Corrective Action Plan.

23.7 Acceleration

- (a) If the progress of the Project Works is or is likely to be delayed by the occurrence of a Compensation Event or a Relief Event in respect of which compensation or relief has been granted pursuant to clauses 61 or 62 (as applicable) the Operator must, if requested by the Client Representative, give to the Client Representative a notice setting out the time and cost consequences of accelerating the Project Works (as applicable).
- (b) The Client Representative may give notice to the Operator requiring the Operator to use all prudent and commercial endeavours to procure funding for some or all of the amount of the cost consequences of accelerating the Project Works (as applicable) upon terms acceptable to the Client Representative.
- (c) If the Client Representative makes a request under clause 23.7(a), the Operator must, as soon as reasonably practicable, inform the Client Representative of the time and cost consequences of the acceleration and submit for approval a notice (**Acceleration Notice**) of:
 - (i) any details of any changes required to the Project Program to reflect the effects of the delay and the acceleration of the Project Works (as applicable);
 - (ii) if the acceleration of the Project Works would result in the Operator incurring additional costs, the amount of those costs:
 - (A) calculated on the basis that those costs are reimbursed to the Operator by the State by way of a lump sum payment made at the same time as the State Capital Payment; and
 - (B) if the Client Representative has given a notice under clause 23.7(b), calculated on the basis that those costs, are reimbursed to the Operator by the State by way of variations to the Monthly Service Payments, each calculated in accordance with the ECE Schedule; and
 - (iii) if the Client Representative has given a notice under clause 23.7(b), whether the Operator is able to procure funding for the acceleration of the Project Works and, if so, the way in which the Operator proposes to fund the proposed acceleration.
- (d) The Client Representative must accept or reject the Acceleration Notice within 20 Business Days by notifying the Operator in writing (**Acceleration Acceptance Notice**).
- (e) If the Client Representative accepts the Acceleration Notice:
 - (i) the Project Program and the Construction Management Plan will be amended to incorporate the changes proposed pursuant to clause 23.7(c)(i);
 - (ii) the Operator must, after finalising of the funding for the proposed acceleration referred to in clause 23.7(c)(ii) in accordance with the Acceleration Notice, execute the Project Works (as applicable) in accordance with the Project Program and the Construction Management Plan (each as amended pursuant to clause 23.7(e)(i)); and
 - (iii) the costs of the acceleration of the Project Works will be paid to the Operator by way of lump sum or a variation to the Monthly Service Payment (as nominated by the Client Representative in the Acceleration Acceptance Notice provided that the Client Representative may not nominate a variation to the Monthly Service Payment if the Operator has demonstrated to the Client Representative's satisfaction (acting reasonably) that the Operator is either unable to procure

funding for the acceleration of the Project Works or is only able to fund the costs on uncompetitive terms) and calculated in accordance with the ECE Schedule.

- (f) If the Client Representative rejects the Acceleration Notice, the Acceleration Notice will have no force and effect and the Operator will not be obliged to accelerate the Project Works.

24. Overview of Completion

- (a) The Operator acknowledges that there are four stages of completion in respect of the Public Patient Portion Works, the Private Patient Portion Works and related Operator's Activities as follows:
 - (i) Technical Completion;
 - (ii) Operational Readiness;
 - (iii) Transfer Completion; and
 - (iv) Final Completion.
- (b) The Operator acknowledges that for the achievement of each such stage of completion:
 - (i) it must:
 - (A) submit updated versions of relevant Project Plans and comply with such Project Plans;
 - (B) satisfy relevant criteria, including conducting tests (where required) to confirm satisfaction of such criteria;
 - (C) provide a draft report, and subsequently a final report, setting out the manner in which the relevant Project Plans have been complied with, the relevant tests conducted (where required) and the relevant criteria satisfied; and
 - (D) issue a notice to the Client Representative and, if applicable, the Independent Verifier when it has reasonably formed the view that it has achieved the stage of completion; and
 - (ii) it must obtain from the Independent Verifier or the Client Representative (as applicable) a certificate confirming achievement of the stage of completion, all in accordance with clauses 25 to 33 (inclusive) and clauses 39 to 44 (inclusive).

25. Preparation for Technical Completion

25.1 Submission of updated Technical Completion Plan, Project Program, Transition Strategy

- (a) The Operator must submit an updated Technical Completion Plan that complies with the Client Representative's reasonable requirements and the requirements set out in the Design Parameters to the Client Representative for review:
 - (i) no later than 12 months prior to the Date for Technical Completion;
 - (ii) no later than six months prior to the Date for Technical Completion; and
 - (iii) at such other times reasonably requested by the Client Representative.

- (b) The Operator must submit updated versions of the Project Program and each Transition Plan no later than six months prior to the Date for Technical Completion.

25.2 Comply with Technical Completion Plan, etc

The Operator must prepare for Technical Completion and otherwise carry out all activities necessary to achieve Technical Completion in accordance with the Technical Completion Plan and any applicable Transition Plan.

26. Conduct of Technical Completion Tests

26.1 Testing in accordance with Technical Completion Plan

The Operator must carry out all applicable Technical Completion Tests in accordance with each approved Technical Completion Plan and otherwise in accordance with this clause 26.

26.2 Additional Technical Completion Tests

- (a) Subject to clause 26.2(d), the Independent Verifier or Client Representative (acting reasonably) may notify the Operator of any additional tests to those specified in the Technical Completion Plan that the Independent Verifier or the Client Representative considers necessary to demonstrate that the Project Works have been completed in accordance with the Certified Construction Documentation or the requirements of this document (**Additional Technical Completion Tests**) at any time up to the date that is 75 days prior to the Date for Technical Completion.
- (b) The Independent Verifier or Client Representative, acting reasonably, will notify the Operator whether any Additional Technical Completion Tests must be completed:
 - (i) prior to Technical Completion; or
 - (ii) prior to Operational Readiness.
- (c) The Operator must carry out all Additional Technical Completion Tests notified by the Independent Verifier or the Client Representative:
 - (i) in accordance with this clause 26.2; and
 - (ii) otherwise in accordance with the reasonable requirements of the Independent Verifier or the Client Representative.
- (d) The Independent Verifier or the Client Representative may only request Additional Technical Completion Tests which a competent party in the position of the Operator or a competent design and construction contractor in the position of the Construction Contractor would have allowed for to demonstrate that the Project Works have been completed in accordance with the Certified Construction Documentation or that the requirements of this document have been satisfied.
- (e) Subject to clause 26.2(f), the State will reimburse to the Operator any costs reasonably incurred by the Operator in carrying out any Additional Technical Completion Tests notified by the Client Representative under this clause 26.2.
- (f) The State will not be liable for any costs incurred by the Operator in carrying out any Additional Technical Completion Test if the results of that Additional Technical Completion Test demonstrate that the Project Works have not been completed in accordance with the Certified Construction Documentation or that the requirements of this document have not been satisfied.

26.3 Conducting Technical Completion Tests

The Operator must:

- (a) give the Independent Verifier and the Client Representative 10 Business Days written notice of the anticipated date for the proposed conduct of each Technical Completion Test and, prior to conducting each Technical Completion Test, give the Independent Verifier and the Client Representative two Business Days written notice of the conduct of the Technical Completion Test;
- (b) conduct the Technical Completion Tests to the reasonable satisfaction of the Independent Verifier;
- (c) ensure that the Independent Verifier and the Client Representative may, in respect of any Technical Completion Test, take samples, make measurements and otherwise carry out whatever checks and investigations they may reasonably require in order to ensure that any Technical Completion Test has been properly and successfully carried out;
- (d) comply with all reasonable directions of the Client Representative and the Independent Verifier in relation to the conduct of any Technical Completion Tests;
- (e) supply and otherwise provide all instruments and appliances necessary to conduct any Technical Completion Tests;
- (f) ensure all test instruments have been checked and calibrated for accuracy by the manufacturer;
- (g) only use test instruments if they have been designed for the specific task for which they are used;
- (h) provide a copy of calibration showing the degree of accuracy of each of the testing instruments to the Independent Verifier if requested by the State or the Independent Verifier; and
- (i) if a test fails, immediately inform the Independent Verifier and the Client Representative and carry out rectification works to enable retesting to occur as soon as possible.

26.4 Unsuccessful Technical Completion Test

- (a) If the Operator fails to successfully complete a Technical Completion Test (which must be successfully completed prior to Technical Completion), the Independent Verifier may:
 - (i) refuse to issue the Technical Completion Certificate; or
 - (ii) subject to clause 28.6, identify the unsuccessful Technical Completion Test as an Outstanding Item.
- (b) The Client Representative may waive the requirement for the Operator to satisfy a Technical Completion Test.

27. Approaching Technical Completion – Technical Completion Report

27.1 Purpose of Technical Completion Report

The Technical Completion Report must:

- (a) identify each of the Technical Completion Criteria applicable to the Project Works;
- (b) identify the methodology that the Operator used to satisfy and demonstrate how each of the Technical Completion Criteria was satisfied;
- (c) provide details of when the Operator satisfied each of the Technical Completion Criteria;

- (d) include an up to date FF&E List (including an up to date State Funded FF&E List) and a reconciliation against FF&E (including State Funded FF&E) installed as part of the Project Works;
- (e) identify any Technical Completion Criteria that remain outstanding and the Operator's strategy for satisfying any outstanding Technical Completion Criteria including the proposed timing for satisfying that Technical Completion Criteria; and
- (f) otherwise assist the Independent Verifier in determining whether the Technical Completion Criteria have been satisfied.

27.2 Submission of draft Technical Completion Report

The Operator must submit to the Independent Verifier and the Client Representative a draft Technical Completion Report for review which satisfies the requirements of clause 27.1 no later than 20 Business Days prior to the date on which the Operator anticipates that it will achieve Technical Completion.

27.3 Meeting concerning draft Technical Completion Report

- (a) The Operator must:
 - (i) arrange a meeting with the Independent Verifier and the Client Representative to discuss:
 - (A) the contents of the draft Technical Completion Report;
 - (B) preparation for Technical Completion generally; and
 - (C) anticipated timing for achieving Technical Completion;
 - (ii) conduct such a meeting a minimum of 15 Business Days prior to the date on which the Operator anticipates that it will achieve Technical Completion;
 - (iii) update the draft Technical Completion Report to take into account feedback provided by the Independent Verifier or the Client Representative; and
 - (iv) otherwise take into account and comply with any directions reasonably given by the Independent Verifier in relation to preparing for Technical Completion.
- (b) If, after the meeting referred to in clause 27.3(a) above, the Independent Verifier or the Client Representative reasonably forms the view that the Operator is unlikely to achieve Technical Completion by the anticipated date:
 - (i) the Independent Verifier or the Client Representative (as applicable) must provide written notice to the Operator to this effect; and
 - (ii) the Operator must promptly submit an updated draft Technical Completion Report in accordance with clause 27.2 and arrange a further meeting in accordance with this clause 27.3.

28. Technical Completion

28.1 Notice of Technical Completion

- (a) When the Operator has reasonably formed the view that it has achieved Technical Completion, the Operator must provide the following information to the Independent Verifier and the Client Representative:
 - (i) a Notice of Technical Completion; and
 - (ii) a final Technical Completion Report.

- (b) The Operator may not submit the information to the Independent Verifier and the Client Representative pursuant to this clause 28.1 until a date which is 20 Business Days after the submission of the draft Technical Completion Report in accordance with clause 27.2.

28.2 Technical Completion Criteria

Subject to clauses 26.4(b) and 28.6, the Operator must satisfy each of the Technical Completion Criteria in order to achieve Technical Completion.

28.3 Independent Verifier forms view

- (a) The Independent Verifier must notify the Operator in writing as to whether the Technical Completion Criteria have been satisfied and whether the Operator has achieved Technical Completion within 10 Business Days after receipt of a Notice of Technical Completion and final Technical Completion Report in accordance with clause 28.1.
- (b) To the extent permitted by Law, a determination made by the Independent Verifier as to whether the Project Works have achieved Technical Completion will be final and binding on the parties save for manifest error or errors of Law.

28.4 Independent Verifier not satisfied Technical Completion achieved

- (a) If the Independent Verifier is not satisfied that the Project Works have achieved Technical Completion, it must, within 10 Business Days after the period referred to in clause 28.3(a) either:
 - (i) issue to the Operator and the Client Representative a written notice containing details of the outstanding Technical Completion Criteria that must be satisfied by the Operator as a condition precedent to achieving Technical Completion; or
 - (ii) direct the Operator in writing to continue with the execution of the Project Works to achieve Technical Completion.
- (b) If the Independent Verifier issues a notice or direction under this clause 28.4, the requirements of clause 28.1 will apply again save that in clause 28.1(b) the reference to '20 Business Days' will be deemed to be '10 Business Days'.

28.5 Independent Verifier verifies Technical Completion

- (a) If the Independent Verifier is satisfied that the Project Works have achieved Technical Completion, it must issue to the Operator and the Client Representative, with its notice under clause 28.3(a), the Technical Completion Certificate stating the date on which the Operator achieved Technical Completion.
- (b) The Independent Verifier may, at its sole and absolute discretion, issue a Technical Completion Certificate if Technical Completion has been achieved, notwithstanding that the Operator has not issued a notice in accordance with clause 28.1.

28.6 Technical Completion Outstanding Items

- (a) The Independent Verifier may issue a Technical Completion Certificate with an attached list of Outstanding Items which must be remedied, addressed or completed by the Operator within a reasonable period of time as determined by the Independent Verifier and in any event prior to Operational Readiness (**Technical Completion Outstanding Items**).
- (b) The Operator must, within five Business Days after the issue of a Technical Completion Certificate which attaches a list of Technical Completion Outstanding Items, provide to the Independent Verifier for its review a written program for the completion of the Technical Completion Outstanding Items in accordance with the Independent Verifier's requirements.

- (c) The program must set out the proposed times for the completion of each of the Technical Completion Outstanding Items and must otherwise comply with the Independent Verifier's requirements.
- (d) The Operator must complete the Technical Completion Outstanding Items:
 - (i) in accordance with the approved program;
 - (ii) to the satisfaction of the Independent Verifier; and
 - (iii) as a condition precedent to achieving Operational Readiness.
- (e) If a list of Technical Completion Outstanding Items is attached to a Technical Completion Certificate, the Operator must ensure that the Technical Completion Outstanding Items and details of their rectification form part of the Operational Readiness Plan and Operational Readiness Report.

28.7 No obligation to certify Technical Completion early

Notwithstanding any other provision of this document, if the Independent Verifier certifies that Technical Completion has been achieved prior to the Original Date for Technical Completion, the Date of Technical Completion will be the Original Date for Technical Completion, unless the State (in its sole and absolute discretion) agrees to an earlier Date of Technical Completion.

29. Preparation for Operational Readiness

29.1 Submission of updated Operational Readiness Plan etc

The Operator must submit updated versions of the Project Program and each Transition Plan, each complying with the General Plan Requirements or the Transition Plan Requirements (as applicable) and the requirements set out in this document (including, in the case of the Operational Readiness Plan, the requirements of clause 29.2) to the Client Representative for review:

- (a) no later than nine months prior to the Date for Operational Readiness;
- (b) and then no later than six months prior to the Date for Operational Readiness; and
- (c) at such other times reasonably requested by the Client Representative prior to the Date of Final Completion,

provided that:

- (d) after the Date of Operational Readiness, the Operator need not provide updated versions of the Operational Readiness Plan; and
- (e) after the Date of Transfer Completion, the Operator need not provide updated versions of the Patient Transfer Plan.

29.2 Contents of Operational Readiness Plan

The Operational Readiness Plan must be in a form approved by the Client Representative (acting reasonably), include completion of the Technical Completion Outstanding Items and otherwise comply with the detailed requirements for the Operational Readiness Plan set out in the Transition Plan Requirements.

29.3 Appointment of State Surveyor

- (a) By no later than 4 months prior to the Date for Operational Readiness, the Client Representative must notify the Operator of:

- (i) the registered surveyor the Client Representative has selected to be the State Surveyor for the purposes of this document; and
 - (ii) the scope of work the State requires the State Surveyor to undertake.
- (b) As soon as practicable following notification by the Client Representative pursuant to paragraph (a) (and in any event by no later than 3 months prior to the Date for Operational Readiness), the Operator must appoint the person nominated by the Client Representative pursuant to paragraph (a) as the State Surveyor for the purposes of this document. The appointment must:
- (i) include the scope of work required by the State as notified to the Operator under paragraph (a)(ii); and
 - (ii) otherwise be on terms acceptable to the State.
- (c) The costs and expenses of the State Surveyor (including the professional fees of the State Surveyor) will be paid in the following proportions:
- (i) 50% by the Operator; and
 - (ii) 50% by the State.
- (d) If the State Surveyor retires or is terminated prior to the end of its engagement in respect of this document, the procedure in paragraphs (a) to (c) (inclusive) will be followed as soon as reasonably practicable after such retirement or termination so that a replacement State Surveyor can be appointed.

30. Conduct of Operational Readiness Tests

30.1 Comply with Operational Readiness Plan, etc

The Operator must carry out all applicable Operational Readiness Tests and otherwise carry out all activities necessary to achieve Operational Readiness in accordance with the Operational Readiness Plan and each other Transition Plan and otherwise in accordance with this clause 30.

30.2 Additional Operational Readiness Tests

- (a) Subject to clause 30.2(c), the Independent Verifier or the Client Representative (acting reasonably) may notify the Operator of any additional tests to those specified in the Operational Readiness Plan or another Transition Plan that the Independent Verifier or the Client Representative considers necessary to demonstrate that Services are able to be provided, in accordance with this document, or in satisfaction of the FFP Warranty or in respect of the requirements of this document relevant to achieving Operational Readiness (**Additional Operational Readiness Tests**), at any time up to the date that is one month before the Date for Operational Readiness.
- (b) The Operator must carry out all Additional Operational Readiness Tests notified by the Client Representative or the Independent Verifier:
 - (i) prior to Operational Readiness;
 - (ii) in accordance with this clause 30.2; and
 - (iii) otherwise in accordance with the reasonable requirements of the Client Representative or the Independent Verifier.
- (c) The Client Representative or the Independent Verifier may only request Additional Operational Readiness Tests which:

- (i) a competent service provider in the position of the Parent Company;
- (ii) a competent party in the position of the Operator; or
- (iii) a competent design or construction contractor in the position of the Construction Contractor,

would have allowed for to demonstrate that the Project Works and the Facility comply with the requirements of this document that are relevant to achieving Operational Readiness (including to demonstrate satisfaction of the FFP Warranty).

- (d) Subject to clause 30.2(e), the State will pay to the Operator any costs reasonably incurred by the Operator in carrying out any Additional Operational Readiness Tests notified by the Client Representative under this clause 30.2.
- (e) The State will not be liable for any costs incurred by the Operator in carrying out any Additional Operational Readiness Test if the results of that Additional Operational Readiness Test demonstrate that the Project Works or the Facility do not comply with the requirements of this document that are relevant to achieving Operational Readiness.

30.3 Conducting Operational Readiness Tests

The Operator must, in the conduct of the Operational Readiness Tests, comply with the requirements set out in clause 26.3 as if the Technical Completion Tests referred to in clause 26.3 were a reference to Operational Readiness Tests.

30.4 Unsuccessful Operational Readiness Test

- (a) If the Operator fails to successfully complete an Operational Readiness Test (which must be successfully completed prior to Operational Readiness), the Independent Verifier may refuse to issue the Operational Readiness Certificate.
- (b) The Client Representative may waive the requirement for the Operator to satisfy an Operational Readiness Test.

31. Operational Readiness Report

31.1 Purpose of Operational Readiness Report

The purpose of the Operational Readiness Report is to:

- (a) identify each of the Operational Readiness Criteria;
- (b) identify the methodology that the Operator used to satisfy and demonstrate how each of the Operational Readiness Criteria was satisfied;
- (c) identify any requirements (and details of the satisfaction of such requirements) of the Project Program or the other Transition Plans which must be satisfied prior to Operational Readiness;
- (d) provide details of when the Operator satisfied each of the Operational Readiness Criteria;
- (e) identify any Operational Readiness Criteria that remain outstanding and the Operator's strategy for satisfying any outstanding Operational Readiness Criteria including the proposed timing for satisfying such criteria; and
- (f) otherwise assisting the Client Representative and the Independent Verifier in determining whether the Operational Readiness Criteria have been satisfied.

31.2 Submission of draft Operational Readiness Report

The Operator must submit to the Client Representative and the Independent Verifier for review and comment a draft Operational Readiness Report no later than 10 Business Days prior to the date on which the Operator anticipates that it will achieve Operational Readiness.

31.3 Meeting concerning the Operational Readiness Report

- (a) The Operator must:
 - (i) arrange a meeting with the Independent Verifier and the Client Representative to discuss:
 - (A) the contents of the draft Operational Readiness Report;
 - (B) preparation for Operational Readiness generally; and
 - (C) anticipated timing for achieving Operational Readiness;
 - (ii) conduct such a meeting a minimum of 15 Business Days prior to the date on which the Operator anticipates that it will achieve Operational Readiness;
 - (iii) update the draft Operational Readiness Report to take into account feedback provided by the Independent Verifier or the Client Representative; and
 - (iv) otherwise take into account and comply with any directions reasonably given by the Independent Verifier in relation to preparing for Operational Readiness.
- (b) If, after the meeting referred to in clause 31.3(a) above, the Independent Verifier or the Client Representative reasonably forms the view that the Operator is unlikely to achieve Operational Readiness by the anticipated date:
 - (i) the Independent Verifier or the Client Representative (as applicable) must provide written notice to the Operator to this effect; and
 - (ii) the Operator must promptly submit an updated draft Operational Readiness Report in accordance with clause 31.2 and arrange a further meeting in accordance with this clause 31.3.

32. Operational Readiness

32.1 Notice of Operational Readiness

- (a) When the Operator has reasonably formed the view that it has achieved Operational Readiness, the Operator must provide the Client Representative and the Independent Verifier:
 - (i) a Notice of Operational Readiness; and
 - (ii) a final Operational Readiness Report.
- (b) The Operator may not submit the information to the Client Representative and the Independent Verifier pursuant to clause 32.1(a) until a date which is 20 Business Days after the submission of the draft Operational Readiness Report in accordance with clause 31.2.
- (c) Subject to clause 30.4(b), the Operator must satisfy each of the Operational Readiness Criteria prior to achieving Operational Readiness.

32.2 Independent Verifier forms view

- (a) Within 10 Business Days after receipt by the Independent Verifier of a notice under clause 32.1(a):
 - (i) if the Independent Verifier (after consultation with the Client Representative) is satisfied that the Operator has achieved Operational Readiness, the Independent Verifier must issue the Operational Readiness Certificate stating the date on which the Operator achieved Operational Readiness; and
 - (ii) if the Independent Verifier (after consultation with the Client Representative) is not satisfied that the Operator achieved Operational Readiness, the Independent Verifier will direct the Operator in writing to continue with the execution of the Project Works, in order to achieve Operational Readiness and provide written reasons why the Independent Verifier was not satisfied that the Operator had achieved Operational Readiness.
- (b) If the Independent Verifier issues a notice or direction under clause 32.2(a)(ii), the requirements of this clause 32 will apply again save that in clause 32.1(b) the reference to '10 Business Days' will be deemed to be 'five Business Days'.
- (c) The Independent Verifier may in its sole and absolute discretion issue the Operational Readiness Certificate if Operational Readiness has been achieved, notwithstanding that the Operator has not issued a notice in accordance with clause 32.1(a).

32.3 Drawings and survey

The Operator must give the Client Representative, as a condition precedent to Operational Readiness:

- (a) a complete set of 'work as executed' architectural and engineering drawings for the Project Works in hard copy and manipulable electronic format, which comply with the requirements of the Design Parameters; and
 - (b) a detailed survey from the State Surveyor which:
 - (i) will comply with the State's required form of survey;
 - (ii) shows and verifies (as against the Handover Plan – Appendix A) the location of:
 - (A) the Site, the Non-Development Site, the Retained Green Space and the Car Park Site;
 - (B) the completed Facility on the Site and confirms that each of the Public Patient Portion, the Private Patient Portion and the Shared Portion areas (including the Designated Commercial Areas and each Associated Commercial Facility), have not changed from those shown in the RFP Design Proposal (except as varied in accordance with clauses 19.9, 63 or 67); and
 - (C) the completed Car Park on the Car Park Site and confirms that the Car Park has not changed from that shown in the RFP Design Proposal (except as varied in accordance with clauses 19.9, 63 or 67); and
 - (iii) certifies that the completed Facility and the Car Park is located in accordance with the Certified Construction Documentation,
- and which complies with the Design Parameters.

32.4 No obligation to certify Operational Readiness early

Notwithstanding any other provision of this document, if the Independent Verifier certifies that Operational Readiness has been achieved prior to the Original Date for Operational Readiness, the Date of Operational Readiness will be the Original Date for Operational Readiness, unless the State (in its sole and absolute discretion) agrees to an earlier Date of Operational Readiness.

33. Effect of Certificates and State review of documents and involvement in tests

33.1 Effect of Technical Completion and Operational Readiness Certificates

The issue of a Technical Completion Certificate or Operational Readiness Certificate does not constitute:

- (a) approval by the State;
- (b) evidence that the Project Works or the Facility have been constructed in accordance with the Certified Construction Documentation, the requirements of the Licensing Authority or this document;
- (c) evidence that any applicable Project Plan has been fully complied with;
- (d) evidence that the Services can be provided at the Facility or otherwise that the Facility is Fit for Intended Purpose; or
- (e) evidence that the Operator has satisfied the FFP Warranty.

33.2 No obligation to review or comment

Any review or comment upon, or acceptance of, or direction to amend, or failure to review or comment upon any Technical Completion Report or Operational Readiness Report or direction to carry out or directing any Additional Technical Completion Tests or Additional Operational Readiness Tests by the Client Representative or the Independent Verifier (as the case may be) will not:

- (a) relieve the Operator from, or alter or affect, its liabilities or obligations under this document;
- (b) prejudice the State's rights against the Operator; or
- (c) evidence or constitute the granting of an extension of time or a direction by the Operator to accelerate, disrupt, prolong or vary any or all of the Project Works.

33.3 No duty of care

The State and the Client Representative do not assume or owe any duty of care to the Operator in reviewing, accepting or rejecting a Technical Completion Report or Operational Readiness Report or directing any or direction to carry out Additional Technical Completion Tests or Additional Operational Readiness Tests to identify any:

- (a) Defect in the Public Patient Portion Works or the Public Patient Portion;
- (b) non-conformances in the Project Works or the Facility, a Technical Completion Report or an Operational Readiness Report with the requirements of this document, the requirements of the Licensing Authority, any Law or the conditions of any other Consent; or
- (c) errors or omissions in the Technical Completion Report or Operational Readiness Report.

33.4 State assistance in conduct of Tests

The Operator acknowledges and agrees that:

- (a) any participation or assistance given by the State or a State Related Party to the Operator in conducting a Technical Completion Test or Operational Readiness Test will be provided at the sole and absolute discretion of the State or the State Related Party (as the case may be); and
- (b) the State accepts no Liability or responsibility to the Operator for any Claim in relation to the participation by the State or a State Related Party in the conduct of a Technical Completion Test or Operational Readiness Test or the provision of any assistance in this regard.

Part C – Operating Term

34. Grant of Operating Term Private Patient Portion Lease

34.1 Grant

Subject to this document, the State agrees to grant and the Operator agrees to accept the grant of the Operating Term Private Patient Portion Lease on and from the Date of Operational Readiness.

34.2 Completion of Operating Term Private Patient Portion Lease

- (a) The Operating Term Private Patient Portion Lease will be completed by the State's solicitors in accordance with this clause 34.
- (b) The State and the State's solicitors are authorised to complete the Operating Term Private Patient Portion Lease and must do so prior to the Date of Operational Readiness by inserting:
 - (i) the title details for the Site;
 - (ii) the Date of Operational Readiness as the commencement date;
 - (iii) the date that is 20 years after the Date for Operational Readiness as the termination date;
 - (iv) the term; and
 - (v) the date of this document in the definition of 'Project Deed'.

34.3 Execution

The Operating Term Private Patient Portion Lease must be duly executed by the State and the Operator as soon as possible thereafter, and in any event prior to the Date of Operational Readiness.

34.4 Registration

The State must lodge the Operating Term Private Patient Portion Lease for registration as soon as reasonably practicable after the Operating Term Private Patient Portion Lease is completed and executed in accordance with this clause 34.

34.5 Parties bound

The parties are bound by the Operating Term Private Patient Portion Lease from and including the Date of Operational Readiness, although the Operating Term Private Patient Portion Lease may not have been completed in accordance with clause 34.2, a party may not have executed the Operating Term Private Patient Portion Lease or the Operating Term Private Patient Portion Lease may not have been registered.

35. No Compensable Patients prior to Operational Readiness

No Compensable Patient may be admitted to any part of the Facility, nor may any services be provided to a Compensable Patient in any part of the Facility, until the Date of Operational Readiness.

36. Staff Migration

36.1 Operator and State to cooperate to identify NSW Health Service Employees to transfer to the Operator

- (a) The State and the Operator must cooperate in the identification and matching of positions under clause 36.2(a), selection pursuant to clauses 36.2(b) to 36.2(d) (inclusive) and transfer of NSW Health Service Employees to transfer to the Facility.
- (b) The State and the Operator must jointly establish a taskforce (**Workforce Migration Taskforce**) to facilitate the identification, matching, selection and transfer of NSW Health Service Employees to the Operator and any Subcontractor.
- (c) The Workforce Migration Committee shall be comprised of up to 3 representatives of each of the Operator and the State, to be selected by the Operator and the State respectively and shall be chaired by one of the representatives nominated by the State.
- (d) Where any dispute arises between the members of the Workforce Migration Committee, it shall be escalated to the State for determination.

36.2 Offers of employment by the Operator to NSW Health Service Employees

- (a) The Operator must, in respect of any position with the Operator, invite and otherwise procure that in respect of any position with a Subcontractor, that the Subcontractor invites:
 - (i) **(first round expression of interest)** NSW Health Service Employees to express an interest in any position at the Facility, or which primarily provides services to the Facility, (other than the Chief Executive Officer, the Chief Financial Officer, and the Director of Operations/Clinical Services) which is substantially similar to the position that he or she performs at or for an Existing Hospital; and
 - (ii) **(subsequent rounds expression of interest)** NSW Health Service Employees who have not yet expressed an interest in any position at the Facility or which primarily provides services to the Facility, or whose expression of interest was not accepted, to express an interest in any positions at the Facility or which primarily provides services to the Facility (other than the Chief Executive Officer, the Chief Financial Officer, and the Director of Operations/Clinical Services) for which no NSW Health Service Employee has already expressed an interest in a preceding expression of interest round and for which they meet the reasonable position requirements of the Operator.
- (b) The Operator must and must procure that Subcontractors will:
 - (i) accept an expression of interest for each position at the Facility, or which primarily provides services to the Facility, for which an expression of interest is received; and
 - (ii) make an offer of employment to each NSW Health Service Employee whose expression of interest is accepted.
- (c) The parties acknowledge and agree that clause 36.2(a) may be amended by the mutual agreement of the parties at any time after the date of this document.
- (d) All offers of employment made by the Operator or a Subcontractor to NSW Health Service Employees must:
 - (i) be in a form approved by the State (which approval must not be unreasonably withheld);

- (ii) be for the position for which each NSW Health Service Employee has expressed an interest;
- (iii) include the terms and conditions set out in this document, including the terms and condition in clauses 36.4 and 36.5;
- (iv) be conditional on the satisfaction of any terms imposed by the State at the time of the offer;
- (v) take effect on a date to be agreed between the State and the Operator and by no later than the Date of Final Completion; and
- (vi) otherwise comply with any obligations or requirements set out in this document.

36.3 Acceptance of offers of employment

- (a) The State will not discourage NSW Health Service Employees from accepting the offers of employment referred to in clause 36.2.
- (b) If the employment of a NSW Health Service Employee who has expressed an interest in a position at the Facility that has been accepted terminates for any reason prior to their Migration, the State must notify the Operator of this as soon as reasonably practicable.

36.4 Terms and conditions of employment of Migrating Employees

The Operator must, and must procure that any Subcontractor which makes an offer to a Migrating Employee under clause 36.2(d) which is accepted (**Specified Subcontractor**), employ Migrating Employees on the following terms and conditions:

- (a) at least the Migrating Employee's current actual salary at the time of their Migration, except where the Migrating Employee accepts a higher or lower graded position than that which they perform in the NSW Health Service, in which case the salary should be that applicable to the equivalent grade in the Award;
- (b) the Award Terms and Conditions that applied to the equivalent position in the NSW Health Service to that which the Migrating Employee accepts;
- (c) permit any Migrating Employee with any secondary employment that is approved by the State prior to their Migration to continue in that secondary employment on the terms of the relevant approval; and
- (d) to the extent permitted by law and reasonably practicable and where applicable to the Migrating Employee, the NSW Health policies set out below, or any equivalent Policy Directive or Information Bulletin applicable at the time of Migration (any references in these documents to the 'employer', 'NSW Health Service', 'public health system' and 'the Department' or similar references are to be read as a reference to the Operator, or any Subcontractor, as the case may be):
 - (i) Leave to Undertake Defence Force Duties (PD2006_013);
 - (ii) Learning and Development Leave Policy (PD2006_066);
 - (iii) Health Services Union – Award Changes – Memorandum of Understanding – Old Part Time Employees (IB2005_062);
 - (iv) Model Pilot Agreement for Midwifery Caseload Practice Annualised Salary Agreement (IB2008-012);
 - (v) Private Motor Vehicle Use on Official Business – 'Transport Rate' (IB2009_049);

- (vi) Incremental Salary Progression for Part-Time Employees in PHO's and Health Administration Corp (PD2005_456);
- (vii) Special Leave (PD2006_095);
- (viii) Family Violence Provisions (IB2001_029);
- (ix) Annual Leave – only section 15 (excluding paragraphs 10 and 11), which relates to annual leave loading (PD2006_089); and
- (x) Managing Excess Staff of the NSW Health Service (voluntary redundancy arrangements, including payments, and the forced redundancy arrangements, including payments) (PD2012_021).

36.5 Additional terms and conditions of employment of Staff Specialists

In addition to the terms and conditions of employment set out in clause 36.4, for any Migrating Employee who is a Staff Specialist, the Operator must, and must procure that any Specified Subcontractor, must either:

- (a) provide the following entitlements (or their equivalent at the relevant time) provided that the Staff Specialist is in receipt of the entitlement immediately prior to Migration:
 - (i) the special allowance of 17.4% of the Staff Specialist's salary (salary being set by the *Staff Specialists (State) Award*);
 - (ii) the abnormal working hours and recall allowance, calculated in accordance with the *Staff Specialists Determination 2010*;
 - (iii) the Training Education and Study Leave and funding entitlement, as set out in accordance with the *Staff Specialists Determination 2010*;
 - (iv) the rights of private practice, including the private practice allowance, as set out in the *Staff Specialists Determination 2010*; and
 - (v) the Emergency Physicians allowance as set out in the *Staff Specialist Emergency Physicians – Remuneration Arrangements for the period to June 2014* (PD2012_045); or
- (b) enter into an agreement with the Staff Specialist under which the Staff Specialist receives comparable, and no less favourable, entitlements as described in paragraph (a) above.

36.6 Accrued entitlements and recognition of prior service

The Operator must, and must procure that any Specified Subcontractor:

- (a) recognise continuous service in the NSW Health Service (including any broken (for long service leave only) or unbroken service currently recognised by the NSW Government) of all Migrating Employees for all purposes including any law regulating employment or any employment related benefit, except in respect of annual leave where a Migrating Employee cashes out all of his or her annual leave on Migration;
- (b) assume, recognise and become solely responsible for all accrued leave entitlements of Migrating Employees which are recognised by the NSW Government immediately prior to Migration, including sick leave, family and community services leave, annual leave (including annual leave loading), training, education or study leave (however described), long service leave and parental leave (except any annual leave or long service leave that is cashed out on Migration); and

- (c) assume and become solely responsible for any and all amounts payable to a Migrating Employee on the termination of a Migrating Employee's employment, including on redundancy.

36.7 Compensation for transfer of accrued leave

- (a) As part of the Final Completion Payment, the State will pay the Operator an amount in consideration for the assumption by the Operator and any Specified Subcontractor (as the case may be) of the accrued leave entitlements of Migrating Employees under clause 36.6 (**Accrued Liabilities Payment**).
- (b) The Accrued Liabilities Payment will equal the total of:
 - (i) 100% of the amount of the annual leave and annual leave loading, as recognised by the NSW Government in relation to Migrating Employees;
 - (ii) 100% of the amount of long service leave of Migrating Employees with periods of service of seven years or more recognised by the NSW Government (where long service will be deemed to accrue after seven years' service); and
 - (iii) 50% of the amount of long service leave of Migrating Employees with periods of service between five years and seven years recognised by the NSW Government (where long service will be deemed to accrue after five years' service).
- (c) The Accrued Liabilities Payment will be calculated on the basis:
 - (i) of each Migrating Employee's salary and period of service at their Migration Date;
 - (ii) that it will not include any amount for any annual leave or long service leave which a Migrating Employee has cashed out on Migration; and
 - (iii) that annual leave and long service leave will be calculated in accordance with the applicable Award or legislation.
- (d) The Operator must hold the Accrued Liabilities Payment in a specially designated trust account established solely for the purpose of holding the Accrued Liabilities Payment in respect of Migrating Employees, whether employed by the Operator or any Specified Subcontractor.
- (e) The Accrued Liabilities Payment may only be used by the Operator to pay the relevant transferring leave entitlements of Migrating Employees when required by Law. The Migrating Employees will be deemed to take the earliest accrued leave first.
- (f) In relation to Migrating Employees employed by any Specified Subcontractor, the Operator must pay the Accrued Liabilities Payment to any Specified Subcontractor when the Specified Subcontractor's obligation to pay the relevant transferring leave entitlements of Migrating Employees arises at Law and not otherwise, subject to the Operator receiving a written request from the Specified Subcontractor to do so. Such payment must be made for the sole purposes of discharging the Specified Subcontractor's obligations in relation to the relevant transferring leave entitlements. The Operator must procure that any Specified Subcontractor deems the Migrating Employees to take the earliest accrued leave first.
- (g) The Operator indemnifies the State from and against any Claim by any Migrating Employee in respect of any accrued leave entitlement for which an Accrued Liabilities Payment is made by the State to the Operator, and any Claim by a Specified Subcontractor in respect of the failure by the Operator to pay the Accrued Liabilities Payment to the Specified Subcontractor in accordance with clause 36.7(f).

- (h) At the end of the Term, the Operator must repay to the State the Accrued Liabilities Payment to the extent to which the Accrued Liabilities Payment has not been paid by the Operator to Migrating Employees under clause 36.7(e) or to any Specified Subcontractor under clause 36.7(f).

36.8 Employment guarantee period

- (a) The Operator must not and must procure that any Specified Subcontractor does not terminate the employment of a Migrating Employee for two years from the Migration Date, except:
 - (i) for serious misconduct;
 - (ii) pursuant to the proper application of reasonable disciplinary procedures;
 - (iii) if the Migrating Employee is no longer able to perform the inherent requirements of the position; or
 - (iv) by agreement with the Migrating Employee.
- (b) The Operator must not and must procure that any Specified Subcontractor does not vary the Migrating Terms and Conditions for two years from the Migration Date, except by agreement by or on behalf of a Migrating Employee where the variation results in the Migrating Employee being better off overall.
- (c) To the extent that the obligations of the Operator under this clause 36.8 are not directly enforceable by the Migrating Employees for whose benefit they have been given under section 36C of the *Conveyancing Act 1919* (NSW), the Operator agrees and must procure that any Specified Subcontractor agrees that they may be enforced by the State on behalf of the Migrating Employees.

36.9 Employee records

As soon as practicable after Migration and subject to applicable Laws, the State will provide to the Operator and any Specified Subcontractor any information about Migrating Employees that the State would be required to provide to the Operator under section 3.41 of the *Fair Work Regulations 2009* (Cth), as if that section applies.

36.10 Transfer of business

- (a) The Operator acknowledges and must procure any Specified Subcontractor to acknowledge that:
 - (i) the Staff Migration meets the requirements of section 768AD of the *Fair Work Act 2009* (Cth) such that the Staff Migration will be a 'transfer of business'; and
 - (ii) acknowledges that as a result, any copied State instruments will apply to Migrating Employees.
- (b) The Operator agrees and must procure that any Specified Subcontractor agrees that it will not seek any orders under sections 768BA or 768BB of the *Fair Work Act 2009* (Cth) (or any equivalent provision) in relation to any applicable Award.
- (c) To the extent that the obligations of the Operator or a Specified Subcontractor under this clause 36.10 are not directly enforceable by the Migrating Employees for whose benefit they have been given under section 36C of the *Conveyancing Act 1919* (NSW), the Operator agrees and must procure that any Specified Subcontractor agrees that they may be enforced by the State on behalf of the Migrating Employees.

36.11 Non-NSW Health Service Employees and VMOs

- (a) The Operator is not required to offer employment to any employee of the NSW Health Service who is not a NSW Health Service Employee. However, the Operator may do so if it wishes.
- (b) The obligations set out in this clause 36 do not apply to any Non-NSW Health Service Employee or VMO. Subject to any applicable law, the Operator may enter into any arrangement with or in relation to Non-NSW Health Service Employees and VMOs. Subject to subclause (c) below, the terms of any such arrangement will be solely a matter for the Operator.
- (c) If the Operator enters an arrangement with a Non-NSW Health Service Employee or VMO, the timing of the commencement of the arrangement will be subject to the approval of State, such approval not to be unreasonably withheld.

36.12 Staff Migration Plan

- (a) The Operator must comply with the Staff Migration Plan.
- (b) The transfer of all Migrating Employees must be complete on or prior to the Date of Final Completion.

36.13 Indemnity in respect of Migrating Employees, Non-NSW Health Service Employees and VMOs

The Operator indemnifies each Indemnified State Party, from and against any Loss or Claim (including its legal costs on a full indemnity basis) suffered, paid or incurred in respect of a Migrating Employee, a Non-NSW Health Service Employee and a VMO, where those Liabilities and Claims are in respect of any matter that arises on or after the Migration Date.

36.14 Migration Payment

- (a) Subject to clause 36.14(b):
 - (i) within 7 days following Final Completion, the Operator must provide a tax invoice to the State in respect of the Migration Payment (if a positive number);
 - (ii) the State must pay the Migration Payment to the Operator as part of the Final Completion Payment; and
 - (iii) the Operator must pay any Specified Subcontractor so much of the Migration Payment as relates to Migrating Employees employed by the Specified Subcontractor, subject to receiving a tax invoice from the Specified Subcontractor.
- (b) Subject to this document, the Migration Payment:
 - (i) will be the only compensation payable by the State to the Operator in respect of the costs, expenses and losses of the Operator and any Specified Subcontractor incurred by reason of the maintenance, in respect of Migrating Employees, of existing employment terms and conditions; and
 - (ii) will be reduced by the amount of any additional cost incurred by the State as a result of the Operator not performing its obligations under this document in respect of Migrating Employees.
- (c) The Operator indemnifies the State from and against any Claim by any Specified Subcontractor in respect of the failure by the Operator to pay the Migration Payment to the Specified Subcontractor in accordance with clause 36.14(a)(iii).

37. Superannuation for Migrating Employees

37.1 Definitions

In this clause:

DB Contribution means, in respect of a Migrating Employee in a Defined Benefit Scheme, the contributions that the STC Actuary determines is payable in respect of that Migrating Employee in the Defined Benefit Scheme on and from the Migration Date, having regard to the Operator's Employer Reserve in the Defined Benefit Scheme at the time.

Defined Benefit Scheme means each of:

- (a) the State Superannuation Scheme or SSS, as constituted pursuant to the *Superannuation Act 1916* (NSW);
- (b) the State Authorities Superannuation Scheme or SASS, as constituted pursuant to the *State Authorities Superannuation Act 1987* (NSW); and
- (c) the State Authorities Non-Contributory Superannuation Scheme or SANCS, as constituted pursuant to the *State Authorities Non-Contributory Superannuation Act 1987* (NSW).

Employer has the meaning given to that term in the governing rules of a Defined Benefit Scheme.

Employer Reserve has the meaning given to that term in the governing rules of the Defined Benefit Scheme.

Employee Event means the earlier of the following:

- (a) the Migrating Employee leaves employment of the Operator or any Specified Subcontractor; and
- (b) the Migrating Employee is granted a new position within the Operator or any Specified Subcontractor irrespective of the salary applying to that position.

Migrating Employee's Superannuation Scheme has the meaning given to it in clause 37.2(c)(i).

Minimum Superannuation Contribution means the 'charge percentage' of an employee's 'ordinary time earnings' (as those expressions are defined in the Superannuation Guarantee Legislation) or such other amount as is required to:

- (a) avoid the imposition of the superannuation guarantee charge under the Superannuation Guarantee Legislation; or
- (b) comply with any other legal obligation pertaining to employee superannuation contributions (including, but not limited to, under a contract of employment, an industrial instrument such as an award or agreement or any other law).

Operator's Employer Reserve has the meaning given to it in clause 37.4(a)(ii)(A).

Past Service Assets has the meaning given to it in clause 37.4(a)(ii)(B)(II).

Past Service Liabilities has the meaning given to it in clause 37.4(a)(ii)(B)(I).

Post-Migration Period means:

- (a) the period commencing on the Migration Date and ending on the next 30 June preceding the Migration Date; and
- (b) any financial year commencing after the period identified in paragraph (a) of this definition.

Specified Subcontractor has the same meaning as defined in clause 36.4.

Superannuation Guarantee Legislation means:

- (a) the *Superannuation Guarantee Charge Act 1992* (Cth); and
 - (b) the *Superannuation Guarantee (Administration) Act 1992* (Cth),
- as amended from time to time.

STC means the SAS Trustee Corporation, the trustee of each Defined Benefit Scheme.

STC Actuary means the actuary or firm of actuaries as may be appointed as the actuary for the Defined Benefit Scheme by STC from time to time.

37.2 Objectives of this clause

- (a) In relation to any Specified Subcontractor who employs a Migrating Employee from the Migration Date, the parties agree that:
 - (i) the Operator must procure that the Specified Subcontractor complies with the Operator's obligations under this clause 37 as if the Specified Subcontractor is the Operator; and
 - (ii) the State must comply with its obligations under this clause 37 as if the Specified Subcontractor is the Operator.
- (b) The Operator acknowledges that:
 - (i) under the terms of this document, a Migrating Employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which the Migrating Employee was a contributor, member or employee (as a NSW Health Service Employee) immediately before the Migration Date (**Migrating Employee's Superannuation Scheme**) and remains so entitled subject to any variation to that entitlement made by agreement or otherwise in accordance with law; and
 - (ii) the continuity of the Migrating Employee's contract of employment is taken not to have been broken by the Migration of the Migrating Employee's employment, and service of the Migrating Employee in the NSW Health Service that is continuous service up to the time of Migration is taken for all purposes to be service with the Operator.
- (c) The parties intend that in respect of a Migrating Employee, with effect on and from the Migration Date:
 - (i) the State will cease to contribute to the Migrating Employee's Superannuation Scheme;
 - (ii) the Operator will contribute to the Migrating Employee's Superannuation Scheme, and be responsible for fully funding all future service liabilities attributable to each Migrating Employee in that scheme on and after the Migration Date in place of the State;
 - (iii) where, in any Post-Migration Period, the DB Contributions for a Migrating Employee in the Defined Benefit Schemes exceeds the Minimum Superannuation Contribution required to be paid by the Operator for that Migrating Employee, the State will pay to the Operator annually in arrears an amount equal to the amount by which the DB Contributions exceeds the Minimum Superannuation Contribution for the Migrating Employee; and

- (iv) except as otherwise provided in this clause, the State will cease to be responsible for funding any superannuation benefits accruing to the Migrating Employee in respect of periods of service, on and after the Migration Date.

37.3 Continuation of membership

With effect on and from the Migration Date, each Migrating Employee will remain a member of the Migrating Employee's Superannuation Scheme of which the Migrating Employee was a member immediately before the Migration Date, except as otherwise required by Law (such as, for example, where the Migrating Employee chooses another fund in accordance with the Superannuation Guarantee Legislation or any applicable industrial award).

37.4 Operator to become a participating employer or contributor of the Employee's Superannuation Scheme

- (a) The State must use reasonable endeavours to:
 - (i) enable the Operator to become, with effect on and from the Migration Date, a participating employer or contributor of each Migrating Employee's Superannuation Scheme (including applying for an appropriate order to schedule the Operator as an Employer under the relevant Act governing each Defined Benefit Scheme);
 - (ii) procure that:
 - (A) STC establish a new Employer Reserve in each Defined Benefit Scheme attributable to the Operator which relates to the Migrating Employees who are members of that Defined Benefit Scheme (each such account to be known as the **Operator's Employer Reserve**);
 - (B) the STC Actuary calculates:
 - (I) the aggregate of the past service liabilities of the State attributable to the Migrating Employees as at the Migration Date (**Past Service Liabilities**); and
 - (II) an asset amount attributable to the Migrating Employees as at the Migration Date (**Past Service Assets**); and
 - (C) STC transfers from the State's Employer Reserve to the Operator's Employer Reserve in each Defined Benefit Scheme, the Past Service Liabilities and the Past Service Assets attributable to each Migrating Employee in that scheme as at the Migration Date in accordance with the relevant Act governing the Defined Benefit Scheme.
- (b) The Operator must do all things necessary to ensure that, with effect on and from the Migration Date:
 - (i) the Operator becomes a participating employer or contributor of each Migrating Employee's Superannuation Scheme (including becoming an Employer of a Defined Benefit Scheme); and
 - (ii) each Migrating Employee is able to continue as a contributor, member or employee of the Migrating Employee's Superannuation Scheme as contemplated by clause 37.3.
- (c) Upon admission by the Operator as a participating employer or contributor of a Migrating Employee's Superannuation Scheme, the Operator will be bound by the governing rules of the Migrating Employee's Superannuation Scheme for as long as the

Operator is a participating employer or contributor of the Migrating Employee's Superannuation Scheme for the purposes of those rules.

- (d) With effect on and from the Migration Date, the Operator will be responsible for fully funding all future service liabilities attributable to the relevant Migrating Employee in the Migrating Employee's Superannuation Scheme.
- (e) The State shall request the Treasurer to make any orders as are necessary to give effect to the transactions contemplated by this clause 37.4.
- (f) The Operator will not be responsible for the Past Service Liability attributable to a Migrating Employee in a Defined Benefit Scheme unless the Past Service Assets attributable to that Migrating Employee in that scheme as at the Migration Date has been transferred to the Operator's Employer Reserve in that scheme.

37.5 State responsible for superannuation benefits for service up to the Migration Date

The State must, up to the Migration Date:

- (a) make Minimum Superannuation Contributions on behalf of all Migrating Employees (other than in relation to a Migrating Employee who is a member of a Defined Benefit Scheme); and
- (b) comply with the obligations with respect to superannuation in any Award in relation to all Employees covered by that Award, including:
 - (i) in respect of a Migrating Employee who is a member of a Defined Benefit Scheme:
 - (ii) contribute at a rate required by the governing rules of the Defined Benefit Scheme to fund the benefits provided by that scheme in respect of any period of service up to the Migration Date; and
 - (iii) meet the costs associated with making the contributions referred to in subparagraph (a) above.

37.6 Operator to fund superannuation benefits for service from the Migration Date

- (a) The Operator must, on and from the Migration Date:
 - (i) make Minimum Superannuation Contributions on behalf of all Migrating Employees (other than in relation to a Migrating Employee who is a member of a Defined Benefit Scheme);
 - (ii) comply with the obligations with respect to superannuation in any Award in relation to all Migrating Employees covered by that Award; and
 - (iii) in respect of a Migrating Employee who remains a member of a Defined Benefit Scheme:
 - (A) contribute at a rate required by the governing rules of the Defined Benefit Scheme to fund all future service liabilities attributable to the Employee in that scheme on and from the Migration Date; and
 - (B) meet the costs associated with making the contributions referred to in subparagraph (A) above.
- (b) Where, in any Post-Migration Period, the total of the DB Contributions for a Migrating Employee in the Defined Benefit Schemes exceeds the Minimum Superannuation Contribution for that Migrating Employee, the State will pay to the Operator annually in

arrears an amount by which the DB Contributions exceeds the Minimum Superannuation Contribution for the Migrating Employee.

- (c) Despite clause 37.6(b), upon the occurrence of any Employee Event in relation to a Migrating Employee, the State will not be liable for any superannuation contributions (or payment to the Operator in relation to superannuation contributions) accruing or arising from the date of the Employee Event occurring in relation to the Migrating Employee.
- (d) Except as otherwise provided in clauses 37.6(b) or 37.6(c), the State will cease to be responsible for funding any superannuation benefits accruing to the Migrating Employee in respect of periods of service, on and after the Migration Date.

37.7 Operator has no interest in the State's Employer Reserve in a Defined Benefit Scheme

- (a) The Operator:
 - (i) acknowledges that it does not have an interest in the State's Employer Reserve in a Defined Benefit Scheme;
 - (ii) must not make a claim on any part of the State's Employer Reserve in a Defined Benefit Scheme;
 - (iii) releases the State and STC from any claim on the State's Employer Reserve in a Defined Benefit Scheme that the Operator may have;
 - (iv) indemnifies the State and STC against any claim that the Operator may make on the State's Employer Reserve in a Defined Benefit Scheme; and
 - (v) acknowledges that the State's Employer Reserve in a Defined Benefit Scheme remains available for the sole use and benefit of the State subject to the governing rules of the Defined Benefit Scheme.
- (b) If at any time after the Migration Date, the STC Actuary determines that the State's Employer Reserve in a Defined Benefit Scheme is in surplus:
 - (i) the State may procure that STC allocates such surplus as agreed between the State and STC, including to the State employer reserve or to the Employer Reserve of any other Employer within the Defined Benefit Scheme; and
 - (ii) the Operator must nonetheless continue to contribute to the Defined Benefit Scheme in accordance with clause 37.6.

38. Patient Transfer Services

38.1 Patient Transfer Services

- (a) The Operator must perform the Patient Transfer Services in accordance with the Patient Transfer Plan and in order to meet any applicable KPIs within the Patient Transfer Period.
- (b) Once the Operator is satisfied that the Patient Transfer Services have been completed, it must provide notice of that fact to the State together with such evidence of the satisfactory performance of the Patient Transfer Services as the State may require.
- (c) The State must:
 - (i) inspect the performance of the Patient Transfer Services (and the Operator must provide such access to the Facility and all records and other information as the State may require in this regard);

- (ii) notify the Operator whether or not it is satisfied that the Patient Transfer Services have been completed in accordance with this document; and
- (iii) if the State is not satisfied that the Patient Transfer Services have been satisfactorily performed in accordance with the Operator's obligations under this clause 38.1, direct the Operator as to which steps it requires the Operator to take in order to complete the Patient Transfer Services, in which case:
 - (A) the Operator must comply with any such direction; and
 - (B) clauses 38.1(b) to 38.1(d) will apply again.
- (d) The Operator:
 - (i) maintains full responsibility for the timely and satisfactory performance of the Patient Transfer Services (including in respect of the governance of clinical care and responsibility for all patients transferring from the Existing Hospitals to the Facility) at all relevant times; and
 - (ii) has sole responsibility for the governance of the clinical care of all transferring patients at all times from the time of clinical handover,

and the State assumes no Liability in this regard by virtue of any direction given under clause 38.1(c)(iii).
- (e) The Operator must ensure that all clinical staff directly involved in the provision of the Patient Transfer Services will be employees of, or contractors engaged by, the Operator for the duration of the Patient Transfer Services.

38.2 Patient Transfer Payment

- (a) Subject to clause 38.2(b):
 - (i) following service of the State's notice under clause 38.1(c)(ii) that the Patient Transfer Services have been satisfactorily performed by the Operator and in any event within 7 days following Final Completion, the Operator must provide a tax invoice to the State in respect of the Patient Transfer Payment (if a positive number); and
 - (ii) the State must pay the Patient Transfer Payment to the Operator as part of the Final Completion Payment.
- (b) Subject to this document, the Patient Transfer Payment:
 - (i) will be the only compensation payable by the State to the Operator in respect of its costs, expenses and losses incurred in the course of the performance of the Patient Transfer Services; and
 - (ii) will be reduced by the amount of any additional cost incurred by the State as a result of the Operator not performing the Patient Transfer Services in accordance with this clause 38.

39. Preparing for Transfer Completion and Final Completion

39.1 Compliance with Transition Plans

The Operator must prepare for Transfer Completion, the conduct of the Final Completion Tests, Final Completion and the provision of the Patient Transfer Services, and otherwise carry out all activities specified in, and in accordance with, the Project Program and the Transition Plans.

39.2 Transition Period obligations

During the Transition Period, the Operator must:

- (a) diligently pursue:
 - (i) Transfer Completion in accordance with the Project Program and the Transition Plans; and
 - (ii) Final Completion in accordance with the Project Program and the Transition Plans;
- (b) cooperate with the State (including by providing any information reasonably requested by the State) in respect of the execution of the Transition Strategy, the Patient Transfer Plan and the Staff Migration Plan, the performance of the Patient Transfer Services, and the achievement of Transfer Completion and Final Completion; and
- (c) coordinate completion of the activities and works required to achieve Transfer Completion and Final Completion so as to minimise disruption to operations taking place on the part of the Site which will comprise the Public Patient Portion during the Transition Period.

40. Transfer Completion Criteria and Final Completion Criteria

- (a) The Operator must satisfy each of the Transfer Completion Criteria in order to achieve Transfer Completion.
- (b) Subject to clause 43.2(b), the Operator must satisfy each of the Final Completion Criteria in order to achieve Final Completion.

41. Transition Report

41.1 Purpose of Transition Report

The Transition Report must:

- (a) identify each of the Transfer Completion Criteria and the Final Completion Criteria applicable to the Project Works;
- (b) identify the methodology that the Operator used to satisfy and demonstrate how the Transfer Completion Criteria and the Final Completion Criteria were satisfied (as applicable), including the conduct of the Final Completion Tests;
- (c) identify any other requirements (and details of the satisfaction of such requirements) of the Project Program which must be satisfied prior to achieving Transfer Completion or Final Completion;
- (d) provide details of when the Operator satisfied the Transfer Completion Criteria or the Final Completion Criteria (as applicable); and
- (e) otherwise assist the Independent Verifier in determining whether the Transfer Completion Criteria and Final Completion Criteria have been achieved.

41.2 Submission of draft Transition Report

The Operator must submit to the Independent Verifier and the Client Representative a draft Transition Report for review which satisfies the requirements of clause 41.1 no later than 10 Business Days prior to the date on which the Operator anticipates that it will achieve Transfer Completion.

41.3 Meeting concerning draft Transition Report

The Operator must:

- (a) arrange a meeting with the Independent Verifier and the Client Representative promptly after the submission of the draft Transition Report to discuss:
 - (i) the contents of the draft Transition Report;
 - (ii) preparation for Transfer Completion and Final Completion generally; and
 - (iii) anticipated timing for achieving Transfer Completion and Final Completion;
- (b) conduct such a meeting a minimum of 5 Business Days prior to the date on which the Operator anticipates that it will achieve Transfer Completion;
- (c) update the draft Transition Report to take into account feedback provided by the Independent Verifier or the Client Representative; and
- (d) otherwise take into account and comply with any directions reasonably given by the Independent Verifier in relation to the Patient Transfer Services or in preparing for Transfer Completion or Final Completion.

42. Transfer Completion

42.1 Transfer Completion

- (a) When the Operator has reasonably formed the view that it has achieved Transfer Completion, the Operator must provide the following information to the Independent Verifier and the Client Representative:
 - (i) a Notice of Transfer Completion; and
 - (ii) an updated Transition Report.
- (b) The Operator may not submit the information to the Independent Verifier and the Client Representative pursuant to this clause 42.1 until a date which is 10 Business Days after the submission of the draft Transition Report in accordance with clause 41.

42.2 Client Representative comments

The Client Representative may, within 5 Business Days after receipt of the relevant notice and the updated Transition Report in accordance with clause 42.1, provide comments or advice to the Independent Verifier in respect of the Operator's satisfaction of the Transfer Completion Criteria.

42.3 Independent Verifier forms view

- (a) The Independent Verifier must, after taking into account any comments or advice provided by the Client Representative under clause 42.2, notify the Operator in writing as to whether the Operator has achieved Transfer Completion within 5 Business Days after receipt of the relevant notice and the updated Transition Report in accordance with clause 42.1.
- (b) If the Independent Verifier is satisfied that the Operator has achieved Transfer Completion, it must issue to the Operator and the Client Representative, with its notice under clause 42.3(a), the Transfer Completion Certificate stating the date on which the Operator achieved Transfer Completion.

42.4 No obligation to certify Transfer Completion early

- (a) Subject to paragraph 42.4(b), the Independent Verifier may in its absolute discretion issue the Transfer Completion Certificate if Transfer Completion has been achieved, notwithstanding that the Operator has not issued a notice under clause 42.1(a).
- (b) Notwithstanding any other provision of this document, if the Independent Verifier certifies that Transfer Completion has been achieved prior to the Original Date for Transfer Completion, the Date of Transfer Completion will be the Original Date for Transfer Completion, unless the State (in its sole and absolute discretion) agrees to an earlier Date of Transfer Completion.

42.5 Failure to achieve Transfer Completion

- (a) If the Operator fails to achieve Transfer Completion by the Date for Transfer Completion, it must, no later than 5 Business Days after such failure, produce a report in writing to the Client Representative setting out:
 - (i) the reasons why Transfer Completion was not achieved by the Date for Transfer Completion; and
 - (ii) the date by which Transfer Completion will be achieved.
- (b) If the Operator fails to achieve Transfer Completion by the Date for Transfer Completion, the Client Representative may give written notice to the Operator requiring the Operator to promptly prepare and submit an updated Transition Strategy and (as applicable) an updated Patient Transfer Plan or Staff Migration Plan, within 5 Business Days after the date of that notice for the Client Representative's approval.
- (c) The Operator must take all reasonable steps to avoid or minimise the consequences of any delay.

42.6 Liquidated damages – delay in Transfer Completion

- (a) If the Operator fails to achieve Transfer Completion by the Date for Transfer Completion, the Operator will be liable to the State for liquidated damages at the Daily LD Rate for every calendar day after the Date for Transfer Completion until the earlier of the Date of Transfer Completion or the termination of this document, provided that the Operator's maximum aggregate liability for liquidated damages under this clause 42.6 is limited to the State LD Cap.
- (b) Any liquidated damages payable by the Operator will be moneys due and payable on demand.
- (c) If, after the Operator has paid liquidated damages pursuant to clauses 42.6(a) and 42.6(b), the Date for Transfer Completion is extended in accordance with this document, the State will repay to the Operator any liquidated damages paid in respect of the period to and including the new Date for Transfer Completion (as extended). The State will make any payment to the Operator under this clause 42.6(c) within 20 Business Days of the relevant extension.
- (d) The Operator acknowledges and agrees that the State will incur loss if Transfer Completion is not achieved by the Date for Transfer Completion.
- (e) The parties agree that the Daily LD Rate:
 - (i) is a fair, reasonable and genuine pre-estimate of the loss which the State is likely to incur if Transfer Completion is not achieved by the Date for Transfer Completion; and

- (ii) does not constitute a penalty.
- (f) The Operator agrees that it will not assert or seek to assert in any proceedings pursuant to clause 87, court, arbitration or other proceedings that the Daily LD Rate constitutes a penalty or that this clause 42.6 or the Operator's obligations pursuant to this clause 42.6 is void or unenforceable (whether in whole or in part).
- (g) Notwithstanding clauses 42.6(d), 42.6(e) and 42.6(f) if the liquidated damages provided for in this clause 42.6 are found to be a penalty or if this clause 42.6 or the Operator's obligation pursuant to this clause 42.6 is found to be void or unenforceable for any reason (whether in whole or in part), the Operator will be liable to pay unliquidated damages at Law for the breach for which liquidated damages would have been payable had the relevant liquidated damages, obligation or this clause 42.6 not been a penalty or not been void or unenforceable.
- (h) The parties acknowledge and agree that the Operator's obligation to pay liquidated damages under this clause 42.6 is a financial remedy available to the State in addition to any amount of the Monthly Service Payments not required to be paid by the State during the period of delay.
- (i) Subject to clauses 42.6(a), 42.6(b) and 42.6(g), the Operator is released from any liability to pay any amounts to any party by way of damages for breach of contract for failure to achieve Technical Completion by the Date for Technical Completion or Operational Readiness by the Date for Operational Readiness.
- (j) Clauses 42.6(a), 42.6(h) and 42.6(i) do not limit or otherwise affect:
 - (i) the Operator's liability for any loss if this document is terminated as a result of an Operator Termination Event;
 - (ii) the Operator's liability for any loss arising from the consequences of the event causing the delay other than for the delay itself, including:
 - (A) the Operator's liability under clause 72; or
 - (B) any Insured Liability.

43. Conducting Final Completion Tests

43.1 Conduct of Final Completion Tests

The Operator must, in the conduct of the Final Completion Tests, comply with the requirements set out in clause 26.3 as if:

- (a) the Technical Completion Tests referred to in clause 26.3 were a reference to Final Completion Tests;
- (b) the reference in clause 26.3(a) to 10 Business Days were a reference to 5 Business Days; and
- (c) all references in clause 26.3 to the Independent Verifier were deleted.

43.2 Unsuccessful Final Completion Test

- (a) If the Operator fails to successfully complete an Final Completion Test (which must be successfully completed prior to Final Completion), the Independent Verifier may refuse to issue a notice under clause 44.1(a)(i).
- (b) The Client Representative may waive the requirement for the Operator to satisfy a Final Completion Test.

44. Final Completion

44.1 Final Completion

- (a) When the Operator has reasonably formed the view that it has satisfied the Final Completion Criteria, the Operator must provide the following information to the Independent Verifier and the Client Representative:
 - (i) a Notice of Final Completion; and
 - (ii) a final Transition Report.
- (b) The Operator may not submit the information to the Independent Verifier and the Client Representative pursuant to this clause 44.1 until 5 Business Days after the Independent Verifier has notified the Operator pursuant to clause 42.2 that Transfer Completion has been achieved.

44.2 Client Representative comments

The Client Representative may, within 5 Business Days after receipt of the relevant notice and the final Transition Report in accordance with clause 44.1, provide comments or advice to the Independent Verifier in respect of the Operator's satisfaction of the Final Completion Criteria.

44.3 Independent Verifier forms view

- (a) The Independent Verifier must, after taking into account any comments or advice provided by the Client Representative under clause 44.2, notify the Operator in writing as to whether the Operator has achieved Final Completion within 5 Business Days after receipt of the relevant notice and the final Transition Report in accordance with clause 44.1.
- (b) If the Independent Verifier is satisfied that the Operator has achieved Final Completion, it must issue to the Operator and the Client Representative, with its notice under clause 44.3(a), the Final Completion Certificate stating the date on which the Operator achieved Final Completion.

44.4 No obligation to certify Final Completion early

- (a) Subject to paragraph 44.4(b), the Independent Verifier may in its absolute discretion issue the Final Completion Certificate if Final Completion has been achieved, notwithstanding that the Operator has not issued a notice under clause 44.1(a).
- (b) Notwithstanding any other provision of this document, if the Independent Verifier certifies that Final Completion has been achieved prior to the Original Date for Final Completion, the Date of Final Completion will be the Original Date for Final Completion, unless the State (in its sole and absolute discretion) agrees to an earlier Date of Final Completion.

44.5 Failure to achieve Final Completion

- (a) If the Operator fails to achieve Final Completion by the Date for Final Completion, it must, no later than 5 Business Days after such failure, produce a report in writing to the Client Representative setting out:
 - (i) the reasons why Final Completion was not achieved by the Date for Final Completion; and
 - (ii) the date by which Final Completion will be achieved.
- (b) If the Operator fails to achieve Final Completion by the Date for Final Completion, the Client Representative may give written notice to the Operator requiring the Operator to promptly prepare and submit an updated Transition Strategy and (as applicable) an

updated Patient Transfer Plan or Staff Migration Plan, within 5 Business Days after the date of that notice for the Client Representative's approval.

- (c) The Operator must take all reasonable steps to avoid or minimise the consequences of any delay.

45. Effect of Certificates and State review of documents and involvement in tests

45.1 Effect of Transfer Completion and Final Completion Certificates

The issue of a Transfer Completion Certificate or Final Completion Certificate does not constitute:

- (a) approval by the State;
- (b) evidence that the Facility is staffed or Patients have been transferred as required under this document;
- (c) evidence that any applicable Project Plan has been fully complied with;
- (d) evidence that the Services can be provided at the Facility or otherwise that the Facility is Fit for Intended Purpose; or
- (e) evidence that the Operator has satisfied the FFP Warranty.

45.2 No obligation to review or comment

Any review or comment upon, or acceptance of, or direction to amend, or failure to review or comment upon any Transition Report will not:

- (a) relieve the Operator from, or alter or affect, its liabilities or obligations under this document;
- (b) prejudice the State's rights against the Operator; or
- (c) evidence or constitute the granting of an extension of time or a direction by the Operator to accelerate, disrupt, prolong or vary any or all of the Operator's Activities.

45.3 No duty of care

The State and the Client Representative do not assume or owe any duty of care to the Operator in reviewing, accepting or rejecting a Transition Report to identify any:

- (a) non-conformances in the Operator's Activities or a Transition Report with the requirements of this document, any Law or the conditions of any other Consent; or
- (b) errors or omissions in the Transition Report.

45.4 State assistance in conduct of Final Completion Tests

The Operator acknowledges and agrees that:

- (a) any participation or assistance given by the State or a State Related Party to the Operator in conducting a Final Completion Test will be provided at the sole and absolute discretion of the State or the State Related Party (as the case may be); and
- (b) the State accepts no Liability or responsibility to the Operator for any Claim in relation to the participation by the State or a State Related Party in the conduct of a Final Completion Test or the provision of any assistance in this regard.

46. Defects

- (a) Except in relation to defects to which clause 46(b) applies, the Operator must remedy or make safe any other Defect as soon as is reasonable given the nature of the Defect and the impact of the Defect on the provision of the Services, after such Defect is advised to the Operator or the Operator otherwise becomes aware of it.
- (b) Any dispute as to whether a defect in the Project Works or the Facility constitutes a Defect for the purposes of this document must be referred for dispute resolution in accordance with clause 87.
- (c) If an Insolvency Event occurs in relation to the Construction Contractor or the Construction Contractor Guarantor between the Date of Operational Readiness and the later of the first anniversary of that date and the date the Defects Liability Bond is returned by the Operator to the Construction Contractor, the Operator must:
 - (i) notify the State in writing within 10 Business Days after becoming aware of the Insolvency Event, of all outstanding Defects in the Project Works or the Private Patient Portion Works that it is aware of and which are the responsibility of the Construction Contractor, including:
 - (A) an estimated cost of the rectification of each such Defect;
 - (B) without limiting clause 46(a), the timing as to when it expects each such Defect will be rectified; and
 - (C) a cash flow of the cost of fixing the Defects showing the source of funds including the calling on any outstanding Defects Liability Bond;
 - (ii) where the cash flow provided pursuant to clause 46(c)(i)(C) shows there is a deficit in the available or forecast source of funds to meet the cash flow scheduled cost of fixing the Defects, provide to the State in writing within 10 Business Days after the submission of the notice under clause 46(c)(i)(C) details of a plan for the raising of such additional funds which could include the raising of further borrowings or further investment by equity; and
 - (iii) diligently pursue any plan provided pursuant to clause 46(c)(ii).

47. State Capital Payment

47.1 State Capital Payment

The State must, subject to this clause 47, make the State Capital Payment to Operator B on the State Capital Payment Date, provided that the State will have no obligation to make the State Capital Payment unless the SCP Conditions are satisfied or waived.

47.2 Acknowledgement

The parties acknowledge and agree that the State Capital Payment is not calculated by reference to the value of the Project Works or the value of the goods and services supplied by Operator B, the Operator or a Subcontractor during the Development Phase or otherwise under this document.

47.3 SCP Conditions

The obligations of the State under clause 47.1 will not commence unless and until each of the following conditions (**SCP Conditions**) have been satisfied or waived by the State in accordance with clause 47.5:

- (a) (**Transfer Completion**) Transfer Completion has occurred; and

- (b) **(no outstanding Default or Termination Events)** there is no subsisting Operator Event of Default or Operator Termination Event.

47.4 Notices in relation to satisfaction of SCP Conditions

- (a) Operator B must use its best endeavours to procure the satisfaction of the SCP Conditions in accordance with this document.
- (b) Once Operator B considers that it has satisfied all of the SCP Conditions which have not been waived by the State in accordance with clause 47.5, Operator B must give the Client Representative:
 - (i) a written notice stating that it considers that all of the SCP Conditions which have not been waived by the State in accordance with clause 47.5 have been satisfied;
 - (ii) reasonable evidence that each of the SCP Conditions which has not been waived by the State in accordance with clause 47.5 has been satisfied; and
 - (iii) an updated version of the Base Case – State Asset, which is adjusted only for inputting the timing for payment and amount of the State Capital Payment and any other matters agreed with the State.
- (c) Within 10 Business Days after receiving a notice under clause 47.4(b), the Client Representative will give Operator B:
 - (i) written notice that the Client Representative agrees that the SCP Conditions have been satisfied or waived and the adjusted Base Case – State Asset is only adjusted pursuant to clause 47.4(b)(iii) (**SCP Satisfaction Notice**), in which case the State will make payment pursuant to clause 47.1; or
 - (ii) written notice that the Client Representative does not agree that the SCP Conditions which have not been waived by the State in accordance with clause 47.5 have been satisfied and the reasons for the Client Representative's determination, in which case Operator B must:
 - (A) use its best endeavours to procure the satisfaction of the outstanding SCP Conditions; and
 - (B) re-submit its notice to the State under clause 47.4(b),
and this clause 47.4(c) will apply to the re-submitted notice.
- (d) Without limiting the rights of the State under this document, a breach of clause 47.4(a) by Operator B (or the Operator as agent on behalf of Operator B) will not, of itself, be an Operator Event of Default, Operator Termination Event or a default entitling the State to issue a notice under clause 77.1(a).

47.5 Waiver of SCP Conditions

- (a) The State may waive one or more of the SCP Conditions by giving written notice to Operator B (**SCP Waiver Notice**).
- (b) Any waiver by the State of a SCP Condition does not constitute a waiver by the State of any of its rights, powers or discretions in respect of any subsisting breach of this document, Operator Event of Default, Operator Termination Event or Defect (as may be relevant).
- (c) The State may specify the State Capital Payment Date in the SCP Waiver Notice, provided that the date specified is the last day of an Interest Period.

47.6 Adjustments to Base Case – State Asset

In addition to any obligations of Operator B or the Operator (as applicable) under clauses 47.4 and 70, on the State Capital Payment Date, the Operator will provide to the State an updated version of the Base Case – State Asset, each adjusted only by inputting the timing for payment and amount of the State Capital Payment and any other matters agreed with the State.

47.7 Private Patient Portion Works

Each of the Operator and Operator B acknowledges and agrees that it is not entitled to:

- (a) any payment from the State in respect of the carrying out of the Private Patient Portion Works under this document; and
- (b) use any amounts payable by the State for performance of the Public Patient Portion Works under this document in carrying out the Private Patient Portion Works.

48. Minimum equity following State Capital Payment

The Operator must ensure that, at all times on and from the State Capital Payment Date, it is capitalised by equity (or a secured deferred equity commitment backed by a bond, letter of credit or similar instrument issued by a financial institution having the Required Rating) in an amount not less than of the construction price of the Private Patient Portion Works, contributed to the Operator (either directly or indirectly) by way of ordinary shares, units or intercompany subordinated debt.

49. Final Completion Payment

The State must make a payment (**Final Completion Payment**) to the Operator within 28 days of the Date of Final Completion comprising the aggregate of the following:

- (a) the Patient Transfer Payment; plus
- (b) the Accrued Liabilities Payment; plus
- (c) the Migration Payment; less
- (d) the Private Opportunity Payment.

50. Facility

50.1 General Facility provisions

- (a) The Facility may be accessed by the Operator only for the purpose of delivering the Services and otherwise exercising its rights or performing its obligations under this document or the Project Documents.
- (b) The Operator must comply with State- and health-wide smoking and healthy living policies at the Facility as if the Facility was a NSW public hospital, and must ensure that the Personnel and Hospital Users comply with this requirement.
- (c) The State may (acting reasonably) refuse admittance to, or require the removal or non-admittance of, any person (other than individuals employed or engaged by the Operator or individuals employed or engaged by a Subcontractor, who are addressed in clause 59) from the Facility whose presence poses, or is reasonably believed by the State to pose, a risk to the health or well-being of the Hospital Users. Such action does not relieve the Operator of any of its obligations under this document.

- (d) If the State refuses admittance or requires the removal of a person under this clause 50.1 or otherwise under this document, the Operator must, at its own cost, promptly remove the person and if the person is removed under clause 59.1(c)(v), arrange a replacement for that person.
- (e) The Operator must ensure the continuous supply of Utilities to and within the Facility sufficient to perform its obligations under this document and (without limitation) to ensure the continuous uninterrupted provision of the Services.

51. Fundamental Service obligations

- (a) During the Operating Term, the Operator must provide the Services to Public Patients in accordance with this document, including:
 - (i) in accordance with the Activity Schedule, the Performance Schedule, the Reporting Schedule and the Payment Schedule;
 - (ii) in accordance with the Services Plans and the Services Specification;
 - (iii) in accordance with Good Operating Practices and the Quality Assurance Management Plan;
 - (iv) in accordance with the Australian Industry Participation Plan, the Work Health and Safety Management Plan, the Business Continuity Management Plan and each Operational Plan;
 - (v) in accordance with the other Project Plans;
 - (vi) ensuring that for the duration of the Operating Term the Facility is Fit For Intended Purpose; and
 - (vii) in accordance with all Health Policies:
 - (A) applicable to the operation of a private health facility (as that term is defined in the Hospitals Act); and
 - (B) all Health Policies listed in Schedule 20A as updated or amended by the State from time to time by notice to the Operator (in which circumstances, the updates or amendments shall be deemed to be incorporated into Schedule 20A).
- (b) All Health Services must be provided by the Operator on or from the Facility, unless otherwise consented to by the State (in its discretion).
- (c) The Operator must perform the Services having regard to the highest standard of Patient care and safety at all times.
- (d) The Operator must comply with the IM&T Requirements as they are updated or amended by the State (acting reasonably) from time to time, taking into account (among other things) State- or health-wide requirements and relevant technological advances and upgrades.
- (e) Each party acknowledges and agrees that, save as provided in clauses 51(j) or 19.16(b), nothing in this document shall transfer to the other party any Intellectual Property Rights existing prior to the date of this document and owned by or licensed to a party (**Background IP**).
- (f) If the Operator (or any officer, agent, employee, licensee, contractor, consultant or person acting under the direction or with the permission of the Operator (each an **Operator**

Delegate) creates any Material in the course, for the purposes or by virtue of the Project in which Intellectual Property Rights subsist as a result of:

- (i) any Research;
- (ii) research and development of any kind;
- (iii) any business systems and processes associated with the operation of the Facility and/or the Car Park which:
 - (A) is developed either using data available as a result of the provision of the Services; or
 - (B) interfaces with any business, accounting or software system utilised in any enterprise operated by or on behalf of the State,

(together the **Project IP**), then the Operator will promptly notify the State in writing of such Project IP, including providing reasonable details of the Project IP, a description of the Project IP, when the Project IP was created and by whom, the intended use of the Project IP and any Operator Background IP that is necessary or convenient for the use of the Project IP.

- (g) Save as provided in clause 51(h), the Operator agrees that all Project IP will vest in the State and the Operator assigns (and will procure that each Operator Delegate assigns) to the State all existing and future right, title and interest in such Project IP.
- (h) Upon receiving notification of any specific Project IP under clause 51(f), the State may elect in writing (acting in its sole discretion) not to own the specific Project IP, in which case the specific Project IP will vest in the Operator (or the Operator Delegate as the case may be), provided that the Operator agrees (and procures that each Operator Delegate agrees):
 - (i) not to commercialise that specific Project IP without the prior written consent of the State (which may be withheld or delayed by the State acting in its sole discretion); and
 - (ii) to comply with the terms of clause 51(i) in relation to any commercialisation of the Project IP.
- (i) The parties agree that:
 - (i) any revenue generated by and attributable to the commercialisation of any Project IP (the **IP Proceeds**) will be shared equally between the State and the Operator; and
 - (ii) the Operator will allocate and spend at least 50% of its share of the IP Proceeds on research and development activities.
- (j) The Operator grants (and will procure that each Operator Delegate grants) to the State an unrestricted, non-exclusive, royalty free, irrevocable, perpetual, worldwide and assignable (in whole or in part) licence (including the right to sublicense) of any right, title and interest in Background IP (including, without limitation, any Background IP notified to the State under clause 51(f)) that is necessary or convenient for the use of the Project IP.
- (k) The Operator will (and will procure the Operator Delegates) obtain all necessary Moral Rights Consents (in consideration for the payment of \$1 to the relevant person) or waivers to the fullest extent permissible by law for the State's (and the State's licensee's and assigns') unimpeded use of any copyright works subsisting in the Project IP and the Background IP licensed under clause 51(j).

52. Provision of Services and Operations

52.1 General Services obligations during Operating Term

- (a) Subject to paragraph (b), the Operator must at all times make the whole of the Public Patient Portion and the Shared Portion available for the provision of Services to Public Patients.
- (b) Notwithstanding paragraph (a):
 - (i) the Operator may admit Compensable Patients to the Public Patient Portion provided that admission of Compensable Patients does not adversely impact the Operator's ability to provide the Services to Public Patients in accordance with this document;
 - (ii) use of the Shared Portion by the Operator in relation to Compensable Patients must not adversely impact the Operator's ability to provide the Services to Public Patients in accordance with this document; and
 - (iii) the use of any part of the Private Patient Portion or the Shared Portion by the Operator during the provision of the Services will be at no extra charge to the State.
- (c) For the avoidance of doubt, the performance of any Services within the Private Patient Portion does not relieve the Operator from its obligations under this document in respect of the performance of those Services.
- (d) Without limiting any other clause of this document, the Activity Schedule forms part of this document, and the parties must each comply with their obligations set out in the Activity Schedule.
- (e) The Operator must not do any service, provide any treatment or perform any procedure which is not specified in both the then-current Role Delineation and the Activity Profile for that Operating Year without the prior written consent of the State (which can be granted or withheld in the State's discretion).
- (f) The Operator must achieve the Elective Surgery Targets and the Emergency Access Target in relation to the Services and the operation of the Facility (or any equivalent target levels which are either:
 - (i) imposed by any law, agreement or other mechanism which is designed to replace, update or supersede the COAG 'National Health Reform Agreement – National Partnership Agreement on Improving Public Hospital Service 2011'; or
 - (ii) then being applied at other comparable NSW public hospitals, as notified in writing by the State to the Operator from time to time).

52.2 Inappropriate transfer

- (a) Notwithstanding clause 52.1(e), and the Operator's other obligations under this document, the Operator must:
 - (i) provide appropriate clinical treatment for all people who present at or are referred to the Facility:
 - (A) in compliance with this document and the Services Specification for those within the Role Delineation; or

- (B) otherwise in accordance with Good Operating Practice having regard to clinical need;
 - (ii) perform the Services in respect of all Public Patients who present at the Facility with a condition which is consistent with the Activity Profile, the Services Specification and the Role Delineation; and
 - (iii) subject to clause 52.2(c), not inappropriately transfer any Patient to another health service or facility.
- (b) For the purposes of subparagraph (a)(iii) and paragraph (d), an **inappropriate transfer** includes where:
- (i) a Patient with a condition that is consistent with the Activity Profile, the Services Specification and the Role Delineation is transferred to another public health service or facility;
 - (ii) a Patient with a condition other than as specified in clause 52.2(b)(i) is transferred to another health service or facility without the Operator first having complied with its obligations under clause 52.2(a)(i); or
 - (iii) a Patient is transferred to another health service or facility, and that Patient's required level of care exceeds the role delineation for the receiving service or facility,
- but does not include transfers:
- (iv) occurring as a result of a Patient presenting with a condition for which a Restricted Service would be required; or
 - (v) where the Patient requires a level of care that can be appropriately provided by a hospital which has capacity, closer to the Patient's, or their Carer's, residence.
- (c) The Operator may transfer a Patient to another health service or facility if there is an urgent and critical clinical need to do so having regard to Good Operating Practice, provided that this will still constitute an inappropriate transfer for the purposes of this clause 52.2 if it would otherwise satisfy the criteria in clause 52.2(b).
- (d) The State is entitled to recover from the Operator the net cost to the State of treating any Patient who has been inappropriately transferred to another public health service or facility in accordance with the mechanism in the Payment Schedule.

52.3 Obligation to prevent leakage

The Operator must do all things reasonably necessary to ensure that all prospective Patients within the Catchment Area use the Facility as their primary hospital, including by engaging with the local community.

52.4 Licensing

The Operator must ensure that, at all times during the Operating Term, the Operator:

- (a) to the extent required by Law, procures, maintains and renews the Hospital Licence in a form and substance sufficient to provide the Services from the Facility in accordance with this document;
- (b) complies with all terms and conditions attaching to or contained in the Hospital Licence;
- (c) immediately notifies the State of the imposition of any Adverse Licence Conditions together with its proposed plan for the addressing or rectifying and removing those Adverse Licence Conditions;

- (d) ensures that any Adverse Licence Condition is promptly and unconditionally addressed or rectified and removed or withdrawn;
- (e) on request, provides to the State full and certified copies of the Hospital Licence; and
- (f) procures and maintains the issue of a provider number for the Facility and the making of a declaration under section 121-5 of the *Private Health Insurance Act 2007* (Cth) that the Facility is a private hospital.

52.5 Accreditation

- (a) The Operator must provide the State with a copy of any report relating to the Accreditation Requirements received from the Accrediting Body upon request by the State.
- (b) Without limiting clause 10, the Operator must continuously renew its Accreditation in accordance with the Accrediting Body.
- (c) The Operator must promptly ensure that:
 - (i) any non-compliance with its Accreditation Requirements is addressed or rectified; and
 - (ii) any recommendations made by any Accrediting Body are promptly implemented.

52.6 Medicare principles

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

52.7 Community Participation

Without limiting the Operator's obligations under the Stakeholder Engagement and Communications Strategy, the Operator must actively undertake activities to:

- (a) reinforce to the community that the Facility is the primary hospital within the Catchment Area;
- (b) improve awareness of services provided by the Facility;
- (c) provide and encourage community participation to improve and enhance Patient care and the Services at and from the Facility;
- (d) focus on the broader health needs of the community, rather than a concentration only on the purely clinical aspects of health care;
- (e) develop and maintain strong relationships and links with the local community;

- (f) ensure that all Services seamlessly interact with primary care, community health and community mental health services;
- (g) enter into partnering relationships with other health providers and the local community, through collaboration between clinicians across health facilities and strong engagement with the community as well as Patients; and
- (h) facilitate a holistic and integrated local health system, which ensures that Patients experience a seamless and sustainable health service, regardless of organisational boundaries.

52.8 Volunteer organisations and donations

- (a) If the Operator elects to involve volunteers in any capacity in relation to the Facility, then the Operator must ensure that:
 - (i) each volunteer and auxiliary organisation is:
 - (A) registered as a non-profit organisation by the Australian Charities and Not-for-Profits Commission or as otherwise approved by the Client Representative; or
 - (B) otherwise approved in writing by the Client Representative;
 - (ii) all volunteers have a police clearance and sign a confidentiality agreement and conflict of interest declaration document as required by the State;
 - (iii) volunteers attend an initial orientation workshop prior to commencing services followed by annual updates; and
 - (iv) volunteers are issued with ID cards and are easily identifiable.
- (b) The Operator must not actively solicit donations in respect of the Facility or the Operator's Activities. Donations will be allowed to support broader infrastructure at the Site (including public space) but only at the sole discretion of the State.
- (c) Notwithstanding paragraph (b), the Operator must ensure that all donations received by the Operator for the benefit of Public Patients are:
 - (i) held on trust for the benefit of Public Patients;
 - (ii) applied solely for the benefit of Public Patients; and
 - (iii) applied in accordance with the State's written directions (in its absolute discretion).
- (d) On the Public Patient Portion Expiration Date or earlier date of termination of the Public Patient Portion, the Operator must pay any donations then held by the Operator to the State or its nominee to be held by the State or its nominee upon the trusts set out in paragraph (c) above.
- (e) The Operator will, in addition to the powers otherwise conferred upon trustees by Law, have the following powers:
 - (i) to open any account or accounts with any bank or banks and to operate by and in all usual ways any such account or accounts;
 - (ii) to pay out of all moneys held all Taxes and all reasonable expenses incurred in acting as trustee in respect of the above trusts;
 - (iii) to give effectual receipts and discharges for all donations received; and

- (iv) to do all such other things as may be incidental to the exercise of the above powers and authorities.

52.9 Disasters/Networking and Planning

- (a) Without prejudice to its obligation to perform the balance of the Services, the Operator must participate in, and contribute to, Disaster Measures in accordance with:
 - (i) the Services Specification;
 - (ii) the Annual Notice; and
 - (iii) otherwise in accordance with directions of the State issued from time to time.
- (b) If the State:
 - (i) gives notice that a Disaster has occurred or is likely to occur; or
 - (ii) issues a State Disaster Services Plan,the Operator must:
 - (iii) fulfil the roles set out in the State Disaster Services Plan; and
 - (iv) without limiting clause 52.9(d), ensure the continuous supply of Utilities to the Facility.
- (c) Notwithstanding any other clause in this document, the Operator must comply with the obligations set out in paragraphs (a) and (b) notwithstanding that it may otherwise be prevented or released from its obligation to do so by the fact that the Disaster or occurrence the subject of the Disaster Measures or State Disaster Services Plan also constitutes a Force Majeure Event.
- (d) The Operator must promptly report to the State all matters which have or might have the potential to constitute a Disaster in accordance with protocols or rules determined by the State, any other Authority or the Licensing Authority from time to time and must provide appropriate notification in accordance with the protocols advised to it from time to time (which at the Services Commencement Date is the NSLHD's Health Services Functional Area Coordinator in the first instance and, if unavailable, the State Health Services Functional Area Coordinator's 24/7 call line at 02 8396 5019).
- (e) If the Operator's compliance with its obligations under this clause (including in respect of the State Disaster Services Plan) or the Disaster Measures requires the Operator to perform services which are substantially of the nature of the Services, the Operator will be entitled to payment in respect of those services in accordance with the Payment Schedule as if those services were 'Services' for the purposes of this document, and the Operator may include a claim for the payment of these amounts in the next Operations Payment Claim to be submitted by the Operator under clause 55.3(a).
- (f) The Operator's obligations under this clause 52.9 and its right to receive payment under paragraph (e) will not constitute a change to the Maximum Payment Amount, unless expressly advised by the State.

52.10 Health Initiatives

- (a) The parties acknowledge that it is likely that, in order to meet requirements for the delivery of high quality and cost effective health care initiatives efficient referrals and integration with the NSLHD network, the State may require the implementation of various Health Initiatives.

- (b) If the State has notified the Operator of its requirement for the Operator to implement a Health Initiative at the Facility, the Operator must implement that Health Initiative at the Facility, provided that (and without prejudice to the Operator's obligations under this paragraph (b)), the Operator must first notify the State if it believes that:
 - (i) the implementation of the Health Initiative will have a detrimental effect on efficiency at the Facility or value for money for the State; or
 - (ii) it is able to achieve greater efficiency at the Facility or value for money for the State through the implementation of a different or varied Health Initiative.
- (c) In further developing and implementing any Health Initiative pursuant to paragraph (b) above, the Operator:
 - (i) must take a development as well as implementation role;
 - (ii) must comply with protocols and guidelines developed and applied by the State in the State's public hospitals;
 - (iii) must share all relevant data with the State, including in respect of cause, process and outcomes of Health Initiatives; and
 - (iv) agrees (and must procure that each Operator Delegate agrees) to procure that all Intellectual Property Rights created in the course of the implementation of a Health Initiative is deemed to be Project IP (as defined in clause 51) and will be dealt with in accordance with the provisions of that clause.
- (d) The parties acknowledge and agree that, to the extent that the implementation of any Health Initiative by the Operator under clause 52.10(b) would otherwise constitute a Change (but for paragraph (k) of the definition of 'Change' in clause 1.1) or Additional Work, then any corresponding compensation or reimbursement to which the Operator may be entitled will be determined in accordance with the ECE Schedule as if the implementation of that Health Initiative was a Change or Additional Work respectively.
- (e) The Operator must:
 - (i) at all times endeavour to create, develop or identify additional Health Initiatives or other initiatives, reforms, schemes and programs which are consistent with the provision of the Services under this document and appropriate associated funding, and must provide the State (on the State's reasonable demand) evidence of the Operator's endeavours; and
 - (ii) not apply for any additional funding or grants in respect of any initiative, reform, scheme or program without the State's prior written approval.
- (f) Any Health Initiative which the Operator seeks to implement in accordance with clause 52.10(e) will be treated as a Change proposed by the Operator pursuant to clause 67 of this document.
- (g) To the extent that the PBS becomes available to private providers of public health services, the Operator must promptly implement that element of the PBS (such that that element of the PBS is fully implemented within 2 years (or as otherwise agreed by the State acting reasonably) of it becoming available) in order to procure reimbursements from the Commonwealth under the PBS as they relate to the Facility and the Services.

52.11 Private Patient Portion

In operating the Private Patient Portion, the Operator:

- (a) must maintain a Hospital Licence in respect of the Private Patient Portion at all times;
- (b) must ensure that the provision of the Services and the performance of its obligations under this document are in no way prejudiced or compromised;
- (c) is only entitled to provide services to Compensable Patients which are complementary to, and do not interfere with, the Services;
- (d) must ensure that the role delineation of services offered to Compensable Patients at the Facility is not less than the role delineation of the equivalent Services which the Operator is required to provide to Public Patients under this document (including the Services Specification);
- (e) must not make inappropriate reclassifications (being reclassifications which are not required due to 'unforeseen circumstances' in accordance with the NHRA) of Compensable Patients to Public Patients;
- (f) must use its best endeavours to maximise the number of Patients who elect to use their private health insurance or are otherwise converted to being Compensable Patients at all times;
- (g) must do all things necessary to ensure that the Private Patient Portion is able to, and does, operate to its full capacity in accordance with:
 - (i) the Private Patient Portion role delineation referred to in paragraph (d); and
 - (ii) without limiting paragraph (d), the Compensable Patient Strategy,
in each case at all times, regardless of the presence of any Disaster or emergency situation and any other circumstances;
- (h) must ensure at all times that the number of Beds designated for use by Compensable Patients is not less than 173;
- (j) without limiting any other obligation in this document, must perform repair and maintenance, facilities management and other non-clinical support services in respect of the Private Patient Portion and the services it provides to Compensable Patients to a standard not less than that to which the Operator is required to perform the Non-Clinical Support Services in respect of the Services and the State Asset under this document;
- (k) subject to paragraphs (b) and (c) above, clause 52.1 and the Activity Schedule, may use the Public Patient Portion for the treatment of Compensable Patients, but only to the extent that the Services continue to be provided as required in this document and no Public Patient in any way suffers a detriment or is denied access to treatment, and the Operator indemnifies the State, on demand, in respect of any Loss or Claim suffered by the State as a result of the Operator's use of the Public Patient Portion for the treatment of Compensable Patients; and

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

53. Performance

- (a) **(Objectives)** The objectives of the Performance Regime are to measure the Operator's performance in accordance with this document. The Operator must set up an electronic system to record and report the Operator's performance against the Performance Regime, which system must contain an audit log and data amendment tracking capability that meets standards as reasonably prescribed by the State from time to time.
- (b) **(Achievement of KPI)** Without prejudice to the other provisions of this document, in performing the Services, the Operator must:
 - (i) achieve each of the Targets, as well as the balance of the requirements of, and standards set out in, the Performance Regime; and
 - (ii) comply with the Performance Management Plan.
- (c) **(Performance Data)** The Operator must:
 - (i) subject to the State providing reasonable prior notice, give the State access to (for the purposes of review) the Performance Data at all reasonable times;
 - (ii) ensure the availability and continuous integrity of the Performance Data;
 - (iii) ensure that all Performance Data is not amended or deleted without the State's consent; and
 - (iv) ensure that the Performance Data is accurate and keep a copy of all Performance Data for 7 years after its collection.
- (d) **(Other information)** The Operator must, in addition to the other requirements of this clause 53, maintain (in electronic format) a log for recording the start and end times and any other information requested by the State from time to time, in respect of all Failures in a form that can be audited by the State.
- (e) **(Audit):**
 - (i) At any time up to 12 months after the end of the Operating Term, the State may give notice to the Operator requiring an audit of the Performance Data, the Monthly Performance Reports or the Monthly Activity Reports to verify their accuracy (**Performance Audit Notice**).
 - (ii) If the State gives the Operator a Performance Audit Notice:
 - (A) the State will appoint and notify the Operator of a person to conduct the audit (**Performance Auditor**), at the State's cost and on terms reasonably determined by the State; and
 - (B) the Operator must, within a reasonable period, make the Performance Data, the Monthly Performance Reports and the Monthly Activity Reports available, and provide all necessary assistance (including access to senior management and personnel as reasonably required by the Performance Auditor), to the Performance Auditor.

- (f) **(Inaccurate data or reports)** If:
- (i) a report provided to the State in accordance with section 3.4 of the Reporting Schedule;
 - (ii) the report prepared by the Performance Auditor under clause 53(e); or
 - (iii) any review of the Performance Data, the Monthly Activity Report or the Monthly Performance Reports,
- reveals that the Performance Data, a Monthly Activity Report or a Monthly Performance Report is not accurate, the Operator must:
- (iv) fix the inaccuracy and reissue the relevant data or report to the State;
 - (v) reassess the occurrence or extent of any Failure and reduce the amount of the next Operations Payment Claim by any positive amount equal to the actual amount of any Failure Abatements which should have been incurred plus interest payable at the Default Rate; and
 - (vi) pay the costs of the Performance Auditor, or reimburse the State for any costs of the Performance Auditor paid by the State.
- (g) **(Failure Abatement as the only monetary compensation)** Subject to clause 53(h), Failure Abatement of a Monthly Service Payment will be the only monetary compensation payable by the Operator to the State for a Failure which activates Failure Abatement.
- (h) **(Not to affect other rights)** Clause 53(g) does not affect or limit:
- (i) the State's rights against the Operator (including making a claim for money) under clauses 7.12, 19.16(f), 46, 60, 72, 80 or 81;
 - (ii) the State's rights to make a Claim against the Operator (including making a claim for money) whether under this document or otherwise for any of the following:
 - (A) any loss or damage to, or destruction of the Facility or the Site;
 - (B) any third party property damage incurred by the State or a State Related Party or for which the State or a State Related Party is liable;
 - (C) any death, disease, illness or injury to any person for which the State or a State Related Party is liable;
 - (D) any reasonably foreseeable economic loss of the State or a State Related Party (including as a consequence of liability incurred to a third party):
 - (I) to the extent that that economic loss is recovered or recoverable under a Project Insurance (assuming compliance by the Operator with this document and any such insurance policy); or
 - (II) which is caused by a breach by the Operator or an Operator Related Party of any Law or any unlawful, wilful or fraudulent act or omission by the Operator or any Operator Related Party; and
 - (E) any loss or damage incurred by the State or a State Related Party as a result of a Failure which leads to termination of any Project Document,

to the extent that:

 - (F) any such loss, damage, destruction, injury, death or liability occurs as a result of a Failure; and

- (G) the State has not been compensated for any loss, damage, destruction, injury, death or liability by the reduction in the Monthly Service Payment by Failure Abatement; or
- (iii) any of the State's other rights or remedies under this document upon the occurrence of a Failure which are not rights or remedies for monetary compensation.
- (i) **(No penalty)** The Operator agrees to exclude and waives any right of the benefit to the application of any legal rule or norm, including in accordance with any Law, relating to the enforceability of this clause 53 or the characterisation of it as a penalty.

54. Reporting, Notification and Medical Records

54.1 Fundamental reporting obligations

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

54.2 Notification of safety issues

The Operator must:

- (a) identify and enquire into:
 - (i) any activity performed in respect of the Services which may give rise to health and safety risks for the Hospital Users, the Operator's Employees and Agents, any Subcontractor or any of their officers, employees, agents or consultants; and
 - (ii) any accidents or other incidents involving any (or any risk of) loss, injury or damage to persons (including death) or property of any kind, which occurs on or about the Site or the Facility as a result of or in connection with the Operator performing the Services;
- (b) in the case of the matters referred to in paragraph (a)(i), give the Client Representative written notice of each such matter as soon as reasonably practicable after it is identified; and
- (c) in the case of the matters referred to in paragraph (a)(ii), give the Client Representative a detailed written report of such matters as soon as reasonably practicable after such accident or incident occurs.

54.3 Notification of industrial issues

The Operator must:

- (a) keep the Client Representative regularly informed of any industrial action which may affect the provision of the Project Works, the Facility or the Services;
- (b) promptly inform the Client Representative of:
 - (i) any industrial action which causes the Operator to suspend or cease the provision of the Project Works, the Facility or the Services; and
 - (ii) what action or measures (including settlement) the Operator has taken or proposes to take to overcome, or minimise the effects of, such industrial action; and
- (c) promptly inform the Client Representative of any industrial action affecting the Operator or any Subcontractor or any employees of either of them which may impede the Project Works, the Facility or the Services.

54.4 Notification of Step-In Events

The Operator must immediately inform the Client Representative of:

- (a) any event or circumstances reasonably likely to constitute or cause a Step-In Event; and
- (b) what action or measures the Operator has taken or proposes to take to respond to, overcome, or minimise the effects of, such incident, event or circumstances.

54.5 Notification of damage, defect and other incident

- (a) The Operator must advise the Client Representative promptly in writing of any material damage or repairs affecting the Public Patient Portion Works, the Site, the Public Patient Portion or the Shared Portion of which the Operator is aware, and the action the Operator proposes to take to correct that material damage, Defect or disrepair, and the estimated time that correction will require.
- (b) For the purposes of this clause 54.5, material Defect, damage or repairs mean any Defect or damage the cost of repair of which is in excess of \$50,000 (Indexed).
- (c) The Operator must immediately inform the Client Representative of any other incident which causes the Operator to suspend or cease carrying out all or any significant part of the Public Patient Portion Works or the Services or which may significantly adversely affect the Services.

54.6 Monitoring and records

- (a) The Operator must monitor its performance in the delivery of the Services and maintain the information programs, plans, procedures, standards, policies, systems, records and manuals required in accordance with the procedures set out in the Services Specification.
- (b) The Operator will promptly provide to the Client Representative copies of all information, records or documents which the State reasonably requires in relation to the Public Patient Portion and its operation and the Shared Portion (including copies of any documents issued to or between members of the Operator Group, lodged with the Australian Securities and Investment Commission or any relevant stock exchange).
- (c) The Operator must retain all records and statements in relation to the Project for at least five years after the Operator's obligations under this document have ended.

54.7 Plans, procedures, standards audit

- (a) Without limiting clause 54.6, the Operator must, during the Operating Term, have its compliance with the programs, plans, procedures, standards, policies, systems, records and manuals prepared and maintained in accordance with the Design Parameters audited at intervals not exceeding twelve months by an independent auditor acceptable to the Client Representative.
- (b) The Operator must permit the Client Representative or his or her representative to be present during such audits and deliver to the Client Representative an audit report, within a reasonable time of completion of each audit.
- (c) The State may require additional audits of the programs, plans, procedures, standards, policies, systems, records (including financial records) and manuals prepared and maintained in accordance with the Design Parameters, at its own cost, provided that if an additional audit performed by the State reveals that the Operator or its Subcontractor has not materially complied with, or is not materially complying with, the requirements of the specifications with respect to such programs, plans, procedures, standards, policies, systems, records and manuals the Operator must reimburse the State for the costs of

carrying out such an audit, and any subsequent audit to confirm rectification of the non-compliance.

54.8 Other reporting and notification obligations

The Operator must:

- (a) give the State, if the State is, or is likely to become, liable to pay a Termination Payment under clauses 80 or 81, reasonable details of each component of that amount and the way in which the component was calculated, promptly after being requested to do so by the State;
- (b) give the State details of any changes to the Counterparty Details within 20 Business Days after the change;
- (c) give the State, as soon as practicable, copies of:
 - (i) all notices and other documents given or received by the Operator, the Parent Company or an Equity Investor to or from the Australian Securities and Investments Commission or the Australian Stock Exchange Limited; and
 - (ii) all other notices to Equity Investors and all notices from an Equity Investor to the holder of any securities issued by the Equity Investor;
- (d) give the State all reports and information specified in the Design Parameters or the Services Specification;
- (e) promptly give the State such other information relating to the Project as the State may reasonably require from time to time;
- (f) give the State as soon as practicable certified copies of all notices of default, breach or dispute given or received by it under the Project Documents or the Financing Agreements from any counterparty to those documents; and
- (g) advise the State as soon as practicable after an event has occurred which, to the Operator's actual knowledge, could in any way materially prejudice the State's rights under the Project Documents or the Financing Agreements by reason of the exercise of rights available to third parties arising from the Project Documents or the Financing Agreements.

54.9 Medical Records

- (a) All Medical Records delivered to the Operator by the State from time to time during the Operating Term remain the property of the NSLHD. The NSLHD and its successors are entitled to access the Medical Records at all times.
- (b) The Operator acknowledges and agrees that:
 - (i) Medical Records delivered to it by the State may be subject to the GIPA Act and the Privacy Legislation and may be required to be delivered to the State under the GIPA Act or the Privacy Legislation if required for the purposes of the GIPA Act or the Privacy Legislation; and
 - (ii) it will provide all assistance reasonably required by the State in relation to the processing of any applications made under the GIPA Act.
- (c) The Operator must, at all times during the Operating Term, ensure that:
 - (i) the Medical Records of all Public Patients bear appropriate identification as is agreed by the State and the Operator from time to time;

- (ii) subject to clauses 54.9(a) and 54.9(b) and to clause 92.3, all Medical Records of Public Patients remain the property of the Operator; and
 - (iii) copies of any Medical Records which are in the Operator's possession are provided to other health care facilities in the event that the Public Patient to which they relate is transferred to or treated from that facility.
- (d) The Operator must, as required by the State or any Authority or any other private hospital or public hospital (as defined in the Hospitals Act) make the Medical Records of all Public Patients treated at the Facility available in a manner consistent with State requirements.
- (e) The State will use its best endeavours to, if relevant to the performance of the Services and requested by the Operator, provide the Operator with copies of or reasonable access to all Medical Records relating to the provision of services to patients at each of the Existing Hospitals within the period commencing 7 years prior to the Date of Operational Readiness, provided that:
- (i) the consent of the patient is first obtained by the Operator (or the State, in the case of medical records pertaining to patients transferring from the Existing Hospitals as part of the Patient Transfer Services and patients from Existing Hospitals who, prior to Operational Readiness, have appointments scheduled at the Facility after Operational Readiness), and the Operator must maintain a written register of the details and timing of any consent obtained by the Operator (or the State, as applicable) and the patient's capacity at the relevant time;
 - (ii) the relevant Medical Record is then in the possession of, and accessible by, the State; and
 - (iii) the State is not precluded (by reasons of confidentiality, privacy or otherwise) to do so,

provided that the State and the Operator agree that, provided that no Operator Event of Default or Operator Termination Event then subsists, they will meet after the first 12 months of the Operating Term to discuss the continuing requirement for, and application of, the proviso at subparagraph (i) above and (each acting reasonably) seek to agree as to whether it is appropriate to vary or delete that proviso.

55. Payment during Operating Term

55.1 Monthly Service Payment

- (a) The Operator will be paid the Monthly Service Payment:
- (i) calculated in accordance with the Payment Schedule;
 - (ii) adjusted in accordance with this document; and
 - (iii) payable in arrears.
- (b) No Monthly Service Payments are payable:
- (i) prior to the Services Commencement Date; and
 - (ii) on and from the last day of the Term.

55.2 Other payments

- (a) The State will pay any payment (other than the Monthly Service Payment) which becomes due and payable to the Operator, and the Operator will pay any payment which becomes

due and payable to the State, at the time specified in, and in accordance with, this document or the relevant State Project Documents.

- (b) If no time is specified for the payment of the relevant amount in accordance with clause 55.2(a), then a claim for that amount may be submitted by the Operator together with the next Operations Payment Claim, and will be paid by the State within 20 Business Days (or such longer time as may be reasonable in the circumstances) of receipt of that Operations Payment Claim.
- (c) The Operator must not claim an entitlement to payment (in a Services Invoice or otherwise) of any amount which has already been claimed from the State or otherwise compensated, whether as part of the Monthly Service Payment, any other payment to which the Operator is entitled under this document or otherwise.

55.3 Payment

- (a) **(Operations Payment Claim)** The Operator must prepare and provide to the State a payment claim (an **Operations Payment Claim**) for the Monthly Service Payment for that Operating Month:
 - (i) calculated in accordance with the Payment Schedule (and clause 52.9, if applicable);
 - (ii) which complies with the Reporting Schedule and the Activity Schedule;
 - (iii) which must separately set out each element of the Monthly Service Payment together with supporting calculations and data (including as to Public Patient coding); and
 - (iv) which, for the avoidance of doubt, may be split into separate Operations Payment Claims in respect of:
 - (A) different Service Categories; and
 - (B) any other matters the subject of an Operations Payment Claim,no later than the 10th day of the next Operating Month (provided that any Operations Payment Claim submitted after that date will be deemed to have been submitted together with the next following Operations Payment Claim for the following Operating Month).
- (b) **(Operations Payment Statement)** The State:
 - (i) may request additional supporting information or data in respect of any Operations Payment Claim (which must be promptly provided to the State by the Operator);
 - (ii) may recalculate the amounts in any Operations Payment Claim if the State believes that this is necessary for the Operations Payment Claim to correctly reflect the amount payable to or by the Operator in accordance with this document; and
 - (iii) will, within 10 Business Days after receipt by the State of an Operations Payment Claim (or, if later, any supporting information requested in accordance with subparagraph (i)), provide to the Operator a statement (**Operations Payment Statement**) stating the amount payable to or by the Operator and any recalculations made to the amounts set out in the Operations Payment Claim.

- (c) **(Services Invoice)** The Operator will provide the State a Services Invoice in respect of any supplies (as defined in the GST Law) the subject of the Operations Payment Statement within 2 Business Days of receipt of the Operations Payment Statement.
- (d) **(Timing of payment)** Subject to clause 55.3(c), payment of the amount stated to be payable to or by the Operator in an Operations Payment Statement will be made by the State to the Operator or by the Operator to the State (as applicable) within 10 Business Days of receipt of the Services Invoice described in clause 55.3(c).
- (e) **(Payment not evidence of proper performance)** The payment of Monthly Service Payments by the State to the Operator will not of itself be evidence that the Services have been performed by the Operator in accordance with the State Project Documents.

55.4 Lifecycle Payment Account

- (a) The parties acknowledge and agree that each Monthly Service Payment includes a component for the Lifecycle Fee.
- (b) On receipt of each Monthly Service Payment, the Operator must place an amount equal to the Lifecycle Fee for that Monthly Service Payment into an interest bearing account approved by the State in the name of the Operator (**Lifecycle Payment Account**). Any interest earned on the Lifecycle Payment Account is for the account of the State.
- (c) The Operator must establish the Lifecycle Payment Account as a condition precedent to Technical Completion and provide details of the Lifecycle Payment Account to the State.
- (d) The Operator must procure that the financial institution with which the Lifecycle Payment Account is established:
 - (i) is notified of, and consents to, the State's security over the Lifecycle Payment Account in accordance with the Project Security; and
 - (ii) agrees not to exercise any right of set-off or combination of accounts in relation to the Lifecycle Payment Account.
- (e) The Operator must ensure that the balance of the Lifecycle Payment Account plus the forecast Lifecycle Fees to be received by the Operator for the next rolling 12 month period is at all times sufficient to fund Lifecycle Refurbishment Works to be carried out in the next rolling 12 month period in accordance with the Asset Lifecycle Plan and this document.
- (f) The Operator may only use and withdraw amounts credited to the Lifecycle Payment Account to pay for direct costs incurred by the Operator in respect of Lifecycle Refurbishment Works.
- (g) The Operator must upon reasonable prior notice give the State records of expenditure from the Lifecycle Payment Account sufficient to enable the State to readily reconcile that expenditure against the Asset Lifecycle Plan.
- (h) Any credit balance standing in the Lifecycle Payment Account as at the expiry of the Term will be for the account of the State.

55.5 Disputed Amounts

- (a) The Operator may refer any dispute in relation to the calculation of any Monthly Service Payment by the State for resolution in accordance with clause 87 of this document if, and only if, the dispute is notified within 30 Business Days after the issue of the Operations Payment Statement under clause 55.3(b).

- (b) If the dispute is not referred for resolution by the Operator in accordance with clause 87, then the Operator:
 - (i) is not entitled to make any Claim in respect of such dispute; and
 - (ii) releases the State from any liability in respect of such dispute.
- (c) If, following resolution of the dispute under clause 87 of this document, an adjustment is agreed or determined in respect of any previous Monthly Service Payment, then that adjustment will be added to or deducted from (as the case may be) the next Monthly Service Payment after that agreement is reached or that determination is made (as the case may be) and the Operator must issue a revised Tax Invoice or Adjustment Note, as the case may be.

55.6 Late Payments

Any late payment of amounts that are properly due and payable by either party to a party under any Project Document (including a previously disputed amount or an amount which is not paid due to the application of set-off by the State under clause 55.7(a) where the amount set-off is determined to be incorrect) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

55.7 Rights of Set-Off

- (a) The State will be entitled to set-off or deduct from any amount due from the State to the Operator under a Project Document:
 - (i) any debt or other monies due from the Operator to the State; and
 - (ii) any claim to money which the State may reasonably make against the Operator whether for damages or otherwise and whether or not the amount is disputed, whether under a Project Document or otherwise at Law relating to the Project.
- (b) Except as expressly provided in this document, the Operator must make all payments due to the State under the Project Documents without set-off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this clause 55.7 affects the State's right to recover from the Operator the whole of the debt or any balance that remains owing after any set-off.
- (d) Where the State would be entitled to set-off or deduct an amount under clause 55.7(a) or any other provision of this document in respect of the Operator Activities or otherwise arising out of or in relation to any act or omission of the Operator or any Operator Related Party, such amounts may only be set-off against, or deducted from, the Monthly Service Payment, provided that nothing in this clause 55.7 limits the liability of the Operator in respect of Failure Abatements made in accordance with the Payment Schedule.

56. Associated Commercial Facilities

56.1 Designated Commercial Areas

- (a) The Certified Construction Documentation must show the Designated Commercial Areas.
- (b) The Operator may make a request to the State from time to time to extend the Designated Commercial Areas, which will be considered by the State in its absolute discretion.

56.2 Grant of rights and exclusivity

- (a) The State grants the Operator the exclusive right to operate the Associated Commercial Facilities within the Designated Commercial Areas in accordance with this clause 56.2 during the Operating Term.
- (b) The Operator may:
 - (i) operate and manage the Associated Commercial Facilities in its own capacity;
 - (ii) appoint a Subcontractor to operate and manage the Associated Commercial Facilities; or

56.3 Revenue sharing

In consideration of the State's grant of exclusivity in respect of the Associated Commercial Facilities pursuant to clause 56.2, the State shall be entitled to share in the revenue generated by the Associated Commercial Facilities in accordance with the principles set out in the Payment Schedule.

56.4 General obligations

- (a) Without limiting its obligations under clause 20, the Operator must construct and deliver the Associated Commercial Facilities identified in the Certified Construction Documentation and the Associated Commercial Facilities Plan.
- (b) Without limiting its obligations under paragraph (a) and subject to clause 56.6, the Operator must use its best endeavours (and procure that any person operating an Associated Commercial Facility uses its best endeavours) to pursue all opportunities available to it in respect of the Associated Commercial Facilities and, to the greatest extent possible, ensure that:
 - (i) all available space within the Designated Commercial Areas is appropriately utilised;
 - (ii) there are sufficient Associated Commercial Facilities within the Designated Commercial Areas to conveniently meet the needs of the State, State Related Parties and Hospital Users; and
 - (iii) Associated Commercial Facilities are operated so as to optimise their usage and amenity for the State, the State Related Parties and other Hospital Users.
- (c) The Operator must, in respect of each Associated Commercial Facility to be constructed, opened or otherwise made available for use as part of the Facility, deliver to the Client Representative (or procure the delivery to the Client Representative by the relevant

Subcontractor) the Associated Commercial Facilities Plan updated to incorporate that Associated Commercial Facility, prior to the date the relevant Associated Commercial Facility is constructed, opened or otherwise made available for use.

- (d) The Associated Commercial Facilities Plan must be updated at any time that a material change occurs in the nature of the trading activities or business of an Associated Commercial Facility (including to the nature of trade, material expansion or contraction or a merger, amalgamation or temporary closure).
- (e) In operating the Associated Commercial Facilities, the Operator must comply (and procure that any person operating an Associated Commercial Facility complies) with the Associated Commercial Facilities Plan.

56.5 Presentation of Associated Commercial Facilities

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

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

56.6 Restrictions

The Operator must:

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

56.7 Termination

- (a) Without prejudice to any rights the State may have under or in respect of a relevant Subcontract, the State may, at any time during the Operating Term (but subject to providing **(ACF Termination Notice)** in the event of termination of the Private Consulting Suites and associated Subcontracts and subleases), notify the Operator that it requires the termination of any Associated Commercial Facility and associated Subcontract and sublease, in which case:
- (i) the Operator must do all things necessary to terminate and ensure the cessation of that Associated Commercial Facility; and
 - (ii) in the event of termination of:
 - (A) the Private Consulting Suites, and associated Subcontracts and subleases, at the election of the State (such election to be made in the ACF Termination Notice):
 - (I) that termination will be deemed to be a State initiated Change under clause 63.1; or
 - (B) Associated Commercial Facilities in respect of Urgent Care Alternate Strategies Services in the form of a general practice clinic (**GP Clinic**), and associated Subcontracts and subleases, the State must use reasonable endeavours to facilitate the relocation of the GP Clinic to an appropriate comparable space in the Facility or on the Site prior to any such termination or, if such relocation is not facilitated, termination will be deemed to be a State initiated Change under clause 63.1; and
 - (C) any other Associated Commercial Facility, and associated Subcontracts and subleases, the State will pay the Operator its additional costs and losses actually and reasonably incurred in association with that termination.
- (b) If the State terminates only the Operator's rights and entitlements in respect of the Private Patient Portion under clause 78.5(c), the Operator must:
- (i) do all things reasonably necessary to promptly collect all rent payable under the subleases of the Associated Commercial Facilities; and
 - (ii) pay to the State monthly in arrears all such rent paid and any other amounts of rent which would be payable if the subleases were agreed on a commercial basis, less a fee for managing the subleases calculated as a percentage of the total rent received from the subleases equivalent to the market rate which would be charged if an arms' length third party managed the subleases.

56.8 Risk

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

57. Car Park

- (a) The parties agree that the Operator and the Car Park Operator must make available the Car Park in accordance with the Car Park Management Deed.
- (b) The parties agree that the Car Park Management Deed shall apply in respect of the operation and maintenance of the Car Park on and from the Date of Operational Readiness.
- (c) The Operator must procure that the Car Park Operator performs each of its obligations under the Car Park Management Deed.

Part D – Other whole of term provisions

58. Subcontracts

58.1 Subcontracting

- (a) The Operator must not subcontract any of the Operator's Activities except in accordance with this clause 58.
- (b) The Operator must not subcontract any part of the Clinical Services (other than to VMOs in accordance with clauses 36.11 and 59) without the prior consent of the State (which may be granted or withheld at the State's discretion).
- (c) The Operator is not relieved of any of its Liabilities or obligations under this document as a result of any subcontracting of the Services or the Project Works, the operation or maintenance of the Facility or the approval of any Subcontractor, and the Operator is at all times responsible for the performance of all Subcontractors.

58.2 Subcontract requirements

- (a) The Operator must promptly provide to the Client Representative a copy of each Material Subcontract entered into or proposed to be entered into involving any of the Services or the operation of the Facility.
- (b) The Operator must ensure that no Key Subcontractor is engaged in connection with Services or the Project Works, the operation or maintenance of the Facility without the Operator and the relevant Key Subcontractor having delivered to the Client Representative a duly executed Side Deed in respect of its Key Subcontract.
- (c) The Operator must ensure that no Material Subcontractor (other than a Key Subcontractor) is engaged in connection with the Services or the Project Works, the operation or maintenance of the Facility without the Operator and the relevant Material Subcontractor having delivered to the Client Representative a duly executed Collateral Warranty.
- (d) The Operator is not required to use State-provided health and health-support services and entities (including Healthshare NSW and NSW Health Pathology). However, the Operator may elect to use such services and entities by Subcontract on a commercial basis, in which case the provisions of this clause 58 will apply.

58.3 Subcontracting obligations

The Operator must:

- (a) comply with its obligations under and enforce the terms of any Subcontract to which it is a party;
- (b) ensure that the relevant Subcontractor complies with the obligations imposed on the Subcontractor under the Subcontract to which it is a party;
- (c) not later than the tenth day of each month provide to the Client Representative:
 - (i) a statutory declaration, signed by an authorised officer of the Operator, confirming that all amounts payable under Subcontracts to which it is a party which fell due for payment in the month immediately preceding have been paid or otherwise discharged by the Operator except for those amounts genuinely in dispute; and
 - (ii) details of each formal dispute with a Material Subcontractor arising in connection with the Services;

- (d) not without the Client Representative's prior written consent permit any variation or amendment to, departure from, termination or assignment or replacement of:
 - (i) a Key Subcontract; or
 - (ii) a Material Subcontract, where it may impact the rights of the State or the ability of the Operator to satisfy its obligations under the Project Documents;
- (e) give the Client Representative notice of the termination or material amendment of a Material Subcontract immediately upon the Operator becoming aware of such termination or material amendment;
- (f) not without the Client Representative's prior written consent, compromise or waive any claim it may have against a Material Subcontractor, where it may impact the rights of the State or the ability of the Operator to satisfy its obligations under the Project Documents;
- (g) not engage any new subcontractor, who would become a Key Subcontractor on such engagement, without the State's prior written consent;
- (h) obtain and ensure that the State has the benefit of warranties and guarantees offered by Subcontractors and suppliers with respect to any part of the Services or the Project Works, the operation or maintenance of the Facility;
- (i) ensure that each Subcontract in respect of Associated Commercial Facilities contains terms reflecting the Associated Commercial Facilities Plan and the State's revenue sharing rights pursuant to clause 56.3;
- (j) ensure that each Key Subcontract contains terms confirming that such Key Subcontract is entered into subject to the terms of the relevant Side Deed entered into pursuant to clause 58.2(b) (including any step-in rights of the State); and
- (k) ensure that each Material Subcontract contains terms such that:
 - (i) the Material Subcontract is terminable or able to be novated to the State at the option of the State (or a State Appointed Operator) upon termination of this document; and
 - (ii) the relevant Material Subcontractor has no Claim against the State (or a State Appointed Operator) in respect of such termination.

58.4 Ability to perform obligations

The Operator must ensure that each Subcontractor is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by this document.

58.5 Insurance

The Operator must ensure that no Subcontractor in connection with the Services or the Project Works, the operation or maintenance of the Facility is engaged by it (either directly or indirectly) without the relevant Subcontractor:

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

as required under Schedule 5, to the extent, and for insured amounts, applicable to the relevant Services or the Project Works, and the operation or maintenance of the Facility, to be performed by it.

58.6 Agreed form

Unless otherwise agreed in writing by the Client Representative, each Key Subcontract must remain in the form agreed by the State on or prior to the date of this document.

58.7 Amendment and termination

The Operator agrees that, no amendment to, departure from, termination or assignment or replacement of a Material Subcontract made without the written consent of the Client Representative will be binding on the State or affect or prejudice the rights of the State against the Operator under this document, or under a Side Deed or a Collateral Warranty, or in any other way.

59. Employment at the Facility generally

59.1 Responsibility for Workforce Matters and Industrial Relations Matters

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

59.2 Operator's obligations in respect of all Personnel

- (a) The Operator must ensure that, at all times, all Personnel:
 - (i) are properly authorised, qualified, accredited (including, where applicable, registered), skilled, trained and experienced to discharge their duties;

- (ii) are fit to carry out their duties;
 - (iii) comply with applicable Laws, including the *Child Protection (Working with Children) Act 2012* (NSW), where applicable;
 - (iv) are attired in a clean, well maintained and appropriate uniform that complies with the WHS Legislation, as well as identification badges or labels and appropriate safety equipment;
 - (v) comply with any directions of the State or the Client Representative given under this document; and
 - (vi) act in good faith in the discharge of their duties.
- (b) Prior to engaging any Personnel to carry out the Services, the Operator must satisfy itself that they are fit and proper persons to carry out the Services, including by requiring Personnel to undergo pre-employment health screening and provide a National Police Certificate and/or working with children check clearance under the *Child Protection (Working with Children) Act 2012* (NSW), where appropriate or applicable.
 - (c) The Operator must provide Personnel with a formal induction and staff handbooks, which include appropriate policies dealing with equal employment opportunity, discrimination, harassment, bullying and work health and safety issues.

59.3 Key Personnel

- (a) The Operator must notify the State 12 months prior to the Date for Operational Readiness of the names and experience of the persons proposed to fill the roles set out in Schedule 3 for the State's approval (which must not be unreasonably withheld) and, upon service of approval from the State, employ (or procure that its Subcontractors employ) those persons.
- (b) The Operator must:
 - (i) subject to clause 59.3(b)(ii), not replace any Key Personnel without the Client Representative's prior written approval (which must not be unreasonably withheld); and
 - (ii) if any of the Key Personnel for any reason is not able to fulfil the role for which they have been employed, immediately notify the Client Representative and replace that Key Personnel with personnel of at least equivalent experience (technical or otherwise, as the role requires), ability and expertise, and good repute, approved by the Client Representative (acting reasonably).
- (c) The Key Personnel must:
 - (i) carry out the functions and be given the authorities and responsibilities specified for them in Schedule 3; and
 - (ii) otherwise be available for consultation with the Client Representative when the Client Representative reasonably requires.

59.4 Hospital Chief Executive

- (a) As soon as reasonably practicable prior to the appointment of any person as Hospital Chief Executive, the Operator will seek the State's consent (which must not be unreasonably withheld) to the appointment by notifying the State of the name and relevant experience of the relevant person.

- (b) The State will consider the proposed appointment in a timely manner, having regard to the interests of the Operator in making a timely appointment of a suitable candidate for the State's consent (which must not be unreasonably withheld).
- (c) If the State does not consent to the proposed appointment, it will discuss the reasons for its decision with the Operator.
- (d) If, at any time, the State is of the view that the Hospital Chief Executive is not adequately performing his or her obligations under this document or is otherwise unsuitable to carry out those obligations, the State may issue a notice to that effect to the Operator (**Chief Executive Performance Notice**).
- (e) The Chief Executive Officer of the Operator (unless that person is the subject of a Chief Executive Performance Notice, in which case the person to whom that person is immediately responsible) and the Secretary of Health (or his or her delegate, nominee or representative) must meet within 10 Business Days of the issue of a Chief Executive Performance Notice to discuss and attempt to agree measures to address the concerns that led to the issue of the Chief Executive Performance Notice.

59.5 JMOs

- (a) The NSW Government will provide JMOs to the Operator on a rotation basis for the purposes of the Operator providing the TTER Services.
- (b) In this clause 59.5, the **JMO Minimum Number** means, in any Operating Year, the number of JMO teaching and training positions as determined by the State (acting reasonably and having regard to the numbers of JMOs engaged at other public hospitals within the NSLHD as a ratio of service activity at those hospitals) and set out in the Annual Notice for that Operating Year or as otherwise notified by the State from time to time.
- (c) In each Operating Year, the Operator must, at all times and at its cost, ensure that the JMO Minimum Number of teaching and training positions for JMOs employed in the NSW Health Service are provided and available at the Facility. These positions must be:
 - (i) directly associated with the treatment of Public Patients;
 - (ii) in accordance with the TTER Plan and the Workforce Plan; and
 - (iii) at a level commensurate with the corresponding level of experience for each JMO.
- (d) The terms on which the NSW Government will provide JMOs to the Operator will be set out in an agreement between the parties. Without limiting any such terms:
 - (i) the amount payable by the Operator to the State will be calculated in accordance with clause 10 of Schedule 20;
 - (ii) the Operator will be responsible for the conduct of all JMOs while they are carrying out the Services or services to Compensable Patients (if applicable);
 - (iii) the Operator must provide any JMOs performing the Services with appropriate and adequate supervision at all times;
 - (iv) the Operator will be responsible for providing a safe work environment for JMOs at all times that JMOs are performing the Services or at the Facility;
 - (v) the Operator will be responsible for managing the attendance of JMOs while they are providing the Services, including rostering and covering absences;

- (vi) the Operator will indemnify the Indemnified State Parties, on demand, from and against any Loss or Claim in respect of all aspects of its arrangements with respect to any JMOs performing the Services, including any Claims by or against JMOs; and
- (vii) JMOs will not be entitled to receive any Medicare rebate or private billings.
- (e) The Operator is required to utilise any JMO provided by the NSW Government in performing the Services.
- (f) If, at any time, the NSW Government is not able to provide the Operator with as many JMOs as the Operator requires to provide the Services or meet the Operator's obligations under clause 59.5 for any reason, the Operator will be responsible for making suitable alternative arrangements, at no cost to the State.
- (g) If, at any time during the Term, the NSW Government decides to alter its arrangements with respect to JMOs and, for this reason, the NSW Government is no longer willing or able to provide JMOs to the Operator, the Operator will be responsible for making suitable alternative arrangements, at no cost to the NSW Government.
- (h) For the avoidance of doubt, the Operator may provide additional JMO teaching and training positions to non-NSW Government employed JMOs, provided always that the JMO Minimum Number is first met in respect of NSW Government-employed JMOs.

59.6 VMOs

The Operator must make its own arrangements with all VMOs performing the Services.

59.7 Independent contractors and Subcontractors

- (a) The Operator and all Subcontractors are independent contractors and nothing contained in this document will be construed as constituting any relationship with the Indemnified State Parties other than, with respect to the Operator and the State, that of principal and independent contractor, nor will it be construed as creating any relationship whatsoever between any Indemnified State Party and the Subcontractors or the Personnel.
- (b) Neither the Operator nor any Subcontractors, nor any of their employees, are or will be deemed, by virtue of this document, or any Subcontract, to be employees of any Indemnified State Party.
- (c) The Operator indemnifies, and must procure that any Subcontractor indemnifies, and at all times holds the Indemnified State Parties fully and effectively indemnified, in each case on demand, against any Loss or Claim arising directly or indirectly out of or in connection with any claim that any Indemnified State Party is the employer of the Personnel.
- (d) Without limiting clauses 59.7(a), 59.7(b) or 59.7(c), the Operator is responsible for, and must procure that any Subcontractor is responsible for:
 - (i) remuneration and benefits, including performance payments, incentive payments, superannuation contributions, annual leave, personal/carer's leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance;
 - (ii) group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and
 - (iii) any payment upon termination of service, payable to or in respect of the Personnel.

59.8 Operator's obligations in respect of Subcontractors

- (a) Other than as expressly provided in this document, the Operator must procure that every Subcontractor will:
 - (i) be entirely responsible for the employment of its employees;
 - (ii) comply with the same obligations and requirements as required of the Operator under clauses 36 and 59.2, including without limitation the obligation to offer employment to NSW Health Service Employees; and
 - (iii) comply with any reasonable request by the State for information about the Subcontract or any other matter in connection with the provision of the Services.
- (b) With each invoice submitted by the Operator, the Operator must provide the State with a properly completed and correct Subcontractor's Statement for the period to which the invoice relates. The Operator acknowledges that it is not entitled to payment of the invoice unless a Subcontractor's Statement is provided.

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

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

59.10 No Claims as a result of Industrial Relations Matters

- (a) Unless otherwise provided expressly in this document, the Operator is responsible for any Liability it incurs or delay or disruption it suffers arising out of, or in connection with, any Workforce Matter or Industrial Relations Matter.
- (b) The Operator has a continuing obligation to inform itself of and manage:
 - (i) all Workforce Matters and Industrial Relations Matters relevant to the Services and the Facility; and
 - (ii) all matters relevant to the Personnel at the Facility.

59.11 Principal contractor

- (a) In this clause 59.11, the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings given to those terms under the WHS Legislation. For the purposes of the WHS Legislation and this document, the work under this document and the work under any Subcontract is taken to be part of the same 'construction project'.
- (b) Subject to clause 2.11(b)(iii), during the Development Phase:
 - (i) to the extent that the work under this document or any Subcontract includes construction work, the State must execute the Construction Side Deed to:
 - (A) engage the Construction Contractor as the principal contractor for the work under this document or the Subcontract; and
 - (B) authorise the Construction Contractor to have management and control of each workplace at which the work under this document or the Subcontract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (ii) the Operator must procure that the Construction Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation,

and the Construction Contractor's engagement and authorisation pursuant to the Construction Side Deed as a principal contractor will continue:

- (iii) subject to clause 59.11(b)(iv), until the Date of Operational Readiness (unless sooner revoked by the State); and
 - (iv) in respect of any rectification work carried out under clause 46 that is construction work, during the period any such work is carried out.
- (c) Where any work under this document or any Subcontract to be performed during the Operating Term includes construction work, then, prior to the commencement of that work:
- (i) the Operator must notify the State of the nature of the work and the identity of each Relevant Entity by notice in writing;
 - (ii) the Operator must either act as the principal contractor or provide to the State an agreement from a Relevant Entity to act as principal contractor for such work; and
 - (iii) if the Operator is not the principal contractor and the Operator has complied with sub-paragraph (ii), the State must appoint the Relevant Entity as principal contractor in respect of that work and authorise the Relevant Entity to have management and control of the workplace at which the relevant work is to be performed and to discharge the duties of a principal contractor under the WHS Legislation.
- (d) The Operator warrants to the State that any party it nominates to act as principal contractor under clause 59.11(c) will be sufficiently skilled, qualified and experienced to undertake the role of principal contractor having regard to the size, scale and location of the works.
- (e) The Operator must:
- (i) ensure that any principal contractor it nominates to act complies with its duties under the WHS Legislation and require the principal contractor to ensure that any Subcontractor that it engages complies with its duties under the WHS Legislation;
 - (ii) ensure that if any Law (including a Law in the state or territory in which the Project Works are situated or work under this document or a Subcontract is carried out) requires that:
 - (A) a person:
 - (I) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - (II) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

- (iii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 59.11(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (iv) if requested by the State or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work, health and safety (as the case may be) to the satisfaction of the State before the Operator or the Subcontractor (as the case may be) commences such work.

59.12 Work Health and Safety

(a) The Operator must perform the Services and carry out the other Operator's Activities:

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

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

(b) The Operator must:

- (i) in performing the Services and carrying out the other Operator's Activities under this document:
 - (A) ensure that it complies with all Laws and other requirements of this document for work, health, safety and rehabilitation management;
 - (B) require all Subcontractors to comply with their obligations referred to in this document and under the WHS Legislation; and
 - (C) ensure that it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work, health and safety duty in relation to the same matter;
- (ii) notify the Client Representative immediately (and in any event, within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the performance of the Services or any other Operator's Activities that are required to be notified under the WHS Legislation and procure that the Client Representative is notified as soon as reasonably practicable (and in any event, no later than the following Business Day) of all major injury incidents sustained within the Facility;
- (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
- (iv) provide the written assurances referred to in clause 59.12(b)(iii), together with written assurances from the Operator about the Operator's ongoing compliance with the WHS Legislation, to the Client Representative;
- (v) provide the Client Representative with a written report of all work, health, safety and rehabilitation matters (including matters concerning or arising out of, or in connection with, this clause 59.12) or any other relevant matters as the Client Representative may require from time to time;

- (vi) cooperate with all Subcontractors and the State to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) ensure that it does not do anything or fail to do anything that would cause any Indemnified State Party to be in breach of the WHS Legislation; and
 - (viii) require that each Subcontract includes provisions equivalent to this clause 59.12.
- (c) Without limiting the Operator's obligations under this document, insofar as the Operator, in carrying out the Operator's Activities, is:
- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the WHS Act applies;
 - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the WHS Act applies;
 - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the WHS Act applies;
 - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the WHS Act applies; or
 - (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the WHS Act applies,
- the Operator must comply with the applicable obligations under the WHS Legislation.

59.13 TTER Services Scoping, Costing and Payment

- (a) Not later than 31 August each Operating Year, Operator must submit to the State a report (**TTER Resourcing Report**) for the preceding Operating Year setting out:
- (i) the number of clinical and clinical support staff (including JMOs) by FTE relating to productive hours (excluding all leave and overtime) that were engaged by the Operator in relation to the provision of Public Patient Services at the Facility for the preceding Operating Year;
 - (ii) the individual employee and contractor categories into which those FTE numbers fall;
 - (iii) the base salary (excluding, among other things, provisional, overtime or leave entitlement amounts) applicable to each such employee/contractor category;
 - (iv) the Indirect/Infrastructure TT Services Amount, being the expenditure related to Indirect/Infrastructure TT Services calculated on the basis of the same methodology as the State applies in respect of Indirect/Infrastructure TT Services at peer public hospitals within NSW; and
 - (v) the Research Amount being the expenditure related to Research Services calculated on the basis of the same methodology as the State applies in respect of Research Services at peer public hospitals within NSW.
- (b) The Operator must promptly provide details of its methodology and any additional information and evidence reasonably requested by the State in relation to the TTER Resourcing Report
- (c) By the date which is 1 month following the later of receipt of the TTER Resourcing Report and receipt of any details or information required by the State under clause 59.13(b):

- (d) To avoid doubt:
- (i) the TTER Services Amount will be determined based on the criteria set out in clause 59.13(c) only, and will not take into account (for example) any additional Compensable TTER Services the Operator provided in any other prior Operating Year that were not covered by that Operating Year's TTER Services Amount;
 - (ii) the TTER Services Amount will be payable by the State, and must be applied by the Operator, only in respect of the Compensable TTER Services, and may not be applied by the Operator towards any other purpose including the Embedded TTER Services, Research activities that are related to the delivery of Patient care and services to Compensable Patients;
 - (iii) the entirety of the Operator's entitlement to compensation in respect of the provision of the Embedded TTER Services and Research activities that are related to the delivery of patient care is via the Service Fee, and the Operator is not entitled to any additional compensation in respect of the provision of the Embedded TTER Services and Research activities that are related to the delivery of patient care other than the Service Fee calculated in accordance with the Payment Schedule;
 - (iv) the Operator must perform the TTER Services in accordance with the TTER Plan approved by the State under clause 13;

- (v) the Operator must continue to perform the Compensable TTER Services notwithstanding that the TTER Services Amount may already have been expended during that Operating Year;
 - (vi) prior to the TTER Services Amount for the current Operating Year being determined in accordance with clause 59.13(c)(i), the State will pay the Operator monthly instalments based on the TTER Services Amount for the preceding Operating Year; and
 - (vii) the first instalment of the TTER Services Amount paid by the State after the TTER Services Amount has been determined under clause 59.13(c) must be adjusted to take into account any under or over payment by the State in respect of any payments made under clause 59.13(d)(vi) (when compared to the TTER Services Amount for the current Operating Year).
- (e) Within 2 months of the end of each Operating Year, the Operator must provide to the State a report (the structure and content of which is to be agreed by the parties prior to initial submission) detailing:
- (i) the nature and scope of the TTER Services provided for the previous Operating Year, broken down:
 - (A) between:
 - (I) each of the TTER Services forming part of the Compensable TTER Services;
 - (II) the Research activities provided directly in relation to Patient care; and
 - (III) the Embedded TTER Services,
 by reference to the Service Specification and the TTER Plan; and
 - (B) across Service Categories, specialties and wards;
 - (ii) in respect of the Compensable TTER Services, how the TTER Services Amount was applied to those Compensable TTER Services; and
 - (iii) the amount and nature of any revenue received by the Operator from any third party (including Commonwealth Government) sources in respect of the provision of the Compensable TTER Services (**Third Party TTER Funding**) during that Operating Year (which, to avoid doubt, may be received by way of direct grant or contribution towards FTE costs, among other methods),
- (the **TTER Service Report**).
- (f) The Operator must promptly provide any additional information and evidence reasonably requested by the State in relation to the TTER Service Report.
- (g) If the Operator:
- (i) receives any Third Party TTER Funding in relation to any Compensable TTER Services which are the subject of a TTER Resourcing Report; or
 - (ii) is otherwise paid through the Service Fee for elements of the TTER Services for which it has also received the TTER Services Amount,

then the aggregate of the amounts referred to in paragraphs (1) and (2) may (at the election of the State) be:

- (iii) deducted from the following Operating Year's TTER Services Amount; or
 - (iv) payable by the Operator as a debt due and owing to the State; or
 - (v) applied to the Compensable TTER Services in the following two Operating Years.
- (h) Without limiting the State's other rights under this document, the Operator agrees to provide access to all relevant records and information required for the State to enable the State to audit the Compensable TTER Services and the TTER Services Amount in accordance with the State's Performance Audit rights pursuant to clause 53(e).
- (i) Without limiting paragraph (h), in respect of Compensable TTER Services, if the method by which the State Price is determined from time to time is amended so as to provide compensation for elements of the Compensable TTER Services, then the calculation of the TTER Service Amount will be adjusted accordingly (including that the affected components of the Compensable TTER Services will be deemed to be Embedded TTER Services for the purposes of this clause 59.13).
- (j) Without limiting any other paragraph of this clause 59.13, the State may only change the calculation of the TTER Services Amount set out in this clause 59.13 if:
- (i) prior to making the change, it has consulted with the Operator in relation to the change; and
 - (ii) the change is being applied across peer public hospitals within NSW.

60. Emergencies and State Step-In

60.1 Client Representative may instruct

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

60.2 Payment for additional or alternative services

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

60.3 State Step-In

If a Step-In Event occurs and:

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

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

the State may exercise the Step-In Rights in accordance with the procedure set out in Schedule 8.

60.4 Subcontractors and employees

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

61. Compensation Events

- (a) If and to the extent that a Compensation Event (or its effects):
 - (i) affects the ability of the Operator to provide the Services as required under this document;
 - (ii) delays or is likely to delay an activity:
 - (A) on the critical path contained and shown in the Current Project Program; or
 - (B) which was not on the critical path contained and shown in the Current Project Program but which has become critical as a result of the Compensation Event giving rise to the delay,in a manner which gives rise or is likely to give rise to a delay to the Operator achieving:
 - (C) a Date for Completion; or
 - (D) if Technical Completion has not occurred on or prior to the Funded Completion Date, Technical Completion;
 - (iii) during the Operating Term, affects the ability of the Operator to comply with any of its other obligations or exercise any of its rights under this document other than in respect of the Operator's obligations under clause 61(a)(i); or
 - (iv) causes the Operator to incur additional or increased costs or lose revenue in respect of the Project (but, in respect of delay and disruption costs, only to the extent that relief is available under clause 61(a)(ii)),

then, without limiting clauses 61(b) and 61(c) (as applicable), the Operator is entitled:

- (v) prior to the Date of Final Completion, to apply for an extension of time to the affected Date for Completion and (in the case of an amendment to the Date for Operational Readiness) the Sunset Date; or
- (vi) in the Operating Term, to apply for relief from its obligations (other than its obligations under clause 74, except to the extent it would be actually or practically impossible to comply with those obligations); and/or

- (vii) in the Development Phase or the Operating Term, to claim compensation under this document in accordance with the provisions of Schedule 9.
- (b) Notwithstanding the occurrence of a Compensation Event, the Operator must continue to perform all of its obligations under this document to the extent that the Operator is not prevented from performing those obligations by that Compensation Event.
- (c) If a Compensation Event occurs which affects the provision of the Services the Operator must, unless it is actually or practically impossible to clinically appropriately do so at the Facility given the nature of the Compensation Event:
 - (i) continue to provide the Services and otherwise perform its obligations under this document;
 - (ii) amend its methodology for performing the Services as necessary to continue to provide the Services during the Compensation Event; and
 - (iii) perform the Services in accordance with Good Operating Practice.

62. Relief Events

- (a) If and to the extent that a Relief Event (or its effects):
 - (i) affects the ability of the Operator to provide the Services as required under this document; or
 - (ii) delays or is likely to delay an activity:
 - (A) on the critical path contained and shown in the Current Project Program; or
 - (B) which was not on the critical path contained and shown in the Current Project Program but which has become critical as a result of the Relief Event giving rise to the delay,

in a manner which gives rise or is likely to give rise to a delay to the Operator achieving:

 - (C) a Date for Completion; or
 - (D) if Technical Completion has not occurred on or prior to the Funded Completion Date, Technical Completion; or
 - (iii) during the Operating Term, affects the ability of the Operator to comply with any of its other obligations or exercise any of its rights under this document other than in respect of the Operator's obligations under clause 62(a)(i),

then, without limiting clauses 62(c) or 62(d) (as applicable), the Operator is entitled:

 - (iv) prior to the Date of Final Completion, to apply for an extension of time to the affected Date for Completion; or
 - (v) in the Operating Term, to apply for relief from its affected obligations under this document (other than its obligations under clause 74, except to the extent it would be actually or practically impossible to comply with those obligations),

in each case in accordance with the provisions of Schedule 10, but will not be entitled to any compensation from the State or any State Related Parties for additional or increased costs or lost revenue in respect of such Relief Event.

- (b) Subject to section 6.3(b) of the Payment Schedule, nothing in this document will affect:
 - (i) any entitlement of the State to make a Failure Abatement; or
 - (ii) any Failure Abatement made,

as a result of the Payment Schedule during the period in which the Relief Event is (or its effects are) subsisting, but any such Failure Abatement will not constitute or count towards an Operator Event of Default or Operator Termination Event; or

 - (iii) to the extent the Operator is not prevented from doing so by the relevant Relief Event, any obligation on the Operator to:
 - (A) perform the Services;
 - (B) satisfy or exceed the Services Specification, the Services Plans, the KPIs, the Quality Standards or the Design Parameters; or
 - (C) take remedial action (including, where applicable, provision of back-up Utilities), rectify, reinstate or replace to deal with the effects or consequences of such Relief Event.
- (c) Notwithstanding the occurrence of a Relief Event, the Operator must continue to perform all of its obligations under this document to the extent that the Operator is not prevented from performing those obligations by that Relief Event.
- (d) If a Relief Event occurs which affects the provision of the Services the Operator must, unless it is actually or practically impossible to clinically appropriately do so at the Facility given the nature of the Relief Event:
 - (i) continue to provide the Services and otherwise perform its obligations under this document;
 - (ii) amend its methodology for performing the Services as necessary to continue to provide the Services during the Relief Event; and
 - (iii) perform the Services in accordance with Good Operating Practice.

62A Unilateral Extension

- (a) (**Unilateral extensions**): The State may, at any time and from time to time, by notice to Operator, unilaterally extend a Date for Completion if a Compensation Event or Relief Event has occurred.
- (b) (**Acknowledgements**): The parties acknowledge that:
 - (i) the State may exercise its discretion under paragraph (a) above whether or not the Operator has claimed or is entitled to claim an extension of time, or has performed or observed its obligations under or in accordance with this document;
 - (ii) the State is not required to exercise the State's discretion under paragraph (a) for the benefit of the Operator; and
 - (iii) the exercise or failure to exercise the State's discretion under this clause 62A is not capable of being the subject of a dispute for the purposes of this document or otherwise subject to review.
- (c) (**Compensation**): In circumstances where the State exercises its power under this clause 62A in respect of a Compensation Event, the State shall pay the Operator as if the extension were itself a Compensation Event.

63. State proposed Changes

63.1 Change Proposal

- (a) The Client Representative may at any time issue to the Operator a notice titled '*Change Proposal*' setting out the details of a proposed Change which the State is considering, including the State's proposed requirements for the implementation and funding of the proposed Change.
- (b) The State will not be obliged to proceed with any Change proposed in a Change Proposal.
- (c) Without limiting the State's rights under this clause 63, the Client Representative may, at any time after issuing a Change Proposal under clause 63.1(a), issue a Notice to Proceed with the Change together with a Change Order.

63.2 No liability unless Change Order

- (a) Subject to clause 64.2, the Operator must not change the delivery of the Services or begin any work and will not be entitled to make any Claim against the State arising out of, or in any way in connection with, any State initiated Change, except where the Operator is directed to carry out a Change pursuant to a Change Order issued by the State under this clause 63.
- (b) If the Operator forms the view that any direction given by the Client Representative or the State (other than a direction which is expressed to be given under this clause 63 or clauses 64, 65, or 67) constitutes a Change Proposal, a Change Order or an Additional Work Request, the Operator must provide written notice to this effect to the State within 20 Business Days after receipt of that direction.
- (c) If the Operator fails to provide written notice to the State that it considers that a direction given by the Client Representative or the State constitutes a Change Proposal, a Change Order or an Additional Work Request in accordance with clause 63.2(b), the Operator will not be entitled to make any Claim against the State or State Related Party arising out of, or in any way in connection with, that direction under this clause 63 or clauses 64, 65 or 67.

63.3 Operator acknowledgements

Notwithstanding any other provision of this clause 63, the Operator acknowledges that:

- (a) the Operator must continue to perform the Services and to otherwise carry out the Operator's Activities except to the extent that it is prevented from doing so as a consequence of the implementation of a Change in accordance with this clause 63; and
- (b) the Operator's obligations and representations and warranties given by the Operator under this document in respect of the performance of the Services and the design, construction and maintenance of the Project Works will apply to all Changes implemented in accordance with this clause 63 as if those Changes were implemented as part of the original Services or the Project Works (as applicable).

63.4 Deemed State Change Proposals

- (a) If the Operator wishes to propose a Change as a direct result of:
 - (i) the occurrence of a Compensation Event;
 - (ii) a direction to cease to perform or change the way in which the Operator performs the Services or the other Operator's Activities following the discovery of an Artefact, for which the Operator is entitled to compensation under clause 61;
 - (iii) an Additional Work Request referred to in clause 65.1;

- (iv) a notice issued by either party under clause 69.11; or
- (v) the occurrence of an Uninsurable Material Risk pursuant to clause 75.3,

the Operator must first issue a Change Proposal to the Client Representative together with a notice to the Client Representative identifying under which of clauses 63.4(a)(i) to 63.4(a)(v) such proposal is being made.

- (b) A Change Proposal issued by the Operator in accordance with clause 63.4(a) will be deemed to have been issued by the State under clause 63.1 unless the Client Representative's notice rejects the Change Proposal within 20 Business Days after its receipt by the Client Representative as a consequence of the Client Representative reasonably forming the view that circumstances referred to in clauses 63.4(a)(i) to 63.4(a)(v) have not arisen.

63.5 No cost Changes

If a Change proposed by the State under this clause 63 comprises:

- (a) a change or variation which is required to the extent necessary to ensure that the Facility or the Services will (or continues to):
 - (i) be Fit for Intended Purpose; or
 - (ii) meet the requirements of this document;
- (b) a change or variation referred to in paragraphs (b) to (h) of the definition of 'Change' which is required to the extent necessary to rectify a Defect in the Project Works or the Facility; or
- (c) maintenance, refurbishment or capital replacement of any part of the Facility in accordance with the Design Parameters, the Asset Management Strategy or clause 68 of this document,

then the Operator will not be entitled to claim any costs (including any Estimated Cost Effect) incurred in connection with that Change from the State.

63.6 Right to omit Operator's Activities

- (a) Subject to paragraph (c), the State may omit any part of the Operator's Activities (other than performing any Services) in accordance with the procedure set out in clause 63.1 and may carry out those omitted Operator's Activities itself or have them carried out by an Other Contractor.
- (b) Where the State exercises its rights under paragraph (a), the Operator will be relieved from its obligations under this document to the extent agreed by the parties or as determined in accordance with clause 87 to be necessary to accommodate the Change.
- (c) This clause 63.6 does not entitle the State to omit the entirety of the Operator's Activities.
- (d) Where the State exercises its rights under paragraph (a), the State must procure that the Other Contractor enters into and complies with an Interface Protocol with the Operator.
- (e) The Operator must enter into and comply with an Interface Protocol which is procured by the State under paragraph (d) with the Other Contractor.

64. Change Procedure

64.1 Changes generally

- (a) The Operator must not make or implement any Change other than in accordance with clauses 63, 64, 65 or 67.
- (b) Either party may propose a Change in accordance with the Change Procedure.

64.2 Costs of preparation of Change Notice

Unless the State has issued a Notice to Proceed to the Operator:

- (a) the Operator must, within 10 Business Days after service of a Change Proposal under clauses 63.1 or 63.4, provide the State with an estimate of the direct costs that the Operator proposes will be reasonably incurred by the Operator in preparing the Change Notice (excluding margins) (**Change Notice Price**);
- (b) to the extent it is able to do so, the State will provide the Operator with further details of the proposed Change reasonably requested by the Operator to assist the Operator to determine the Change Notice Price;
- (c) within 10 Business Days after receipt of the Change Notice Price, the Client Representative must advise the Operator that:
 - (i) the Change Notice Price is acceptable, in which case the Operator must prepare a Change Notice within 20 Business Days of receiving notice from the State; or
 - (ii) the Change Notice Price is not acceptable, in which case the State may give the Operator notice that:
 - (A) the State does not wish to proceed with the Change Proposal; or
 - (B) the State requires the Operator to meet with the State to agree an alternative price, in which case:
 - (I) if the parties reach agreement on the Change Notice Price, the Operator must prepare a Change Notice within 20 Business Days of the parties' agreement; or
 - (II) if the parties do not reach agreement on the price of the Change Notice, either party may refer the matter to dispute resolution;
- (d) if the Operator prepares a Change Notice in accordance with this clause 64.2 and the price for preparation and submission of the Change Notice agreed or determined in accordance with this clause 64.2 exceeds \$10,000 then, whether or not the State issues a Change Order, the State will reimburse the Operator for direct and reasonable costs demonstrably incurred in the preparation and submission of the Change Notice agreed or determined in accordance with this clause 64.2:
 - (i) if the Client Representative does not issue a Change Order, within 60 Business Days after receiving an invoice from the Operator for such price provided that the relevant Change Notice has been prepared and submitted in accordance with this clause 64.2; or
 - (ii) if the Client Representative does issue a Change Order, as part of the amount payable by the State for a Change proposed by the State in accordance with Schedule 11; and

- (e) the Operator will only be entitled to be paid for a Change Notice issued in response to a Change Proposal issued by the State under clause 63.1 or deemed to be issued by the State under clause 63.4.

64.3 Contents of Change Notice

A Change Notice is a notice setting out detailed particulars of:

- (a) the effect the proposed Change will have on:
 - (i) the Services (including the Services Specification and Services Plans);
 - (ii) the conditions of the Hospital Licence or any other requirement of the Licensing Authority;
 - (iii) the Abatement Regime and KPIs;
 - (iv) the Operator's ability to perform the Services or the other Operator's Activities in accordance with Good Operating Practice, the Operating Term Quality Standards and the other provisions of this document;
 - (v) the Operator's ability to meet the requirements of the Licensing Authority or the Hospital Licence;
 - (vi) the Operator's ability to perform the Operator's Activities in accordance with this document (including its ability to meet a Date for Completion);
 - (vii) the FF&E List (including the State Funded FF&E List);
 - (viii) the safety of the Facility and the manner in which Services are provided;
 - (ix) the workmanship, durability or functional integrity of any element of the Facility;
 - (x) the Operator's ability to meet the Sustainability Requirements;
 - (xi) the Operator's ability to return the Facility to the State (or its nominee) in accordance with the requirements of this document; and
 - (xii) the Operator's ability to:
 - (A) satisfy any warranty given by the Operator under this document; or
 - (B) perform any of its other obligations under this document;
- (b) if the Change is proposed by the State, any relief required by the Operator from its obligations under this document as is reasonable for the proposed Change;
- (c) any necessary amendments to the Services Specification, the Design Parameters, the Project Plans, the Design Documentation or the Project Documents;
- (d) any restriction or restraint in the size or configuration of the Facility which, in the Operator's reasonable opinion, will prevent it from implementing a Change Order affecting Services;
- (e) the Estimated Cost Effect which it will incur, or the Change Savings which it will derive, as a result of the proposed Change, calculated in accordance with the ECE Schedule and including calculations supporting the requirements for:
 - (i) staged payments matching the payments to relevant Subcontractors; and

- (ii) if appropriate:
 - (A) a lump sum amount for the capital component of any Change together with the Operator's proposal in relation to the timing of such payment; and
 - (B) any adjustment to the Monthly Service Payment;
- (f) whether the required Capital Expenditure (if any) can be accommodated within the next planned refurbishment or lifecycle work by the Operator for the Facility;
- (g) the basis (if any) on which the Operator would be prepared to fund the proposed Change and the cost difference, if the Operator, rather than the State, funds the Change (including the time period required to seek funding for the Change);
- (h) the time within which the proposed Change will be implemented, including, for a Change to be carried out during the Development Phase, the effect of the Change on the Project Program;
- (i) the methodology and process by which the Operator proposes to carry out the proposed Change; and
- (j) any other information requested by the State in respect of the proposed Change.

64.4 General requirements for Change Notice

Any Change Notice submitted by the Operator must be prepared:

- (a) so as to minimise the disruption to the performance of the Services and the Facility arising from the carrying out of the proposed Change;
- (b) so as to avoid any adverse safety or clinical impacts from carrying out the proposed Change;
- (c) without limiting clauses 4 or 18, so as to avoid, as far as practicable, the need for a new Consent or a modification to an existing Consent (including the Hospital Licence) for the implementation of the proposed Change;
- (d) as to minimise any delay in achieving a Date for Completion arising from carrying out the proposed Change, to the extent that a Date for Completion has not yet been achieved;
- (e) in accordance with the principles contained in the ECE Schedule;
- (f) assuming the Operator is a willing, efficient and competent provider of the proposed Change in an efficient and competitive market;
- (g) in a manner which is consistent with the requirements of the State for the implementation of the proposed Change;
- (h) so as to avoid any adverse safety or clinical impacts from carrying out the proposed Change;
- (i) in a manner which ensures that all appropriate insurances relevant to the proposed Change are taken out and maintained consistently with those that would have been required by the State if the proposed Change had been included in the original requirements of this document, unless the State otherwise determines; and
- (j) in the form of an offer capable of immediate acceptance by the State within 40 Business Days after the date on which the State receives the Operator's Change Notice.

64.5 Consultation

If required by the State, the Operator will meet at such times and provide such further details and such appropriately qualified personnel to explain, as may be reasonably necessary to enable the State to assess the Change Notice.

64.6 Issue of a Change Order

- (a) **(Change Order)** Within 20 Business Days (or such longer period as the State reasonably requires, having regard to the size and complexity of the proposed Change) after receiving a Change Notice, the Client Representative may:
 - (i) accept the Change Notice;
 - (ii) reject the Change Notice; or
 - (iii) inform the Operator that it does not wish to proceed with the proposed Change.
- (b) **(The State accepts Change Notice)** If the State accepts the Change Notice in accordance with clause 64.6(a)(i):
 - (i) the State will issue a Change Order;
 - (ii) the Operator must carry out the Change described in the Change Order on the basis of the Change Notice (as accepted by the State); and
 - (iii) the Operator will be relieved of its obligations under this document to the extent specified in the Change Notice (as accepted by the State).
- (c) **(The State rejects Change Notice)** If the State rejects the Change Notice in accordance with clause 64.6(a)(ii), the State may require that:
 - (i) the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Change Notice which are in dispute; or
 - (ii) the Operator conduct a tender process (to the extent it has not already done so) under clause 64.10.
- (d) **(Parties reach agreement)** If the parties reach agreement on the disputed matters in the Change Notice, the State may direct the Operator to implement the Change by issuing a Change Order, in which case:
 - (i) the Operator must carry out the Change on the basis of the Change Notice (as varied by the parties' agreement, as recorded in the Change Order, on the matters in the Change Notice which were in dispute); and
 - (ii) the Operator will be relieved of its obligations under this document to the extent specified in the Change Notice (as varied by the parties' agreement, as recorded in the Change Order, on the matters in the Change Notice which were in dispute).
- (e) **(If parties fail to reach agreement)** If the parties are unable to reach agreement within 20 Business Days after the State receives the Change Notice, either party may refer the matter for dispute resolution in accordance with clause 87. To the extent that any such dispute relates to the Estimated Cost Effect of the Change, or any relief required by the Operator from its obligations under this document (including any extensions of time to the Dates for Completion) and (in the case of an extension to the Date for Operational Readiness) the Sunset Date), it will be referred to expert determination in accordance with clause 87.5.
- (f) **(The State may direct that Change proceed)** If:

- (i) the Operator fails to provide a Change Notice as required by this clause 64; or
 - (ii) the State refers the matter for dispute resolution under clause 64.6(e),
- the State may give the Operator a notice to implement the Change (**Notice to Proceed**) together with a Change Order (whether or not any matters in dispute have been agreed in accordance with clause 87).
- (g) (**Notice to Proceed**) If the State issues a Notice to Proceed to the Operator under clause 64.6(f):
 - (i) any disputed matters (including any matters set out in clauses 64.3(b), 64.3(e) or 64.3(h)) will, until the State and the Operator otherwise agree or a determination is made in accordance with clause 87, be reasonably determined by the Client Representative;
 - (ii) the Operator must proceed to implement the Change on the basis determined by the Client Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 87);
 - (iii) the Operator will be relieved of its obligations under this document to the extent specified in the Notice to Proceed;
 - (iv) the parties will use their best endeavours to agree to the Estimated Cost Effect of the Change and any relief required by the Operator from its obligations under this document (including any extensions of time to the Dates for Completion) and (in the case of an extension to the Date for Operational Readiness) the Sunset Date) as is reasonable for the proposed Change; and
 - (v) any necessary adjustments to the Estimated Cost Effect and the relief granted will be made following the determination of a dispute (where applicable).
 - (h) (**The State's options following determination**) Following determination of the dispute referred to in clause 64.6(e) in accordance with clause 87, the State may, if it has not already exercised its right under clause 64.6(f), elect to do either of the following:
 - (i) require the Operator to implement the Change in accordance with the Change Notice as varied by the determination by issuing a Change Order; or
 - (ii) withdraw its Change Proposal.
 - (i) (**Operator to implement Change**) If the State gives a Change Order pursuant to clause 64.6(h)(i):
 - (i) the Operator must carry out the Change described in the Change Order on the basis of the Change Notice (as varied by the determination, once made); and
 - (ii) the Operator will be relieved of its obligations under this document to the extent specified in the Change Notice (as varied by the determination, once made) other than in respect of the performance (in accordance with this document) of any Health Services which were the subject of the matters submitted for determination under clause 64.6(e).

64.7 Estimated Cost Effect and relief

If the State directs the Operator to carry out a Change in accordance with this clause 64 then, the State must:

- (a) pay to the Operator the Estimated Cost Effect; and

- (b) grant the Operator any relief from its obligations under this document (including any extension of time to the Dates for Completion and (in the case of an extension to the Date for Operational Readiness) the Sunset Date) as is reasonable for the proposed Change, provided that, unless it is actually or practically impossible to clinically appropriately do so given the nature of the Change, the Operator must:
 - (i) continue to provide the Services and otherwise perform its obligations under this document;
 - (ii) amend its methodology for performing the Services as necessary to continue to provide the Services during implementation of the Change; and
 - (iii) perform the Services in accordance with Good Operating Practice,

in each case:

- (c) as agreed by the parties; or
- (d) failing agreement, as initially determined by the Client Representative and ultimately determined by expert determination in accordance with clause 87.

64.8 Additional Services

- (a) Unless otherwise determined by the Client Representative, the Operator will be responsible for all aspects of the delivery of the Services or the performance of the other Operator Activities as they relate to any Change, whether the Change is carried out by the Operator or a third party, after completion or installation of the Change pursuant to this clause 64.
- (b) Any changes to the delivery of the Services, the performance of the other Operator Activities and the Monthly Service Payments arising from the Change will be determined together with the Change to which they relate in accordance with this clause 64, and the Operator releases the State and the State Related Parties from any liability, duty or obligation to the Operator in respect of a Claim or Loss connected with such a Change, except for any express rights of the Operator arising under this document.
- (c) All Changes the subject of a Change Order and implemented during the Operating Term must be implemented so as to cause no disruption to the provision of the balance of the Services by the Operator (save to the extent of disruptions or suspension of obligations agreed by the parties pursuant to clause 64.7(c)) and, for the avoidance of doubt, the Operator will not be entitled to any relief (other than as expressly provided for in this clause 64 in respect of the performance of the Services or its other obligations under this document as a result of the implementation of any Change.

64.9 Change Savings

- (a) If the Operator implements a Change in accordance with this clause 64 that results in Change Savings, the Operator must pay the Change Savings to the State (except to the extent otherwise agreed by the State, acting reasonably) promptly after the Operator receives the benefit of the Change Savings and in any event no later than 10 Business Days after the receipt of such benefit, except where the parties fail to agree the existence and the amount of the Change Savings, in which case either party may refer the Dispute for determination in accordance with clause 87.
- (b) The State may deduct or set off any Change Savings under this clause 64 against any amount otherwise payable by the State to the Operator (including the State Capital Payment or a Monthly Service Payment) provided that the existence and amount of the Change Savings has been determined in accordance with clause 87.

64.10 Tender for works

- (a) The State may at any time require that the Operator conduct a tender process for all or part of the Project Works which would be required to effect the proposed Change.
- (b) If the State elects to require the tender process, the tender process must be carried out promptly, in accordance with the State's reasonable requirements.
- (c) Following completion of the tender process, the Operator must prepare a Change Notice, having regard to the outcome of the tender process (including the tendered prices) in the Change Notice (or, if a Change Notice has been submitted before the completion of the tender process, promptly submit an appropriately amended Change Notice).
- (d) If the Operator is required to prepare a Change Notice in accordance with clause 64.10(c), the date by which the Operator must provide a Change Notice under clause 64.2 will be extended by such period as is reasonably required to conduct the tender process.

65. Additional Work during the Operating Term

65.1 Additional Work procedure

- (a) If during the Operating Term the State wishes to make a change to the Facilities which would, if implemented, be Additional Work, the Client Representative may issue to the Operator a request for the Operator to provide a proposal for the procurement of that Additional Work (**Additional Work Request**).
- (b) Within 60 Business Days after service of an Additional Work Request, the Operator must prepare and submit (in draft) to the Client Representative a detailed proposal for the procurement of the Additional Work (**Procurement Proposal**). A draft Procurement Proposal must include a detailed estimate of the calculation of the Estimated Cost Effect of carrying out the Additional Work in accordance with the draft Procurement Proposal, and the details required under clause 64.3 with respect to the effect of the Additional Works.
- (c) If the draft estimate of the Capital Expenditure required to carry out that Additional Work:
 - (i) is less than \$500,000 (Indexed), the parties agree that the Additional Work Request will be deemed to be a State Change Proposal under clause 63.4; or
 - (ii) is equal to or greater than \$500,000 (Indexed), the Procurement Proposal must be a proposal in which the Operator is engaged by the State in the capacity of a managing contractor to issue a request for tender to not less than three contractors nominated by the Operator and approved by the Client Representative to carry out the relevant Additional Work.
- (d) If required by the Client Representative, the Operator must make available such further information as the Client Representative may request relating to a draft Procurement Proposal in such form as the Client Representative may request.
- (e) Within 40 Business Days after receiving the draft Procurement Proposal, the Client Representative may:
 - (i) direct the Operator to implement the Procurement Proposal;
 - (ii) give the Operator comments, recommendations and representations regarding the draft Procurement Proposal; or
 - (iii) withdraw the Additional Work Request and elect not to proceed with the Procurement Proposal.

- (f) If the Client Representative gives the Operator comments, recommendations and representations regarding the draft Procurement Proposal the Operator must amend the draft Procurement Proposal to reflect the Client Representative's comments, recommendations or representations and the draft Procurement Proposal must be re-submitted in accordance with clause 65.1(b).
- (g) If the State directs the Operator to implement the Procurement Proposal in accordance with this clause 65 then, the State must pay to the Operator the Estimated Cost Effect as agreed by the parties or, failing agreement, as initially determined by the Client Representative and ultimately determined by expert determination in accordance with clause 87.
- (h) Where:
 - (i) the State Change Proposal involving Additional Work occurs pursuant to clause 65.1(c)(i) during the Operating Term, and the Operator and the Client Representative, having invoked the Change Procedure, are unable to agree on the terms of the relevant Change; or
 - (ii) the Operator and the Client Representative are unable to agree on the form of a Procurement Proposal pursuant to clause 65.1(b),
 then:
 - (iii) the State may undertake, or appoint an Other Contractor to undertake, the Additional Work;
 - (iv) the Operator must cooperate with, and not hinder, prevent or delay the State or any Other Contractor from undertaking the Additional Work and must provide the State or the Other Contractor with all access to the Facility and information about the Facility that the State reasonably requires; and
 - (v) the State may request that the Operator and the Other Contractor enter into an Interface Protocol with respect to all or any of the design, construction, completion, commissioning, hand over and facilities management of the Additional Work and the Operator must comply with all such requests; and
 - (vi) the State must use reasonable endeavours not (and must use reasonable endeavours to ensure that any Other Contractor does not) interfere with the provision of the services or the Operator's lawful activities at the Facility.
- (i) Unless otherwise determined by the Client Representative in its discretion:
 - (i) the Operator will be responsible for all aspects of the Services as they relate to Additional Work after completion or installation of Additional Work pursuant to this clause 65; and
 - (ii) the State may at any time issue a Change Proposal under clause 63.1 in relation to the Services to be performed from the Additional Work once completed (provided that any increase in the volume of the Services will be paid for by the State in accordance with the Activity Schedule and the Payment Schedule).
- (j) The Operator:
 - (i) subject to clauses 61 and 62, will not be entitled to any relief in relation to the performance of the Services and its other obligations under this document as a result of the performance of the Additional Works; and

- (ii) releases the State and the State Related Parties from any liability, duty or obligation to the Operator (or any person claiming through or on behalf of the Operator, including any Subcontractor) in respect of any Claim or Loss connected with such Additional Work, except for any rights of the Operator arising from a Compensation Event or a Relief Event.

65.2 Implementation of Additional Work

All Additional Work implemented by the Operator during the Operating Term:

- (a) must be designed and constructed so that:
 - (i) the Operator provides and will continue to provide the Services in accordance with this document; and
 - (ii) the Facility continues to be Fit For Intended Purpose; and
 - (iii) any equipment or materials forming part of the Additional Work are selected, procured, manufactured, installed, commissioned and tested in accordance with Good Industry Practices and are Fit For Intended Purpose; and
- (b) must be implemented so as to cause no disruption to the provision of the Services by the Operator (save to the extent of disruptions or suspension of obligations agreed by the Operator and the State in consultations prior to the issue of, and as specified in, the Additional Work Request/Procurement Proposal).

66. Third Party Infrastructure

66.1 Third Party Infrastructure

The State may engage Other Contractors to construct Third Party Infrastructure or perform work on, or in the vicinity of, the Site at any time during the Term or the Private Patient Portion Term (as applicable).

66.2 Interface Protocols

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

67. Operator proposed Changes

67.1 Operator may propose a Change

The Operator may propose a Change by giving a written notice submitting a Change Proposal to the Client Representative including (without limiting any other requirements for a Change Proposal specified in this document) details of:

- (a) the proposed Change;
- (b) the reason for the proposed Change;
- (c) the time within, and the manner in which, the Operator proposes to implement the proposed Change;

- (d) the value for money for the State arising from the Change; and
- (e) the matters specified in clause 64.3 (other than clause 64.3(b)).

67.2 Operator to provide statement

If the State requires, the Operator must provide in respect of any Change it proposes:

- (a) a written statement stating that the proposed Change:
 - (i) will not adversely affect the functional integrity of the Facility or the ability of the Operator to perform the Operator's Activities in accordance with this document; and
 - (ii) will not adversely affect the quality standards, warranties and other obligations required under this document; and
- (b) any other information and supporting documentation the State requires.

67.3 State may approve or reject

- (a) If the Operator gives a written statement under clause 67.2(a) together with any other information or supporting documentation which the State requires under clause 67.2(b), the State:
 - (i) will consider the Operator's Change Proposal in good faith; and
 - (ii) subject to clause 67.4, may:
 - (A) approve (with or without conditions) the Change Proposal in its absolute discretion by issuing a Change Approval to the Operator; or
 - (B) reject the Change Proposal in its absolute discretion; and
 - (iii) will be under no obligation to approve the Change Proposal for the convenience of or to assist the Operator.
- (b) If the State approves the Change Proposal pursuant to clause 67.3(a)(ii)(A):
 - (i) the Operator must proceed to implement the Change on the basis set out in the Change Approval; and
 - (ii) the Operator will be relieved of its obligations under this document to the extent specified in the Change Approval.

67.4 Change required as a result of Change in Law

Without limiting the Operator's obligations under clauses 20, 22 and 24:

- (a) to the extent that any Change requested by the Operator is required to ensure that the Project Works or the Facility comply with a Change in Law, the State must, in its discretion, either:
 - (i) approve the Change proposed by the Operator by issuing a Change Approval;
 - (ii) issue a Change Proposal under clause 63.1 to ensure that the Project Works or the Facility comply with the Change in Law; or
 - (iii) take such other action as the State reasonably considers necessary to ensure the Public Patient Portion Works, the Public Patient Portion and the Shared Portion comply with the Change in Law.
- (b) If the State approves or directs a Change in accordance with clause 67.4(a)(i) or clause 67.4(a)(ii):

- (i) the Operator must proceed to implement the Change in accordance with the Change Proposal and clause 64; and
- (ii) if the Change is required to ensure that the Public Patient Portion Works and the Facility comply with a Qualifying Change in Law, clause 71 will apply.

67.5 Operator to bear risks and costs

Unless otherwise agreed in writing by the State and subject to clause 67.4(b)(ii):

- (a) the Operator will bear all risks and costs:
 - (i) associated with proposing a Change and preparing its Change Proposal;
 - (ii) reasonably incurred by the State in assessing the Operator's Change Proposal; and
 - (iii) associated with carrying out a Change proposed by the Operator and approved by the State under clause 67.3; and
- (b) the Operator will not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Change proposed by the Operator and approved by the State under clause 67.3.

67.6 Change Savings

- (a) If the Operator implements a Change in accordance with this clause 67 that results in Change Savings, the Operator must pay to the State 50% of the Change Savings promptly after the Operator receives the benefit of the Change Savings and in any event no later than 10 Business Days after the receipt of such benefit, except where the parties fail to agree the existence and the amount of the Change Savings, in which case either party may refer the Dispute for determination in accordance with clause 87.
- (b) The State may deduct or set off any Change Savings under this clause 67.6 against any amount otherwise payable by the State to the Operator provided that the existence and amount of the Change Savings has been determined in accordance with clause 87.

67A Planned Expansion and Public Expansion

67A.1 Planned Expansion

- (a) The Operator may at any time after the Date of Final Completion issue a Planned Expansion Notice to the State.
- (b) Subject to clauses 67A.1(c), 67A.2 and 67C, the Operator may implement the Planned Expansion on the basis set out in the Planned Expansion Notice.
- (c) The Operator must not implement the Planned Expansion referred to in the Planned Expansion Notice delivered under clause 67A.1(a), unless and until:
 - (i) the Operator has provided any additional information reasonably required by the State in connection with the proposed Planned Expansion following receipt by the State of the Planned Expansion Notice under clause 67A.1(a);
 - (ii) the State (acting reasonably) is satisfied the implementation of the proposed Planned Expansion could not be expected to:
 - (A) have an adverse impact on the provision of Services;
 - (B) materially adversely affect the Operator's ability to perform its other obligations under the Project Documents;

- (C) give rise to an increase or adverse change in the profile of the risks or liabilities of the State under the Project Documents (whether actual or contingent, but for the avoidance of doubt excluding any increased Termination Payment payable in connection with any completed Planned Expansion under this clause following a relevant voluntary termination by the State under this document);
 - (D) without limitation to any reasonably described loss of space contemplated expressly in the Planned Expansion Plan, otherwise adversely affect the ability of the State to undertake a future Expansion of the Public Patient Portion or the Shared Portion; or
 - (E) unless such cost will be funded by the Operator on terms reasonably acceptable to the State, increase the cost to the State of undertaking a future Expansion of the Public Patient Portion or the Shared Portion, including relating to the provision of Utilities or a step-change in infrastructure that may be required to implement any such future expansion;
- (iii) there is no subsisting Operator Event of Default or Default Termination Event;
 - (iv) the State (acting reasonably) is satisfied the Operator has obtained committed funding for the relevant Planned Expansion on market terms;
 - (v) the Operator has produced evidence satisfactory to the State (acting reasonably) that all necessary Consents in respect of the proposed Planned Expansion have been or will, when reasonably required, be obtained and there are no Adverse Licence Conditions or other adverse impacts on the Consents relating to the Public Patient Portion or Shared Portion triggered by, or as a result of, the proposed Planned Expansion;
 - (vi) the State is satisfied (acting reasonably) the Operator will bear all risks and costs (including lifecycle costs) associated with the implementation of the Planned Expansion and will not be entitled to make any Claim against the State arising out of, or in any way in connection with, the implementation of the Planned Expansion (but for the avoidance of doubt this subparagraph will not limit the Operator's rights in respect of any Compensation Event or Relief Event otherwise occurring under this document);
 - (vii) the period for delivery of a Change Proposal or Additional Work Request under, and as contemplated by, clause 67A.2(b) has expired (where triggered in connection with delivery of the Planned Expansion Notice under clause 67A.1(a)); and
 - (viii) if the Planned Expansion Plan proposes, contemplates or requires the entrance, access, passing across or otherwise the use by any person of the Retained Green Space for a purpose other than that specified in clause 7.4A(a), the State is satisfied (acting reasonably) that any Contamination in, on or under the Retained Green Space has been remediated to the extent reasonably necessary in accordance with clause 67C.

67A.2 Joint Capacity Review

- (a) Following receipt of a Planned Expansion Notice by the State under clause 67A.1, or a Type 3 Planned Expansion Notice under clause 67B(a), or at any other time at the request of the State, the parties (acting in good faith) will for a period of 90 days (or such longer

period agreed by the parties) undertake a joint review of the equivalent capacity and expansion needs of the Public Patient Portion and/or the Shared Portion (**Joint Capacity Review**) in light of (if applicable) any proposed Planned Expansion.

- (b) Without limitation to any of its other rights under this document, the State may, within 90 days following a Joint Capacity Review, issue a Change Proposal or Additional Work Request to the Operator under clauses 63.1 or 65.1 (respectively) for the Expansion of all or a part of the Public Patient Portion and/or the Shared Portion (**Public Expansion**). Subject to the ECE Schedule, any compensation or reimbursement to which the Operator may be entitled in respect of the implementation of a Public Expansion will be determined in accordance with clauses 64 or 65 (as applicable) and the Operator must take all steps reasonable to take advantage of any cost, construction or programme efficiencies or synergies arising as a result of the relevant Planned Expansion or Type 3 Planned Expansion occurring at or about the same time.

67B Type 3 Planned Expansion

- (a) The Operator may at any time after the Date of Final Completion issue a Type 3 Planned Expansion Notice attaching a Type 3 Planned Expansion Plan to the State.
- (b) Subject to this clause 67B and clause 67C, the Operator may implement the relevant Type 3 Planned Expansion on the basis set out in the Type 3 Planned Expansion Notice delivered under clause 67B(a).
- (c) The Type 3 Planned Expansion Plan provided under clause 67B(a) must contain and address the matters referred to in Schedule 45 in form and content reasonably acceptable to the State.
- (d) The Operator must not implement the Type 3 Planned Expansion referred to in the Type 3 Planned Expansion Notice delivered under clause 67B(a), unless and until:
 - (i) the Operator has provided any additional information reasonably required by the State in connection with the proposed Type 3 Planned Expansion following receipt by the State of the Type 3 Planned Expansion Notice under clause 67B(a);
 - (ii) the State (acting reasonably) is satisfied the implementation of the proposed Type 3 Planned Expansion could not reasonably be expected to:
 - (A) have an adverse impact on the provision of Services;
 - (B) materially adversely affect the Operator's ability to perform its other obligations under the Project Documents;
 - (C) give rise to an increase or adverse change in the profile of the risks or liabilities of the State under the Project Documents (whether actual or contingent, but for the avoidance of doubt excluding any increased compensation or Termination Payment payable in connection with any completed Type 3 Planned Expansion under this clause following a relevant voluntary termination by the State under this document);
 - (D) without limitation to any reasonably described loss of space contemplated expressly in the Planned Expansion Plan, otherwise adversely affect the ability of the State to undertake a future Expansion of the Public Patient Portion or the Shared Portion; or
 - (E) unless such cost will be funded by the Operator on terms reasonably acceptable to the State, increase the cost to the State of undertaking a

future Expansion of the Public Patient Portion or the Shared Portion, including relating to the provision of Utilities or a step-change in infrastructure that may be required to implement any such future expansion;

- (iii) there is no subsisting Operator Event of Default or Default Termination Event;
- (iv) the State (acting reasonably) is satisfied the Operator has obtained committed funding for the relevant Type 3 Planned Expansion on market terms;
- (v) the Operator has produced evidence satisfactory to the State (acting reasonably) that all necessary Consents in respect of the proposed Type 3 Planned Expansion have been or will, when reasonably required, be obtained and there are no Adverse Licence Conditions or other adverse impacts on the Consents relating to the Public Patient Portion or Shared Portion triggered by, or as a result of, the proposed Type 3 Planned Expansion;
- (vi) the State is satisfied (acting reasonably) the Operator will bear all risks and costs (including lifecycle costs) associated with the implementation of the Type 3 Planned Expansion and will not be entitled to make any Claim against the State arising out of, or in any way in connection with, the implementation of the Type 3 Planned Expansion (but for the avoidance of doubt this subparagraph will not limit the Operator's rights in respect of any Compensation Event or Relief Event otherwise occurring under this document);
- (vii) the period for delivery of a Change Proposal or Additional Work Request under, and as contemplated by, clause 67A.2(b) has expired (where triggered in connection with delivery of the Type 3 Planned Expansion Notice under clause 67B(a));
- (viii) the parties have undertaken a design process consistent and equivalent in all respects with the principles and clauses set out in clause 19 of this document; and
- (ix) if the Type 3 Planned Expansion proposes, contemplates or requires the entrance, access, passing across or otherwise the use by any person of the Retained Green Space for a purpose other than that specified in clause 7.4A(a), the State is satisfied (acting reasonably) that any Contamination in, on or under the Retained Green Space will be remediated or otherwise treated to the extent reasonably necessary in accordance with clause 67C.

67C Use of the Retained Green Space

- (a) If and to the extent that a Planned Expansion or a Type 3 Planned Expansion (as applicable) proposes, contemplates or requires the entrance, access, passing across or otherwise the use by any person of the Retained Green Space for a purpose other than that specified in clause 7.4A(a), the Operator must, in the Planned Expansion Notice or the Type 3 Planned Expansion Notice (as applicable), provide all reasonable details of the entrance, access, passing across or otherwise the use so proposed, contemplated or required.
- (b) The Operator must not enter, access, pass across or otherwise use, or permit an Operator Related Party to enter, access, pass across or otherwise use the Retained Green Space in connection with the implementation of a Planned Expansion or a Type 3 Planned Expansion (as applicable) unless the State approves (such approval not to be unreasonably withheld or delayed).

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

68. Maintenance and refurbishment of the Facility and FF&E

68.1 Maintenance and refurbishment of the Facility

- (a) Without limiting its other obligations under this document, the Operator must implement the Asset Maintenance Plan and the Asset Lifecycle Plan, each as reviewed or modified from time to time pursuant to this document and in accordance with the Annual Works Plan.
- (b) Where in performing its obligations under paragraph (a) or in undertaking Lifecycle Refurbishment Works otherwise in accordance with the Asset Management Strategy the Operator proposes to replace FF&E, it must do so using FF&E that:
 - (i) has the same standard relative to the market for that FF&E at the time of replacement as the replaced FF&E had relative to the market at the time that FF&E was purchased;
 - (ii) has the same or higher levels of quality and are as technically up to date as that which would be used in accordance with Good Operating Practice; and
 - (iii) has a design life equal to or greater than the original design life of the FF&E being replaced.
- (c) As part of the annual review of the Asset Management Strategy, the Operator must by no later than 2 months prior to the commencement of each Operating Year:
 - (i) review the Asset Maintenance Plan and the Asset Lifecycle Plan, so as to plan for works for the following 5 years (including any period after the expiry of the Operating Term to the extent that it may be relevant for the purposes of achieving the Handover Condition for the State Asset) to ensure it will meet the Operator's obligations under this document, and such review and any proposed modifications to it (other than minor or immaterial modifications) will be subject to the review procedure set out in clause 13 of this document; and
 - (ii) prepare and issue an Annual Works Plan, provided that each such Annual Works Plan will be subject to the review procedure set out in clause 13 of this document.
- (d) The Operator must ensure that maintenance is carried out:

- (i) in accordance with:
 - (A) the Design Parameters;
 - (B) the Accreditation Requirements;
 - (C) the other Quality Standards;
 - (D) the Asset Management Strategy;
 - (E) Good Industry Practice and Good Operating Practice, and in an appropriate, effective and efficient, dependable and cooperative manner;
 - (F) all applicable Consents, Policies and Law;
 - (G) the other Project Plans; and
 - (H) each other Project Document;
 - (ii) so that the Operator continues to satisfy the FFP Warranty;
 - (iii) so that the Facility continues to comply with all relevant Laws and Consents; and
 - (iv) so far as practicable, in a manner and at times which will facilitate the continued performance of the Services.
- (e) The Operator must not defer any planned maintenance referred to in this clause 68 without the Client Representative's prior written approval.

68.2 General FF&E obligations

Without limiting any other obligation of the Operator under this document or any other Project Document, the Operator must:

- (a) ensure that all FF&E necessary to perform the Services is maintained in accordance with Good Operating Practice and available at all times and in accordance with this document;
- (b) ensure that it has sufficient Consumables at the Public Patient Portion to perform the Services in accordance with this document; and
- (c) ensure that all FF&E will be owned or leased as required under clause ~~21.2(a)(xiii)~~21.2(a)(xiii).

68.3 State Funded FF&E

- (a) Subject to this clause 68.3, all State Funded FF&E will be the property of the State, but for all purposes in connection with the Project Documents, will be licensed to the Operator in accordance with this document.
- (b) Any State Funded FF&E that:
 - (i) is not Shared Portion may only be used for the purpose of delivery of the Services to Public Patients, subject to clause 52.1(b)(i); and
 - (ii) is Shared Portion must not be used for purposes other than the delivery of the Services to Public Patients by more than the proportion that it was not funded by the State.
- (c) State Funded FF&E may not be sold or otherwise disposed of without the consent of the State in accordance with clause 68.3(d).
- (d) If the Operator intends to sell or otherwise dispose of any State Funded FF&E that is:
 - (i) not Shared Portion, it must:

- (A) inform the State of that intention;
 - (B) give the State the option to take title to the State Funded FF&E for nil consideration (and, if this option is exercised, title to the relevant State Funded FF&E will immediately vest in the State); and
 - (C) if the State:
 - (I) does not exercise its option under clause 68.3(d)(i)(B); and
 - (II) agrees that the State Funded FF&E can be sold or disposed of, promptly pay the State the higher of the sales proceeds (which must be disclosed on a fully transparent basis) and Fair Market Value of the State Funded FF&E upon that sale or disposal; or
- (ii) Shared Portion, it must:
- (A) inform the State of that intention;
 - (B) give the State the option to take title to the State Funded FF&E at a price calculated as Fair Market Value multiplied by the percentage of the original capital cost of the State Funded FF&E not funded by the State (and, if this option is exercised, title to the State Funded FF&E will vest in the State upon payment by the State of that price and the Operator must do everything necessary to perfect such vesting);
 - (C) if the State:
 - (I) does not exercise its option under clause 68.3(d)(ii)(B); and
 - (II) agrees that the State Funded FF&E can be sold or disposed of, promptly upon that sale or disposal pay the State an amount equal to the higher of:
 - (I) the sale proceeds (which must be disclosed on a fully transparent basis); and
 - (II) Fair Market Value of the equipment, multiplied by the percentage of the original capital cost of the State Funded FF&E which was funded by the State.

69. Force Majeure

69.1 Notification

On the occurrence of a Force Majeure Event, the Operator must notify the Client Representative as soon as practicable. The notification must include all updated details required to be provided in accordance with the ECE Schedule in relation to the Relief Event which has become a Force Majeure Event.

69.2 Meeting

As soon as practicable after a notice under clause 69.1 is given the parties must meet and consult with each other in good faith and use all reasonable endeavours to:

- (a) determine whether a Force Majeure Event has occurred;
- (b) determine the extent to which the Force Majeure Event is covered by insurance;
- (c) determine the estimated duration of the Force Majeure Event; and

- (d) agree on appropriate measures to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this document.

69.3 Relief

- (a) Subject to clause 69.3(b), if the Operator believes that a Force Majeure Event has occurred and the Operator provides evidence to the Client Representative that:
 - (i) the Force Majeure Event has occurred and prevents the Operator from performing all or a material part of its obligations under this document;
 - (ii) the impact of the Force Majeure Event could not reasonably have been mitigated or recovered by the Operator acting in accordance with Good Industry Practice or Good Operating Practice (as applicable), without incurring material expenditure in excess of the amount it is entitled to recover under any Project Insurance in respect of the Force Majeure Event; and
 - (iii) the Operator is using best endeavours to perform its obligations under this document;

without limiting the other provisions of this clause 69:

- (iv) the Client Representative must grant such relief as is appropriate (including extending the Sunset Date or any Date for Completion, or suspending any obligations under this document), taking into account the likely effect of the Force Majeure Event, but the Operator will not be entitled to:
 - (A) any compensation for additional or increased costs or lost revenue in respect of the Force Majeure Event; or
 - (B) relief to which the Operator would not have been entitled had the corresponding Relief Event not subsisted for a sufficient length of time as to constitute the Force Majeure Event in respect of which relief is claimed; and
 - (v) no Default Notice may be given under clauses 77.1 or 77.3 in respect of a breach of the Operator's obligations during the period in which the Operator has been granted relief to the extent that the breach is a direct result of the Force Majeure Event.
- (b) Nothing in this clause 69 limits the application of clauses 62(b)(iii) and 62(d) to the Force Majeure Event.

69.4 Further information

The Operator must notify the Client Representative if at any time it receives or becomes aware of any further information relating to the Force Majeure Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading, and the relief given in accordance with clause 69.3 will be amended accordingly.

69.5 Mitigation

The Operator must at all times following the occurrence and during the subsistence of a Force Majeure Event:

- (a) take all reasonable steps to reduce, avoid, mitigate, prevent or eliminate the occurrence of the Force Majeure Event or its effects;
- (b) take all steps in accordance with Good Industry Practice and Good Operating Practice (as applicable) to overcome or minimise the consequences of the Force Majeure Event

(including incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures); and

- (c) must at all times continue to provide Services in accordance with clauses 62(b)(iii) or 62(d) (as applicable).

69.6 Step-In Rights

- (a) The Operator's right to relief under clause 69.3 does not affect the State's Step-In Rights.
- (b) A Force Majeure Event may also constitute a Step-In Event.

69.7 Cessation of Force Majeure Event

The affected party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event. Following such notification this document will continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

69.8 Monthly Service Payments not affected

Nothing in this document will affect:

- (a) any entitlement of the State to make a Failure Abatement; or
- (b) any Failure Abatement made,

as a result of the Payment Schedule during the period in which the Force Majeure Event is subsisting, but any such Failure Abatement will not constitute or count towards an Operator Event of Default or Operator Termination Event; or

- (c) to the extent the Operator is not prevented from doing so by the relevant Force Majeure Event, any obligation of the Operator to:
 - (i) perform the Services;
 - (ii) satisfy or exceed the Services Specification, the Services Plans, the KPIs, the Quality Standards or the Design Parameters; or
 - (iii) take remedial action (including, where applicable, provision of back-up Utilities), rectify, reinstate or replace to deal with the effects or consequences of such Force Majeure Event.

69.9 Termination for Force Majeure Event

- (a) Subject to clause 69.9(b), if:
 - (i) the parties are unable to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this document; and
 - (ii) the Force Majeure Event is continuing or its consequences remain such that the affected party has been or is unable to comply with a material part of its obligations under this document,

then, subject to clauses 69.9(b) and 69.10, either party may terminate this document by giving 20 Business Days' prior written notice to the other party.

- (b) The Operator must not terminate this document in accordance with clause 69.9(a) during the period the Operator is able to recover under its advance consequential loss insurance or business interruption insurance policies (or would be able to recover under those policies if the Operator had complied with its obligations under clause 73 or Schedule 5 or

made a proper claim) for any Liability suffered as a consequence of the relevant Force Majeure Event.

69.10 Suspension of Operator's right to terminate

- (a) If the Operator gives a termination notice under clause 69.9, the State may suspend the Operator's right to terminate by giving a suspension notice within 20 Business Days after receipt of the Operator's termination notice.
- (b) If the State gives the Operator a suspension notice under clause 69.10(a):
 - (i) the State must, if the right to terminate is suspended during the Operating Term, during the period in which the Operator's right to terminate is suspended, pay to the Operator the Monthly Service Payments which would have been payable if the Services or other Operator's Activities then required to be carried out under this document were being performed in full (on the basis of the type and volume of Services set out in the latest issued Annual Notice (and if no Annual Notice has been issued, that contained in the Activity Profile in Schedule 16) prorated in respect of the relevant period of relief), but the State will not pay any lost revenue in respect of the Private Patient Portion or the Shared Portion, less the aggregate of (without double counting):
 - (A) the costs not incurred by the Operator as a result of the non-performance of the Operator's Activities; and
 - (B) the amount of the proceeds the Operator receives from any advance consequential loss insurance or business interruption insurances as it relates to the State Asset; and
 - (ii) this document will not terminate until expiry of written notice (of at least 30 Business Days) from the State to the Operator that it is ending the suspension of the Operator's right to terminate.
- (c) If the Operator becomes able to recommence performing the relevant obligations after the State gives the Operator a suspension notice:
 - (i) the Operator must recommence performance of those obligations; and
 - (ii) the Operator's termination notice under clause 69.9 will cease to have any effect.

69.11 Not all of Site or Facility affected

Where a Force Majeure Event prevents the Operator from carrying out its obligations under this document in respect of some but not all of the Site or the Facility, as the case may be, either party may, following the occurrence of the Force Majeure Event, propose a Change by notice in writing in accordance with clause 63.1 or 63.4 (as applicable) under which the affected part of the Site or the affected Facility cease to be subject to this document.

70. Financing and Refinancing

70.1 Financing Agreements

The Operator must not, without the prior written consent of the Client Representative:

- (a) enter into any financing agreements or derivative transactions (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of business) other than the Financing Agreements or any intercompany financing agreement between the Operator and the Borrower; or

- (b) make any material amendment to or, waive, vary or change any term or provision of the Financing Agreements if such waiver, variation or change is of a material nature,

other than in respect of a Refinancing conducted in accordance with this clause 70 or an event or circumstance described in paragraphs (d) to (h) of the definition of 'Refinancing'.

70.2 General

- (a) The Financial Indebtedness assumed by the Operator or the Borrower under any Refinancing must be used solely for the Project (which may not include legal, swap break or other costs incurred in connection with that Refinancing).
- (b) The Operator must:
 - (i) promptly and efficiently procure any Refinancing required to ensure that it complies with its obligations under the Financing Agreements; and
 - (ii) in undertaking any Refinancing, act reasonably as any reasonable borrower would in the circumstances and given the market conditions at that time.

70.3 Operator to provide details of Refinancing

- (a) The Operator must promptly provide the State with 30 days prior written notice of any proposed Refinancing, together with:
 - (i) any term sheet which will form the basis for any financing documentation or amendment to the Financing Agreements or other documents which are relevant to the proposed Refinancing;
 - (ii) information with which to ascertain the impact that the proposed refinancing will or may have on the liabilities or the risks of the State (whether actual or contingent) under any Project Document;
 - (iii) a copy of the last agreed Base Case – State Asset and, if the Refinancing occurs during the Pre State Capital Payment Phase only, the Whole Project Base Case, as adjusted for the proposed Refinancing:
 - (A) showing all of the material changes to the Operator's or the Borrower's obligations to the Debt Financiers (or their assigns or successors); and
 - (B) with projections for the cash flow of the Operator from the proposed date of the Refinancing to the end of the Private Patient Portion Term, including projected distributions after taking the Refinancing into account;
 - (iv) the basis for assumptions used in the adjusted Base Case – State Asset and, if applicable in accordance with clause 70.3(a)(iii), the Whole Project Base Case;
 - (v) a certificate on terms and in a form acceptable to the State from the auditors of the Base Cases referred to in clause 70.3(a)(iii), as to its operation and effect; and
 - (vi) such further information as the State reasonably requires from the Operator regarding the proposed Refinancing.
- (b) The State must advise the Operator within 10 Business Days after receiving the Operator's notice under clause 70.3(a) if the State requires further information from the Operator regarding the proposed Refinancing and that additional information will be limited to the information currently available to the Operator or the Borrower (as the case may be). If so, the Operator must provide the additional information reasonably sought by the State as soon as reasonably practicable but within a period of five Business Days from the State's request.

70.4 State consent to Refinancing

- (a) The Operator must not enter into any Refinancing which:
- (i) gives rise to an increase in the amount of outstanding Debt at the proposed date of the Refinancing above that forecast at that time in the last agreed of each Base Case;
 - (ii) gives rise to an increase in the amount of outstanding Debt beyond that forecast for any future period in the last agreed of each Base Case; or
 - (iii) is likely to give rise to an increase or adverse change in the liabilities or the profile of the risks or liabilities of the State (whether actual or contingent) under the Project Documents,

without the prior written consent of the State, which must be provided in accordance with this clause 70.4.

- (b) The State must not unreasonably withhold its consent to a Refinancing to which clause 70.4(a) refers if the Operator demonstrates to the reasonable satisfaction of the Client Representative that:
- (i) the proposed Refinancing is or will be effected on an arm's length basis;
 - (ii) the proposed Refinancing will not bring about an increase or adverse change in the liabilities or the profile of the risks or liabilities of the State (whether actual or contingent) under any Project Document (other than as consented to by the State and reflected in one or more of the Base Cases) without compensation to the State which is deemed adequate by the State (in its absolute discretion); and
 - (iii) the proposed Refinancing, taken as a whole, is not materially more onerous or disadvantageous to the Operator or the Borrower than the terms and conditions under the existing Financing Agreements (other than in respect of interest rates and margin for the period of the proposed Refinancing, so long as the interest rates and margin that apply under the proposed Refinancing reflect the then current market conditions applying at the time of the Refinancing).
- (c) If the State does not notify the Operator of its consent or refusal to consent to the Refinancing within 20 Business Days of receipt of all information in respect of the proposed Refinancing reasonably sought by it, the State will be deemed to have consented to the proposed Refinancing.
- (d) Any dispute as to whether the State's consent is required for a proposed Refinancing or the State is entitled to withhold its consent to a proposed Refinancing may be referred by either party for resolution in accordance with clause 87.

70.5 Copies of documents

- (a) The Operator must deliver a certified true copy of each amended and amending Financing Agreement to the State within 20 Business Days after execution.
- (b) The Operator must not execute any Refinancing until:
- (i) any new Debt Financiers (or their agents) have executed a deed with the State substantially in the form of the Financiers Tripartite Deed or become bound by the Financiers Tripartite Deed; and
 - (ii) any retiring Debt Financiers have executed any documents reasonably requested by the State to terminate their rights under the Financiers Tripartite Deed.

70.6 Costs relating to a Refinancing

The Operator must pay to the State the reasonable costs incurred by the State (including any legal or financial advisors' fees, reasonably incurred) in relation to considering a proposed Refinancing or consenting to a Refinancing.

70.7 Adjustments to Base Cases

For the purpose of clause 76, on execution of a Refinancing, the Base Case – State Asset and, if the Refinancing occurs during the Pre State Capital Payment Phase only, the Whole Project Base Case, will be adjusted as follows:

- (a) Debt fees and margins for the period of the Refinancing will be updated to reflect the amended or amending Financing Agreements;
- (b) the actual Debt balance after the Refinancing will be updated to reflect the amended or amending Financing Agreements;
- (c) the impact of financial covenants which result in the forced retention of cash amounts within the Operator will be updated to reflect the amended or amending Financing Agreements;
- (d) legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing will replace those equivalent costs previously forecast for the period of the Refinancing including those costs paid to the State in accordance with clause 70.6; and
- (e) further required adjustments as otherwise reasonably agreed between the State and the Operator,

provided that any swap break, transaction or other costs in connection with a Refinancing should not be capitalised into outstanding principal.

71. Change in Law

71.1 Requirement to comply

Without limiting clause 2.6, the Operator acknowledges and agrees that:

- (a) it must, in performing the Project, comply, and procure that all Subcontractors comply, with all applicable Law;
- (b) it is not entitled to any compensation or extension of time or relief from performance of its obligations under this document as a result of any Change in Law, unless and to the extent that such Change in Law constitutes a Compensation Event; and
- (c) nothing in this clause 71 limits the Operator's obligation to comply with Law.

71.2 Qualifying Change in Law

The Operator will be entitled to compensation for a Qualifying Change in Law in accordance with clause 61, Schedule 9 and the ECE Schedule.

71.3 Implementation relief

Notwithstanding clause 71.1, to the extent it is able to do so, the State will use all reasonable endeavours to avail the Operator of any relief, implementation arrangements or programs which are extended to the State (in its capacity as a counterparty to the Project Documents) in respect of compliance with any Change in Law.

71.4 Beneficial Change in Law

Where a Beneficial Change in Law occurs, the Monthly Service Payments will be adjusted in accordance with the ECE Schedule as if the Beneficial Change in Law resulted in a Change and

the Change Saving arose due to a State Change Proposal provided that the State will be entitled to any Change Saving which arises from any Beneficial Change in Law.

72. Loss and damage

72.1 Risk of loss or damage

Except as expressly provided in this document:

- (a) from Financial Close until the end of the Development Phase, the Operator bears the risk of destruction, Loss or damage to the Project Works, the completed Facility and to the Site; and
- (b) during the Operating Term, the Operator bears the risk of destruction, Loss or damage to the Facility and the Site,

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

- (c) is the direct result of:
 - (i) a fraudulent, unlawful or negligent act or omission of the State or any State Related Party; or
 - (ii) a breach by the State of this document.

72.2 Operator's indemnity

The Operator must, subject to clauses 72.3 and 72.11, be responsible for, and must release and indemnify the Indemnified State Parties on demand from and against each of:

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

which may arise out of, or in consequence of:

- (iv) delivery of the Services or the design, construction, operation or maintenance activities of the Operator or the performance or non-performance by the Operator of its obligations under this document or any Project Document; or
 - (v) the condition of the Site or the Extra Land or the presence on or possession of or access to the Site, the Extra Land, the Project Works or the Facility by the Operator or any Operator Related Party; or
 - (vi) subject to clause 9.5, any Contamination of or Pollution occurring on or from the Site, the Extra Land or the Facility;
- (b) any Claim or Loss suffered by or incurred in connection with any:
 - (i) breach or failure to comply with the terms of any Project Document by the Operator or any Operator Related Party; or
 - (ii) negligent, or unlawful acts or omissions or wilful misconduct by the Operator or any Operator Related Party; and

- (c) any Claim or Loss suffered or incurred by an Indemnified State Party arising out of or in connection with the failure of the Operator to comply with clause 59.11.

Without limiting this clause 72.2, and to the extent permitted by law, if an Indemnified State Party incurs any Loss, expense (including any fines or penalties) or damage pursuant to the provisions of the WHS Legislation arising from the Project Works or the Services on the Site or any matter related to the Project Works or the Services on the Site, the Operator will reimburse (on demand) that Indemnified State Party for any such Loss, expense (including any fines or penalties) or damage.

72.3 Operator not liable

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

- (a) caused by negligent or unlawful acts or omissions or wilful misconduct of any Indemnified State Party, to the extent such Claim, Loss or Liability did not occur as a result of a failure by the Operator to perform the Services or operate the Facility in accordance with this document;
- (b) caused by a breach of the State of its express obligations under a Project Document; or
- (c) caused by any fraudulent act or omission of any Indemnified State Party.

This clause 72.3 does not limit the Operator's rights under this document with respect to Compensation Events, Relief Events and Force Majeure Events.

72.4 Insured Liability

For the purposes of this clause 72, **Insured Liability** means:

- (a) where the Operator, an Operator Related Party or an Indemnified State Party has an entitlement to recover or be indemnified in respect of Indirect Loss under a Project Insurance:
 - (i) the amount or amounts actually recovered by the Operator, the Operator Related Party or the Indemnified State Party (as applicable) from; and
 - (ii) the amount or amounts for which the Operator, the Operator Related Party or the Indemnified State Party is otherwise actually indemnified by,
the insurer or insurers of such Project Insurance; and
- (b) where, but for:
 - (i) the failure of the Operator to comply with its obligations under clause 73 to obtain a Project Insurance;
 - (ii) the insolvency of the insurer or insurers of such Project Insurance; or
 - (iii) any act or omission by the Operator or an Operator Related Party (including any misrepresentation, non-disclosure, breach of a duty to the insurer, breach of the terms and conditions of any Project Insurance or failure to comply with those terms or conditions) not caused or contributed to by any act or omission of any Indemnified State Party which has resulted in a loss of or reduction of the recovery or indemnity under a Project Insurance,

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

Operator Related Party or the Indemnified State Party (as applicable) would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Project Insurance.

72.5 No circularity (Insured Liability)

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

72.6 Damage by the State or State Related Parties

Without limiting clause 74.2, loss of or damage to the Project Works, the Facility, the Site or the Extra Land (or any part of them) caused or contributed to by the State or a State Related Party will not (subject to paragraph (a) of the definition of Compensation Event) be a Compensation Event. The State will have no Liability or obligation to indemnify the Operator or any Operator Related Party in respect of such damage.

72.7 Responsibility for Related Parties

The Operator will be responsible, as against the State, for the acts or omissions of the Operator Related Parties as if they were the acts or omission of the Operator and, subject to clause 72.6, the State will be responsible, as against the Operator, for the acts or omissions of the State Related Parties as if they were the acts or omissions of the State.

72.8 Claims procedure

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

72.9 Costs of Claims

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

72.10 Operator's obligations for the benefit of the State

- (a) Where the Operator:
 - (i) is obliged to do something or comply with an obligation; or
 - (ii) not to do something,

for the benefit of the State, the Operator agrees that it will be taken to have also agreed to do that thing or comply with that obligation, or not to do that thing for the benefit of the State, to the intent that the State may exercise all rights that arise by virtue of the Operator's failure to comply with any obligation owing to the State as if that obligation was owed to the State.

- (b) Any damage or Loss incurred by the State as a result of a failure of the Operator to comply with any such obligation will be taken to be Loss or damage which the State may recover from the Operator, as if the Operator had expressly undertaken to comply with that obligation for the benefit of the State.

72.11 Indirect Loss exclusion

- (a) Subject to clause 72.11(c), but otherwise despite any other provision of this document, neither the Operator nor any Operator Related Party has any Liability to any Indemnified State Party, nor will any Indemnified State Party be entitled to make any Claim, in respect of Indirect Loss incurred or sustained by the Indemnified State Party as a result of any act or omission of the Operator or any Operator Related Party (whether negligent or otherwise) or as a result of a breach of the Project Documents by the Operator.
- (b) Subject to clause 72.11(c), but otherwise despite any other provision of this document, neither the State nor any Indemnified State Party has any Liability to the Operator or any Operator Related Party, nor will the Operator or any Operator Related Party be entitled to make any Claim, in respect of Indirect Loss incurred or sustained by the Operator or Operator Related Party as a result of any act or omission of the State or any Indemnified State Party (whether negligent or otherwise) or as a result of a breach of the Project Documents by the State.
- (c) Clauses 72.11(a) and (b) do not apply in respect of any Insured Liability.

72.12 Indemnities generally

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

73. Insurance

73.1 Operator's requirement to maintain

- (a) Subject to paragraph (b), the Operator must take out and maintain or procure the taking out and maintenance of the insurances specified in Schedule 5, at the times, in the manner and in the form specified in Schedule 5, and any other insurances as may be required by applicable Law. The Operator will otherwise comply with the requirements of Schedule 5 in all respects.
- (b) Notwithstanding paragraph (a) or anything in Schedule 5, the Operator is not required to take out and maintain or procure the taking out and maintenance of any insurances for any risk in respect of the Private Patient Portion Works or the Private Patient Portion to the extent such risk is or becomes uninsurable in the reasonable opinion of the Operator and having regard the method of determining an Uninsurable Risk in clause 75.

73.2 Limit of Liability

Neither failure to comply, nor full compliance by the Operator with the insurance provisions of this document, will limit or relieve the Operator of its liabilities and obligations under this document.

73.3 Insurance proceeds

The Operator must pay to the State the net amount it recovers under any Project Insurance (other than the proceeds of business interruption insurance) in connection with any event which results in the State making a payment to the Operator pursuant to sections 4 or 5 of the Termination Payment Schedule, which are not used by the Operator to repair or remedy any destruction, loss or damage or reinstate or replace part or parts of the Project Works, the Site or the Facility or used to discharge any insured legal liability to third parties.

To the extent that the proceeds of any of the Project Insurances are insufficient to reinstate the loss or damage then, subject to clause 73.2, the Operator must fund the deficit.

73.4 Parent Company's insurances

The Operator must ensure that:

- (a) each insurance effected and maintained by the Parent Company under the Parent Company Subcontract is on terms (including deductible and/or excess levels) approved in writing by the Client Representative; and
- (b) once approved by the Client Representative, the terms of the insurance are not changed in a manner materially adverse to the Project or the State without the Client Representative's prior written approval.

The State must not unreasonably withhold an approval under this clause 73.4.

74. Reinstatement

74.1 Operator's obligation to reinstate

If any destruction, loss or damage occurs to any part of the Project Works, the Site or the Facility, the Operator must (without limiting its other obligations under this document):

- (a) promptly repair or remedy the destruction, loss or damage or replace or reinstate the Project Works, the Site and the Facility so that, to the greatest extent possible, the Operator continues to comply with its obligations under the Project Documents (including so that it continues to provide the Services in accordance with clauses 61(c) or 62(d) (as applicable));
- (b) promptly provide the Client Representative with written notice of any such destruction, loss or damage and any required repair, remedy replacement or reinstatement;
- (c) as soon as practicable, provide the Client Representative with a further detailed report of all action being taken or to be taken to effect a remedy or repair of the destruction, loss or damage or replacement or reinstatement of the Project Works, the Site and the Facility, including the estimated time such action will require;
- (d) consult with the Client Representative as to the programming of the Project Works, the Site and the Facility needed to effect the relevant repair, remediation, replacement or reinstatement or remedy;
- (e) in carrying out the relevant repair, remediation, replacement or reinstatement activities, minimise the impact on the Project Works, the Site, the Facility, the Services and the

operation of the Facility and keep the Client Representative fully informed of the progress of the repair, remediation, replacement and reinstatement activities; and

- (f) apply all insurance proceeds and amounts received by the Operator under clause 73.3 in respect of such destruction, loss or damage (other than the proceeds of delay in startup insurance or business interruption insurance and those insurance proceeds required to discharge any insured legal liability to third parties) towards the cost of the relevant repair, remediation, replacement or reinstatement.

74.2 Costs borne by the State

To the extent that the destruction, loss or damage which occurs before the end of the Operating Term contemplated in clause 74.1 is the direct result of:

- (a) a fraudulent, unlawful or negligent act or omission or wilful misconduct of the State or a State Related Party; or
- (b) a breach by the State of this document,

if the Operator is required to repair, replace or remedy that destruction, loss or damage pursuant to clause 74.1, the State must pay to the Operator the costs reasonably incurred by the Operator in carrying out the repair, replacement or remediation work arising from such damage, loss or destruction (to the extent the insurance proceeds, if any, are insufficient).

74.3 Direction not to replace or reinstate

The State may direct the Operator, by written notice:

- (a) not to carry out its obligations under clause 74.1. If such notice is given:
 - (i) the Operator waives (to the extent permitted by the applicable policy) in favour of and for the benefit of the State, the Operator's right to make a claim under a policy of insurance required under clause 73.1, other than claims in respect of the Operator's or a Subcontractor's own loss or damage;
 - (ii) the Operator must pay to the State all proceeds it receives from the policies of insurance required under clause 73.1, other than proceeds in respect of the Operator's or a Subcontractor's own loss or damage;
 - (iii) the Operator will be relieved of its obligations to perform the Project Works, provide the Services and operate the Facility, to the extent reasonably determined by the State in the context of the destruction, loss or damage; and
 - (iv) the State must issue a State Change Proposal in relation to Changes to obligations of the Operator to perform the Project Works, provide the Services or operate the Facility; or
- (b) to carry out a Change in reinstating or repairing the Project Works, the Site or the Facility and specifying a reasonable time within which the Change must be carried out, in which case:
 - (i) the reinstatement or repair will constitute a Change only to the extent that the work required differs from the requirements of the Design Parameters; and
 - (ii) the Operator will be compensated for the Change only to the extent that any insurance proceeds are less than the Estimated Cost Effect of the Change.

74.4 State may repair or reinstate

Without limiting any other provision of this document, if the Operator does not comply with clause 74.1:

- (a) the State may give the Operator written notice that the State intends to repair or remedy any destruction, loss or damage or replace or reinstate the Project Works, the Site, or the Facility (or have such work done by a nominee) which the Operator was (and is) obliged to repair, remedy or replace or reinstate under clause 74.1; and
- (b) if the Operator:
 - (i) does not commence complying with its obligations under clause 74.1 within 14 days after the issue of that notice by the State; or
 - (ii) having commenced to comply with its obligations under clause 74.1, ceases to comply with its obligations (as reasonably determined by the State),

the State may, without further notice, elect to remedy or repair any loss or damage or replace or reinstate the Project Works, the Site or the Facility or have such work done by a person nominated by the State in which case:

- (iii) the costs and expenses incurred in doing such work or having such work done by another person will be a debt due and payable by the Operator to the State; and
- (iv) the Operator must make no Claim against the State in respect of such work, and must indemnify the State and the State Related Parties, on demand, against any Claim or Loss (including any legal costs on a full indemnity basis) the State or any State Related Party (as applicable) pays, suffers, incurs or is liable for, in respect of such work.

74.5 Damage to Third Party Property

- (a) Without limiting clause 72.2, where any damage to or loss or destruction of real or personal property of third parties occurs which arises out of:
 - (i) a breach by the Operator of its obligations under this document, the Operator must promptly repair, replace or reinstate the damage, loss or destruction (where the Operator has a legal liability to do so) at the Operator's cost or if the affected person agrees, reasonably compensate the affected person; or
 - (ii) the Operator's Activities, the Operator must promptly repair, replace or reinstate the damage, loss or destruction (where the Operator has legal liability to do so), or if the affected person agrees, reasonably compensate the affected person (where the Operator has legal liability to do so).
- (b) If the Operator fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation (where this clause 74.5 requires the Operator to do so), the State may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by the State will be a debt due and payable from the Operator to the State.

75. Uninsurable Risks

75.1 Risks become Uninsurable

To the extent that any risk in respect of the Public Patient Portion Works, the Public Patient Portion or the Shared Portion which is required to be insured against under the Project Insurances is or becomes Uninsurable then:

- (a) the Operator must notify the Client Representative within five Business Days after the risk becoming Uninsurable; and
- (b) if both parties agree, or it is determined in accordance with clause 87, that the risk is Uninsurable and that the risk being Uninsurable is not caused by the actions of the Operator or an Operator Related Party (**Uninsurable Risk**),

then the parties must meet to discuss the means by which the Uninsurable Risk should be managed (including considering the possibility of self-insurance by either party).

75.2 No obligation to insure

If the parties agree, or it is determined under clause 87, that a risk in respect of the Public Patient Portion Works, the Public Patient Portion or the Shared Portion which is or has become an Uninsurable Risk, and the risk did not become an Uninsurable Risk as a result of an act or omission of the Operator or an Operator Related Party, then for so long as the risk remains an Uninsurable Risk, the Operator is not required to procure insurance against that risk.

75.3 Uninsurable Material Risks

- (a) If an Uninsurable Risk is also a Material Risk (**Uninsurable Material Risk**), but the parties cannot agree as to how to manage the Material Risk, then this document will continue on foot but with an amount agreed by the Operator and the State to be equal (as far as reasonably practicable) to the premium that was last paid by the Operator (Indexed for insurance for such Material Risk immediately prior to it becoming an Uninsurable Material Risk (in so far as such Material Risk relates to the Public Patient Portion Works, the Public Patient Portion or the Shared Portion only and adjusted, in the case of the Shared Portion, by excluding the Operator Allocation of Shared Portion) payable by the Operator to the State during the Development Phase or deducted from the Monthly Service Payment during the Operating Term.
- (b) Any Dispute under this clause 75.3 must be referred to dispute resolution in accordance with clause 87.
- (c) If this clause 75.3 applies, on the occurrence of an event for which the risk of occurrence was an Uninsurable Material Risk, the State must (at the State's option) either:
 - (i) pay to the Operator:
 - (A) an amount equal to the insurance proceeds that would have been payable had the relevant Project Insurance in respect of the Public Patient Portion Works, the Public Patient Portion or the Shared Portion continued to be available (adjusted, in the case of the Shared Portion, by excluding the insurance proceeds that would have been payable by reference to the Operator Allocation of Shared Portion); or
 - (B) if the relevant Project Insurance in respect of the Public Patient Portion Works, the Public Patient Portion or the Shared Portion had never been available, an amount equal to the insurance proceeds that would have been payable had such relevant Project Insurance been effected and maintained in accordance with this document (adjusted, in the case of the Shared

Portion, by excluding the insurance proceeds that would have been payable by reference to the Operator Allocation of Shared Portion),

less the loss of equity return component of the advance consequential loss insurance or the business interruption insurances and clause 74.1 will apply; or

- (ii) only in respect of a Material Risk required to be insured under Schedule 5:
 - (A) if part, but not all of the Public Patient Portion Works, the Public Patient Portion, or the Shared Portion is affected, issue a State Change Proposal, under which the affected part or parts of the Public Patient Portion Works, Public Patient Portion or the Shared Portion or any other part of the Facility cease to be subject to this document; or
 - (B) if all of the Public Patient Portion Works, the Public Patient Portion or the Shared Portion is affected, pay to the Operator an amount equal to the amount set out in section 5 of the Termination Payment Schedule and terminate this document by giving 10 Business Days' prior written notice to the Operator.

75.4 Change

- (a) The State and the Operator agree that any Change (and associated calculation of the Estimated Cost Effect in accordance with the ECE Schedule) undertaken as a result of a State Change Proposal issued under clause 75.3(c)(ii) will be undertaken on the basis that the State Capital Payment or the Monthly Service Payments (as applicable) will be unchanged from what it would have been on and from the occurrence of the Uninsurable Material Risk, had the Uninsurable Material Risk not occurred, less, without double counting, the amount of any costs avoided as a result of the Change.
- (b) Without limitation, any Change (and the calculation of the associated Estimated Cost Effect) resulting from the application of clause 75.3(c)(ii) will have the effect that:
 - (i) the Operator is deemed to have complied with all of its obligations under the Project Documents to which the State is a party (including so as to complete the Public Patient Portion Works or part of the Public Patient Portion Works) at the time that it is (or would, but for the Uninsurable Material Risk have been) required to carry out such obligations under the Project Documents to which the State is a party, but only to the extent that its failure to do so results or would have resulted from the occurrence of the Uninsurable Material Risk; and
 - (ii) the Operator will not be:
 - (A) in breach of the Project Documents to which the State is a party; or
 - (B) subject to any Failure Abatements,and no Operator Event of Default or Operator Termination Event occurs or will occur to the extent that:
 - (C) the failure of the Operator to comply with its obligations under any Project Document to which the State is a party; or
 - (D) any Failure Abatements or the occurrence of any Operator Event of Default or Operator Termination Event,results from or would have resulted from the occurrence of the Uninsurable Material Risk.

75.5 Obligation to monitor and insure

- (a) Where a risk is an Uninsurable Risk, the Operator must approach the insurance market on a regular basis (satisfactory to the State, acting reasonably, but no more than once every 12 months up to the end of the Operating Term) to establish whether that risk remains an Uninsurable Risk and must advise the State accordingly.
- (b) If a risk which is required to be insured against under the Project Insurances is no longer an Uninsurable Risk, the Operator must:
 - (i) immediately notify the State;
 - (ii) obtain separate quotations to cover the risk in accordance with the requirements set out in clause 73 and Schedule 5 from three Reputable Insurers in the commercial insurance market (or as otherwise agreed by the State acting reasonably) and provide these quotations to the State within 10 Business Days after submission to the State of the notice described in clause 75.5(b)(i) together with such other documentation or information as the State reasonably requires in connection with those quotations;
 - (iii) promptly, but no later than five Business Days, after service of confirmation from the State that one of the quotations provided under clause 75.5(b)(ii) is acceptable, effect insurance with the provider of the quote to cover the risk in accordance with the requirements set out in clause 73 and Schedule 5; and
 - (iv) update the Base Case – State Asset to incorporate the price of the quotation that is accepted by the State and submit a revised version of the Base Case – State Asset to the State in accordance with clause 76.
- (c) The parties acknowledge and agree that the Monthly Service Payments will be adjusted to include a pro rata amount for the premium that is payable for the insurance in respect of which the quotation has been obtained.

75.6 Uninsurable

Subject to the Operator's obligations under clause 75.5, the parties acknowledge that, as at the date of this document, they have agreed the following risks to be Uninsurable Risks:

- (a) war (declared or undeclared), armed conflict, riot, civil commotion (including protests), act of sabotage, act of public enemy or other like activities;
- (b) nationalisation or embargo by order of any Authority, other than an embargo caused by an act or omission of the Operator or an Operator Related Party;
- (c) any terrorist act not insured under the Project Insurances; and
- (d) nuclear, chemical, biological or ionising contamination and infectious disease outbreak, in each case to the extent:
 - (i) not insured under the Project Insurances; and
 - (ii) not caused or contributed to by the Operator or any Operator Related Party or in undertaking the Services,

provided however that nuclear, chemical, biological or ionising contamination caused by or resulting from the presence or use of nuclear, chemical, biological or ionising substances for medical purposes (including waste products thereof) shall not be deemed to be Uninsurable.

76. Base Cases and Monthly Service Payment adjustments

- (a) **(Reviewed Base Case and the Payment Schedule)** The Operator must:
- (i) as soon as reasonably practicable following any adjustment to the Monthly Service Payments in accordance with this document; or
 - (ii) when this document provides for or requires a revised Base Case to be submitted to the State (including prior to implementing any Refinancing),
submit to the Client Representative for approval:
 - (iii) one electronic copy of the proposed revised Payment Schedule (if applicable);
 - (iv) the proposed revised Base Case – State Asset and, during the Pre State Capital Payment Phase only, the Whole Project Base Case (each a **Proposed Base Case**) (incorporating, to the extent applicable, all adjustments to the Monthly Service Payments made in accordance with this document) and all supporting formulae and data;
 - (v) an instruction manual outlining how to use each Proposed Base Case, which is acceptable to the Client Representative, acting reasonably;
 - (vi) a financial close protocol (if applicable) outlining the interest rate setting procedures and model solving procedures for adjusting each Proposed Base Case to incorporate updated interest rates; and
 - (vii) a certificate from an auditor acceptable to the Client Representative in respect of each Proposed Base Case, confirming that an independent audit of the Proposed Base Case has been completed and that:
 - (A) calculations in the Proposed Base Case have been checked and are in all material respects internally consistent and mathematically correct;
 - (B) the Proposed Base Case allows changes in assumptions to correctly flow through to the results;
 - (C) any macros in the Proposed Base Case that govern the calculation of the Proposed Base Case are correct;
 - (D) the input data used in the Proposed Base Case is consistent with all relevant supporting project documentation, formulae or constants;
 - (E) the calculations of any relevant ratios and financial covenants in the Proposed Base Case have been checked and that the Proposed Base Case correctly reflects the definitions contained in the Financing Agreements;
 - (F) the Proposed Base Case correctly incorporates the relevant structural features in the Debt Financiers' term sheets such as reserve accounts, lock up provisions, default provisions and amortisation;
 - (G) the accounting assumptions and outputs from the Proposed Base Case are in accordance with the generally accepted accounting principles in Australia; and
 - (H) the income taxation assumptions and outputs from the Proposed Base Case are in accordance with the relevant income tax legislation.
- (b) **(State's review)** The Operator must:

- (i) allow the Client Representative 15 Business Days to either approve or submit proposed amendments to each Proposed Base Case, financial close protocol and revised Payment Schedule (as applicable); and
- (ii) if required by the Client Representative:
 - (A) make available, at the cost and expense of the Operator, the appropriate personnel to explain; or
 - (B) provide information, in such form as the Client Representative reasonably requests, in relation to,

the relevant Proposed Base Cases, financial close protocol and revised Payment Schedule (as applicable).
- (c) **(Approval)** The Client Representative must, within 15 Business Days of receipt of each Proposed Base Case, financial close protocol and the revised Payment Schedule (as applicable), either approve or submit proposed amendments to the Proposed Base Case, financial close protocol and the revised Payment Schedule.
- (d) **(Adjustment of Base Case and Payment Schedule)** If the Client Representative approves a Proposed Base Case, financial close protocol and the revised Payment Schedule submitted by the Operator in accordance with clause 76(a), then:
 - (i) the Proposed Base Case as adjusted in accordance with the financial close protocol will be the relevant Base Case for the purposes of this document;
 - (ii) if the Proposed Base Case was adjusted in accordance with the financial close protocol, the Operator must submit to the Client Representative a certificate from an auditor acceptable to the Client Representative confirming that an independent audit of the relevant Base Case has been completed in accordance with the requirements of clause 76(a)(vii); and
 - (iii) the Payment Schedule will be replaced with the revised Payment Schedule submitted in accordance with clause 76(a) as adjusted in accordance with the financial close protocol.
- (e) **(Consultation in good faith)** If the Client Representative submits amendments to a Proposed Base Case, financial close protocol or revised Payment Schedule in accordance with clause 76(a), then:
 - (i) the Operator and the Client Representative must consult in good faith with respect to, and use their reasonable endeavours to agree on, the amendments required to the Proposed Base Case, financial close protocol or revised Payment Schedule; and
 - (ii) if, and to the extent that, those amendments are agreed, the revised Proposed Base Case and revised Payment Schedule agreed by the Client Representative and the Operator and amended in accordance with the financial close protocol (if applicable) will be the relevant Base Case or the Payment Schedule for the purposes of this document and clause 76(d)(ii) will apply.
- (f) **(Dispute resolution)** If the Client Representative and the Operator do not agree on the amendments required to be made to a Proposed Base Case, financial close protocol or revised Payment Schedule within 10 Business Days after the commencement of the consultation pursuant to clause 76(e) or if no consultation has been held within 12 Business Days after the date when the Client Representative submitted amendments to

the Proposed Base Case, financial close protocol or revised Payment Schedule in accordance with clause 76(c), then:

- (i) the Client Representative and the Operator must refer the dispute for resolution by expert determination in accordance with clause 87; and
- (ii) the Base Case or the new Payment Schedule, as determined under clause 87, will be the relevant Base Case and/or the Payment Schedule for the purposes of this document and clause 76(d)(ii) will apply.
- (g) **(No duty to review)** The Operator acknowledges and agrees that the Client Representative's review of, comment on, rejection of, or direction in respect of a Base Case, the Payment Schedule, financial close protocol, a Proposed Base Case and/or the revised Payment Schedule is solely for the benefit of the State for the purpose of monitoring the performance of the Operator, and the State does not assume any duty of care or responsibility to ascertain errors, omissions, defects or non-compliance with this document, and no action or inaction on the part of the Client Representative will entitle the Operator to make any Claim or in any way relieve, alter, limit or change the Operator's obligations and liabilities to the State under the Project Documents.
- (h) **(Amendments to Base Cases)** Other than as expressly permitted under this document, no Base Case may be adjusted, varied or revised after the date of this document without the prior written consent of the State.

77. Operator Event of Default

77.1 Notice of Default by the State

- (a) Without prejudice to any other right which the State may have, under this document or at Law, if a breach by the Operator of an obligation under this document or any Project Document (other than in respect of a Failure) occurs which is not an Operator Event of Default, the Client Representative may issue the Operator a notice in writing stating that such breach has occurred, identifying details of the breach and requiring the Operator to cure the breach within 20 Business Days after the Operator receives that Notice.
- (b) The Operator must comply with any notice issued by the Client Representative pursuant to clause 77.1(a).

77.2 Operator Events of Default

Each of the following events is an Operator Event of Default:

- (a) the Operator fails to procure a Hospital Licence within 3 months of the Date of Technical Completion;
- (b) the occurrence of three or more breaches by the Operator of the same obligation, or five or more breaches by the Operator of similar obligations, under this document or any Project Document (other than in respect of a Failure) in any 12 month period, of which the Client Representative has given notice to the Operator pursuant to clause 77.1(a);
- (c) as a result of Failures, the Operator accumulates more than Failure Points in any rolling three month period (provided that if any Operator Event of Default occurs under this paragraph (c) then, for the purposes of this paragraph (c) only, the Operator's accumulated Failures and Failure Points will be deemed to reset to zero from the end of the period to which the relevant Default Notice relates);
- (d) any Consent:

- (i) (including Accreditation but excluding the Hospital Licence) required for the provision of the Clinical Services by the Operator is wholly or partially cancelled, revoked, suspended or otherwise discontinued, other than as a result of a renewal in the ordinary course of business; or
 - (ii) to which subparagraph (i) does not apply (excluding the Hospital Licence) and which is required for the provision of the Services by the Operator, or the performance by the Operator of any other obligation under any Project Document, is wholly or partially cancelled, revoked, suspended or otherwise discontinued, other than as a result of a renewal in the ordinary course of business, and is not reinstated within 10 Business Days either in full or otherwise to the reasonable satisfaction of the State;
- (e) a representation or warranty given by the Operator or the Parent Company in any Project Document to which the State is a party proves to be untrue and the effect of this is that circumstances exist which have a Material Adverse Effect;
 - (f) there is fraud, collusive, misleading or deceptive conduct on the part of the Operator or a Subcontractor in the performance of the Project or any part of it;
 - (g) any breach of clause 77.1(b) by the Operator or (to the extent it has a Material Adverse Effect) any breach by the Operator of a material obligation under any other Project Document (other than a Failure);
 - (h) there is a cessation of or a threat to cease, or it becomes unlawful for the Operator or the Parent Company to continue, the provision of the Services (other than as a result of any event for which the Operator is expressly entitled to suspension of performance in accordance with this document);
 - (i) at any time if a direction under section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth), or an investigation under, or taken to be under, the *Australian Securities and Investments Commission Act 2001* (Cth) in relation to the Operator or a Material Subcontractor results in the Australian Securities and Investments Commission forming an opinion, and publishing either an interim or final report to the effect that:
 - (i) a serious contravention of the Corporations Act relating to the Operator or a Material Subcontractor has occurred;
 - (ii) a breach of applicable Law involving management, fraud or dishonesty relating to the Operator or relevant Material Subcontractor has occurred; or
 - (iii) action should be taken or proceedings commenced in relation to the issue of financial products, fraud or other serious misconduct to which the investigation related;
 - (j) the Operator fails to regularly and diligently progress the Development Activities as required under clause 23.1;
 - (k) the Independent Verifier, on a date which is no more than 12 months prior to the Date for Operational Readiness, issues a certificate under clause 23.3(a) and the Operator fails to prepare, submit or comply with a Corrective Action Plan in respect of that delay in accordance with clause 23.6;
 - (l) at any time during the Development Phase, the Operator fails to prepare, submit and comply with a Corrective Action Plan in accordance with clause 23.6 (provided that the preparation of a revised Corrective Action Plan by the Operator pursuant to clause 23.6(g)

will not, by itself, be treated as a rectification of an Operator Event of Default under this clause 77.2(1));

- (m) the obligation of a Debt Financier or Equity Investor to provide funding under the Financing Agreements is cancelled due to an event of default under a Financing Agreement, or a Debt Financier or Equity Investor fails (in whole or in part) to provide funding under the Financing Agreements;
- (n) an Insolvency Event occurs in relation to:
 - (i) Operator B;
 - (ii) the Construction Contractor or the Construction Contractor Guarantor prior to the Date of Operational Readiness; or
 - (iii) any other Key Subcontractor (other than the Parent Company or the Operator Holding Company),and:
 - (iv) Operator B is not replaced within 15 Business Days by a party acceptable to the State; or
 - (v) the Construction Contractor, Construction Contractor Guarantor or Key Subcontractor (as applicable) is not replaced within 90 days by a party which:
 - (A) is reputable, solvent and has the resources and experience to perform its obligations under the relevant Key Subcontract; and
 - (B) complies with clauses 58.2 to 58.6 (inclusive);
- (o) an Insolvency Event occurs in relation to the Construction Contractor or the Construction Contractor Guarantor between the Date of Operational Readiness and the later of the first anniversary of that date and the date on which the Defects Liability Bond is returned by the Operator to the Construction Contractor, and within 90 days of the occurrence of the Insolvency Event the Operator fails to:
 - (i) exercise any rights it has to make a demand under the Defects Liability Bond; and
 - (ii) comply with the requirements of clause 46;
- (p) a Change in Management of the Operator or the Parent Company occurs and as a result the Operator or Parent Company (as applicable) no longer has the same or better management skills, experience and capacity available to it as it had prior to the Change in Management, provided that where a Change in Management of the Operator or the Parent Company occurs due to the injury, illness or death of a person, the termination of that person's employment or their resignation or where the person has committed a breach of any express or implied term of its contract of employment which would warrant termination, such change will not be an Operator Event of Default if the relevant person is replaced within a reasonable time by a person with the same or better management skills, appropriate experience and capacity as the person being replaced;
- (q) the Operator fails to comply with clauses 52.11(f) and 52.11(g) and the State (acting reasonably) is able to demonstrate that that failure is leading to additional Public Patients presenting at the NBH or other hospitals within the NSLHD;
- (r) the Operator enters into a Refinancing for which the State's consent is required under clause 70.4 without the State's consent; and

- (s) a 'Car Park Operator Event of Default' (as defined in the Car Park Management Deed) occurs during the Operating Term and either:
 - (i) the Operator does not remedy, or procure the remedy of, that Car Park Operator Event of Default within 20 Business Days of receipt by the Operator of a written notice from the State; or
 - (ii) the Car Park Operator is not replaced within 20 Business Days of receipt by the Operator of a written notice from the State, by the Operator or another party, provided that in each case the Operator or other Party (as applicable):
 - (A) must enter into an agreement with the State and, if applicable, the Operator, on the same terms as set out in the Car Park Management Deed; and
 - (B) is reputable, solvent and has the resources and experience to perform its obligations under such replacement Car Park Management Deed,
- provided in each case that during any such period within which a remedy or replacement is being pursued, the Car Park must remain available for use in accordance with the Car Park Management Deed unless it is actually or practically impossible to appropriately do so.

77.2A No Operator Event of Default following loss or damage to Private Patient Portion

Notwithstanding any other provision in this document, an Operator Event of Default will not be taken to have occurred after the Date of Operational Readiness if:

- (a) the circumstance which would otherwise have constituted that Operator Event of Default (but for this clause 77.2A) arose as a consequence of loss or damage caused to the Private Patient Portion; and
- (b) such loss or damage was not caused by an act or omission of, or otherwise in connection with a breach, by the Operator, of its obligations under this document.

77.3 Default Notice

If an Operator Event of Default occurs, the Client Representative may give the Operator a notice in writing (the **Default Notice**):

- (a) stating that it is a notice under this clause 77.3; and
- (b) specifying the nature of the Operator Event of Default.

77.4 Cure Plan

- (a) If:
 - (i) a Default Notice has been given; and
 - (ii) the Operator Event of Default is capable of being Remedied,
- the Operator must commence, and continue, to diligently pursue a Remedy in respect of the Operator Event of Default and must, within 10 Business Days after service of the Default Notice:
- (iii) Remedy the Operator Event of Default; or
 - (iv) prepare and submit to the State a Draft Cure Plan.

- (b) Within 10 Business Days after service of the Draft Cure Plan, the State must either:
 - (i) approve the Draft Cure Plan, by notifying the Operator; or
 - (ii) reject the Draft Cure Plan by notifying the Operator and providing reasons to the Operator for its rejection.
- (c) If the State approves a Draft Cure Plan pursuant to clause 77.4(b)(i):
 - (i) subject to clause 77.5, the period of time in the Approved Cure Plan to Remedy the Operator Event of Default is the cure period (the **Applicable Cure Period**); and
 - (ii) the Operator must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remedy of the Operator Event of Default) and Remedy the Operator Event of Default within the Applicable Cure Period.
- (d) If the State rejects a Draft Cure Plan pursuant to clause 77.4(b)(ii), the Operator, in consultation in good faith with the State, must amend the Draft Cure Plan to meet the State's reasonable requirements and submit the amended Draft Cure Plan to the State for its approval within five Business Days of the State notifying the Operator of the rejection under clause 77.4(b)(ii), in which case this clause 77.4 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 77.4(a).
- (e) The parties acknowledge and agree that an Applicable Cure Period will not take into account any period of time in which the performance of the relevant obligations by the Operator is suspended by operation of clauses 60.1, 61, 62, 64.7, 69.3 or Schedule 8.

77.5 Extension of Applicable Cure Period

- (a) The Operator may, no later than five Business Days before the expiry of the Applicable Cure Period specified in clause 77.4(c)(i), provide evidence why, notwithstanding diligent pursuit, it has been unable to Remedy the Operator Event of Default in accordance with the Approved Cure Plan to the reasonable satisfaction of the State, and may request, by providing the State with written notice, a single extension to that Applicable Cure Period.
- (b) If the State is reasonably satisfied with such evidence, it must not unreasonably refuse to grant that extension to the Applicable Cure Period for such period as the State considers is reasonably required to implement the Approved Cure Plan, provided that the State is not required to grant more than one extension to an Applicable Cure Period.

77.6 Prevention Plan

- (a) If:
 - (i) a Default Notice has been given; and
 - (ii) the Operator Event of Default is not capable of being Remedied,the Operator must, within 10 Business Days after service of the Default Notice prepare and submit to the State a Draft Prevention Plan.
- (b) Within 10 Business Days after receipt of the Draft Prevention Plan, the State must either:
 - (i) approve the Draft Prevention Plan by notifying the Operator; or
 - (ii) reject the Draft Prevention Plan by notifying the Operator and providing reasons to the Operator for its rejection.

- (c) If the State approves a Draft Prevention Plan pursuant to clause 77.6(b)(i) (the **Approved Prevention Plan**), the Operator must comply with and implement the Approved Prevention Plan.
- (d) If the State rejects a Draft Prevention Plan pursuant to clause 77.6(b)(ii), the Operator, in consultation in good faith with the State, must amend the Draft Prevention Plan to meet the State's reasonable requirements and submit the amended Draft Prevention Plan to the State for its approval within 5 Business Days of the State notifying the Operator of the rejection under clause 77.6(b)(ii), in which case this clause 77.6 will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 77.6(a).

77.7 Remedies for Operator Events of Default

If a Default Notice has been given and the Operator fails to:

- (a) if the Operator Event of Default is capable of being Remedied:
 - (i) Remedy the Operator Event of Default, or submit a Draft Cure Plan, in accordance with clause 77.4(a);
 - (ii) if the State rejects a Draft Cure Plan pursuant to clause 77.4(b)(ii) amend the Draft Cure Plan to meet the State's requirements and submit the amended Draft Cure Plan in accordance with clause 77.4(d);
 - (iii) comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remedy of the Operator Event of Default); or
- (b) if the Operator Event of Default is not capable of being Remedied:
 - (i) submit a Draft Prevention Plan in accordance with clause 77.6(a);
 - (ii) if the State rejects a Draft Prevention Plan pursuant to clause 77.6(b)(ii), amend the Draft Prevention Plan to meet the State's requirements and submit the amended Draft Prevention Plan in accordance with clause 77.6(d);
 - (iii) comply with and implement the Approved Prevention Plan,

a Step-In Event and an Operator Termination Event, will be deemed to have occurred.

77.8 Operator to continue to perform

Notwithstanding the issue of a Default Notice, the Operator must continue to perform:

- (a) the Services; and
- (b) all of its other obligations under any Project Document,

to the extent that the performance of those obligations is not prevented by the Operator complying with an Approved Cure Plan or Approved Prevention Plan.

77.9 No prejudice to other remedies

Nothing in any one or more of clauses 77 to 81 (inclusive) prejudices or limits the State from:

- (a) exercising its other rights, whether set out in those clauses or under any other provision of this document, any other Project Document or otherwise according to Law, and whether against the Operator or otherwise, in relation to the Operator Event of Default or any other default by the Operator, including the State's:
 - (i) rights pursuant to any security held by the State;
 - (ii) Step-In Rights under clause 60.3; or
 - (iii) rights to terminate this document under clause 78; or

- (b) suing the Operator, or exercising any other rights against the Operator, whether under this document or otherwise according to Law, in relation to an Operator Event of Default or any other default by the Operator.

78. Termination of this document

78.1 Operator Default Termination

The State will be entitled to terminate this document by notice in writing to the Operator (subject to clause 78.2) if:

- (a) the Operator fails to submit the Stage 2 Development Application to the Development Consent Authority within the period specified in clause 18.2;
- (b) Operational Readiness has not occurred by the Sunset Date;
- (c) the Operator abandons the Project or displays an intention to permanently abandon the provision of the Project Works, (at any time prior to the Public Patient Portion Expiration Date) a material part of any of the Services or (at any time prior to the Private Patient Portion Expiration Date) the operation of the Facility;
- (d) at any time, an Insolvency Event occurs in relation to the Operator or the Parent Company or the Operator Holding Company (whether or not the Operator is otherwise in breach of this document);
- (e) following Financial Close, the Operator fails to commence within 60 Business Days the performance of the Operator's Activities;
- (f) the Parent Company Guarantee is or becomes void, voidable, illegal, invalid or unenforceable for any reason and is not replaced within 10 Business Days or the Parent Company breaches a material term of the Parent Company Guarantee;
- (g) the Operator Holding Company Guarantee is or becomes void, voidable, illegal, invalid or unenforceable for any reason and is not replaced within 10 Business Days or the Operator Holding Company breaches a material term of the Operator Holding Company Guarantee;
- (h) an Operator Termination Event has occurred pursuant to clause 77.7;
- (i) the Hospital Licence is cancelled, revoked, suspended or otherwise discontinued;
- (j) the Operator has not procured and provided to the State a Bond required under this document or required to be replaced under this document:
 - (i) within the time period required under this document; or
 - (ii) which satisfies the requirements of clause 12.7,
and fails to do so within 10 Business Days after receipt by the Operator of a written notice from the State directing the Operator to do so;
- (k) the Operator has not effected and maintained (or caused to be effected or maintained) the Project Insurances it is required to effect and maintain pursuant to this document (subject to clause 75), and fails to do so within 10 Business Days after receipt by the Operator of a written notice from the State directing the Operator to do so;
- (l) an Illegality Event occurs;
- (m) the Operator breaches its obligations under clause 86;

- (n) the State forms the view (acting reasonably) that there are no reasonable requirements that can be met by the Operator to overcome the consequences of, or compensate the State for an Operator Event of Default;
- (o) as a result of Failures, the Operator accumulates more than Failure Points in any five Operating Months within a rolling six month period;
- (p) following two or more Operator Events of Default referred to in clause 77.2(c) occur in any rolling three year period, (whether or not they have been Remedied by the Operator or another person), a Default Notice is issued in respect of a further occurrence during that period of the Operator Event of Default referred to in clause 77.2(c));
- (q) a 'Car Park Operator Termination Event' (as defined in the Car Park Management Deed) occurs during the Operating Term and the Car Park Operator is not replaced within 60 Business Days of receipt by the Operator of a written notice from the State, by the Operator or another party, provided that in each case the Operator or other party (as applicable):
 - (i) must enter into an agreement with the State and, if applicable, the Operator, on the same terms as set out in the Car Park Management Deed; and
 - (ii) is reputable, solvent and has the resources and experience to perform its obligations under such replacement Car Park Management Deed; or
- (r) the occurrence of a breach by the Operator of an obligation under a Project Document, which causes (whether directly or indirectly) the total loss of the Project Works or use or occupation of the Facility, or a substantial part of the Project Works or use or occupation of the Facility,

each event being an Operator Termination Event.

78.1A No Operator Default Termination following loss or damage to Private Patient Portion

Notwithstanding any other provision in this document, an Operator Termination Event will not be taken to have occurred after the Date of Operational Readiness if:

- (a) the circumstance which would otherwise have constituted that Operator Termination Event (but for this clause 78.1A) arose as a consequence of loss or damage caused to the Private Patient Portion; and
- (b) such loss or damage was not caused by an act or omission of, or otherwise in connection with a breach, by the Operator, of its obligations under this document.

78.2 Termination by the State – Operator Termination Event

- (a) At any time while an Operator Termination Event is subsisting the State may terminate this document by notice (**Termination Notice**) to the Operator stating:
 - (i) the Operator Termination Event in respect of which the notice is given; and
 - (ii) that the State is terminating this document under this clause 78.2.
- (b) This document will terminate on the date falling 20 Business Days after the date on which the Operator receives a Termination Notice (or such later date as is specified in the Termination Notice).

78.3 Operator Notice of Operator Termination Event

Without limiting the State's rights or the Operator's other obligations under this document, the Operator must notify the Client Representative immediately upon becoming aware of an Operator

Termination Event or an event or occurrence which, with the giving of notice, or lapse of time, would, or is likely to, become an Operator Termination Event.

78.4 State action following Operator Termination Event

- (a) Without limiting the State's other rights and remedies under this document, where an Operator Termination Event has occurred and is subsisting, the State may take any action it considers appropriate or necessary to overcome the effects of the Operator Termination Event or preserve the Project, which may include the State's representatives entering and remaining on or in and take possession of the Site, the Extra Land or the Project Works and the Facility (including all FF&E) (as applicable).
- (b) In taking action under this clause 78.4:
 - (i) the amount of any costs or expenses incurred by the State will be a debt due and payable upon demand by the Operator to the State; and
 - (ii) the State will have the benefit of the releases and indemnities set out in section 7 of Schedule 8.

78.5 Voluntary Termination

- (a) The State may elect, at any time and in its sole and absolute discretion, to terminate this document by prior written notice (**Voluntary Termination Notice**) to the Operator stating that the State is terminating this document under this clause 78.5.
- (b) If the State issues a Voluntary Termination Notice, this document will terminate on the date falling 20 Business Days after the date of service of a Voluntary Termination Notice or such later date as specified in the Voluntary Termination Notice.
- (c) Without prejudice to its rights under paragraph (a), the State may, at any time after the Pre State Capital Payment Phase and in its sole and absolute discretion, either terminate only the Operator's rights and obligations in respect of the Private Patient Portion or only the Operator's rights and obligations in respect of the State Asset.
- (d) If the State issues a notice under paragraph (c), the Operator's rights and obligations in respect of the Private Patient Portion or State Asset will terminate on the date falling 20 Business Days after the date of service of that notice or such later date as specified in that notice, and this document and the other Project Documents will remain on foot in all other respects.

78.6 Termination for Force Majeure Event

The relevant party identified in clause 69.9 may terminate this document pursuant to clause 69.9.

78.7 Termination for Uninsurable Risk

The State may terminate this document pursuant to clause 75.3.

78.8 Determination of Early Handover Date

Where this document is terminated during the Operating Term, the Early Handover Date will be:

- (a) in respect of a termination pursuant to:
 - (i) clause 78.2; or
 - (ii) clause 78.5 in circumstances where the State elects to terminate the Operator's rights and entitlements in respect of the State Asset,
- the 20th Business Day after the date of service to the Operator of a Termination Notice, Voluntary Termination Notice or notice under clause 78.5(c) (as applicable) (or such later

- date as is specified in the Termination Notice, Voluntary Termination Notice or notice under clause 78.5(c) (as applicable));
- (b) in respect of a termination pursuant to clause 78.6, subject to any suspension of the Operator's right to termination pursuant to clause 69.10, the 20th Business Day after the date of service of a notice of termination under clause 69.9 or after the date of service of the notice identified in clause 69.10(b)(ii) (or such later date as is specified in the relevant notice); or
 - (c) in respect of a termination pursuant to clause 78.7, the 10th Business Day after the date of service to the Operator of a notice of termination under clause 75.3(c)(ii)(B).

79. Consequences of Termination

Notwithstanding whether this document is terminated in accordance with clauses 78.2, 78.5, 78.6 or 78.7, the consequences of such termination of this document are set out in:

- (a) clause 80, if termination occurs during the Development Phase; or
- (b) clause 81, if termination occurs during the Operating Term.

80. Termination during the Development Phase

80.1 Activities upon termination

- (a) Without limiting any other rights of the parties under this document, if this document is terminated for any reason whatsoever during the Development Phase, the Operator agrees that the State is free to continue with the Project Works on its own or with a nominated third party, and the Operator must do all things and execute all further documents necessary to ensure that the State is free to continue with such works, in the manner set out in this clause 80 within the time period prescribed by the State.
- (b) Subject to paragraph (c), if this document is terminated during the Pre State Capital Payment Phase under clause 78.2 by reason of an Operator Termination Event, the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number), in each case in respect of the Project Works in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase.
- (c) If this document is terminated during the Pre State Capital Payment Phase under clause 78.2 by reason of an Operator Termination Event under clause 78.1(b) which was solely and directly the result of a Force Majeure Event, the Operator will pay to the State the Force Majeure Termination Payment (if a negative number) or the State will pay to the Operator the Force Majeure Termination Payment (if a positive number), in each case in respect of the Project Works in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase.
- (d) If this document is terminated during the Pre State Capital Payment Phase under clause 78.5, the Operator will pay to the State the Voluntary Termination Payment (if a negative number) or the State will pay to the Operator the Voluntary Termination Payment (if a positive number), in each case in respect of the Project Works in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase.
- (e) If this document is terminated under clauses 78.6 or 78.7, the Operator will pay to the State the Force Majeure Termination Payment (if a negative number) or the State will pay to the Operator the Force Majeure Termination Payment (if a positive number), in each

case in respect of the Project Works in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase.

- (f) Other than as specified in paragraphs (b), (c), (d) and (e), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State.
- (g) Notwithstanding the termination of this document, the Operator must not do, or omit to do, anything to prevent the State from continuing with the Project Works.
- (h) Upon termination of this document by the State, without limiting any of the State's rights under this document, the State may, at no cost, use, or make available to others to use any of the work, documentation or information (however recorded) developed by the Operator under this document for completing the Project Works, providing the Services, operating and maintaining the Facility and for any future expansion of the Facility, and the Operator must provide any such documentation or information to the State within 10 Business Days of the State's request for it to do so and on delivery all right, title and interest in such documentation and information (other than Intellectual Property Rights) is transferred and vests in the State.
- (i) The Operator's obligations under this clause 80 include:
 - (i) doing all things necessary to enable the State or its nominated third party (and its or their Subcontractors):
 - (A) to receive the benefit of any Subcontracts that the Operator has entered into in connection with the Project Works;
 - (B) to progress, use, reproduce, communicate, adapt and modify the Design Documentation;
 - (C) to progress and complete the procurement of any Subcontract;
 - (D) to own, or have a licence to use all Intellectual Property Rights and the Operator's and/or the Parent Company's Proprietary Material in relation to the Project Works, or to be granted an irrevocable, perpetual, royalty-free, non-exclusive, transferable licence (including the right to sub-license) to use, reproduce, communicate, adapt and modify the Intellectual Property Rights of the Operator's and/or the Parent Company's Proprietary Material in relation to the Project Works; and
 - (E) to ensure a smooth transition of the Project Works, providing the Services, operating and maintaining the Facility to the State or its nominated third party and its or their Subcontractors);
 - (ii) making employees of any of the Operator or the Parent Company, and to the extent it is able to do so having used its best endeavours, any Subcontractor, available to the State or the State's nominated third party on terms and conditions as may be agreed between the Operator and the State (acting reasonably and without undue delay);
 - (iii) making available to the State or the State's nominated third party (and its or their Subcontractors), all tools, plant and equipment, data, software, vehicles, facilities and information which have been directly or indirectly used by or made available to the Operator in the performance of its obligations under any Project Document;
 - (iv) the Operator assigning, novating or transferring to the State or the State's nominated third party the benefit of any Subcontract, Consent it holds (which is

capable of transfer) and any other contract, arrangement, warranty or understanding to which the Operator is a party and which, in the opinion of the State, is necessary or desirable for the Project Works, including facilitating any discussions between the Subcontractors, person who issued that Consent and/or person with whom it has that contract, arrangement, warranty or understanding (as applicable) and the State or the State's nominated third party; and

- (v) if the Operator is required to continue performing any of its obligations under any Project Document, continuing to do this in accordance with the Project Plans (or, if the State's nominated third party or the State has prepared updated or replacement plans, those plans as notified by the State to the Operator) and the relevant Project Document.

80.2 Other consequences

If this document is terminated under clause 78.2 by reason of an Operator Termination Event:

- (a) the Operator agrees that the State may bar the Operator and any Consortium Entity, and any of their respective Related Bodies Corporate, from participating in any other tender or procurement process relating to the Project Works; and
- (b) the State may deduct amounts owing (or which may become owing) from the Operator to the State from a Bond in favour of the State prior to releasing the Bond.

80.3 General saving

Any expiration or termination of this document does not affect any rights of the parties which may have accrued before the date of termination.

80.4 Power of attorney

The Operator irrevocably appoints the State and its nominees as notified from time to time jointly and severally as the Operator's attorney with full power and authority to carry out the Operator's obligations in accordance with this clause 80 to the extent that the Operator fails to comply with its obligations in accordance with this clause 80.

80.5 Assistance

The Operator must assist the State in the exercise of the State's rights in accordance with this clause 80.

80.6 No obligation to employ

The Operator acknowledges and agrees that, where this document is terminated:

- (a) the State will not be obliged to employ any employees of the Operator or any Consortium Entity or Key Subcontractor; and
- (b) the employment of any employees of the Operator or any Consortium Entity or any Key Subcontractor, and the making of any payments to these employees, continues to be the sole responsibility of the Operator and the Operator is barred from making any Claim against the State or a State Related Party in respect of these matters (except to the extent provided otherwise in the Termination Payment Schedule).

80.7 Novation of liabilities to the State

- (a) If:
 - (i) this document is terminated; and
 - (ii) as at the date of termination, the Operator or the Borrower has any outstanding Financial Indebtedness,

- (b) the State may elect to assume all of the Operator's or Borrower's rights and liabilities under the Financing Agreements.
- (c) If the State elects to assume all of the Operator's rights and liabilities under paragraph (a):
 - (i) the Operator must ensure that such rights and liabilities are novated to the State on the date of termination of this document (but subject to subparagraph (v));
 - (ii) the State agrees to meet all further obligations to the Debt Financiers on the same terms and conditions as contained in the Financing Agreements;
 - (iii) the State's assumption of the Operator's or Borrower's rights and liabilities will be supported by a guarantee from the NSW Government on terms no less favourable than those contained in the PAFA Act Guarantee;
 - (iv) the amount of the Termination Payment which the State would otherwise be obliged to pay will be reduced by the amount of the liabilities assumed by the State under those Financing Agreements; and
 - (v) the State must pay the Termination Payment to the Operator on the date or prior to the date on which the novation becomes effective.
- (d) For the avoidance of doubt, the parties agree that in the circumstances contemplated in this clause 80.7, the Termination Payment which the State would otherwise be obliged to pay to the Operator will also be reduced by the amount of any costs of terminating the Financing Agreements which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation.
- (e) The Operator must ensure that it and the Borrower are permitted, under the terms of all of the Financing Agreements, to procure the novation of their rights and obligations under those Financing Agreements pursuant to this clause 80.7.

81. Termination during the Operating Term

81.1 Activities upon termination following an Operator Termination Event

If this document is terminated during the Operating Term and that termination is in accordance with clause 78.2, then the State may elect to:

- (a) terminate the Project (including in respect of all arrangements concerning the Private Patient Portion Works and the Private Patient Portion), in which case:
 - (i) the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number), in each case in respect of the entire Project in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase or the Post State Capital Payment Phase (as applicable);
 - (ii) other than as specified in subparagraph (i), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State;
 - (iii) the State Project Documents will each terminate, other than:
 - (A) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and

- (B) the Project Security in respect of amounts that the Operator may owe to the State under this document;
 - (iv) all logos, branding and similar marks belonging to or relating to the Operator, an Operator Related Party, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Portion (other than as specified by the State), and make good any damage caused by that removal; and
 - (v) for the avoidance of doubt, the State may resume the control and occupation of the whole of the Facility, and, title to the Private Patient Portion will vest in the State (to the extent that is has not already done so); or
- (b) during the Post State Capital Payment Phase, terminate the Project but allow the Operator to continue to operate the Private Patient Portion, in which case:
- (i) the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number), in each case in respect of the State Asset only in accordance with the Termination Payment Schedule in respect of the Post State Capital Payment Phase;
 - (ii) other than as specified in subparagraph (i), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State;
 - (iii) subject to subparagraph (v) below, the State Project Documents will each terminate, other than:
 - (A) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
 - (B) the Project Security in respect of amounts that the Operator may owe to the State under this document;
 - (iv) the State shall exercise the Early Handover Put Option on the Early Handover Date; and
 - (v) the Project Security will remain in full force and effect, varied to grant security to the State in respect of any residual liability of the Operator under the balance of the Project Documents (and the Operator agrees to do all things necessary to vary each Project Security accordingly, or to provide appropriate replacement securities if any Project Security is unable to be so varied).

81.2 Activities upon Voluntary Termination

- (a) If this document is terminated during the Operating Term and that termination is:
- (i) in accordance with clauses 78.5(a); and
 - (ii) in respect of the Project (including in respect of all arrangements concerning the Private Patient Portion Works and the Private Patient Portion),
- then:
- (iii) the State will pay to the Operator the Voluntary Termination Payment in respect of the Project in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase or the Post State Capital Payment Phase (as applicable);

- (iv) other than as specified in subparagraph (iii), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State;
 - (v) the Project Documents will each terminate, other than:
 - (A) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
 - (B) the Project Security in respect of amounts that the Operator may owe to the State under this document;
 - (vi) the Operator must ensure that all logos, branding and similar marks belonging to or relating to the Operator, an Operator Related Party, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Portion (other than as specified by the State), and make good any damage caused by that removal; and
 - (vii) for the avoidance of doubt, the State may resume the control and occupation of the whole of the Facility, and title to the Private Patient Portion will vest in the State (to the extent that is has not already done so).
- (b) If this document is terminated during the Post State Capital Payment Phase and:
- (i) that termination is in accordance with 78.5(a); and
 - (ii) the State elects, in accordance with clause 78.5(c), to terminate the Project but allow the Operator to continue to operate the Private Patient Portion,
- then:
- (iii) the State will pay to the Operator the Voluntary Termination Payment in respect of the State Asset in accordance with the Termination Payment Schedule in respect of the Post State Capital Payment Phase;
 - (iv) other than as specified in subparagraph (iii), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State;
 - (v) subject to subparagraph (vii), the State Project Documents will each terminate, other than:
 - (A) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
 - (B) the Project Security in respect of amounts that the Operator may owe to the State under this document;
 - (vi) the State shall exercise the Early Handover Put Option on the Early Handover Date; and
 - (vii) the Project Security will remain in full force and effect, varied to grant security to the State in respect of any residual liability of the Operator under the balance of the Project Documents (and the Operator agrees to do all things necessary to vary each Project Security accordingly, or to provide appropriate replacement securities if any Project Security is unable to be so varied).
- (c) If this document is terminated during the Post State Capital Payment Phase and:

- (i) that termination is in accordance with clause 78.5(a); and
 - (ii) the State elects, in accordance with clause 78.5(c), to terminate the Project but allow the Operator to continue to operate the State Asset,
- then:
- (iii) the State must grant the Operator a lease in respect of the State Asset, provided that the term of such lease will be for a period equivalent to the balance of the Term (had this document remained in effect); and
 - (iv) clause 81.6 shall apply in respect of the Private Patient Portion.

81.3 Activities upon termination for Force Majeure or Uninsurable Risk

If this document is terminated during the Operating Term and that termination is in accordance with clauses 78.6 or 78.7, then:

- (a) the whole of the Project (including in respect of all arrangements concerning the Private Patient Portion Works and the Private Patient Portion) terminates;
- (b) the State Project Documents will each terminate, other than:
 - (i) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
 - (ii) the Project Security in respect of amounts that the Operator may owe to the State under this document;
- (c) subject to paragraph (d), and the Termination Payment Schedule, the Operator will pay to the State the Force Majeure Termination Payment (if a negative number) or the State will pay to the Operator the Force Majeure Termination Payment (if a positive number), in each case in accordance with the Termination Payment Schedule in respect of the Pre State Capital Payment Phase or the Post State Capital Payment Phase (as applicable);
- (d) if the Private Patient Portion has been wholly or substantially damaged by the relevant Force Majeure Event, then:
 - (i) no Termination Payment in respect of the Private Patient Portion is payable by the State to the Operator; and
 - (ii) the Operator is not required to demolish and remove the Private Patient Portion;
- (e) other than as specified in subparagraphs (c) and (d), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State; and
- (f) title to the Facility and any other improvements situated on the Site will vest in the State (to the extent that it has not already done so), provided that title to the Private Patient Portion will only pass to the State upon payment of any applicable Termination Payment and the Operator must grant to the State a licence to access, use and otherwise do all things necessary to and within the Private Patient Portion to enable the State to operate the Private Patient Portion as part of the Facility.

81.4 Accrued rights

Except as expressly provided in this document, the termination of this document is without prejudice to the rights, duties and liabilities of either party accrued prior to termination, including any rights, duties and liabilities accrued by either party as a result of the termination of this document. The clauses of this document which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

81.5 Waiver and no Claim

- (a) Subject to paragraph (b), if this document is terminated, the Operator will not be entitled to make a Claim against the State or a State Related Party for any payment of any amount other than for payment of the Termination Payment.
- (b) This clause 81.5 does not affect a Claim for the Monthly Service Payment, in respect of which the Operator will be entitled to an amount based on the Services it actually provided before the Early Handover Date in the applicable Operating Month.

81.6 Termination of Private Patient Portion only

If the rights and entitlements of the Operator in respect of the Private Patient Portion are terminated by the State in accordance with clause 78, then:

- (a) the Operator must vacate the Private Patient Portion at the end of the notice period referred to in clause 78.5(d) and relinquish it to the State in a state of repair and condition which is consistent with the Private Patient Portion Handover Condition;
- (b) the Operator must ensure that all logos, branding and similar marks belonging to or relating to the Operator, an Operator Related Party, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Portion (other than as specified by the State), and make good any damage caused by that removal;
- (c) the State will pay to the Operator the Voluntary Termination Payment in respect of the Private Patient Portion in accordance with the Termination Payment Schedule;
- (d) other than as specified in clause 81.6(c), no Termination Payment or other compensation will be payable by the State to the Operator, or by the Operator to the State; and
- (e) for the avoidance of doubt, this document and the balance of the Project Documents will continue to remain in full force and effect in relation to the whole of the Facility.

81.7 Incomplete Works

- (a) If:
 - (i) the State has directed the Operator to implement a Procurement Proposal in accordance with clause 65.1; and
 - (ii) the works the subject of that Procurement Proposal have not been completed in accordance with the terms of this document (**Incomplete Works**),prior to the Termination Date, then:
 - (iii) the Operator must provide to the State copies of all information and documentation relating to those Incomplete Works; and
 - (iv) without limiting any of the State's rights under this document, the State may, at no cost, use, or make available to others to use any of the Proprietary Materials or any other work, documentation or information developed by the Operator under this document for completing any of the Incomplete Works, and the Operator must provide any such documentation or information to the State within 10 Business Days of the State's request for it to do so.
- (b) The Operator's obligations under clause 81.7(a) include:
 - (i) doing all things necessary to enable the State or its nominated operator:
 - (A) to progress the design documentation in relation to the Incomplete Works;
 - (B) to progress the procurement of any Subcontract;

- (C) to own all Intellectual Property Rights in relation to the Incomplete Works including all associated design documentation or to be granted an irrevocable, perpetual, royalty-free, non-exclusive, transferable licence (including the right to sub-license) to use the Intellectual Property Rights in relation to the Incomplete Works for any purpose in connection with the Project; and
- (D) to ensure a smooth transition to the State or its nominated operator;
- (ii) to the extent reasonably possible, making available to the State or the State's nominated operator, all tools, plant and equipment, data, software, vehicles, facilities and information which have been directly or indirectly used by or made available to the Operator in relation to the Incomplete Works; and
- (iii) the Operator arranging to assign or novate to the State or the State's nominated operator the benefit of any Subcontract and any other contract, arrangement, warranty or understanding relating to the Incomplete Works to which the Operator and/or Parent Company is a party and which, in the opinion of the State, is necessary or desirable for the Project, including facilitating any discussions between the Subcontractors and the State or the State's nominated operator.

82. Early Handover Put Option

82.1 Option to lease

The Operator grants the State the Early Handover Put Option.

82.2 Option duration

The Early Handover Put Option may only be exercised:

- (a) in accordance with clauses 81.1(b)(iv) or 81.2(b)(vi); and
- (b) if each of the following conditions are satisfied on the Early Handover Date or waived by the State:
 - (i) the Operator has complied with any of its obligations under Schedule 22 that it is required to comply with prior to the Early Handover Date;
 - (ii) the State has received evidence satisfactory to it that the Operator is capitalised by equity in an amount not less than of the construction price of the Private Patient Portion Works, contributed to the Operator (either directly or indirectly) by way of ordinary shares or units, or intercompany subordinated debt;
 - (iii) the Operator:
 - (A) holds a Hospital Licence in respect of the Private Patient Portion;
 - (B) has done all things necessary to ensure that the Private Patient Portion is able to, and does, operate to its full capacity in accordance with the Private Patient Portion role delineation as at the date of this document and, without limiting clause 52.11(d), the Compensable Patient Strategy at all times, regardless of the presence of any disaster or emergency situation and any other circumstances; and
 - (C) all amounts due and owing to the State under or otherwise pursuant to the Project Documents have been irrevocably paid in full.

82.3 Exercise of option

In order to exercise the Early Handover Put Option, the State must deliver to the Operator:

- (a) a written notice of exercise of option; and
- (b) two copies of the Post-Operating Term Private Patient Portion Lease executed by the State, which the State and the State's solicitors are authorised to and must complete by inserting:
 - (i) the title details for the Private Patient Portion and the Site;
 - (ii) the day after the Early Handover Date as the commencement date;
 - (iii) the date that is 40 years after the commencement date of the Operating Term Private Patient Portion Lease as the termination date;
 - (iv) the term; and
 - (v) the date of this document in the definition of 'Project Deed'.

82.4 Execution by Operator

Promptly after receiving the Post-Operating Term Private Patient Portion Lease executed by the State under clause 82.3, the Operator must execute the Post-Operating Term Private Patient Portion Lease and return one fully executed version to the State.

82.5 Registration

The State must, as soon as reasonably practicable after receipt of the fully executed Post-Operating Term Private Patient Portion Lease from the Operator, lodge for registration the Post-Operating Term Private Patient Portion Lease together with, if the term of the Post-Operating Term Private Patient Portion Lease exceeds 25 years, a survey plan defining the Private Patient Portion (which shall be prepared, if required, at the cost of the Operator).

82.6 Parties bound

The parties are bound by the Post-Operating Term Private Patient Portion Lease from and including the date of exercise of the Early Handover Put Option, although the Post-Operating Term Private Patient Portion Lease may not have been completed in accordance with clause 82.3(b), a party may not have executed the Post-Operating Term Private Patient Portion Lease or the Post-Operating Term Private Patient Portion Lease may not have been registered.

82.7 Schedule 22 applies

On and from the date the Early Handover Put Option is validly exercised:

- (a) the parties must comply with Schedule 22 and the Shared Portion and Post-Operating Term Strategy; and
- (b) to the extent of any ambiguity, discrepancy or inconsistency between this document, Schedule 22 and the Post-Operating Term Private Patient Portion Lease, the order of priority is as follows:
 - (i) Schedule 22;
 - (ii) the Post-Operating Term Private Patient Portion Lease; and
 - (iii) to the extent it applies during the Private Patient Portion Term in accordance with Schedule 22, the Main Body (as defined in Schedule 22).

83. State inspection

- (a) The Client Representative and/or his or her representatives may carry out or procure the carrying out of an inspection of the Site, the Project Works or the Facility or any part of them, to assess whether the Operator is complying with its obligations under this document.
- (b) When carrying out any inspection, the Client Representative and its representatives must cause the minimum disruption reasonably practicable to the Project Works, the provision of the Services or the operation of the Facility by the Operator, and must comply with the reasonable Site safety and security requirements of the Operator. The Operator must provide reasonable assistance to the Client Representative in carrying out the inspection, including providing access to any systems, registers, manuals, relevant records, plans and programs maintained in relation to the Facility or the Site.
- (c) The cost of any inspection carried out in accordance with this clause 83, except where paragraph (d) applies or an Operator Termination Event has occurred and is continuing, will be borne by the State. The Operator must give the Client Representative any reasonable assistance required by the Client Representative from time to time during the carrying out of any inspection.
- (d) If an inspection shows that the Operator has not complied or is not complying with its obligations under this document, the Client Representative:
 - (i) must notify the Operator of the details of the non-compliance;
 - (ii) must specify a reasonable period within which the Operator must carry out appropriate rectification and/or remedy activities; and
 - (iii) will be entitled to be reimbursed by the Operator for the cost of the inspection and any reasonable administrative costs incurred by the State in relation to the inspection if the inspection shows that the Operator has not complied with, or is not materially complying with, its obligations under this document.
- (e) The Operator must at its own cost carry out such rectification and/or remedy activities within the period specified by the Client Representative, and the Client Representative may carry out or procure the carrying out of an additional inspection to assess compliance with the requirement to carry out such rectification and/or remedy activities.

84. Accounting and audit

84.1 Accounting records

- (a) The Operator must keep at the Public Patient Portion proper books of account and all other financial and financial planning records that would be expected of a prudent and competent person undertaking similar obligations to those the Operator undertakes under the Project Documents.
- (b) Without limiting clause 84.1(a), the Operator must keep and maintain a full record of the design, construction, commissioning, operation, maintenance, refurbishment, financing and other costs incurred in carrying out the Operator's Activities and details of funds held to cover such costs.
- (c) The Operator must:
 - (i) have its accounts audited annually; and

- (ii) ensure that its Key Subcontractors and Key Subcontractor Guarantors have their financial statements audited annually.
- (d) The Operator must ensure the books of account and records of the Operator and the Parent Company in respect of the Public Patient Portion are available to the State and its nominees at all reasonable times during the Term for examination, audit, inspection, transcription and copying.
- (e) Without limiting the Operator's obligations under clauses 81, 91 and 92 or Schedule 22, if this document is terminated, the Operator must give the State access to all books of account and records (including all books of account and records of the Parent Company) necessary for the continued design, construction, commissioning, operation, maintenance and refurbishment of the Facility and the performance of the Operator's Activities.
- (f) The Operator must give the Client Representative access to any books of account or records given to the State by the Operator (including all books of account and records of the Parent Company) for seven years after the date on which they are given.

84.2 Cost to complete information

The Operator must give the State the same information required to be given to any Debt Financier under the Financing Agreements in relation to the cost to complete the Project Works at such times as are required under the Financing Agreements.

84.3 Operation and maintenance costs

Without limiting the Operator's other obligations under this clause 84, the Operator must give the State such information relating to the cost of operating, maintaining and refurbishing the Public Patient Portion and the Shared Portion as the State may request from time to time (including such information held by the Parent Company).

84.4 State audit

- (a) At any time up to six months after the last day of the Term, the Client Representative may give notice to the Operator (**Financial Audit Notice**) requiring an independent audit of any Project revenue, monthly revenue statements, annual financial statements or other financial information of the Operator or the Parent Company provided pursuant to clauses 84.1, 84.2, 84.3 or the Reporting Schedule to be undertaken for the purpose of reviewing any such information and verifying their accuracy, adequacy, suitability, fitness for purpose, correctness and completeness.
- (b) If the Client Representative gives a Financial Audit Notice under this clause 84.4:
 - (i) the Client Representative will appoint, and notify the Operator of, an appropriately trained and qualified person to carry out and complete the audit (the Financial Auditor), at the State's cost and expense, on terms and conditions of appointment determined by the Client Representative; and
 - (ii) the Operator must, within a reasonable period, make its financial statements, other financial reports and accounts and all source information, documentation and data required for the preparation of such annual financial statements or other financial reports, available for audit by the Financial Auditor.
- (c) Upon request by the Financial Auditor, the Operator must:
 - (i) make available to the Financial Auditor an appropriately trained and qualified member of the Operator's or the Parent Company's staff (as relevant) to extract any relevant information from the Operator's or the Parent Company's accounting system (as relevant) for the purposes of the audit; and

- (ii) provide such information, advice and assistance to the Financial Auditor as the Financial Auditor may request.
- (d) If the written report of the Financial Auditor (the **Financial Auditor's Report**) states that any annual financial accounts, or any other financial reports, or any part of them is not accurate, complete and correct, then:
 - (i) the Operator must (or must procure that the Parent Company must):
 - (A) fix the inaccuracy, inadequacy, unsuitability, unfitness for purpose, incorrectness or incompleteness in the affected accounts or data and re-issue the affected accounts or data to the State; and
 - (B) as applicable, promptly take steps to remedy the inaccuracy, inadequacy, unsuitability, unfitness for purpose, incorrectness or incompleteness in its monitoring, measuring and reporting systems;
 - (ii) if the inaccuracy, inadequacy, unsuitability, unfitness for purpose, incorrectness or incompleteness has affected the amount of any Monthly Service Payment or any other amount that has been paid to the Operator, the Client Representative will determine, and notify the Operator of, the amount of the appropriate adjustment to the affected amounts and that amount will be added to or deducted from (as the case may be) the next Monthly Service Payment scheduled after the date of the Client Representative's notice; and
 - (iii) the Operator will reimburse the State the costs of the Financial Auditor in carrying out the audit pursuant to this clause 84.4.

84.5 Audit

- (a) At any time up to six months after the last day of the Term, the State may perform an audit of the Operator's Records and inspect the Facility to identify the Operator's compliance with any of its obligations under this document or the Project Documents.
- (b) Without limiting clause 84.5(a), the parties acknowledge and agree that, notwithstanding any provision of this document to the contrary:
 - (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW)(or any substituted legislation) are not limited or affected by the terms of this document and each party submits to those powers and responsibilities;
 - (ii) the State or the Operator may be the subject of an audit by the Auditor-General pursuant to the *Public Finance and Audit Act 1983* (NSW); and
 - (iii) without limiting clause 84.5(b)(i), the Operator covenants with the State that it will, at its own cost, cooperate and comply with the directions of the Auditor-General and the State in relation to any audit referred to in clause 84.5(b)(ii).

85. Information and confidentiality

85.1 Keep confidential

- (a) Subject to clause 85.2, the parties must keep confidential all matters relating to this document and the Project Documents and must use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating to this document.

- (b) Subject to clause 85.2, the Operator must not, and must ensure that the Personnel do not, make any public disclosures, announcements or statements in relation to the Project without the State's prior consent (which will not be unreasonably withheld).
- (c) The parties acknowledge and agree that the Commercially Sensitive Information is of a confidential nature and will be received, supplied and communicated in circumstances of confidence and on a commercial-in-confidence basis.
- (d) The Operator:
 - (i) must not, and must ensure that the Personnel do not, disclose any personal, confidentiality or other information of Patients (including Medical Records) or their Consumers; and
 - (ii) must otherwise maintain the confidentiality of all Medical Records and other information of Patients in accordance with the Hospitals Act, the Privacy Legislation and all other applicable Law.

85.2 Permitted disclosure

Clause 85.1 will not apply to:

- (a) the disclosure by the State of any information that is not Commercially Sensitive Information;
- (b) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party;
- (c) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of breach of clause 85.1;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction), including in accordance with the GIPA Act;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any disclosure of information to any prospective permitted assigns, prospective investors in, prospective shareholders of, or prospective debt financiers of the Operator or the Borrower, in each case to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any disclosure by the Client Representative of information relating to the design, construction, operation and maintenance of the 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, provided that the exclusion in this clause 85.2(g) does not apply to:
 - (i) the Parent Company's Proprietary Material; or
 - (ii) any information which is commercially sensitive in that it has a unique characteristic to the Operator or 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 department, office or agency of the NSW Government including, for the avoidance of doubt, the Licensing Authority;

- (i) any disclosure of information in connection with the Project by the State (including Commercially Sensitive Information), provided the information is marked as confidential, the State uses reasonable endeavours to inform the recipient that the relevant information is confidential, and such disclosure is:
 - (i) as authorised in writing by the Operator;
 - (ii) to any Minister;
 - (iii) in accordance with all Laws;
 - (iv) by the Minister for Health, the Premier of New South Wales, the Treasurer, the NSW Ministry of Health and Aging of New South Wales (including the Secretary of Health or any chief executive of the Department of Health and Aging of New South Wales) or NSW Treasury in the performance of their functions or the discharge of their duties, including in responding to any questions, making a public statement, or releasing information in relation to a matter of public interest;
 - (v) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the State; and
 - (vi) in accordance with the *Ombudsman Act 1976* (Cth);
- (j) any disclosure by the Client Representative of any document relating to this document and which the Operator or the Subcontractor, as the case may be, (acting reasonably) has agreed with the Client Representative contains no Commercially Sensitive Information;
- (k) any disclosure of information by the Client Representative, the Operator or the Borrower to the Debt Financiers; or
- (l) any disclosure of information required by a stock exchange or a New South Wales or Commonwealth regulator.

85.3 Obligations preserved

Where disclosure is permitted under clause 85.2, other than clauses 85.2(a), 85.2(c), 85.2(d), 85.2(g), 85.2(h), 85.2(i) and 85.2(l), the party providing the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this document.

85.4 Disclosure by the State

- (a) Notwithstanding the other provisions of this clause 85, 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) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (iv) the State and the Client Representative may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) by entering into this document, the State has consulted with the Operator 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 that is not Commercially Sensitive Information;

- (ii) the State will notify the Operator 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 85.4(b)(ii), the State will take reasonable steps to consult with the Operator before disclosing Commercially Sensitive Information, including under the GIPA Act;
- (iv) if, following:
 - (A) notification by the State in accordance with clause 85.4(b)(ii); or
 - (B) consultation between the State and the Operator in accordance with clause 85.4(b)(iii),

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

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

85.5 Exploitation of information

The Operator must not make use of this document or any information issued or provided by or on behalf of the State in connection with this document otherwise than for the purposes of this document, except with the written consent of the Client Representative.

85.6 Expiry

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

86. Assignment or Change of Control

86.1 Assignment

- (a) Subject to any express provision of this document, no party may, without the prior written consent of each other party, assign, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest under the Project Documents, provided always that an assignment by HAC or the NSLHD of its interest to any other governmental body, agency or department (in each case, constituting the NSW Government or supported by a guarantee from the NSW Government on terms no less favourable than those contained in the PAFA Act Guarantee) will not require the parties' prior written consent.
- (b) The provisions of clause 86.1(a) do not apply to the granting of Security Interests in accordance with the Financing Agreements.

86.2 Change in Control

- (a) Subject to clauses 86.2(b) to 86.2(c), the Operator undertakes to the State that the legal and beneficial ownership of each member of the Operator Group and the Operator Group structure will remain as set out in Schedule 34 until the expiry of the Defects Liability Period.
- (b) Subject to clause 86.2(e), the Operator must not permit any Change in Control of:
 - (i) the Operator, Operator B or the Parent Company; or
 - (ii) any change to the Operator Group structure prior to the first anniversary of the Date of Operational Readiness,without the prior written consent of the State (in its absolute discretion).
- (c) Any notice seeking the consent of the State to a Change in Control to which clause 86.2(b) applies must include:
 - (i) the identity of each person proposed to acquire Control;
 - (ii) the address of each person proposed to acquire Control;
 - (iii) the extent and nature of the proposed Change in Control; and
 - (iv) all other information necessary for the State to determine:
 - (A) whether to consent to the Change in Control of the relevant entity; or
 - (B) the probity or other investigations (if any) the State wants to undertake in respect of such persons proposed to acquire Control.
- (d) The State must, within 10 Business Days (or such longer period as the State reasonably requires, given the nature of the information provided in the Operator's notice) of receiving a notice under paragraph (c), notify the Operator whether:
 - (i) the State consents to the proposed Change in Control;
 - (ii) the State does not consent to the proposed Change in Control (and the reasons for this); or
 - (iii) the State needs to conduct a probity or other investigation in connection with the Change in Control prior to making a determination whether or not to consent to the Change in Control.
- (e) For the purposes of clauses 86.2(a) and (b):
 - (i) any change in beneficial or legal ownership of any equity interests (including shares or units) that are listed on a prescribed financial market; and
 - (ii) any transfer of equity interests by a person to another Equity Investor or a Related Body Corporate of an Equity Investor,will be disregarded.
- (f) For the purposes of this clause 86.2, **Defects Liability Period** means the period of 12 months commencing from the Date of Operational Readiness.

86.3 Change in Control of Material Subcontractors

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

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

the Operator must, at its own cost, terminate any Material Subcontract with that Material Subcontractor and re-tender those Project Works or Services being provided by that Material Subcontractor, within 60 days.

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

86.4 Other restrictions

- (a) Subject to clause 86.4(c), the Operator must not lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with the whole or any part of the Facility, except:
 - (i) as expressly permitted in accordance with this document;
 - (ii) the grant by the Operator to the Key Subcontractor of a sub-lease or licence of the Facility; or
 - (iii) as otherwise consented to by the State.
- (b) Without limiting clause 86.4(a) and notwithstanding any other part of this document, the Operator may not at any time licence, license, transfer, sell, dispose of, part with possession of, or otherwise deal with any Shared Portion, or any part of the Facility which would prejudice the State's ability to ensure the continuous uninterrupted provision of the Services.
- (c) The restrictions in clause 86.4(b) on leasing and licensing do not apply to or prevent the grant of leases or licences in respect of the Associated Commercial Facilities contemplated by this document.

87. Dispute Resolution

87.1 Disputes generally

Subject to clauses 87.9 and 87.10, any dispute, difference, controversy or claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with the Operator's Activities or this document (including any questions relating to the existence, validity or termination of this document) or any party's conduct before the date of this document, must be resolved in accordance with this clause 87.

87.2 Project Co-ordination Group and Operational Services Group

Prior to the issuance of a notice under clause 87.3(a), any dispute which arises between the Operator and the State may be referred to the Project Co-ordination Group or the Operational Services Group (as applicable) under clause 6.6(n).

87.3 Notice of Dispute

- (a) If any Dispute arises between the State and the Operator, any party to the Dispute may, within the time required by clause 87.3(b), give the other party written notice of the Dispute, specifying:
 - (i) the Dispute;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.
- (b) Without limiting clause 88, the written notice under clause 87.3(a) must be given to the other party and the Client Representative within 20 Business Days after the Dispute arising.

87.4 Executive negotiation

- (a) Where a notice of Dispute is given under clause 87.3, the Dispute must be referred to the relevant Executive Negotiators and the Executive Negotiators must, within five Business Days after the date on which the notice of Dispute was given under clause 87.2, commence meetings and negotiations with a view to resolving the Dispute.
 - (b) If the Executive Negotiators:
 - (i) have not resolved the Dispute; or
 - (ii) have not reached agreement upon a procedure to resolve the Dispute, within 20 Business Days after the date on which the notice of Dispute was given under clause 87.2 (or such longer period of time as the Executive Negotiators or the parties to the Dispute may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute:
 - (iii) in the case of Disputes solely in connection with:
 - (A) the calculation of the Estimated Cost Effect (including under clause 64.6(e));
 - (B) the relief from its obligations to which the Operator is entitled in connection with an ECE Event or Relief Event;
 - (C) the Change Notice Price under clause 64.2;
 - (D) Construction Contractor Statements (as defined in the Construction Side Deed);
 - (E) calculation or adjustment of the Monthly Service Payment;
 - (F) any other payment claim under this document; or
 - (G) the adjustment of a Base Case,
- or any other Dispute which this document specifies will be referred to expert determination, either party to the Dispute may give the other party written notice requiring that the Dispute be referred to expert determination under clause 87.5; and

- (iv) in the case of all other Disputes, either party to the Dispute may give the other party written notice that the dispute will be referred to arbitration under clause 87.6.

87.5 Expert determination

- (a) If a party to the Dispute requires that the Dispute is referred to expert determination under clause 87.5:
 - (i) the Executive Negotiators will attempt to agree on the expert to be appointed for the dispute resolution process;
 - (ii) if, within five Business Days after a referral pursuant to clause 87.4(b) to expert determination, the parties to the Dispute cannot agree on the expert to be appointed for the dispute resolution process, either party may request:
 - (A) if the Dispute relates to Clinical Services or Clinical Support Services or matters of a clinical or medical nature, the Secretary of Health; or
 - (B) for all other Disputes, the President of the Institute of Arbitrators and Mediators Australia (**President**),

to nominate a committee of not less than three experts (**Selected Committee**); and
 - (iii) if the Secretary of Health or the President (as applicable) has nominated a Selected Committee, the Client Representative must within three Business Days after being notified of the members of the Selected Committee advise the Operator of the expert for the purposes of this clause 87.5, chosen from the Selected Committee.
- (b) If the Client Representative fails to select a member of the Selected Committee as the expert within that period of three Business Days then the Operator will be entitled to select the expert for the purposes of this clause 87.5 from the Selected Committee.
- (c) If a Dispute is referred to expert determination under this document, then the Operator will appoint, upon the referral in accordance with clause 87.4, as expert the person agreed between the parties to the Dispute or selected in accordance with clause 87.5(b).
- (d) The parties to the Dispute must enter into an agreement with the expert on the terms contained in Schedule 31, or such other terms as may be agreed between the parties and the expert (**Expert Determination Agreement**).
- (e) The parties to the Dispute must not withhold agreement to:
 - (i) any amendment the expert requests to be made to those terms contained in the Expert Determination Agreement provided the amendment is reasonable and does not conflict with this clause 87; or
 - (ii) any reasonable fees and disbursements the expert requests to be set out in the Expert Determination Agreement between the parties and the expert.
- (f) The expert must make the determination in accordance with:
 - (i) the Expert Determination Agreement and the rules for expert determination (**Rules**) contained in Schedule 31 to this document; and
 - (ii) the Institute of Arbitrators and Mediators Australia Expert Determination Rules, to the extent they are not inconsistent with the Expert Determination Agreement and the Rules.

- (g) An expert determination conducted in accordance with the Expert Determination Agreement and the Rules is not an arbitration and the expert is not an arbitrator.
- (h) The determination of the expert will be final and binding unless a party to the Dispute serves a notice of appeal on the other party within 20 Business Days after the determination.
- (i) If a notice of appeal is given by any party in accordance with clause 87.5(h):
 - (i) the Dispute will be referred to arbitration under clause 87.6; and
 - (ii) the determination of the expert will be binding on the parties to the Dispute until it is overturned, reversed, varied or otherwise changed by an award of an arbitrator.

87.6 Arbitration Rules

If a Dispute is referred to arbitration under clauses 87.4(b) or 87.5, the arbitration will be conducted in accordance with the following procedure:

- (a) the arbitration will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules;
- (b) the seat of the arbitration will be Sydney, Australia;
- (c) the number of arbitrators will be agreed or determined pursuant to Article 8 of the ACICA Arbitration Rules;
- (d) the language of the arbitration will be English;
- (e) the parties to the Dispute agree:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of the Dispute;
 - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of proceedings before the arbitral tribunal; and
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (A) the number of written submissions that will be permitted;
 - (B) where appropriate, the length of written submissions;
 - (C) the extent of document discovery permitted, if any;
 - (D) the consolidation of proceedings, when requested;
 - (E) the joinder of parties, when requested;
 - (F) the length of any hearing, if any; and
 - (G) the number of experts, if any, each party to the Dispute is permitted to appoint;
- (f) subject to clauses 87.6(j) and 87.6(k), the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages;
- (g) the arbitral tribunal has the power, on the application of any party to a Dispute, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to the Dispute must consent to such joinder. In the event of such joinder of parties in the arbitration, the

arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration;

- (h) any award of the arbitral tribunal will be final and binding upon the parties to the Dispute;
- (i) this arbitration agreement is governed by and must be construed according to the Laws applying in New South Wales;
- (j) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 87.6; and
- (k) the arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

87.7 Payments

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

87.8 Operator to continue performing obligations

Despite the existence of any Dispute, the parties must, except as expressly provided otherwise, continue to perform their respective obligations under this document.

87.9 Urgent relief

Nothing in this clause 87 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a Court.

87.10 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 87 will not apply to any dispute, difference, controversy or claim between the parties which is expressly required to be dealt with by the dispute resolution process in the Independent Verifier Deed; and
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Verifier Deed.

87.11 Key Subcontract disputes

- (a) The parties acknowledge and agree that a dispute or difference arising under a Key Subcontract may concern the respective rights and obligations of the State and the Operator under this document.
- (b) The Operator must inform the Client Representative immediately of any formal disputes and differences under any Key Subcontracts and the consequences (if any) on the operation of this document.
- (c) In such circumstances, and if the State consents (in its absolute discretion), the Operator may permit the Key Subcontractor to:
 - (i) attend and observe the dispute resolution process under this document; or
 - (ii) be joined as a party to the dispute resolution process,

and, in giving or withholding its consent under clause 87.11(c)(i), the State must have regard to the principle that it is not desirable for two or more dispute resolution processes

in which the matters the subject of the dispute are identical or materially overlap to be conducted at the same time.

87.12 Survive termination

This clause 87 will survive termination of this document.

88. Notification of Claims

88.1 Notices of Claims

Subject to any provisions of this document containing a specific notice requirement, the State will not be liable for any Loss of, or upon any Claim by, the Operator arising out of or in any way in connection with any direction, instruction, notice or any other act or omission of the State or any other fact, matter or thing under, arising out of or in connection with the Project or the Operator's Activities unless the Operator gives the State the notices required by clause 88.2 and, if applicable, clause 88.3.

88.2 Prescribed notices

The notices referred to in clause 88.1 are:

- (a) a written notice from the Operator which must be given to the Client Representative within the earlier of:
 - (i) 15 Business Days after when the Operator first became aware of the events on which the Loss or Claim is based; or
 - (ii) 45 Business Days after the first occurrence of the event on which the Loss or Claim is based (provided that, if the Operator reasonably demonstrates that the event is not something of which it ought reasonably to have been aware within that 45 Business Day period, the period for submission of the notice will be extended to 15 Business Days after the Operator first become aware of, or ought reasonably to have become aware of, that event),

in which the Operator states that it intends to submit a Claim and the event upon which the Claim will be based; and
- (b) a written Claim by the Operator to be given to the Client Representative within 20 Business Days after giving notice under clause 88.2(a) and which must include:
 - (i) detailed particulars of the facts on which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of this document or otherwise, and if based on a term of this document, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated, including any Loss.

88.3 Continuing events

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

89. Conflicts of Interest

89.1 Performance of obligations

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

89.2 Disclosure

The Operator must:

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

89A Senior Governance Board

Without limiting any other provision of this document, the parties agree to establish the Senior Governance Board which will meet every 3 months throughout the Operating Term (or such other times as the parties may agree) to discuss and attempt to pre-emptively resolve any material issues emerging in respect of the administration of this document.

Part E – End of Term and beyond

90. Extension of Term

90.1 Notice

The Client Representative may give the Operator written notice not later than 3 years prior to the Public Patient Portion Expiration Date that the State requires an extension of the Term, in which case:

- (a) the Term will be extended by an additional period specified in the notice (not to exceed five years) on the same terms as this document except for this clause 90; and
- (b) the parties must do all things reasonably necessary (including to register a variation of the Operating Term Private Patient Portion Lease to extend the term of that lease) to give effect to that extension of the Term.

90.2 Operator to seek direction

- (a) If the Operator has not received a notice from the Client Representative under clause 90.1 by the date that is 3 years prior to the Public Patient Portion Expiration Date, the Operator must promptly notify the Client Representative and seek a direction from the Client Representative as to whether the State will issue a notice to the Operator under clause 90.1.
- (b) If the Client Representative does not issue a notice to the Operator under clause 90.1 within 60 Business Days of receipt of the Operator's notice under clause 90.2(a), the Client Representative will be deemed not to have issued a notice to the Operator under clause 90.1 and the Operator must prepare to transfer responsibility for the Services (or any of the Services) and the operation of the State Asset to the State in accordance with clauses 91 and 92.
- (c) If the Client Representative does issue a notice to the Operator under clause 90.1 within 60 Business Days of receipt of the Operator's notice under clause 90.2(a), clauses 90.1(a) and 90.1(b) shall apply.

91. Preparing for Handover of State Asset

91.1 Handover Condition

Handover Condition means the required condition of the State Asset upon Handover, which:

- (a) if it occurs on the Public Patient Portion Expiration Date, is the condition referred to in paragraph (b), and also the condition that the items identified in the Asset Management Strategy must be in so that those items have a residual life for the relevant period of time after the Public Patient Portion Expiration Date in accordance with their Service Life as at that date (without taking into account any extension of the Term pursuant to clause 90) without any major maintenance or refurbishment work;
- (b) if it occurs on an Early Handover Date, is the condition that the State Asset:
 - (i) was in as at Operational Readiness (assuming all Defects and Outstanding Items had been rectified in accordance with the Operator's obligations (or Parent Company's obligations) under any Project Document), fair wear and tear excepted; and
 - (ii) would be in as at that date if the Asset Management Strategy had been fully implemented,

and in each case:

- (c) is in a condition that allows the State:
 - (i) to assume the provision of the Services itself or through a third party on and from Handover, without having to perform any act, or incur any cost, that should have been performed or incurred by the Operator or the Parent Company under any Project Document; and
 - (ii) if the Handover has occurred on the Public Patient Portion Expiration Date, to provide health services at the State Asset with a lifecycle effective age that is the aggregate of the balance of the original Term (if any) and 10 years;
- (d) if the Handover has occurred on the Public Patient Portion Expiration Date, ensures that all FF&E in the State Asset, Common Areas, the Shared Infrastructure and the Utility Infrastructure (including all pipework, ductwork, cabling, items of plant, control systems and similar components) are in a condition:
 - (i) sufficient to allow the State to provide health services at the State Asset with a lifecycle effective age that is the aggregate of the balance of the original Term (if any) and 10 years; and
 - (ii) which would not prevent the State or another operator from obtaining and maintaining the State Asset for a period of 5 years following Handover;
- (e) is in a condition which it would have been in if all of the Operator's and Parent Company's obligations under any Project Document had been complied with; and
- (f) is otherwise in a condition which satisfies the requirements of the Design Parameters in respect of the State Asset,

as at the Early Handover Date (without taking into account any extension of the Term pursuant to clause 90).

91.2 Handover Audit

- (a) Without prejudice to any other provision of this document, approximately:
 - (i) three years (**First Scheduled Handover Inspection**); and
 - (ii) every 6 months after the First Scheduled Handover Inspection, prior to the Public Patient Portion Expiration Date; or
 - (iii) if this document is to be terminated prior to the natural expiry of the Term, such shorter period before the Early Handover Date as is required by the State,the Client Representative may require an Independent Assessor to carry out a project audit of the State Asset (**Handover Audit**).
- (b) The Independent Assessor will inspect the State Asset and notify the State and the Operator in writing of:
 - (i) whether the State Asset has been and is being maintained by the Operator in accordance with its obligations under this document;
 - (ii) whether the State Asset will, as at the Public Patient Portion Expiration Date or the Early Handover Date (as applicable), be in a condition which satisfies the Handover Condition; and

- (iii) the rectification, maintenance and remediation works (if any) required to be carried out by the Operator before the Public Patient Portion Expiration Date to:
 - (A) bring the condition of the State Asset to the condition they would have been in had the Operator complied with its obligations under this document; and
 - (B) ensure that on the Public Patient Portion Expiration Date or the Early Handover Date (as applicable), the State Asset will meet the Handover Condition;
- (iv) a reasonable period within which the Operator must carry out such work under clause 91.2(b)(iii); and
- (v) the aggregate of the amount (if any) without double counting required to be expended (including by way of rectification or make good) or reserved against during or for the balance of the period up until the Public Patient Portion Expiration Date or the Early Handover Date (as applicable) to ensure that the State Asset is in the Handover Condition, and that any breaches in relation to the condition of the State Asset by the Operator of this document have been rectified, on the Public Patient Portion Expiration Date or the Early Handover Date (as applicable) (less any amounts which will be paid by the Operator during that period for any scheduled maintenance or lifecycle replacements to be performed during the period).
- (c) The aggregate amount calculated under clause 91.2(b)(v) updated by each subsequent Handover Audit less the amount calculated in accordance with clause 91.7 will be the **Relevant Amount**.
- (d) The cost of each Handover Audit will be shared equally by the State and the Operator.
- (e) If the Operator disputes the Independent Assessor's decision under clause 91.2(b), the Operator may refer those aspects of the matter in dispute for dispute resolution under clause 87.

91.3 Return Condition Bond

- (a) Within 20 Business Days after the Client Representative notifying the Operator of the results of a Handover Audit, the Operator must provide the Client Representative a bond in favour of the State (**Return Condition Bond**) which:
 - (i) has a face value of the Relevant Amount; and
 - (ii) satisfies the requirements of clause 12.7.
- (b) If the Operator fails to provide a Return Condition Bond which complies with the terms of clause 91.3(a), then the State may deduct from each payment of the Monthly Service Payments an amount equal to _____ of the Relevant Amount divided by the number of months until the scheduled expiry of the Term and will pay such amount into an interest bearing account in the name of the State and established by the State (the **Retention Fund Account**) until this document has expired or is terminated.
- (c) If the State establishes a Retention Fund Account in accordance with clause 91.3(b), it will promptly give the Operator particulars of the Retention Fund Account.
- (d) All funds deposited in the Retention Fund Account will be the property of the State.

91.4 Notification of Handover Audit

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

91.5 Minimise disruption

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

91.6 Rectification work

The Operator must carry out the required rectification, maintenance or remediation work notified pursuant to clause 91.2(b)(iii):

- (a) to the satisfaction of the Independent Assessor;
- (b) in accordance with all applicable Laws; and
- (c) so as to satisfy the standards and other requirements applicable to the State Asset under this document,

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

91.7 Reduction of the Relevant Amount

- (a) If and to the extent that the Operator carries out the required rectification, maintenance or remediation within the specified period as notified pursuant to clause 91.2(b)(iv) to the satisfaction of the Independent Assessor, the Relevant Amount will be reduced by the amount reserved in the Relevant Amount for undertaking the relevant work.
- (b) If clause 91.3(b) applies, then:
 - (i) if and to the extent that the Operator carries out the required rectification, maintenance or remediation work to the satisfaction of the Independent Assessor, the State will reimburse the Operator's costs of so doing by withdrawing amounts from, and to the extent there are moneys standing to the credit of, the Retention Fund Account and paying these to the Operator;
 - (ii) if the amount in the Retention Fund Account is insufficient to cover the Operator's costs, the State will reimburse the Operator's costs from any amounts which subsequently stand to the credit of the Retention Fund Account as a result of the deductions made from the Monthly Service Payments pursuant to clause 91.3(b). In the event that the amount remaining in the Retention Fund Account on the expiration of the Term is insufficient to cover the Operator's costs which have not been reimbursed, the Operator will bear the balance of such costs itself; and

- (iii) if all the required rectification and/or maintenance work identified by the Independent Assessor has been carried out to the satisfaction of the Independent Assessor, on the later of the Expiration Date and the expiry of the period notified pursuant to clause 91.2(b)(iv), then the State will pay any credit balance on the Retention Fund Account (including accrued interest) to the Operator as soon as practicable.

91.8 Failure to carry out work

- (a) If and to the extent that the Operator fails to carry out the necessary rectification, maintenance or remediation work to the appropriate level of professional care, in accordance with Good Industry Practice and to the satisfaction of the Independent Assessor, and within the specified period as notified pursuant to clause 91.2(b)(iv), the State will be entitled to carry out itself, or procure, such rectification, maintenance or remediation work, and the cost of such rectification, maintenance or remediation work will be a debt due and payable against the Operator to the State.
- (b) The State may (subject to the Termination Payment Schedule) deduct or set off that amount against any amount otherwise payable by the State to the Operator, or may take any other enforcement action available to it including under the security provided under clause 91.3(a), in respect of an unpaid debt owed to it.

91.9 State Election

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

- (a) carry out any work identified under clause 91.2(b)(iii); or
- (b) undertake any part of the lifecycle refurbishment program set out in the Asset Management Strategy, in which case the State will no longer be required to pay the Lifecycle Fee component of the Monthly Service Payment in respect of those obligations which the Operator has been relieved from performing.

91.10 Handover Plan, Shared Portion and Post-Operating Term Strategy

- (a) The Operator must prepare, update and submit the Handover Plan to the Client Representative not later than 24 months prior to the Public Patient Portion Expiration Date (or immediately, if this document is termination and Handover will occur on an Early Handover Date) and (for the avoidance of doubt) clause 13 will apply in respect of the Handover Plan.
- (b) The Handover Plan must, without limitation, address the handover of equipment and the handover of Services, in each case by reference to clauses 92.2 and 92.3, respectively.
- (c) The Operator must update and submit the Shared Portion and Post-Operating Term Strategy to the Client Representative not later than 12 months prior to the Public Patient Portion Expiration Date (or immediately, if this document is termination and Handover will occur on an Early Handover Date) and (for the avoidance of doubt) clause 13 will apply in respect of the Shared Portion and Post-Operating Term Strategy.
- (d) The Operator must comply with each of the Handover Plan and the Shared Portion and Post-Operating Term Strategy.

92. Handover obligations

92.1 Handover Obligations

Without limiting its obligations under clauses 92.2 and 92.3, on the Public Patient Portion Expiration Date or the Early Handover Date (as applicable), the Operator must:

- (a) hand over the State Asset (including all rights, title and interest in the State Asset) to the State or its nominee (**State Appointed Operator**) free from any encumbrances and in a state and condition which complies with the Handover Condition and the Handover Plan;
- (b) if required by the State, enter into and comply with an Interface Protocol with the State Appointed Operator;
- (c) transfer to the State or its nominee all rights, title, interest and warranties in plant and equipment, including relevant plant and building engineering services, a 3-month supply of maintenance spare parts for the FF&E, a 1-month supply of consumables for the FF&E, and/or the Project Works, required to allow the State or its nominee to operate, maintain and repair the State Asset (as applicable) to the standards required in accordance with this document free from any encumbrances; and
- (d) deliver to the State or its nominee:
 - (i) all manuals, records (including Medical Records), plans and other information under the control of the Operator which are relevant to the design, construction, commissioning, operation, maintenance or repair of the State Asset (as applicable);
 - (ii) a complete set of Project Plans (in electronic and hard copy format) which is up to date as at the Public Patient Portion Expiration Date or the Early Handover Date (as applicable);
 - (iii) all other data recorded for the provision of the Services and the operation of the State Asset during the Term;
 - (iv) all valid and unexpired warranties, guarantees and similar documentation (in hard copy) obtained for materials and workmanship for the State Asset; and
 - (v) a licence to use a copy of all software applications (excluding off the shelf software) necessary to perform the Services and operate the State Asset to meet the requirements of this document,

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

92.2 FF&E handover

- (a) The Operator is not entitled to remove FF&E or Consumables from the State Asset within the last 12 months prior to the Public Patient Portion Expiration Date, other than FF&E and Consumables removed as permitted by this clause 92.2.
- (b) As soon as reasonably practicable, but in any event:
 - (i) no later than 6 months prior to the Public Patient Portion Expiration Date; or
 - (ii) prior to the Early Handover Date, in the event of the earlier termination of this document,

the Operator must submit to the State an FF&E Inventory.

- (c) The Operator must conduct a stocktake of all Consumables and provide a copy of that stocktake to the State as soon as reasonably practicable, but in any event:
 - (i) not later than 12 months prior to the Public Patient Portion Expiration Date; or
 - (ii) prior to the Early Handover Date, in the event of the earlier termination of this document.
- (d) The Consumables (other than stale or obsolete Consumables, which will have a nil value) will be valued at:
 - (i) for unused Consumables, cost; or otherwise
 - (ii) market value, as determined by the State (acting reasonably),
(Stock Price).
- (e) On conclusion of the stocktake, the State and the Operator must agree on and initial a stocktake list of Consumables and agree the Stock Price.
- (f) If reasonably requested by the State, the Operator must do all things reasonably necessary to ensure that there is a supply of various Consumables within the State Asset as required by the State sufficient to provide the Services from the State Asset in accordance with the then-current Role Delineation and Activity Profile for a period of not less than 3 months after the Public Patient Portion Expiration Date or Early Handover Date (as applicable), or a lesser period in the case of Consumables having a usable lifespan of less than 3 months.
- (g) To the extent that they are owned by the Operator, the State agrees to acquire and the Operator agrees to relinquish, as at the Public Patient Portion Expiration Date or Early Handover Date (as applicable) the unencumbered title in:
 - (i) those items of FF&E listed in the FF&E Inventory referred to in clause 92.2(b) that the State elects to acquire, for:
 - (A) in the case of State Funded FF&E, nil consideration; and
 - (B) in the case of all other items used in the State Asset which are not the subject of an FF&E Lease, the lesser of:
 - (I) market value (as determined by the State, acting reasonably); and
 - (II) Written Down Value,
multiplied by the proportion of usage at the Public Patient Portion; and
 - (ii) those Consumables:
 - (A) on the stocktake list that the State elects to acquire; and
 - (B) the balance of any Consumables that the State has requested the Operator to purchase in accordance with clause 92.2(f),
at the Stock Price.
- (h) In respect of those items referred to in the FF&E Inventory which are the subject of an FF&E Lease, the Operator must, at its cost and prior to the Public Patient Portion Expiration Date or Early Handover Date (as applicable), make arrangements to procure for the State unencumbered title in such FF&E at Handover. The State agrees to acquire as at the Public Patient Portion Expiration Date or Early Handover Date (as applicable) the unencumbered title in such items which are the subject of an FF&E Lease for the lesser of:
 - (i) market value (as determined by the State, acting reasonably); and

- (ii) Written Down Value,
multiplied by the proportion of usage at the Public Patient Portion.
- (i) On the day which is 20 Business Days after the Public Patient Portion Expiration Date or Early Handover Date (as applicable), the State must pay the purchase price (determined as outlined in clause 92.2(g) above) to the Operator, in which case title to and risk of the assets which the State agrees to purchase under clause 92.2(g) will pass to the State, free of encumbrances and claims of third parties (except insofar as those assets are the subject of a novated finance or similar lease), upon payment of the purchase price to the Operator.
- (j) The Operator is only entitled to remove from the Public Patient Portion the FF&E which, in accordance with clause 92.2(g) the State elects not to acquire (**Unsold Equipment**). The State must not obstruct, hinder or delay the removal of the Unsold Equipment by or on behalf of the Operator in accordance with the provisions of this clause 92.2.
- (k) If the Operator fails to remove all or any of the Unsold Equipment within 60 days of the later of:
 - (i) the Public Patient Portion Expiration Date or Early Handover Date (as applicable); and
 - (ii) the date on which the State elects not to acquire that Unsold Equipment under clause 92.2(g),
 then unencumbered title to such Unsold Equipment will automatically vest in the State and the State's costs of removing and dealing with any such Unsold Equipment will be a debt due and owing from the Operator to the State.
- (l) For the avoidance of doubt, title to all FF&E will pass to the State at the Public Patient Portion Expiration Date or Early Handover Date (as applicable) for nil consideration (to the extent that it has not already).

92.3 Services handover

- (a) Upon the Public Patient Portion Expiration Date or Early Handover Date (as applicable) the Operator must:
 - (i) (**access**) provide the State with all access to the Facility that the State requires in order to exercise its rights under this document;
 - (ii) (**novation**) procure the novation to the State or its nominee of:
 - (A) such contracts for works or services to which it or the Construction Contractor or a Subcontractor is a party as they relate to the Services or the Public Patient Portion (as applicable) as the State may nominate;
 - (B) any leases, subleases and licences agreed to by the State; and
 - (C) any warranties in respect of FF&E and Consumables;
 - (iii) (**Intellectual Property Rights**) grant or procure the grant to the State or its nominee of such Intellectual Property Rights as will enable the State or its nominee to be in a position to design, construct, operate, commission, maintain and repair the Public Patient Portion in order to meet the KPIs;
 - (iv) (**Insurances**) to the extent the Operator has not already done so, pay to the State or its nominee any insurance proceeds from any Project Insurances for the reinstatement or replacement of the Public Patient Portion to the extent not already

reinstated or replaced, and assign to the State any rights available to the Operator under the Project Insurances;

- (v) **(Consents)** must do all acts and things necessary to enable the State (or its nominee) to have transferred or obtained all Consents necessary for the operation, maintenance and repair of the Public Patient Portion;
 - (vi) **(operations)** do all other acts and things to enable the State (or its nominee) to be in a position to deliver the Project at the standards stated in this document, with minimum disruption;
 - (vii) **(Medical Records)** provide to the State all original Public Patient Medical Records and all other Records and copies of other information and documentation provided by the State for the purposes of the Project; and
 - (viii) **(Branding)** subject to clauses 80 and 81, remove all logos, branding and similar marks belonging to or relating to the Operator, an Operator Related Party, a Consortium Entity or a Subcontractor from all places within or adjacent to the Public Patient Portion (other than as specified by the State), and make good any damage caused by that removal.
- (b) Without limiting clauses 92.3(a) and 92.5, the Operator must, before the end of the Operating Term, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for the Project to the State or its nominee in accordance with the Handover Plan including:
- (i) meeting with the State and such other persons notified by the State not less than 12 months prior to the commencement of the Service Handover Period to discuss the Project and to attempt to agree arrangements associated with the Handover of the Public Patient Portion and the Services;
 - (ii) providing access to its operations for the purpose of familiarisation;
 - (iii) providing sufficient information as is required to ensure the safety and quality of Patient care;
 - (iv) providing sufficient information to the State or its nominee to determine the status and condition of the Project, any works programs in place at the time and the Operator's workforce profile;
 - (v) providing reasonable assistance to the State in securing the supply to the State of goods and services to the extent that such supply is necessary for the operation of all or any part of the Public Patient Portion or provision of the Services; and
 - (vi) permitting the State and any of its invitees (including any potential replacement Operator of the Public Patient Portion) to gain access to the Public Patient Portion and to observe the delivery of the Services and the performance of the Operator's other obligations under this document.

92.4 Utilities

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

- (a) make all arrangements (including making any payments as required under paragraph (b)) to ensure the continuing supply of any Utilities to the State Asset;

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

92.5 Staff Handover

- (a) The Operator must cooperate with the State and any State Appointed Operator to facilitate the transfer of employment or engagement of Personnel (as selected by the State or any State Appointed Operator), whether to the State or a State Appointed Operator that the State, or the State Appointed Operator, requires to continue to operate the State Asset from the Public Patient Portion Expiration Date or Early Handover Date (as applicable). This obligation will commence 12 months prior to the Public Patient Portion Expiration Date or as soon as the Early Handover Date is known, whichever is applicable.
- (b) The Operator will be responsible for any entitlements or payments which arise from, or are attributable to, any transfer of employment described in clause 92.5(a) above, including any accrued entitlements which are recognised by the Operator and any termination payments.
- (c) The Operator must do all things reasonably necessary to ensure that the State, or a State Appointed Operator, does not become responsible for, or incur any liability in respect of, an entitlement or payment referred to in clause 92.5(b) above, or any other payment in respect of the transfer of Personnel referred to in clause 92.5(a) above.
- (d) If the State or a State Appointed Operator becomes liable for any entitlements or payments to Personnel referred to in clauses 92.5(b) or 92.5(c) above or otherwise in respect of their employment or engagement up to and including the Public Patient Portion Expiration Date or Early Handover Date (as applicable), including by operation of Law, the Operator will reimburse the State or the State Appointed Operator for the entire amount of the entitlement or payment.
- (e) The Operator must not without the prior written consent of the State (which may not be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any of the Operator's employees or Subcontractors who work solely and exclusively at or in relation to the Facility, where:
 - (i) the variation takes effect in the Service Handover Period unless it is a variation:
 - (A) imposed by an Award or Order of the New South Wales Industrial Relations Commission or Fair Work Commission (or equivalent body); or
 - (B) made in the ordinary course of business and, when aggregated with any other variation which takes effect during the Service Handover Period, represents an increase in the remuneration of that employee or Subcontractor of the Operator which results in that remuneration not

exceeding the remuneration which that employee or Subcontractor would have then received had it been employed directly by the State;

- (ii) the variation first takes effect after the Public Patient Portion Expiration Date;
- (iii) the variation results in the employment being for a fixed term, the expiry of which is more than 12 months after the Public Patient Portion Expiration Date;
- (iv) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
- (v) the variation relates to the provision of a benefit (but excluding base salary and the employee's legal entitlements) which the employee will, or may have, a contractual right to receive after the Public Patient Portion Expiration Date; or
- (vi) the variation prevents, restricts or hinders the employee or Subcontractor from working for the State or from performing the duties the employee performed for the Operator,

and must ensure that the Subcontractors do the same in relation to their employees and subcontractors.

92.6 Duty to co-operate

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

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

92.7 Transfer of responsibility

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

93. Operator Call Option

93.1 Option to lease

In consideration for entering into this document, the State grants to the Operator the Operator Call Option.

93.2 Option duration

The Operator Call Option may be exercised at any time between the date that is 3 years prior to the Public Patient Portion Expiration Date and the date that is 30 months prior to the Public Patient Portion Expiration Date.

93.3 Exercise of option

In order to exercise the Operator Call Option, the Operator must deliver to the State:

- (a) a written notice of exercise of option; and
- (b) two copies of the Post-Operating Term Private Patient Portion Lease executed by the Operator, which the Operator and the Operator's solicitors are authorised to and must complete by inserting:
 - (i) the title details for the Private Patient Portion and the Site;
 - (ii) the day after the expiry of the Operating Term Private Patient Portion Lease as the commencement date;
 - (iii) the date that is 40 years after the commencement of the Operating Term Private Patient Portion Lease as the termination date;
 - (iv) the term; and
 - (v) the date of this document in the definition of 'Project Deed'.

93.4 Execution by State and registration

As soon as reasonably practicable after receiving the Post-Operating Term Private Patient Portion Lease executed by the Operator under clause 93.3, the State must:

- (a) execute the Post-Operating Term Private Patient Portion Lease; and
- (b) lodge the Private Portion Lease for registration.

93.5 Parties bound

The parties are bound by the Post-Operating Term Private Patient Portion Lease from and including the date of exercise of the Operator Call Option, although the Post-Operating Term Private Patient Portion Lease may not have been completed in accordance with clause 93.3(b), a party may not have executed the Post-Operating Term Private Patient Portion Lease or the Post-Operating Term Private Patient Portion Lease may not have been registered.

94. State Put Option

94.1 Application

This clause 94 only applies if the Operator has failed to exercise or to exercise properly the Operator Call Option under clause 93.

94.2 Option to lease

The Operator grants the State the State Put Option.

94.3 Option duration

The State Put Option may be exercised at any time between the date that is 30 months prior to the Public Patient Portion Expiration Date and the date that is 24 months prior to the Public Patient Portion Expiration Date.

94.4 Exercise of option

In order to exercise the State Put Option, the State must deliver to the Operator:

- (a) a written notice of exercise of option; and
- (b) two copies of the Post-Operating Term Private Patient Portion Lease executed by the State, which the State and the State's solicitors are authorised to and must complete by inserting:
 - (i) the title details for the Private Patient Portion and the Site;
 - (ii) the day after the expiry of the Operating Term Private Patient Portion Lease as the commencement date;
 - (iii) the date that is 40 years after the commencement of the Operating Term Private Patient Portion Lease as the termination date;
 - (iv) the term; and
 - (v) the date of this document in the definition of 'Project Deed'.

94.5 Execution by Operator

Promptly after receiving the Post-Operating Term Private Patient Portion Lease executed by the Operator under clause 94.4, the Operator must execute the Post-Operating Term Private Patient Portion Lease and return one fully executed version to the State.

94.6 Registration

The State must lodge the Post-Operating Term Private Patient Portion Lease for registration as soon as reasonably practicable after receipt of the fully executed Post-Operating Term Private Patient Portion Lease from the Operator.

94.7 Parties bound

The parties are bound by the Post-Operating Term Private Patient Portion Lease from and including the date of exercise of the State Put Option, although the Post-Operating Term Private Patient Portion Lease may not have been completed in accordance with clause 94.4(b), a party may not have executed the Post-Operating Term Private Patient Portion Lease or the Post-Operating Term Private Patient Portion Lease may not have been registered.

95. Schedule 22 applies

On and from the date the Operator Call Option or the State Put Option is validly exercised:

- (a) the parties must comply with Schedule 22 and the Shared Portion and Post-Operating Term Strategy; and
- (b) to the extent of any ambiguity, discrepancy or inconsistency between this document, Schedule 22 and the Post-Operating Term Private Patient Portion Lease, the order of priority is as follows:
 - (i) Schedule 22;
 - (ii) the Post-Operating Term Private Patient Portion Lease; and
 - (iii) to the extent it applies during the Private Patient Portion Term in accordance with Schedule 22, the Main Body (as defined in Schedule 22).

Part F – General

96. Notices

96.1 Notices to the State

A notice, consent or other communication to be sent, provided or issued to the State under a Project Document must, unless expressly provided otherwise in that Project Document, be issued to the NSLHD.

96.2 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address, and in respect of a Default Notice or Termination Notice only, must only be delivered or sent in accordance with this paragraph (c)(i);
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address.

96.3 When a notice is given

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

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

96.4 Address for notices

A person's address and fax number are those as set out in the notice details of this document, or as the person notifies the sender.

96.5 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 96.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 96. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 96.2(c)(iii) will only form part of a communication under this clause 96 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this document:
 - (i) to ensure that their respective firewall and/or mail server (as applicable):
 - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received;
 - (B) does not trap any messages in the spam filter which:
 - (I) in the case of notices sent by the State to the Operator, have been sent from hinfra.health.nsw.gov.au or health.nsw.gov.au; and
 - (II) in the case of notices sent by the Operator to the State have been sent from healthscope.com.au; and
 - (C) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

96.6 Electronic collaboration system

- (a) The parties will use best endeavours to establish an agreed electronic collaboration system for the transmission of notices, consents and other communications under this document prior to Financial Close.
- (b) Subject to any contrary agreement pursuant to clause 96.6(a), this clause 96 will apply to any notice given by any party to another party under this document notwithstanding any electronic collaboration system used by the parties in connection with the Project.

97. Taxes

97.1 Liability for Taxes

- (a) Subject to clause 97.2, the Operator must indemnify the State and the State Related Parties against, and must pay to the State and the State Related Parties on demand the amount of, all Taxes (including Rates, Land Tax and stamp duty) incurred in connection with:
 - (i) the negotiation, preparation, execution, stamping and registration of this document or any Project Document;
 - (ii) the transactions that this document or any Project Document contemplates; and

- (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this document or any Project Document.
- (b) If the State notifies the Operator within 10 Business Days after execution of this document that it will attend to lodgement and stamping of the Project Documents, the Operator must promptly deliver all executed copies of the documents in its possession to the State to enable it to arrange lodgement and must cooperate with the State to arrange stamping, payment of any assessment and to dispute an assessment (at the State's cost) in accordance with the State's directions.
- (c) On and from the date of this document to the Public Patient Portion Expiration Date or the Early Handover Date (as applicable), the Operator must pay all Rates and Land Tax, if any, in respect of the Site, provided that if the Site or part of it becomes subject to Rates or Land Tax as a result of any Associated Commercial Facilities, the Operator must pay for such Rates and/or Land Tax and may arrange for the relevant Rates and Land Tax to be invoiced to the relevant user and paid direct to the Authority by the relevant user.
- (d) On and from the Public Patient Portion Expiration Date or the Early Handover Date (as applicable):
 - (i) the State must pay all Rates and Land Tax, if any, in respect of that part of the Site which forms the State Asset; and
 - (ii) the Operator must pay all Rates and Land Tax, if any, in respect of the remainder of the Site,

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

97.2 GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 97.2 have the meanings given to those terms by the GST Law (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 97.2.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this document (other than under this clause 97.2) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 97.2.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
 - (v) For the purposes of this clause 97.2:
 - (A) references to the 'State' means the Health Administration Corporation (**HAC**) or Northern Sydney Local Health District (**NSLHD**) as the case may be; and

- (B) to the extent HAC or NSLHD makes a supply or acquisition on behalf of the other in accordance with this document, it is authorised to do so as agent of the other and may issue or obtain a tax invoice or recipient created tax invoice, as the case may be, in that capacity.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this 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 97.2, 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 97.2(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 97.2(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this document within seven days after the Supplier becomes aware of the adjustment event.
- (e) **(Exclusion of GST from calculations)** If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of that other amount or revenue stream net of GST.
- (f) **(Barter supplies)** The parties acknowledge and agree that, in accordance with the principles set out in Public Binding Ruling GSTR 2001/6 – *Goods and Services Tax: non-monetary consideration*, pursuant to this document, for GST purposes:
- (i) the State will be making the following supplies to the Operator:
- (A) the Operating Term Private Patient Portion Lease; and
- (B) the Post-Operating Term Private Patient Portion Lease;
- (ii) the consideration provided by the Operator for the supplies outlined at clause 97.2(f)(i) is:
- (A) the Public Patient Portion Works; and
- (B) the Private Patient Portion Works;

- (iii) the Operator will be making the following supplies to the State:
 - (A) the Public Patient Portion Works; and
 - (B) the Private Patient Portion Works;
- (iv) the consideration provided by the State for the supplies outlined at clause 97.2(f)(iii) is:
 - (A) the Operating Term Private Patient Portion Lease;
 - (B) the Post-Operating Term Private Patient Portion Lease; and
 - (C) the State Capital Payment.
- (g) **(GST exclusive market value)** The parties agree that the GST exclusive market value of the supplies made by the Operator referred to in clause 97.2(f)(iv) is equal to the sum of GST exclusive value of the supplies made by the State referred to in clause 97.2(f)(ii) plus the State Capital Payment.
- (h) **(Responsibility for determining GST exclusive market value)** The parties agree that the Operator will:
 - (i) instruct a reputable and prudent valuer that is acceptable to the State to determine, at the Operator's expense, the GST exclusive market value of the supply of the Operating Term Private Patient Portion Lease and the Post-Operating Term Private Patient Portion Lease (**Valuation**); and
 - (ii) provide that valuation in writing to the State no later than 15 Business Days after the grant of the Operating Term Private Patient Portion Lease pursuant to clause 34.
- (ha) If the State, acting reasonably, is not satisfied that the Valuation accurately reflects the GST exclusive market value of the supply of the Operating Term Private Patient Portion Lease and the Post-Operating Term Private Patient Portion Lease, then:
 - (i) the State will provide the Operator with a written notice setting out the reasons why it is not satisfied that the Valuation is accurate; and
 - (ii) if the Operator accepts that the Valuation is not accurate, it will instruct the valuer to prepare a revised valuation (**Revised Valuation**) taking into account the matters outlined in the notice issued by the State under paragraph (ha)(i) and provide the Revised Valuation in writing to the State; and
- (i) **(Exchange of Tax Invoices)** Within 15 Business Days of the last to occur of:
 - (i) the Operator providing the Valuation referred to in clause 97.2(h)(ii) to the State;
 - (ii) the Operator providing the Revised Valuation referred to in clause 97.2(ha)(ii) to the State; and
 - (iii) a dispute in respect of the Valuation or Revised Valuation (as applicable) being resolved pursuant to clauses 97.2(ha)(iii) and

the State and Operator will each provide the other with a Tax Invoice for their respective taxable supplies referred to in clause 97.2(f).
- (j) **(GST registration of the Operator):**
 - (i) The Operator must provide its Australian Business Number (**ABN**) and details of its GST registration status to the State prior to execution of this document.

- (ii) If the Operator has not satisfied the requirements of clause 97.2(j) or is not otherwise registered for GST throughout the term of this document, then on written notice from the State, the Operator will pay to the State an amount equal to the GST payable on the supply of the Operating Term Private Patient Portion Lease and the Post-Operating Term Private Patient Portion Lease.
- (k) **(Exchange of non-monetary consideration):**
 - (i) Except to the extent that a supply is covered by clause 97.2(f), if any part of the consideration provided for the Supplier's Taxable Supply to which clause 97.2(c) applies is a Taxable Supply made by the Recipient (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 97.2(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 97.2(c) (or the time at which such GST Amount would have been payable in accordance with clause 97.2(c) but for the operation of this clause 97.2(k)).
- (l) **(Health Supplies Election):**
 - (i) If and to the extent an amount payable or credited to a party under or in connection with this document would otherwise be consideration for a GST-free supply under Subdivision 38-B of the GST Act, parties agree pursuant to section 38-60(4) of the GST Act that such amounts will be treated as consideration for a taxable supply.
 - (ii) The State may, by written notice to the Operator, revoke the agreement made in clause 97.2(l)(i) but until this occurs, clause 97.2(l)(i) continues to apply.
- (m) **(No offset)** If and to the extent that:
 - (i) any amount payable to one party is offset against an amount payable to another party under or in connection with this document, and accordingly, a net payment is made between the parties in accordance with this document; and
 - (ii) such amounts are consideration for a taxable supply, including any supplies which the parties agree to treat as taxable under clause 97.2(l),then:
 - (iii) each party that makes a taxable supply must calculate and return the GST payable based on the gross amount prior to any offset or deduction; and
 - (iv) except if clause 97.2(n) applies, each party that makes a taxable supply must issue a tax invoice to the other party in accordance with clause 97.2(c)(ii).
- (n) **(Monthly Service Payments):**
 - (i) Notwithstanding any other provision in this document, if and to the extent that any amount offset or deducted from the Monthly Service Payment pursuant to clause 1(a) of Schedule 20 (**MSP Offset Amount**) is consideration for a taxable supply by the State to the Operator, including any supplies which the parties have agreed to treat as taxable under clause 97.2(l), the parties acknowledge and agree that the

GST payable by the State on that supply shall be calculated based on the full amount without any offset or deduction.

- (ii) In respect of each Monthly Service Payment, the parties agree that:
 - (A) the State shall not issue any Tax Invoices to the Operator in respect of any taxable supply for which a MSP Offset Amount is consideration;
 - (B) the Operator shall issue to the State, in accordance with clause 55.3(c), a Services Invoice which shall be issued as a combined document comprising:
 - (I) a Recipient Created Tax Invoice (**RCTI**) for any taxable supply by the State to the Operator; and
 - (II) a Tax Invoice for any taxable supply by the State to the Operator;
 - (C) if and to the extent that an amount is not consideration for a taxable supply (**Non-Taxable Amounts**), the Operator shall include and separately identify the Non-Taxable Amounts in the Services Invoice;
 - (D) each party acknowledges and warrants that at the time of entering into this agreement, it is registered for GST;
 - (E) each party must notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs; and
 - (F) the State may, by notice in writing, terminate the agreement to issue RCTIs as provided for in this clause 97.2(n)(ii) at any time but until this occurs, the RCTI agreement remains in force.
- (o) (**No merger**) This clause will not merge on completion or termination of this document.

98. General

98.1 State as a Public Authority

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

98.2 No other business

The Operator may not engage in, or permit the Public Patient Portion or the Shared Portion to be used for, any business or revenue generating activity other than in accordance with this document or any other Project Document.

98.3 Certification

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

98.4 Cost of performing obligations

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

98.5 Governing Law

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

98.6 Amendments

This document may only be varied by a deed executed by or on behalf of each party, except that:

- (a) amendments to the Design Parameters determined in accordance with clauses 19.12 or 63 of this document can be made by agreement in writing executed by the Client Representative and the Operator; and
- (b) amendments to the Initial Project Plans and any other Project Plans may be made as expressly contemplated by this document without the need for any amending instrument.

98.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this document by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this document.
- (b) A waiver or consent given by a party under this document is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this document operates as a waiver of another breach of that term or of a breach of any other term of this document.

98.8 Survival of certain provisions; no merger

- (a) Without limiting clause 72.12:
 - (i) clauses 1, 3, 4, 5, 6.1, 7.12, 12, 22, 42.6, 46(c), 54, 72, 79, 80, 81, 84.1, 84.2, 84.3, 85, 87, 88, 89, 91, 92, 96, 97, 98 (and the Schedules to the extent necessary to give

effect to those clauses) and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this document; and

- (ii) if this document is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of this document occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.

98.9 Survival and repetition of representations and warranties

The representations and warranties given by the Operator in this document:

- (a) survive execution of each Project Document; and
- (b) in respect of clauses 5.1(b)(i) to 5.1(b)(xii) (excluding clause 5.1(b)(iv)), 5.2, 11.4(a), 13.3, 19.4, 22, and 59.11(d), are repeated on each anniversary of Financial Close, in each case with respect to the facts and circumstances then subsisting.

98.10 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this document.

98.11 Consents

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

98.12 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this document.

98.13 Reading down

If a word, phrase, sentence, clause or other provision of this document would otherwise be unenforceable, illegal or invalid the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

98.14 Severance

Any provision of this document which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this document or affecting the validity or enforceability of such provision in any other jurisdiction.

98.15 Exercise of remedies

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

98.16 Remedies cumulative

The rights and remedies provided in this document are cumulative and are not exclusive of any rights or remedies provided by Law or any other agreement, except to the extent expressly provided in this document.

98.17 Moratorium legislation

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

98.18 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this document and the Post-Operating Term Private Patient Portion Lease:

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

98.19 Counterparts

This document 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.

98.20 Attorneys

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

98.21 Relationship between the State and the Operator

Nothing in, or contemplated by, this document or any other Project Document will be construed or interpreted as:

- (a) constituting a relationship between the State and the Operator, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the State to the Operator or the Operator Related Parties in relation to or arising out of this document, other than to comply with the obligations (if any) expressly stated to be assumed by the State under this document or any other Project Document on a good faith basis.

98.22 Contract documents to be in English

All documentation in computer readable or other written forms brought (whether before or after the date of this document) or required to be brought into existence as part of, or for the purpose of, performing the Operator's Activities must be written in the English language.

98.23 Vienna convention

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this document.

Signing pages

EXECUTED as a deed.

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

Secretary of the Ministry of Health



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

Chief Executive of the Northern Sydney Local Health District



Executed by NBH Operator Co Pty Ltd (ACN 169 029 181) in its capacity as trustee of the NBH Operating Trust in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)



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

Name of director/company secretary (print)



**Executed by NBH Operator B Pty Ltd
(ACN 602 943 911)** in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director



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



Name of director (print)

Name of director/company secretary (print)