



**GOVERNMENT OF
WESTERN AUSTRALIA**

Department of Health

Department of Treasury

Midland Health Campus Project

Project 12053

Design and Construction Agreement for the design and construction of the Midland Health Campus

The State of Western Australia
(State)

and

St John of God Midland Health Campus ACN 152 874 845
(Operator)

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DESIGN AND CONSTRUCTION AGREEMENT

This Agreement is made on

2012

between

The State of Western Australia

and

St John of God Midland Health Campus (ACN 152 874 845) (Operator)

Recitals

- A. The State invited proposals to undertake the Project.
- B. The State has selected the Operator to undertake the Project.
- C. This Agreement sets out the terms on which the Operator agrees to undertake the Works as part of the Project.
- D. To facilitate the administration of the Project, the State and the Operator are entering into a separate Services Agreement to record their agreement in respect of the delivery of the Services after the Completion of the Works under this Agreement.
- E. In consideration of the Operator undertaking the Works, the State will pay the Operator in accordance with this Agreement.

Operative Provisions

1. Definitions, interpretation and related matters

1.1 Definitions

In this Agreement the following terms and expressions will have the following meanings.

Abandonment means that the Operator:

- (a) fails to start continuous construction activity at the Site by the date specified in the Works Program other than by reason of an Extension Event;
- (b) fails to resume work within 20 Business Days after termination or cessation of a Force Majeure Event;
- (c) has terminated or caused the termination of the D&C Subcontract and has either:
 - (i) failed within 60 Business Days (or such longer period as the State may determine having regard to the relevant circumstances) after the date of that termination to conclude a new D&C Subcontract approved by the State in accordance with Clause 6.7 and Clause 6.8; or
 - (ii) concluded a new D&C Subcontract approved by the State within such period determined under paragraph (i) but the new Builder has failed for any reason to commence continuous construction activity at the Site within that period.

Acceptable Insurer means an insurer with an insurer financial strength rating of at least 'A-', as rated by Standard & Poors, or an equivalent rating from another internationally recognised rating agency, acceptable to the State (acting reasonably), and which either:

- (a) carries on insurance business in Australia and is authorised to do so by the APRA; or
- (b) if an overseas insurer not authorised by the APRA, operates in the London insurance market and is not required to be authorised under the *Insurance Act 1973* (Cth) in order to undertake liability, as insurer, under the relevant insurance policy or such other insurance cover or risk proposed to be underwritten by such overseas insurer.

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

- (a) ACHS Accreditation (or any equivalent accreditation required by the State, provided that the State's required accreditation is being applied at the Peer Group Hospitals);
- (b) registration with and accreditation by NATA; and

- (c) registration with or accreditation, licensing or approval by any other Authority which is required for the Services to be provided from the Public Patient Facility.

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 Western Australia.

ACHS Accreditation means accreditation by the ACHS.

Acoustic Design Report means the report in respect of the acoustic design of the Health Campus to be prepared by the Operator as part of the Design Documentation under this Agreement in accordance with Clause 11.5.

Agreement means this Design and Construction Agreement between the State and the Operator, as described in Clause 1.3(d).

Approval in Principle means the written approval in principle of the Health Campus, issued by the LARU.

Approval to Construct means the written approval to commence the Works and the Private Works, issued by the LARU.

Approval to Occupy means the written approval to occupy all or part of the Health Campus issued by the LARU.

Approved Recycled Materials means recycled or re-used fixtures, fittings, finishes and materials which have been specifically identified to the State and approved in writing by the State for incorporation into a specified location in the Works and which otherwise meet the requirements of paragraph (d) of the definition of 'Best Construction Practices' and are Fit For Purpose.

APRA means the Australian Prudential Regulation Authority.

Artefacts means all artefacts, fossils, bones, coins, articles of value or antiquity, structures and other remains or things of scientific, geological, sociological, cultural, historical or archaeological interest, including all Aboriginal Cultural Material (as defined in the *Aboriginal Heritage Act 1972* (WA)).

Associate for the purposes of the definitions of "Control" and "Change in Control", has the same meaning as "associate" in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of Section 12 of the Corporations Act).

Australian Industry Participation Plan means the plan of that name prepared by the Operator which sets out the Operator's Australian industry participation methodology which, as at the Date of this Agreement, is set out in Attachment 9 as may be updated from time to time by the Operator in accordance with this Agreement.

Australian Standards means the standards published by Standards Australia as amended from time to time.

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, approval, authority or exemption from, by or with an Authority or stock exchange, and includes the Hospital Licence, the Approval in Principle, the Approval to Construct and the Approval to Occupy.

Authority means any Governmental Agency, administrative or judicial body or tribunal.

Best Construction Practices means construction works and practices which are carried out:

- (a) in accordance with Good Industry Practice;
- (b) with due expedition and without unreasonable or unnecessary delay;
- (c) in a manner safe to workers, the general public and the Environment; and
- (d) using high quality fixtures, fittings, finishes and materials which are free from defects and are either new or Approved Recycled Materials.

Bid Design Documentation means the design documentation for the Health Campus prepared by the Operator prior to the Date of this Agreement as set out in Attachment 1.

Bid Works Program means the Works Program prepared by the Operator prior to the Date of this Agreement as set out in Attachment 2.

Bill has the same meaning as “bill of exchange” in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order).

Brokers Evidence of Cover has the meaning given to that term in Clause 24.4(a)(ii).

Brookfield Australia Investments Limited means Brookfield Australia Investments Limited (ABN 96 008 687 063).

Brookfield Australia Investments Limited Group means Brookfield Australia Investments Limited and the Builder.

Builder means the person engaged by the Operator to undertake all, or substantially all, of the Works in accordance with the D&C Subcontract being, as at the Date of this Agreement, Brookfield Multiplex Constructions Pty Limited ABN 70 107 007 527, and any other person who, in addition or substitution, is engaged by the Operator to undertake all, or substantially all, of the Works.

Builder Guarantor means the person who provides the Builder Parent Guarantee as specified in Section 9 of Schedule 1.

Builder Parent Guarantee means the parent guarantee provided by the Builder Guarantor in respect of the performance of the Builder's obligations under the D&C Subcontract in favour of the Operator.

Building Engineering Services means the integrated building systems incorporating environmental control and safety provisions for the comfort and wellbeing of Hospital Users, which includes all air conditioning and mechanical ventilation systems, reticulated medical and other gas systems, medical vacuum systems, pneumatic tube conveying systems, electrical light and power, nurse call systems, fire services, fire and life safety engineering systems, water and waste services, ICT Systems, security and

access control, vertical transportation, acoustic treatments, energy management systems, building management systems and any integrated extra low voltage systems.

Business Day means any day other than:

- (a) a Saturday or a Sunday; or
- (b) a holiday for Perth gazetted in the *Public and Bank Holidays Act 1972* (WA).

Capital Cost Proposal Schedule means the schedule setting out a detailed breakdown of the capital cost of performing the Works (including a detailed breakdown of the Contract Sum) as at the Date of this Agreement as set out in Attachment 4 and amended from time to time in accordance with Clause 18.11 and Clause 21.8.

Change in Control means where, at any time any person (whether alone or together with any Associates), ceases to or commences to, directly or indirectly, have Control of an entity.

Claim means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made:

- (a) in connection with this Agreement, the Services Agreement or the Project;
- (b) at Law; or
- (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.

Code means the National Code of Practice for the Construction Industry 1997, a copy of which is available at www.deewr.gov.au/building.

Commencement Date means the date on which the last of the Conditions Precedent is satisfied or waived in accordance with Clause 2.

Commercial Facilities means all facilities to be designed, constructed and commissioned by the Operator as part of the Private Works under this Agreement for the purpose of accommodating the Commercial Opportunities which, for the avoidance of doubt, will form part of the Health Campus.

Commercial in Confidence Information means those terms of this Agreement designated and agreed to by the parties as being commercial in confidence as set out in 0.

Commercial Opportunities means the commercial opportunities which may be undertaken by the Operator at the Health Campus in accordance with the Services Agreement.

Communications Plan means the plan of that name prepared by the Operator which sets out the Operator's approach and procedures for communication which, as at the Date of this Agreement, is set out in Attachment 15 as may be updated from time to time by the Operator in accordance with this Agreement.

Compensable Extension Event means each of the following events:

- (d) **(breach)**: breach by the State (in its capacity as a contracting entity to the State Project Documents) of any State Project Document;

- (e) **(suspension)**: suspension of the execution of the Works or any part of the Works under Clause 13.3 for any reason other than:
 - (i) any act or omission of the Operator or any Operator Associate (including any breach of a Project Document by the Operator or any Operator Associate); and
 - (ii) a Force Majeure Event;
- (f) **(Industrial Action)**: Industrial Action but only to the extent that it is directed at the Project and the action results directly from an act or omission of the State, but excluding any Industrial Action caused or motivated by opposition to private operation of public services;
- (g) **(Variations)**: a Variation directed by the State in accordance with Clause 18 or a direction determined to be a Variation in accordance with Clause 30 following a referral under Clause 18.6;
- (h) **(delayed access)**: a failure or delay by the State to give access to the Site in accordance with this Agreement or prior to the Date of Completion, the Development Lease or after the Date of Completion, the Operating Lease;
- (i) **(Artefacts, Native Title and Heritage Claims)**: a direction, order or requirement under Clause 8.5 or Clause 8.6 that obliges the Operator to suspend performance of the Works, except to the extent that the suspension has resulted either directly or indirectly from an act or omission of the Operator or an Operator Associate;
- (j) **(unilateral extension by State)**: an extension to the Date for Completion granted by the State under Clause 14.8;
- (k) **(contamination)** the State (in its capacity as a contracting entity under this Agreement) or State Personnel cause Contamination on the Site after the Date of this Agreement that the Operator is bound to Remediate under Clause 8.3(c), excluding, for the avoidance of doubt, Reimbursable Contamination or Migratory Contamination;
- (l) **(further testing)** the State requires the Operator to carry out further testing of the Works under Clause 15.2(c), unless the tests show that the Works tested do not meet the requirements of this Agreement;
- (m) **(excision)** a material adverse effect on the Operator's performance of its obligations under this Agreement arising out of, or in connection with, an excision of a portion of the Site in accordance with Clause 16.2 of the Services Agreement, including the State commencing or undertaking Further Development (as that term is defined in the Services Agreement) during the D&C Phase but excluding:
 - (i) works required to connect any Further Development and Excision Area referred to in Clause 16.2(e) of the Services Agreement to any services, Utilities or other required infrastructure; and
 - (ii) the effects of any Industrial Relations Matter,

provided that the Operator has cooperated with the State and acted reasonably in planning its works and works programming on Site, including on

the basis of the information then available to determine any potential delay costs; or

- (n) **(delay by MRA)** a delay by the MRA in granting the Development Approval in respect of the Health Campus, to the extent that the delay is not caused or contributed to by an act or omission of the Operator or Key Service Provider, and which delay continues beyond 180 days from the date of submission of the application for the Development Approval (which date is 7 March 2012).

Completion means that stage when all of the Completion Criteria have been satisfied.

Completion Certificate means a certificate issued by the State Representative under Clause 16.6(a) in the form of Schedule 7.

Completion Criteria means those criteria that are required to be satisfied to achieve Completion as set out in Schedule 5 and otherwise expressly specified in this Agreement.

Completion Plan means the plan of that name prepared by the Operator which sets out the Operator's plan for Completion which, as at the Date of this Agreement, is set out in Attachment 8 as may be updated from time to time by the Operator in accordance with this Agreement.

Completion Report means the report of that name to be prepared by the Operator which meets the requirements of Clause 16.2(b).

Completion Tests means those tests which are required to be successfully completed prior to Completion in order to demonstrate that Completion has been achieved, including those set out in the Completion Plan.

Condition Precedent means a condition precedent set out in Clause 2.2.

Condition Precedent Deadline Date has the meaning given to that term in Clause 2.3(a).

Confidential Information means all information which is identified as confidential or which the Operator knows, or exercising Good Industry Practice ought to know, is confidential and includes information arising out of, relating to or contained within:

- (a) this Agreement; or
- (b) any document, agreement, discussions or negotiations arising out of or in relation to this Agreement.

Consortium Entity means:

- (a) the Operator;
- (b) the Parent Guarantor;
- (c) the Builder;
- (d) the Builder Guarantor; and
- (e) the Key Service Provider.

Construction Management Plan means the plan of that name prepared by the Operator which sets out the Operator's construction management methodology which, as at the Date of this Agreement, is set out in Attachment 6 as may be updated from time to time by the Operator in accordance with this Agreement.

Contaminated has the same meaning as given in the *Contaminated Sites Act 2003* (WA) and **Contamination** has a related meaning.

Contract Materials means:

- (a) the D&C Documents; and
- (b) all other programs, documents, materials or information prepared by or for or on behalf of the Operator for the Project.

Contract Sum means the fixed lump sum amount as set out in Schedule 1 (a detailed breakdown of which is set out in Attachment 4) which is to be paid by the State to the Operator for the performance of the Works in accordance with Clause 21, as adjusted from time to time in accordance with this Agreement.

Control means:

- (a) control or influence of, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (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 (as defined in the Corporations Act),

of an entity (whether alone or together with any Associates).

Controller means, in relation to a Change in Control of an entity, the person or body corporate to whom Control will pass.

Convenience Termination Payment has the meaning set out in the Services Agreement.

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

D&C Documents means all documents that the Operator has prepared, prepares or is required to prepare to undertake the Works including the:

- (a) Design Documentation, but excluding that design documentation as it relates to the Private Works;
- (b) Plans;
- (c) Works Program;
- (d) Equipment Inventory; and
- (e) Capital Cost Proposal Schedule.

D&C Phase means the phase of the Project commencing on the Commencement Date and ending on the Expiry Date.

D&C Subcontract means the contract for the Works entered into between the Operator and the Builder dated on or about the Date of this Agreement and any other contract between the Operator and the Builder for the undertaking of all, or substantially all, of the Works.

Daily LD Rate means *[not disclosed]* per calendar day.

Damage Termination Event has the meaning given to that term in Clause 23.4(b)(iv).

Date for Completion means 23 November 2015, as extended under Clause 14.6 or 14.8.

Date of Completion means the date on which the Operator achieves Completion as specified in the Completion Certificate.

Date of this Agreement means the date on which this Agreement is executed by both parties to this Agreement or, if not executed on the same date, the date on which the last of the parties executes this Agreement.

Default Notice has the meaning given to that term in Clause 26.1(b).

Default Rate means a rate equivalent to 2% per annum above:

- (a) the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Perth time) on page "BBSY" of the Reuters Monitor System on that day, having a term of one month; or
- (b) if that rate is no longer available or, if in the reasonable opinion of the State, that rate becomes an inappropriate rate to benchmark the default rate or becomes incapable of application, the "Default Rate" means the rate reasonably determined by the State to be the appropriate equivalent rate having regard to prevailing market conditions.

Defect means:

- (a) any component of the Works or the Health Campus which does not comply with the requirements of this Agreement;
- (b) without limiting paragraph (a), any component of the Health Campus which is not Fit For Purpose; or
- (c) any defect, shrinkage, fault, or omission in the Works or the Health Campus.

Defect Notice means a notice given by the State Representative to the Operator in respect of a Defect as described in Clause 17.1.

Defects Liability Period has the meaning given to that term in Clause 3.3.

Delay Costs means the amount payable by the State to the Operator in respect of a Compensable Extension Event calculated in accordance with Clause 14.9.

Department means the Department as that term is defined in the Services Agreement.

Design Departures Schedule means the schedule of departures to the Design Requirements which has been agreed by the Operator and the State, as set out in Attachment 1.

Design Development Report means the report in respect of the Design Development Stage to be prepared by the Operator in accordance with Clause 11.6.

Design Development Stage means the design stage undertaken by the Operator under this Agreement, during which further design work is undertaken to refine the functionality and constructability of the design work undertaken during the Schematic Design Stage, but prior to the commencement of the Detailed Design Stage.

Design Documentation means the Bid Design Documentation as updated from time to time in accordance with this Agreement and all other design documentation (including all draft and final drawings, specifications, models, samples and calculations) in computer readable and written form or stored by any other means, which the Operator has or is required to or must necessarily create to undertake the Works (including the documents described in Clause 11.5) and the Private Works.

Design Issues List means the list of issues that the State has raised in respect of the Bid Design Documentation, and the Operator's response to those issues, as set out in Attachment 1.

Design Management and Stakeholder Engagement Plan means the plan of that name prepared by the Operator which sets out the Operator's design management and stakeholder engagement methodology which, as at the Date of this Agreement, is set out in Attachment 11 as may be updated from time to time by the Operator in accordance with this Agreement.

Design Requirements means the requirements for the design of the Health Campus set out in:

- (a) the Health Campus Requirements;
- (b) the Services Specification;
- (c) the ICT Requirements;
- (d) the Bid Design Documentation;
- (e) the requirements of the MRA;
- (f) the requirements of the LARU;
- (g) all relevant Quality Standards and Laws; and
- (h) the remainder of this Agreement,

as varied by any Variation undertaken pursuant to a Variation Order or a direction determined to be a Variation in accordance with Clause 30 following a referral under Clause 18.6.

Design Submission Program means the subset of the Works Program showing the times for submission of the Submitted Documents, as contained in Schedule 18 and as updated from time to time in accordance with this Agreement.

Detailed Design Stage means the design stage undertaken by the Operator under this Agreement, during which further design work is undertaken to complete documentation of the design to produce the Final Design Documents.

Development Approval means the approval to undertake development issued by the Metropolitan Redevelopment Authority under section 66(2)(b) of the *Metropolitan Redevelopment Authority Act 2011* (WA).

Development Lease means the document entitled “Midland Health Campus Development Lease” between the State and the Operator dated on or about the Commencement Date.

Dispute means any dispute arising between the parties in connection with any fact, matter or thing in connection with this Agreement.

Environment has the same meaning as given to that term in the Environmental Protection Act.

Environmental Incident means any event that gives rise to a likelihood of “environmental harm” (as that term is defined in the Environmental Protection Act).

Environment Management Plan means the plan of that name prepared by the Operator which sets out the Operator's environmental management methodology which, as at the Date of this Agreement, is set out in Attachment 5 as may be updated from time to time by the Operator in accordance with this Agreement.

Environmental Notice means any notice or direction issued in accordance with any Law or otherwise by any Governmental Agency relating to the Environment requiring a person to take measures to remediate any Contamination in, on, under or emanating from the Site including a clean up order, site contamination assessment order or site remediation order issued in accordance with the Environmental Protection Act.

Environmental Protection Act means *Environmental Protection Act 1986* (WA).

Equipment means the equipment for the Public Patient Facility set out in the Equipment Inventory which is to be selected, procured, manufactured, installed, commissioned and tested by the Operator as part of the Works.

Equipment Inventory means the list which identifies the Equipment to be procured by the Operator as part of the Works (and the manner in which the Equipment is to be procured by the Operator) which, as at the Date of this Agreement, is set out in Attachment 3 and as updated in accordance with clause 11.2 from time to time.

ESD means ecologically sustainable development.

ESD Initiatives means the ESD initiatives to be developed by the Operator in performing the Works under this Agreement as set out in the ESD management sub-set of the Design Management and Stakeholder Engagement Plan.

ESD Targets means the ESD targets nominated by the Operator for the annual consumption of energy, greenhouse gas emissions and water giving consideration to the State's intent to achieve a high sustainability standard, which are set out in the ESD management sub-set of the Design Management and Stakeholder Engagement Plan.

Event of Default means any of the following events:

- (a) **(fraud)**: the Operator, or any Consortium Entity, engages in fraud, collusion, or misleading or deceptive conduct in performing their obligations in connection with the Project;
- (b) **(false representation)**: a representation or warranty given by the Operator or Key Service Provider in accordance with a State Project Document (other than the Interim Management Agreement) is found to be materially incorrect or misleading;
- (c) **(Parent Guarantee and Builder Parent Guarantee)**: the Parent Guarantee or the Builder Parent Guarantee becomes unenforceable for any reason and is not replaced within 5 Business Days;
- (d) **(Key Subcontractors)**: the Operator breaches an obligation in Clause 6.7, 6.8 or 6.9 in connection with Key Subcontractors;
- (e) **(Insurance)**: the Operator fails to comply with any of its insurance obligations in Clause 24;
- (f) **(assignment)**: the Operator breaches Clause 31.1 in relation to assignment, transfer or disposal of any of its obligations in accordance with the Project Documents;
- (g) **(Change in Control)**: a Change in Control of a Consortium Entity (other than the Operator or a Parent Guarantor) occurs without the consent of the State in accordance with Clause 31.5;
- (h) **(Change in Management)**: a Change in Management occurs and Clause 31.6 applies;
- (i) **(Probity Event)**: the Operator fails to comply with its obligations in connection with a Probity Event in accordance with Clauses 32.2, 32.3 and 32.4;
- (j) **(Completion)**: the Operator fails to achieve Completion within 45 days of the Date for Completion;
- (k) **(Abandonment)**: there is an Abandonment;
- (l) **(breach)**: the Operator fails to remedy any Operator or Operator Associate breach of a State Project Document (other than the Interim Management Agreement) within 20 Business Days of receipt of a notice from the State of the breach (other than an Immediate Termination Event or a breach which is listed as an Event of Default under a different paragraph of this definition);
- (m) **(Hospital Licence or Authorisation)**: the Hospital Licence or any other Authorisation required for the performance by the Operator of any obligation under this Agreement is wholly or partially cancelled, revoked, suspended or otherwise discontinued, other than as a result of a renewal in the ordinary course of business;
- (n) **(Code and NPA)** the Operator fails to comply with the requirements of Clause 9.2(a), Clause 9.2(k) or Clause 9.5; and
- (o) the Liability of the Parent Guarantor under the Parent Guarantee has reached the Liability Cap.

Excision Areas has the meaning given to it in the Development Lease.

Expiry Date has the meaning given to that term in Clause 3.2.

Extension Event means any of the following events that occur prior to the Date of Completion:

- (a) a Compensable Extension Event;
- (b) a Force Majeure Event, including a notice to repair or rebuild given under Clause 23.2(a)(i) if the loss or damage was caused by a Force Majeure Event;
- (c) lightning, hurricane, cyclone, earthquake, natural disaster, landslide, tsunami or mudslide beyond what would usually be expected at the Site;
- (d) fire or explosion at the Site to the extent not caused or contributed to, or which could not be reasonably prevented by the Operator or an Operator Associate;
- (e) flood at or transgressing onto the Site caused by any of the events described in paragraph (c) to the extent not caused or contributed to, or which could not be reasonably prevented by the Operator or an Operator Associate;
- (f) water from or action by the sea or tidal wave, other than in each case caused by earthquake or seismological disturbance;
- (g) a delay by the LARU in giving a Key Approval in respect of the Health Campus in accordance with the Works Program, to the extent that the delay is not caused or contributed to by the act or omission of the Operator or a Consortium Entity;
- (h) a change in the LARU's requirements for the granting of a Key Approval in respect of the Health Campus from the requirements of the LARU as at the date of granting the Approval in Principle, which leads to the Operator having to change the Design Documentation, excluding:
 - (i) a change which ought reasonably to have been anticipated by the Operator; and
 - (ii) a change to the extent it arises out of the Operator's misunderstanding of the LARU's requirements;
- (i) a change in the requirements of the MRA for the granting of the Development Approval from the regulations and guidelines in respect of the Health Campus or the Works in place as at the Date of this Agreement, which change leads to the Operator having to change the Design Documentation, excluding:
 - (i) a change which ought reasonably to have been anticipated by the Operator; and
 - (ii) a change to the extent it arises out of the Operator's misunderstanding of the MRA's requirements;
- (j) a delay by the MRA in granting the Development Approval in respect of the Health Campus, to the extent that the delay is not caused or contributed to by the act or omission of the Operator or a Consortium Entity, and which delay continues beyond 120 days from the date of submission of the application for the Development Approval (which date is 7 March 2012), but is less than or equal to 180 days delay;

- (k) Remediation of Reimbursable Contamination or Migratory Contamination;
- (l) an act or omission of the State Personnel which is not:
 - (i) the exercise of a right or the performance of an obligation under a State Project Document;
 - (ii) an event which a State Project Document expressly states is at the Operator's cost or risk (it being acknowledged that Clause 5.3 is not an express allocation of risk for the purpose of this definition);
 - (iii) a Compensable Extension Event; or
 - (iv) listed in one of the other paragraphs of this definition of 'Extension Event';
- (m) the excision by an Authority of a materially different area of land to the Excision Areas shown on the plan attached to the Development Lease; and
- (n) any other event which is expressly stated by this Agreement to be an Extension Event.

FF&E Plan means the fixtures, furniture and equipment plan prepared by the Operator which sets out the Operator's management processes and procedures for the integration of fixtures, furniture and equipment which, as at the Date of this Agreement, is set out in Attachment 14 as may be updated from time to time by the Operator in accordance with this Agreement.

Final Design Documents means all Design Documentation at the completion of the Detailed Design Stage which has been submitted for review by the State in accordance with Clause 11.2, the time for the State review has passed and is marked "for construction", as amended and updated in accordance with this Agreement.

Final Design Report means the report in respect of the Detailed Design Stage to be prepared by the Operator in accordance with Clause 11.6.

Fire and Life Safety Engineering Report means the report in respect of the fire and life safety design of the Health Campus to be prepared by the Operator as part of the Design Documentation under this Agreement in accordance with Clause 11.5.

Fit For Purpose means:

- (a) satisfies each of the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from the Design Requirements as those requirements exist at Completion; and
- (b) is capable of enabling the Operator to perform the Services in accordance with the Services Agreement as the Services Agreement is agreed as at Completion.

Fitness For Purpose Warranty means the obligation imposed on the Operator in Clause 5.2.

Flexibility and Expansion Report means the report in respect of the flexibility and expansion capacity of the Health Campus to be prepared by the Operator as part of the Design Documentation under this Agreement in accordance with Clause 11.5.

FOI Act means the *Freedom of Information Act 1992* (WA).

Force Majeure Event means any one or more, or a combination, of the following:

- (a) civil riot, civil rebellion, revolution, terrorism, insurrection, military usurped power, act of sabotage or act of public enemy and war (declared or undeclared);
- (b) nuclear or biological contamination, ionising radiation, or contamination by radioactivity;
- (c) chemical contamination, other than contamination caused by a chemical brought on to the Site for the purpose of the Project; or
- (d) the air quality conditions at the Site,

which (either separately or together) directly causes the Operator to be unable to comply with all or a material part of its obligations in accordance with this Agreement where the event or its consequences was not caused or contributed to by the Operator or an Operator Associate, but excludes any interruption to, failure or discontinuation of any Utility.

Force Majeure Termination Event means a Force Majeure Event which prevents the Operator from undertaking all or a substantial part of the Works for a continuous period exceeding 6 months, except in circumstances where:

- (a) the Force Majeure Event results in damage to the Works; and
- (b) the State has required the repair or rebuilding of the Works under Clause 23.2(i).

Functional Unit means a Functional Unit as that term is defined in the Services Agreement.

[not disclosed]

General Security Agreement means the document entitled “General Security Agreement” between the State as chargee and the Operator as chargor in the form attached to the Services Agreement.

Good Industry Practice means:

- (a) with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor undertaking works similar to the Works; and
- (b) in accordance with all Laws, Authorisations and Quality Standards.

Governmental Agency means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department, excluding the State exercising a right or performing an obligation under this Agreement.

GST has the meaning given in the GST Law.

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

Handover has the meaning given to it in the Services Agreement.

Health Campus means the Midland Health Campus to be designed, constructed and commissioned by the Operator on the Site in accordance with this Agreement, including, for the avoidance of doubt, the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure, the Commercial Facilities and all other improvements to be situated on the Site.

Health Campus Requirements means the State's requirements for the Health Campus as set out in Schedule 10 (Health Campus Requirements) as may be amended from time to time by a Variation in accordance with Clause 18.

Heritage Claim means a claim made under any Law for the protection, preservation or removal of any Artefact.

HIL-D means the Health-based Investigation Level (HIL) for the concentration of a contaminant in soil, applicable to residential settings with minimal opportunities for soil access, as adopted by the Department of Environment and Conservation and the Department of Health and published in *Assessment Levels for Soil, Sediment and Water* (Department of Environment and Conservation, 2010).

Hospital Licence means the licence granted to the Operator or the Key Service Provider from time to time to operate the Health Campus as a private hospital under Part IIIA 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 a Hospital User as that term is defined in the Services Agreement.

Hospitals Act means the *Hospital and Health Services Act 1927* (WA).

ICT means information and communications technology.

ICT Requirements means the requirements for ICT at the Health Campus as set out in Schedule 12.

ICT Systems means the ICT Systems as that term is defined in the Services Agreement.

IMA Critical Default Event means the events (if any) identified in the Interim Management Agreement (if entered into by the parties) as "Critical Default Events".

Immediate Termination Event means each of the following:

- (a) the Operator repudiates this Agreement;
- (b) an Insolvency Event occurs in relation to the Operator or Parent Guarantor, whether or not the Operator is then in breach of a State Project Document;
- (c) an Insolvency Event occurs in relation to the Builder, whether or not the Operator is then in breach of a State Project Document, and that Builder is not replaced within 60 Business Days by a person approved by the State in accordance with Clause 6.7 and Clause 6.8;

- (d) a Change in Control of the Operator or a Parent Guarantor occurs without the consent of the State in accordance with Clause 31.5;
- (e) Clause 31.5(d)(ii) applies in respect of a Listed Entity Change in Control;
- (f) Completion is not achieved within 180 days of the Date for Completion;
- (g) the Date for Completion as at the Date of this Agreement is extended by reason of any Extension Event excluding any event contained in paragraphs (g), (h), (i) and (j) of the definition of Extension Event (other than Compensable Extension Events) under this Agreement by a period exceeding 1 year (except where this constitutes a Force Majeure Termination Event);
- (h) the Date for Completion as at the Date of this Agreement is extended by reason of any event contained in paragraphs (g), (h), (i) and (j) of the definition of Extension Event under this Agreement by a period exceeding 2 years (except where this constitutes a Force Majeure Termination Event);
- (i) the Interim Management Agreement (if entered into by the parties) terminates due to an IMA Critical Default Event; or
- (j) the Services Agreement is validly terminated for default of the Operator or becomes wholly unenforceable due to an act or omission of the Operator or an Operator Associate.

Implementation Guidelines means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009, a copy of which is available at www.deewr.gov.au/building.

Indemnified Persons means the State and each State Associate.

Independent Certifier means the person identified as the independent certifier in the Independent Certifier Agreement.

Independent Certifier Agreement means an agreement to be entered into by the parties, the Builder and the Independent Certifier within 20 Business Days of the Commencement Date, or such later time as agreed by the parties, in accordance with Clause 6.12(d) and substantially in the form of Schedule 16.

Independent Certifier Services means those services to be provided by the Independent Certifier in respect of this Agreement (and not any Subcontract), as outlined in the Independent Certifier Agreement.

Independent Expert means a person with suitable expertise and experience required to determine a Dispute having regard to the nature of the Dispute, appointed in accordance with Clause 30.3.

Indirect or Consequential Loss means:

- (a) loss of opportunity;
- (b) loss of profit, anticipated profit, business, business opportunities or revenue;
- (c) any failure to realise anticipated savings;
- (d) direct expenditure of time by managers and employees consequential upon any loss;

- (e) damage to reputation; or
- (f) the cost of capital or other financing costs,
- (g) but excludes any Liability arising from, or in connection with:
- (h) any statutory fine levied against a party arising from any breach of Law by the other party;
- (i) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by a party;
- (j) wrongful acts committed by a party with reckless indifference to the consequences;
- (k) wilful and intentional default by a party;
- (l) Abandonment;
- (m) matters that cannot be excluded at Law; or
- (n) a breach of the confidentiality obligations in this Agreement; and

in relation to the State's Liability only, does not include loss of profit of the Operator, the Builder or the Key Service Provider in relation to the Project (unless already paid by the State) caused by a breach or repudiation of this Agreement by the State (in its capacity as a contracting entity under this Agreement), which shall be considered direct loss.

Industrial Action means a strike, ban, lockout, demarcation or industrial dispute which affects the undertaking of the Works under this Agreement.

Industrial Awards, Agreements or Order means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations Commission, Australian Industrial Relations Commission or Fair Work Australia and includes transitional instruments under schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Preserved State Agreements and Notional Agreements Preserving State Awards, and any agreement including a workplace or enterprise agreement between an individual or group of individuals and any member of the Operator, Consortium Entity or a Subcontractor that is lodged, registered or certified in accordance with any Law applying in Western Australia.

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

- (a) a claim for payment for or on behalf of any employee of any member of the Operator or a Subcontractor;
- (b) a claim for payment for or on behalf of any employee of a Subcontractor;
- (c) a claim for payment in the nature of a site allowance;
- (d) any demand for terms of employment in excess of or outside the scope of relevant Industrial Awards, Agreements 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 or in the future to become allowable or payable within the construction industry (including a claim in respect of any of those matters described above which arises out of any change in State or Federal awards or work practices); or

- (f) any reduction in the construction industry working hours per week.

Information Documents means any information, data or documents provided by or on behalf of the State to the Operator concerning the Project, whether before or after the Commencement Date, excluding the State Project Documents but including other documents expressly referred to in the State Project Documents which are not State Project Documents.

Infrastructure means all utility infrastructure and all other services infrastructure which are external to, but are to be provided to, the Site including roads, footpaths, bicycle paths and transport facilities.

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

- (a) **(informs creditors)**: a corporation informs its creditors generally that it is insolvent;
- (b) **(receiver)**: a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) **(execution)**: a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
- (d) **(application)**: an application is made for the administration, dissolution or winding up of a corporation which application is not stayed, withdrawn or dismissed within 10 Business Days of being made;
- (e) **(winding up)**: an order is made for the administration, dissolution or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State;
- (f) **(resolution)**: a resolution is passed for the administration or winding up of the corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State;
- (g) **(arrangement or composition)**: a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State;
- (h) **(statutory demand)**:
 - (i) a corporation fails to comply with, or apply to have set aside, a statutory demand within 10 Business Days of the time for compliance; or
 - (ii) if the corporation applies to have the statutory demand set aside within 10 Business Days of the time for compliance, the application to

set aside the statutory demand is unsuccessful and the corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application;

- (i) **(execution levied against it)**: a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge; or
- (j) **(insolvency)**: a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts in accordance with any applicable Law.

Insurance Facility means as the context indicates, an Insurance Policy required to be effected and maintained under Clause 24, or a risk required to be insured under an Insurance Policy required to be effected and maintained under Clause 24.

Insurance Policy means the insurance policies required to be effected and maintained under Clause 24 and Schedule 6.

Interface Agreement means the “Interface Agreement for the cooperation and coordination of activities in relation to the design, construction, operation and maintenance of the Health Campus” between the Operator, the Key Service Provider and the Builder and dated on or about the Date of this Agreement.

Intellectual Property Rights means all intellectual and industrial property rights both in Australia and throughout the world and for the duration of the rights including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.

Interim Management Agreement means the agreement to be entered into between the State and the Operator (or the Key Service Provider) in accordance with Clause 9.1 of the Services Agreement.

Interim Management Services means the interim management services which, subject to the Interim Management Agreement being agreed and executed pursuant to Clause 9.1 of the Services Agreement, are to be provided by the Operator or the Key Service Provider pursuant to the Interim Management Agreement.

Invoice means a tax invoice for payment in the form agreed between the parties (each acting reasonably) after the Date of this Agreement which must contain a full break down of all elements of a Payment Certificate and any other items reasonably requested by the State.

Key Approval means the Approval in Principle, the Approval to Construct, the Approval to Occupy or the Hospital Licence, as the case may be.

Key Personnel means the persons listed in Section 4 of Schedule 1 who are to carry out the roles and functions described in that Schedule, as amended from time to time in accordance with Clause 6.7.

Key Service Provider means St John of God Health Care Inc (ARBN 051 960 911).

Key Subcontractor means:

- (a) the Builder;

- (b) the Subcontractors set out in Section 6 of Schedule 1; and
- (c) any other Subcontractor who enters into a Key Subcontract with the Operator or the Builder,

and any replacement of them in accordance with this Agreement.

Key Subcontracts means:

- (a) the D&C Subcontract;
- (b) the Subcontracts which are entered into between the Subcontractors set out in Section 6 of Schedule 1 and the Operator or the Builder;
- (c) any Subcontract which is entered into between the Operator or the Builder and a Subcontractor in respect of the Works set out in Section 5 of Schedule 1; and
- (d) any other Subcontract which is entered into between the Operator or the Builder and a Subcontractor where:
 - (i) the value of the Subcontract exceeds [*not disclosed*]; or
 - (ii) the value of the Subcontract, together with any other Subcontracts entered into between the Operator or the Builder and the Subcontractor in respect of the Works, exceeds [*not disclosed*].

Key User means clinical and non-clinical stakeholders that are likely to be providing health and non-health services at the Public Patient Facility and any other external stakeholders in connection with the development of the Public Patient Facility at the Site.

Land Conditions means any physical conditions on, under, or over the surface, or in the vicinity of the Site, including:

- (a) **(water)**: ground water, ground water hydrology, the existence of any wells and the effects of any de-watering;
- (b) **(physical structures)**: physical and structural conditions above, upon and below the ground including any infrastructure, services, partially completed structures, Artefacts or in ground works;
- (c) **(vegetation)**: pastures, grasses or other vegetation on the Site;
- (d) **(topography)**: topography, ground surface and sub-surface conditions and geology including rock or other materials;
- (e) **(climate)**: climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (f) **(Contamination)**: any Contamination;
- (g) **(safety)**: any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:
 - (i) unsafe or unfit for intended use or occupation by persons or animals;

- (ii) degraded in its capacity to support plant life;
 - (iii) Contaminated; or
 - (iv) otherwise environmentally degrade;
- (h) **(physical conditions)**: all other physical conditions and characteristics of or in the vicinity of the Site, on, under or over the surface which may affect the Operator's ability to perform its obligations in accordance with this Agreement; and
- (i) **(easements)**: all easements over or in connection with the Site,

whether or not they were in existence or known to the Operator before the Commencement Date.

LARU means the Licensing Accreditation and Regulatory Unit established under the Hospitals Act.

Law means:

- (a) Commonwealth, Western Australian or local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or Australian Standards), requirements, regulations, by-laws and other subordinate legislation;
- (b) common law; and
- (c) principles of equity.

Liability includes any debt, obligation, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.

Liability Cap means the maximum aggregate liability of the Guarantor as set out in the Parent Guarantee.

Licensed Disposal Site means a waste disposal facility licensed to accept the material which is being delivered there by the Operator under Clause 8.3.

Listed Entity Change in Control means any Change in Control which results from any dealing in any listed securities.

Main Roads means the Commissioner of Main Roads constituted under the *Main Roads Act 1930* (WA).

Master Plan means the master plan for the Health Campus to be prepared by the Operator as part of the Design Documentation under this Agreement in accordance with Clause 11.5, which details the master plan for the Health Campus for the period up to 2021 and describes conceptual growth of the Health Campus after 2021.

Midland Health Campus Access and Movement Plan means the *Midland Health Campus Access and Movement Plan* prepared by TPG Town Planning Group for the MRA.

Midland Health Campus Building Heights Plan means the *Midland Health Campus Building Heights Plan* prepared by TPG Town Planning Group for the MRA.

Midland Health Campus Design Intent / Context Plan means the *Midland Health Campus Design Intent / Context Plan* prepared by TPG Town Planning Group for the MRA.

Midland Health Campus Site Specific Guidelines means the *Midland Health Campus Site Specific Guidelines* prepared by TPG Town Planning Group for the MRA.

Migratory Contamination means Contamination originating off the Site and migrating on to the Site, not caused by an act or omission of the Operator or Operator Associate.

Minister means a minister acting for and on behalf of the Crown in right of the State of Western Australia.

Milestone means a milestone required to be met under the NPA set out in Schedule 3.

Milestone Date means the date specified in the NPA for achieving the relevant Milestone, as set out in Schedule 3.

Monthly Works Report means the report of that name to be prepared and submitted by the Operator in accordance with this Agreement.

Moral Rights has the meaning given to it in the *Copyright Act 1968* (Cth).

MRA means the Metropolitan Redevelopment Authority, being the successor to the Midland Redevelopment Authority from 1 January 2012 in respect of the Project.

NATA means the National Association of Testing Authorities.

NPA means the National Partnership Agreement between the State and the Commonwealth of Australia (amongst others) dated 7 December 2009 whereby the State and the Commonwealth each agree to contribute to the cost of the Works.

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 which is to be obtained by the Operator in accordance with Clause 6.10.

Native Title Claim means an application for a determination of native title under the *Native Title Act 1993* (Cth) or any other similar Law.

Notice of Dispute has the meaning given to that term in Clause 30.1(b).

Novation Deed means a deed in the form of Schedule 8.

Operating Lease means the document entitled "Midland Health Campus Operating Lease" to be entered into between the Operator and the State as part of the conditions precedent under the Services Agreement.

Operator Associate means:

- (a) the Operator Representative;
- (b) any Parent Guarantor;

- (c) any Consortium Entity;
- (d) any Subcontractor;
- (e) a Related Body Corporate of the Operator or any Parent Guarantor;
- (f) officers, agents, advisers, consultants, contractors and employees of the Operator, the Builder and any other Subcontractor; and
- (g) any visitor to the Site invited onto the Site by the Operator or an Operator Associate, excluding State Associates.

Operator Representative means the person nominated as such in Section 3 of Schedule 1, or such other person as may be appointed from time to time to replace that person in accordance with Clause 6.4.

Operator's Background IP means any Intellectual Property Rights of the Operator (or licensed to the Operator by a third party) which:

- (a) is in existence before the Date of this Agreement or comes into existence after the Date of this Agreement other than in connection with this Agreement; and
- (b) the Operator makes available, contributes, brings to or uses in connection with the Works under this Agreement,

and **Subcontractor's Background IP** has a corresponding meaning in respect of Intellectual Property Rights of a Subcontractor.

Operator's Vehicles has the meaning given to that term in Section **Error! Reference source not found.** of Schedule 6.

Outstanding Item means a minor Defect which in the reasonable opinion of the Independent Certifier:

- (a) will not prevent the Health Campus from being Fit For Purpose; and
- (b) will not prevent the Operator from satisfying the Fitness For Purpose Warranty.

Parent Guarantee means the parent company guarantee in the form set out in Schedule 16 of the Services Agreement.

Parent Guarantor means each person required to give a Parent Guarantee as specified in Section 9 of Schedule 1.

Patient Transfer Services means the patient transfer services by which patients are discharged from SDH and physically transported to the Health Campus, to be performed by the Operator in accordance with Clause 9 of the Services Agreement, or the State under Clause 9.1 of the Services Agreement.

Payment Certificate means the certificate of that name to be prepared by the State Representative in accordance with Clause 21.5.

Peer Group Hospitals means Peer Group Hospitals as that term is defined in the Services Agreement.

Performance Bond means a performance bond which satisfies the requirements of Clause 25.3 and is in the form set out in Schedule 9.

Plans means any or all of the following plans (as the case may be):

- (a) the Design Management and Stakeholder Engagement Plan;
- (b) the Construction Management Plan;
- (c) the Environment Management Plan;
- (d) the Safety Management Plan;
- (e) the Quality Plan;
- (f) the Completion Plan;
- (g) the Australian Industry Participation Plan;
- (h) the Training Plan (on and from the date of notification by the Operator to the State Representative of its approval by the Department of Education and Training in accordance with Clause 9.4);
- (i) the Project Management Plan;
- (j) FF&E Plan;
- (k) Communications Plan; and
- (l) any other plans reasonably required by the State from time to time.

Post Completion Tests means those tests which, by their nature, are unable to be successfully completed until such time as the Health Campus is fully operational and those tests which are necessary to undertake to show that the Outstanding Items have been rectified.

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

PPS Law means:

- (a) the PPSA;
- (b) any regulations made at any time under the PPSA;
- (c) any provision of the PPSA or regulations made at any time under the PPSA;
- (d) any amendment to any of the above, made at any time; or
- (e) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

Private Patient means a Private Patient as that term is defined in the Services Agreement.

Private Patient Facility means that part of the Health Campus to be dedicated to or used for the diagnosis, accommodation and treatment of admitted and non-admitted Private Patients that will be designed, constructed and commissioned as the Private

Works in accordance with this Agreement and which is shaded pink in the Site Delineation Plan.

Private Proportion of Shared Infrastructure has the meaning set out in the Services Agreement.

Private Works means all works necessary to complete the Private Patient Facility and the Commercial Facilities in accordance with and so as to comply with this Agreement.

Probity Event includes any event or thing which:

- (a) relates to a Related Person, or a Consortium Entity and has a material adverse effect on the public interest, or public confidence, in the Project;
- (b) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Related Person, or Consortium Entity; or
- (c) involves a material failure of a Consortium Entity to achieve or maintain:
 - (i) good corporate citizenship;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Consortium Entity to perform and observe its obligations in connection with the Project; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project.

Probity Investigation means such probity and criminal investigations to report on the character, honesty and integrity of persons or corporations as are required by Law or by the State from time to time, to ensure that a person or entity is fit and proper for its proposed or continued involvement in the Project.

Project means:

- (a) undertaking the Works;
- (b) if applicable, performing the Patient Transfer Services and the Interim Management Services;
- (c) the operation of the Health Campus;
- (d) the performance of the Services; and
- (e) Handover of the Public Patient Facility,

in accordance with this Agreement, the Interim Management Agreement (if entered into by the parties) and the Services Agreement.

Project Advisory Group means the Project advisory group established in accordance with Clause 6.5.

Project Documents means:

- (a) this Agreement;
- (b) if entered into by the parties, the Interim Management Agreement;

- (c) the Services Agreement;
- (d) the Development Lease;
- (e) the Operating Lease;
- (f) the Parent Guarantee;
- (g) the State Securities;
- (h) the D&C Subcontract;
- (i) the Key Subcontracts;
- (j) the Novation Deeds;
- (k) the Builder Parent Guarantee;
- (l) the Independent Certifier Agreement;
- (m) Interface Agreement; and
- (n) any other document the parties agree from time to time is a Project Document.

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Agreement or the Services Agreement or the execution of the Works (including any Intellectual Property Rights in the Contract Materials).

Project Management Plan means the plan of that name prepared by the Operator which sets out the Operator's project management procedures which, as at the Date of this Agreement, is set out in Attachment 13 as may be updated from time to time by the Operator in accordance with this Agreement.

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Public Patient means a Public Patient as that term is defined in the Services Agreement.

Public Patient Facility means that part of the Health Campus to be dedicated to or used for the diagnosis, treatment and accommodation of Public Patients.

Quality Plan means the plan of that name prepared by the Operator which sets out the Operator's quality methodology which, as at the Date of this Agreement, is set out in Attachment 10 as may be updated from time to time by the Operator in accordance with this Agreement.

Quality Standards means:

- (a) all requirements of the LARU;
- (b) the Accreditation Requirements;
- (c) the Health Campus Requirements;
- (d) the Building Code of Australia;

- (e) the relevant standards, codes and guides of Standards Australia and Standards New Zealand;
- (f) to the extent they do not conflict with the standards, codes or guides published by WorkSafe WA, the standards, codes and guides published by the National Occupational Health and Safety Commission and SafeWork Australia;
- (g) the *Disability Discrimination Act 1992* (Cth);
- (h) NEPM: Assessment of Site Contamination, Schedules A and B (Dec 1999) published by the National Environment Protection Council;
- (i) all Environment Protection Authority (WA) publications and bulletins;
- (j) all standards, codes and guides published by the WorkCover Corporation of Western Australia and WorkSafe WA;
- (k) State policies;
- (l) all requirements of Utility providers and Governmental Agencies; and
- (m) all other standards, codes, specifications, guidelines and requirements relevant to the Works, the Services or the Health Campus,

as may be amended from time to time.

Reasonable Break Costs has the meaning set out in the Services Agreement.

Records means any information or documents created or procured by the Operator or the Key Service Provider or any Subcontractor in connection with delivering the Project, including:

- (a) the D&C Documents;
- (b) the audited accounts referred to in Clause 28.1(e);
- (c) National Police Certificates;
- (d) all records and information relating to the effects of a Force Majeure Event; and
- (e) 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.

Reimbursable Contamination means Contamination on the Site prior to the Date of this Agreement which does not meet the requirements of HIL-D.

Related Body Corporate has the same meaning as "related body corporate" in the Corporations Act.

Related Entity means an entity described in section 2.6 of the Implementation Guidelines.

Related Person means:

- (a) a director or secretary of a Consortium Entity;

- (b) any officer or employee or agent of a Consortium Entity who:
 - (i) has the ability to exercise influence or control in relation to the Consortium Entity, or in matters relating to the Project;
 - (ii) works at the Site; or
 - (iii) has access to confidential information concerning the Project; and
- (c) an entity with Control over a Consortium Entity.

Relevant Law means:

- (a) Commonwealth, Western Australian or local government legislation, including statutes, ordinances, instruments, regulations, by-laws and other subordinate legislation;
- (b) common law; and
- (c) principles of equity.

Relevant Relief Event has the meaning given to that term in Clause 5.5.

Remediation is defined in the *Contaminated Sites Act 2003* (WA) and “**Remediate**” has a corresponding meaning.

Required Rating means a current long-term foreign currency credit rating of at least A- (issued by Standard and Poor's Australia) or A3 (issued by Moody's Investor Service), or the equivalent credit rating issued by another generally-recognised international credit rating agency.

Review Period means 10 Business Days from the date the State receives a Submitted Document or revised Submitted Document to be reviewed in accordance with the Review Procedures, except:

- (a) where otherwise expressly stated in this Agreement, in which case the relevant period of time expressly stated will apply; or
- (b) where a large volume of Submitted Documents have been submitted or re-submitted by the Operator to the State in a short period of time, in which case a reasonable period of time will apply as determined by the State acting reasonably (having regard to, among other things, the volume of Submitted Documents submitted by the Operator for review at that time) and notified in writing by the State to the Operator.

Review Procedures means the procedures for review of and comment on a Submitted Document as set out in Schedule 2.

Safety Management Plan means the plan of that name prepared by the Operator which sets out the Operator's safety management methodology which, as at the Date of this Agreement, is set out in Attachment 7 as may be updated from time to time by the Operator in accordance with this Agreement.

Schematic Design Report means the report in respect of the Schematic Design Stage to be prepared by the Operator in accordance with Clause 11.6.

Schematic Design Stage means the design stage undertaken by the Operator under this Agreement after the completion of the Master Plan but prior to the commencement of the Design Development Stage.

SDH means the Swan District Hospital.

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

Services means the Services as that term is defined in the Services Agreement.

Services Agreement means the document entitled "Midland Health Campus Project Services Agreement" entered into between the Operator and the State and dated on or about the Date of this Agreement.

Services Damage Termination Event means a Damage Termination Event as that term is defined in the Services Agreement.

Services Event of Default means an Event of Default as that term is defined in the Services Agreement.

Services Force Majeure Termination Event means a Force Majeure Termination Event as that term is defined in the Services Agreement.

Services Immediate Termination Event means an Immediate Termination Event as that term is defined in the Services Agreement.

Services Specification means the specification for the Services set out in Schedule 11.

Services Uninsurable Risk Termination Event means an Uninsurable Risk Termination Event as that term is defined in the Services Agreement.

Shared Infrastructure means those parts of any infrastructure, services, facilities and equipment on the Health Campus (including, where applicable, infrastructure, services, facilities and equipment located in the Public Patient Facility) 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 in the respective percentages set out in the Capital Cost Proposal Schedule (which, in the case of capital cost contributions which will be made by the State, will form part of the Contract Sum), and which the parties intend will be used for the provision of both the Services and services to Private Patients. For the avoidance of doubt, the Shared Infrastructure includes the Equipment and the Fixed Building Equipment (as that term is defined in the Services Agreement).

Site means the area leased to the Operator under the Development Lease upon which the Operator will develop the Health Campus in accordance with this Agreement.

Site Delineation Plan means the plan of the Site prepared by the Operator which sets out the areas of the Health Campus on the Site as set out in Attachment 12.

Specific Security Deed means the document entitled 'Specific Security Deed' between the State, the Operator and the Key Service Provider in the form set out in Schedule 18 of the Services Agreement.

State means (subject to Clauses 23.7 and 24.13):

- (a) the State of Western Australia as the contracting entity under this Agreement;
or
- (b) the State of Western Australia as the Crown in right of the State of Western Australia and includes a department established under the *Public Sector Management Act 1994* (WA) and a Minister,

as the context requires, but which, for the avoidance of doubt, does not include the LARU.

State Associate means:

- (a) the State Representative;
- (b) Key Users; and
- (c) any other officers, agents, advisers, consultants, contractors or employees of the State,

but excluding the LARU, the Operator and any Operator Associate.

State Personnel means a Minister and those State Associates acting for the State in respect of the Project and this Agreement but, for the avoidance of doubt, excludes Main Roads and any Utility Company.

State Project Documents means:

- (a) this Agreement;
- (b) if entered into by the parties, the Interim Management Agreement;
- (c) the Services Agreement;
- (d) the Development Lease;
- (e) the Operating Lease;
- (f) the State Securities;
- (g) the Novation Deeds;
- (h) the Independent Certifier Agreement;
- (i) any other Project Document to which the State is a party; and
- (j) any other document the parties agree is a State Project Document.

State Representative means the person nominated as such in Section 2 of Schedule 1, or such other person as may be appointed in writing by the State from time to time to replace that person, in accordance with Clause 6.2.

State Security means:

- (a) the General Security Agreement;
- (b) the Specific Security Deed;

- (c) any other documents collateral to the documents listed in paragraphs (a) and (b);
- (d) the Parent Guarantee; and
- (e) any other documents which the State and the Operator reasonably agree from time to time to be a State Security.

State's Background IP means any Intellectual Property Rights of the State (or licensed to the State by a third party) which the State makes available, contributes, brings to or uses in connection with the Project or the Works.

Structure Plan means the *Midland Health Campus Structure Plan* (May 2011) prepared by Cox / Hames Sharley for the Department.

Subcontract means an agreement which the Operator or a Subcontractor intends to, or does, enter into with a Subcontractor (which, for the avoidance of doubt, includes the Key Subcontracts).

Subcontractor means any person to whom the Operator or another Subcontractor subcontracts any part of the Works, whether or not there is an executed Subcontract (which, for the avoidance of doubt, includes the Key Subcontractors).

Submitted Documents means the following documents which are to be reviewed by the State in accordance with the Review Procedures:

- (a) the Plans;
- (b) the Design Documentation;
- (c) the Works Program;
- (d) the Completion Report;
- (e) Equipment Inventory;
- (f) the program for the completion of the Outstanding Items in accordance with Clause 16.8(b);
- (g) any other reports required to be submitted under this Agreement; and
- (h) any other document which the State determines from time to time will be a Submitted Document.

Training Plan has the meaning given to that term in Clause 9.4(a) which, as at the Date of this Agreement, is set out in Attachment 16 as may be updated from time to time by the Operator in accordance with this Agreement.

Uninsurable means that insurance for the relevant Insurance Facility is not available:

- (a) from Acceptable Insurers in the Australian or London insurance markets;
- (b) due to the capacity of Acceptable Insurers or their reinsurers being filled in respect of the relevant risk, class of insurance, loss or liability; or
- (c) because the insurance premium payable for the Insurance Facility is of such a level, or the terms and conditions are such, that the risk is not generally being

insured against by private sector providers of facilities similar to the Health Campus, in Australia,

provided that the Insurance Facility will not be taken to be Uninsurable to the extent that the unavailability of the Insurance Facility is caused or contributed to by a breach of this Agreement, the Insurance Policy or any Law or any acts or omissions by or of the Operator or any Operator Associate.

Uninsurable Risk Termination Event has the meaning given to that term in Clause 23.4(b)(iii).

Utility means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater and communications services.

Utility Company means any public or private body who provides a Utility.

Utility Infrastructure means any part of the supply, distribution or reticulation network operated or managed by a Utility Company, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems but not including communications systems provided as part of the Health Campus.

Variation means any change to the Health Campus Requirements or any addition, decrease, omission, deletion or removal to or from the Works.

Variation Order means the order given by the State to carry out a Variation under Clause 18, or a direction determined to be a Variation in accordance with Clause 30 following a referral under Clause 18.6 following the receipt of a Variation Quote.

Variation Request has the meaning given to that term in Clause 18.1.

Variation Quote means the notice to be given by the Operator in response to a Variation Request, which must comply with Clause 18.3 and contain:

- (a) all the information required for a Variation Quote under this Agreement; and
- (b) any additional information reasonably requested by the State Representative, as amended by agreement between the parties.

Works means all design services and work necessary for the design, construction, completion and commissioning of the Public Patient Facility and the Shared Infrastructure in accordance with and so as to comply with this Agreement including:

- (a) all work as a consequence of any Variations;
- (b) procurement and installation of all Equipment; and
- (c) the remediation of any Outstanding Items and the rectification of any Defects.

Works Program means the Bid Works Program as updated from time to time by the Operator in accordance with Clause 13.2.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) **(references)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to this Agreement;
- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(authority)**: a reference to any Authority, Utility Company, institute, association or body is:
 - (i) if that Authority, Utility Company, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, Utility Company, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that Authority, Utility Company, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, Utility Company, institute, association or body;
- (g) **(this Agreement)**: a reference to this Agreement or to any other deed, agreement, document, instrument or guidelines includes a reference to this Agreement or such other deed, agreement, document, instrument or guidelines as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (k) **(headings)**: headings are for convenience only and do not affect the interpretation of this Agreement;
- (l) **(inclusive)**: a reference to this Agreement includes all Schedules and Attachments;
- (m) **(clauses)**: a reference to:
 - (i) a Clause, Schedule or Attachment is a reference to a Clause, Schedule or Attachment of or to this Agreement;

- (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the Clause in which the reference appears; and
 - (iii) a Section is a section of a Schedule;
- (n) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) **(\$)**: a reference to "\$" is to Australian currency;
- (p) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (q) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (r) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part;
- (s) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) **(remedy)**: the use of the word "remedy" or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome; and
- (u) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this Agreement.

1.3 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Operator obligations)**: In complying with or accepting any obligation or risk in accordance with this Agreement, the Operator must procure that, to the extent applicable, the Operator's Associates are required to comply with or accept the relevant obligation or risk and not cause the Operator to breach its obligations in accordance with this Agreement.
- (c) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.
- (d) **(Agreement composition)**:
 - (i) This Agreement comprises:
 - A. Clauses 1 to 37; and

- B. Schedule 1 to 0; and
- C. Attachment 1 to Attachment 16.
- (ii) The Operator agrees:
 - A. to the extent that an Attachment seeks to impose any obligations on the State, such obligations will not be legally binding on the State (unless a corresponding obligation is expressly imposed on the State or a State Associate in a Clause or a Schedule); and
 - B. the Operator is not entitled to make any Claim against the State for any Liabilities incurred by the Operator in connection with a breach of an obligation imposed on the State in an Attachment unless such Liabilities are also incurred by the Operator as a consequence of a breach of a corresponding obligation imposed on the State in a Clause or a Schedule.
- (e) **(Order of precedence):** The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:
 - (i) Clauses 1 to 37, Schedule 1, Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6 and Schedule 9;
 - (ii) the Works Program and Design Submission Program;
 - (iii) the Design Departures Schedule;
 - (iv) subject to paragraph (vii), Schedule 11;
 - (v) subject to paragraph (vii), Schedule 10 and Schedule 12;
 - (vi) the remaining Schedules and Attachments (other than Attachment 1); and
 - (vii) Attachment 1 (other than the Design Departures Schedule), save where the Bid Design Documentation is inconsistent with the Services Specification, the Health Campus Requirements or the ICT Requirements, in which case the Bid Design Documentation will prevail over the Services Specification, the Health Campus Requirements or the ICT Requirements if and to the extent that the standards or requirements of the Bid Design Documentation impose a higher, more stringent or greater standard, requirement or scope than that imposed by the Services Specification, the Health Campus Requirements or the ICT Requirements (as applicable),

except to the extent that any part of the various documents listed above impose a greater or higher requirement, standard, quality, level of service, quantum or scope than any other part of the documents listed above, in which case subject to paragraph (g), that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.
- (f) **(Ambiguous terms):**

- (i) If either party identifies an ambiguity, discrepancy or inconsistency within or between any of the documents or categories of documents identified in paragraph (d), then that party must notify the other party of the ambiguity, discrepancy or inconsistency as soon as possible and in no case later than 5 Business Days after becoming aware of the ambiguity, discrepancy or inconsistency.
- (ii) If the Operator issues a notice in accordance with paragraph (f)(i), it must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a notice is received from the State in accordance with paragraph (f)(iii) or if no notice is received, 5 Business Days has elapsed.
- (iii) Within 5 Business Days of receipt of a notice in accordance with paragraph (f)(i), the State will (acting reasonably) direct the Operator as to how to resolve any ambiguity, discrepancy or inconsistency the subject of the notice in accordance with:
 - A. the order of precedence in paragraph (e); or
 - B. if the relevant ambiguity, discrepancy or inconsistency cannot be resolved in accordance with paragraph (f)(iii)A:
 - 1) in accordance with any process for resolving such ambiguities, discrepancies or inconsistencies contained in the relevant document; or
 - 2) otherwise as determined by the State acting reasonably.
- (iv) The Operator must comply with any direction issued by the State in accordance with this paragraph (f).
- (g) **(Design Departures Schedule):** The parties agree that in respect of any discrepancy or inconsistency, the Design Departures Schedule takes precedence over the documents listed in paragraph (e)(iv) to (e)(vii), to the extent that there is an express reference in respect of the discrepancy or inconsistency in the Design Departures Schedule.

1.4 Authorities

The Operator agrees that:

- (a) there are Authorities with jurisdiction over aspects of the Project and parts of the Site;
- (b) such Authorities may, from time to time and at any time, exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project; and
- (c) except as otherwise expressly provided in this Agreement, the Operator bears the full risk of all occurrences of the kind referred to in paragraph (b) and will not be entitled to make any Claim against the State in connection with such occurrences.

1.5 Open book basis of Agreement

- (a) Subject to Clause 28.3 and without limiting any other clause of this Agreement, the State has the right to request that the Operator make available to the State any records and other documentation which:
 - (i) are for the purpose of the Operator identifying and the State verifying all relevant costs for Variations or any other claims for compensation made under this Agreement including any preliminaries, labour, equipment, materials, subcontract, finance, overhead, administrative and other costs and profit margins, provided that the State will keep this information confidential, except in the circumstances as described in Clause 28.3(g)(ii), (iv) and (v); and
 - (ii) are or relate to the D&C Documents (including the Capital Cost Proposal Schedule) and any amendments which are made to those documents from time to time in accordance with this Agreement,on an open book basis.
- (b) The obligation to make the documents described in paragraph (a)(ii) available is subject to Clause 1.7, excluding Clause 1.7(a)(ii). The Operator must provide the State with documents referred to in Clause 1.7 for the purpose set out in paragraph (a)(i) if the information required for the purpose set out in paragraph (a)(i) is not in another document that the Operator provides to the State.
- (c) Without limiting paragraph (b), receipt of any records and documentation described in paragraph (a)(ii), may be disclosed in the circumstances described in Clause 28.3(g)(ii), (iv), and (v).
- (d) For the purposes of this Clause 1.5, "open book basis" includes the Operator providing to the State any records and documentation in a timely and clear and transparent manner which allows the State to properly understand the records and documentation and making available appropriately qualified personnel to explain the records and documentation or answer any questions the State may have in respect of the records and documentation.
- (e) The Operator must allow the State to review and undertake audits to enable it to verify compliance with this Clause 1.5.

1.6 Commitment to value for money

The Operator commits to the State to use its best endeavours to achieve best value for money for the State in respect of the Works, having regard to:

- (a) (but not being bound by) all State Supply Commission and other State procurement policies and principles, including the requirement to engage apprentices as part of the implementation of the Training Plan;
- (b) its experience of timely, quality and Best Construction Practices on the part of the Subcontractors performing the Works; and
- (c) each of the Project Documents.

1.7 Record Keeping

- (a) Subject to paragraph (b) and Clause 1.5(b) and notwithstanding any other provision in this Agreement, the Operator is not required to provide the State with:
 - (i) reports or communications prepared for internal management, internal audit, credit and executive group or board reports in relation to the Operator, the Key Service Provider or the Brookfield Australia Investments Limited Group;
 - (ii) any documents or communications where the Operator, the Key Service Provider, the Builder or Brookfield Australia Investments Limited has contractual or statutory confidentiality obligations to third parties that are unable to be waived and are unable to be excluded;
 - (iii) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee;
 - (iv) any communication subject to legal professional privilege, including any internal information regarding any Dispute or any Claim against the State under this Agreement;
 - (v) documents relating to the Key Service Provider's or the Brookfield Australia Investments Limited Group's internal costs structures and treatment of non-project related overheads, but only to the extent that those cost structures are not related to the Operator's obligations or the Project.
- (b) Nothing in this Clause 1.7 prevents the Auditor-General or the Ombudsman from having access to the records described in paragraph (a) which it is entitled to have at Law.

2. Conditions Precedent

2.1 Commencement

- (a) Subject to paragraph (b), this Agreement will not commence unless and until each of the Conditions Precedent has been satisfied or waived in accordance with this Clause 2.
- (b) The following Clauses of this Agreement commence at the Date of this Agreement:
 - (i) Clause 1 (Interpretation and related matters);
 - (ii) this Clause 2 (Conditions Precedent);
 - (iii) Clause 9 (Compliance);
 - (iv) Clause 10 (Occupational safety and industrial relations);
 - (v) Clause 22 (Representations and warranties);
 - (vi) Clause 24 (Insurance);
 - (vii) Clause 25 (Security);

- (viii) Clause 28 (Information);
- (ix) Clause 30 (Dispute resolution);
- (x) Clause 31 (Assignment and ownership);
- (xi) Clause 33 (Notices); and
- (xii) Clause 34 (General).

2.2 Conditions Precedent

This Agreement is conditional on:

- (a) the Operator entering into the Services Agreement and the Development Lease; and
- (b) the Operator delivering to the State all of the following in a form and substance reasonably satisfactory to the State:
 - (i) **(counterparts of State Project Documents)**: original counterparts of:
 - A. the State Securities; and
 - B. Novation Deeds which are required in accordance with Clause 6.6(c)(i) for Subcontracts that have been executed at the Date of this Agreement,all duly executed by all parties other than the State;
 - (ii) **(certified copies of other Project Documents)**: certified copies of the D&C Subcontract, the Builder Parent Guarantee and the Interface Agreement, all duly executed by all parties;
 - (iii) **(Performance Bond)**: the Performance Bond, valid and enforceable by the State and otherwise meeting the requirements of this Agreement;
 - (iv) **(insurances)**: evidence in the form required by Clause 24.4 that the Operator has complied with its insurance obligations set out in Clause 24.

2.3 Satisfaction of Conditions Precedent

- (a) The Operator must satisfy each Condition Precedent by 2pm on the date that is 20 Business Days after the Date of this Agreement or such later date as the State may specify by notice in writing to the Operator (**Condition Precedent Deadline Date**).
- (b) When the last of the Conditions Precedent to be satisfied or waived has been satisfied or waived, the State must confirm that all of the Conditions Precedent have been satisfied or waived and the date upon which the last of the Conditions Precedent was satisfied or waived by issuing a certificate to that effect.

2.4 Waiver of Conditions Precedent

A Condition Precedent is only waived if the State gives notice of the waiver of the Condition Precedent to the Operator.

2.5 Failure to satisfy Conditions Precedent

- (a) If a Condition Precedent has not been satisfied or waived by the Condition Precedent Deadline Date, then the State may terminate this Agreement by giving not less than 5 Business Days notice in writing to the Operator.
- (b) If this Agreement is terminated in accordance with paragraph (a) then:
 - (i) each of the other Project Documents, including the Interim Management Agreement (if entered into by the parties) and Services Agreement, will be taken to have been terminated at the time this Agreement is terminated; and
 - (ii) the Operator will not be entitled to bring any Claim against the State and the State will not be entitled to bring any Claim against the Operator arising in connection with:
 - A. the failure of the Conditions Precedent to be satisfied;
 - B. the termination of this Agreement; or
 - C. the Project or the State Project Documents,except for any Claim arising in connection with the Clauses identified in Clause 2.1(b), other than a Claim that the Conditions Precedent have not been satisfied.

3. D&C Phase

3.1 Commencement Date

This Agreement and the D&C Phase commence on the Commencement Date.

3.2 Expiry Date

The D&C Phase will expire on:

- (a) the Date of Completion; or
- (b) any earlier date on which this Agreement is terminated in accordance with Clause 27 or otherwise at Law,

(in each case the **Expiry Date**).

3.3 Defects Liability Period

- (a) The Defects Liability Period is:
 - (i) in respect of items set out in Schedule 15, the period that begins on the Date of Completion and ends 24 months after that date; and

- (ii) subject to paragraph (b), in respect of items of the Works not described in paragraph (i), the period that begins on the Date of Completion and ends 12 months after that date.
- (b) A separate Defects Liability Period in respect of rectification work performed by the Operator will commence on the date that rectification work is completed to the satisfaction of the State and continue for a further period of 12 months, provided that the total Defects Liability Period does not extend beyond 24 months from the Date of Completion.

4. Interaction with Interim Management Agreement and Services Agreement

- (a) Prior to the Date of Completion, if a matter is dealt with in both this Agreement and either the Services Agreement and/or the Interim Management Agreement:
 - (i) generally, the provisions in this Agreement will prevail to the extent of any overlap or inconsistency; but
 - (ii) where provisions relate more closely to:
 - A. the Services or the Patient Transfer Services, the provisions in the Services Agreement will prevail; or
 - B. the Operator's obligations under the Interim Management Agreement, the provisions in the Interim Management Agreement (if entered into by the parties) will prevail,to the extent of any overlap or inconsistency.
- (b) On and from the Date of Completion, if a matter is dealt with in both this Agreement and either the Services Agreement and/or the Interim Management Agreement:
 - (i) generally, where provisions relate more closely to:
 - A. the Services or the Patient Transfer Services, the provisions in the Services Agreement will prevail; or
 - B. the Operator's obligations under the Interim Management Agreement, the provisions in the Interim Management Agreement (if entered into by the parties) will prevail,to the extent of any overlap or inconsistency; but
 - (ii) where provisions relate more closely to the Works (including Defects and Insurance Policies), the provisions in this Agreement will prevail to the extent of any overlap or inconsistency.
- (c) Without limiting its obligations under the Interim Management Agreement and Services Agreement, the Operator acknowledges that:
 - (i) the delivery of the Works under the Agreement will have an effect on the performance of the Interim Management Services under the Interim Management Agreement (if entered into by the parties) and

the Patient Transfer Services and the Services under the Services Agreement and that the transition from this Agreement to the Services Agreement must be seamless; and

- (ii) it must ensure that the delivery of the Works under this Agreement takes into account the future operation of the Interim Management Agreement (if entered into by the parties) and Services Agreement.

5. General obligations

5.1 Operator's fundamental obligations

The Operator must:

- (a) design the Health Campus to meet the Design Requirements (including, for the avoidance of doubt, the requirements of the LARU) and to obtain the Authorisations to achieve Completion;
- (b) undertake the Works in accordance with Best Construction Practices;
- (c) construct the Health Campus in accordance with the D&C Documents;
- (d) achieve Completion by the Date for Completion;
- (e) satisfy the Fitness For Purpose Warranty; and
- (f) otherwise perform its obligations in accordance with the requirements set out in this Agreement.

5.2 Fitness For Purpose Warranty

The Operator must:

- (a) undertake the Works so that; and
- (b) ensure that at Completion,

the Health Campus is Fit For Purpose.

5.3 Operator's risks and limitation of State's liability

- (a) Except to the extent expressly provided in this Agreement, the Operator acknowledges the Contract Sum contains allowances for the performance by the Operator of its obligations under this Agreement including the execution of the Works and the allocation of risks to the Operator pursuant to this Agreement.
- (b) Subject only to its express rights pursuant to this Agreement, the Operator is not entitled to any adjustment to the Contract Sum or to make any Claim against the State or any State Associate for any Liabilities incurred or suffered by the Operator arising out of or in connection with:
 - (i) this Agreement (including the termination of this Agreement);
 - (ii) the performance of the Works;
 - (iii) any delay or disruption to the Works; or

- (iv) the realisation of any risks not expressly allocated to the State pursuant to this Agreement.

5.4 Acts or omissions of the Operator

Without limiting Clause 5.5, if a State Project Document confers on the Operator a right to make a Claim against the State or State Associate, 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 Associate; or
- (b) breach by the Operator of any State Project Document.

5.5 Mitigation

- (a) In this Clause 5.5, “**Relevant Relief Event**” means the occurrence of any event which entitles the Operator to:
 - (i) an extension of time;
 - (ii) compensation;
 - (iii) relief from performance of any of its obligations in any State Project Document (other than the Interim Management Agreement); or
 - (iv) bring any other Claim against the State.
- (b) If a Relevant Relief Event occurs, the Operator must:
 - (i) use its best endeavours to mitigate the effects of the Relevant Relief Event; and
 - (ii) for this purpose, comply with all reasonable directions of the State concerning the Relevant Relief Event and its consequences.
- (c) The State’s Liability in connection with the Relevant Relief Event will be reduced to the extent the Operator fails to comply with its obligations set out in paragraph (b).

5.6 The Operator

- (a) The Operator has been incorporated for the sole purpose of performing this Project. From the Commencement Date and until the expiry of the Services Agreement and subject to paragraph (b), the Operator must not conduct any business or undertaking other than the Project.
- (b) From the Commencement Date and until the expiry of the Services Agreement, the Operator may conduct business and undertakings in respect of the Private Patient Facility and the Commercial Facilities, but must conduct that business and those undertakings (including Commercial Opportunities) in accordance with the Services Agreement.
- (c) The Operator must 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 or the exercise of its rights under the State Project Documents.
- (d) The Operator must notify the State immediately if:
 - (i) it or a Consortium Entity or a Key Subcontractor becomes a party to any investigation, prosecution, litigation, legal proceedings, arbitration, mediation or any other form of litigation or dispute resolution process (where a formal notice of dispute has been served on the Operator or a Consortium Entity or Key Subcontractor) or administrative or governmental proceedings; or
 - (ii) such proceedings are pending or threatened, in the circumstances where the proceedings have the potential to involve a Claim of:
 - A. [not disclosed] or more for the Operator, the Key Service Provider or the Parent Guarantor and are not wholly covered by insurance; and
 - B. [not disclosed] or more for the Builder.
- (e) The Operator must provide to the State promptly upon request, all documents provided by the Operator (or any Related Body Corporate) to the Australia Stock Exchange Limited (and which are generally available to the public) or which the Operator is required by Law to issue to its shareholders, debenture holders or holders of its other marketable securities (as defined in the Corporations Act).

6. Contract administration

6.1 Parties' representatives

The parties may exercise any of their rights or perform any of their obligations in accordance with this Agreement through their representatives appointed in accordance with this Agreement.

6.2 State Representative

- (a) **(Appointment):** The State Representative is the person set out in Section 2 of Schedule 1 or such other person as may be appointed from time to time to replace that person in accordance with this Clause 6.2.
- (b) **(Directions):** The State Representative may:
 - (i) give directions and notices to be given by the State under this Agreement; and
 - (ii) receive all notices and documents to be received by the State under this Agreement,in accordance with this Agreement.

- (c) **(Agent):** The State Representative will carry out all of its functions in accordance with this Agreement as the agent of the State, except the function of verifying claims for payment of any kind.
- (d) **(Compliance):** Subject to Clause 18.5(a) and Clause 18.6 the Operator must comply with any direction by the State Representative given or purported to be given in accordance with this Agreement.
- (e) **(Oral directions):** The State Representative may give a direction orally but will as soon as practicable confirm that direction in writing.
- (f) **(Directions from other people):** The Operator must not accept or act upon directions from an employee or agent of the State other than the State Representative or a delegate of the State Representative appointed in accordance with Clause 6.3.
- (g) **(Vary or terminate delegation):** The State may vary or terminate any delegated power or authority of the State Representative but must promptly notify the Operator of any such variation or termination.
- (h) **(Replacement):** The State may at any time replace the State Representative, in which event the State will appoint another person as the State Representative and notify the Operator of that appointment.

6.3 Further State delegations

- (a) The State or the State Representative may at any time delegate the exercise of any power or authority of the State Representative in accordance with this Agreement to a person other than the State Representative and may terminate or vary that delegation.
- (b) In connection with any delegation in accordance with paragraph (a), the State will promptly notify the Operator of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power) and of any termination or variation to that delegation.
- (c) Any direction given by a State delegate in accordance with its delegation in accordance with this Clause 6.3 will be deemed to be a direction of the State Representative.

6.4 Operator Representative

- (a) **(Appointment):** The Operator Representative is the person set out in Section 3 of Schedule 1 or such other person as may be appointed from time to time to replace that person in accordance with this Clause 6.4.
- (b) **(Contact):** The Operator Representative must act as the principal point of contact with the State and be available to the State as and when required.
- (c) **(Presence):** The Operator must ensure that the Operator Representative is present at the Site at such times as are necessary to ensure that the Operator is complying with its obligations in accordance with this Agreement and upon reasonable request by the State Representative.
- (d) **(Directions):** A direction is given to the Operator if it is given to the Operator Representative.

- (e) **(Replacement):**
 - (i) The Operator may only replace the Operator Representative if any such replacement has the prior approval of the State (which must not be unreasonably withheld).
 - (ii) It is the intention of the parties that the Operator Representative under the Services Agreement and this Agreement hold the same position within the Operator's organisation at all times.
- (f) **(Employee of the Operator):** The Operator Representative must be an officer or employee of the Operator or a Related Body Corporate of the Operator.
- (g) **(Authority and skills):** The Operator will ensure that at all times during his or her appointment, the Operator Representative has:
 - (i) the authority to perform its role and duties and discharge its obligations in accordance with paragraph (h) and elsewhere in this Agreement; and
 - (ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of the Operator Representative.
- (h) **(Duties):** The Operator Representative will be the principal point of contact with the State in connection with this Agreement and the Project during the D&C Phase and must perform the duties of the Operator Representative in accordance with this Agreement, including to:
 - (i) **(spokesperson):** act as the spokesperson for the Operator;
 - (ii) **(partnership):** ensure the ongoing implementation of a partnership with the State;
 - (iii) **(management):** understand, co-ordinate and manage all phases of the Works throughout the D&C Phase;
 - (iv) **(liaison):** liaise and generally deal with stakeholders;
 - (v) **(manage):** represent the views of the Operator and manage and co-ordinate issues with any Operator Associate prior to presentation to the State; and
 - (vi) **(presence):** ensure a strong presence and consistent project management role for the Operator in the implementation of the Works.

6.5 Project Advisory Group

- (a) **(Establishment):** The parties will establish a team consisting of:
 - (i) the State Representative and three other representatives of the State notified by the State to the Operator from time to time;
 - (ii) the Operator Representative and three other persons nominated by the Operator to the State from time to time (which may include a representative of the Builder); and

- (iii) such other members as the parties may agree from time to time, (together the **Project Advisory Group**).
- (b) **(Chair of meetings)**: The Operator Representative will chair Project Advisory Group meetings.
- (c) **(Appointment of delegates)**: The members of the Project Advisory Group may, by notice to the other members of the Project Advisory Group, appoint a delegate to:
 - (i) attend any Project Advisory Group meetings in their absence; and
 - (ii) otherwise discharge their responsibilities in accordance with this Clause 6.5.
- (d) **(Functions)**: The functions of the Project Advisory Group will be to:
 - (i) monitor the overall progress of the Works and compliance with this Agreement;
 - (ii) endeavour to resolve any matters referred to the Project Advisory Group by a party, including any Disputes referred to the Project Advisory Group in accordance with Clause 30;
 - (iii) review all progress reports provided by the Operator and its Subcontractors; and
 - (iv) discuss and consider any other issues in connection with the Works.
- (e) **(Meetings)**: The Project Advisory Group must:
 - (i) meet monthly (or as otherwise agreed by the parties); or
 - (ii) conduct its meetings in the manner agreed by its members from time to time.
- (f) **(Reporting at meetings)**: The Operator must provide a Monthly Works Report to the Project Advisory Group prior to each Project Advisory Group meeting in accordance with Clause 7.2 and report to the Project Advisory Group on the matters covered by the Monthly Works Report at the meeting.
- (g) **(Minutes)**: The Operator must take minutes of each Project Advisory Group meeting and distribute such minutes within 5 Business Days after the meeting.
- (h) **(Other attendees)**: The State may require that the Operator procure the attendance of senior representatives of any of the Builder or any of the Operator Associates at any meeting of the Project Advisory Group and the Operator must comply with any such request. In addition, other representatives of the State and the Operator may attend meetings of the Project Advisory Group from time to time provided that the chair of the Project Advisory Group is given prior notice by the State Representative or the Operator Representative (as the case may be), together with the reason for their attendance.
- (i) **(Advisory only)**: The role of the Project Advisory Group is advisory only and its decisions or recommendations to the parties are not binding on the parties.

- (j) **(Rights and obligations unaffected):** Neither the parties' involvement in the Project Advisory Group nor the discussion of any issues at the Project Advisory Group affects the parties' respective rights and obligations in accordance with this Agreement.
- (k) **(No restriction):** The Project Advisory Group will not have any power to require any of the parties, a State Associate or an Operator Associate to act or refrain from acting in any way.
- (l) **(No reliance or Claim):** Neither the State nor the Operator will be entitled to make any Claim against any member of the Project Advisory Group in connection with anything which any such member does or fails to do in its capacity as a member of the Project Advisory Group.
- (m) **(Other meetings):** If requested by the State, the Operator must:
 - (i) ensure that appropriate personnel are available to attend meetings convened by the State in connection with construction activities on the Site (and, for the avoidance of doubt, the State may arrange for other Project stakeholders to be present at such meetings); and
 - (ii) liaise directly with, and ensure that appropriate personnel are available to attend meetings convened by, other Project stakeholders.
- (n) **(Opportunities):** As part of the Project Advisory Group's functions under this Agreement, the Project Advisory Group will take a proactive role in identifying any opportunities for the making of public announcements or statements in respect of the progress of the Works under this Agreement or the Project generally and will liaise with the State in respect of those opportunities. Nothing in this paragraph (n) limits Clause 28.4 and the requirement that the Consortium Entities not make any public disclosures, announcements or statements in relation to the Project without the State's prior consent.

6.6 Subcontracting

- (a) **(General):** The Operator must not, and must ensure that the Builder does not, enter into any Subcontract unless the proposed Subcontractor is an experienced, creditworthy, reputable and competent party which holds any necessary registrations or licences and which will have sufficient resources to perform the works or the services that are the subject of the proposed Subcontract.
- (b) **(Liability for Subcontractors):** The Operator:
 - (i) is not relieved from any of its obligations and Liabilities in accordance with this Agreement as a result of subcontracting any of those obligations or Liabilities;
 - (ii) remains responsible for the performance of all Subcontractors and the Key Service Provider and agrees that a breach by a Subcontractor or the Key Service Provider or a failure by a Subcontractor to comply with the obligations of the Operator under this Agreement is a breach or failure of the Operator; and
 - (iii) is entirely responsible for all Liabilities suffered or incurred by the State arising out of any acts, omissions and defaults, negligence or

termination of any Subcontractors or the Key Service Provider (and those of the employees and agents of any Subcontractors or the Key Service Provider).

(c) **(Novation Deeds):**

- (i) The Operator must promptly, but in any event within 3 Business Days, after the execution of any Subcontract with a value in excess of [not disclosed] or with any Key Subcontractor deliver to the State, a Novation Deed:
 - A. substantially in the relevant form set out in Schedule 8, provided that any change from the relevant form set out in Schedule 8 must be agreed with the State (acting reasonably) prior to execution of the Novation Deed;
 - B. executed by the Operator, the Builder and the Key Service Provider in the case of the Novation Deed for the D&C Subcontract; and
 - C. executed by the Builder and the relevant Subcontractor in the case of all other Subcontracts which require Novation Deeds.
- (ii) The State must respond to any request from the Operator to amend the form of the Novation Deed from that contained in Schedule 8, within 10 Business Days of provision of those amendments by the Operator to the State.
- (iii) If this Agreement is terminated or otherwise expires, the State or a third party contractor nominated by the State may give effect to the novation of any Subcontract the subject of a Novation Deed executed in accordance with paragraph (i), by executing the relevant Novation Deed.

(d) **(Subcontracts for Private Works):**

If any Subcontract in respect of the Works also requires the Subcontractor to perform the whole or any part of the Private Works, then:

- (i) where paragraph (c) applies, at the State's election, the Operator must deliver to the State a Novation Deed in accordance with paragraph (c) which relates to the Works component of the Subcontract only; and
- (ii) for the avoidance of doubt, Clause 20(e) will apply to the Subcontract.

6.7 Key Personnel and Key Subcontractors

(a) The Operator must:

- (i) employ or engage the Key Personnel and Key Subcontractors in the positions specified in Schedule 1 or equivalent positions at the times specified in the Works Program; and
- (ii) ensure that the Key Personnel and Key Subcontractors possess the appropriate skill, expertise, authority and qualifications.

- (b) The Operator must not replace the Key Personnel or any Key Subcontractors in their roles as Key Personnel or Key Subcontractors or permit the replacement of any Key Personnel or Key Subcontractors:
 - (i) without the State's prior written approval in accordance with paragraph (c) and (d); or
 - (ii) unless directed to do so by the State in accordance with Clause 6.9.
- (c) If the Operator or a Key Subcontractor wishes to replace or permit the replacement of a member of Key Personnel, the State may not unreasonably withhold or delay its approval of a proposed replacement if:
 - (i) the member of Key Personnel has resigned from his or her employment or has terminated his or her engagement with the Operator or the Key Subcontractor;
 - (ii) the member of Key Personnel has died;
 - (iii) the member of Key Personnel has become permanently or long term incapable of performing his or her duties due to injury or illness; or
 - (iv) the member of Key Personnel has committed a breach of any express or implied term of his or her contract of employment or independent contract which would warrant termination of his or her employment or engagement, and

the Operator has demonstrated to the reasonable satisfaction of the State that the proposed replacement person is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute. If any of the events described in paragraphs (i) to (iv) above occur without notice to the Operator, the Operator is not required to obtain prior approval from the State, but rather must within 10 Business Days of becoming aware of the relevant event, propose to the State a replacement Key Personnel who is appropriately technically qualified and has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute and is available to perform the role.

- (d) If the Operator or the Builder wishes to replace or permit the replacement of a Key Subcontractor, the State may not unreasonably withhold or delay its approval of a proposed replacement if:
 - (i) the Operator demonstrates to the reasonable satisfaction of the State that the proposed replacement Key Subcontractor is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute; and
 - (ii) the Operator procures the execution by the replacement Key Subcontractor of a Novation Deed substantially in the form contained in Schedule 8.

6.8 Key Subcontracts

The Operator must seek the State's prior approval (which will not be unreasonably withheld) as to the terms of any Key Subcontract and any amendment to any Key Subcontract.

6.9 Removal of personnel

- (a) The State may, acting reasonably, direct the Operator to remove from any activity connected with the Project any individual employed or engaged by the Operator or any individual employed or engaged by a Subcontractor.
- (b) The State may, acting reasonably, direct the Operator to remove from any activity connected with the Project any Subcontractor engaged by the Operator which the State does not believe meets the requirements of Clause 6.6(a).
- (c) On receipt of a direction under paragraph (a) or paragraph (b), the Operator must take immediate steps to:
 - (i) remove or procure the removal of the individual or the Subcontractor from the activity connected with the Project;
 - (ii) prevent or procure the prevention of the relevant individual or Subcontractor from having access to the Works, the Site or Confidential Information; and
 - (iii) if necessary, appoint an alternative individual or Subcontractor acceptable to the State.
- (d) Following removal under this Clause 6.9, the individual must not be employed or engaged in respect of activities connected with the Project and have access to the Works or any confidential information without the prior approval of the State.

6.10 National Police Certificates

The Operator must obtain a National Police Certificate for all Key Personnel and officers and directors of the Operator and each Key Subcontractor engaged by the Operator during the Defects Liability Period (from which time the Services will have commenced at the Public Patient Facility under the Services Agreement) and, if requested, provide a copy of the National Police Certificate to the State.

6.11 Engagement of employees

If, at any time during the D&C Phase, either party engages a person who was previously employed by the other party in relation to a construction, contract management or project development aspect of the Project, then:

- (a) the party who engages that person must promptly notify the other party in writing; and
- (b) unless otherwise agreed between the parties, the party which engages that person must not utilise that person in relation to the Project for a period of 12 months (or such other period agreed between the parties).

6.12 Independent Certifier

- (a) **(Role):** The role of the Independent Certifier in respect of this Agreement is to determine whether Completion has occurred and subject to Clause 14.6, whether a claim for an extension of time should be granted, including the duration of the extension of time. The parties acknowledge that the Independent Certifier will also have responsibilities in respect of certain events under the D&C Subcontract but that those responsibilities must not put the Independent Certifier in conflict with its obligation to perform the Independent Certifier Services. The functions, rights and liabilities of the Independent Certifier and the parties' rights and obligations with the Independent Certifier will be as set out in the Independent Certifier Agreement which is prepared and negotiated in accordance with this Clause 6.12.
- (b) **(Tenders):** The Operator and the State must, in conjunction with the Builder and prior to the Commencement Date, jointly call for tenders for the Independent Certifier who must:
 - (i) **(expertise):** have appropriate qualifications and experience;
 - (ii) **(no conflicts):** have no interest or duty which may conflict with the role of the Independent Certifier in accordance with this Agreement;
 - (iii) **(execution):** indicate its willingness to execute the Independent Certifier Agreement without substantial amendment;
 - (iv) **(insurance):** have professional indemnity insurance in accordance with the requirements of the Independent Certifier Agreement; and
 - (v) **(information):** provide such information in relation to fees and other matters as the State reasonably requires.
- (c) **(Selection):** The parties in conjunction with the Builder will select one of the firms which tendered as set out in paragraph (b) to act jointly on behalf of the State and the Operator as the Independent Certifier to perform the Independent Certifier Services.
- (d) **(Independent Certifier Agreement):** The Operator and the State must and the Operator must procure that the Builder, enter into the Independent Certifier Agreement with the Independent Certifier selected by the parties and the Builder within 20 Business Days of the Commencement Date, or such later time as agreed by the parties, in the form approved in Schedule 16 as the parties in conjunction with the Builder may amend during the tender process.
- (e) **(Amendment to Independent Certifier Agreement):** If the Independent Certifier proposes amendments to the terms of the Independent Certifier Agreement, then the parties in conjunction with the Builder must negotiate and seek to agree the amendments.
- (f) **(No approval):** No certificate or notice given by, or other act or omission of, the Independent Certifier will:
 - (i) constitute an approval by the State of the Operator's performance of its obligations in accordance with the State Project Documents other than to the fact of Completion having occurred; or

- (ii) prejudice any rights or powers of the State whether in accordance with the State Project Documents or otherwise according to Law.
- (g) **(Final and binding):** The decision of the Independent Certifier in respect of any matter which it is required to make a decision as part of the Independent Certifier Services is final and binding on the parties with the exception of manifest error of the Independent Certifier.
- (h) **(Appointment and replacement):** If:
 - (i) the Independent Certifier Agreement is terminated in accordance with its terms; or
 - (ii) the Independent Certifier is, for any reason, not appointed or ceases to act as the Independent Certifier,

the State and the Operator in conjunction with the Builder must jointly engage another person to act as Independent Certifier on substantially the same terms as the Independent Certifier Agreement in accordance with the process set out in paragraphs (a) to (c).
- (i) **(Costs of Independent Certifier):** The costs of the Independent Certifier for the Independent Certifier Services will be shared equally by the parties in so far as it relates to the Independent Certifier Services, but excludes any functions performed by the Independent Certifier with respect to the Private Works and the D&C Subcontract, which costs, as between the State and the Operator, are to be borne by the Operator.

7. Plans and reports

7.1 Requirements for all Plans

- (a) The Plans as at the Date of this Agreement are contained in Attachment 5 to Attachment 16 (inclusive).
- (b) The Plans must comply with the requirements of the relevant Plans set out in Schedule 4 at all times.
- (c) The Operator must update each of the Plans:
 - (i) by no later than the expiry of the following time periods after the Commencement Date:
 - A. in respect of the Completion Plan, 100 Business Days; and
 - B. in respect of all of the other Plans, 60 Business Days;
 - (ii) in accordance with any requirements for updating each of the Plans set out in Schedule 4;
 - (iii) if reasonably requested by the State Representative to do so; and
 - (iv) as otherwise necessary to reflect any changes to the nature or status of the Works.

- (d) The Operator must submit any revisions, modifications or updated versions of the Plans to the State Representative for review in accordance with the Review Procedures.
- (e) The Operator must provide any additional information in relation to the Plans reasonably requested by the State Representative.
- (f) Unless otherwise agreed in writing by the State Representative, the Operator must undertake the Works and the Operator's obligations under this Agreement in accordance with the Plans.

7.2 Monthly Works Report

- (a) The Operator must submit to the State Representative, the Independent Certifier (but only to the extent that the Independent Certifier requires the Monthly Works Report for the Independent Certifier Services) and each other member of the Project Advisory Group no later than 5 Business Days after the end of each calendar month and at least 5 Business Days before each Project Advisory Group meeting, a report (**Monthly Works Report**). Each Monthly Works Report will relate to and report on the immediately preceding calendar month.
- (b) The Monthly Works Report must, as a minimum, comprise the following information:
 - (i) (**Plans**) details of the Operator's performance against the Plans including any issues arising in relation to the execution of the Works in accordance with the Plans;
 - (ii) (**Design**) details of the design work undertaken by design consultant Subcontractors during the reporting period;
 - (iii) (**Procurement**) details of Subcontracts let during the reporting period (and the progress of those Subcontractors) and planned to be let during the forthcoming month;
 - (iv) (**Construction**) details of:
 - A. the construction work undertaken on the Site during the reporting period and the construction work planned to be undertaken during the forthcoming month;
 - B. the Subcontractors on the Site during the reporting period and planned to be on the Site during the forthcoming month; and
 - C. the results of any monitoring and test programs;
 - (v) (**Works Program**):
 - A. details of the progress of the Works against, and compliance with, the Works Program in the form of a summary and a marked up copy of the Works Program; and
 - B. a copy of the Works Program updated in accordance with this Agreement. If the Works Program is updated such that the Design Submission Program must also be updated for

consistency, the Design Submission Program must be updated at the same time as the Works Program;

- (vi) **(Variations)** details of any Variations or proposed Variations;
- (vii) **(Claims and Disputes)** details of any outstanding Claims or Disputes;
- (viii) **(Interim Management Services)** details of any Interim Management Services performed in the reporting period;
- (ix) **(ESD)** confirmation that the Operator has satisfied applicable ESD requirements during the relevant reporting period;
- (x) **(Quality)** details of any quality assurance concerns in relation to the Works;
- (xi) **(Safety)** details of any safety concerns and any safety incidents that have occurred in the reporting period and cumulatively and details of any safety initiatives, procedures and other measures that have been implemented by the Operator in the reporting period;
- (xii) **(Environment)** details of:
 - A. any environmental issues including any Environmental Notices and proposed remedial actions; and
 - B. the removal of any Contamination including details of the quantities and types of Contamination removed during the relevant reporting period;
- (xiii) **(Industrial Relations Matters)** details of any Industrial Relations Matters in the relevant reporting period (including union representative entry onto the Site in the relevant reporting period), other than claims for payments of the type described in paragraphs (a), (b) or (c) of the definition of 'Industrial Relations Matter' which are in the ordinary course of business;
- (xiv) **(Community issues)** a summary of all issues, complaints received and communications with Key Users including the public, media, neighbourhood groups, local community and adjoining neighbours, including a description of any strategies to inform the local community of construction or other works that may impact the community;
- (xv) **(Other matters)** any issues arising out of any reports, plans or manuals provided to the State in accordance with this Agreement; and
- (xvi) such other information reasonably requested by the State Representative.

7.3 Occupational health and safety incident reports

- (a) In addition to the Monthly Works Report, the Operator must immediately notify the State Representative in writing if a significant occupational health and safety incident occurs on the Site, including:

- (i) a WorkCover WA notifiable injury to person(s) as a result of a Site workplace incident;
 - (ii) any event related to the Works which requires or has resulted in the evacuation of the Works or the Site;
 - (iii) any accident involving a major item of construction equipment (including cranes, hoists and vehicles);
 - (iv) the collapse of any building structural element, excavation or temporary scaffolding or shoring;
 - (v) the severing of any live power or gas supply to the Site, or accidental interruption to service supply to the local community;
 - (vi) injury to any workers and other members of the general public visiting or accessing the Site or adjacent areas (where applicable);
 - (vii) having the Site closed down for occupational health and safety reasons including by any Governmental Agency (including WorkSafe Western Australia or any Commonwealth government inspectors) or by trade union representatives; or
 - (viii) any other event that causes, or is likely to cause, personal injury, death or damage to property or closure of a Site.
- (b) The Operator must:
- (i) within 2 Business Days of any incident referred to in paragraph (a), provide a written report to the State giving complete details of the incident, including the results of investigations into its cause, any further investigations to be carried out and the timeframe within which they will be completed and any recommendations or strategies for prevention of a recurrence including the implementation of suitable control measures and remedial action as required; and
 - (ii) provide the State with any further information when reasonably requested by the State.

7.4 Submitted Documents for review by the State

The Operator must provide a fortnightly report to the State detailing any Submitted Documents which are scheduled to be submitted to the State for review in accordance with the Review Procedures in the forthcoming fortnight under this Agreement.

7.5 Additional reports

The Operator must prepare and submit any other reports or information relating to the Works reasonably requested by the State.

8. Site

8.1 Access

- (a) **(Development Lease):** The Operator acknowledges that the Development Lease gives it sufficient access to complete the Works and undertake the Project in accordance with this Agreement.
- (b) **(Adequacy of access):** The Operator:
 - (i) acknowledges that the State and State Associates make no representation, warranty or guarantee with respect to the adequacy of access to the Site for the execution of the Works; and
 - (ii) accepts all risks associated with the adequacy of the access to the Site.
- (c) **(Risk of obtaining access to additional land):** The Operator acknowledges that it is solely responsible for obtaining access to any land outside or additional to the Site to which access is required for the purposes of carrying out the Project (including for the purposes of accessing water or natural material sources for carrying out the Project and carrying out remedial works).
- (d) **(State right of access to inspect Works):**
 - (i) The Operator must provide the State Personnel access to:
 - A. the Site; and
 - B. any other place where any part of the Works are being designed, prepared, tested, fabricated or stored,upon reasonable request by the State, for the purpose of the State inspecting the Works.
 - (ii) If State Personnel attend the Site or any other place referred to in paragraph (i) prior to the Date of Completion the State will procure compliance with the Operator's reasonable requirements in respect to safety and industrial relations and any reasonable direction issued by the Operator in respect of safety and site access.
 - (iii) Nothing in this Clause 8.1(d) requires the State to inspect the Works for Defects and the Operator is not relieved from, and remains fully responsible for, the Operator's obligations in respect of the Works.
- (e) **(Controlling access):** At all times from the Commencement Date to the Date of Completion, the Operator must:
 - (i) control access to, and ensure public safety on the Site;
 - (ii) provide for the continuous safe passage of the public and road users on existing roads, pedestrian access ways and bicycle paths which are within the Site; and
 - (iii) not cause an unsafe condition to exist around or in the vicinity of the Site.

8.2 Condition of land

The State makes no representation and gives no warranty to the Operator in connection with:

- (a) the Site;
- (b) the existence, location, condition or availability of any Infrastructure; and
- (c) any Land Conditions.

8.3 Contamination

- (a) If the Operator discovers any Contamination in, on, over, under or emanating from the Site (including any Contamination in any groundwater) (whether or not the Operator has caused or contributed to that Contamination) it must:
 - (i) notify the State as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination; and
 - (ii) fully comply with any requirements for notification of the Contamination under the *Contaminated Sites Act 2003* (WA), unless the State notifies the Operator that it intends to comply with that notification requirement itself.
- (b) Each party must promptly provide the other party with a copy of any Environmental Notice in relation to Contamination served on it, and copies of all related correspondence (including correspondence received prior to and after the Environmental Notice).
- (c) The Operator must:
 - (i) Remediate:
 - A. any Contamination in, on, or under the Site; or
 - B. any Contamination which has emanated or is emanating from or to the Site,in accordance with all Laws and any Environmental Notice; and
 - (ii) comply with all requirements of any Authority in connection with any Contamination referred to in paragraph (i) or any Remediation of any such Contamination.
- (d) If the Operator believes in good faith, based on professional advice, that an Environmental Notice can and should be successfully challenged or appealed, the Operator must:
 - (i) promptly notify the State and give the State a copy of all information and advice it has received in support of this view (provided that nothing in this Clause requires the Operator to waive any legal professional privilege);
 - (ii) if the Environmental Notice is addressed to the State, obtain the consent of the State (such approval not to be unreasonably withheld or delayed) prior to commencing any action to challenge or appeal

- the Environmental Notice on behalf of the State (and must not, in commencing or continuing any action to challenge or appeal the Environmental Notice, put the State in a worse position in respect of the Environmental Notice or the event that led to the Environmental Notice being given, than if it had not commenced the action);
- (iii) if required by the State, lodge an appeal or challenge against the Environmental Notice, in which case the State will bear the direct costs reasonably necessarily incurred only in the case of Reimbursable Contamination, Migratory Contamination or Contamination to the extent caused by the State (in its capacity as a contracting entity under this Agreement) or State Personnel;
 - (iv) keep the State promptly and fully informed at all times of the progress of any action taken to challenge or appeal the Environmental Notice; and
 - (v) notwithstanding any challenge or appeal, take all reasonable steps to contain the Contamination and continue to satisfy the requirements of the Environmental Notice until the Environmental Notice is stayed, quashed, overturned, set aside or revoked.
- (e) If the Operator discovers any Reimbursable Contamination in, on, over, under or emanating from the Site, or Migratory Contamination, in addition to the obligations under paragraphs (a), (b) and (c), the Operator must:
- (i) as part of the notice given under paragraph (a) include details of:
 - A. the Reimbursable Contamination or Migratory Contamination encountered and why the Operator believes the Contamination is Reimbursable Contamination or Migratory Contamination;
 - B. the method by which the Reimbursable Contamination or Migratory Contamination should be Remediated;
 - C. the additional work and additional resources which the Operator estimates to be necessary to Remediate the Reimbursable Contamination or Migratory Contamination;
 - D. the time the Operator anticipates will be required to Remediate the Reimbursable Contamination and the effect on the Date for Completion (if any) and the Milestone Dates; and
 - E. the Operator's estimate of the cost of the measures necessary to Remediate the Reimbursable Contamination or Migratory Contamination.
- (f) Within 5 Business Days of receipt of the notice provided under paragraph (a) in the circumstances referred to in paragraph (e), the Operator and the State must meet to agree on a method of Remediation of the Reimbursable Contamination or Migratory Contamination. The method of Remediation is to have regard to the effect on the Operator of any delay to carrying out the Works or the Private Works caused by undertaking the Remediation which is not able to be mitigated. If the parties are unable to agree on the method of

Remediation, the matter is to be referred to dispute resolution in accordance with Clause 30, and may be referred to the Independent Expert in accordance with that Clause.

- (g) Subject to the Operator's compliance with paragraph (e) and (f) and the Operator mitigating the costs it incurs in undertaking the Remediation in accordance with Clause 8.3, the Operator is entitled to:
- (i) reimbursement by the State of the cost of disposal of Reimbursable Contamination or Migratory Contamination at a Licensed Disposal Site, in accordance with the method of remediation agreed or determined under paragraph (f), calculated in accordance with Schedule 19;
 - (ii) reimbursement by the State of the cost incurred by the Operator undertaking any other Remediation of Reimbursable Contamination or Migratory Contamination in accordance with paragraph (c) and the method of remediation agreed or determined under paragraph (f), calculated in accordance with Schedule 19; and/or
 - (iii) an extension of time to the Date for Completion determined in accordance with Clause 14,
- but not the costs associated with any delay caused by the Reimbursable Contamination or Migratory Contamination or undertaking the Remediation.
- (h) Except in the circumstances set out in paragraphs (e), (f) and (g):
- (i) if the State (in its capacity as a contracting entity under this Agreement) or State Personnel caused the Contamination after the Date of this Agreement, the State is responsible for the cost of Remediating the Contamination in accordance with paragraph (c) and calculated in accordance with Schedule 19; and
 - (ii) the Operator must otherwise comply with its obligations under paragraph (c) at its cost.

8.4 Utilities

The Operator must:

- (a) **(enquiries)**: make enquires as to the location of existing Utility Infrastructure and liaise with the owner of that Utility Infrastructure and the relevant Utility Company in connection with the need for any potential relocation, protection or decommissioning of the Utility Infrastructure (as applicable);
- (b) **(Utility works)**: undertake, or procure that a Utility Company undertakes, all necessary work in connection with Utility Infrastructure within the Site required to deliver the Health Campus;
- (c) **(supply)**: ensure that there is a continuous supply of Utilities to and within the Site for the purpose of undertaking the Works;
- (d) **(agreements)**: enter into all agreements for the supply of Utilities for the purpose of undertaking the Works;

- (e) **(payment):** pay for all Utilities consumed or used in undertaking the Works (including connections and headworks) in accordance with the agreements entered into with the relevant Utility Company or if no agreement is entered into, upon receipt of an invoice for Utility consumption from the State; and
- (f) **(indemnity):** indemnify the State against any Claim or Liability for:
 - (i) any damage or disruption to any Utility Infrastructure; or
 - (ii) the removal, relocation or carrying out of works to Utility Infrastructure,in connection with delivering the Project or the use or occupation of the Site by the Operator or the Operator's Associates.

8.5 Artefacts

- (a) Any Artefacts discovered on or under the surface of the Site will be the property of the State.
- (b) If an Artefact is discovered in the Site or any part of it, then the Operator must:
 - (i) immediately notify the State of that discovery;
 - (ii) take every reasonable precaution to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made;
 - (iii) continue to perform its obligations under this Agreement, except to the extent otherwise:
 - A. directed by the State;
 - B. ordered by a court or tribunal; or
 - C. required by Law;
 - (iv) at the request of the State, provide all reasonable assistance in connection with the discovery of the Artefact; and
 - (v) without limiting the Operator's right to seek reimbursement or compensation pursuant to this Agreement, comply with any direction of the State in respect of any Artefact.

8.6 Native Title Claims and Heritage Claims

- (a) Despite anything to the contrary contained in this Agreement, as between the State and the Operator:
 - (i) the State is responsible for responding to any Native Title Claim and Heritage Claim in respect of any part of the Site; and
 - (ii) the State will be responsible for the payment of any compensation or other moneys required to be paid to any native title holders of the Site or any part of the Site pursuant to a Native Title Claim or Heritage Claim.

- (b) If there is a Native Title Claim or Heritage Claim in connection with the Site or any part of it, then the Operator must:
 - (i) continue to perform its obligations under this Agreement, except to the extent otherwise:
 - A. directed by the State;
 - B. ordered by a court or tribunal; or
 - C. required by Law; and
 - (ii) provide all reasonable assistance required by the State in dealing with the Native Title Claim or Heritage Claim.

8.7 General Environment provisions

The Operator must ensure that in undertaking the Works:

- (a) it complies with all Laws, Authorisations and other requirements of this Agreement for the protection of the Environment;
- (b) it does not cause any Environmental Incident;
- (c) it immediately notifies the State of and remedies as soon as practicable:
 - (i) any non-compliance with the requirements of this Clause 8.7;
 - (ii) any Environmental Incident; or
 - (iii) the receipt of any notice, order or communication received from an Authority for the protection of the Environment; and
- (d) the responsibility for the cost of the remedial action is determined in the same manner as set out in Clause 8.3(h).

8.8 Advertising

The Operator may erect on Site, or permit to be erected on Site, only those signs:

- (a) required by Law;
- (b) specified in the Design Requirements; or
- (c) required to identify the Operator's premises.

9. Compliance

9.1 General

- (a) **(Authorisations):** The Operator must obtain and maintain all Authorisations for, and to undertake, the Works.
- (b) **(Comply with all Laws and Authorisations):** The Operator must:
 - (i) comply with, and ensure that the Operator Associates comply with:

- A. all applicable Laws in undertaking the Works; and
 - B. all Authorisations necessary for, and to undertake, the Works (including all conditions of such Authorisations); and
- (ii) ensure that the Works comply with all applicable Laws and Authorisations (including all conditions of such Authorisations);
- (c) **(Notices, fees and documents):** The Operator must:
 - (i) except as expressly provided in this Agreement, give all notices and pay all fees and other amounts required to be paid in respect of undertaking the Works; and
 - (ii) give the State Representative copies of all documents (including Authorisations and other notices) issued to it in respect of the Project by any Authority or the LARU.
- (d) **(Operator to provide information and assistance):** The Operator must provide all information and assistance reasonably required by the State in order for the State to discharge any obligation it has in accordance with any Law or Authorisation in connection with the Works.

9.2 Compliance with the Code and Implementation Guidelines

- (a) The Operator must, and must ensure that all of its Subcontractors and Related Entities, comply with the Code and the Implementation Guidelines.
- (b) The Operator acknowledges and agrees that compliance with the Code and the Implementation Guidelines does not relieve the Operator from responsibility to perform its obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Operator with the Code and the Implementation Guidelines.
- (c) Where any amendment of this Agreement under Clause 34.9 is proposed by the Operator, and that amendment would affect compliance with the Code and Implementation Guidelines by the Operator in accordance with this Clause 9.2, the Operator must submit a report to the Government of the Commonwealth of Australia specifying the extent to which the Operator's compliance with the Code and the Implementation Guidelines will be affected.
- (d) The Operator must maintain adequate records of compliance with the Code and the Implementation Guidelines by:
 - (i) that Operator;
 - (ii) that Operator's Subcontractors; and
 - (iii) that Operator's Related Entities.
- (e) If the Operator does not comply with the requirements of the Code or the Implementation Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group (as referred to in the Code and the Implementation Guidelines) or the Government of the Commonwealth of Australia, without prejudice to any rights that would otherwise accrue, the Minister for Employment and Workplace Relations, the Code Monitoring Group or the

Government of the Commonwealth of Australia are entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Operator or a Related Entity in respect of work funded by the Government of the Commonwealth of Australia or any Government Agency.

- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Operator may give preference to proposed Subcontractors that have demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (g) The Operator must not engage a proposed Subcontractor in relation to the Project where:
 - (i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (ii) the proposed Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (h) The Operator must and must ensure that its Subcontractors and its Related Entities provide the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Implementation Guidelines), with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project and Works the subject of this Agreement; and
 - (iii) interview any person,as is necessary to demonstrate their compliance with the Code and the Implementation Guidelines.
- (i) The Operator agrees that the Operator and its Related Entities must comply with a request from the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- (j) For the avoidance of doubt, paragraph (h) applies in relation to the Operator's new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).

- (k) The Operator must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under paragraph (a) to (j) (inclusive) and that the tender for any Subcontract includes compliance with the Code and the Implementation Guidelines as a condition of tender. If reasonably requested by the State, the Operator must provide evidence of its compliance with this paragraph (k).

9.3 Building and Construction Industry Training Levy

The parties acknowledge and agree that the Contract Sum includes, and the Operator must pay, the training levy in respect of the Project under the *Building and Construction Industry Training Levy Act 1990* (WA).

9.4 Priority Start – Building Policy

- (a) Without limiting Clause 9.1, in performing the Works, the Operator must engage apprentices or trainees in accordance with the requirements of the Western Australian Government's Priority Start – Building Policy administered by the Department of Education and Training and, for that purpose, by no later than 4 weeks after the Date of this Agreement prepare a training plan for the Works which is approved by the Department of Education and Training as complying with the Priority Start – Building Policy (**Training Plan**).
- (b) The Operator must notify the State Representative in writing as soon as the Training Plan has been approved by the Department of Education and Training, together with evidence of the Department of Education and Training's approval, from which time the Training Plan will become a Plan for the purposes of this Agreement and Clause 7.1 will apply to the Training Plan.

9.5 Compliance with NPA

- (a) The Operator acknowledges that the State is a party to the NPA and that the funding for the Project comes (in part) from the Commonwealth of Australia. To assist the State to comply with its obligations under the NPA, the Operator must:
 - (i) 15 Business Days prior to the 10th day of each March, June, September and December that falls between the Date of this Agreement and the Date of Completion, provide a report to the State detailing:
 - A. the scope of the work performed during the period covered by the report;
 - B. the progress of the Operator with reference to the Milestones and the Works Program;
 - C. the progress of the cost of the Project;
 - D. risk issues that have arisen with respect to the Project during the period covered by the report;
 - E. details of how risk issues identified in previous reports have been resolved, managed or progressed; and

- F. confirmation of the Operator's and its Subcontractors' compliance with Commonwealth, State and local laws and regulations that apply to the Project;
 - (ii) if the State reasonably requests further information in respect of any information contained in a report submitted in accordance with paragraph (i), provide that information within 5 Business Days of the request;
 - (iii) subject to paragraph (b) and (c), without affecting the obligation to comply with the Works Program, achieve the Milestones by no later than the relevant Milestone Date; and
 - (iv) at all times ensure and, if requested, provide written confirmation that the Builder is accredited under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme.
- (b) If the Operator is entitled to an extension of time to the Date for Completion under Clause 14, and the event leading to the extension of time also delays the Operator in achieving a Milestone Date, the Operator will not be in breach of its obligation to achieve the Milestone by the relevant Milestone Date if an extension calculated in accordance with Clause 14 for the Milestone Date would have extended the Milestone Date beyond the date by which the Operator actually achieved the Milestone.
- (c) If the Date of this Agreement is after 31 March 2012, this paragraph (c) applies.
- (i) For the purpose of this clause the period between 1 April 2012 and the Date of this Agreement plus an additional 20 Business Days from the Date of this Agreement is the **NPA Milestone Delay**.
 - (ii) Regardless of the Milestone Dates, the date on which the parties anticipate that the Milestones will be achieved is set out in the Bid Works Program.
 - (iii) If the date referred to in paragraph (ii) is adjusted by adding the NPA Milestone Delay (**NPA Adjusted Date**) and the NPA Adjusted Date is then later than the relevant Milestone Date, the Operator's obligation in paragraph (a)(iii) is to achieve the relevant Milestone by the NPA Adjusted Date, not the Milestone Date.
 - (iv) This paragraph (c) operates to provide the Operator with relief from the obligation in paragraph (a)(iii) in the circumstances described in this paragraph (c) only.
 - (v) This paragraph (c) does not affect relief to which the Operator may be entitled under paragraph (b) and is in addition to any relief that may be granted under paragraph (b).
 - (vi) Nothing in this paragraph (c) or paragraph (b) operates to alter the Milestone Dates, which the parties acknowledge are dates by which the Milestones must be achieved, as between the State and the Commonwealth of Australia.

9.6 Requirements of the MRA

- (a) If the requirements of the MRA for the granting of the Development Approval in respect of the Health Campus or the Works change from the regulations and guidelines in place as at the Date of this Agreement, which change leads to the Operator having to change the Design Documentation for the Public Patient Facility or the Works excluding:
 - (i) a change which ought reasonably to have been anticipated by the Operator; and
 - (ii) a change to the extent it arises out of the Operator's misunderstanding of the MRA's requirements,the Operator will be entitled to claim all reasonable necessary direct costs that it incurs undertaking the rework to address those changes, but is not entitled to any costs in respect of the Private Patient Facility.
- (b) The Operator is not entitled to claim any delay costs arising out of the events referred to in paragraph (a) in respect of the Public Patient Facility or the Private Patient Facility.

10. Occupational safety and industrial relations

10.1 Occupational health, safety and rehabilitation

- (a) **(OHS Laws):** In this Clause 10.1:
 - (i) **(OHS Accreditation Scheme):** means any occupational health and safety accreditation scheme established or that may be established in connection with the *Building and Construction Industry Improvement Act 2005* (WA).
 - (ii) **(OHS Laws):** means all statutes, regulations and other subordinate legislation of the Parliament of the State of Western Australia or the Parliament of the Commonwealth of Australia in force or that come into force during the D&C Phase in connection with occupational health and safety including the *Occupational Safety and Health Act 1984* (WA) and the *Occupational Safety and Health Regulations 1996* (WA) and any OHS Accreditation Scheme.
- (b) **(Health, safety and welfare):** The Operator must ensure the health, safety and welfare of all persons present on or entering the Health Campus, or in any way engaged with the performance of the Works consistent with its obligations under OHS Laws.
- (c) **(Comply with OHS Laws):** Without limiting Clause 9.1, the Operator must:
 - (i) comply with all OHS Laws, ensure that its employees and contractors comply with all OHS Laws and, upon the reasonable request of the State, demonstrate compliance with OHS Laws;
 - (ii) perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under the OHS Laws; and

- (iii) co-operate with the State to enable the State to comply with its obligations in accordance with all relevant OHS Laws.
- (d) **(Site Safety)**: From the Commencement Date, the Operator must supply or arrange to be supplied all plant and equipment necessary to ensure the Works and the Private Works are carried out, and the Site is maintained, in a manner that is safe and without risks to health.
- (e) **(Ultimately responsible)**: The Operator accepts that it is responsible for:
 - (i) all plant and equipment on Site, whether supplied by it, any Subcontractor or any third party, including its maintenance and condition so that it is safe and without risk to any person;
 - (ii) the control and management of the Site for the purposes of delivering the Works and the Private Works and discharging the duties imposed by the OHS Laws; and
 - (iii) all health and safety at the Site,from the Commencement Date. The Operator must not delegate or assign its responsibility for health and safety under this Agreement to a third party. Whilst the State does not prevent the Operator delegating its obligations in respect of health and safety as may be permitted by any Law, a delegation or assignment of any responsibility for health and safety by the Operator under an OHS Law does not derogate from the Operator's overall responsibility as set out in this Agreement. The Operator must keep the State informed of potential and actual occupational health and safety issues which may affect the ability of the Operator to perform the Operator's obligations under this Agreement and promptly provide any relevant information to the State.
- (f) **(Accreditation)**: The Operator must ensure that all persons (other than the State or State Associates) required to be accredited under the OHS Accreditation Scheme for the purposes of this Project, are accredited or attain accreditation within 12 months of the Commencement Date under the OHS Accreditation Scheme and comply with all requirements of and maintain accreditation under the OHS Accreditation Scheme.
- (g) **(NPA)**: The Operator acknowledges that any breach of this Clause 10.1 may mean that the Operator will not be permitted to be involved in any project wholly or partly funded by the Commonwealth under the NPA.

10.2 Breach of OHS Laws

Any breach by the Operator or its employees and contractors of OHS Laws or the requirements of this Clause 10 which:

- (a) gives rise to circumstances which present an actual or potential risk to life or of serious injury; or
- (b) is otherwise required to be notified under OHS Laws,

must be notified by the Operator to the State, and entitles the State to suspend the whole or part of the Works and the Operator must bear any cost it incurs as a result of the suspension. If the Operator believes that the circumstances that gave rise to the suspension as notified by the Operator no longer exist, the Operator may give the State

notice and evidence of that fact. Following receipt of the notice, if the State is satisfied, acting reasonably, that the circumstances that gave rise to the suspension no longer exist (including that any consequences that needed to be addressed or remediated have been addressed or remediated), the State must promptly give the Operator a notice that it can recommence the Works.

10.3 Dangerous goods

The Operator is responsible for the reporting of any reportable situations (as that term is defined in the *Dangerous Goods Safety Act 2004* (WA)) and for complying with all other obligations under the *Dangerous Goods Safety Act 2004* (WA) to the extent that it applies to the Operator's obligations under this Agreement. The State is entitled to rely on the Operator complying with this Clause 10.3 in the event that a reportable situation (as that term is defined in the *Dangerous Goods Safety Act 2004* (WA)) occurs.

10.4 Audit

The State may, at any time and from time to time, perform an audit of the Operator's Records and inspect the Site to identify whether the Operator has breached this Clause 10 or any requirements of a Plan relating to workplace health and safety.

10.5 Industrial issues

(a) **(Industrial Relations Matters and Industrial Action):**

- (i) The Operator is solely responsible for the management of all Industrial Relations Matters in connection with delivering the Works and the Private Works including the conduct of all proceedings, conferences, negotiations and dealings with unions and union representatives.
- (ii) Without limitation, the Operator must:
 - A. attend meetings from time to time for the purpose of discussing Industrial Relations Matters, other than claims for payments of the type described in paragraphs (a), (b) or (c) of the definition of 'Industrial Relations Matter' which are in the ordinary course of business, as requested by the State;
 - B. keep the State informed of potential and actual Industrial Action or other industrial issues which may affect the ability of the Operator to perform the Operator's obligations under this Agreement and promptly provide any relevant information to the State;
 - C. ensure compliance with the Code and Implementation Guidelines;
 - D. ensure that Subcontractors are aware of and meet the terms of employment prescribed in any applicable Industrial Award, Agreement or Order, or any other statutory or legal obligation applying to each Subcontractor's employees who are engaged in connection with this Agreement. 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;
 - E. ensure that its employees and agents do not engage in workplace behaviour which contravenes Site policies in relation to workplace behaviour and fitness for work; and
 - F. provide evidence of its compliance with this paragraph (a)(ii) if requested by the State to do so.
- (b) **(No Claims as a result of changes in terms of employment):**
- Any Liability incurred from a change in terms of employment arising from any cause, including an approved change, an approved agreement (including a registered or unregistered workplace agreement or deed), or change to an Industrial Award, Agreement or Order must be satisfied by the Operator at its own cost.
- (c) **(No Claims as a result of Industrial Relations Matters and Industrial Action):**
- (i) Unless otherwise expressly provided in this Agreement, the Operator is responsible for any Liability it incurs or delay or disruption it suffers arising out of, or in connection with, any Industrial Relations Matter or Industrial Action.
 - (ii) The Operator has a continuing obligation to inform itself of and manage:
 - A. all Industrial Relations Matters relevant to the Works, and the Site; and
 - B. all matters relevant to the employment of labour at the Site.

11. Design

11.1 Design obligations

- (a) The Operator must design the Health Campus:
 - (i) in accordance with the Design Requirements;
 - (ii) so that the Health Campus, when constructed, will be Fit For Purpose; and
 - (iii) in accordance with the requirements of the LARU.
- (b) The Operator must ensure that the Design Documentation is prepared in accordance with Best Construction Practices.

11.2 Submission of Design Documentation

- (a) The Operator must submit the relevant Design Documentation to the State for the State's review and comment by the date specified in the Design Submission Program and otherwise in accordance with the Review Procedures.

- (b) The Operator must submit any amendments to the Equipment Inventory to the State for the State's review and comment in accordance with the Review Procedures. Any amendments to the Equipment Inventory do not amend the Contract Sum, except arising out of a Variation Order.

11.3 Changes to Design Documentation

If the Operator proposes any changes to the Bid Design Documentation or any other Design Documentation as a result of complying with the requirements of the LARU or otherwise, then the Operator must submit all proposed changes to the State and the requirements of the Review Procedures will apply to those proposed changes.

11.4 Discrepancies between Design Requirements

- (a) If there are any unresolvable discrepancies between any of the Design Requirements (as they exist from time to time), the Operator must immediately convene a meeting of all of the relevant Project stakeholders (including the State) to resolve the discrepancy.
- (b) If the requirements of the State conflict with the requirements of the LARU such that the State's requirements would prevent a Key Approval being obtained, the requirements of the LARU prevail and the Operator is not obliged to comply with the State's requirements to the extent of the inconsistency.
- (c) Without limiting Clause 1.4, the Operator will not be entitled to make a Claim (including a Claim for adjustment of the Contract Sum) or otherwise be entitled to any additional costs, extension of time or other form of relief in respect of performing its obligation to design the Health Campus in accordance with the Design Requirements (as they exist from time to time), except where the State directs a Variation in accordance with Clause 18 or a direction determined to be a Variation under Clause 30 following a referral under 18.6 or, if an Extension Event described in paragraph (h) or (i) of that definition has occurred, in accordance with Clause 14.

11.5 Design Documentation

- (a) Without limiting the remainder of this Clause 11, the Operator must prepare the following documents as part of the Design Documentation under this Agreement:
 - (i) the Master Plan;
 - (ii) the Fire and Life Safety Engineering Report;
 - (iii) the Acoustic Design Report; and
 - (iv) the Flexibility and Expansion Report.
- (b) The Operator must ensure that the Design Documentation described in paragraph (a) details, as a minimum, the relevant matters set out in Schedule 13 (in a form reasonably acceptable to the State Representative).
- (c) The Operator must prepare the Flexibility and Expansion Report in conjunction with the Master Plan to ensure that the principles of flexibility and expansion are a key consideration in its development.

- (d) The Operator must review and update the Flexibility and Expansion Report at the conclusion of the Design Development Stage (and submit the updated Flexibility and Expansion Report to the State in accordance with the Review Procedures) to ensure that all stated assumptions in the Flexibility and Expansion Report remain valid and all flexibility, expansion and future-proofing measures are captured within the Flexibility and Expansion Report.
- (e) The Operator must liaise with relevant Authorities in respect of the Design Documentation described in paragraph (a) (as applicable).

11.6 Design reports and presentations

- (a) The Operator must prepare:
 - (i) the Schematic Design Report at the completion by the Operator of the Schematic Design Stage;
 - (ii) the Design Development Report at the completion by the Operator of the Design Development Stage; and
 - (iii) the Final Design Report at the completion by the Operator of the Detailed Design Stage,and provide those reports to the State Representative as soon as reasonably practicable thereafter. The Schematic Design Report, the Design Development Report and the Final Design Report must detail, as a minimum, the relevant matters set out in Schedule 14 (in a form reasonably acceptable to the State Representative).
- (b) The Operator must provide a presentation to the State and the State Associates in respect of:
 - (i) the Schematic Design Report prepared by the Operator;
 - (ii) the Design Development Report prepared by the Operator;
 - (iii) the Final Design Report preparing by the Operator; and
 - (iv) any other aspect of the design of the Works under this Agreement (including the completion of the design of any discrete component of the Works) as reasonably requested by the State,in a manner necessary to allow the State and the State Associates to properly understand the information presented by the Operator.
- (c) The Operator must ensure that there is specialist facilities management advice and input at relevant times during the design development, development of performance monitoring regimes, policies and procedures, development of the Asset Management Plan and the Annual Works Plan, life cycle plans and equipment selections and commissioning of the facility in relation to the compliance of the Design Documentation and the Works with the requirements of this Agreement (**FM Advice**).

12. Construction

12.1 General performance

- (a) The Operator must undertake the Works:
 - (i) in accordance with this Agreement;
 - (ii) to ensure that the Design Requirements are met;
 - (iii) in accordance with the Final Design Documents (provided that any error or deficiency in the Final Design Documents, no matter how occurring, will not entitle the Operator to any relief in respect of the performance of its obligations to undertake the Works or perform the Services in accordance with the Project Documents);
 - (iv) in accordance with any Variation Order;
 - (v) to ensure that the Equipment is selected, procured, manufactured, installed, commissioned and tested in accordance with Best Construction Practices and is Fit For Purpose;
 - (vi) to ensure that the Health Campus is Fit For Purpose and to enable the Services to be performed in accordance with the Services Agreement;
 - (vii) in accordance with the Plans;
 - (viii) in accordance with Best Construction Practices;
 - (ix) in accordance with the requirements of all Governmental Agencies and the LARU and all Laws;
 - (x) in an expeditious, proper and workmanlike manner; and
 - (xi) in order to comply with the standards specified in this Agreement or, if this Agreement does not specify the applicable standards:
 - A. those standards as would ordinarily be applied in the circumstances;
 - B. if more than one standard would ordinarily be applied in the circumstances, the Works will comply with the highest of those standards (to the extent that those standards conflict); or
 - C. if this Agreement or the Design Requirements do not specify the standard of workmanship, material, finish or any other aspect of the Works then the standard of that workmanship, material, finish, or other aspect (as the case may be) as determined by the State, acting reasonably, on the basis that they will be suitable, appropriate and adequate for the purpose as described in this Agreement and consistent with the nature and character of the Works,

and, for the avoidance of doubt, any determination made by the State under paragraph (C) will not form the basis of a claim for extra costs, including as a Variation, by the Operator.

- (b) Without limiting paragraph (a)(i) to (a)(xi) (inclusive), the Operator must:
 - (i) keep the State fully informed of all issues relating to the Works, the progress of the Works, Key User and stakeholder discussions and any other matters that affect the Works;
 - (ii) convene, attend and facilitate Key User and other stakeholder meetings (including the Builder) and discussions to inform the requirements and outcomes of the Works and take minutes of these meetings and discussions; and
 - (iii) incorporate innovations that the Operator considers will better achieve the provision of the Patient Transfer Services and the Services in accordance with the Services Agreement.

12.2 Safety, security, noise and other

The Operator must, in performing its obligations under this Agreement:

- (a) keep the Site tidy and free of refuse;
- (b) keep the Site and Works secure and safe and free from all unauthorised access;
- (c) prevent nuisance, noise, dust, air pollution, odour, vibration and any disturbance to the areas adjacent to the Site from exceeding the levels stipulated in the Plans or any Law or Authorisation, whichever has the stricter requirements;
- (d) not (except to the extent required to implement the Works in accordance with this Agreement) cause any damage to:
 - (i) the Site or any adjacent sites; and
 - (ii) any other appurtenances, services, fittings, fixtures or other items on the Site;
- (e) take all measures necessary to protect and ensure the safety of people and property in accordance with Best Construction Practices;
- (f) avoid or minimise unreasonable interference with:
 - (i) the passage of people and vehicles around the Site and to or from the Works; and
 - (ii) the operations or activities carried out in the vicinity of the Site.

13. Time

13.1 Progress

The Operator must:

- (a) at all times diligently undertake the Works;
- (b) achieve Completion by the Date for Completion; and
- (c) undertake the Works in accordance with the then current Works Program.

13.2 Works Program

- (a) The Works Program as at the Date of this Agreement is the Bid Works Program which is set out in Attachment 2. The Operator must use Asta Powerproject (Version 10.04 (build 053) or later) or any equivalent approved by the State to prepare the Works Program and any updates to it in accordance with this Clause 13.2.
- (b) The Operator must ensure that the Works Program at all times reflects the progress of the Works and identifies and details (in a form acceptable to the State Representative):
 - (i) all Milestones;
 - (ii) the Date for Completion;
 - (iii) the dates for submission of the Design Documentation;
 - (iv) all construction activities and any Authorisations which must be obtained prior to or during the construction of the Works;
 - (v) activities which are on the critical path and the dependencies relating to those activities;
 - (vi) all commissioning and testing activities (including with reference to the Completion Plan);
 - (vii) activities in respect of Equipment including selection, procurement, manufacture, installation, commissioning and testing;
 - (viii) all Key Personnel and Key Subcontractors required by the Operator for the various activities occurring on the Site;
 - (ix) activities in respect of the Private Works, including any interdependencies between those activities and any activities in respect of the Works; and
 - (x) any other details reasonably requested by the State Representative.
- (c) Without limiting paragraph (b), the Operator must update the Works Program and submit the updated Works Program (in the number and format required by the Review Procedures) to the State for review in accordance with the Review Procedures:
 - (i) at least monthly;
 - (ii) within 5 Business Days of the Operator being:
 - A. granted an extension to the Date for Completion under Clause 14;

- B. instructed to carry out a Variation under Clause 18;
- (iii) if reasonably requested by the State Representative; and
- (iv) as otherwise necessary to reflect any changes to the nature or status of the Works,

provided that:

- A. any updated Works Program must not adjust the Date for Completion;
 - B. any updated Works Program must not adjust the dates for obtaining the Key Approvals without the consent of the State,

(unless an extension of time has been granted under this Agreement).
- (d) If the Works Program is updated such that the Design Submission Program must also be updated for consistency, the Design Submission Program must be updated at the same time as the Works Program.
 - (e) The State is not required to use the Works Program for any purpose, but may do so in its sole and absolute discretion.

13.3 Suspension

- (a) **(State right to suspend):** The State Representative may at any time give written notice to the Operator to suspend the execution of the Works or any part of the Works, which notice is to include, in brief, the circumstances that give rise to the suspension.
- (b) **(Operator must suspend):** If the Operator receives a written notice under paragraph (a), the Operator must immediately suspend the execution of the Works or the applicable part of the Works.
- (c) **(Compensation for suspension):** If execution of the Works is suspended for any reason other than a Compensable Extension Event, the Operator is not entitled to any compensation in respect of the suspension. If execution of the Works is suspended for a Compensable Extension Event, then the Operator's entitlement to compensation is set out in Clause 14.
- (d) **(Notice to resume):** The State Representative may at any time give written notice to the Operator to resume the execution of the part of the Works which has been suspended. If the Works have been suspended for any circumstance other than a Compensable Extension Event and the Operator believes that the circumstance that gave rise to the suspension, as notified by the State, no longer exists, the Operator may give the State notice and evidence of that fact. Following receipt of the notice, if the State is satisfied, acting reasonably, that the circumstances that gave rise to the suspension no longer exist (including that any consequences that needed to be addressed or remediated have been addressed or remediated), the State must promptly give the Operator a notice that it can recommence the Works.
- (e) **(Resumption):** If the Operator receives a written notice under paragraph (d), the Operator must immediately resume execution of the part of the Works which has been suspended.

14. Delay

14.1 Delays to achieving Completion or Milestone

If the Operator reasonably forms the view that it will be delayed or disrupted in achieving Completion or a Milestone, the Operator must, by no later than 5 Business Days after forming the view, give the State Representative written notice stating:

- (a) the details of the delay or disruption and the Operator's anticipated Date of Completion or anticipated date of completion of the Milestone (as the case may be); and
- (b) the steps, if any, the Operator proposes to take to prevent or minimise the delay or disruption.

14.2 Form of extension of time claim

If the Operator will be delayed in achieving Completion or a Milestone by an Extension Event, the Operator's written notice submitted under Clause 14.4(c) must set out:

- (a) detailed particulars of the Extension Event causing the delay;
- (b) detailed particulars of the consequences or the likely consequences of the Extension Event including details of how the Operator will be delayed by the Extension Event;
- (c) the total number of days of extension of time claimed;
- (d) evidence that it will be delayed in achieving Completion or completing the Milestone (as the case may be) by a matter referred to in Clause 14.4(a);
- (e) if the Operator believes the Extension Event is a Compensable Extension Event, details of the Delay Costs calculated in accordance with Clause 14.9; and
- (f) such other information reasonably requested by the State Representative.

14.3 Submission of updated extension of time claim

The Operator must, if the effects of the Extension Event continue beyond the period of extension claimed under Clause 14.4(c), and if the Operator wishes to claim an extension of time in respect of such further delay, submit an updated written notice to the State Representative:

- (a) by no later than 10 Business Days after the expiry of the extension claimed; and
- (b) containing the information required by Clause 14.2.

14.4 Conditions precedent to extension

The Operator will only be entitled to an extension of time if:

- (a) the Operator has been, or is likely to be, delayed in achieving Completion or completing a Milestone as a direct result of:
 - (i) prior to the Date for Completion, an Extension Event; or

- (ii) after the Date for Completion, a Compensable Extension Event or, an event listed in paragraphs (g), (h), (i) or (j) of the definition of Extension Event;
- (b) the cause of the delay was beyond the reasonable control of the Operator;
- (c) the Operator submits a written notice to the State Representative in accordance with Clause 14.2 within 10 Business Days from the date the Operator became aware, or ought reasonably to have become aware that it would be delayed in achieving Completion or completing a Milestone by an Extension Event;
- (d) the delay is due to an activity on the critical path contained and shown in the then current Works Program; and
- (e) the Operator has complied with all of its obligations under Clause 13.2 relevant to any claim for an extension of time.

14.5 Failure to submit written notice

If the Operator fails to submit a written notice to the State Representative in respect of any delay in accordance with Clause 14.2 within the timeframe required by Clause 14.4(c), then the Operator will not be entitled to, and will be barred from making any Claim against the State for, any extension of time or Delay Costs or any other payment in respect of the delay.

14.6 Extension of Date for Completion

If, within 5 Business Days of receipt of the Operator's written notice under Clause 14.4(c) or updated notice under Clause 14.3 (as the case may be):

- (a) the parties agree that the Operator is entitled to an extension of time and the duration of the extension of time, the Date for Completion will be extended by the period agreed between the parties; or
- (b) the parties do not agree as to whether the Operator is entitled to an extension of time and/or the duration of the extension of time, either party may submit a written request to the Independent Certifier, which written request must attach copies of the written notice under Clause 14.4(c) and any notice under Clause 14.3 to determine whether an extension of time should be granted and the duration of the extension of time and, if the Operator has satisfied the requirements set out in Clause 14.4 (as determined by the Independent Certifier, whose decision is final and binding on the parties with the exception of manifest error of the Independent Certifier), the Date for Completion will be extended by a reasonable period as determined by the Independent Certifier in accordance with this Agreement.

14.7 Concurrent delays

Where the Operator has made a claim for extension of time under this Clause 14 as a consequence of an Extension Event and the delay would have occurred due to an event other than the Extension Event, the Operator is not entitled to an extension of time to the Date for Completion for the period of the delay that would have occurred as a result of such other events.

14.8 Unilateral extensions

- (a) Whether or not the Operator has made, or is entitled to make, a claim for an extension of time under this Clause 14, the State may, in its absolute discretion at any time by written notice to the Operator, unilaterally extend the Date for Completion.
- (b) The State is not required to exercise the State's discretion under this Clause 14.8 for the benefit of the Operator or at all.
- (c) The exercise or failure to exercise the State's discretion under this Clause 14.8 is not capable of being the subject of a Dispute or otherwise subject to review.

14.9 Delay Costs

- (a) To the extent that delay is caused by a Compensable Extension Event for which the Operator is granted an extension of time in accordance with Clause 14.6, the Operator is entitled to payment by the State for all reasonable necessary direct costs that the Operator incurs for the period by which the Date for Completion is extended and which would not have otherwise been incurred by the Operator but for the extension. Except for a Compensable Extension Event referred to in paragraph (n) of that definition, the costs include the reasonable necessary direct costs that the Builder properly incurs in respect of its work on the Private Patient Facility for the period by which the Date for Completion is extended and which would not have otherwise been incurred by the Builder but for the extension, but does not include the Operator's costs in respect of the Private Patient Facility.
- (b) The Operator's entitlement to payment for the Delay Costs referred to in paragraph (a) is limited to the extent that it provides evidence to the reasonable satisfaction of the State Representative that it has actually incurred such direct costs.
- (c) The Operator is not entitled to payment of any amount for lost opportunities, lost business or lost profits or any additional amount for profit (whether on the part of the Operator, the Key Service Provider or any Subcontractor) arising out of any extension of time under this Agreement.
- (d) The State Representative must determine the amount of the Delay Costs in accordance with this Agreement and otherwise acting reasonably. If the Operator disputes the determination of the State Representative, the Dispute will be referred for resolution in accordance with Clause 30.

14.10 Liquidated damages

- (a) **(Liquidated damages for delay in achieving Completion):**
 - (i) If the Operator fails to achieve Completion by the Date for 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 Completion until the earlier of the Date of Completion or the termination of this Agreement.
 - (ii) If, after the Operator has paid or the State has deducted liquidated damages under paragraph (a)(i), the Date for Completion is extended

in accordance with this Agreement, the State will repay to the Operator any liquidated damages paid or deducted in respect of the period to and including the new Date for Completion (as extended). The State will make any payment to the Operator under paragraph (a)(ii) within 20 Business Days of the relevant extension.

(b) **(Genuine pre-estimate):**

- (i) The Operator acknowledges and agrees that the State will incur loss if Completion is not achieved by the Date for Completion.
- (ii) The parties agree that the Daily LD Rate:
 - A. is a fair, reasonable and genuine pre-estimate of the loss which the State is likely to incur if Completion is not achieved by the Date for Completion; and
 - B. does not constitute a penalty.
- (iii) The Operator agrees that it will not assert or seek to assert in any proceedings pursuant to Clause 30, court, arbitration or other proceedings that the Daily LD Rate constitutes a penalty or that this Clause 14.10 or the Operator's obligations pursuant to this Clause 14.10 is void or unenforceable (whether in whole or in part).

(c) **(When liquidated damages are payable):** Any liquidated damages payable by the Operator will be moneys due and payable on demand.

(d) **(General damages if liquidated damages are unenforceable):** Notwithstanding paragraph (b), if the liquidated damages provided for in this Clause 14.10 are found to be a penalty or if this Clause 14.10 or the Operator's obligation pursuant to this Clause 14.10 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 14.10 not been a penalty or not been void or unenforceable.

15. Testing

15.1 Operator to perform testing

- (a) The Operator must perform all necessary testing in accordance with the relevant Plans, including the Completion Plan, to demonstrate that the Works meet the requirements of this Agreement.
- (b) The Completion Tests must be designed to test the Works as an operating hospital, such that the Services are able to be provided in accordance with the Services Agreement. The Completion Tests must be performed in accordance with the Completion Plan and Best Construction Practices. The Completion Tests must be performed in sufficient time to demonstrate that Completion has been achieved by the Date for Completion.
- (c) The Operator is fully responsible for the proper conduct and results of the tests. The Operator's obligation to provide the Services under the Services Agreement is unaffected by the test results.

- (d) The State or the Operator is entitled to order the cessation of any test if damage to the Works or other property or personal injury is likely to result from continuation. The Operator is not entitled to a Variation or an extension to the Date for Completion by reason of such an order.
- (e) The State and its nominee and the Independent Certifier are entitled to attend and witness all testing carried out under this Agreement.
- (f) Before conducting a Completion Test, or any other test under this Agreement that the State (or its nominee) or the Independent Certifier may reasonably wish to attend, the Operator must give reasonable notice to the State and the Independent Certifier of the time, date and place of the test in order to give the State sufficient opportunity to attend the test (including, where stated, at the times specified in the Completion Plan).
- (g) Without limiting Clause 16.7, the passing of any test, and the issuing of the Completion Certificate, does not prevent the State from claiming that any part of the Works is defective, if those Works contain a Defect.

15.2 Repeat or additional testing

- (a) If:
 - (i) the whole or any part of the Works fails to pass any test (or any repeat of that test); or
 - (ii) the Operator fails to pass any relevant test,that test will be repeated within a reasonable time determined by the State upon the same terms and conditions, at the Operator's own cost. All reasonable additional costs and expenses which the State may incur by the repetition of the test must be paid by the Operator to the State.
- (b) The Operator acknowledges and agrees that nothing in this Clause 15.2:
 - (i) obliges the State to direct any repeat test; or
 - (ii) relieves the Operator from any of its obligations to conduct testing (including to conduct repeat testing) where required to demonstrate compliance with the Operator's obligations under this Agreement.
- (c) The State and the Independent Certifier may request further testing of the Works than as set out in the Completion Plan, including determining whether Completion has been achieved.
- (d) If the State requests further testing in accordance with paragraph (c), that testing must be carried out at the State's cost (including any Delay Costs incurred as a result of the further testing), unless the tests show that the Works tested do not meet the requirements of Completion in which case the Operator must pay for the cost of the testing and bear the costs of any delay.
- (e) If the Independent Certifier requests further testing of the Works in accordance with paragraph (c) for the purpose of performing the Independent Certifier Services, the Operator and the State will share the cost of the tests, unless the tests show that the Works do not meet the requirements of Completion, in which case the Operator will pay for the costs of the testing.

15.3 Rectification work

If the whole or any part of the Works fails to pass any test, the Operator must at its own cost promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects as may be required to ensure that all tests are satisfied.

16. Completion

16.1 Interim Management Services and Patient Transfer Services

- (a) The Operator must prepare for and perform the Interim Management Services in accordance with the Interim Management Agreement (if entered into by the parties) and (if applicable) the Patient Transfer Services in accordance with the Services Agreement.
- (b) The Operator must coordinate the Works to ensure that the Interim Management Services are performed in accordance with the Interim Management Agreement (if entered into by the parties) and the Patient Transfer Services are performed in accordance with the Services Agreement.

16.2 Completion Report

- (a) The Operator must submit to the Independent Certifier for review in accordance with the Independent Certifier Agreement and the State Representative for review in accordance with the Review Procedures a draft Completion Report which satisfies the requirements of paragraph (b) and otherwise in accordance with the timing requirements specified in the Independent Certifier Agreement.
- (b) The Completion Report must:
 - (i) identify each of the Completion Criteria;
 - (ii) include details of how and when the Operator satisfied each of the Completion Criteria;
 - (iii) identify any Completion Criteria that remain outstanding and the Operator's strategy for satisfying any outstanding Completion Criteria including the proposed timing for satisfying such criteria;
 - (iv) include all test results for the testing of the Works conducted in accordance with Clause 15; and
 - (v) otherwise assist the Independent Certifier in determining whether the Completion Criteria have been satisfied.
- (c) The Operator must:
 - (i) update the draft Completion Report to take into account feedback provided by the Independent Certifier in accordance with the Independent Certifier Agreement and the State Representative in accordance with the Review Procedures; and

- (ii) otherwise take into account and comply with any directions reasonably given by the Independent Certifier and the State Representative in relation to preparing for Completion.

16.3 Notice of Completion

If the Operator is of the reasonable opinion that it has achieved Completion, the Operator must provide the following information to the Independent Certifier and the State Representative:

- (a) written notice that it is of the reasonable opinion that it has achieved Completion; and
- (b) an updated Completion Report.

16.4 Verification by Independent Certifier

- (a) After the Operator has provided the information required under Clause 16.3, the Independent Certifier must certify whether or not Completion has been achieved.
- (b) The Independent Certifier must notify the parties in writing of his or her conclusion as to whether Completion has been achieved, and if achieved the date which it is achieved.
- (c) The conclusion of the Independent Certifier as to whether Completion has been achieved is binding on the parties as to the fact of Completion having been achieved in accordance with this Agreement, with the exception of manifest error of the Independent Certifier.

16.5 Completion not achieved

- (a) If the Works have not achieved Completion, the Independent Certifier must issue to the Operator and the State Representative a written notice containing details of the outstanding Completion Criteria that must be satisfied by the Operator as a condition precedent to achieving Completion.
- (b) If the Independent Certifier issues a notice under this Clause 16.5, the requirements of Clause 16.3 and Clause 16.4 will apply again.

16.6 State Representative certifies Completion

- (a) If the Independent Certifier notifies the parties that the Works have achieved Completion, the State Representative must promptly issue to the Operator the Completion Certificate stating the date on which the Operator achieved Completion, as notified by the Independent Certifier.
- (b) The State Representative may at its sole and absolute discretion issue a notice to the Independent Certifier and the Operator if it believes that Completion has been achieved notwithstanding that the Operator has not issued a notice in accordance with Clause 16.3. If the State Representative issues a notice to the Independent Certifier, the Operator must, within 10 Business Days, provide the information required under Clause 16.3 or provide information to the Independent Certifier which satisfies the Independent Certifier that Completion has not yet been achieved.

16.7 Effect of Completion and Completion Certificate

- (a) The issue of a notice by the Independent Certifier that Completion has occurred or a Completion Certificate pursuant to Clause 16.6 does not constitute:
 - (i) approval by the State of the Works;
 - (ii) evidence that the Operator has satisfied the Fitness For Purpose Warranty; or
 - (iii) evidence that the Works have otherwise been completed in accordance with this Agreement (other than as to the fact that Completion has occurred).
- (b) The Operator acknowledges and agrees that the appointment of the Independent Certifier and the performance by the Independent Certifier, or any failure by the Independent Certifier to perform, any of its obligations under the Independent Certifier Agreement does not relieve the Operator from the performance of the Project and its obligations under this Agreement.

16.8 Outstanding Items

- (a) The Independent Certifier may issue a notice that Completion has occurred 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 Certifier.
- (b) The Operator must, within 5 Business Days after the issue of a list of Outstanding Items, submit to the State Representative for review in accordance with the Review Procedures, a program for the completion of the Outstanding Items in accordance with the Independent Certifier's requirements.
- (c) The Operator must complete any Outstanding Items in accordance with the approved program and to the satisfaction of the State Representative (acting reasonably).

16.9 No obligation to certify Completion early

Notwithstanding any other provision of this Agreement, if the Independent Certifier certifies Completion prior to the Date for Completion, the Date of Completion will be the Date for Completion, unless the State agrees to an earlier Date of Completion.

16.10 Post completion

- (a) The Operator must conduct and complete any Post Completion Tests:
 - (i) in accordance with the Completion Plan; and
 - (ii) by no later than 3 months after the Date of Completion.
- (b) The Operator must submit a final version of the Completion Report to the State Representative as soon as possible following the successful completion of all of the Post Completion Tests (or at such other time agreed in writing by the State Representative) which:

- (i) identifies any Outstanding Items and Post Completion Tests; and
- (ii) provides details of when the Operator satisfied each of the Outstanding Items and Post Completion Tests.

17. Defects

17.1 Defect Notice

- (a) Where the Operator discovers a Defect during the relevant Defects Liability Period, the Operator must immediately notify the State Representative of the Defect.
- (b) If during the Defects Liability Period:
 - (i) the Operator notifies the State of a Defect in accordance with paragraph (a); or
 - (ii) the State otherwise discovers a Defect,the State Representative may give the Operator a Defect Notice:
 - (iii) directing the Operator to correct the Defect; or
 - (iv) notifying the Operator that the State elects to accept the Defect.
- (c) The Defect Notice must contain details of the Defect and, if it requires the Operator to rectify the Defect, state a reasonable date by which the Operator must comply with that direction.

17.2 Operator not relieved

The Operator is not relieved from its performance obligations under the Services Agreement by the presence of any Defects or the need to rectify those Defects.

17.3 Cost of rectifying Defects

The Operator must rectify Defects at its own cost and risk.

18. Variations

18.1 Directing a Variation

At any time before the Date of Completion, the State may give the Operator a written notice directing the Operator to undertake a Variation (**Variation Request**).

18.2 Submission of Variation Quote

The Operator must submit a Variation Quote to the State Representative:

- (a) within 20 Business Days of receipt of the Variation Request or a direction determined to be a Variation in accordance with Clause 18.6 (including following a referral to dispute resolution under Clause 30 if necessary); or
- (b) at such later time agreed by the State Representative (acting reasonably).

18.3 Contents of Variation Quote

The Variation Quote must contain:

- (a) where the proposed Variation relates to any new Shared Infrastructure not set out in the Capital Cost Proposal Schedule as at the date of the Variation Request, the Operator's proposed expected usage of that new Shared Infrastructure within the Public Patient Facility and the Private Patient Facility;
- (b) the Operator's fixed price quote for the cost of undertaking the proposed Variation which must be calculated in accordance with Clause 18.7 (including, where applicable, having regard to the information provided by the Operator);
- (c) details of the effect of the Variation on the Operator's obligations under this Agreement and the other Project Documents, including in relation to:
 - (i) compliance with the Design Requirements;
 - (ii) compliance with all Authorisations;
 - (iii) any impact on the Plans under this Agreement and the Services Agreement;
 - (iv) any impact on the Works Program (including any effect on the Milestones and the Date for Completion);
 - (v) any impact on the Insurance Policies to be taken out by the Operator pursuant to Schedule 13 of the Services Agreement;
 - (vi) any impact on the Operator's ability to comply with the Facility KPIs and the Services KPIs in Schedule 6 of the Services Agreement;
 - (vii) any material impact on the Service Fee and the Lifecycle Fee payable under the Services Agreement;
 - (viii) any material adverse effect on the Private Works or the ability to provide, or cost of providing, Services from the Public Patient Facility or the Private Patient Facility; and
 - (ix) any impact on the ability to give the warranties set out in this Agreement; and
- (d) any additional information reasonably requested by the State whether or not such request is included in any Variation Request.

18.4 State response to Variation Quote

- (a) Within 20 Business Days (or such longer period as the State reasonably requires, given the size and complexity of the proposed Variation) after receiving a Variation Quote, the State must:
 - (i) issue a Variation Order to the Operator directing the Operator to carry out the Variation on the terms set out in the Variation Order and the Variation Quote; or
 - (ii) notify the Operator by written notice that it does not wish to proceed with the proposed Variation; or

- (iii) notify the Operator that it wishes to negotiate the contents of the Variation Quote, in which case the parties must meet to attempt to resolve the contents of the Variation Quote within 10 Business Days, and within a further 5 Business Days the State must either:
 - A. issue a Variation Order to the Operator directing the Operator to carry out the Variation in accordance with the negotiated terms; or
 - B. notify the Operator by written notice that it does not wish to proceed with the proposed Variation; or
 - C. dispute that the Variation Quote has been prepared in accordance with this Agreement, in which case the Dispute will be referred for resolution in accordance with Clause 30, and this Clause 18.4(a)(iii) applies to the Variation Quote correctly calculated in accordance with this Agreement, as determined by the Dispute resolution process; or
 - (iv) notify the Operator that it requires more information in respect of the Variation Quote in which case:
 - A. the timing in Clause 18.2 applies again in respect of when that further information is to be provided;
 - B. Clause 18.4 applies again from the date that the further information is provided, except that the State will only have 10 Business Days from the date of receipt of the further information to review the further information; and
 - C. within a further 5 Business Days the State must proceed under paragraph (i), (ii) or (iii) above.
- (b) Upon receipt of a Variation Order, without limiting its rights under Clause 30, the Operator must proceed to execute the Variation described in the Variation Order on the terms set out in the Variation Order and in accordance with the Variation Quote, as amended by agreement between the parties.

18.5 Proceed with Variation

- (a) The Operator must not begin any work in respect of a Variation until the State has issued a Variation Order in respect of the Variation including a direction that the Operator claims is a Variation under Clause 18.6.
- (b) The Operator will not be entitled to make any Claim against the State or any State Associate in respect of a Variation under this Agreement unless the State has issued a Variation Order in respect of the Variation or a direction is determined to be a Variation in accordance with Clause 30 following a referral under Clause 18.6.
- (c) A Variation Order may not be issued by the State without the consent of the Operator where it will have a material adverse affect on the overall ability to provide, or cost of providing, services from the Private Patient Facility.

18.6 Directions as Variations

- (a) If the Operator considers that any direction given by the State (in its capacity as a contracting entity under this Agreement) or State Representative is or would constitute a Variation then the Operator must, within 10 Business Days after receiving the direction, give notice in writing to the State of the reasons why the Operator considers the direction is or would constitute a Variation.
- (b) Upon receipt of the notification from the Operator under paragraph (a), the State must within 10 Business Days do one of the following (in writing):
 - (i) retract the direction;
 - (ii) confirm the direction as a Variation Request and the Operator must prepare a Variation Quote in accordance with Clause 18.3 within 20 Business Days of receipt of the notification under this paragraph or such later time agreed by the State Representative (acting reasonably);
 - (iii) reject the direction as a Variation, in which case the Operator may refer the Dispute for resolution in accordance with Clause 30; or
 - (iv) request a Variation Quote and also further information as to why the Operator believes the direction constitutes a Variation, without confirming the direction as a Variation Request or rejecting the direction as a Variation. The Operator must respond with the further information within 20 Business Days of the request or such later time agreed by the State Representative (acting reasonably) and prepare the Variation Quote in accordance with Clause 18.3. Upon receipt of the further information, the State may either:
 - A. reject the direction as a Variation, in which case the Operator may refer the Dispute for resolution in accordance with Clause 30; or
 - B. confirm the direction as a Variation Request and proceed to respond to the Variation Quote in accordance with Clause 18.4.

18.7 Valuation of Variations

- (a) In submitting a Variation Quote to the State Representative under Clause 18.2, the Operator must prepare a fixed price quote for the cost of undertaking the proposed Variation which is calculated as follows:

$$P = BC + O$$

where:

- (b) **P =** the fixed price quote, which, if accepted by the State, is either an amount payable to the Operator (where this is a positive amount) or an amount payable by the Operator (where this is a negative amount);
- (c) **BC =** the Base Costs of the Variation; and
- (d) **O =** the Overhead applicable to the Variation.

- (i) **Base Costs** means those actual costs (including Design Base Costs and Construction Base Costs (as applicable)) which are directly attributable to the proposed Variation to be properly and reasonably incurred by the Operator in undertaking the proposed Variation, which:
- A. where the proposed Variation relates to any of the Shared Infrastructure set out in the Capital Cost Proposal Schedule, takes into account only those Base Costs which reflect the percentage capital cost contribution of the State for that Shared Infrastructure as set out in the Capital Cost Proposal Schedule or as otherwise agreed between the parties;
 - B. where the proposed Variation relates to any new Shared Infrastructure not set out in the Capital Cost Proposal Schedule as at the date of the Variation Request, takes into account only those Base Costs which reflect the Operator's proposed percentage capital cost contribution of the State for that new Shared Infrastructure (which is consistent with the Operator's proposed expected usage of that new Shared Infrastructure within the Public Patient Facility and the Private Patient Facility set out in the Variation Quote); and
 - C. in all cases, excluding:
 - 1) any Overhead (as calculated in paragraph (iv) below); and
 - 2) the cost of any project management services provided by the Operator.
- (ii) **Design Base Costs** means those Base Costs which relate to the design of the proposed Variation.
- (iii) **Construction Base Costs** means those Base Costs which relate to the construction of the proposed Variation.
- (iv) **Overhead** means the amount calculated as follows:

[table not disclosed]

The Overhead percentages set out in the table above will be applied as follows:

- A. the Design Management Fee percentage will be applied to the Design Base Cost only;
- B. the Builder Preliminaries percentage will be applied to the Construction Base Cost only;
- C. the Builder Overhead and Margin percentage will be applied to the Construction Base Cost only; and
- D. the Operator Overhead percentage (where applicable) will be applied to the Construction Base Cost and Design Base Costs as adjusted to reflect the Overhead amounts set out in paragraphs A to C (inclusive) above,

and the sum of these amounts will be the Overhead.

- (e) The Operator will not be entitled to any margin or mark up in respect of undertaking a Variation and the Operator warrants that, in calculating the relevant Base Costs in accordance with paragraph (a) above, all Base Costs will be exclusive of any Overhead, Design Management Fee and Builder Preliminaries and other like costs. For the avoidance of doubt, the Builder will be entitled to margin or mark up in respect of undertaking a Variation as part of the Builder Overhead and Margin which forms part of the Overhead payable in respect of a Variation.
- (f) Where any proposed Variation provides for any component of the Works to be omitted by the Operator (**Omitted Works**), then the cost of the Omitted Works will be calculated in accordance with paragraph (a) above (excluding the "Builder Preliminaries" and "Design Management Fee"), but will be taken to be a negative amount for the purposes of determining whether an amount is payable to the Operator or an amount is payable by the Operator in respect of the proposed Variation.
- (g) If the Operator has submitted a Variation Quote and the State has accepted it by issuing a Variation Order under Clause 18.4(a)(i), then the State will pay the Operator or the Operator shall pay the State (as the case may be) the fixed amount for undertaking the Variation as set out in the Variation Quote in accordance with Clause 18.8.

18.8 Payment of the Variations

The price for each Variation the subject of a Variation Order must be added to or deducted from the Contract Sum and will be paid in accordance with Clause 21.

18.9 Ability to engage third party to carry out omitted Works

At any time after the Date of Completion, the State may have any component of the Works which has been omitted pursuant to this Clause 18 carried out by a third party regardless of the amount or value of the component of the Works which has been omitted pursuant to this Clause 18. The Operator must cooperate with the State and any third party in respect of any Works which has been omitted pursuant to this Clause 18 and must do all things necessary to ensure that the State and any third party are free to continue with the omitted Works.

18.10 Operator request State to direct a Variation

- (a) The Operator may, for its convenience, request the State to direct a Variation by submitting a written notice to the State Representative which contains details of the proposed Variation and satisfies the requirements of Clause 18.3.
- (b) The State may, in its sole and absolute discretion, direct a Variation in accordance with the Operator's written notice by issuing a Variation Order. If the State issues a Variation Order under paragraph (b):
 - (i) the Operator is not entitled to submit a Variation Quote or to any payment in respect of the Variation Order; and
 - (ii) if the work undertaken in respect of the Variation results in net savings to the cost of performing the Works under this Agreement,

then the Contract Sum will be decreased by the amount which reflects 50% of the net savings.

- (c) The Operator is not relieved from performing or observing its obligations or from any other Liabilities under this Agreement as a result of the failure by the State to issue a Variation Order in respect of a Variation requested by the Operator.
- (d) If:
 - (i) a change to a State or Commonwealth government policy or guideline occurs which the Operator is legally obliged, or required by the State, to comply with (**Policy Change**);
 - (ii) the Operator is required by the State to implement a "Health Initiative" (as defined in the Services Agreement) at the Health Campus in accordance with Clause 12.9 of the Services Agreement (**Health Initiative Implementation**); or
 - (iii) the Operator is required to comply with the Redundancy and Disaster Planning in Health's Capital Works Programs issued by the Disaster Preparedness and Management Unit, other than the 2008 version (**Redundancy and Disaster Planning Change**),and, the Policy Change, Health Initiative Implementation or Redundancy and Disaster Planning Change will:
 - (iv) materially increase the cost of undertaking the Works in accordance with this Agreement; or
 - (v) disrupt or delay the Operator in achieving Completion or a Milestone,the Operator may request the State to direct a Variation, in which case subject to the Operator having complied with its obligations under paragraph (e) and having provided a Variation Quote calculated in accordance with this Agreement, the State will direct a Variation in accordance with the Operator's written notice by issuing a Variation Order in accordance with the process set out in Clause 18.4.
- (e) The Operator must take all reasonable steps to avoid or mitigate the effects of any Policy Change, Health Initiative Implementation or Redundancy and Disaster Planning Change.

18.11 Updated Construction Documentation

The Operator must submit to the State Representative three paper copies, one electronic version in .pdf format and one electronic version in original format of the following documents following completion of any Variation (if applicable given the nature of the Variation):

- (a) all final drawings, specifications, models, samples and calculations used to undertake any Variation; and
- (b) amended versions of any D&C Documents necessary to identify and incorporate any Variation.

18.12 Design Departures Schedule

The parties acknowledge and agree that:

- (a) the Design Departures Schedule prepared prior to the Date of this Agreement by the Operator in respect of the Bid Design Documentation, is an exhaustive list of the Operator's non-compliances with the Design Requirements for the design of the Health Campus that has been accepted by the State (**Design Departures**);
- (b) the resolution of any matter arising out of any Design Departure (including matters in respect of:
 - (i) patient safety and occupational health and safety;
 - (ii) efficiency of circulation routes in the Health Campus;
 - (iii) adequacy of design (including room size and number and type of functional areas) to accommodate clinical, clinical support and non-clinical support functions;
 - (iv) capacity (number and size of facilities) to accommodate the projected activity having regard to the anticipated patient and visitor mix; and
 - (v) adequacy of design layout of clinical areas,such that:
 - (vi) all Authorisations required to be obtained under this Agreement are obtained;
 - (vii) the Completion Criteria are achieved;
 - (viii) the Works and the Private Works otherwise meet the requirements of this Agreement; and
 - (ix) the Services can be provided in accordance with the Services Agreement,

is the Operator's responsibility and does not of itself give rise to a Variation.

18.13 Design Issues List

The parties acknowledge and agree that:

- (a) the Design Issues List was prepared prior to the Date of this Agreement by the State providing comments to the Operator in respect of the Bid Design Documentation and the Operator providing its response to the State's comments;
- (b) if the State has raised a matter in respect of the Bid Design Documentation (which is documented in the Design Issues List) (**Design Issue**), the resolution of any matter arising out of that Design Issue (including matters in respect of:
 - (i) patient safety and occupational health and safety;

- (ii) efficiency of circulation routes in the Health Campus;
 - (iii) adequacy of design (including room size and number and type of functional areas) to accommodate clinical, clinical support and non-clinical support functions;
 - (iv) capacity (number and size of facilities) to accommodate the projected activity having regard to the anticipated patient and visitor mix; and
 - (v) adequacy of design layout of clinical areas,
- such that:
- (vi) all Authorisations required to be obtained under this Agreement are obtained;
 - (vii) the Completion Criteria are achieved;
 - (viii) the Works and the Private Works otherwise meet the requirements of this Agreement; and
 - (ix) the Services can be provided in accordance with the Services Agreement,

is the Operator's responsibility and does not of itself give rise to a Variation.

19. Force Majeure

19.1 Notice

If the Operator is of the reasonable opinion that a Force Majeure Event has occurred that affects the Works and/or the Site, the Operator must, no later than 5 Business Days after it forms that opinion, submit a notice to the State which must contain:

- (a) details of the Force Majeure Event including details of the basis on which the Operator has formed the opinion that the event constitutes a Force Majeure Event;
- (b) details of the obligations affected by the Force Majeure Event and an estimate of the time (if any) during which the Operator will be unable to carry out the affected obligations;
- (c) details of the action that the Operator has taken and proposes to take to avoid or minimise the consequences of the Force Majeure Event; and
- (d) details of all insurance moneys on which the Operator may be able to rely in making good any damage caused by the Force Majeure Event.

19.2 Meeting

Within 5 Business Days of the date of the notice submitted in accordance with Clause 19.1, the parties must meet to seek to agree on:

- (a) whether the event set out in the notice is a Force Majeure Event;
- (b) what obligations (if any) will be affected by the Force Majeure Event; and

- (c) whether the Force Majeure Event is an Extension Event; and
- (d) the steps to be taken to overcome the effects of the Force Majeure Event.

19.3 Actions

The Operator must:

- (a) promptly after the occurrence of a Force Majeure Event, take and continue to take proper and reasonable steps to avoid or minimise the consequences of the Force Majeure Event and seek to overcome the effects of the Force Majeure Event;
- (b) continue to perform its obligations in accordance with this Agreement that are unaffected by the Force Majeure Event; and
- (c) keep the State updated as to the status of the effects of the Force Majeure Event and the Operator's actions in connection with the Force Majeure Event.

19.4 Obligations suspended

- (a) The obligations of each party in accordance with this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its obligations in accordance with this Agreement.
- (b) A party's failure to perform its obligations in accordance with this Agreement which are suspended in accordance with paragraph (a) will not be a breach of this Agreement, an Event of Default or an Immediate Termination Event during the period of suspension in accordance with paragraph (a).
- (c) To the extent that the Operator is continuing to perform part of its obligations under this Agreement during the Force Majeure Event, it will be entitled to submit payment claims for the work performed in accordance with the provisions set out in Clause 21.

20. Private Works

- (a) The Operator must undertake the Private Works in accordance with:
 - (i) the Design Documentation in respect of the Private Works;
 - (ii) Best Construction Practices;
 - (iii) the Building Code of Australia;
 - (iv) the relevant standards, codes and guides of Standards Australia and Standards New Zealand;
 - (v) the Approval in Principle;
 - (vi) the Approval to Construct;
 - (vii) the Approval to Occupy;
 - (viii) any other lawful requirements of any Governmental Agencies and the LARU and all Laws; and

- (ix) the Health Campus Requirements (to the extent that the Private Works contemplate that the Private Patient Facility and any of the Commercial Facilities will be situated within the Health Campus).
- (b) The Operator must undertake the Private Works and achieve the Completion Criteria in respect of the Private Works as set out in Schedule 5 by the Date for Completion (as determined by the Independent Certifier).
- (c) Without limiting the Operator's obligation under paragraph (b), the Operator is not liable to the State for any additional damages in respect of its failure to achieve Completion of the Private Works by the Date for Completion, other than liquidated damages set out in Clause 14.10 including Clause 14.10(d), if that clause applies.
- (d) The undertaking of the Private Works must not in any way affect or interfere with the provision of the Services in accordance with the Services Agreement.
- (e) The Operator acknowledges and agrees that it is not entitled to:
 - (i) any payment from the State in respect of the undertaking of the Private Works under this Agreement; and
 - (ii) use any amounts payable by the State as part of the Contract Sum for performance of the Works under this Agreement in undertaking the Private Works.
- (f) The Operator must update the Design Documentation as necessary to reflect any changes to the nature or status of the Private Works. The Operator must submit any revisions, modifications or updated versions of the Design Documentation to the State Representative for review in accordance with the Review Procedures.
- (g) The State acknowledges and agrees that the Operator is permitted to design, construct and operate the Private Works for commercial gain.

21. Payment

21.1 Generally

In consideration of the performance of its obligations under this Agreement, the State will pay the Operator the Contract Sum, and any other amount which is payable by the State to the Operator under this Agreement, in accordance with this Clause 21.

21.2 Conditions precedent to payment

The State is not obliged to make a payment under this Clause 21 unless the Operator has:

- (a) submitted a payment claim in accordance with the requirements set out in this Clause 21;
- (b) submitted to the State an Invoice in accordance with Clause 21.6;
- (c) to the extent that the payment claim relates to payment for unfixed goods and materials, provided the State with a Performance Bond in respect of such unfixed goods and materials as required under Clause 21.9;

- (d) provided to the State Representative certified copies of the Parent Guarantee and the Builder Parent Guarantee all duly executed by all parties;
- (e) provided to the State Representative the relevant Novation Deeds that have been or ought to have been executed by the Operator and the relevant Subcontractors in accordance with Clause 6.6(c)(i) as at the date of the Payment Claim;
- (f) provided the State with the Performance Bond as required under Clause 25.2;
- (g) effected the insurance required by Clause 24 and if requested by the State Representative, submitted evidence of such compliance to the State Representative;
- (h) paid the training levy in respect of the Project under the *Building and Construction Industry Training Levy Act 1990* (WA) as referred to in Clause 9.3;
- (i) submitted to the State Representative evidence of the Department of Education and Training's approval of the Operator's Training Plan for the Works prepared under Clause 9.4;
- (j) complied with its programming obligations under Clause 13.1;
- (k) complied with its Australian Industry Participation Plan reporting obligations under Schedule 4; and
- (l) complied with its obligations under Clause 21.15.

21.3 Timing of Payments

Subject to the remainder of this Clause 21, the Operator may submit monthly payment claims for an amount calculated in accordance with Clause 21.4(a).

21.4 Payment claim

- (a) At least 3 Business Days before the end of each month, and upon termination of this Contract, the Operator must submit to the State a draft payment claim substantially in the form of Schedule 17, setting out the following information:
 - (i) **(Progress Costs)** the amount claimed on account of the Contract Sum which is calculated by multiplying the percentage of the Works completed since the last payment claim (as specified in paragraph (a)(iii)) by the relevant part of the Contract Sum as set out in Attachment 4;
 - (ii) **(other amounts)** any other amounts that are payable by the State to the Operator under this Agreement together with the basis of the amount claimed and reasonable evidence (including evidence required to be provided under this Agreement) of the basis of the claim;
 - (iii) **(Progress of the Works)** the Operator's assessment of:
 - A. the total percentage of the Works that have been completed as determined by reference to the activities that will be completed at various stages of the Works, as set out in the

Works Program and the detailed breakdown of the activities in Attachment 4; and

- B. the percentage of the Works that have been completed since the last payment claim, or in the case of the first draft payment claim, the percentage of the Works completed since the Commencement Date by reference to the detailed breakdown in Attachment 4.
- (b) In respect of each draft payment claim issued under paragraph (a), the Operator must submit to the State a payment claim, by the following dates:
 - (i) generally, on or before the 3rd day of the month following the month in respect of which the draft payment claim was submitted (and no earlier than the 1st day of that month); and
 - (ii) upon termination of this Contract, 5 Business Days from the date that the draft payment claim was submitted.
- (c) The payment claim must be the same as the draft payment claim, except for any changes discussed and agreed by the parties in respect of the draft payment claims.

21.5 Payment Certificate

- (a) Within 6 Business Days of the date that the payment claim was received, the State must determine the payment to be made to the Operator (if any), acting reasonably and in accordance with the terms of this Agreement and, by notice to the Operator:
 - (i) advise that the State intends to make the payment set out in the payment claim and deliver a Payment Certificate to the Operator for the amount of the payment claim; or
 - (ii) advise that the State does not intend to make all or part of the payment set out in the payment claim, providing the reasons for its decision, and deliver a Payment Certificate to the Operator for any amounts to which the State advises that the Operator is entitled.
- (b) The State may for any reason, including as a result of any audit under Clause 28, in any Payment Certificate:
 - (i) deduct any amounts which the State is owed by the Operator under this Agreement, or is entitled to deduct under this Agreement; or
 - (ii) acting reasonably, and in accordance with this Agreement, correct or modify any error in any previous Payment Certificate issued by the State under paragraph (a).

21.6 Operator to provide tax invoice

Within one Business Day of receipt of a Payment Certificate by the Operator, the Operator must provide a tax invoice in a form approved by the State acting reasonably and any other documentation necessary for the State to be able to claim any applicable GST or have payment of any GST recognised under the applicable GST legislation to the State. The amount in the tax invoice must be the same as the amount in the Payment Certificate.

21.7 Payment

- (a) Provided that the timeframes in Clause 21.4(a), 21.4(b) and 21.6 have been met, on or before the 26th day of the month on which the payment claim was received, the State must pay the Operator or the Operator must pay the State (as the case may be) the amount shown in the Payment Certificate (as adjusted under Clause 21.5(b)) by way of an electronic funds transfer of cleared funds to the Operator's nominated bank account as notified to the State's Representative under Clause 33.
- (b) The timeframe for the State to make the payment under paragraph (a) will be extended by the number of Business Days after the date that the Operator should have provided either the draft payment claim under Clause 21.4(a), the payment claim under Clause 21.4(b) or the tax invoice under Clause 21.6 and that the Operator actually does provide those documents.
- (c) Any Payment Certificate or payment of moneys under Clause 21.7 is not:
 - (i) evidence of the value of work or services or that work or services have been satisfactorily performed in accordance with this Agreement;
 - (ii) an admission of liability; or
 - (iii) approval by the State of the Operator's performance or compliance with this Agreement,but is only to be taken as payment on account.
- (d) Subject to any right to withhold or otherwise not make the payment, as set out in this Agreement, if the State does not pay an amount set out in a Payment Certificate by the time specified in paragraph (b), the State must pay the Operator simple interest on any amount set out in the Payment Certificate at the Default Rate for the period from the date that the amount set out in the Payment Certificate was due until the date that the amount in the Payment Certificate is paid by the State.
- (e) The amount calculated in accordance with paragraph (d) will be the Operator's sole entitlement to interest for a failure to pay an amount set out in a Payment Certificate, including damages for loss of use of, or the cost of borrowing money.
- (f) Paragraph (d) does not apply to amounts:
 - (i) for which the Operator has not given a tax invoice that complies with the requirements of Clause 21.6;
 - (ii) for which the conditions for payment have not been satisfied; or
 - (iii) while they are in Dispute.

21.8 Capital Cost Proposal Schedule

- (a) As soon as possible after the Commencement Date, the Operator must submit to the State, a detailed breakdown of the amounts of the Contract Sum attributable to the activities highlighted in Attachment 4 ("**Highlighted Activities**") for the State's approval. The detailed breakdown may be provided

separately for each Highlighted Activity, depending on when the information becomes available, but all of the line items for each Highlighted Activity must be provided together.

- (b) Within 6 Business Days of the date that the detailed cost breakdown of a Highlighted Activity is received, the State and the Operator must meet to agree the cost breakdown for that Highlighted Activity.
- (c) If the parties are unable to reach an agreement as to the cost breakdown for a Highlighted Activity, the Dispute will be referred for resolution in accordance with Clause 30.
- (d) The Operator will not be entitled to make a claim for payment for any work undertaken which forms part of the Highlighted Activity until the relevant cost breakdown has been agreed with the State or determined under Clause 30.
- (e) The completion and agreement of the cost breakdown of the Highlighted Activities must not increase the Contract Sum.
- (f) The breakdown of the Contract Sum set out in Attachment 4 does not affect the Operator's obligations to deliver the whole of the Works and perform all of the obligations under this Agreement for the Contract Sum in accordance with this Agreement.

21.9 Unfixed goods and materials

- (a) Unfixed goods and materials will not be included in the value of work in a Payment Certificate under Clause 21.5 unless:
 - (i) the Operator gives the State Representative with its payment claim an additional Performance Bond equal to the payment claimed for the unfixed goods and materials (which may be procured from a relevant Subcontractor or otherwise);
 - (ii) the unfixed goods and materials are on the Site or available for immediate delivery to the Site; and
 - (iii) the unfixed goods and materials are properly stored in a place approved by the State Representative.
- (b) If the Operator has given the State an additional Performance Bond for payment for unfixed goods and materials, the State must release it to the Operator once those goods and materials are incorporated into the Works.

21.10 Completion payment claim and notice

- (a) Within 6 months after the issue of a notice of Completion under Clause 16.6, the Operator must give the State Representative:
 - (i) a payment claim which must include all amounts which the Operator claims from the State on account of the Contract Sum or otherwise under the Agreement; and
 - (ii) notice of any other amounts which the Operator claims from the State,

arising out of, or in any way in connection with, the Works or this Agreement which occurred before the Date of Completion.

- (b) The Operator cannot include in this payment claim or notice any Claims which are barred by this Agreement.

21.11 Release after Completion payment claim and notice

- (a) After the date for submitting the payment claim and notice under Clause 21.10 has passed, the Operator releases the State from any Claim arising out of, or in any way in connection with, the Works or this Agreement which occurred prior to the Date of Completion.
- (b) The Operator's release under paragraph (a) does not apply to:
 - (i) any Claim included in a payment claim or notice under Clause 21.10 which is given to the State Representative within the time required by, and in accordance with the terms of, Clause 21.10; or
 - (ii) any cross-claim the Operator files in response to legal proceedings brought by the State or any proceeding commenced by the Operator in response to proceedings brought by a third party.

21.12 Final payment claim and notice

- (a) Within 28 days after the end of the last of the Defects Liability Periods (as extended) the Operator must give the State Representative:
 - (i) a payment claim which must include all amounts which the Operator claims from the State on account of the Contract Sum or otherwise under this Agreement; and
 - (ii) notice of any other amounts which the Operator claims from the State,

arising out of, or in any way in connection with, the Works or this Agreement which occurred during the Defects Liability Period.
- (b) The Operator cannot include in this payment claim or notice any Claims which are barred under this Agreement.

21.13 Release after final payment claim and notice

- (a) After the date for submitting the payment claim and notice under Clause 21.12 has passed, the Operator releases the State from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works or this Agreement which occurred during the Defects Liability Period.
- (b) The Operator's release under paragraph (a) does not apply to:
 - (i) any Claim included in a payment claim or notice under Clause 21.12 which is given to the State Representative within the time required by, and in accordance with the terms of, Clause 21.12; or
 - (ii) any cross-claim the Operator files in response to legal proceedings brought by the State or any proceeding commenced by the Operator in response to proceedings brought by a third party.

21.14 Right of set-off

Without limiting or otherwise affecting the State's rights under any other provision in this Agreement or at Law and notwithstanding the provision of, or the issue of a Payment Certificate under Clause 21.5, the State may deduct from any moneys due and payable to the Operator pursuant to this Agreement any amount due and payable by the Operator to the State (whether under or relating to this Agreement or any other contract with the State or otherwise).

21.15 Payment of workers and Subcontractors

The Operator must with each payment claim under Clause 21.4(a) provide the State Representative with:

- (a) a certificate together with any supporting evidence which may be reasonably required by the State Representative, duly signed by a representative of the Operator who is in a position to know the facts stated, that, except to the extent disclosed in the relevant certificate (such disclosure to specify all relevant amounts, workers and Subcontractors):
 - (i) all workers who have at any time been employed by the Operator on the Works have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment on the Works; and
 - (ii) all Subcontractors have been paid all moneys due and payable to them in respect of the Works; and
- (b) documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a Subcontractor of the Operator have been paid all moneys due and payable to them in respect of their employment on the Works.

21.16 No prejudice

Except to the extent expressly provided otherwise, suspension of the Operator's obligations under this Agreement will not limit, prejudice or affect the State's power under this Agreement to deduct from, reduce, set-off or suspend payment of any amount payable under this Agreement.

21.17 Construction Contracts Act 2004 (WA)

- (a) **(Application of Clause):** This Clause will apply only to the extent that the *Construction Contracts Act 2004* (WA) (**CCA**) applies to this Agreement (and, in the case of paragraph (g), to any Subcontract).
- (b) **(Interpretation):** Expressions defined or used in the CCA have the same meaning for the purposes of this Clause 21.17 (unless the context otherwise requires).
- (c) **(Notice of communications):** The Operator must:
 - (i) when it gives to the State any application or notice under the CCA, immediately give a copy of that application or notice to the State Representative; and

- (ii) when it or any entity forming part of the Operator receives an application or notice under the CCA relating to the services from any third party in connection with the Project, immediately give a copy of that application or notice to the State Representative.
- (d) **(Prescribed appointor):** For the purposes of Part 3 of the CCA, the parties appoint the Institute of Arbitrators and Mediators Australia (Western Australian Chapter) as the prescribed appointor for this Agreement.
- (e) **(Operator's remedies limited):** Nothing in this Agreement will be construed to:
 - (i) make any act or omission of the State in contravention of the CCA (including failure to pay an amount becoming due under the CCA) a breach of this Agreement (unless the State would have been in breach of this Agreement had the CCA had no application); or
 - (ii) give to the Operator rights or remedies under this Agreement which extend or are in addition to rights or remedies given to the Operator by the CCA in respect of any act or omission of the State in contravention of the CCA.
- (f) **(Suspension by Operator):** If the Operator at any time is entitled to and does suspend the whole or any part of the Works under the CCA, despite any other provision of this Agreement:
 - (i) the suspension will be an Extension Event; and
 - (ii) except to the extent (if any) expressly provided under the CCA, the State will not be liable for any Liability whatsoever suffered or incurred by the Operator as a result of the suspension and the suspension will not be a Compensable Extension Event.
- (g) **(Suspension by Subcontractors):** If the CCA applies to any Subcontract:
 - (i) the Operator must ensure that, within one Business Day after notice of a Subcontractor's intention to suspend work under a Subcontract pursuant to the CCA is given to, or received by, the Operator from any of its Subcontractors, a copy of that notice is given to the State; and
 - (ii) if a Subcontractor becomes entitled to suspend work under a Subcontract pursuant to the CCA because of a failure by the Operator or any the Operator Associate to pay moneys due and payable to the Subcontractor, the State may (in its absolute discretion) pay to the Subcontractor the amount owing to the Subcontractor in respect of that work, and any amount paid by the State will become monies due and payable on demand by the Operator to the State.

21.18 Goods and Services Tax

- (a) **(General)** This Clause shall apply as if the GST Law imposed GST, and was able to impose GST, in the circumstances prescribed in the GST Law, on property of any kind belonging to a State (as that expression is used in section 114 of the *Commonwealth of Australia Constitution Act 1900*).

- (b) **(Interpretation):** In this Clause 21.18, terms used and defined in this Clause 21.18 have the meaning given to them in the GST Law.
- (c) **(GST exclusive amounts):** The Contract Sum and any other amounts in this Agreement (except where otherwise specified) are exclusive of GST and are subject to this Clause 21.18.
- (d) **(Payment in respect of Operator's GST liability):**
 - (i) Subject to paragraph (ii), in addition to any other consideration or payment obligation of the State for a Supply in connection with this Agreement, the State must pay to the Operator or reimburse the Operator for any GST the Operator must pay on any Supply made by the Operator in connection with this Agreement.
 - (ii) Notwithstanding any other provision of this Agreement, the Operator is not entitled to recover from the State any amount in respect of GST relating to a Supply for which the State has no consideration or payment obligation.
- (e) **(Payment in respect of State's GST liability):** In addition to any other consideration or payment obligation of the Operator for a Supply in connection with this Agreement, the Operator must pay to the State or reimburse the State for any GST the State must pay on any Supply made by the State in connection with this Agreement.
- (f) **(Recipient Created Tax Invoice):** The State may issue to the Operator a copy (and retain the original) of a Recipient Created Tax Invoice with respect to Supplies made by the Operator to the State. So that the State can issue an invoice which is a Recipient Created Tax Invoice, the State and the Operator agree that:
 - (i) the State may issue Tax Invoices in respect of the Supplies made by the Operator;
 - (ii) the Operator will not issue Tax Invoices in respect of the Supplies made by the Operator;
 - (iii) the Operator acknowledges that it is registered for GST purposes when it enters into this Agreement and that it will notify the State if it ceases to be registered for GST purposes; and
 - (iv) the State acknowledges that it is registered for GST purposes when it enters into this Agreement and that it will notify the Operator if it ceases to be registered or if it ceases to satisfy any of the requirements of the Commissioner of Taxation relating to the issue of a Recipient Created Tax Invoice.
- (g) **(Time for payment by the State):**
 - (i) The State must pay or reimburse the Operator for GST at the same time as the payment obligation to which the GST relates, provided that if for any reason the provisions of paragraph (f) do not apply, the Operator has first provided a Tax Invoice in respect of that GST.
 - (ii) Notwithstanding any other provision of this Agreement, the Operator is not entitled to recover from the State any amount in respect of GST

the Operator has paid or is liable to pay in relation to or in connection with any outgoing, expense or cost paid or payable by the Operator, if the Operator is entitled to receive a credit for that GST.

(h) **(Time for payment by the Operator):**

- (i) The Operator must pay or reimburse the State for GST at the earlier of the time of the payment obligation to which the GST relates, or upon the State providing a Tax Invoice in respect of that GST.
- (ii) Notwithstanding any other provision of this Agreement, the State is not entitled to recover from the Operator any amount in respect of GST the State has paid or is liable to pay in relation to or in connection with any outgoing, expense or cost paid or payable by the State, if the State is entitled to receive a credit for that GST.

22. Representations and warranties

22.1 No State warranties on information provided

The State or State Associate does not warrant, guarantee or make any representation about the accuracy, adequacy or completeness of, and owes no duty of care with respect to, the Information Documents.

22.2 Operator acknowledgement

- (a) The Operator acknowledges that:
 - (i) the Information Documents are provided by the State for information purposes only;
 - (ii) there may be other information which the State or a State Associate is aware of or has in its possession which may be relevant to the rights and obligations of the parties under this Agreement which may not have been provided to the Operator or to which no reference has been made;
 - (iii) all Intellectual Property Rights in the Information Documents and the State Project Documents remain the property of the State;
 - (iv) the Information Documents do not form part of this Agreement or constitute an invitation, offer or recommendation by or on behalf of the State; and
 - (v) where the Information Documents were prepared by third parties, the State is a mere conduit in respect of the information contained in those Information Documents.
- (b) To the extent permitted by Law, the Operator will not and will ensure that any Operator Associate does not make any Claim against the State or any State Associate for any Liabilities incurred or suffered by the Operator or any Operator Associate arising out of or in connection with:
 - (i) any inadequacy, inaccuracy or incompleteness in any of the Information Documents;

- (ii) the provision of, or the purported reliance upon, or use of, the Information Documents by the Operator or any Operator Associate; or
 - (iii) a failure by the State or State Associate to provide any other information, data or documents to the Operator.
- (c) The Operator indemnifies the State and each State Associate from and against any Liabilities suffered or incurred arising out of or in connection with a breach by the Operator of paragraph (b).

22.3 Operator's representations and warranties

The Operator represents and warrants to the State that:

- (a) it has informed itself as to the nature of the Project;
- (b) it has not relied upon any of the information, data and documents referred to in Clause 22.1 or any representations made by the State in respect of the Project in entering into this Agreement;
- (c) the Design Documentation meets the requirements of the LARU and the Design Requirements;
- (d) it has the resources and expertise required to perform the obligations imposed on the Operator under this Agreement including to undertake the Works in accordance with this Agreement;
- (e) without limiting the Operator's right to recover costs in respect of Reimbursable Contamination and Migratory Contamination in accordance with Clause 8.3(g), it has examined the Site and its surroundings and has done everything possible to inform itself sufficiently as to access to those areas and the Land Conditions which may affect delivery of the Works;
- (f) it has assessed the risks which it is assuming under this Agreement;
- (g) it has examined all the information made available by the State or State Associates to the Operator in connection with the Works and the Site, including the Information Documents and the State Project Documents.

22.4 Repetition of representations and warranties

- (a) Except as set out in paragraph (b), each representation and warranty contained in this Agreement:
 - (i) is made on the Date of this Agreement; and
 - (ii) will be deemed to be repeated each day during the D&C Phase and, except for the warranty in Clause 22.3(c), the Defects Liability Period,with reference to the facts and circumstances then subsisting.
- (b) The warranty set out in Clause 22.3(c) does not apply to the extent that a change in requirement by the LARU or in the Design Requirements means that the Design Documentation does not, at that time, meet the requirements of the LARU or the Design Requirements.

- (c) Notwithstanding paragraph (b), the Operator must warrant on the Date of Completion, that the Design Documentation meets the requirements of the LARU and the Design Requirements as those requirements exist at Completion.

22.5 Reliance on representations and warranties

The Operator acknowledges that the State has relied on the representations, warranties and acknowledgements of the Operator set out in this Agreement in entering into this Agreement.

22.6 Warranties unaffected

The warranties given in this Agreement will remain unaffected notwithstanding:

- (a) any review of, comments upon, or any purported endorsement or failure to endorse, or failure to review or comment upon any Design Documentation or the Works; or
- (b) the execution of any Variation, except as notified to the State in a Variation Quote, which Variation Quote was:
 - (i) accepted by the State; or
 - (ii) determined in accordance with the dispute resolution procedures in Clause 30.

23. Risk and Liability

23.1 Risk of loss or damage

The Operator bears the risk of loss or damage to:

- (a) the Works; and
- (b) unfixed goods and materials (whether on or off the Site), including anything:
 - (i) provided by the State to the Operator;
 - (ii) brought onto the Site by a Subcontractor; or
 - (iii) used or to be used in performing the Works,

during the D&C Phase in accordance with this Clause 23 and must promptly notify the State of the actual or possible occurrence of any damage or loss which is likely to impact upon the Operator's performance of the Works.

23.2 State election to reinstate

- (a) Within 60 Business Days (or such longer period as the State reasonably requires) of any loss or damage to the Works of which the Operator notifies the State under Clause 23.1, the State must notify the Operator whether it requires the Operator:
 - (i) to repair or rebuild the Works; or
 - (ii) not to repair or rebuild the Works,

for which the Operator retains the risk of loss or damage in accordance with Clause 23.1.

- (b) If the State notifies the Operator that it requires the Works to be repaired or rebuilt more than 60 Business Days after notice from the Operator of the loss or damage to the Works, the State must pay the actual remobilisation costs which the Operator necessarily incurs remobilising to Site.

23.3 Reinstatement

If the State notifies the Operator that it requires the Operator to repair or rebuild the Works in accordance with Clause 23.2(a)(i), the Operator must:

- (a) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
- (b) promptly consult with the State and carry out such steps as are necessary to ensure the prompt repair and reinstatement of the loss or damage so that:
 - (i) the Works comply with the requirements of the State Project Documents;
 - (ii) to the greatest extent possible, the Operator continues to comply with its obligations in accordance with the State Project Documents; and
 - (iii) the State is fully informed of the progress of the repair and reinstatement activities; and
- (c) bear the cost of repairing or rebuilding the Works, unless the loss or damage was caused by:
 - (i) a Force Majeure Event; or
 - (ii) subject to the Operator or Consortium Entity having notified the State as soon as the Operator or Consortium Entity receives written notification from its insurers or insurance broker that the relevant risk has become Uninsurable, an Uninsurable risk;

in which case:

- A. the State will bear any actual cost of repair or rebuilding to the extent that it exceeds the proceeds of any insurance taken out by the Operator under this Agreement, or which it would have received had it complied with its obligations under this Agreement in respect of insurance including under Clause 24 and Schedule 6, or its obligations under the relevant Insurance Policy, or where the loss or damage was occasioned by an Uninsurable risk; and
- B. the parties must comply with the provisions of Clause 18 in relation to those repairs or rebuilding works as if those works were a Variation for the purposes of that Clause.

23.4 Consequences of not repairing or rebuilding

If the State notifies the Operator not to repair or rebuild the Works in accordance with Clause 23.2(a)(ii), and the loss or damage:

- (a) does not result in the loss of or damage to the whole or a substantial part of the Works, the notice of the State in accordance with Clause 23.2(a)(ii) will be deemed to be a Variation to omit the relevant part of the Works from this Agreement and the State must issue a Variation Order in accordance with Clause 18; or
- (b) results in the loss of or damage to the whole or a substantial part of the Works and was caused by:
 - (i) an Event of Default or Immediate Termination Event, then this Agreement will be deemed to have been terminated as if for an Event of Default or an Immediate Termination Event in accordance with Clause 27.3 or 27.4 respectively;
 - (ii) a breach by the State of a State Project Document or negligent or wilful act or omission of the State or State Personnel, then this Agreement will be deemed to be terminated for convenience in accordance with Clause 27.1;
 - (iii) a Force Majeure Termination Event or the occurrence of an Uninsurable risk “**Uninsurable Risk Termination Event**”, then the State must immediately terminate this Agreement by notice to the Operator under Clause 27.2; or
 - (iv) any matter not covered by paragraphs (i), (ii) or (iii) above, then a “**Damage Termination Event**” has occurred and Clause 27.5 will apply,

and, in the event of either paragraph (a) or (b), the Operator must pay to the State any proceeds of insurance which it receives under this Agreement, or would have received had it complied with its obligations under this Agreement in respect of that insurance or, its obligations under the relevant Insurance Policy.

23.5 Damage to third party property

- (a) The Operator must avoid interference with, or obstruction or damage to, any property in the vicinity of the Works arising in connection with the performance of the Works.
- (b) If any loss of or damage to real or personal property of third parties occurs in connection with the performance of the Works, the Operator must:
 - (i) promptly repair such loss or damage; or
 - (ii) reasonably compensate the affected person for that loss or damage (if the Operator has a legal Liability to do so and as agreed with the affected person).

23.6 Third party liability indemnity

The Operator indemnifies each of the Indemnified Persons against:

- (a) any Liability incurred in connection with any breach by the Operator or any Operator Associate of a Project Document or any negligent act or omission of the Operator or an Operator Associate in connection with this Agreement or the Project;

- (b) any loss of or damage to property of the Indemnified Person (other than the Works which is subject to the regime set out in Clauses 23.1 to 23.5 (inclusive)) in connection with:
 - (i) delivering the Project; or
 - (ii) the use or occupation of the Site by the Operator or the Operator Associates; and
 - (c) any Liability incurred by the Indemnified Person in connection with any loss of or damage to third party property or injury to, disease or death of a person in connection with:
 - (i) delivering the Project; or
 - (ii) the use or occupation of the Site by the Operator or the Operator Associates,
- provided that the Operator's Liability to indemnify each of the Indemnified Persons in paragraphs (a), (b) or (c) will be reduced to the extent that any such damage, injury, death or disease or Liability arises due to:
- A. a fraudulent, negligent, unlawful or wilful act or omission of the Indemnified Person; or
 - B. a breach by the State of a State Project Document.

23.7 References to the State

For the purposes of the indemnities given by the Operator to the State in this Agreement, the State includes the Crown in the right of the State of Western Australia, the Parliament, department, agency or instrumentality of the State of Western Australia, any Minister, whether body corporate or otherwise, and their officers, employees, consultants, contractors (other than the Operator or any Operator Associates), agents, and personnel.

23.8 State holds benefit of indemnities on trust

- (a) The State declares that it holds on trust for each State Associate, the benefit of each indemnity and release given by the Operator under this Agreement in favour of each State Associate.
- (b) The Operator acknowledges the existence of such trusts and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of the State Associates; and
 - (ii) the State Associates exercising rights in relation to, or otherwise enforcing the indemnities and releases.
- (c) The State and the Operator agree that the consent of the State Associates will not be required for any amendment to, or waiver of rights in accordance with a State Project Document.

23.9 Time for enforcement

It is not necessary for the State to incur expense or make any payment before enforcing a right of indemnity in accordance with this Agreement.

23.10 Application of Civil Liability Act 2002 (WA)

- (a) **(Interpretation):** In this Clause 23.10 only, "**the Law**" means Part 1F of the *Civil Liability Act 2002* (WA) and any equivalent statutory provision in any other state or territory.
- (b) **(Law excluded):** The operation of the Law is excluded in relation to all and any rights, obligations and Liabilities arising out of or in connection with this Agreement or the Works whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.
- (c) **(Agreement specifies Liabilities):** Without limiting the generality of paragraph (b), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate Liability) are as specified in this Agreement and not otherwise whether such rights, obligations and Liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity, under statute or otherwise at Law.
- (d) **(Subcontracts):** The Operator must:
 - (i) include a term in each Subcontract that (to the extent permitted by Law), excludes the application of the Law in relation to all and any rights, obligations or Liabilities of either party pursuant to each subcontract whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort (including negligence) or otherwise; and
 - (ii) require each Subcontractor to include, in any further contract that it enters into with a third party for the execution of a component of the Works, a term that (to the extent permitted by Law) excludes the application of the Law in relation to all and any rights, obligations or Liabilities of either party pursuant to each further contract whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort (including negligence) or otherwise.
- (e) **(Insurance):** The Operator must ensure that all Insurance Policies required by this Agreement which cover third party Liability:
 - (i) cover the Operator for potential Liability to the State assumed by reason of the exclusion of the Law; and
 - (ii) do not exclude cover for any potential Liability the Operator may have to the State under or by reason of this Agreement.

23.11 Indirect or Consequential Loss

- (a) Despite any other provision of this Agreement (other than paragraphs (b) and (c)), neither party is liable to the other, nor is a party entitled to make any Claim against the other, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by that party (including in relation to the State,

any other person claiming through the State, including any person entitled to the benefit of an indemnity under the State Project Documents and including in relation to the Operator, any other person claiming through the Operator, including the Builder and Key Service Provider), arising out of or in connection with this Agreement.

- (b) The exclusion in paragraph (a) does not apply to Indirect or Consequential Loss that:
 - (i) a party has a legal entitlement to claim from the other party arising from:
 - A. injury to, disease or death of a person; or
 - B. third party claims made against the first party; or
 - (ii) forms part of the Convenience Termination Payments or Reasonable Break Costs calculation, to the extent that it is expressly included or contemplated.
- (c) The exclusion of the Operator's Liability for Indirect or Consequential Loss in paragraph (a) does not apply to the extent that the Operator, the Key Service Provider or the Builder recover Indirect or Consequential Losses under an Insurance Policy required to be effected under this Agreement. In that case, the Liability of the Operator for Indirect or Consequential Loss is the extent of such proceeds recovered under the Insurance Policy. The Operator must take all reasonable steps to pursue its entitlement under an Insurance Policy for proceeds to recover Indirect or Consequential Loss.

24. Insurance

24.1 General

- (a) The Operator must, at its own cost and expense, as a minimum, effect and maintain the insurance cover set out in Schedule 6:
 - (i) on the terms and conditions set out in Schedule 6 and otherwise on terms acceptable to the State (acting reasonably); and
 - (ii) with insurers approved by the State (acting reasonably) which either:
 - A. carry on business in Australia and are authorised by APRA; or
 - B. if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the State.
- (b) Without limiting paragraph (a), the Operator must:
 - (i) pay all premiums and deductibles applicable to the Insurance Policies when due; and
 - (ii) promptly reinstate any Insurance Policy if it lapses or if cover is exhausted.

- (c) To the extent available at the times of placement and each renewal, the Insurance Policies must:
 - (i) provide that where the State is a named insured the insurers must waive rights of subrogation against the State; and
 - (ii) state they are governed by the laws of the Commonwealth of Australia and that courts of the Commonwealth of Australia will have exclusive jurisdiction in any dispute under the policy.
- (d) The effecting and maintaining of the Insurance Policies by the Operator does not, in any way, affect or limit the Liabilities or obligations of the Operator under this Agreement.
- (e) For the avoidance of doubt, where a party is to be named or noted on an Insurance Policy, or where an Insurance Policy is to extend to a party, it is intended that the cover provided by the Insurance Policy will be provided to each of the parties so named, noted or to whom the Insurance Policy extends, for the risks covered by the Insurance Policy for their respective rights and interests.

24.2 Term

- (a) The Insurance Policies must come into effect on the dates set out in Schedule 6.
- (b) Subject to paragraph (c), the Insurance Policies must be maintained until the dates set out in Schedule 6.
- (c) If the wording of any Insurance Policy required by this Agreement is constructed on a claims made basis, the Insurance Policy must be renewed or otherwise maintained without interruption for a period of 7 years after the Expiry Date.

24.3 Approval of insurers and proposed terms and conditions of the Insurance Policies

- (a) The proposed terms and conditions of the Insurance Policies (excluding Professional Indemnity insurance and Compulsory Motor Vehicle insurance) must be provided by the Operator to the State for approval (such approval not to be unreasonably withheld or delayed):
 - (i) 10 Business Days (or such other period as may be agreed to by the State) prior to the Date of this Agreement; and
 - (ii) by not later than 10 Business Days after each annual renewal.
- (b) In the case of the current Professional Indemnity insurance as at the Date of this Agreement, Minter Ellison, or other reputable national legal firm will provide written advice to the State prior to the Commencement Date stating:
 - (i) the names and underwriting percentages of the insurers; and
 - (ii) confirmation that the current Professional Indemnity policy complies with Clauses 24.2, 24.13 and section 4 of Schedule 6, or provides details of non-compliance

which written advice will be relied upon by the State.

- (c) In respect of all renewals of the Professional Indemnity policy, the Operator will at its election provide, within the time limits set out in Clause 24.3(a):
 - (i) unqualified written advice by Arthur J. Gallagher (Aus) Pty Ltd, or other reputable national insurance broker, to the State advising:
 - A. the names and underwriting percentages of the insurers, and confirmation that the limit of cover complied with the requirements of section 4 of Schedule 6; and
 - B. that the new policy does not differ in any material or significant way from the previous policy; or
 - (ii) written advice from Minter Ellison, or other reputable national legal firm as required in paragraph (b) above,

which written advice will be relied upon by the State.

24.4 Proof of Insurance Policies

- (a) On or before the Commencement Date and whenever reasonably requested by the State thereafter, the Operator must produce to the State:
 - (i) certificates of currency for the Insurance Policies; and
 - (ii) copies of the Insurance Policies or brokers evidence of cover incorporating policy wording and schedules (**Brokers Evidence of Cover**) evidencing the insurance effected and maintained (excluding Professional Indemnity insurance and Compulsory Motor Vehicle insurance).
- (b) The Brokers Evidence of Cover and certificates of currency must not contain a disclaimer to the effect that it cannot be relied upon.
- (c) Before producing them to the State, the Operator may redact commercially sensitive information in the Insurance Policies or the Brokers Evidence of Cover or certificates of currency which relates to other projects.
- (d) The State will keep the Insurance Policies and the Brokers Evidence of Cover and certificates of currency confidential and will not disclose the contents of these documents to third parties (other than the State's legal and insurance advisers) without the prior written approval of the Operator, such approval not to be unreasonably withheld. The State will advise its legal and insurance advisers of the provisions of this Clause 24.

24.5 Failure to produce proof of insurance terms

- (a) If the Operator fails to comply with Clause 24.3(a)(ii), or after being requested by the State to do so, the Operator fails to produce evidence of compliance with its insurance obligations in accordance with Clause 24.4, to the satisfaction and approval of the State, the State may:
 - (i) effect and maintain the Insurance Policies and pay the premiums. The amount paid by the State in effecting and maintaining the

required insurance will be a debt due and payable on demand from the Operator to the State;

- (ii) exercise its rights under Clause 26;
 - (iii) suspend the performance of the Works under Clause 13.3 until evidence of insurance required by this Agreement is produced to the State; or
 - (iv) refuse payment of any moneys due to the Operator until evidence of insurance required by Clause 24.4 is produced to the State.
- (b) The rights given to the State by this Clause 24.5 are in addition to any other rights the State may have.

24.6 Notices of potential claims

The Operator must:

- (a) as soon as practicable, inform the State in writing of any occurrence that may give rise to a claim in excess of [*not disclosed*] under the Product Liability policy referred to in section 3 of Schedule 6;
- (b) keep the State informed of subsequent developments concerning the claim; and
- (c) ensure that the Key Personnel and Key Subcontractors and Key Service Provider similarly inform the Operator and the State in respect of occurrences which may give rise to a claim.

24.7 Insurance Policy claim

- (a) If and to the extent that the Operator may be insured against Liability that it suffers or incurs in respect of an event, occurrence or circumstance arising out of or in connection with the Project, the Operator must (unless the State assumes joint or sole responsibility in making the claim) promptly make and pursue a claim against the relevant insurer in respect of that event or circumstance where the State has an interest as an insured.
- (b) The insurance claim must be properly prepared by the Operator in the manner and time required by the relevant insurer and Insurance Policy.

24.8 Operator's further obligations

- (a) The Operator must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.
- (b) The Operator must give the State at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of any of the Insurance Policies.

24.9 Insurance Policies primary

- (a) The Insurance Policies are primary and not secondary to the indemnities referred to in this Agreement. However, the State is not obliged to make a claim or institute proceedings against any insurer under the Insurance Policies

before enforcing any of its rights or remedies under the indemnities referred to in this Agreement, or generally.

- (b) The parties acknowledge that if a claim is made under an Insurance Policy by the State, it is their intention that the insurer cannot require the State to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.
- (c) The Operator acknowledges that regardless of whether the Insurance Policies respond or not, and regardless of the reason why the Insurance Policies respond or fail to respond, the Operator is not released (in whole or in part), from any of its obligations under the indemnities referred to in this Agreement, or generally.

24.10 Insurance review

- (a) The State may from time to time review the adequacy and appropriateness of the Insurance Policies. As part of this review, the State may (without limitation) determine whether, in the State's reasonable opinion, any additional Insurance Policies are required or whether any Insurance Policies effected and maintained at the time of the review are no longer required or require amendment, and give notice to the Operator to that effect.
- (b) To allow the State to exercise its rights under paragraph (a), the Operator must provide to the State copies of the Insurance Policies (excluding Professional Indemnity insurance and Compulsory Motor Vehicle insurance) and accompanying schedules or Brokers Evidence of Cover promptly upon request by the State subject to the conditions set out in Clauses 24.4(b) to 24.4(d) (inclusive).
- (c) The Operator must commence negotiations to obtain insurances or amend the Insurance Policies within 10 Business Days of receiving notice from the State under paragraph (a), and must, subject to paragraphs (d), (e) and (f) as soon as practicable thereafter at the Operator's own cost, obtain insurances or amend the Insurance Policies to reflect the recommendations of the State's review.
- (d) The Operator must promptly notify the State if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising from the State's review. The parties must determine what action, if any, is to be taken following receipt of this notification and where a Dispute arises in respect of this matter it must be referred for Dispute resolution in accordance with Clause 30.
- (e) The Operator must promptly notify the State in writing of the amount of any additional or reduced premium payable in giving effect to the requirements of the State under paragraph (a) before it implements the requirement, and the State will advise the Operator in writing whether it still requires the Operator to give effect to that requirement.
- (f) The cost of any additional or reduced premiums paid on any additional, increased or varied Insurance Policies required by the State in accordance with paragraph (e) will be added to or subtracted from the Contract Sum (as the case may be).

24.11 Subcontractor insurance

- (a) The Operator must ensure that its Subcontractors are insured as required by this Agreement, as appropriate (including as to amounts of insurance and type of insurance) given the nature of services or work to be performed by them.
- (b) If the Operator fails to ensure that its Subcontractors effect and maintain all the insurance required by this Agreement, the State may (without limitation):
 - (i) exercise its rights under Clause 26;
 - (ii) suspend the performance of the Works under Clause 13.3 until evidence of insurance required by this Agreement is produced to the State; or
 - (iii) refuse payment of any moneys due to the Operator until evidence of insurance required by this Agreement is produced to the State.
- (c) The State may, but has no obligation to, satisfy itself as to the Operator's compliance with this Clause 24.11.

24.12 Use of insurance proceeds

All claims proceeds received under the Insurance Policies must be applied as follows:

- (a) towards replacement or repair of the Works or the Health Campus; or
- (b) to discharge the relevant Liability or make good the relevant loss,

as applicable, and must be applied towards the Works before being applied to the Private Patient Facility.

24.13 References to the State

For the purposes of the Insurance Policies described in this Agreement, the State includes the Crown in the right of the State of Western Australia, the Parliament, department, agency or instrumentality of the State of Western Australia, any Minister, whether body corporate or otherwise, and their officers, employees, consultants, contractors (other than the Operator or any Operator Associates), agents, and personnel.

24.14 Uninsurable risk

- (a) If an Insurance Facility becomes Uninsurable, the Operator must notify and ensure that a Consortium Entity notifies, the State in writing within 10 Business Days after becoming so aware, or after a Consortium Entity becoming aware, or after determining, acting reasonably, that the Insurance Facility has become Uninsurable ('**Uninsurability Notice**') and must simultaneously provide sufficient evidence that the Insurance Facility is Uninsurable.
- (b) The Operator's obligations to effect cover for an Insurance Facility or to perform any obligations that are Uninsurable are suspended after it gives an Uninsurability Notice until agreement is reached as to whether the Insurance Facility is Uninsurable, or where a Dispute arises in respect of the matter, it is determined in accordance with Clause 30 that the relevant Insurance Facility is or is not Uninsurable.

- (c) The Operator need not effect or maintain any particular Insurance Facility to the extent that it is Uninsurable.
- (d) The Contract Sum will be adjusted to deduct an amount equal to the premium that was payable by the Operator to insure such risk immediately prior to the risk becoming Uninsurable.
- (e) The Operator must and must ensure that a Consortium Entity similarly advise the State in writing within 10 Business Days of becoming aware that an Insurance Facility is likely to become Uninsurable and simultaneously provide sufficient evidence that the Insurance Facility is likely to become Uninsurable.
- (f) Within 10 Business Days of receipt of an Uninsurability Notice or the Notice referred to in paragraph (e) above, the parties will meet to discuss the means by which the risk should be managed, including, but not limited to:
 - (i) consideration of self-insurance by either party;
 - (ii) if, though Uninsurable, it is still possible to insure the risk by paying higher premiums, taking out that insurance cover, and passing the premium charges through to the State from the date that the insurance cover is taken out;
 - (iii) assigning some other allocation of responsibility to the risk; or
 - (iv) varying the Works to overcome the risk.
- (g) The State may at the State's sole election, require the Operator to continue with the performance of the Uninsurable obligation and pay the Operator for the loss or damage suffered or incurred by the Operator to the extent such loss or damage (including physical loss or damage to the Works (excluding the Private Proportion of Shared Infrastructure) and loss or damage resulting from performance of the Uninsurable obligation) arose from the occurrence of that Uninsurable risk, up to an amount equal to the insurance proceeds that would have been payable, taking into account any deductible, had the relevant insurance continued to be available.
- (h) If the Insurance Facility is available at additional cost, the Operator must promptly inform the State in writing of the amount of any additional premium payable, and the State will advise the Operator in writing whether it still requires the Operator to effect that Insurance Facility in which case, if the State requires the Operator to effect the Insurance Facility at additional cost, the additional premium must be paid by the State, or reimbursed to the Operator by the State.
- (i) Subject to paragraph (g), if the parties are unable to agree on a method of managing the risk, the matter will be dealt with in accordance with Clause 30.

25. Security

25.1 Parent Guarantee

The Operator must, on or before the Commencement Date, procure:

- (a) the Parent Guarantor to sign and deliver to the State a Parent Guarantee in the form of Schedule 16 in the Services Agreement; and

- (b) the Builder Guarantor to sign and deliver to the State a certified copy of the Builder Parent Guarantee.

25.2 Performance Bond

- (a) **(Initial bond)**: The Operator must provide a Performance Bond to the State in the amount of *[not disclosed]* of the Contract Sum as part of the satisfaction of the Conditions Precedent under Clause 2.
- (b) **(Defects Liability Period bond)**: Within 5 Business Days after the issue of the Completion Certificate, the Operator must provide a Performance Bond to the State in the amount of *[not disclosed]* of the Contract Sum.
- (c) **(Release of Performance Bond)**: Within 5 Business Days after the receipt of the Performance Bond referred to in paragraph (b), the State will release to the Operator the Performance Bond then held under paragraph (a).
- (d) **(Release of Defects Liability Period Bond)**: Within 5 Business Days after the expiry of the last of the Defects Liability Period, the State will release to the Operator the Performance Bond then held under paragraph (b).

25.3 Requirements of Performance Bond

Each Performance Bond must:

- (a) be unconditional, irrevocable and payable on demand;
- (b) specify a location within Perth where demand is to be given and payment made on any Business Day; and
- (c) be issued by a financial institution that:
 - (i) has an office open for business in Australia;
 - (ii) is registered in Australia;
 - (iii) is the holder of a current licence issued by APRA; and
 - (iv) has the Required Rating.

25.4 Demands under Performance Bond

- (a) The State may immediately make a demand under any Performance Bond where:
 - (i) the State is satisfied, or reasonably considers, that the Operator has committed an Event of Default;
 - (ii) the State is otherwise authorised to do so under this Agreement; or
 - (iii) the State makes a bona fide claim that it is owed any amount by the Operator under this Agreement and has not been paid that amount by the Operator.
- (b) The amount of any demand by the State under any Performance Bond will be an amount determined by the State as necessary to compensate the State for

any Liability incurred by the State as a consequence of the event entitling the State to make the demand under the Performance Bond.

25.5 Interest

- (a) The State:
 - (i) subject to paragraph (b), is not obliged to pay the Operator interest on the Performance Bond; and
 - (ii) does not hold any Performance Bond or the proceeds of any Performance Bond on trust for the Operator.
- (b) If the State makes a demand under the Performance Bond and obtains cash as a consequence, the State shall be obliged to pay simple interest on the amount of any cash payment in excess of the sum to which the State is entitled at the time of such call at the Default Rate.

25.6 No right to enjoin by injunction or otherwise

Even where the Operator disputes the State's right to payment (including where Dispute resolution proceedings have been commenced under Clause 30), the Operator covenants with the State that the Operator will not institute any proceedings, or exercise any right or take any steps to enjoin by injunction or otherwise restrain:

- (a) the financial institution that issued the Performance Bond from paying the State pursuant to the Performance Bond;
- (b) the State from taking any steps for the purpose of making a demand under any Performance Bond or receiving payment under any Performance Bond, or otherwise exercising its rights under any Performance Bond; or
- (c) the State using money received under the Performance Bond.

25.7 Replacement Performance Bond

- (a) The Operator must, no later than 2 months before the expiry of the Performance Bond, if the expiry of the last of the Defects Liability Periods has not at that time occurred, procure the issue of a replacement Performance Bond in its favour and in the form and for the amount of the Performance 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) at all times until the expiry of the last of the Defects Liability Periods.

25.8 New Performance Bond on rating downgrade or loss of licence

The Operator must monitor the rating of the current issuer of a Performance Bond so that where the issuer ceases to:

- (a) have the Required Rating; or
- (b) be the holder of a current licence issued by APRA,

the Operator must promptly (and in any case not later than 10 Business Days after demand by the State), procure a replacement Performance Bond in favour of the State

issued by a financial institution which holds a current licence issued by APRA and has the Required Rating, on the same terms as, and for the face value of, the Performance Bond it is replacing.

25.9 Failure to replace Performance Bond

If the Operator fails to replace the Performance Bond in accordance with Clause 25.7 or 25.8, the State may call the Performance Bond that is to be replaced.

26. Default

26.1 Notice of Operator default

- (a) The Operator must:
 - (i) promptly notify the State upon the occurrence of an Event of Default or other breach of this Agreement occurring during the D&C Phase or the Defects Liability Period; and
 - (ii) immediately take steps to commence the remedy of and mitigate the effects of the Event of Default or other breach of this Agreement.
- (b) If an Event of Default occurs, the State may give the Operator a notice (**Default Notice**) which contains:
 - (i) details of the Event of Default;
 - (ii) if the Event of Default is capable of being remedied, a reasonable date of not less than 20 Business Days having regard to the nature of the default, by which the Operator must remedy the Event of Default; and
 - (iii) if the Event of Default is not capable of being remedied:
 - A. a date by which the Operator must comply with any reasonable requirements of the State in connection with that Event of Default; or
 - B. if the State forms the view (acting reasonably) that there are no reasonable requirements in relation to that Event of Default, a statement to that effect.
- (c) If the relevant Event of Default is the event referred to in paragraph (o) of the definition of Event of Default, the remedy of that Event of Default for the purposes of this Clause 26 and Clause 27.3 is that the Operator procures the Parent Guarantor to reinstate the full amount of the Liability Cap within 20 Business Days (which is the time to be inserted in the Default Notice under paragraph (b)(iii)A)).

26.2 Operator to comply with Default Notice and provide remedy program

If the State gives a Default Notice to the Operator, then:

- (a) the Operator must comply with the Default Notice; and

- (b) unless the relevant Event of Default is a failure to pay money or is the event referred to in paragraph (o) of the definition of Event of Default:
 - (i) the Operator must give the State a program to either remedy the Event of Default within the time specified in the Default Notice or comply with any reasonable requirements of the State in accordance with the terms of the Default Notice, which will also specify steps to address the underlying cause of the Event of Default and to avoid similar Events of Default occurring in the future;
 - (ii) the parties must consult to develop and agree the remedy program; and
 - (iii) following agreement or determination of the remedy program, the Operator must implement and comply with the remedy program.

26.3 Requests for extensions to remedy period

- (a) If the Operator considers, in good faith, that the time stated in a Default Notice is not reasonable, it must immediately notify the State of that belief, the reasons for that belief and the time which it believes is reasonably required to remedy the Event of Default or comply with any reasonable requirements of the State.
- (b) The Operator may give a notice in accordance with paragraph (a), even if the Operator has previously given one or more such notices.

26.4 When extensions to be given

- (a) Subject to paragraph (b), if the Operator gives a notice in accordance with Clause 26.3(a) and the State is reasonably satisfied that the Operator is and has been diligently pursuing:
 - (i) the remediation of the Event of Default; or
 - (ii) compliance with any reasonable requirements of the State in connection with an Event of Default that is not capable of remedy and in relation to which a notice under Clause 26.1(b)(iii)A was issued,then the time stated in the Default Notice will be extended by such period as the State determines is reasonably required to enable the Operator to either remedy the Event of Default or comply with any reasonable requirements of the State.
- (b) The Operator is not entitled to more than two extensions in connection with the same Event of Default.

26.5 Disputes

If the Operator considers that the time stated in the notice given by the State in accordance with Clause 26.1(b) or as extended under Clause 26.4, is not reasonable or there is a failure to agree a remedy program as required by Clause 26.2(b) it:

- (a) may (provided that it is and has either been diligently pursuing the remediation of the Event of Default or compliance with any reasonable requirements of the State) refer the matter for resolution in accordance with Clause 30; and

- (b) whilst the matter is being determined, must continue to diligently pursue either the remediation of the Event of Default or compliance with any reasonable requirements of the State.

27. Termination

27.1 Termination for convenience

- (a) The State may, at any time, terminate this Agreement at its convenience by giving the Operator not less than 20 Business Days' notice.
- (b) If legislation is enacted by the government of Western Australia which renders wholly unlawful the provision of public hospital services at the Public Patient Health Campus by private providers and wholly prevents the performance of this Agreement, this Agreement will be deemed to have been terminated for convenience by the State under paragraph (a).

27.2 Termination for Force Majeure or Uninsurable risk

- (a) If a Force Majeure Termination Event or an Uninsurable Risk Termination Event occurs, and, in the case of an Uninsurable Risk Termination Event, Clause 24.14(g) does not apply, then the State or the Operator may terminate this Agreement by giving notice to the other party.
- (b) The termination of this Agreement for a Force Majeure Termination Event or an Uninsurable Risk Termination Event will take effect upon the date stated in the notice given in accordance with paragraph (a).

27.3 Termination for Event of Default

- (a) The State may terminate this Agreement by giving the Operator a notice if any of the following events occur:
 - (i) the Operator fails to remedy an Event of Default within the time period set out in the Default Notice (as extended, if at all, in accordance with Clause 26.4);
 - (ii) an Event of Default has occurred which is not capable of remedy and the State has issued a notice under Clause 26.1(b)(iii)B; or
 - (iii) if an Event of Default has occurred which is not capable of remedy, the State has issued a notice under Clause 26.1(b)(iii)A and the Operator fails (in the reasonable opinion of the State) to diligently comply with any reasonable requirements of the State within the time stated in the notice given by the State in accordance with Clause 26.1(b)(iii)A (as may be extended in accordance with Clause 26.4).
- (b) Termination of this Agreement for an Event of Default will take effect upon the date stated in the notice given by the State in accordance with paragraph (a).

27.4 Termination for Immediate Termination Event

- (a) The State may terminate this Agreement immediately by notice and without granting the Operator any cure period if an Immediate Termination Event occurs.

- (b) Termination of this Agreement for an Immediate Termination Event will take effect upon the date stated in the notice given by the State to the Operator in accordance with paragraph (a).

27.5 Termination for damage

- (a) If a Damage Termination Event occurs, then the State may terminate this Agreement by giving notice to the Operator.
- (b) The termination of this Agreement for a Damage Termination Event will take effect upon the date stated in the notice given in accordance with paragraph (a).

27.6 Consequences of termination

- (a) If this Agreement is terminated in accordance with Clause 27.1, 27.2, 27.3, 27.4 or 27.5, the consequences of termination of this Agreement are set out in Clause 27.8 of this Agreement and Clause 29 and 30 of the Services Agreement.
- (b) The parties acknowledge and agree that Clause 29 and 30 of the Services Agreement (which sets out certain consequences of termination of this Agreement) will continue to apply to this Agreement, regardless of whether or not the Services Agreement has been earlier terminated by the parties.

27.7 Termination of the Services Agreement

- (a) If the Services Agreement is terminated:
 - (i) for a Services Event of Default, then the State may terminate this Agreement for an Event of Default by giving notice to the Operator;
 - (ii) for a Services Force Majeure Termination Event or a Services Uninsurable Risk Termination Event, then the State may terminate this Agreement for a Force Majeure Termination Event or an Uninsurable Risk Termination Event by giving notice to the Operator as the case may be;
 - (iii) for a Services Damage Termination Event, then the State may terminate this Agreement for a Damage Termination Event by giving notice to the Operator;
 - (iv) for a Services Immediate Termination Event, then the State may terminate this Agreement for an Immediate Termination Event by giving notice to the Operator; or
 - (v) for convenience by the State, then the State may terminate this Agreement for convenience by the State by giving notice to the Operator,

and any termination of this Agreement under this Clause 27.7 will take effect upon the date stated in the notice given by the State to the Operator in accordance with this paragraph (a).

- (b) The consequences of any termination of this Agreement under this Clause 27.7 are set out in Clause 27.8 of this Agreement and Clause 29 and 30 of the Services Agreement.

27.8 Activities upon termination

(a) **(Operator's activities upon termination):**

- (i) Without limiting any other rights of the parties under this Agreement, if this Agreement is terminated for any reason whatsoever, the Operator agrees that the State is free to continue with the 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 the Works, in the manner set out in this Clause 27.8 within the time period prescribed by the State.
- (ii) Notwithstanding the termination of this Agreement, the Operator must not do, or omit to do, anything to prevent the State from continuing with the Works.
- (iii) Upon termination of this Agreement by the State:
 - A. the Operator must return to the State all Records and copies of other information and documentation provided by the State for the purposes of this Agreement (including all Information Documents); and
 - B. without limiting any of the State's rights under this Agreement, the State may, at no cost, use, or make available to others to use any of the Contract Materials or any other work, documentation or information developed by the Operator under this Agreement for completing the Works and operating and maintaining the Health Campus and for any future expansion of the Health Campus, 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.
- (iv) The Operator's obligations under paragraph (a)(i) include:
 - A. doing all things necessary to enable the State or its nominated third party:
 - 1) to receive the benefit of any Subcontracts that the Operator has entered into in connection with the Works;
 - 2) to progress the Design Documentation;
 - 3) to progress the procurement of any Subcontract;
 - 4) to own, or have a licence to use all Intellectual Property Rights in relation to the Works including the 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 Works for any purpose in connection with the Works; and

- 5) to ensure a smooth transition to the State or its nominated third party;
 - B. making employees of the Operator, and to the extent it is able to do so having used its best endeavours, Subcontractors, 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);
 - C. making available to the State or the State's nominated third party, 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 this Agreement;
 - D. the Operator arranging to assign or novate to the State or the State's nominated third party the benefit of any Subcontract 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 Works, including facilitating any discussions between the Subcontractors and the State or the State's nominated operator; and
 - E. if the Operator is required to continue performing any of its obligations under this Agreement, continuing to do this in accordance with the 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.
- (b) **(Other consequences):**
- If this Agreement is terminated under Clause 27.3 by reason of an Event of Default or Clause 27.4 by reason of an Immediate Termination Event:
- (i) 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 Works;
 - (ii) the State Representative (acting reasonably and in accordance with this Agreement) will certify any amounts owing from the State to the Operator or from the Operator to the State under Clause 21.5 and, in that Payment Certificate, deduct any amounts from previous Payment Certificates that were paid to the Operator prior to termination for works or services provided by the Operator that the State (acting reasonably) considers are defective; and
 - (iii) the State may deduct amounts owing from the Operator to the State from the Performance Bond prior to releasing the Performance Bond.
- (c) **(General saving):**

Any expiration or termination of this Agreement does not affect any rights of the parties which may have accrued before the date of termination.

27.9 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 27 to the extent that the Operator fails to comply with its obligations in accordance with this Clause 27.

27.10 Assistance

The Operator will use its best endeavours to assist the State in the exercise of the State's rights in accordance with this Clause 27.

27.11 Waiver

If the State terminates this Agreement in accordance with its terms, then the Operator's only entitlement will be in accordance with its rights (if any) under Clause 27.8 of this Agreement and Clause 29 and 30 of the Services Agreement.

27.12 No obligation to employ

Without limiting Clause 27.8 of this Agreement and Clause 29 and 30 of the Services Agreement (which set out the consequences of termination of this Agreement), the Operator acknowledges and agrees that, where this Agreement is terminated (whether by expiry of the Term or otherwise under this Clause 27):

- (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 Associate in respect of these matters.

28. Information

28.1 Records

- (a) **(Make available to State):** The Operator must upon receipt of a request from the State, make the Records available to the State within 2 Business Days of receiving the State's request.
- (b) **(Financial information):** To the extent the Records comprise financial information, the Operator must prepare all Records in accordance with established accounting practices and procedures.
- (c) **(Legal professional privilege):** The requirement in paragraph (a) does not apply to Records which are the subject of legal professional privilege.
- (d) **(Audit):** The State and any auditor appointed by the State may audit any Records requested by the State and the Operator must provide all reasonable assistance to facilitate such audit.
- (e) **(Accounts audit):** The Operator must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that

that the Operator is part of a consolidated entity, within the meaning of the Corporations Act).

- (f) **(Audited financial statements):** As soon as practicable (and in any event not later than 120 days) after the close of each financial year, the Operator must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited statements of financial position and statement of financial performance of the Operator for the previous financial year, and if requested by the State, the Builder for the previous financial year.
- (g) **(Maintenance of Records):** The Operator must maintain all Records for a period of not less than 7 years from the date that the Record was created.
- (h) **(State Records Act):** The Operator will comply with the *State Records Act 2000* (WA) and all applicable policies and standards to the extent that it applies to any Records, including in relation to the creation, maintenance, storage, transportation and destruction of those Records.

28.2 Freedom of Information

The Operator acknowledges that the Project Documents and any information held or compiled by the State in relation to the Project Documents, the Project and the Operator's obligations under the Project Documents are subject to the FOI Act.

28.3 Confidentiality

- (a) **(Confidentiality obligations):** Subject to paragraphs (c), (d), (e) and (f), the Operator must and must ensure that the Operator Associates keep confidential the Confidential Information.
- (b) **(Commercial in Confidence Information):** Subject to paragraphs (g), (h), (i) and (j), the State must keep confidential the Commercial in Confidence Information.
- (c) **(Permitted disclosure):** The Operator is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Operator; or
 - (ii) the disclosure of which is:
 - A. required by Law, including in accordance with the FOI Act;
 - B. required by a relevant stock exchange;
 - C. consented to by the State; or
 - D. made to a court in the course of proceedings to which the Operator is a party.
- (d) **(Disclosure to Operator Associates):** Without limiting the Operator's obligations under paragraph (a), the Operator may disclose Confidential Information to the Operator Associates to the extent necessary for the purpose of undertaking the Project.
- (e) **(No disclosure):** The Operator must not disclose any Confidential Information to any prospective financier or equity investor of the Project until, if required by

the State, the State has carried out any Probity Investigations in connection with the relevant entities.

(f) **(Confidentiality for the purposes of the PPSA):**

- (i) Neither the State nor the Operator will disclose information of the kind mentioned in Section 275(1) of the PPSA in response to a request under Section 275(1) of the PPSA.
- (ii) The Operator will not authorise, and will ensure that no Operator Associate authorises, the disclosure of information of the kind mentioned in section 275(1) of the PPSA.

(g) **(State may disclose):** Subject to the State using reasonable endeavours to inform the recipient that the relevant information is confidential, and marking the relevant information as confidential, the State may at any time disclose the Confidential Information and Commercial in Confidence Information and any other information in connection with the Project:

- (i) as authorised in writing by the Operator;
- (ii) to any Minister;
- (iii) in accordance with all Laws;
- (iv) by the Minister of Health of Western Australia, the Premier of Western Australia, the Treasurer of Western Australia, the Department of Health of Western Australia (including the Director General or any chief executive of the Department of Health of Western Australia) or the Department of Treasury of Western Australia 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;
- (vi) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties; and
- (vii) in accordance with the *Ombudsman Act 1976* (Cth) or the *Parliamentary Commissioner Act 1971* (WA).

(h) **(Limited disclosure):** Subject to the State using reasonable endeavours to inform the recipient that the relevant information is confidential, and marking the relevant information as confidential, the State may at any time disclose the Confidential Information and the Commercial in Confidence Information and any other information in connection with the Project to the extent reasonably necessary:

- (i) for the purpose of performing the State's obligations under this Agreement;
- (ii) to satisfy the requirements of any Authority;
- (iii) to advise or inform any State Associate or advisor to the State in relation to purposes connected to the Project;

- (iv) to comply with policies of the Western Australian government; and
 - (v) to complete annual reports to the Department of Health of Western Australia and the Department of Treasury of Western Australia.
- (i) **(Government websites):** Subject to paragraph (j), the contents of the State Project Documents and any other document in connection with the Project which is authored or authorised by the State or a Governmental Agency may be published on any Western Australian government internet website, other than the Commercial in Confidence Information.
- (j) **(Aggregated Information):** Notwithstanding the remainder of this Clause, the State may disclose Confidential Information and aggregated information derived from the Commercial in Confidence Information to the extent required in order to demonstrate the overall financial benefit of, or value for money in relation to, the Project, including:
 - (i) the Contract Sum;
 - (ii) the expected and actual amount paid by the State to the Operator for Variations, Reimbursable Contamination and Compensable Extension Events; and
 - (iii) the total expected amount payable by the State to the Operator under the Project Documents as compared against the State's public sector comparator.

28.4 Public announcements

The Consortium Entities must 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), except in relation to any public disclosures, announcements or statements required by any stock exchange on which that Consortium Entity is listed.

29. Intellectual property

29.1 Operator's Background IP

- (a) Subject to the terms and conditions of this Clause 29, the Operator's Background IP remains vested in the Operator (or third party licensor as applicable).
- (b) Subject to paragraph (c) the Operator grants to the State a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and to sub-license and permit further sub-licenses) to use the Operator's Background IP and the Project IP described in Clause 29.9(d):
 - (i) to use, operate, monitor, repair, enhance, modify, alter or otherwise deal in any way with the Works, the Health Campus and the Contract Materials;
 - (ii) to deliver the Health Campus (whether with or without the Operator) including completing the design and construction of the Works or the Health Campus (or any part of them);

- (iii) for any purpose in connection with the Project and associated with the further development of improvements on or in the vicinity of the Site; and
 - (iv) to exercise the rights referred to in paragraphs (i) to (iii) (inclusive) with other Intellectual Property Rights the State may own or otherwise be entitled to exercise.
- (c) Notwithstanding the terms of paragraph (b), to the extent that the subject matter to which the Operator's Background IP attaches or protects is commercially available off-the-shelf third party software, the Operator must:
 - (i) if the Operator is legally able to do so, licence that software to the State and the State Associates on the terms of the licence granted to the Operator by the third party licensor; or
 - (ii) if the Operator is not legally able to licence that software to the State without the consent of the licensor, use all reasonable endeavours to procure the consent of the licensor to grant such a licence to the State and the State Associates.
- (d) If the Operator is, or reasonably considers it will be, after having used its reasonable endeavours, unable to grant to the State the rights required in accordance with paragraph (c), it must promptly notify the State of that failure and the State and the Operator will negotiate in good faith with respect to the Operator obtaining for the State's benefit, such rights or arrangements as the State reasonably requires. If the Operator and the State are unable to obtain such rights for the State, the Operator will continue to work with the State in order to allow the State to use or take full benefit of the third party software.

29.2 State's Background IP

- (a) The State's Background IP remains vested in the State or the relevant State Associates (as applicable).
- (b) The State grants to the Operator a non-exclusive, royalty-free, revocable, non-transferable licence (including a right to sub-licence on such conditions that the State reasonably requires from time to time) to use the State's Background IP to the extent required to perform the Operator's obligations under this Agreement.
- (c) If the licence of the State's Background IP set out in paragraph (b) is revoked by the State (excluding revocation due to a breach by the Operator of the licence) and the licence is required by the Operator to perform the Operator's obligations under this Agreement, the State will promptly procure a replacement licence at the State's cost.
- (d) If the licence of the State's Background IP set out in paragraph (b) is revoked by the State due to a breach by the Operator of the licence, and the licence is required by the Operator to perform the Operator's obligations under this Agreement, the State will promptly provide information to the Operator to enable the Operator to procure a replacement licence at its own cost.

29.3 Project IP

- (a) Except for Project IP described in Clause 29.9(d), the Operator hereby assigns to the State all Project IP free of any encumbrance or interest of any third party. The Operator acknowledges and agrees that this paragraph (a) constitutes an assignment of copyright in the relevant Project IP for the purpose of section 196 of the *Copyright Act 1968* (Cth).
- (b) The State grants to the Operator a non-exclusive, royalty-free, non-transferable licence (including a right to sub-licence on such conditions that the State reasonably requires from time to time) to use the Project IP to the extent required by the Operator to perform its obligations under this Agreement in accordance with the terms of this Agreement. Without limiting the Services Agreement, the licence of Project IP from the State to the Operator terminates at the end of the Defects Liability Period.
- (c) The Operator must:
 - (i) notify the State if it becomes aware of or reasonably considers that any of the Project IP has commercial application or may be commercially exploited by the State; and
 - (ii) give or procure all assistance reasonably requested by the State to protect, exploit and commercialise the relevant Project IP.

29.4 Verification

The Operator must, if required by the State:

- (a) verify the creation and ownership of all Project IP including by communicating, disclosing or making available for inspection, examination and copying all information, data, documents, records and materials reasonably required by the State for verification, audit, project management and operational purposes; and
- (b) do all things necessary to give effect to the assignment of Project IP on the terms contained in Clause 29.3(a), 29.9(b) and 29.9(c); and
- (c) do all things necessary to sub-licence or ensure the grant of a licence of the Project IP described in Clause 29.9(d) to the State.

29.5 Operator's warranties

The Operator warrants that:

- (a) the Operator owns or is entitled to use the Operator's Background IP in the performance of the Works;
- (b) to the best of its knowledge the Operator's Background IP and the validity and subsistence of the Operator's or third party's (as the case may be) right, title and interest to the relevant Operator's Background IP are not the subject of any pending or threatened challenge or Claim (including for opposition, cancellation, verification or rectification) and there are no matters or facts which might give rise to such challenge or Claim;
- (c) the Operator is able to grant the licence to Operator's Background IP as described in Clause 29.1(b) or Clause 29.1(c), whichever applies;

- (d) the Operator has obtained all authorisations and consents required so that Project IP can be assigned to the State, as described in Clause 29.3(a) or licensed to the State, as described in Clause 29.9(d);
- (e) use by the State, or by another person at the direction or with the permission of the State, of the Operator's Background IP or Project IP in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party or breach any Law; and
- (f) neither the State, nor any other person acting at the direction or with the permission of the State, is liable to pay any third party any licence or other fee in respect of the use of the Operator's Background IP or the Project IP.

29.6 Non-infringement

- (a) The Operator must perform the Works, and otherwise perform its obligations and exercise its rights under this Agreement, in a manner that does not infringe or misappropriate any Intellectual Property Rights of any person.
- (b) Without limiting paragraph (a), if the Operator becomes aware that there is, or will be, or is likely to be an infringement or misappropriation of any Intellectual Property Rights of any person arising out of this Agreement, including by reason of the performance of the Works or the State's use of the Works, the Operator must, at no cost to the State, use its best endeavours to, at the State's direction:
 - (i) procure any necessary rights or licences; or
 - (ii) replace or modify any infringing resource, service or work,in each case in a manner acceptable to the State, such that the quality, performance or usefulness of the relevant resource, service or Works is not degraded and the infringement or alleged infringement ceases.

29.7 Indemnity

- (a) Subject to paragraph (d), the Operator indemnifies each of the Indemnified Persons against any Liability suffered or incurred by the Indemnified Person arising out of or in connection with any claim, action, demand or proceeding brought or made by any third party that:
 - (i) the performance of the Works;
 - (ii) the use of the Works or the Health Campus; or
 - (iii) the grant or exercise of any licence of Intellectual Property Rights by the Operator under this Agreement,infringes the Intellectual Property Rights, Moral Rights or any other rights of any person (**Third Party IP Claim**), which indemnity is reduced to the extent that the relevant claim action, demand or proceeding is caused or contributed to by the use of the State's Background IP by the Operator in accordance with the terms of the licence of the Intellectual Property Rights.
- (b) The State may:

- (i) defend any Third Party IP Claim, at the Operator's reasonable expense, in such a manner as it may deem appropriate; or
 - (ii) direct the Operator to defend the Third Party IP Claim.
- (c) The Operator must, if directed by the State in accordance with paragraph (b)(ii):
 - (i) conduct the defence of any proceedings relating to the Third Party IP Claim diligently using competent counsel and in such a way as not to bring the reputation of the State into disrepute;
 - (ii) consult with the State and keep the State informed of all material matters relating to the Third Party IP Claim;
 - (iii) obtain the State's prior written approval (which must not be unreasonably withheld) before any settlement is made in respect of the Third Party IP Claim and which settlement must have regard to the State's interests; and
 - (iv) comply at all times with any reasonable direction given by the State in connection with the defence or settlement of the Third Party IP Claim.
- (d) The indemnity in paragraph (a), the obligations in paragraphs (b) and (c) and the warranties in Clause 29.5 will not apply to the extent that the Third Party IP Claim arises from:
 - (i) any combination, operation or use of any relevant Operator's Background IP or Project IP in conjunction with any items not supplied by the Operator, recommended by the Operator in writing or sourced by the Operator;
 - (ii) any modification, update or development carried out by or for the State to any Operator's Background IP or Project IP (to the extent that Project IP is licensed to the State) where such modification, update or development was not authorised or approved by the Operator in writing;
 - (iii) the State or its sublicensees or permitted users failing to use the Operator's Background IP or Project IP (to the extent that Project IP is licensed to the State) in accordance with this Agreement; or
 - (iv) subject to the Operator or its Subcontractors giving prior notice of the potential infringement of which the Operator or its Subcontractors is aware or should reasonably have been aware, compliance with the requirements or instructions of the State by the Operator or its Subcontractors where it is not reasonably possible to comply with such requirements or instructions without causing such infringement.
- (e) References to Operator in paragraph (d) above, include any Operator Associate.

29.8 Moral Rights

- (a) The Operator must procure from all authors and holders of Moral Rights in the Operator's Background IP and the Project IP an unconditional, irrevocable consent in writing authorising the State (and its successors in title, and

licensees and persons authorised by the State, its successors in title or licensees) to:

- (i) use any or all of the Operator's Background IP or the Project IP without attribution of the author;
 - (ii) subject any or all of the Operator's Background IP or Project IP to derogatory treatment; and
 - (iii) falsely attribute the authorship of any or all of the Operator's Background IP or the Project IP.
- (b) The State may notify the Operator at any time that it requires a further written unconditional and irrevocable consent from an author or holder of Moral Rights in any or all of the Operator's Background IP or the Project IP for specific acts or omissions by the State in relation to that subject matter. The Operator must use its reasonable endeavours to procure and promptly provide such consent to the State.
- (c) On the performance of the Works, the Operator warrants that it has obtained all the written consents needed to allow the State to perform the acts and omissions specified in paragraph (a) from the relevant authors and other holders of Moral Rights.
- (d) On request from the State, the Operator must immediately provide the State with copies of the consents referred to in paragraph (a).

29.9 Subcontracts

- (a) The Operator must ensure that each Subcontract contains conditions that:
- (i) the Subcontractor:
 - A. grants to the Operator an irrevocable, transferable, non-exclusive, worldwide royalty free licence (with the right to assign and to sub-licence and permit further sub-licenses including to the Operator for the purpose of performing the Works) to use and reproduce all Subcontractor Background IP to the extent necessary to enable the Operator to perform the Works;
 - B. grants to the State an irrevocable, non-exclusive, transferable, worldwide royalty free licence (with the right to assign and to sub-licence and permit further sub-licensees including to the Operator for the purpose of performing the Works) to use and reproduce all Subcontractor Background IP to the extent necessary to enable the State or the Operator and any person claiming through them to use the product of the work or services performed under the Subcontract, including to exercise all or any Intellectual Property Rights assigned to the Operator under paragraph (b) or paragraph (c);
 - C. must procure from each person involved in the performance of the works or services under the Subcontract, an unconditional, irrevocable written consent to the State and

the Operator and any person claiming through them doing anything that would otherwise infringe any of their Moral Rights in the product of work or services performed by such person for the purpose of the Subcontract;

- (ii) the works or services to be executed under the Subcontract must be performed, where the Subcontractor is a natural person, only by the Subcontractor or persons who are employees of the Subcontractor acting within the terms of their employment or, where the Subcontractor is a body corporate, only by persons who are employees of the Subcontractor acting within the terms of their employment; and
 - (iii) the Subcontractor must do all things necessary to enable the Operator to verify the creation and ownership of all Intellectual Property Rights created or coming into existence under the Subcontract whether before or after the date of the Subcontract (including communicate, disclose or make available for inspection, examination and copying all information, data, documents, records and materials reasonably required by the Operator for verification, audit, project management and operational purposes) and to perfect the vesting of such rights in the Operator (including executing any transfer or other document).
- (b) The Operator must ensure that each Key IP Subcontract contains conditions that the Key IP Subcontractor assigns to the Operator free of any interest of any third party, by way of absolute assignment of future rights and separately upon them coming into existence, all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Key IP Subcontract or the provision of any of the services or work to be performed under the Key IP Subcontract, whether before or after the date of the Key IP Subcontract, with the intent that such rights will, by virtue solely of the Key IP Subcontract, vest in the Operator immediately upon their creation.
- (c) The Operator must use its best endeavours to ensure that each Subcontract that is not with a Key IP Subcontractor contains conditions that the Subcontractor assigns to the Operator free of any interest of any third party, by way of absolute assignment of future rights and separately upon them coming into existence, all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Subcontract or the provision of any of the services or work to be performed under the Subcontract, whether before or after the date of the Subcontract, with the intent that such rights will, by virtue solely of the Subcontract, vest in the Operator immediately upon their creation.
- (d) If the Operator is not able to include the conditions in paragraph (c), the Operator must ensure that the Subcontract contains conditions granting to the Operator a licence of the Project IP and that the Operator can licence that Project IP to the State on the terms contained in Clause 29.1(b). If the Subcontractor acts inconsistently with the licence to be granted under this paragraph, at any time, the Operator must take all steps necessary to enforce the terms of the licence, for the benefit of the State, at the Operator's cost.
- (e) For the purpose of this Clause 29, Key IP Subcontractor means:

- (i) Hassell Limited (ABN 24 007 711 435);
- (ii) BG&E Pty Limited (ABN 67 150 804 603);
- (iii) Direct Engineering Services Pty Ltd t/as Desair (ABN 50 008 700 178);
- (iv) Nilsen (WA) Pty Limited (ABN 50 008 703 802); and
- (v) Sanwell Pty Limited (ABN 48 009 301 562)

or any replacement of those Key IP Subcontractors, and a Key IP Subcontract is a Subcontract entered into with a Key IP Subcontractor.

30. Dispute resolution

30.1 Disputes

- (a) Disputes will be resolved in accordance with this Clause 30.
- (b) If there is a Dispute, then a party may deliver to the other party a notice of dispute which sets out the party's contentions including any relevant legal basis of claim (**Notice of Dispute**).
- (c) Despite the existence of a Dispute or the referral of the Dispute for resolution in accordance with this Clause 30 each party must continue to comply with its obligations in accordance with this Agreement.
- (d) Subject to Clause 30.5, the parties agree that unless and until a party has complied with the requirements of this Clause 30, a party may not commence any court proceedings in connection with any Dispute except if the party seeks urgent interlocutory injunctive or urgent interlocutory declaratory relief.

30.2 Consideration by Project Advisory Group

- (a) Subject to paragraph (b), if a Notice of Dispute has been delivered in accordance with Clause 30.1(b), the Project Advisory Group must within 5 Business Days of the delivery of the Notice of Dispute meet, give due consideration to the submissions by the parties in connection with the Dispute and attempt in good faith to:
 - (i) assist the parties to resolve the Dispute; or
 - (ii) agree that the Dispute be referred to an Independent Expert in accordance with Clause 30.3.
- (b) If this Agreement expressly provides that a Dispute will or may be directly referred for determination by an Independent Expert, then this Clause 30.2 will not apply and the Dispute will be referred directly to an Independent Expert for resolution in accordance with Clause 30.3.

30.3 Independent Expert

- (a) (**Agreement**): If this Agreement expressly provides that a Dispute will or may be referred directly for determination by an Independent Expert (including a referral under Clause 30.2(a)(ii)), then within 5 Business Days after:

- (i) if referred under Clause 30.2(a)(ii), the date of that referral; or
- (ii) in all other cases, the delivery of the Notice of Dispute in accordance with Clause 30.1(b),

the parties must agree on an Independent Expert to determine the Dispute.

- (b) **(Independent Expert):** For the purpose of paragraph (a), the parties may, by agreement, appoint any person, to act as the Independent Expert.
- (c) **(Failure to agree on Independent Expert):** If the parties fail to agree on the Independent Expert within the time referred to in paragraph (a), then an Independent Expert will be nominated by the Minister for Health.
- (d) **(Agreement):** The agreed or nominated Independent Expert must execute an agreement with the parties within 10 Business Days after the agreement on, or nomination of, the Independent Expert in accordance with paragraph (b) or (c) (as applicable).
- (e) **(Referral):** If the Independent Expert so agreed or nominated executes an agreement in accordance with paragraph (d), then the Dispute must be referred to that Independent Expert for determination.
- (f) **(New independent expert):** If the Independent Expert agreed or nominated does not execute an agreement in accordance with paragraph (d), then the parties must agree or nominate another independent expert in accordance with this Clause 30.3 (but the parties will only have the opportunity to agree or nominate one further Independent Expert after the initial Independent Expert).
- (g) **(Basis for determination):** The Independent Expert will make its determination based upon:
 - (i) the Notice of Dispute;
 - (ii) the submissions provided by the parties which, unless the Independent Expert extends the time for delivery, must be delivered within 5 Business Days of the Independent Expert signing the agreement referred to in paragraph (d); and
 - (iii) any further information provided by the parties in accordance with any request by the Independent Expert for further submissions, documents or information from either or both parties.
- (h) **(Conference):** After the Dispute has been referred to the Independent Expert, the Independent Expert may call and conduct a conference, or any number of conferences, as the Independent Expert sees fit, between the parties, but will give the parties reasonable notice of the matters to be addressed at any such conference.
- (i) **(Representation):** The parties may be legally represented at any such conference.
- (j) **(Privacy):** All conferences will be held in private except to the extent that representatives of the Key Subcontractors will be permitted to attend on reasonable notice, where the Dispute impacts upon their aspect of the delivery of the Project.

- (k) **(Visit):** The Independent Expert may visit the Site or the Works (as applicable), and the parties will facilitate the Independent Expert's access to any of those areas.
- (l) **(Timing):** The Independent Expert must make a determination in connection with the Dispute by the earliest of:
 - (i) within 10 Business Days after the last of the steps set out in paragraphs (g) to (k) (inclusive); or
 - (ii) within 30 Business Days after receipt of submissions in accordance with paragraph (g)(ii).
- (m) **(Not arbitrator):** The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.
- (n) **(Final and binding):** The determination of the Independent Expert will be final and binding on the parties, unless within 15 Business Days of the determination, a party notifies the other party that it intends to commence litigation to appeal the determination.
- (o) **(Mistake):** The Independent Expert may correct the determination by notice to the parties where its determination contains:
 - (i) a clerical mistake or an error arising from an accidental slip or omission; or
 - (ii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter.
- (p) **(Costs):** The cost of the Independent Expert will be borne equally by each of the parties to the Dispute unless the determination is made against the party who issued the Notice of Dispute, in which case the Independent Expert may determine that that party will bear all or a greater proportion of the Independent Expert's costs in connection with that Dispute.

30.4 Joinder and consolidation of Disputes

- (a) Subject to paragraph (b), if a Dispute is referred for determination in accordance with Clause 30.3 of this Agreement and also Clause 31.3 of the Services Agreement (**Concurrent Disputes**), the Independent Expert must consolidate the Concurrent Disputes if the Independent Expert determines that:
 - (i) the issues in the Concurrent Disputes are substantially related; and
 - (ii) that it would be beneficial to the expeditious and efficient determination of the disputes between the parties for the Concurrent Disputes to be consolidated.
- (b) The Independent Expert may only consolidate Concurrent Disputes upon application by one of the parties to any of the Concurrent Disputes.

30.5 Litigation

Either party may commence litigation in connection with a Dispute if and only if a Notice of Dispute has been delivered in accordance with Clause 30.1(b) and:

- (a) Clause 30.2 applies and within 20 Business Days after the delivery of the Notice of Dispute in accordance with Clause 30.1(b) the Project Advisory Group has not:
 - (i) resolved the Dispute; or
 - (ii) agreed that the Dispute be referred to an Independent Expert in accordance with Clause 30.3;
- (b) the Dispute has been referred for determination by an Independent Expert in accordance with Clause 30.3 and:
 - (i) the agreed Independent Expert and any new Independent Expert agreed in accordance with Clause 30.3(f) did not execute an agreement in accordance with Clause 30.3(d);
 - (ii) the Independent Expert failed to make a determination in accordance with Clause 30.3, including within the time set out in Clause 30.3(l); or
 - (iii) the Independent Expert made a determination and, within 15 Business Days of the determination, a party has notified the other party that it intends to commence litigation to have the determination reconsidered by a court of competent jurisdiction; or
- (c) either party has failed to comply with any of the requirements of this Clause 30.

31. Assignment and ownership

31.1 Assignment by the Operator

Except as expressly permitted in accordance with this Agreement or the State Securities, the Operator must not assign, mortgage, novate, charge or otherwise encumber the Project Documents, without the prior consent of the State and on such terms and conditions as are determined by the State.

31.2 Restrictions on sale, lease and parting with possession

- (a) Subject to paragraph (b) and (d), the Operator must not:
 - (i) create or allow to exist any security interest over; or
 - (ii) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with,

the whole or any part of the Site, the Works or the Health Campus, except as expressly permitted in accordance with this Agreement or as otherwise consented to by the State.
- (b) Without limiting paragraph (a) and notwithstanding any other part of this Agreement, the Operator may not at any time:

- (i) create or allow to exist any security interest over; or
 - (ii) licence, sub-licence, transfer, sell, dispose of, part with possession of, or otherwise deal with,
- any Shared Infrastructure, or any part of the Health Campus which would prejudice the State's ability to ensure the continuous uninterrupted performance of the Works.
- (c) The restrictions in paragraph (a) on leasing and licensing do not apply to or prevent the grant of leases or licences in respect of the Commercial Facilities and Commercial Opportunities contemplated by this Agreement.
- (d) The Operator may grant the Builder a licence (including a right to sublicense) to enter onto the Site for the purpose of undertaking its obligations under the D&C Subcontract.

31.3 Assignment by the State

- (a) The State may not sell, transfer, assign or otherwise dispose of its interest in the Project Documents without the prior consent of the Operator.
- (b) The Operator must give its consent in accordance with paragraph (a) if:
 - (i) it has been provided with details of the proposed transferee and the terms and conditions of the proposed transfer;
 - (ii) the proposed transferee is a Governmental Agency (including any Minister) which is an agent of, or the obligations of which are supported by, the Crown in the right of the State of Western Australia; and
 - (iii) the proposed transferee has agreed to be bound by the relevant State Project Documents.

31.4 Initial status of ownership

The Operator represents and warrants that, as at the Date of this Agreement, the Operator will be indirectly and beneficially owned and Controlled by its sole member St John of God Health Care Inc ARBN 051 960 911.

31.5 Change in Control

- (a) **(Prohibition):** Subject to paragraph (d), the Operator must ensure that there is no Change in Control of a Consortium Entity without the prior consent of the State (which may be given or withheld by the State in its reasonable discretion except with respect to a Change in Control of the Operator, which may be withheld by the State in its absolute discretion).
- (b) **(Notice):** Any notice seeking the consent of the State to a Change in Control must include:
 - (i) the identity of each proposed Controller;
 - (ii) the address of each proposed Controller;
 - (iii) the extent and nature of the proposed Change in Control;

- (iv) all other information necessary for the State to determine:
 - A. whether to consent to the Change in Control of the Consortium Entity; or
 - B. the Probity Investigations (if any) the State wants to undertake; and
 - (v) in the case of a Change in Control of a Consortium Entity who is also a Key Subcontractor, evidence that the requirements of Clause 6.7(d) are still satisfied in respect of the Consortium Entity.
- (c) **(State response):** 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), notify the Operator whether:
 - (i) the State consents to the proposed Change in Control of the Consortium Entity;
 - (ii) the State does not consent to the proposed Change in Control of the Consortium Entity (and the reasons for this); or
 - (iii) the State needs to conduct a Probity Investigation in connection with the Change in Control prior to making a determination whether or not to consent to the Change in Control.
- (d) **(Listed Entity Change in Control):** The Operator will not be required to obtain the State's prior consent to any Change in Control under paragraph (a) which is a Listed Entity Change in Control. If a Listed Entity Change in Control occurs:
 - (i) the Operator must immediately notify the State in writing of the Listed Entity Change in Control which notice must contain:
 - A. the identity and address of each Controller;
 - B. the extent and nature of the Change in Control; and
 - C. all other information requested by the State in order to make a determination as to whether any Controller is acceptable to the State for the purposes of this Agreement; and
 - (ii) if, following receipt of the Operator's notice in respect of the Listed Entity Change in Control, the State determines (in its reasonable discretion, except with respect to a Change in Control of the Operator, where the State may make a determination in its absolute discretion), that any Controller is not acceptable to the State for the purposes of this Agreement, then it will be an Immediate Termination Event and Clause 27.4 will apply.

31.6 Change in Management

- (a) An Event of Default will occur if a Change in Management of the Operator or Key Service Provider occurs and as a result the Operator or Key Service Provider no longer has the same or better management skills, experience and capacity available to it as it had prior to the Change in Management.

- (b) For the purpose of this Clause 31.6, a “**Change in Management**” means a change in the senior employees of the Operator or Key Service Provider who carry out the management functions of the Operator or Key Service Provider or a change in the chief executive officer of the Key Service Provider at the Public Patient Facility.

32. Probity Events

32.1 Notice of Probity Event

The Operator must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur.

32.2 Meeting

Upon receipt of a notice in accordance with Clause 32.1 or otherwise upon the occurrence of a Probity Event:

- (a) the State and the Operator must meet within 10 Business Days to agree to a course of action that will remedy the Probity Event (including conducting a Probity Investigation); and
- (b) the Operator must take all necessary steps in accordance with any agreement in accordance with paragraph (a) to remedy the Probity Event.

32.3 Failure to agree

If the State and the Operator fail to meet or agree to a course of action in accordance with Clause 32.2, the Operator must take any action required by the State to remedy the Probity Event (including conducting a Probity Investigation).

32.4 Consents required for Probity Investigation

The Operator must use its best endeavours to procure all relevant consents from any persons in connection with which the State requires Probity Investigations to be conducted.

32.5 Costs of Probity Investigation

The Operator:

- (a) must bear the costs reasonably incurred by the State in carrying out the Probity Investigation; and
- (b) will not be liable for any other Probity Investigation required by the State.

32.6 No appointment without consent

The Operator must not appoint any Operator Associate to a role in connection with the Project if the State forms the view (acting reasonably) that such an appointment will lead to a Probity Event.

33. Notices

33.1 General Notices

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this Agreement (in this Clause 33.1, "**Notices**"):
- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) subject to paragraph (f), sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address (provided that the email contains a read receipt request),
- of the addressee set out in Schedule 1 (or as otherwise notified by that party to each other party from time to time).
- (c) **(Date of receipt):** Subject to paragraph (d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, 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 stated in Schedule 1; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices sent by email):** In connection with Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 33.1. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) the Operator must ensure that, in connection with any communications in accordance with or in connection with this Agreement:
 - A. its firewall and/or mail server (as applicable):

- 1) allows messages of up to 14 MB to be received;
 - 2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - 3) automatically sends a receipt notification to the sender upon receipt of a message; and
- B. its 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.
- (f) **(Email not to be used):** Email or similar electronic means of communication must not be used to give Notices under:
- (i) Clause 14 (Delay);
 - (ii) Clause 16 (Completion);
 - (iii) Clause 17 (Defects);
 - (iv) Clause 18 (Variations);
 - (v) Clause 19 (Force Majeure);
 - (vi) Clause 23.1 (Risk of loss or damage);
 - (vii) Clause 23.2 (State election to reinstate);
 - (viii) Clause 24.6(a) (Notices of potential claims);
 - (ix) Clause 26 (Default);
 - (x) Clause 27 (Termination);
 - (xi) Clause 29.1(d) (Intellectual Property Licence),
 - (xii) Clause 30 (Dispute resolution);
 - (xiii) Clauses 31.5(b), (c) and (d) (Change in Control);
 - (xiv) Clause 32.1 (Notice of Probity Event),
- unless the email is followed by another method of communication of the Notice set out in paragraph (b)(i), in which case the Notice will be deemed to have been given and received by that further method of communication in accordance with paragraph (c).

33.2 Notice of Claims

Except if this Agreement expressly sets out the timeframes for the delivery of notices, the State will not be liable upon any Claim by the Operator in connection with this Agreement or the Project unless the Operator gives the State:

- (a) a notice in which the Operator states that it intends to submit a Claim and the event on which the Claim will be based and which must be given to the State no later than 15 Business Days from the earlier of when the Operator first

became aware or ought reasonably to have become aware of the events on which the Claim is based; and

- (b) a Claim within 20 Business Days of giving notice in accordance with paragraph (a), which must include:
 - (i) detailed particulars concerning the events on which the Claim is based;
 - (ii) the legal basis for the Claim whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, 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.

33.3 Continuing events

If the events upon which the Claim in accordance with Clause 33.2(b) is based or the consequences of the events are continuing, the Operator must continue to give information required by Clause 33.2(b) every 20 Business Days after the Claim in accordance with Clause 33.2(b) was submitted, until 21 Business Days after the events or consequences have ceased.

34. General

34.1 Relationship of the parties

- (a) No duty of good faith is implied on the State in connection with its relationship with the Operator.
- (b) Neither the State Project Documents nor the relationship created by them, are intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) Except as expressly permitted or contemplated by this Agreement, the Operator must not act as or represent itself to be the servant or agent of the State.

34.2 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this Agreement expressly provides otherwise, nothing in this Agreement gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with the State Project Documents.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this Agreement to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other Authority, or to influence, over-ride or direct any Authority in the proper exercise and performance of its legal duties and functions.

- (c) **(No fettering)**: Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim)**: Subject to paragraph (e), the Operator will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach)**: Paragraphs (a) to (d) (inclusive) do not limit any Liability of the State which the State would have had to the Operator in accordance with any State Project Documents as a result of a breach by the State of a term of any State Project Documents but for paragraphs (a) to (d) (inclusive).

34.3 Reasonable endeavours

If there is any statement in this Agreement that the State will use "reasonable endeavours" in relation to an outcome it means that:

- (a) the State will take steps to bring about the relevant outcome so far as 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, is not required to:
 - (i) interfere with or influence the exercise of any statutory power or discretion by any body, including an Authority; or
 - (ii) act in any other way that the State regards as not in the public interest.

34.4 Entire agreement

The State Project Documents constitute the entire agreement and understanding between the parties and supersede any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this Agreement.

34.5 Counterparts

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

34.6 Governing law

This Agreement is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

34.7 No waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law

or this Agreement by the State will not in any way preclude, or operate as a waiver of, any exercise or enforcement of that or any other right, power or remedy provided by Law or this Agreement.

- (b) No waiver by the State of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

34.8 Variations and waivers

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

34.9 Amendments to Project Documents

- (a) This Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) Without limiting an express right in this Agreement, the Operator may not at any time after the Date of this Agreement:
 - (i) make or permit any amendment to, replacement of or waiver of a provision of;
 - (ii) terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any counterparty's rights, obligation or interest in; or
 - (iv) enter into any agreement or arrangement which affects the operation or interpretation of,any Project Documents without the State's prior consent.
- (c) The State's consent under paragraph (b):
 - (i) may take into account likely public perception of the proposed change; and
 - (ii) will otherwise not be unreasonably withheld in respect of Project Documents that are not State Project Documents and must be given for Key Subcontracts if the requirements of Clause 6.7(d) are met.
- (d) Paragraph (b)(ii) does not apply to State Project Documents.

34.10 Joint and several liability

If the Operator consists of more than one person, then the rights and obligations of the Operator in accordance with this Agreement are joint and several as between those persons.

34.11 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this Agreement.
- (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 Agreement.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this Agreement.

34.12 Clauses to survive termination

- (a) All provisions of this Agreement which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Agreement will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the State's rights to set-off and to recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any Records available to the State;
 - (v) any indemnity, Performance Bond or other financial security given in accordance with this Agreement;
 - (vi) the Insurance Policies; or
 - (vii) any right or obligation arising on termination of this Agreement.
- (b) Nothing in this Clause 34.12 prevents any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Agreement.

34.13 Costs and expenses

Except as otherwise provided in this Agreement, each party must:

- (a) pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement; and
- (b) perform its obligations in accordance with this Agreement at its own cost.

34.14 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 each party) required by Law or reasonably requested by another party to give effect to this Agreement.

35. Personal Property Securities Act

35.1 State's Personal Property

For the purposes of this Clause 35, "**State Personal Property**" means all personal property the subject of a security interest granted in favour of the State under the Agreement.

35.2 Further assurance

- (a) If the State determines that this Agreement (or a transaction in connection with it) is or contains a security interest in favour of the State for the purposes of the PPS Law, the Operator agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the State reasonably asks and considers reasonably necessary for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the State to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the State has the priority reasonably required by it; and/or
 - (iii) enabling the State to exercise rights in connection with the security interest.

35.3 No requirement for PPSA notices

- (a) The State need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.
- (b) To the extent permitted under the PPSA, the Operator hereby waives its rights to receive all notices under the PPSA.

35.4 Priority of State's interest

Nothing in the Agreement will be taken or construed as an agreement or consent by the State to:

- (a) subordinate the State's interest in State Personal Property (or any part thereof) to any other encumbrance or interest affecting State Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Agreement attaches to the relevant collateral.

35.5 Notices to be given to the State

The Operator must notify the State in writing as soon as the Operator becomes aware of any of the following:

- (a) if any personal property which does not form part of State Personal Property becomes an accession to State Personal Property and is subject to a security

interest in favour of a third party, that has attached at the time it becomes an accession;

- (b) upon request by the State, of the present location or situation of any State Personal Property.

35.6 Costs and expenses relating to PPSA and registration

- (a) Everything the Operator is required to do under this Clause 35 is at the Operator's expense.
- (b) The Operator agrees to pay or reimburse, upon demand, all reasonable costs and expenses of the State in connection with anything the State is required to do under this Clause 35, including preparing, registering and maintaining any financing statement or financing change statement.

36. [not disclosed]

37. [not disclosed]

Execution page

Executed as an agreement

State

Signed for and on behalf of
The State of Western Australia
by THE HONOURABLE COLIN JAMES BARNETT
MLA in his capacity as the Premier of Western Australia
in the presence of:

The Hon. Colin James Barnett

*print name
of witness* _____

*Witness
sign here ►* _____

*Witness
address* _____

*Witness
occupation* _____

Operator

Signed by
St John of God Midland Health Campus
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Schedule 1 – Contract Particulars

1. General particulars

Item and Clause reference	Particulars
Contract Sum (Clause 1.1)	[not disclosed]
Private Patient Facility Contract Sum	[not disclosed]
Parent Guarantor (Clause 1.1)	St John of God Health Care Inc (ARBN 051 960 911)

2. State Representative

Name:	Ian Lacey
Position:	Senior Project Officer, North Metropolitan Area Health Service
Facsimile:	(08) 9346 7945
Telephone:	(08) 9346 2669
Email:	ian.lacey@health.wa.gov.au

3. Operator Representative

Name:	Ian Anderson
Position:	Chief Executive Officer, St John of God Midland Hospital
Facsimile:	(08) 9322 2082
Telephone:	(08) 9213 3620
Email:	ian.anderson@sjog.org.au

4. Key Personnel

Name	Role and function
Ian Anderson	Chief Executive Officer St John of God Midland Hospital
Chris Palandri	Regional Managing Director Brookfield Multiplex Constructions Pty Ltd
Paul Race	Regional Director Brookfield Multiplex Constructions Pty Ltd
Marc Van Heemst	Project Manager Brookfield Multiplex Constructions Pty Ltd
Andrew Scallan	Contracts Manager

Name	Role and function
	Brookfield Multiplex Constructions Pty Ltd
Stuart Clack	Senior Clinical Design Manager Brookfield Multiplex Constructions Pty Ltd

5. Key Subcontracts

Component of Works
Structural works (complete) including substructure and superstructure, movement joints, waterproofing and fire sealing
Mechanical services
Hydraulic services
Electrical and ICT services
Fire services
Lift services
Security services
Medical gases
Pneumatic tube
Façade (complete)
Roof (complete)
Radiation shielding
Piling
Stone / Terrazzo / Tiling
CFC Claddings
Colorbond Cladding
Tanking, waterproofing and gravel ballast etc

6. Key Subcontractors

Name	Role and function
Brookfield Multiplex	Builder

Name	Role and function
Constructions Pty Limited	
Hassell Limited	Architect Consultancy Subcontractor
BG&E Pty Limited	Structural Engineering Consultancy Subcontractor
Aecom Australia Pty Limited	Mechanical Engineering Consultancy Subcontractor
Nilsen (WA) Pty Limited	Electrical Engineering Consultancy Subcontractor
Sanwell Pty Limited	Hydraulic Engineering Consultancy Subcontractor
Aecom Australia Pty Limited	Fire Services Consultancy Subcontractor
JMG Building Surveyors	Building Surveyor Consultancy Subcontractor
Engineering Technology Consultants	ICT consultant
Radiation Services Consulting Pty Limited	Radiation consultant
Aecom Australia Pty Limited	Dangerous Goods consultant

7. Project Advisory Group

Name	Role and function
Ian Lacey	State Representative, D&C Agreement
David Russell-Weisz	Chief Executive, North Metropolitan Area Health Service
Richard Mann	Executive Director, Strategic Projects
David Mulligan	Executive Director, Clinical Planning and Redevelopment
Ian Anderson	Chief Executive Officer, St John of God Midland Hospital
Chris Palandri	Regional Managing Director Brookfield Multiplex Constructions Pty Ltd
Paul Race	Regional Director Brookfield Multiplex Constructions Pty Ltd
Marc Van Heemst	Project Manager Brookfield Multiplex Constructions Pty Ltd

8. Address for service of notices

8.1 State

Attention:	Ian Lacey
Address:	Room 429, 4 th Floor, R Block Sir Charles Gairdner Hospital Verdun St Nedlands, WA 6009
Facsimile:	(08) 9346 7945
Email:	ian.lacey@health.wa.gov.au

8.2 Operator

Attention:	Company Secretary
Address:	Level 2, 12 Kings Park Road, West Perth 6005
Facsimile:	(08) 9322 2082
Email:	paul.volich@sjog.org.au

9. Guarantee

9.1 Parent Guarantor

Name:	St John of God Health Care Inc (ARBN 051 960 911)
Attention:	Company Secretary
Address:	Level 2, Kings Park Road, West Perth 6005
Facsimile:	(08) 9322 2082
Email:	paul.volich@sjog.org.au

9.2 Builder Guarantor

Name:	Brookfield Australia Investments Limited (ABN 96 008 687 063)
Attention:	Meg Redwin
Address:	Level 22, 135 King Street, Sydney 2000
Facsimile:	(02) 9322 2001
Email:	meg.redwin@brookfieldmultiplex.com

Schedule 2 – Review Procedures

1. Submission and review**1.1 Submission**

- (a) The Operator must submit Submitted Documents to the State Representative for review by the State in accordance with these Review Procedures.
- (b) With each Submitted Document, the Operator must provide:
 - (i) details of the Submitted Document, its nature and the relevant Clause or Schedule of this Agreement under which it is submitted for review; and
 - (ii) any other information reasonably required under this Agreement or otherwise necessary for the review of the Submitted Document in accordance with these Review Procedures.
- (c) The Operator must submit Submitted Documents to the State Representative, where relevant, at the times specified in the Design Submission Program and otherwise in a manner to allow the State to properly understand and review the Submitted Documents in accordance with these Review Procedures (including within the Review Period that applies for review of the particular Submitted Documents by the State).

1.2 Review

The State may review, or procure a State Associate to review, the Submitted Document submitted in accordance with Sections 1.1 and 2 and the State Representative may provide any comments in writing to the Operator on behalf of the State in accordance with these Review Procedures within the Review Period.

2. Further information

The Operator must as soon as reasonably practicable (and in any event within a reasonable period of time to allow the State to comment on a Submitted Document within the Review Period in accordance with Section 1.2) upon request by the State:

- (a) submit any further or other information, data or documents; and
- (b) make available appropriately qualified personnel,

that the State reasonably requires in order to review a Submitted Document and respond in accordance with these Review Procedures. Provided that the Submitted Document is submitted at the time specified in the Design Submission Program, the State may only make a request for further information or for the Operator to make available appropriately qualified personnel within 5 Business Days of receipt of the Submitted Document.

3. Comment on Submitted Document

3.1 No comment on Submitted Document

The State may return a Submitted Document to the Operator with or without comment from the State.

3.2 Failure to comment

- (a) Subject to the Operator complying with Section 2, if the State fails to comment on or respond to any Submitted Document submitted in accordance with Section 1.1 within the Review Period, then the State shall be deemed to have returned the Submitted Document to the Operator with no comment and the Operator may proceed to undertake the Works in accordance with the Submitted Document.
- (b) The State's failure to comment under Section 3.2(a) will not in any way alter, affect, reduce or relieve the Operator from its obligations and liabilities under Schedule 2, this Agreement or at Law.

3.3 Response to Submitted Document

Within the Review Period the State may provide comments in respect of a Submitted Document or reject a Submitted Document in accordance with Section 4.

3.4 Substantiate rejection or comments

If the State Representative provides the Operator with comments in respect of the Submitted Document or rejects the Submitted Document under Section 4, the State must provide sufficient detail to the Operator to substantiate those comments or that rejection.

4. Grounds on which State may comment or reject

- (a) The State may provide comments in respect of, or reject, a Submitted Document if the Submitted Document:
 - (i) 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) does not comply with the relevant Laws or Quality Standards (including Design Requirements); or
 - (iii) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this Agreement in respect of the Submitted Document.
- (b) The State may provide comments in respect of a Submitted Document if the State is of the view, acting reasonably, that the Submitted Document will not enable the Operator to satisfy the Fitness For Purpose Warranty or any other relevant warranty given by it as set out in this Agreement (including under Clause 22.3).

5. Document management

5.1 Copies of Submitted Documents

Unless otherwise specified in this Agreement, the Operator must provide three copies of all Submitted Documents to the State for review in accordance with these Review Procedures as follows:

- (a) one paper or hard copy original of full size and in readable format; and
- (b) two electronic versions:
 - (i) one in .pdf format; and
 - (ii) except in the case of Submitted Documents which are drawings, one in editable format.

5.2 Register of Submitted Documents

The Operator must compile and maintain a register of the date of receipt and content of each Submitted Document submitted, and must regularly update that register to record:

- (a) each Submitted Document to which it receives a response in accordance with the Review Procedures, including the reference to that response or comment; and
- (b) each Submitted Document to which it receives no response or comment or is deemed not to receive any response or comment in accordance with Section 3.2,

and must attach the register of Submitted Documents prepared in accordance with this Section 5 to its Monthly Works Report.

6. Compliance with Submitted Documents as reviewed

6.1 Rejected or commented on Submitted Document

Subject to Section 6.2, if the State comments on or rejects a Submitted Document under Section 4 during the Review Period, the Operator must:

- (a) amend the Submitted Document to address the reasons of the State for the rejection to the extent necessary to ensure that the Submitted Document meets the requirements of this Agreement; and
- (b) submit the revised Submitted Document to the State again,

and the Review Period will start again and the provisions of Sections 1 to 8 (inclusive) will apply again to such re-submission until such time as the Submitted Document is returned to the Operator without being rejected by the State.

6.2 Disputed amendments

If the Operator disputes that any amendments are required to the Submitted Document, the Operator may refer the matter for determination in accordance with Clause 30. Whilst the Dispute is being resolved in accordance with Clause 30, and

provided that the Operator has given written notice to the State that it Disputes the amendments sought by the State, including reasons:

- (a) the Operator may proceed to undertake the Works in accordance with the Submitted Document. For the avoidance of doubt, to the extent that the result of the Dispute resolution is that the State was entitled to reject or require amendments to the Submitted Document, the additional costs incurred by the Operator correcting the Submitted Document and performing the rework (including any delays) must be borne by the Operator; and
- (b) the State will continue to pay the Contract Sum in accordance with the Contract.

7. No duty to review

Notwithstanding the Review Procedures, none of the State or the reviewing parties assumes or owes a duty of care or an obligation to the Operator to review at all, or in reviewing, commenting or failing to comment on, accepting, approving, endorsing or rejecting a Submitted Document, to detect defects, errors, omissions or non-compliances with this Agreement, or any Law.

8. Effect of review

8.1 Effect of review

Notwithstanding the Review Procedures, where in this Agreement the words "review", "comment", "accept", "endorse", "approve", "consent" or "reject" (or other grammatical forms of those words) are used in relation to documents of any kind, including Submitted Documents, or where such words are used by the State, then those words, their use and the acts or omissions associated with them (including pursuant to the Review Procedures) do not in any way:

- (a) relieve the Operator from, or alter, affect or reduce, the obligations and Liabilities of the Operator under this Agreement or at Law;
- (b) constitute any representation that any Submitted Document complies with this Agreement;
- (c) prejudice the State's rights against the Operator, whether under this Agreement or otherwise according to Law; or
- (d) affect the time for performance of the State or the State Representative's obligations under this Agreement.

8.2 No evidence

The review, comment or failure to comment on, acceptance, endorsement or approval of, or consent to, any Submitted Document will not be evidence that any Works or other obligation have been or will be undertaken in accordance with this Agreement including so as to meet any warranties given by the Operator under this Agreement.

8.3 No entitlement to Claim

- (a) Subject to the terms of this Agreement, the Operator acknowledges and agrees that it will not be entitled to make any Claim against the State or any

State Associate whether under this Agreement or at Law for any Liabilities incurred by the Operator arising out of or in connection with any review, comment or failure to comment on, or acceptance, approval, endorsement or rejection of, a Submitted Document.

- (b) Without limiting paragraph (a) or Section 3.2, the Operator will not be entitled to make any Claim against the State or any State Associate in respect of any delay in the review of a Submitted Document.

9. Design Documentation for the Private Works

- (a) The parties acknowledge that:
 - (i) the Design Documentation includes design documents for the Private Works; and
 - (ii) the State will receive the design documents for the Private Works as part of the Submitted Documents.
- (b) Except as expressly set out in this Agreement, the Operator is not obliged to take account of any comments made by the State in respect of the Design Documentation as it relates to the Private Works.
- (c) Nothing in this Section 9 affects the Operator's obligations to comply with its obligations in respect of the design, construction and Completion of the Private Works.

Schedule 3 – Milestone Schedule

[not disclosed]

Schedule 4 – Requirements for Plans

1. Construction Management Plan

General

The Construction Management Plan must include the following details:

- (a) the Operator's risk management methodology for the execution of the Works (which must comply with and otherwise be prepared in accordance with AS/NZS ISO 31000/2009);
- (b) the Operator's methodology, procedures and process for the execution of the Works;
- (c) the Operator's methodology for co-ordination of the Works;
- (d) the management measures to be implemented by the Operator in the event that Contamination is discovered in, on, under or emanating from the Site during the execution of the Works;
- (e) the Operator's management structure including:
 - (i) the management structure;
 - (ii) the names and roles of each Key Personnel;
 - (iii) details of any individual teams or groups established to deliver components of the Works; and
 - (iv) the names and roles of each Operator Associate that is responsible for interface with the State and State Associates;
- (f) the Operator's reporting systems to the State including details of the format and content of those reports;
- (g) the Operator's document and communication controls, including its quality assurance methodology;
- (h) the Operator's methodology for communicating and liaising with the State and the State Associates;
- (i) the Operator's procedure for co-ordinating Subcontractors; and
- (j) such other information reasonably requested by the State Representative.

Traffic management and transport

The Construction Management Plan must also contain as a sub-set, a traffic management and transport plan for the Health Campus which must address the way in which the Public Patient Facility will be accessed by vehicles, emergency vehicles, cyclists and pedestrians upon commencement of operations at the Public Patient Facility (and outlining any significant changes following any expansion works for the Health Campus).

The traffic management and transport plan to be developed by the Operator must recognise that:

- (a) all persons attending the Health Campus will be pedestrians at one or more stages during their visit;
- (b) many pedestrians have reduced agility and some suffer other impairment such as loss of hearing or vision; and
- (c) a higher proportion of people will be reliant on wheelchairs, mobility scooters and walking aids than is the case for other civic developments.

The traffic management and transport plan must specifically address the following as a minimum:

- (a) traffic impact assessment including:
 - (i) the impact of the Health Campus on the adjacent street network (including Centennial Place, Clayton Street and Lloyd Street), having regard to the proposed future changes to the road network;
 - (ii) ingress and egress traffic movements; and
 - (iii) internal circulation movements;
- (b) transport connections (including public transport, pedestrian and cycle access, roads);
- (c) vehicular access for staff, visitors, service vehicles and emergency vehicles (including ambulance and fire);
- (d) car parking provisions (including allocation and management of spaces) and access;
- (e) patient drop-off zones;
- (f) motorcycle facilities;
- (g) bicycle and end of trip facilities (including parking, shower and change facilities);
- (h) authorised government vehicle car parking (3 bays);
- (i) pedestrian facilities and connections to existing and proposed pedestrian paths surrounding the Site;
- (j) provisions for emergency vehicles, service vehicles and custodial vehicles;
- (k) functional layouts of vehicle access points and car parking areas;
- (l) drawings confirming vehicle access and turning circles;
- (m) the appropriateness of roads and pavements and traffic; and
- (n) a summary of any consultation with Main Roads, the City of Swan and the MRA and any other relevant Authority in respect of traffic management and transport issues.
- (o) The traffic impact assessment within the traffic management and transport plan must generally be in accordance with the requirements of the MRA for traffic impact assessment of proposed developments adjacent to the

declared road network. It must include all necessary capacity and other analysis using ASIDRA, Austroads guide to traffic engineering practice and other relevant references and techniques (where appropriate).

- (p) All drawings in the traffic management and transport plan must be a minimum scale of 1:200 or 1:100 (where appropriate).

2. Safety Management Plan

The Safety Management Plan must include details of the Operator's methodologies, plans and procedures in respect of:

- (a) ensuring the health and safety of workers and other members of the general public visiting or accessing the Site, including:
 - (i) taking all necessary precautions to ensure the safety of the public;
 - (ii) ensuring that all plant and equipment is not left unattended and is secured during periods when the Site is vacated;
 - (iii) ensuring access to scaffolding and entry points to the Works and its buildings is prevented to unauthorised personnel;
 - (iv) ensuring that access locations to the Works, whether this is via scaffolding, ladders, gates or temporary doors, are not left unattended such that members of the public can gain access;
 - (v) taking the necessary steps to prevent dust, smoke, debris, artificial lighting, stockpiles, temporary works and the like from causing unnecessary inconveniences or becoming a nuisance;
 - (vi) providing identity cards for all its operatives (including all Subcontractors) and ensuring the identity cards are worn at all times; and
 - (vii) providing protective clothing, footwear and headwear, including hearing protection and eye protection as required by Laws in respect of occupational, health and safety for the sole use of persons engaged in relation to the Works;
- (b) the process for identifying potential dangers to workers and other members of the general public visiting or accessing the Site and mitigation strategies to prevent danger to those persons;
- (c) occupational health and safety induction and Site inspection, which must explain as a minimum:
 - (i) Site safety rules and policies (including rules in respect of drugs and alcohol, smoking and horseplay on Site);
 - (ii) Site amenities and welfare facilities;
 - (iii) Site-specific hazards and control measures;
 - (iv) how to report safety hazards and unsafe work practices;
 - (v) how to report incidents, accidents and near-misses;

- (vi) what to do in the event of injuries; and
- (vii) the allocation of first aid responsibilities, where first aid kits are located and who the 'first-aiders' are;
- (d) Site-specific emergency safety management;
- (e) the provision of prompt medical attention in case of serious injury;
- (f) posting telephone numbers of the local hospital, physician, fire brigade or ambulances prominently at the Site;
- (g) how the Operator will ensure that a person with a current first aid qualification will be present at the Site and will have access on Site to a first aid facility and first aid kits in accordance with all Laws;
- (h) the location of fire extinguishers at temporary fire hazards;
- (i) the Operator's schedule of regular occupational health and safety procedures including safety checks, production and review of safe work method statements, equipment safety and equipment maintenance checks, power lead tagging, daily safety inspections, and record keeping;
- (j) the Operator's "sun-safe" work practices, including requirements for adequate sun protection clothing, and provision of sun screen and sun glasses;
- (k) the provision of personal hearing protection devices (complying with Australian Standards AS 1270) and how it will ensure these will be used;
- (l) pre-construction risk assessment, procedural issues and JSAs (Job Safety Analyses, also known as Safe Work Method Statements), including identifying hazardous activities such as working in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors, working at heights, working with tilt-up slabs and working in trenches;
- (m) providing on-Site promotion of health and safety risk management;
- (n) hazard inspection and reporting;
- (o) removal of hazardous materials;
- (p) hazardous substances exposure management;
- (q) maintaining a daily site safety checklist using construction industry organisation occupational health and safety checklist pro formas;
- (r) methods of communicating and consulting with employees and transmitting new work procedures to employees;
- (s) site security;
- (t) purchasing/hiring controls (to avoid unknowingly bringing hazards onto the Site);

- (u) incident notification (including to the State), including the name and contact details of the Operator's nominated incident co-ordinator;
- (v) responding to a crisis or major incident that occurs at the Site or otherwise has the potential to adversely affect the Site or the Operator; and
- (w) communication protocols for liaising with the State and emergency services during the crisis or major incident; and
- (x) in respect of each of the elements referred to in paragraphs (a) to (w) (inclusive):
 - (i) the person on the Site who will take responsibility for the successful implementation of each element;
 - (ii) the hierarchical structure by which the responsibility will be performed; and
 - (iii) the specific manner by which the element will be performed.

3. Environment Management Plan

The Environmental Management Plan must contain the Operator's strategy for:

- (a) compliance with:
 - (i) the Environment Protection and Biodiversity Conservation Act 1999 (Cth); and
 - (ii) AS/NZS ISO 14000 Basic Set: 2007: Environmental Management Basic Set;
- (b) incident notification (including to the State), including the name and contact details of the Operator's nominated incident co-ordinator; and
- (c) preserving the Site environment including in respect to flora and fauna.

4. Completion Plan

The Completion Plan must set out the Operator's methodology for achieving Completion, be in a form approved by the State Representative acting reasonably, and must include:

- (a) the Operator's strategy for achieving Completion;
- (b) details of all activities the Operator must undertake in order to achieve Completion;
- (c) details of the parties involved in achieving each of Completion Criteria and the Operator's strategy for managing the interface between those various parties;
- (d) details of the Operator's dedicated Completion team including the names (and when known or ascertainable), roles and responsibilities of Key Personnel in this regard;

- (e) details of each of the Completion Criteria and the Operator's proposed methodology for successfully satisfying each of the Completion Criteria;
- (f) details of each of the Completion Tests including a methodology for the conduct of each test, details of the systems and parties involved in the conduct of each and the objectives of each test;
- (g) a list of all certificates and permits required for the Project including details of which parties are responsible for obtaining such certificates and permits, their status and the time at which they are required;
- (h) a list of all certificates of compliance required for the Project and the time at which they are required;
- (i) the proposed process for involving the Independent Certifier, the State Representative and the State in Completion;
- (j) the Operator's methodology for:
 - (i) carrying out commissioning processes generally;
 - (ii) confirming that all control systems including building management systems are in place, fully commissioned and operational;
 - (iii) confirming that all warranties relating to the Works have been obtained or otherwise are in place;
 - (iv) ensuring that all documentation that must be provided by the Operator to the Independent Certifier and the State Representative as a condition precedent to achieving Completion has been completed and provided to the Independent Certifier and the State Representative;
 - (v) confirming that all energy performance testing regimes including all necessary metering is in place at the time of Completion;
 - (vi) installing Equipment, including the dates of delivery and details of installation, calibration and testing; and
 - (vii) storing, moving, unpacking and transporting Equipment and all other items to the correct location within the Public Patient Facility;
 - (viii) carrying out a clinical clean of the Public Patient Facility; and
 - (ix) identifying and rectifying Outstanding Items and other Defects;
- (k) the Operator's strategy for liaising with and involving the Independent Certifier and the State Representative in preparing for Completion;
- (l) details of each of the Post Completion Tests; and
- (m) any other information reasonably requested by the Independent Certifier and the State Representative.

5. Australian Industry Participation Plan

The Australian Industry Participation Plan must be in a form in accordance with the Building Local Industry Policy and:

- (a) be based on the guidelines produced by the Government of Western Australia's Department of Industry and Resources and provide details on how the Operator will maximise opportunities for Australian and local Western Australian companies to benefit from the Project, and be integrated with the Operator's Subcontract procurement strategies and the Construction Management Plan; and
- (b) include:
 - (i) the identification of new opportunities for Australian participation and the communication strategy to communicate these opportunities to the market;
 - (ii) the development of Subcontract procurement strategies that provide for full, fair and reasonable opportunities for Australian participation;
 - (iii) a description of the Project including the opportunities for Australian industry in terms of employment, skills transfer and strategic alliances;
 - (iv) a description of the type of and size of procurement packages and/or eligible goods for the Project;
 - (v) a clear statement on how the Operator will maximise the use of competitive local business in goods, services and works purchased;
 - (vi) a description of how the Operator will:
 - A. facilitate strategic partnering;
 - B. support the integration of Australian industry into global supply chains; and
 - C. encourage suppliers to adopt world's best practice standards; and
 - (vii) for each procurement package or contract placed offshore, a description of what the overseas supplier is doing to ensure Australian sub-suppliers are provided opportunities.

6. Quality Plan

The Quality Plan must provide details of all Project controls, systems and processes to be implemented in connection with the Works. The Quality Plan must include:

- (a) the process for ensuring compliance with each of the Quality Standards;
- (b) details of the proposed documentation management systems;

- (c) change control processes for the Design Documentation, the Plans, the Works Program and other controlled documents;
- (d) a risk identification and management plan addressing:
 - (i) risk identification and reporting throughout the Project;
 - (ii) risk management by the appropriate personnel;
 - (iii) design development cognisant of risk;
 - (iv) construction delivery cognisant of risk; and
 - (v) identification of the means and methods for:
 - A. regular monitoring, review and updating of the risk register by risk owners appropriate to the Works Program and Project activity;
 - B. identifying and formally recording hazards and associated risks which arise during construction; and
 - C. observing and recording progress in the reduction or mitigation of the overall impact or number of risks;
- (e) details of proposed Project reviews including regular reviews, ad hoc reviews, milestone Project reviews and peer reviews and value management and buildability workshops, and the timing and extent of these reviews and workshops;
- (f) Project reporting processes;
- (g) invoicing and expenditure reporting processes;
- (h) contract communications processes with Subcontractors (including design consultants) and the State Representative;
- (i) Environmental compliance processes;
- (j) occupational health and safety processes including accreditation;
- (k) training, induction and performance monitoring;
- (l) quality controls, audits and compliance processes;
- (m) control processes to ensure construction built quality including processes for identification and rectification of Defects and non-conformances during construction so as to enable timely resolution and minimal Outstanding Items upon Completion; and
- (n) any other controls, systems and processes to be implemented to ensure the quality of the Works.

7. Design Management and Stakeholder Engagement Plan

General

The Design Management and Stakeholder Engagement Plan must address the following matters as a minimum:

- (a) details of the design consultant Subcontractors (architectural and technical);
- (b) curriculum vitae for key members of the design team from each design consultant Subcontractor;
- (c) the organisational structure for the design consultant Subcontractors and the Builder during the development of the design of the Health Campus under this Agreement;
- (d) design management processes, systems and controls to be implemented on the Project;
- (e) identification of key design issues and risks and the management strategies to address these issues/risks;
- (f) an overview of the stakeholder consultation process, including:
 - (i) a list of internal Project stakeholders and details of how they will be engaged during the design and construction of the Public Patient Facility and performance of the Interim Management Services (if applicable) and Patient Transfer Services;
 - (ii) a list of external Project stakeholders and details of how they will be engaged during the design and construction of the Public Patient Facility and performance of the Interim Management Services (if applicable) and Patient Transfer Services;
 - (iii) a list of the user groups that will be established for consultation during the design and construction of the Public Patient Facility and performance of the Interim Management Services (if applicable) and Patient Transfer Services;
 - (iv) strategies for enhancing stakeholder relations and ensuring a high level of stakeholder input into the design of the Public Patient Facility;
 - (v) a requirement that, as part of the stakeholder consultation process, the Operator must prepare a detailed record (which may include marked-up drawings) of all user group workshops / meetings and must establish a formal functional sign off process at key design milestones;
- (g) the change management process to manage requested changes during the design and construction of the Public Patient Facility;
- (h) details of design reviews including regular reviews, ad hoc reviews, milestone Project reviews and peer reviews and value management and buildability workshops, and the timing and extent of these reviews and workshops;
- (i) details of the process for 'safety in design' giving consideration to the Health Campus's lifecycle (as described in greater detail below);

- (j) the process for ensuring that whole of life considerations are incorporated in the design of the Health Campus;
- (k) the design reporting framework; and
- (l) design consultant Subcontractor certification process for sign off on design and construction of the Health Campus.

ESD management

The Design Management and Stakeholder Engagement Plan must also contain as a sub-set an ESD management plan detailing the following:

- (a) the ESD Initiatives proposed to be incorporated into the design and construction of the Health Campus;
- (b) the ESD Initiatives proposed to be incorporated into the design and construction of the Health Campus, but which are subject to further investigation during the development of the design of the Health Campus under this Agreement;
- (c) the lifecycle feasibility and overall Environmental benefit assessment of the proposed ESD Initiatives;
- (d) the ESD Targets; and
- (e) a schedule of the proposed ESD Initiatives and the associated ESD measurements to demonstrate how a minimum 4 Star Green Star rating will be achieved in accordance with the GBCA Healthcare Rating Tool.

Safety in design process

The Design Management and Stakeholder Engagement Plan must also incorporate a safety in design process which focuses on minimising or eliminating hazards identified during the design phase that may pose a risk of injury or death throughout the service life of the Health Campus. The process must consider all aspects of design including facilities, hardware, systems, equipment, products, tooling, materials, energy controls, layout and configuration.

The safety in design process must be implemented early during the planning and schematic design phase of the D&C Phase, with an emphasis on making appropriate choices with respect to design (layout and configuration), materials selection, construction methodology and maintenance approach.

The safety in design process must consider the Health Campus's lifecycle. Key principles to be considered include:

- (a) design for safe construction: to facilitate safe handling and installation;
- (b) design to facilitate safe use: giving consideration to the intended function of the Health Campus, including the likely workflows and systems of work, the type of plant and equipment that may be used in the Health Campus and any specific workplace hazards;
- (c) design for safe maintenance: so that maintenance of the Health Campus can be performed at ground level or safely from the structure and with sufficient access to undertake the work in a safe manner;

- (d) design for safe alteration and refurbishment: to enable easy and safe re-installation or removal of fittings and fixtures; and
- (e) design for safe demolition: to enable easy and safe demolition if required at the end of the service life of the Health Campus and other facilities located on the Health Campus.

The safety in design process must be based on a risk management approach and involve a multi-disciplinary approach and engagement with the relevant stakeholders from all phases of the Health Campus lifecycle (i.e. designers, construction personnel, operational staff and maintenance personnel).

The safety in design process incorporated into the Design Management and Stakeholder Engagement Plan must contemplate a safety in design review report being prepared by the Operator which fully documents residual risks upon completion of the safety in design process.

Schedule 5 – Completion Criteria

- (a) The Final Design Documents are in accordance with the Design Requirements.
- (b) The Works have passed all of the Completion Tests, including those set out in the Completion Plan and are complete, except for Outstanding Items.
- (c) The Works have been constructed in accordance with the Final Design Documents.
- (d) The Operator has provided the State with:
 - (i) all operating manuals in respect of the Health Campus;
 - (ii) all electronic and hard copy drawings of the Works and the Health Campus in whatever form reasonably required by the State, including “as constructed” drawings and Final Design Documents;
 - (iii) all specifications for materials and finishes, Equipment and Fixed Building Equipment (as that term is defined in the Services Agreement) in the Health Campus;
 - (iv) manufacturers’ warranties;
 - (v) Equipment manuals; and
 - (vi) any other documents reasonably required by the State in respect of the Works and the Health Campus in whatever form reasonably required by the State.
- (e) All of the Equipment set out in the Equipment Inventory has been procured, installed and commissioned as part of the Works.
- (f) The LARU has granted the Approval to Occupy in respect of the Health Campus and the Operator has a valid Hospital Licence in respect of the Health Campus.
- (g) The Operator has obtained and complied with all other Authorisations required to occupy and operate the Health Campus.
- (h) All subtenants have been granted full access to their appropriate tenancies in the Commercial Facilities and are able to fully provide their services from the Commercial Facilities.
- (i) The Operating Lease has been executed by the Operator.
- (j) The Private Works have reached the stage when:
 - (i) the Design Requirements have been met; and
 - (ii) the Completion Tests, including those set out in the Completion Plan, have been carried out in respect of the Private Works and are complete and have been passed, except for Outstanding Items.

- (k) The Private Works have been constructed in accordance with the Final Design Documents.
- (l) The conditions precedent in the Services Agreement have been satisfied by the Operator or waived by the State in accordance with the Services Agreement.

Schedule 6 – Insurance Schedule

[not disclosed]

Schedule 7 – Completion Certificate

To: Operator

Pursuant to Clause 16 of the Midland Health Campus Project Design and Construction Agreement for the design and construction of the Midland Health Campus entered into between the State and the Operator dated [*#insert*] (**Agreement**), I notify you that Completion was reached on the date specified below:

Date: []

This certificate does not relieve you of your obligation to execute the Works in accordance with the Agreement including with respect to the Outstanding Items set out in the list of Outstanding Items attached to this certificate (if any).

Terms defined in the Agreement have the same meaning when used in this certificate.

State Representative

Date of Issuance

Attachments: [*insert, if applicable*]

Schedule 8 – Novation Deed

Subcontractor Deed of Novation made at on 20

Parties The State of Western Australia ("State")

**Brookfield Multiplex Constructions Pty Ltd, The Old Swan Brewery,
Level 2, 173 Mounts Bay Road, Perth 6000, ABN 70 107 007
527("Builder")**

***[#SUBCONTRACTOR name, address and ABN]* ("Subcontractor")**

Recitals

- A. The State and the Operator have entered into a Design and Construction Agreement dated **[#insert]** for the design and construction of the Health Campus by the Operator ("the Agreement").
- B. The Operator and the Builder have entered into the D&C Subcontract dated **[#insert]** to undertake the Works in respect of the design and construction of the Health Campus ("the D&C Subcontract").
- C. The Builder and the Subcontractor have entered into the Subcontract dated **[#insert]** to undertake the Works in respect of the design and construction of the Health Campus ("the Subcontract").
- D. The Agreement and the Subcontract require the Subcontractor to enter into this Deed for the purpose of effecting a novation of the Subcontract from the Builder to the State or a third party nominated by the State.

1. Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires.

Agreement means the agreement identified as such in the Schedule.

D&C Subcontract means the agreement identified as such in the Schedule.

Execution Date means the date that this Deed is executed by the State.

Health Campus means the health campus identified as such in the Schedule.

Operator means the party identified as such in the Schedule.

Parties means the State, the Builder and the Subcontractor.

Project means the procurement of the Health Campus including the design, construction, commissioning and completion of the Health Campus.

Schedule means the schedule to this Deed.

State means the State of Western Australia or any third party contractor nominated as such in the Schedule.

Subcontract means the agreement identified as such in the Schedule.

Subcontractor means the party identified as such in the Schedule.

Works means the works described in general terms in the Schedule.

1.2 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) headings are for convenience only and do not affect the interpretation of this Deed;
- (d) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) references to any document (including this Deed) include any amendment to or substitute for such document; and
- (g) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.3 This Deed prevails

To the extent of any inconsistency between this Deed or the Subcontract, this Deed prevails unless the parties expressly agree otherwise.

2. Operation

This Deed does not come into full force and effect until the Execution Date.

3. Novation

From the Execution Date, subject to Clause 4, the novated Subcontract will take effect:

- (a) as an agreement between the State and the Subcontractor;
- (b) as if the State had been named as the Builder in the Subcontract;
- (c) so that each reference in the Subcontract to the Builder is a reference to the State;

- (d) so that the rights, obligations and liabilities of the Builder under the Subcontract shall become the rights, obligations and liabilities of the State, [as varied by Variation Order Number [*insert*] agreed between the State and the Subcontractor in accordance with clause [x] of the Subcontract] [*Optional clause – to be deleted if no Variation Order has been issued*];
- (e) so that the Subcontractor must comply with all of its obligations under the Subcontract for the benefit of the State; and
- (f) so that the Builder is released from any obligations and liabilities under the Subcontract arising after the Execution Date.

4. Obligations prior to Execution Date

- (a) Notwithstanding Clause 3, the Subcontractor shall have no entitlement to make any Claim against the State for any costs, losses, expenses or damages incurred by the Subcontractor arising out of or in connection with the performance of the Works or the Subcontract prior to the Execution Date, except for amounts owing to the Subcontractor which are the subject of payment claims delivered by the Subcontractor to the Builder in accordance with the Subcontract (but without limiting the State's right to recover that amount from the Operator if the State has paid the Operator for the work the subject of the outstanding amount).
- (b) The Subcontractor is not entitled to exercise any set-off, deduction, abatement or counterclaim against the State if and to the extent that such right arose prior to the Execution Date.

5. Acknowledgments

The Subcontractor acknowledges and agrees that as at, and from, the Execution Date, it will continue to diligently perform its obligations under the novated Subcontract notwithstanding any costs, losses, expenses or damages (including consequential loss) incurred by the Subcontractor in connection with the performance of the Works or the Subcontract prior to the Execution Date.

6. Assignment

Except as expressly contemplated by this Deed or agreed to by the State, neither the Builder nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed or the Subcontract.

7. Further assurances

The Builder and the Subcontractor undertake, upon request by the State, to execute all documents and do all things necessary to vest in the State the Subcontract or otherwise to give effect to the terms of this Deed.

8. Governing law and jurisdiction

This Deed will be governed by and construed in accordance with the laws from time to time in force in the State of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts having jurisdiction in the State of Western Australia and the courts competent to determine appeals from those courts and any injunctions,

orders or judgments issued or granted therefrom shall be enforceable, insofar as they are enforceable at law, within the State of Western Australia.

9. Notices

9.1 Address for Service

Any notice to be given or served under or arising out of a provision of this Deed must be in writing and delivered by hand or sent by prepaid post or facsimile, as the case may be, to the relevant address or facsimile number:

- (a) stated in the Schedule; or
 - (b) last notified in writing to the party giving the notice,
- for the party to whom or upon which the notice is to be given or served.

9.2 Deemed Receipt

A notice delivered or sent in accordance with Clause 9.1 will be deemed to have been given and received:

- (a) if delivered, upon receipt;
- (b) if posted, 3 days after posting; and
- (c) if sent by facsimile transmission, upon confirmation of correct transmission of the facsimile.

10. Counterparts

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

11. Waivers, remedies cumulative

11.1 No waiver

No failure to exercise and no delay in exercising, on the part of the State, any right or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

11.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

12. Attorneys

Each of the attorneys (if any) executing this Deed states that they have no notice of revocation of their power of attorney.

Schedule

Item	Particulars
Operator	[#Note: To be inserted including address for notices.]
Agreement	[#Note: To be inserted.]
Health Campus	[#Note: To be inserted.]
State	[#Note: To be inserted including address for notices.]
D&C Subcontract	[#Note: To be inserted including address for notices.]
Subcontract	[#Note: To be inserted.]
Subcontractor	[#Note: To be inserted including address for notices.]
Works	[#Note: To be inserted.]

Executed as a deed.

**Signed, sealed and delivered by
Brookfield Multiplex Constructions Pty Limited**

by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

**Signed, sealed and delivered by
Subcontractor**

by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name _____

State

Signed for and on behalf of

The State of Western Australia

by THE HONOURABLE [insert]

, Treasurer for the time being

in the presence of

[insert]

*print name
of witness*

Witness

sign here ►

*Witness
address*

*Witness
occupation*

Novation Deed

D&C Subcontract Subcontractor Deed of Novation made at on 20

Parties The State of Western Australia ("State")

**St John of God Midland Health Campus, Level 2, 12 Kings Park Road,
West Perth 6005, ACN 152 874 845 ("Operator")**

**St John of God Health Care Inc, Level 2, 12 Kings Park Road, West
Perth 6005, ARBN 051 960 911 ("Private Operator")**

***[#SUBCONTRACTOR name, address and ABN]* ("Subcontractor")**

Recitals

- A. The State and the Operator have entered into a Design and Construction Agreement dated **[#insert]** for the design and construction of the Health Campus by the Operator ("**the Agreement**").
- B. The Operator, the Private Operator and the Subcontractor have entered into the Subcontract dated **[#insert]** to undertake the Works and the Private Works in respect of the design and construction of the Health Campus ("**the Subcontract**").
- C. The Agreement and the Subcontract require the Subcontractor to enter into this Deed for the purpose of effecting a novation of the Subcontract from the Operator and the Private Operator to the State or a third party nominated by the State.

1. Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires.

Agreement means the agreement identified as such in the Schedule.

Claim means any claim under the Subcontract.

Execution Date means the date that this Deed is executed by the State.

Health Campus means the health campus identified as such in the Schedule.

Operator means the party identified as such in the Schedule.

Parties means the State, the Subcontractor, the Private Operator and the Operator.

Private Operator means the party identified as such in the Schedule.

Private Works means the private works described in general terms in the Schedule.

Project means the procurement of the Health Campus including the design, construction, commissioning and completion of the Health Campus.

Schedule means the schedule to this Deed.

State means the State of Western Australia or any third party contractor nominated as such in the Schedule.

Subcontract means the agreement identified as such in the Schedule.

Subcontractor means the party identified as such in the Schedule.

Works means the works described in general terms in the Schedule.

1.2 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) headings are for convenience only and do not affect the interpretation of this Deed;
- (d) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) references to any document (including this Deed) include any amendment to or substitute for such document; and
- (g) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.3 This Deed prevails

To the extent of any inconsistency between this Deed or the Subcontract, this Deed prevails unless the parties expressly agree otherwise.

2. Operation

This Deed does not come into full force and effect until the Execution Date.

3. Novation

From the Execution Date, subject to Clause 4, the novated Subcontract will take effect:

- (a) as an agreement between the State and the Subcontractor;
- (b) as if the State had been named as the Operator and the Private Operator in the Subcontract;

- (c) so that each reference in the Subcontract to the Operator and the Private Operator is a reference to the State;
- (d) so that the rights, obligations and liabilities of the Operator and the Private Operator under the Subcontract shall become the rights, obligations and liabilities of the State, [as varied by Variation Order Number **[insert]** agreed between the State and the Subcontractor in accordance with clause **[x]** of the Subcontract] **[Optional clause – to be deleted if no Variation Order has been issued]**;
- (e) so that the Subcontractor must comply with all of its obligations under the Subcontract for the benefit of the State; and
- (f) so that the Operator and the Private Operator are released from any obligations and liabilities under the Subcontract arising after the Execution Date.

4. Obligations prior to Execution Date

- (a) Notwithstanding Clause 3:
 - (i) the Subcontractor shall have no entitlement to make any Claim against the State for any costs, losses, expenses or damages incurred by the Subcontractor arising out of or in connection with the performance of the Works, the Private Works or the Subcontract prior to the Execution Date, except for amounts owing to the Subcontractor with respect to the performance of the Works which are the subject of payment claims delivered by the Subcontractor to the Operator in accordance with the Subcontract (but without limiting the State's right to recover that amount from the Operator if the State has paid the Operator for the work the subject of the outstanding amount); and
 - (ii) the Subcontractor shall be entitled to make any Claim against the Private Operator for any costs, losses, expenses or damages incurred by the Subcontractor arising out of or in connection with the performance of the Private Works prior to the Execution Date.
- (b) The Subcontractor is not entitled to exercise any set-off, deduction, abatement or counterclaim against the State if and to the extent that such right arose prior to the Execution Date.

5. Acknowledgments

The Subcontractor acknowledges and agrees that as at, and from, the Execution Date, it will continue to diligently perform its obligations under the novated Subcontract notwithstanding any costs, losses, expenses or damages (including consequential loss) incurred by the Subcontractor in connection with the performance of the Works, the Private Works or the Subcontract prior to the Execution Date.

6. Assignment

Except as expressly contemplated by this Deed or agreed to by the State, none of the Operator, the Private Operator or the Subcontractor may assign or transfer any of its rights or obligations under this Deed or the Subcontract.

7. Further assurances

The Operator, the Private Operator and the Subcontractor undertake, upon request by the State, to execute all documents and do all things necessary to vest in the State the Subcontract or otherwise to give effect to the terms of this Deed.

8. Governing law and jurisdiction

This Deed will be governed by and construed in accordance with the laws from time to time in force in the State of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts having jurisdiction in the State of Western Australia and the courts competent to determine appeals from those courts and any injunctions, orders or judgments issued or granted therefrom shall be enforceable, insofar as they are enforceable at law, within the State of Western Australia.

9. Notices

9.1 Address for Service

Any notice to be given or served under or arising out of a provision of this Deed must be in writing and delivered by hand or sent by prepaid post or facsimile, as the case may be, to the relevant address or facsimile number:

- (a) stated in the Schedule; or
- (b) last notified in writing to the party giving the notice,

for the party to whom or upon which the notice is to be given or served.

9.2 Deemed Receipt

A notice delivered or sent in accordance with Clause 9.1 will be deemed to have been given and received:

- (a) if delivered, upon receipt;
- (b) if posted, 3 days after posting; and
- (c) if sent by facsimile transmission, upon confirmation of correct transmission of the facsimile.

10. Counterparts

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

11. Waivers, remedies cumulative

11.1 No waiver

No failure to exercise and no delay in exercising, on the part of the State, any right or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

11.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

12. Attorneys

Each of the attorneys (if any) executing this Deed states that they have no notice of revocation of their power of attorney.

Schedule

Item	Particulars
Operator	[#Note: To be inserted including address for notices.]
Private Operator	[#Note: To be inserted including address for notices.]
Agreement	[#Note: To be inserted.]
Health Campus	[#Note: To be inserted.]
State	[#Note: To be inserted including address for notices.]
Subcontract	[#Note: To be inserted.]
Subcontractor	[#Note: To be inserted including address for notices.]
Works	[#Note: To be inserted.]
Private Works	[#Note: To be inserted.]

Executed as a deed.

Signing page

Signed, sealed and delivered by

St John of God Midland Health Campus

by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

Signed, sealed and delivered by

St John of God Health Care Inc

by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

Signed, sealed and delivered by

Subcontractor

by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

State

Signed for and on behalf of

The State of Western Australia

by THE HONOURABLE [insert]
, Treasurer for the time being
in the presence of

[insert]*print name
of witness**Witness
sign here ►**Witness
address**Witness
occupation*

Schedule 9 – Performance Bond

The Performance Bond must satisfy the requirements set out in this Schedule 9 unless otherwise agreed in writing by the State.

Form of Bond

TO: The State of Western Australia (**the State**)

FOR: **St John of God Midland Health Campus (ACN 152 874 845) (the Operator)**

DATE: []

The Operator has been selected by the State to design and construct the new Midland Health Campus pursuant to the Design and Construction Agreement entered into between the State and the Operator (**Agreement**).

The Operator has been selected by the State to operate and maintain the Health Campus and provide the Services from the Health Campus (including the Patient Transfer Services (if required)) pursuant to the Services Agreement, entered into between the State and the Operator (**Services Agreement**).

At the request of the State and in respect of the Operator's obligations under the Agreement, **[Name of Issuer] [ABN]** of [] (**the Issuer**) unconditionally and irrevocably undertakes to pay to the State, on demand by the State, any sum or sums which may from time to time be demanded by the State to a maximum aggregate sum of A\$[] million (**Maximum Aggregate Sum**).

Payment or payments under this undertaking must be made by the Issuer to the State:

1. without reference to the Operator, any other person (other than the Issuer) or the Agreement or the Services Agreement;
2. without enquiring into the performance or non-performance of the Agreement or the Services Agreement;
3. despite any notice by the Operator or any other person to the Issuer not to pay the whole or any part of the Maximum Aggregate Sum;
4. despite anything which but for this provision may operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - (a) any variation or alteration to any contract between the State and the Operator (including the Agreement and the Services Agreement); or
 - (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person; and
5. to an Australian Dollar account in the State of Western Australia.

This undertaking expires on the earlier of:

6. **[insert date]**;
7. the date the State notifies the Issuer in writing, endorsed with the consent of the State, that this undertaking is no longer required; or

8. the date the Issuer has paid the Maximum Aggregate Sum to the State.

The Issuer will have no liability in respect of any claim under this undertaking after the date upon which this undertaking expires.

However, the Issuer may at any time without being required to do so pay to the State the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the State and thereupon the liability of the Issuer hereunder in respect of that amount paid shall immediately cease.

This undertaking is governed by and construed in accordance with the laws from time to time in force in the State of Western Australia and the Issuer irrevocably submits to the exclusive jurisdiction of the courts having jurisdiction in the State of Western Australia and the courts competent to determine appeals from those courts and any injunctions, orders or judgments issued or granted therefrom shall be enforceable, insofar as they are enforceable at law, within the State of Western Australia.

Executed and delivered as a deed.

Each attorney executing this deed states that [he/she] has no notice of revocation or suspension of [his/her] power of attorney.

[#Insert execution clause of Issuer]

Schedule 10 – Health Campus Requirements

1. Introduction

This Schedule sets out the Health Campus Requirements and comprises part of the Design Requirements for the Project. In particular, it describes:

- (a) the development vision for the Health Campus;
- (b) the Health Campus Objectives;
- (c) the site conditions and design considerations pertaining to the Site;
- (d) the precinct planning objectives for the Health Campus, including its integration within the broader Midland Redevelopment Area;
- (e) the architectural aspirations and technical requirements for the Health Campus, and where stated the Public Patient Facility; and
- (f) the construction requirements for the Health Campus, and where stated the Public Patient Facility.

This Schedule does not set out detailed functional and technical requirements for the Public Patient Facility on the basis that the Operator is responsible for delivering a Public Patient Facility that is Fit For Purpose.

Application to Private Patient Facility

To the extent that the Private Patient Facility is integrated with the Public Patient Facility, then those parts that are integrated must comply with all requirements of this Schedule.

2. Development Vision

The development of the Health Campus is part of the vision for improving health care for residents of the Catchment Area. It is anticipated that provision of the Public Patient Facility together with the expanded range of services will result in improved patient outcomes and experience, and assist in providing accessible, integrated, patient-focused healthcare for residents within the Catchment Area.

The Operator will be expected to develop partnerships with other health providers and the local community through collaboration between clinicians across facilities and strong engagement with the public as well as the Patients. The intent is that these multiple partnerships will facilitate a holistic and integrated local health system and ensure that Patients experience a seamless and sustainable health service of the highest quality.

The design of the Health Campus will reinforce the development vision for an accessible, connected, welcoming and inclusive health campus in Midland. It will:

- (a) be a key component of the new heart of Midland;
- (b) provide high quality urban design and architecture;

- (c) take into account Evidence Based Design (or EBD) research findings with the goal of enhancing Patient, visitor and staff experiences in a nurturing health environment;
- (d) be information and communication technology enabled; and
- (e) have real connectivity with pedestrian and transport systems.

The Health Campus will provide Patient-centred care in an environment of quality, excellence and innovation, which embraces forward-looking models of care and places emphasis on ambulatory / community / home services.

The Health Campus will have strong links with education and training providers and enable / support research opportunities in the clinical setting.

3. Project Objectives and Health Campus Objectives

The expansion of services at Midland and the associated development will play a key role in achieving the long-term vision for the future of health care in WA. The Health Campus is critical for the North Metropolitan Area Health Service (or NMAHS) and the broader health system to deliver its health reform agenda to the community. The **Project Objectives** are based on the underlying health reform objectives and include:

- (a) provision of high quality, culturally appropriate, safe clinical services, integrated with the overall public health system;
- (b) increasing access to health services / providing care closer to home;
- (c) expanding existing hospital and ambulatory services to meet future demand;
- (d) ensuring a sustainable workforce;
- (e) provision of care in the most appropriate clinical setting;
- (f) ensuring financially viable health services that provide value for money for the State; and
- (g) cost effective future expansion of the Health Campus, in respect of the Planned Expansion and any Further Expansion, that does not negatively impact on delivery of the Services at the Health Campus.

In addition to the Project Objectives, the Department also has specific objectives relating to the design and construction of the Health Campus. These **Health Campus Objectives** are:

- (a) delivery of a contemporary and flexible Public Patient Facility that is adaptable to change, so that future changes in health care delivery, models of care, technology, demographics and public health policy can be implemented with minimal alteration to the Public Patient Facility and with minimal disruption to the Services;
- (b) delivery of a Health Campus that facilitates the Planned Expansion and Further Expansion in a cost effective manner without negative impact on delivery of the Services;

- (c) delivery of a Health Campus that positively contributes to Patient healing, visitor experience and staff satisfaction through incorporation of EBD principles;
- (d) delivery of a Public Patient Facility that encourages provision of quality care in the most appropriate clinical setting;
- (e) provision of a safe, welcoming and non-institutional / non-threatening environment for Patients and visitors to the Health Campus;
- (f) provision of a safe and high quality work environment;
- (g) delivery of a Health Campus that is capable of meeting its specified post disaster role;
- (h) delivery of a Health Campus that is capable of meeting the 2008 edition of the redundancy planning requirements;
- (i) delivery of a Health Campus that is capable of meeting its undergraduate and post-graduate training requirements and able to support clinical research opportunities within the health setting, to support the Teaching, Training and Research Service described in the Services Specification;
- (j) delivery of an efficient, low maintenance and sustainable Health Campus, the design for which is underpinned by consideration of ecologically sustainable design (**ESD**) and whole of life principles;
- (k) delivery of a Health Campus that integrates seamlessly with the Midland town centre and adjacent facilities and amenities within the Midland Redevelopment Area; and
- (l) delivery of the Health Campus on time and on budget.

The design and construction of the Health Campus must be demonstrably aligned with the Project Objectives and the Health Campus Objectives.

4. Overarching Design Principles

4.1 Evidence Based Design

Research demonstrates that the physical environment can influence well-being, promote healing, relieve pain and stress for Patients and reduce infection rates and Patient falls. It also shows that it can influence medical / nursing behaviours in a way that enables hospital staff to avoid mistakes and increase the effectiveness and efficiency of their time.

The Operator must use elements of EBD in the planning, design and construction of the Public Patient Facility, in an effort to improve Patient safety and outcomes, aid the healing process and reduce stress. Objectives must include but not be limited to:

- (a) reducing rates of hospital-acquired infections through provision of high quality air and water and adequate separation between Patients;
- (b) reducing the potential for clinical errors and increasing staff effectiveness through careful design of work spaces;

- (c) reducing Patients' pain, stress and anxiety levels and reducing the incidence of falls through thoughtful design of bedrooms and other spaces to be used by Patients;
- (d) reducing visitors / families' stress and anxiety levels as a way of enhancing their supportive role in the Patient's healing journey;
- (e) increasing Patients' sleep quality through effective design;
- (f) assisting the Patients' healing process by providing opportunities for exercise and rehabilitation; and
- (g) reducing Patient and visitor disorientation through careful wayfinding.

4.2 Patient-Centric Design

The design of the Health Campus must be developed with a demonstrable focus on 'Patient-centric' design that includes:

- (a) visual and physical linkages to nature and landscape;
- (b) access to daylight and sunlight for Patients;
- (c) a high proportion of single Inpatient Rooms;
- (d) capacity for Patients to control their immediate environment (e.g. lighting, radio and TV);
giving each Patient effective privacy;
- (e) giving each Patient as much visual privacy, and control over it, as is consistent with the need for supervision;
- (f) comfortable accommodation for Patients' families and carers; and
- (g) the ability, where possible, of a service being taken to a Patient rather than the Patient being taken to the service.

5. Site Information

5.1 Site Description

The Site is located south-east of the Midland town centre in the Clayton Precinct of the Midland Redevelopment Area, and is approximately 8 hectares in area with an elongated shape measuring approximately 550m east–west by 140m north–south, and currently vacant.

The Site is bounded to the south by Clayton Street, to the west by Centennial Place, to the east by Lloyd Street and to the north by the existing freight and interstate/regional passenger rail line.

5.2 Site Plan

The Site is Lot 515 on Deposited Plan 50077.

There are two (2) notifications on the title, being for:

- (a) bores and contamination; and
- (b) noise and vibration.

There is a road widening indicated on the title adjacent to the eastern boundary of the Site along Lloyd Street.

There is a memorial registered on the title by the Department of Environment and Conservation recording the site classification under the *Contaminated Sites Act (2003)* (WA).

Deposited Plan 50077 is included in the Information Documents.

5.3 Information Documents

The Information Documents include numerous reports relating to conditions at the Site and the planning requirements for the development.

Where a report is denoted as being available through another Governmental Agency, the Operator must liaise with the relevant Governmental Agency to ensure the most recent update of that report is provided.

5.4 Design Considerations and Constraints

- (a) Geotechnical

The report titled '*Geotechnical Report for Midland Health Campus (GEOTPERT08167AG-AB)*' (February 2011) prepared by Coffey Geotechnics Pty Ltd is included in the Information Documents. This outlines the geotechnical conditions existing at the Site.

The Operator must make all necessary allowances in the design and construction of the Health Campus for the geotechnical conditions at the Site.

- (b) Infrastructure

The Operator must allow for all necessary Infrastructure upgrades for development of the Health Campus including any power, water supply and other utility service upgrades required to support the Planned Expansion and any Further Expansion.

All alterations to the configuration of the adjacent road network that are required to facilitate entry to and egress from the Health Campus development must be undertaken by the Operator as part of the Works. The scope of these works must be agreed between the Operator and the MRA and is expected to include the construction of roundabouts and/or slip lanes for access into the Health Campus and additional lanes or other changes required for the dedicated purpose of hospital emergency vehicles.

The Operator must demonstrate that the Infrastructure will have the capacity to accommodate all anticipated development on the Site as shown on the Master Plan, including the Private Patient Facility, Commercial Facilities and any facilities to be constructed as part of the Planned Expansion and any Further Expansion. The Operator is responsible for all necessary liaison with relevant Authorities and Utility Companies to ensure that the Site has adequate Infrastructure to provide for the overall Health Campus

development, including future development stages as proposed in the Master Plan.

The '*Service Location Plan (GEOTPERT08617AD)*' (February 2011) prepared by Coffey Geotechnics Pty Ltd provides approximate location details for existing Utility Infrastructure and is included in the Information Documents.

(c) Site Remediation

The Site is situated in the north eastern corner of the former Western Australian Government Railways workshops site and was used mostly as shunting yards. Early environmental and geotechnical studies identified the presence of shallow fill covering much of the Site comprising cinder, waste rubble materials such as gravels, crushed rock aggregate and scrap metals. A relatively small portion of the fill was also found to contain limited amounts of contaminants.

The '*Sale Agreement – Eastern Region Hospital*' between the Minister for Health and the MRA includes a requirement for the MRA to Remediate the Site so that it is fit for the Minister for Health's intended use.

The MRA has completed onsite Remediation works and the Site classification has been amended by the Department of Environment and Conservation to "Remediated – Restricted Use" following conclusion of the regulatory process under the *Contaminated Site Act (2003)* (WA).

The following reports are included in the Information Documents:

- (i) 'Detailed Site Investigation and Limited Validation Report: Lot 515, Area E Precinct, Midland (Report ref: EP2010/230, v2)' (5 August 2011) prepared by Coffey Environments Australia Pty Ltd; and
- (ii) '*Lot 515, Area E Precinct, Midland: Mandatory Auditor's Report (Ref: 0121876)*' (September 2011) prepared by Environmental Resources Management Australia.

Irrespective of the Remediation works undertaken by the MRA, the Operator must give consideration to potential exposure risks during construction activities and during development of the ground level landscape design. Such consideration may be based on a risk assessment approach and, in respect of the design, could include measures such as removal of additional soil or ensuring appropriate surface treatment where the exposure risk (or perceived risk) for Hospital Users is deemed to be high (e.g. a children's playground at ground level). A conservative approach must generally be taken where the risk or perceived risk is high or extreme.

(d) Groundwater Contamination

A notification has been placed on the title prohibiting bores due to Contamination. The design, construction and maintenance of the Health Campus must not incorporate the use of groundwater at the Site for any purpose.

Water conservation strategies and water harvesting initiatives are strongly encouraged.

The report titled '*Groundwater Investigation: Lot 515, Area E Precinct, Midland (Report Ref: EP2011/105 V1)*' (13 July 2011) prepared by Coffey Environments Australia Pty Ltd is included in the Information Documents.

(e) Air Quality Buffer

The Site is situated within an air quality buffer zone associated with the Austral brickworks at Bellevue. Depending on which limit is applied, the recommended buffer zones under EPA Guidance Statement No. 3 impact on anywhere from a portion to the whole of the Site.

The Operator must design and construct the Health Campus in cognisance of the air quality conditions prevailing at the Site, including consideration of:

- (i) air quality conditions under varying climatic conditions (such as cloud cover and wind direction);
- (ii) peak conditions (such as during scrubber bypass at the brickworks);
- (iii) the potential for airborne particulates;
- (iv) the potential for aspergillus from dust associated with the nearby brickworks, rendering plant and other industrial emission sources;
- (v) the potential for odours; and
- (vi) perceived air quality issues / concerns of Hospital Users.

This could manifest through Site planning at the Master Plan stage and also through the design of mechanical services (e.g. by careful consideration of the location of air intakes and filtration requirements).

(f) Native Title

The State will retain responsibility for, and assume the risk of, any native title issues arising in respect of, or in connection with, the Site.

(g) Cultural and Aboriginal Heritage

The State will retain responsibility for, and assume the risk of, cultural and Aboriginal heritage approvals in relation to the Site.

Monitoring of excavations is required for all ground disturbing work below a depth of 0.5m. The State will arrange attendance of an archaeologist as required.

The Operator's attention is drawn to the guidance material in respect of recognition of Aboriginal sites which is included in the Information Documents.

(h) Precinct Traffic Assessment

A precinct traffic assessment was commissioned by the MRA to evaluate the forecast traffic conditions around the Health Campus and the workshops precinct giving consideration to the potential impact of planned future upgrades to the local road network.

The report titled '*Midland Health Campus and Railway Workshops Precinct: Precinct Traffic and Transport Assessment*' (v7) (August 2011) prepared by Riley Consulting is included in the Information Documents.

(i) Road Works Impacting the Site

The City of Swan and Main Roads have indicated that Lloyd Street is likely to be extended to meet the Great Eastern Highway Bypass to the south and that an underpass may be constructed to replace the existing level crossing at the rail intersection with Lloyd Street. As part of this work it is proposed to connect Cowie Close into the Site at the north east corner, with this link built at a similar level to the rail line and crossing over Lloyd Street.

Additionally, the Clayton Street / Lloyd Street intersection is likely to be upgraded to accommodate the expected increased future traffic volumes as part of the ongoing upgrade to the precinct street network and the incorporation of improved pedestrian and cycle access.

It is anticipated that all of these works are likely to occur during the D&C Phase or early in the Operational Phase.

(j) Noise and Vibration

Freight and passenger railway lines bisect the Midland Redevelopment Area. Rail noise, particularly from the heavier freight trains which also operate at night, is a significant noise source which impacts on the amenity of noise-sensitive premises.

(i) The Public Patient Facility must be designed and constructed to resist the impacts of vibration caused by freight and passenger rail adjacent to the Site. In particular, the structural design must incorporate all necessary vibration isolation to address ground vibration in accordance with Good Industry Practice. Additionally, vibration mounts must be provided for all vibration sensitive Fixed Building Equipment and Medical Equipment as required.

(ii) In preparing the Master Plan, consideration should be given to the location, protection and orientation of facilities on the Site and the fenestration of façades so as to minimise the vibration effects and noise intrusion caused by rail and other sources. Significant other sources include:

- A. aircraft: Midland is located within an established flight path of Perth Airport and will be affected by the future expansion of a third runway. The noise from low flying aircraft contributes to general ambient environmental noise, primarily for noise sensitive residential premises. Protection from future noise of aircraft should be considered in the design;
- B. police helipad: the helipad is not used frequently. It is used several times a year for most of the day for training exercises. It is understood that WA Police does not foresee any increased use; however, this must be verified by the Operator; and

- C. traffic: major roads contribute to the ambient environmental noise of the area. Lloyd Street and Clayton Street are considered to be the primary sources of intrusive traffic noise for the Health Campus. The Operator must consider the daily traffic noise pattern for these roads together with forecast traffic volumes following upgrades to the surrounding road network.
- (iii) The Operator must implement Best Construction Practices to ensure that the Works are constructed in accordance with the design details specified in the Acoustic Design Report.
- (iv) The Operator must undertake its own assessment of the noise and vibration issues pertaining to the Site, however, the Operator is referred to the following Information Documents for background information:
 - A. the 'Midland Redevelopment Area Helena and Clayton Precincts Noise & Vibration Assessment (ref: 1935-2-03092)' (August 2003) prepared by Herring Storer Acoustics for the MRA;
 - B. Email transmittal (ref: 5999-1-03092) from Herring Storer Acoustics titled 'Clayton North Precinct Use Change to Hospital' and dated 21 April 2006;
 - C. Email transmittal (ref: 6998-1-03092) from Herring Storer Acoustics titled 'Clayton North Precinct Use Change To Hospital (Train Noise)' and dated 15 January 2007; and
 - D. Email transmittal (ref: 7098-1-03092-02) from Herring Storer Acoustics titled 'Midland Health Campus – Train Ground Vibration and Noise' and dated 9 February 2007.

6. Precinct Planning Requirements

6.1 General Requirements

Subject to Clause 9.6 of this Agreement, the urban planning design for the Health Campus must address and incorporate the requirements of the Department and the MRA as articulated in the following planning documents:

- (a) the Structure Plan;
- (b) the Midland Redevelopment Scheme;
- (c) the Midland Health Campus Site Specific Guidelines;
- (d) the draft document titled 'Midland Health Campus And Railway Workshops Precinct: Precinct Traffic and Transport Assessment' prepared by Riley Consulting for the MRA;
- (e) the Heritage Strategy for the Midland Central Redevelopment Area;

- (f) the MRA Policy 2.12 - Noise Attenuation;
- (g) the MRA Policy 2.6 - Car Parking¹ to the extent that it does not limit any Key Approval to be obtained from the LARU; and
- (h) the MRA Draft Planning Policy, Public Art.

In addition to the above, the Operator is encouraged to liaise with the MRA to obtain an understanding of the planning direction for the broader Midland Redevelopment Area, including an appreciation of the following the MRA policy and strategy documents which should also be considered in the urban planning design response:

- (a) the Midland Metro Concept Plan 2010;
- (b) the Midland 2017 - The Challenge; and
- (c) the draft Midland City 2041.

6.2 Metropolitan Redevelopment Authority

The MRA is the determining Authority for Development Applications.

6.3 City of Swan

The Site is located within the municipality of the City of Swan. Whilst the City of Swan is not the determining authority it will act as a referral agency to the MRA and may recommend conditions so as to ensure the Works do not impact significantly on the public's quiet enjoyment of the city.

Without limiting Clause 9.1 of this Agreement, the Operator must obtain all necessary Authorisations from the City of Swan associated with undertaking the Works, including obtaining hoarding licences and other such requirements.

6.4 Heritage Council of Western Australia

The Railway Workshops is one of many cultural heritage sites in the Midland Redevelopment Area. It holds a special place in the State's industrial, economic and social history.

The Site is located within the Clayton Precinct which is the part of the former Railway Workshops, and as such, redevelopment of the Site should have regard to the heritage value of the adjacent building stock, including the Flanging Shop and Blocks 1, 2 and 3, whilst also acknowledging the former use of the Site itself.

The Heritage Council of Western Australia will act as a referral agency and have an advisory role to the MRA. They may recommend conditions so as to ensure that the development of the Health Campus respects and preserves heritage values within the area.

¹ This policy is generally applicable to the Project except to the extent that car parking requirements are addressed within the Midland Health Campus Site Specific Guidelines or the requirements are clearly intended to apply to specific forms of development not provided on the Health Campus. The Operator should seek clarification in respect of the applicability of specific car parking requirements from the MRA.

6.5 Development Application

Without limiting Clause 9.1 of this Agreement, the Operator must submit a Development Application to the MRA for the purpose of obtaining Development Approval for the Health Campus prior to commencement of the Works and the Private Works on the Site. Early engagement with the MRA is encouraged.

6.6 Building Licence

Without limiting Clause 9.1 of this Agreement, the Operator is responsible for engaging an independent building surveyor to undertake certification of design and construction compliance and obtain progressive building permits for the Works as required during construction and an occupancy permit for the completed Works from the relevant Permit Authority. Notwithstanding any certificate of design or construction compliance issued by the building surveyor or any building or occupancy permit issued by the Permit Authority under the *Building Act 2011* (WA), the Approval to Construct and the Approval to Occupy must also be obtained prior to any construction works or occupation of the Public Patient Facility respectively.

6.7 Other Authorisations

Without limiting Clause 9.1 of this Agreement, the Operator must obtain all other necessary Authorisations required for the development and subsequent operation of the Health Campus including Authorisations from:

- (a) Licensing and Accreditation Regulatory Unit (**LARU**);
- (b) Department of Health, Public Health;
- (c) Fire and Emergency Services Authority of Western Australia (**FESA**);
- (d) Utility Companies;
- (e) Radiological Council of WA (for registration and licencing);
- (f) Therapeutic Goods Administration (**TGA**);
- (g) Department of Mines and Petroleum (for dangerous goods licencing); and
- (h) adjoining land owners.

All fees and charges associated with Authorisations are the responsibility of the Operator.

6.8 Structure Plan

The State has prepared the Structure Plan in consultation with the MRA for the purpose of informing the Master Plan and the design of the Health Campus. The Structure Plan is intended to convey the key planning principles to guide development; it is not intended to convey a preferred design response nor is it intended to limit the creativity of the Operator in developing the Master Plan.

The Structure Plan has been provided to the MRA to confirm its 'in principle' support. There is no statutory requirement under the Midland Redevelopment Scheme for formal adoption of the Structure Plan by the MRA.

6.9 Flexible, Adaptable, Expandable and Future Proofed Design

- (a) All buildings within the Health Campus must be designed to maximise capacity for flexible use, future adaptation and expansion to both health related and non-health related re-use during the projected 50 year Service Life of the Health Campus. Both individual building configuration and planning, and the relationship between adjacent buildings can build in potential flexibility and adaptation of use over time. Changes to facilities must be possible with minimal disruption to Services delivery.
- (b) Consideration must be given to floor levels between buildings, particularly where buildings are linked and/or proposed to be linked as part of any Expansion Works, to eliminate or minimise the requirement for gradients on public and staff / service access routes.
- (c) The concepts of open ended planning, sharing of rooms, overflow design and modular planning must be incorporated during the Schematic Design Stage to ensure long term flexibility and expandability. Strategies may include:
 - (i) locating primary circulation routes so that they can continue to be extended beyond the building line;
 - (ii) ensuring that major areas of immovable plant, egress stairs, shafts and operational facilities such as loading dock are wherever possible located in positions that will not prevent or be adversely affected by changes of configuration or unduly limit the Planned Expansion, and any Further Expansion;
 - (iii) locating clinical departments that are expected to expand significantly with time next to 'soft' spaces or at the building's perimeter to provide an area to expand into;
 - (iv) at the departmental level, sharing of facilities between adjacent units (e.g. providing common non-clinical support areas, clinical support areas and/or Patient and visitor amenities between adjacent Inpatient Units or providing 'swing beds' between Inpatient Units);
 - (v) modular design that enables functions of areas to be completely replaced with an alternative use that fits into the same standard module / structural grid; and
 - (vi) ensuring that rooms are generic where practicable to enable changes in use on a routine basis or over time (e.g. creating typical outpatient pods that can accommodate multi-disciplinary use).
- (d) Spatial planning in building service plant rooms, risers and ducts must allow for additional building and technology services.
- (e) Floor to ceiling heights must be as required for the activities and Equipment used in the various areas and must wherever possible achieve the recommended ceiling heights (in lieu of the minimum ceiling heights) in the Private Hospital Guidelines - Guidelines for the Construction, Establishment and Maintenance of Private Hospital and Day Procedure Facilities,

Licensing and Accreditation Regulatory Unit, Department of Health Western Australia. There must be adequate service spaces above ceilings which are zoned as required to facilitate the coordination of Building Engineering Services with each other and with structural elements.

6.10 Flexibility and Expansion Report

The Works as outlined in the Project Documents represent the first stage of the Health Campus development.

During the Service Life of the Health Campus (as set out in section 9.1 of these Health Campus Requirements below), various building alterations and Expansion Works may be reasonably anticipated as a result of proposed changes to the Role Delineation and/or Casemix Plan, and as a result of changes in clinical and operational practice.

The Planned Expansion of the Health Campus development is expected to be progressed early in the life of the Public Patient Facility, and may occur in a progressive / staged manner or alternatively as a single stage expansion. It is likely to involve the expansion of Health Services at the Health Campus to provide approximately 450 beds for Public Patients and related ambulatory care, procedural and diagnostic services to meet projected demand for the Catchment Area in 2020/21.

Accordingly, some allowances must be made for this and any Further Expansion as part of this current stage of development.

As a guiding principle with respect to determining these allowances, future development stages must be able to be delivered cost effectively and with minimal impact on delivery of the Services and operation generally of the Public Patient Facility.

6.11 Planning Principles

The Health Campus is located adjacent to Midland's town centre and forms part of the city's multiple precinct urban heart. The adjacent railway corridor imposes a number of access constraints on the Site which will require strategic planning and management of vehicular and pedestrian movement in and around the Health Campus.

(a) The following planning principles, along with the Structure Plan and other planning documents, should guide the planning and design of the Health Campus. The successful resolution of these principles will require a coordinated approach by the Operator and input from a range of Key Users and Governmental Agencies.

(i) Site

- A. Incorporate ESD principles in the Health Campus design (refer to section 7.6 of these Health Campus Requirements below);
- B. Incorporate Crime Prevention through Environmental Design (CPTED) principles throughout the Health Campus, and particularly at external landscaped locations and carparks;

- C. Ensure areas of the Health Campus are held as landscape and open space throughout future stages of development to preserve the 'healing gardens' aspect of the Health Campus;
- D. Ensure the safety of Patients, visitors and staff in the design and location of and access to facilities on the Site;
- E. Avoid the incremental growth of scattered facilities on the Site;
- F. Limit at-grade parking for the ultimate development to ensure adequate provision of landscape spaces to the extent that it does not limit any Key Approval to be obtained from the LARU;
- G. Separate service areas of the Site to exclude public access;
- H. Provide clear wayfinding to assist stressed or distressed Patients and visitors and incorporate user appropriate wayfinding strategies to respond to a variety of disabilities and impairments. Building design, landmarks and signage should clearly direct visitors throughout the Health Campus and along access routes;
- I. Consider providing a meeting place or square to help visitors orientate themselves on the Health Campus;
- J. Develop a landscape character for the Health Campus that provides visual interest and environmental comfort;
- K. Include a sensory aspect to the landscape to stimulate and calm the senses;
- L. Provide outdoor areas for Patients (concept of 'healing gardens');
- M. Provide rehabilitation and mental health units with access to private outdoor spaces;
- N. Provide attenuation from rail noise and vibration in outdoor spaces, provided for a clinical function (e.g. Mental health and Rehabilitation); and
- O. Consider providing staff amenities that will enhance the workplace and aid in attraction and retention of staff.

(ii) Access

- A. Create a strong and welcoming sense of arrival logically connected to the vehicular and pedestrian circulation network, including separate arrival points for emergency (ambulance and visitors) from general admissions and associated site facilities;

- B. Encourage public transport usage (bus and rail) through provision of comfortable, well landscaped pedestrian links to public transport nodes;
- C. Identify main and emergency entrances from surrounding streets, and locate service areas away from public entrances;
- D. Provide separate (where possible) and safe vehicle access for emergency, service, visitor and staff vehicles;
- E. Locate Patient and visitor parking and set-down so that they are visible and accessible from surrounding roads and main entrances;
- F. Provide bicycle end of trip facilities and effective links to the regional cycle network, including public bicycle racks at the main public entries to the Public Patient Facility;
- G. Review parking demand at each development stage with the objective of limiting overall parking provision on the Clayton precinct, to the extent that it does not limit any Key Approval to be obtained from the LARU;
- H. Allow for potential shuttle (e.g. CAT) bus servicing Midland train / bus station, the Health Campus, Midland Gate shopping centre and other nodes within the Midland strategic regional centre;
- I. Incorporate universal access principles in Health Campus design;
- J. Locate staff parking away from public entrances with direct and safe access into buildings;
- K. Create an address / approach to the Health Campus which optimises potential linkages to the town centre and relationships to adjacent heritage buildings and the consolidation of the western side of the Health Campus as a major new urban precinct;
- L. Develop linkages between the Health Campus and other health facilities and short stay accommodation opportunities within the environs of the Health Campus (e.g. Super GP clinic);
- M. Consider the potential for basement or overhead links across the railway reserve which relate to the street grid in Midland, and which facilitate pedestrian access to Midland town Centre and Midland Train / Bus Transfer Station;
- N. Incorporate planning strategies which reinforce connections to the proposed new railway station site adjacent to Centennial Place; and

- O. Provide taxi ranks and taxi call facilities at the main Patient / visitor entries to the Public Patient Facility.

(iii) Urban Context

- A. Develop a civic and symbolic presence within Midland and the Clayton Precinct offering good built form which fits within the contextual setting and strong access relationships with the Midland town centre, public transport nodes and synergistic developments (e.g. Super GP clinic);
- B. Develop an activated streetscape offering visibility to internal activities and ground level activity to the extent that the requirements of clinical function and patient privacy allows (including public uses such as shops and open space);
- C. Provide a streetscape incorporating “civic” quality landscape treatments to create an active and welcoming environment;
- D. Provide primary address points and street activation on both Centennial Place and Clayton Street;
- E. Recognise the vista east along Yelverton Drive and incorporate this in the planning strategy for the Health Campus;
- F. Respect the heritage setting of the railway workshops;
- G. Recognise views to the hills, across Midland and to the Helena River from upper storeys of the Public Patient Facility;
- H. Provide public art installations that are integrated into the overall design of the Health Campus (urban design elements and buildings) and that reflect and interpret the activities on the Health Campus and the surrounding context; and
- I. Provide a safe, attractive pedestrian environment linking seamlessly with surrounding streets and open spaces.

(iv) Built Form

- A. Create a civic presence for the Health Campus as a major community facility;
- B. Recognise the different health functions within the building and articulate these in the façade design through changes in form, fenestration and the like;
- C. Develop scale and character to the buildings and grounds that offers a friendly, non-institutional and accessible place for the Swan regional community;

- D. Generally develop the Site to create street edge building frontages (rather than backs) to all Site boundaries including the railway reserve to the north and define corners of development. This planning strategy may include allowance for narrow landscaping zones within the site to improve streetscape and landscape amenity;
- E. Provide for logical expansion in construction including standard modules for flexibility of department sizes;
- F. Design subsequent phases of the Health Campus so that they have a complimentary and consistent architectural and urban design aesthetic;
- G. Respect surrounding heritage buildings with building scale that does not dominate;
- H. Design deck parking structures (if deck parking is provided) with complimentary architectural qualities to the other facilities on the Health Campus;
- I. Provide weather protection using verandas, colonnades and active façades along frontages that provide access to pedestrian and set-down entrances;
- J. Provide attenuation from rail noise and vibration in building construction and locate sensitive uses appropriately having regard for intrusion of externally generated noise;
- K. Orientate and proportion buildings to provide solar access and avoid overshadowing to both internal and external areas; and
- L. Create a safe and appealing place that will attract and retain staff.

7. General Design and Construction Requirements

7.1 Overarching Requirements

- (a) The design and construction of the Health Campus must comply with the Quality Standards.
- (b) The design of the Health Campus must be undertaken in accordance with Good Industry Practice.
- (c) The construction of the Health Campus must be undertaken in accordance with Best Construction Practices.
- (d) The Health Campus must be Fit For Purpose.

7.2 Key User Consultation

A critical success factor for the Project will be the relationships formed with the Key Users, and in particular Hospital Users that will ultimately work in and/or access Services within the Public Patient Facility.

The State places a high level of importance on stakeholder engagement throughout all phases of the Project, with an emphasis on regular interaction throughout all stages of design, to ensure that the Public Patient Facility meets the requirements of its end users.

The Operator must consult Key Users in the development of the Public Patient Facility and the broader Health Campus design.

A formal user group process must be established for all clinical, clinical support and non-clinical functions (and for sub-functions where appropriate) to ensure operational input into the design.

7.3 Facility Planning & Licensing Requirements

The LARU is the primary health review authority. In addition to standards published by the LARU, several other guidelines will also apply. The Operator must consult the LARU to determine which relevant standards and guidelines (and sections) apply. As a minimum, the following will apply:

- (a) all standards published by the LARU, Department of Health Western Australia, including:
 - (i) Private Hospitals - Licensing Standards for Assessing the Suitability of a Licence Applicant or a Licence Holder, Licensing Accreditation and Regulatory Unit, Department of Health Western Australia;
 - (ii) Private Hospital Guidelines² - Guidelines for the Construction, Establishment and Maintenance of Private Hospital and Day Procedure Facilities, Licensing Accreditation and Regulatory Unit, Department of Health Western Australia;
 - (iii) Private Hospitals - Licensing Standards for the Arrangements for Management, Staffing and Equipment, Licensing Accreditation and Regulatory Unit, Department of Health Western Australia; and
 - (iv) Western Australia Health Facility Guidelines for Engineering Services (2006), Licensing Accreditation and Regulatory Unit, Department of Health Western Australia
 - (v) http://www.health.wa.gov.au/hrit/docs/procedures/WA_HFG_for_Engineering_Services_2006.pdf;
- (b) Australasian Health Facility Guidelines (**AHFG**)

² Except Section E, which is superseded by the document titled 'Western Australia Health Facility Guidelines for Engineering Services' (2006).

<http://www.healthfacilityguidelines.com.au/>;

- (c) Western Australia Health Facility Guidelines for Infection Control, Revision 1, March 2007

http://www.health.wa.gov.au/hrit/docs/procedures/WA_HFG_for_Infection_Control_2006.pdf;

- (d) HB260: Hospital Acquired Infections - Engineering Down the Risk (Handbook), Standards Australia; and

- (e) Redundancy and Disaster Planning in Health's Capital Works Program, Department of Health Western Australia; requirements for a Group 2 hospital

<http://www.public.health.wa.gov.au/cproot/2540/2/Redudancy%20and%20Disaster%20Planning.pdf>.

7.4 General Facility Requirements

The Public Patient Facility must comply with all relevant Quality Standards, Laws, State policies and Department policies and operational directives, as may be amended from time to time, including:

- (a) Australian Standards, Standards Australia;
- (b) The Building Code of Australia (**BCA**);
- (c) The Commonwealth Disability Discrimination Act (**DDA**);
- (d) Green Star Healthcare Rating Tool, Green Building Council of Australia (**GBCA**);
<http://www.gbca.org.au/green-star/rating-tools/green-star-healthcare-v1/1936.htm>;
- (e) Access and Parking Strategy for Health Campuses in the Perth Metropolitan Area, July 2010, Department of Health Western Australia
http://www.health.wa.gov.au/parking/docs/Access_and_Parking_Strategy_Web.pdf;
- (f) Healthy Options WA: Food and Nutrition Policy for WA Health Services and Facilities, April 2009, Department of Health Western Australia
<http://www.health.wa.gov.au/circularsnew/attachments/390.pdf>;
- (g) End of Trip Facilities in Government Buildings: for Cyclists, Bikewest, Department of Transport Western Australia
http://www.transport.wa.gov.au/mediaFiles/cycling_end_of_trip.pdf; and
- (h) Designing Out Crime Planning Guidelines, WA Planning Commission, June 2006
<http://web.archive.org/web/20071021222110/www.wapc.wa.gov.au/Publications/896.aspx>.

7.5 Other Requirements

The list of Quality Standards, Laws, State policies and Department policies included in sections 7.3 and 7.4 of these Health Campus Requirements above is not intended to be exhaustive but provides an indication of the primary reference documents that must inform the design and construction of the Health Campus.

7.6 Ecologically Sustainable Development (ESD)

It is the State's intention that all public infrastructure projects, including the Health Campus, are designed, constructed, maintained and operated to achieve a high level of environmental sustainability. It is also the State's strong preference that any Private Patient Facility and Commercial Facilities achieve similar standards.

- (a) The ESD objectives are to:
 - (i) deliver the Health Campus with minimal impact on the Environment during both construction and operation;
 - (ii) promote efficiency in all aspects of the design;
 - (iii) minimise impact on the Environment during the Operational Phase through minimisation of greenhouse gas emissions, waste and energy and water consumption;
 - (iv) provide Infrastructure and Building Engineering Services that are adaptable to change and capable of supporting the Planned Expansion and any Further Expansion without significant alteration, and with minimal disruption to delivery of the Services;
 - (v) minimise vehicle dependency through provision of facilities for pedestrians and cyclists and through maximising the utilisation of public transport by ensuring convenient access to public transport nodes;
 - (vi) investigate the use of renewable energy sources within the design, and incorporate such initiatives where feasible;
 - (vii) minimise waste sent to landfill through minimisation of waste generation and maximising recycling of waste; and
 - (viii) promote sustainability principles with Health Campus stakeholders and the wider community.
- (b) The design and construction of the Health Campus must be demonstrably aligned with the ESD objectives.
- (c) The Health Campus must be designed and constructed to achieve a minimum 4 star Green Star rating in accordance with the GBCA Healthcare Rating Tool and the Operator is encouraged to incorporate design initiatives which return savings on the basis of whole of life considerations. Certification of Green Star compliance through the GBCA is not required, however, the Operator must demonstrate, through a recognised specialist in the field, that it has provided adequate policies and design features to achieve a minimum of a 4 star Green Star rating.

- (d) The Operator must ensure that the design and construction of the Health Campus incorporates ESD Initiatives that deliver a highly efficient and environmentally sustainable outcome. In determining the ESD Initiatives for the Project, the Operator must select initiatives that will deliver tangible Environmental benefits to the Health Campus and/or the wider community.

7.7 Whole of Life Design

- (a) The design of the Public Patient Facility must address the economic needs of each building over its Service Life through application of whole of life design principles to ensure:
 - (i) staffing efficiency;
 - (ii) minimisation of operating costs for Building Engineering Services systems, Fixed Building Equipment and Equipment;
 - (iii) durability;
 - (iv) minimisation of maintenance and refurbishment costs;
 - (v) minimisation of equipment replacement costs;
 - (vi) minimisation of cleaning costs;
 - (vii) minimisation of energy and water usage; and
 - (viii) minimisation of waste generation.
- (b) The layout of the Public Patient Facility must seek to maximise operational efficiency and therefore minimise operating costs. This may be achieved in several ways including:
 - (i) promoting staff efficiency through careful schematic design of Functional Units during the Schematic Design Stage, including by minimising travel distances between frequently used spaces;
 - (ii) making efficient use of space by locating support areas so that they may be shared by adjacent Functional Units; and/or
 - (iii) incorporating multi-purpose areas within the design.
- (c) The use of controlled natural light and ventilation to offset the cost of artificial illumination and environmental management must be incorporated to the extent that it is not detrimental to the delivery of a safe health service.
- (d) The selection of materials and finishes must minimise the costs associated with ongoing repair and maintenance. In particular, materials and finishes should be selected, detailed and installed to resist the effects of accidental and intentional damage.
- (e) The spatial and fabric impact of the engineering solutions to whole of life design should be integrated into the architectural solution.

7.8 Safety in Design

Safety and security of Hospital users is of the highest priority and must be considered at every stage in the planning and design of the Public Patient Facility and the broader Health Campus.

7.9 Crime Prevention through Environmental Design (CPTED)

Research into safety and urban design has informed the establishment of accepted design principles which underpin successful urban design outcomes. CPTED has now been adopted by planning and crime prevention bodies both internationally and in Australia.

- (a) Key CPTED principles which should be demonstrably incorporated into the design of the Health Campus include:
 - (i) access and movement: places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security;
 - (ii) structure: places that are structured so that different uses do not cause conflict;
 - (iii) surveillance: places where all publicly accessible spaces are overlooked;
 - (iv) ownership: places that promote a sense of ownership, respect, territorial responsibility and community;
 - (v) physical protection: places that include necessary, well-designed security features;
 - (vi) activity: places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times; and
 - (vii) management and maintenance: places that are designed with management and maintenance in mind, to discourage crime in the present and the future.
- (b) In considering the provision and design of security features of known higher risk areas, such as emergency and pharmacy departments, the Operator should find a reasonable balance between the Health Campus Objective of providing a welcoming facility for Patients and visitors while providing physical protection for staff.

7.10 Building Information Modelling (BIM)

Whilst it is not a formal requirement, the use of BIM documentation to assist in design development and coordination is strongly encouraged.

The Operator is also encouraged to consider the facilities management benefits and opportunities of a fully integrated BIM documentation strategy.

7.11 Consistency of Nomenclature

The Operator must ensure that the Design Documentation is prepared with consistent nomenclature within each discipline, and to the extent practicable, between disciplines. This applies to:

- (a) room naming and numbering protocols;
- (b) use of symbols and codes to denote furniture, fittings and equipment;
- (c) use of symbols and codes to denote individual components of each of the Building Engineering Services;
- (d) numbering and lettering (grids, dimensions and references); and
- (e) abbreviations and the use of acronyms.

7.12 Room Numbering and Room Naming Protocol

The Operator must develop and implement a room numbering and room naming protocol early during the Schematic Design Stage. The protocol should be logical / intuitive and flexible, and be developed giving consideration to wayfinding and operational requirements (e.g. alignment of bed numbers with emergency / nurse call and building management systems).

7.13 Standardisation

Standardisation is an important and effective means of improving efficiencies and reducing errors (in both construction and operation), and ensuring the effective use of space and accommodation facilities.

Standardisation of room design, dimensions, materials, Fixed Building Equipment and Equipment enables improved efficiencies in procurement and can assist in independence from single suppliers. A further benefit of repeatability is reduced construction errors and an improved quality outcome from construction.

Standardisation of space utilisation, layout, furnishings, services panels and Equipment within and between the Public Patient Facility and the Private Patient Facility can lead to increased productivity and safety and can also reduce training requirements. It is particularly beneficial for contract / agency personnel who do not work at the Public Patient Facility on a full time basis.

The Operator must demonstrate that the principles of standardisation are carried throughout the design process and incorporated into all Design Documentation for the Public Patient Facility, including in particular the Room Data Sheets and the Kit of Parts.

7.14 Samples and Prototypes

- (a) The Operator must demonstrate that the performance requirements of these Health Campus Requirements will be achieved in construction. To this end the Operator must establish a process whereby samples are reviewed with Key Users, including clinical, infection control, facilities management and other relevant staff. Examples of samples that must be reviewed include, but are not limited, to:
 - (i) items of high individual value (e.g. pan sanitisers / macerators);

- (ii) items of lower value that are used in large numbers (e.g. door hardware);
 - (iii) sanitary fittings, hand basins, sinks, tapware and other hydraulic fittings;
 - (iv) interior finishes; and
 - (v) light fittings.
- (b) The Operator must implement a process for ensuring the quality and consistency of external and internal building finishes and fabricated items. Control samples must be agreed for major façade elements and special design features / items including:
 - (i) precast walls, addressing:
 - A. consistency of surface finish (flatness, regularity of aggregate, colour variability); and
 - B. joint types and finish;
 - (ii) cladding materials, addressing:
 - A. consistency of surface finish (surface undulation or pattern regularity, colour); and
 - B. joint types and finish;
 - (iii) external and internal architectural design features which are reliant on quality and consistency of material or workmanship to deliver an architectural outcome, including feature walls or floors in public areas constructed of stone products, timber products, pressed metal and the like to demonstrate the accepted variability of product (e.g. variability of grain and colour in timber or stone) and installation standard (i.e. workmanship for specified laying / install method, proposed extent of grain and colour matching between adjacent panels / boards / sheets); and
 - (iv) elements of the design which are highly repetitious, which if installed incorrectly are costly or time consuming to fix or for which functionality is paramount, as determined by the Operator and/or nominated by the State. Examples may include:
 - A. falls to floor waste for ensuites to Inpatient Rooms;
 - B. bed services panels for Inpatient Rooms; and
 - C. joinery units which appear in high quantities throughout the design.
- (c) While it is not a formal requirement of these Health Campus Requirements or this Agreement, the Operator may consider construction of prototypes and prototype rooms during the early stages of the Detailed Design Stage. Construction and review of prototypes will assist in:
 - (i) avoiding costly errors;

- (ii) determining the quality of finish to be achieved;
- (iii) validating / refining design;
- (iv) communicating the design to Key Users and confirming their understanding and support; and
- (v) ensuring design meets operational objectives.

8. Functional Requirements

8.1 Models of Care

The design of the Public Patient Facility and the broader Health Campus should enable the Operator to implement models of care that provide:

- (a) safe, high quality, Patient-centred care, integrated in the overall public health system;
- (b) multidisciplinary care and treatment of Patients at the Health Campus;
- (c) ability to accommodate an increase in the level of acuity at the Health Campus;
- (d) continuity of care within the community;
- (e) innovation in service delivery;
- (f) strategic linkages with other local and area-wide services; and
- (g) a shift from Inpatient care to community based care.

8.2 Size of the Facility

- (a) The Public Patient Facility and each Functional Unit within the Public Patient Facility must be designed so that it is suitably sized to:
 - (i) enable delivery of the Services in accordance with the Role Delineation specified in the Services Specification, the Casemix Plan and the Performance Thresholds;
 - (ii) accommodate all items of Fixed Building Equipment, Medical Equipment, Non-Medical FF&E and Consumables with appropriate space for operational management and maintenance;
 - (iii) accommodate plant, travel and circulation; and
 - (iv) accommodate motorised equipment for carrying out Non-Clinical Support Services if required (e.g. use of automatic guided vehicles (**AGVs**));
- (b) Whilst the AHFG may be used as a guide in determining room sizes and making provision for plant, travel and circulation within the Public Patient Facility, compliance with the AHFG is a minimum standard and may not meet the requirements of other codes / operational requirements. Approval to Construct and Approval to Occupy will be based on the statement of function and will be at the discretion of the LARU.

8.3 Functional Planning

- (a) The main entrance to the Public Patient Facility should be clearly identifiable from the north western approach to the Health Campus for persons arriving via rail. Ground level access must be provided for the main entrance and the Emergency Department.
- (b) The internal planning of the Public Patient Facility should be unambiguous, intuitive and easily navigated with a reduced reliance on signage or staff assistance.
- (c) Circulation routes must be suitably wide to allow full accessibility for all Hospital Users and all functions occurring within the zone (e.g. must be universally accessible and must allow for movement of beds, must accommodate passing of wheelchairs).
- (d) The circulation pattern should be clear, logical and obvious to promote natural wayfinding. It must have regard to all Hospital Users, take into account differing Patient clinical requirements and disabilities and should provide the initial means of preventing Patients and visitors from unintentionally entering staff / restricted areas.
- (e) The layout of the Public Patient Facility must attempt to separate Inpatient and staff flows from Outpatient and visitor flows.
- (f) Within each Functional Unit, the functional planning must ensure maximum access to natural light, external views and outdoor areas having regard for the nature of the activity within the Functional Unit.
- (g) The functional relationships between clinical, clinical support and non-clinical functions with the Public Patient Facility are not prescribed however the blocking and stacking of Functional Units should allow for the efficient delivery of the Operator's proposed model of care.
- (h) Reception and waiting areas for each Functional Unit should be easily recognisable and logically positioned (e.g. close to the point of arrival to the Functional Unit(s)). These areas should be appropriately sized for the expected volume of Patients and visitors. Access to natural light and external views is highly desirable in these areas.
- (i) Safe and convenient access must be provided to and from carpark areas for all Hospital Users. Where feasible, this access should be weatherproof.
- (j) Service, delivery and waste management routes must be clearly established throughout the Health Campus (and in particular the Public Patient Facility) so that all areas can be serviced with minimal disruption to the delivery of the Health Services and with minimal visibility of service functions.

8.4 Patient and Visitors with Special Needs

Midland has a higher than average representation of both Aboriginal and multi-cultural community members within the Catchment Area, as well as a diverse socio-economic demographic. Additionally, the Public Patient Facility will provide services to the usual mix of people within the community including people of all ages, people of varying sizes (including obese, severely and morbidly obese Patients), pregnant women,

people with varying disabilities, mental health Patients and Corrective Services Patients.

- (a) The Health Campus, and particularly the Public Patient Facility, must provide an environment which is inclusive, accessible and welcoming to all members of the community.
- (b) The design must consider the special requirements of Patients and visitors with special needs, including:
 - (i) the elderly (refer also to section 8.5 of these Health Campus Requirements below);
 - (ii) cultural groups of varying ethnicity, and particularly the Aboriginal community (refer also to section 8.6 of these Health Campus Requirements below);
 - (iii) obese, severely obese and morbidly obese persons (refer also to section 8.7 of these Health Campus Requirements below);
 - (iv) persons with mental health conditions (refer also to section 8.8 of these Health Campus Requirements below);
 - (v) children, including paediatric Patients (refer also to section 8.9 of these Health Campus Requirements below); and
 - (vi) pregnant / breastfeeding women, including obstetrics Patients (refer also to section 8.10 of these Health Campus Requirements below);
 - (vii) rehabilitation Patients (refer also to section 8.11 of these Health Campus Requirements below);
 - (viii) cancer Patients (refer also to section 8.12 of these Health Campus Requirements below);
 - (ix) Corrective Services Patients (refer also to section 8.13 of these Health Campus Requirements below);
 - (x) persons with disabilities, including varying degrees of temporary and permanent disablement, visual impairment, hearing impairment and development / intellectual disability (refer also to section 8.14 of these Health Campus Requirements below);
 - (xi) persons with varying religious beliefs; and
 - (xii) persons with linguistic difficulties.
- (c) Design principles and features which should be demonstrably incorporated into the design include:
 - (i) access to the Public Patient Facility that considers the specific requirements of each of the above groups;
 - (ii) convenient access to public transport nodes and the visitor carparking areas;

- (iii) protection from the elements at entry / exit locations, drop-off zones, external courtyard / passive recreation areas;
- (iv) ensuring the Public Patient Facility is user friendly and comfortable;
- (v) access to natural light and vistas from major public circulation areas and Inpatient Rooms, and Patient treatment areas where practicable;
- (vi) access to the external environment and fresh air where possible to enable connection with the outdoors / natural environment;
- (vii) a mix of seating types and configurations in public waiting areas to cater for the expected mix of users from the community (e.g. varying cultural requirements, stature, weight and mobility);
- (viii) facilities for parents with babies, such as baby change rooms and quiet and private areas for feeding and caring;
- (ix) wayfinding and signage that is clear, and appropriately incorporates symbols with wording for ease of understanding;
- (x) visual links between related Functional Units and areas;
- (xi) access to religious texts (such as the bible and koran), religious services and reflective / contemplative places for worship;
- (xii) hearing loops where appropriate; and
- (xiii) ensuring the safety and security of all Patients, visitors and staff.

8.5 Elderly Patients

The elderly often display diminished visual acuity, mobility, balance and physical strength.

Special design considerations for elderly Patients which should be considered by the Operator in the design of the Public Patient Facility and the broader Health Campus include:

- (a) parking close to major entrances and covered drop-off areas;
- (b) wayfinding and signage (with appropriate contrasting colour, lettering size and font type), with adequate lighting / glare reduction, and use of other orientation cues;
- (c) use of colour and finishes to emphasise what is important / what is not important from the Patient's perspective and identify landmarks / de-identify restricted access areas;
- (d) proper lighting (e.g. various degrees of illumination, glare reduction strategies, prevention of shadows and distorted features, natural light wherever possible, ability to control bedroom lighting);

- (e) flooring to accommodate reduced vision and prevent falls (e.g. avoid the use of strong patterns and sharp colour contrasts, particularly at thresholds and ensure slip resistant);
- (f) handrails designed to accommodate reduced mobility, balance and physical strength;
- (g) doorway widths to accommodate two people walking side by side with mobility aids (e.g. wheelchair or walker);
- (h) furniture designed for safe seating (e.g. height, colour, texture, arm rests, seat angle) to promote the opportunity to sit and stand without assistance;
- (i) space to walk and move independently, with or without mobility aids;
- (j) Inpatient beds located in close proximity to toilets / bathrooms;
- (k) careful design of bedrooms to reduce falls risk, with storage that is located between shoulder and knee height;
- (l) bathrooms designed to aid access and independent self-care (e.g. slip resistant flooring, grab bars, space for manoeuvrability of large equipment, adequate lighting, easy to use fixtures);
- (m) accessible equipment to compensate for disabilities and promote self-care (e.g. adjustable height beds, walkers / mobility aids of various types, bed / chair alarms, patient lifters);
- (n) sufficient storage space for larger equipment to prevent / reduce clutter in corridors; and
- (o) areas for walking and locations to walk to, including rest areas and spaces for socialisation, functional assessments and allied health therapies.

8.6 Cultural Groups

- (a) It is incumbent on the Operator to embrace the cultural requirements, understand the Aboriginal concepts of design and landscape and incorporate design features appropriate to Aboriginal people specifically and other cultures generally. The Operator is expected to make a genuine effort to incorporate the following design principles and features into the design of the Public Patient Facility and the broader Health Campus:
 - (i) specific cultural requirements pertaining to Hospital Users from rural / semi-rural communities;
 - (ii) culturally appropriate gathering and waiting areas which enable interaction with other groups or withdrawal;
 - (iii) accommodation of an Aboriginal liaison service in a location that is prominent and appropriate for the service, with access to external gathering areas and withdrawal areas where possible;
 - (iv) incorporation of cultural symbols into the development, in internal and external public areas, landscaped areas, built form, artwork and finishes;

- (v) incorporation of familiarity elements that enable positive associations to be created between people and place, which may be achieved through use of colour, light, plants, artworks, materials, sounds and images;
 - (vi) provision of culturally appropriate amenities, ensuring privacy and gender separation;
 - (vii) provision of culturally appropriate bereavement areas;
 - (viii) provision of culturally appropriate outdoor areas with special consideration in the landscape design (e.g. through recognition of the importance of the six (6) Noongar seasons);
 - (ix) ensuring the sustainability of the environment by respecting “Boodjar” (country); and
 - (x) ensuring opportunities for Aboriginal artists to participate in the Percent for Art projects undertaken as part of the Western Australian State Government Percent for Art Scheme in collaboration with other Aboriginal artists and with non-Aboriginal artists.
- (b) The Operator must also consider the implications of the Aboriginal Cultural Respect and Security Framework which is included in the Information Documents, and a demonstrable effort should be made to incorporate the design initiatives detailed within this framework.
- (c) The Operator must give consideration in the design to the cultural requirements and beliefs of all ethnic groups. The design must endeavour to embrace the different values and respect the dignity of all ethnic groups that form part of the WA population.

8.7 Bariatric Patients

Obesity across all age groups is becoming an increasing problem within the community. Special design considerations must be made for obese (BMI over 30), severely obese (BMI of over 35) and morbidly obese (BMI of over 40) Patients.

- (a) The design of the Public Patient Facility must incorporate features to accommodate bariatric Patients and visitors. Provision for bariatric Patients must be made on the basis of expected volumes recognising the increasing incidence of obesity.
- (b) Special design features which must be considered by the Operator include:
- (i) integration of bariatric Inpatient Rooms with standard Inpatient Rooms throughout the hospital so that there is no notion of these Patients being treated differently from our other Patients;
 - (ii) ensuring that bariatric areas incorporate similar interior design concepts and therefore do not appear different from surrounding areas;
 - (iii) ensuring that the Patient’s privacy and dignity is maintained in so far as ensuring that the design does not incorporate specific

- features that could prevent this (e.g. ensuring discreet placement of weigh scales with easy access);
- (iv) provision of facilities to accommodate specially designed ambulances for access, care delivery and transfer;
 - (v) provision of increased space and access (i.e. clear openings and turning circles, larger Inpatient Rooms and ensuites) to ensure the safe delivery of Clinical Services and Clinical Support Services in accordance with occupational safety and health (**OSH**) policies and standards (e.g. provision of additional clear access around beds recognising that access is typically required for multiple staff concurrently, ability to accommodate special furniture, fixtures and equipment needed for bariatric Patients);
 - (vi) provision of suitably rated lifters and (motorised) transporters (with careful integration into the structural, ceiling, heating, ventilation and air-conditioning (**HVAC**) and electrical designs where the lifters are to be fixed);
 - (vii) selection of diagnostic equipment that is capable of providing services to bariatric Patients;
 - (viii) provision of other Medical Equipment which is suitably rated / sized (e.g. including patient beds, commode chairs, wheelchairs);
 - (ix) provision of suitably rated / sized Fixed Building Equipment (e.g. toilets, grab rails) including suitably rated fixings and supports;
 - (x) provision of public seating that is suitable for bariatric waiting purposes;
 - (xi) considering the sensitivity of bariatric Patients to warmer temperatures; and
 - (xii) body storage for bariatric Patients in the mortuary.

8.8 Mental Health Patients

The character of the immediate surroundings can have a profound effect on the psyche of a mental health Patient. Accordingly, it is important that the design of the Public Patient Facility, and especially that of the Mental Health Unit, encourages human interactions essential to treatment and supports the basic needs of mental health Patients for safety and security, dignity, self-esteem, and for the development of interpersonal and social skills.

- (a) The Mental Health Unit must be designed and constructed with the required features to enable it to operate as an Authorised Inpatient Unit.
- (b) For the Mental Health Unit the Operator should determine the required balance between providing a normalised environment against the need to reasonably reduce the potential for self-harm.
- (c) The Operator must provide a total of 4 consultation rooms for use by the State operated community based teams, to be provided as 2 rooms co-located with the older adult mental health inpatient unit and 2 rooms co-located with the aged rehabilitation service. In each of the locations, one of

the two rooms must be of a size suitable for family consultations and allow ready and good wheelchair access.

- (d) Special design elements which must be considered by the Operator include:
- (i) easy and direct visual supervision of, and interaction with, Patients by staff;
 - (ii) design to minimise the risk of self harm and suicide through initiatives including:
 - A. designing to minimise / reduce ligatures in the environment, including through minimisation of hooks, use of spring-loaded hooks where required and use of breakaway fixtures;
 - B. generally ensuring that fittings which are not break-away cannot support the weight of a person;
 - C. designing out ledges where feasible through use of angled tops;
 - D. designing fittings and fixtures which are flush with other surfaces and not easily removed;
 - E. designing plumbing, electrical, and mechanical fixtures in private / un-supervised spaces to be tamper resistant;
 - F. designing out fire sprinklers or use of institutional type 'ligature-ligature' sprinklers; and
 - G. elimination of jumping opportunities;
 - (iii) consideration of optimal direction for door swings;
 - (iv) provision of access control to entrances and exits;
 - (v) careful selection of materials, in particular to ensure that they are robust and not easily broken, and that if broken they do not present a hazard / enable use as a weapon (e.g. use of laminated glass, polycarbonate, fibre-reinforced cement board);
 - (vi) careful consideration of furniture selections, careful placement away from edges / voids and fixing to slab / walls;
 - (vii) incorporation of safety measures that take into account the potential for the Patient to wilfully or unwittingly harm oneself (e.g. no access to cleaning supplies or dispensers for alcohol based hand gels as these can be consumed by Patients);
 - (viii) ensuring that any cords are too short to use for self harm;
 - (ix) eliminating or minimising the use of door knobs and handles;
 - (x) use of interstitial blinds if required;

- (xi) incorporating solid and secure ceilings in areas where Patient supervision is not constant to eliminate access to in-ceiling services;
- (xii) provision of areas for socialisation with other mental health Inpatients and for use during family visits;
- (xiii) use of familiar and non-institutional materials with cheerful and varied colours and textures, recognising that some colours and patterns are inappropriate and can have the effect of lowering a Patient's mood and / or disorienting or agitating Patients and staff;
- (xiv) providing Inpatients with direct and easy access to controlled external areas that are not visible to other Hospital Users including member of the public, that are fenced and are without potential access / climbing opportunities and hanging points;
- (xv) incorporating additional acoustic measures such as adequate separation and sound insulation to prevent confidential but loud conversation from travelling beyond interview rooms, consulting offices and group therapy rooms; and
- (xvi) incorporating design features to assist Patient orientation, such as direct and intuitive travel routes, visual wayfinding cues, minimisation of glare, and avoidance of unusual configurations and excessive corridor lengths. Note that a Patient's sense of security / competence is buoyed by making destinations easy to find, identify, and use without requesting help. Colour, texture, pattern, hierarchical design, localised changes to form and finishes, artwork and signage can all be used to provide visual cues.

8.9 Paediatric Patients

Special design considerations for paediatric Patients which should be considered by the Operator in the design of the Public Patient Facility include:

- (a) ensuring a child friendly and non-intimidating environment;
- (b) ensuring an environment that welcomes and supports families as an important part of the child's healing and caring process while in the hospital but also recognises the long term role of the families even long after discharge. This may be achieved through the integration of space where parents can be given training / education prior to the child's discharge to continue on as caregiver once at home;
- (c) colourful, cheerful and non-institutional décor;
- (d) use of graphics and visuals to aid distraction;
- (e) physical and visual segregation from adult Patients;
- (f) provision of an internal play room;
- (g) provision of an external play area;

- (h) incorporation of special security measures, such as access control and CCTV at entry/exit locations so as to minimise the risk of wandering and / or abduction;
- (i) incorporation of safety measures that take into account the natural curiosity of children (e.g. ensuring children cannot access equipment or materials that may be harmful); and
- (j) facilities for storage of breast milk / formula and disinfection of bottles, expressing equipment and the like.

8.10 Obstetric Patients

Special design considerations for obstetric Patients which should be considered by the Operator in the design of the Public Patient Facility include:

- (a) ready out of hours access for Patients;
- (b) ensuring a non-intimidating environment, with colourful, cheerful and non-institutional décor;
- (c) provision of facilities for the mother's nominated birth partner;
- (d) direct access to an operating room for emergency and elective caesarean sections;
- (e) access to facilities for ante-natal and post-natal care as defined in the Services Specification;
- (f) access to a bath for water-based labour;
- (g) facilities for tracking the location of newborn infants and minimising the potential for loss / theft of a newborn; and
- (h) facilities for storage of breast milk / formula and disinfection of bottles, expressing equipment and the like.

8.11 Rehabilitation Patients

Special design considerations for rehabilitation Patients which should be considered by the Operator in the design of the Public Patient Facility include:

- (a) storage for personal belongings that is located between shoulder and knee height;
- (b) facilities for socialisation, functional assessment and allied health therapies;
- (c) alternative nurse call options for Patients that are unable to use standard nurse call pendants;
- (d) alternative options for Patients that unable to operate lifts, keyboards as part of computer / entertainment systems, tv controls and the like;
- (e) alternative options for location of patient entertainment screens;
- (f) provision of an area that is designed to reduce stimulation; and

- (g) hardening of some Inpatient Rooms for potentially violent and acquired brain injury Patients.

8.12 Cancer Patients

Special design considerations for cancer Patients which should be considered by the Operator in the design of the Public Patient Facility include:

- (a) providing a balance between the need for chemotherapy Patients to interact with and support each other with the need for visual privacy for each Patient;
- (b) a blood collection facility close to the chemotherapy chairs;
- (c) facilities to enable palliative Patients' family to remain at the bedside for long periods / overnight; and
- (d) high quality air, water and treatment spaces / Inpatient Rooms for Patients with compromised immune systems.

8.13 Corrective Services Patients

The Public Patient Facility will be obliged to occasionally see and treat all classifications of Corrective Services Patients (i.e. low, medium and high risk). This will include Emergency Department attendances and multi-day stay for Patients requiring generalist treatment with appropriate security provided by Corrective Services staff. No specific design and construction provisions are required for this Patient group.

8.14 Universal Access

The Health Campus must be designed so as to be easy to use by the many Patients with temporary or permanent disablement.

All occupied areas of the Health Campus must be universally accessible in accordance with the requirements set out in the Quality Standards.

8.15 Patient, Visitor and Staff Flows

- (a) The Public Patient Facility must incorporate contemporary hospital design philosophies in respect of flows for Patients, visitors and staff. Movement throughout the Public Patient Facility of Patients, visitors and staff should generally occur with ease and give consideration to the different flows associated with planned and unplanned Patient pathways. Activity associated with non-clinical support functions should cause minimal disruption to clinical staff, Patients and their associated flows and must not be readily accessible to visitors or ambulant Patients.
- (b) Circulation routes for the public should generally be comprised of primary and secondary circulation.
- (c) Primary circulation should be designed to:
 - (i) be read as primary circulation and enable wayfinding using intuition;

- (ii) provide connection with key visitor amenities including public lifts, public toilet facilities, baby change facilities and Commercial Facilities offering retail and food options;
 - (iii) enable their extension as part of the Planned Expansion; and
 - (iv) avoid their use for movement of non-ambulant Patients and goods distribution.
- (d) Secondary circulation should be designed to:
 - (i) be legible from the primary circulation routes;
 - (ii) provide access to clinical departments and Patient services; and
 - (iii) avoid (where possible) their use for Patient transfer and goods distribution.
- (e) Both primary and secondary circulation should retain a clear and direct association with internal departmental circulation. Overly long and circuitous routes must be avoided. Design of internal departmental circulation should generally avoid dead ends except where these are intentionally planned to facilitate the Planned Expansion. Interconnection with adjoining departments should be provided where beneficial in delivery of the Services (e.g. for direct movement of staff and supplies).
- (f) Other consideration in designing circulation routes include:
 - (i) Patient privacy in adjoining Patient areas; and
 - (ii) the required access paths for movement of Medical Equipment (and large items of Non-Medical FF&E) into and out of the Public Patient Facility.
- (g) Primary access to wards for visitors or facilities management functions cannot be through an adjacent ward.

8.16 Pedestrian Access

- (a) All internal and external pedestrian access at the Health Campus must be designed to support the objective of achieving a safe and pedestrian-friendly environment.
- (b) Pedestrians must be able to move between the Public Patient Facility and the Private Patient Facility on the Health Campus and to / from carpark areas and public transport nodes in an efficient manner and using footpaths / walkways. The need to cross Health Campus roads should be minimised and where this is required a pedestrian crossing must as a minimum be provided.
- (c) All footpaths / walkways must be designed so that prams, mobility scooters and persons in wheelchairs or utilising walking aids can safely use them.
- (d) Consideration should be given to providing covered walkways to primary destinations.

8.17 Vertical Transportation

- (a) The Operator should consider the function and location of lifts in the design to ensure efficient movement for all Hospital Users throughout the Public Patient Facility.
- (b) Public lifts should be located so that they are easily identifiable and directly accessible from the main entry and primary circulation zones on each floor.
- (c) The Operator should consider providing alternative operating controls for the lifts in areas accommodating Patients that are unable to operate standard controls (e.g. rehabilitation).

8.18 Stairs

The Operator should consider the optimal location and placement of stairs to maximise usage and therefore reduce dependence on lifts. Factors to consider include:

- (a) placement in areas of high pedestrian traffic;
- (b) placement to enable direct / convenient staff movement between clinical departments; and
- (c) placement to ensure that future flexibility for the Planned Expansion is not compromised.

8.19 Vehicular Access

- (a) Vehicular ingress and egress must be designed to achieve a steady flow of traffic so that queuing is avoided and access to the Health Campus, and especially to carparks and drop off zones occurs with ease. The Structure Plan contemplates that separate access will be provided for the various traffic streams (e.g. public, staff, emergency and service / delivery vehicles) however this must be balanced with any constraints of the adjacent road network and operational requirements.
- (b) The Structure Plan makes allowance for an internal campus road connection along the northern boundary of the Site (adjacent to the rail reserve) which links Yelverton Drive through to Cowie Close. This road should be designed as a non-through traffic road, whereby access from one end to the other is only possible via some form of access control (e.g. through boom gates or through a pay for use carpark facility). The intention is to prevent through traffic under normal operation whilst providing the capacity to allow it under extenuating circumstances (e.g. significant incident affecting the use of Clayton Street).
- (c) The Operator should allow for staff and public access and egress to the Health Campus by separate routes as indicated in the Structure Plan. The internal campus road network should make allowance for dedicated separate entry points into carpark facilities for staff and public vehicles.

8.20 Emergency Access

- (a) The Structure Plan makes allowance for dedicated emergency vehicle access into the Site from Clayton Street. The Operator must undertake its

own assessment of the existing and forecast traffic volumes, having regard for planned road network upgrades which may or may not proceed, and determine the optimal location for emergency vehicle access to suit its operational requirements and the Master Plan for the Site.

- (b) There must be a dedicated ambulance entry to the Emergency Department that meets the requirements of St John Ambulance Australia.
- (c) The ambulance access to the Emergency Department should be separate from routine ambulance access to other departments.
- (d) There should be one entrance other than the entrance to the Emergency Department that is capable of managing large numbers of people and large vehicles, such as buses and ambulances.

8.21 Infection Control

- (a) Infection prevention and control principles and practices have a direct impact on Patient outcomes and must inform the design of the Public Patient Facility. The Operator must consult with infection control professionals in developing the Master Plan, the schematic design during the Schematic Design Stage and the detailed design during the Detailed Design Stage, and in respect of the Completion Tests, to ensure that relevant issues are properly incorporated into the design, construction and commissioning of the Health Campus.
- (b) Facility design issues that require infection control input include:
 - (i) the number, location and specification of hand basins;
 - (ii) the number, location and type of isolation rooms;
 - (iii) design and maintenance of air handling systems;
 - (iv) water treatment;
 - (v) waste management;
 - (vi) food handling;
 - (vii) clean and dirty work flows;
 - (viii) transportation routes;
 - (ix) specification of selected Fixed Building Equipment and Medical Equipment;
 - (x) design of interior surfaces / selection of finishes to minimise dust collection and facilitate cleaning; and
 - (xi) specific Functional Units including:
 - A. Central Sterilisation Service Department (**CSSD**);
 - B. Operating Suite;
 - C. Endoscopy Suite;

- D. Cancer Unit (chemotherapy areas); and
 - E. Critical Care Areas; and
- (c) The Operator must comply with all relevant Quality Standards that address infection control requirements.

8.22 Radiation Protection

Without limiting Clause 9.1 of this Agreement:

- (a) all relevant Design Documentation must be reviewed by an accredited consultant radiation expert and approved by the Radiological Council of WA prior to construction. Shield rating in walls must be identified by the consultant radiation expert and each wall must have an identification plate fitted that identifies the value of shielding installed.
- (b) the Operator must obtain registration / licensing of the premises and imaging equipment from the Radiological Council of WA prior to the commencement of Clinical Services.

8.23 Workplace Quality

- (a) The quality of the Health Campus workplace will have a significant impact on the ability of the Operator to attract and retain good staff. A standard of design should be provided throughout the Public Patient Facility which encourages job satisfaction of staff members and incorporates demonstrable and due consideration of the following:
 - (i) the physical environment with respect to natural light, air quality, sound, temperature and other factors affecting comfort;
 - (ii) amenities and interaction opportunities for staff (including meeting areas, passive and active recreational facilities);
 - (iii) the health and safety of the staff, as well as the overall security of the Public Patient Facility;
 - (iv) accessibility for elderly and disabled staff members;
 - (v) access to education facilities;
 - (vi) carparking provisions;
 - (vii) provision of functional and optimally located end of trip facilities; and
 - (viii) workplace accommodation planning that provides an optimal balance between individual workplace (workstation, office, quiet rooms to work alone temporarily) and shared or communal facilities (meeting rooms, beverage bays, lounges).
- (b) The overall aesthetic design of the interior and exterior can also help create a positive work environment and encourage the attraction and retention of staff to the Health Campus.

- (c) The Public Patient Facility must maintain accreditation with professional colleges (such as ACEM, ANZCA and RACP) for undergraduate and post-graduate training. In some instances these colleges have specific facility requirements.

8.24 Maintenance

- (a) The Health Campus must be designed to facilitate safe access for the performance of planned preventative maintenance and reactive maintenance on the building fabric, Building Engineering Services systems, Fixed Building Equipment, Medical Equipment and Non-Medical FF&E within and external to the Public Patient Facility.
- (b) The structure of the Public Patient Facility must be maintenance free.
- (c) All materials and finishes used internally and externally at the Public Patient Facility must be durable such that they will continue to maintain their performance and appearance if the Operator properly performs all asset maintenance works as described in the Asset Management Plan.
- (d) All equipment and components comprising the Building Engineering Services systems at the Health Campus must be selected on the basis of reliability and performance such that they will continue to maintain their performance if the Operator properly performs all asset maintenance works as described in the Asset Management Plan.

9. Technical Requirements

9.1 Service Life

- (a) The Health Campus must be designed and constructed to have a minimum Service Life of 50 years.
- (b) A shorter Service Life may be appropriate for separate buildings within the Health Campus which form part of the Private Patient Facility and for Commercial Facilities, particularly where these are proposed to be located within zones designated for Planned Expansion or any Further Expansion. The proposed Service Life of each building must be clearly indicated in the Master Plan.

9.2 Structural Design and Operational Performance

- (a) Floor Systems
 - (i) The Operator must ensure that the structural design of floor systems facilitates future flexibility to alter the configuration of Functional Units and boundaries between Functional Units without significant additional expense and/or structural works.
 - (ii) In the event that a post-tensioned slab system or precast flooring is adopted, consideration must be given to:
 - A. access for future servicing requirements for Building Engineering Services;

- B. future flexibility for location of setdowns (e.g. for relocation of wet areas); and
 - C. serviceability requirements, including ensuring that deflection and vibration impacts comply with the relevant Quality Standards so that occupant comfort and sensitive Medical Equipment are not adversely affected.
- (iii) The design of concrete slabs must include all setdowns as necessary to accommodate any cool rooms, freezer / refrigerated rooms, wet areas, audiology booths, magnetic resonance imaging and the like.
- (b) Column Placement

The structural engineering solution must accommodate the operational performance and architectural space planning requirements for the Public Patient Facility. It is expected that columns are located within wall lines and column free space provided with nil or very few exceptions. Columns must not be located such that they impede the functional design. Consideration should be given to using lift and stair wells as an integral part of the structural design and ensuring that the structural grid across the main building is uniform to maximise future flexibility.
- (c) Expansion Joints

Expansion and control joints must:

 - (i) not be located in wet areas or in areas subject to high infection control standards and / or heavy foot / trolley traffic such as Operating Suites, CSSD and Critical Care Areas;
 - (ii) not be located within clinical departments, to the extent that this is avoidable;
 - (iii) not compromise the integrity of the floor or wall (i.e. must not derogate acoustic performance or fire rating of the area); and
 - (iv) be installed with joint covers that are neatly finished, continuous (where possible) or have only minimal joins (especially along primary circulation routes), and are entirely flush with adjacent floor finishes so as to provide a level transition.

9.3 Disaster and Emergency Preparedness

- (a) The Public Patient Facility is a Group 2 hospital as defined within the Department's policy document titled '*Redundancy and Disaster Planning in Health's Capital Works Program 2008*'. The Operator must design, construct and maintain the Public Patient Facility to meet all of the specified requirements for a Group 2 hospital.
- (b) The Public Patient Facility must comply with all Quality Standards in respect of provisions for natural disaster to enable continued operation during and after the natural disaster except where the Public Patient Facility sustains the primary impact.

- (c) Specifically in respect of earthquakes, the Public Patient Facility must be structurally operable and accessible immediately following a major earthquake in accordance with the requirements of 'AS1170.4: *Earthquake Actions in Australia*' for a building having a post disaster function.
- (d) Specifically in respect of flooding, the Public Patient Facility must be fully operable and accessible during and after a 1 in 100 year ARI storm and flood event as determined by the State based on data published by the Australian Government Bureau of Meteorology.

9.4 Building Structure and Fabric

- (a) Façades
 - (i) Building façades for all buildings / structures on the Health Campus should be designed on the basis of:
 - A. passive solar design principles;
 - B. long-lasting, 'civic' construction quality;
 - C. creating an aesthetically coherent campus and place;
 - D. transparency and passive security design principles; and
 - E. creating an open, welcoming, activated health precinct.
 - (ii) Materials and finishes for all buildings / structures must meet the expected standards of finish for civic buildings ensuring:
 - A. consistency of finish;
 - B. minimum colour variability, except to the extent that this is an intended feature of the material selection; and
 - C. durability of surface finish.
 - (iii) The aesthetic design of the Public Patient Facility and the broader Health Campus should respond to the local heritage context through the use of façade materials, finishes, and colours. These elements should be used to create an architectural style that is an interpretive response, but not exact copy, of the local heritage character.
 - (iv) The rhythm and scale of massing elements should be consistent with the local heritage context and should create the perception of many individual elements rather than single large masses.
 - (v) Exterior finishes to the Public Patient Facility must be low maintenance except for limited selected areas where the material demonstrably adds to the quality and aesthetic appeal of the architecture. Materials made of fibre reinforced cement are acceptable, however composite wood products are considered to be unsuitable for external application.

- (vi) The design and construction of the façade to the Public Patient Facility must:
 - A. be resistant to damage from water, landscaping maintenance and pest invasion (particularly at ground level);
 - B. be properly watertight and disperse water so that all water and moisture is discharged outside of the building;
 - C. provide continuous thermal insulation to minimise heat losses and gains to the building;
 - D. act as an acoustic barrier to minimise sound transmission from external noise sources;
 - E. not generate audible noise or transmit or amplify other structure-borne noise;
 - F. minimise air leakage / infiltration into the building; and
 - G. allow for adequate cleaning and maintenance.
- (b) Sunscreens and Canopies
 - (i) The design of the Public Patient Facility must incorporate sunscreens as an ESD Initiative, which should be selected and installed having regard for the site conditions and site orientation.
 - (ii) Canopies must be provided at major entrance locations to provide weather protection for all Hospital Users for setdown / dropoff and waiting.
 - (iii) Sunscreens must be designed and constructed to:
 - A. preserve views to outside from within the building;
 - B. be effective in improving visual comfort for Hospital Users through reduced glare and mitigation of harsh daylight penetration;
 - C. be effective in reducing solar heat gains to the building; and
 - D. provide sufficient access between each screen to safely and properly undertake cleaning and maintenance.
 - (iv) Sunscreens and canopies must be designed and constructed to:
 - A. not collect or retain moisture and water and not undermine the water tightness of the façade;
 - B. function without noise under all environmental / site conditions and imposed maintenance loads;
 - C. incorporate self-cleaning materials and a built form that reduces cleaning and maintenance requirements; and

- D. withstand imposed loads arising from, and not be easily damaged by, persons and equipment associated with, cleaning and maintenance of the sunscreens, canopies and the façade.

(c) Waterproofing

The design and construction of the Public Patient Facility must incorporate waterproofing which provides an effective and permanent waterproof barrier that does not permit ingress of moisture and water. The waterproofing system must:

- (i) be a complete proprietary waterproof system, suitable for the location and intended function, and installed in accordance with the manufacturer's recommendation;
- (ii) prevent water and moisture from entering the Public Patient Facility in all weather conditions;
- (iii) provide a permanent barrier to moisture and water that is waterproof and resistant to hydrostatic pressure and vapour pressure, condensation and corrosion;
- (iv) be compatible with any admixtures and primers used, the substrate and the ground and groundwater conditions such that the integrity of the waterproof system and / or the adhesion or durability of all subsequent applied work is not adversely affected; and
- (v) be properly installed across all expansion and control joints so that it accommodates movement without damage.
- (vi) In addition, the design and construction of the Public Patient Facility must ensure that:
- (vii) pedestrian surfaces do not allow ponding, with any shed water being appropriately discharged; and
- (viii) adequate run-off and waterproofing is provided to all roof structures to prevent water ingress.

(d) Interior Aesthetics

The aesthetic of interiors is an important factor in creating a therapeutic and healing environment. It is also a major factor in the public image of the Public Patient Facility and broader Health Campus and is therefore important for conveying appropriate messages regarding professionalism and the level of Patient care and quality of the Services offered within to instil confidence in Hospital Users.

- (i) Key aesthetic features which should be considered for the Public Patient Facility include:
 - A. use of contemporary lighting systems and high performance glazing for the comfort of Hospital Users;

- B. increased use of natural light, natural materials, and colours;
 - C. display of artwork, and selection to complement the function of areas (e.g. soothing artwork within the Mental Health Unit, lively and fun artwork within the Paediatric Unit);
 - D. attention to details, proportions, colour and scale;
 - E. provision of bright, open public congregation spaces;
 - F. comfortable and intimately scaled staff stations and offices;
 - G. seamless flow from interior spaces to exterior spaces; and
 - H. compatibility with the exterior design and its surroundings.
- (ii) Internal spaces, and in particular the public and patient-centric spaces of the Public Patient Facility, should deliver a coherent overall aesthetic and distinctive sense of place. Circulation spaces should be easily navigated and demonstrably 'designed' as important spaces in their own right.
- (iii) Interior design can assist in relaxing Patients and reducing an institutional atmosphere. The design should aim to minimise the institutional environment through the appropriate use of colours, fabrics and artworks so that it is soothing and non-threatening to facilitate well being.
- (iv) Colours and lighting can affect people's mood and behaviour. The interior should be carefully designed to minimise anxiety, with special consideration for children in the design of the Paediatric Unit and other areas providing services to paediatric Patients. Colours and lighting design should also be chosen to be sensitive to the age, clinical disposition and cultural diversity of Patients who will use the Public Patient Facility. Patients with severe dementia can be treated with effects that are intended to stimulate the primary senses with music, soft tactile objects, lighting, colour and fragrances. The use of colour and graphics and other such effects should be considered in the design to assist people suffering from cognitive impairment to remember key items and people.
- (v) Colour should be used to avoid an institutional atmosphere. However, in all areas where Patient observation is critical such as operating rooms, anaesthetic induction rooms, first stage recovery and holding bays, colours should be chosen that do not alter the observer's perception of skin colour.
- (vi) Public spaces and waiting rooms must include a higher level of finish than other areas. These areas must incorporate durable finishes and furnishings and offer a non institutional, friendly and

inviting atmosphere. A range of different seating types and configurations must be provided to suit the expected Patient and visitor mix within each area to accommodate the specific needs of Patients and visitors with special needs including but not limited to the aged, pregnant women, children, people with disabilities and various cultural groups.

(e) Interior Finishes and Materials

Interior finishes and materials in the Public Patient Facility must:

- (i) be new and free from defects, damage, corrosion and surface blemishes (except where this is an intended feature of the material or finish);
- (ii) be suitably selected and installed for the conditions and activities within the Functional Unit or area in which it is installed (e.g. ceiling and wall finishes must be moisture resistant in wet areas, floor finishes must be slip resistant in wet areas, trafficable surfaces / floor finishes must be appropriate for the level of pedestrian and wheeled bed / trolley traffic in the Functional Unit / area, use of antimicrobial products where high standards of infection control apply);
- (iii) be installed to accommodate structural movements (including at expansion and control joints) and / or movements of the substrate, without damaging or causing any reduction in the performance or durability of the finish / material;
- (iv) be installed having regard for compatibility of adjacent finishes and materials including any substrate, or separated in an appropriate manner where this is not the case (e.g. finishes should be visually compatible with adjacent finishes / materials and must be chemically compatible with substrates and adjacent finishes / materials);
- (v) be installed straight, plumb, flush and to correct levels as intended by the design;
- (vi) in the case of finishes to walls, doors and door frames in areas of high foot / trolley / bed traffic, paying special attention to durability of materials and protection requirements;
- (vii) in the case of floor finishes, paying special attention to surface finish to ensure that it has the appropriate level of slip resistance is not uneven and that any changes in level are clearly discernible;
- (viii) be selected and detailed giving consideration to cleaning, infection control, fire safety and Patient care (e.g. detailed to minimise any collection of dirt and dust including at corners and junctions, use of fire retardant materials where required, design detailing which recognises the varying acuity, mobility and other requirements and values of the Patient mix, design detailing which enables Patients to control their environment);

- (ix) be low-VOC (volatile organic compound) products wherever possible, including for any adhesives and coatings;
- (x) in the case of timber products, be from certified sustainable sources; and
- (xi) be robust and minimise recurrent maintenance requirements and costs.

(f) Partition Walls and Ceilings

The Operator must design and construct all partitions walls and ceilings in the Public Patient Facility:

- (i) to achieve the required acoustic ratings and fire ratings in accordance with the relevant Quality Standards;
- (ii) to achieve the required fire ratings in accordance with the Quality Standards;
- (iii) in a manner that maintains the efficiency of HVAC systems and the integrity of fire, smoke and acoustic barriers;
- (iv) using moisture-resistant ceiling materials in wet areas;
- (v) using appropriate materials and fixings where hardened construction is required (e.g. consider hardened Inpatient Rooms);
- (vi) using appropriate materials for the use of the room that comply with infection control requirements;
- (vii) to remain stable without deflection or movement under normal conditions of use, including slamming of doors; and
- (viii) in the case of walls, paying special attention to durability of materials and protection of the walls in areas of high foot / trolley / bed traffic (e.g. consider impact board and wall protection).

(g) Doors

The Operator must design and construct all doors at the Public Patient Facility:

- (i) ensuring that door types, door sizes, door swings, door finishes, door furniture and the like are selected having regard to the function of the room where it is to be installed;
- (ii) ensuring that the door widths can accommodate unimpeded movement of beds / trolleys and equipment as required;
- (iii) ensuring that Patient privacy is maintained (e.g. through careful selection of door types) and that door construction does not undermine the acoustic performance of the wall within which it sits;
- (iv) ensuring that automatic doors are provided at all major access points and ambulance entries into the Public Patient Facility;

Revolving doors and automatic swing doors must not be used at these locations; and

- (v) giving consideration to the Planned Expansion in selection and design of the master keying system.

9.5 Landscape

The creation of a high quality landscape throughout the Health Campus is a primary design and development benchmark.

- (a) The landscape design for the Health Campus should:
 - (i) provide a high level of amenity and aesthetic appeal;
 - (ii) endeavour to create a tranquil and healing landscaped environment that fosters a 'sense of place';
 - (iii) incorporate some mature trees from the outset;
 - (iv) incorporate ESD Initiatives so that it is sustainable (e.g. by basing the majority of the landscape design on xeriscaping principles, by installing reticulation systems that incorporate water sensors);
 - (v) be reticulated from a source other than groundwater, via an electronically controlled system which delivers adequate water and appropriate pressure so as to ensure that all areas are properly reticulated without wasting water; and
 - (vi) ensure green landscape outlook from public areas, clinical treatment areas and Inpatient Rooms.
- (b) Maintenance considerations in landscaped areas within the Health Campus should not compromise the quality of landscape amenity.

9.6 Signage

The orientation of people to and within healthcare facilities is greatly assisted or hampered by the quality and location of signage which may be directional, be used as a means of identification, or be a statutory requirement. In addition to assisting wayfinding, signage has an important role in the safety and security of Hospital Users. Signage within the Public Patient Facility must meet the following requirements.

- (a) External signage, including in car parks, lifts, stairwells, and at vehicle and pedestrian access points, must clearly indicate the location of the Public Patient Facility's main entrance, any separate / adjoining facilities that form part of the Public Patient Facility, critical destinations such as the Emergency Department and other Functional Units and parts of the Private Patient Facility as determined by the Operator.
- (b) All signage must:
 - (i) be easily legible at all times, consistent and understood by all Hospital Users, including accommodating languages other than English where appropriate;

- (ii) be positioned such that it is clearly visible on arrival and then at decision points along the route to the destination; and
 - (iii) promote access for people with disabilities.
- (c) Signage should be designed with the specific objective of satisfying the orientation needs of the first-time Patient.
- (d) Signage should be used to indicate areas with restricted access and must be provided to all areas where Hospital Users may be exposed to hazards.
- (e) Whilst signage is an important element in the wayfinding system, other cues to assist wayfinding are equally important and should be demonstrably incorporated in the design (e.g. use of a hierarchy for elements such as corridors and doors; use of finishes, colours, patterns etc for demarcation and identification).

9.7 Artwork

- (a) The Operator must procure and install artworks through the Percent for Art Scheme using the provisional sum allowance as outlined in section 11.1 of these Health Campus Requirements below. The artworks must be dispersed throughout the Public Patient Facility, and must be located within areas of high public use. Specifically, artwork procured through the Percent for Art Scheme must not be located in offices, staff areas and/or other back of house areas of the Public Patient Facility, or within the Private Patient Facility or Commercial Facilities (irrespective of their location).
- (b) The Operator must coordinate, commission and administer the selected artists as nominated by the Artwork Selection Committee formed under the direction of Building Management and Works. All costs associated with the project management, co-ordination, commissioning and administration of the artists are to be excluded from the provisional sum.
- (c) The artworks will comprise significant sculptural pieces that may require integration within the building fabric in addition to more traditional forms such as paintings and murals. Irrespective of the form, the Operator must undertake and separately allow for all necessary liaison, provide all necessary attendance and ascertain all structural and other requirements to facilitate installation. All trade costs for builder's work in connection with the installation, including supply of materials (such as lighting and interpretative materials) may be funded from the provisional sum.
- (d) The Operator may also procure artworks from other sources for display at the Health Campus.

9.8 Fire Compartmentalisation

Design of fire zones must consider the following objectives:

- (a) Critical clinical departments (e.g. Critical Care Areas, Surgical Services containing Operating Suites) should lie within more than one fire zone to eliminate the need to fully evacuate the service in the event of fire;
- (b) fire and smoke doors should be on electronic hold-open devices wherever possible, particularly along primary circulation routes;

- (c) a separate operable door should be provided at an entry to a Functional Unit where that entry coincides with the location of a fire wall;
- (d) aligning fire walls with walls, shear walls and inoperable walls to reduce the number of fire doors and amount of fire glazing required; and
- (e) wherever possible, doors to rooms that are accessed frequently, or are often left open (such as offices and stores) should not be located on fire walls.

9.9 Acoustics

- (a) All public, clinical, patient-oriented and other working environments throughout the Public Patient Facility must meet the acoustic requirements set out within the relevant Quality Standards to ensure operational requirements and human comfort.
- (b) Consideration should be given to the shape and size of rooms, activities within each room and the functional relationship between areas during the functional planning stage of the Schematic Design Stage. In particular, noise sensitive areas should be placed away from areas that accommodate noise generating activities wherever possible.
- (c) The acoustic design and construction requirements include:
 - (i) selecting interior finishes to minimise noise build up through use of appropriately rated acoustic materials and design details where required to meet the acoustic requirements of the Quality Standards (e.g. appropriate sound transmission class for doors, walls and ceilings and/or incorporation of airlocks or similar features);
 - (ii) mitigating noise intrusion from external sources (rail, helicopter and vehicles) into Patient areas and sensitive clinical areas such as the Operating Suites and in consulting, interview and treatment rooms;
 - (iii) mitigating noise intrusion and flanking sound transmission from adjacent areas into sensitive clinical areas such as the Operating Suites and in consulting, interview and treatment rooms;
 - (iv) ensuring appropriate levels of acoustic privacy giving consideration to the function of each room and the reasonably anticipated vocal effort of the occupants, including preventing flanking sound transmission via duct work between adjacent rooms;
 - (v) minimising mechanical, electrical and hydraulic noise (e.g. through equipment selection, provision of acoustically treated enclosures for noisy plant / equipment, lagging of pipework and ductwork); and
 - (vi) designing so as to limit noise intrusion to the Public Patient Facility during Expansion Works, only to the extent of not compromising the visual appearance and amenity of the Public Patient Facility.

9.10 Building Engineering Services

- (a) The Operator must design, construct and commission all Building Engineering Services within the Health Campus to:
 - (i) meet the intended Service Life of the Health Campus; and
 - (ii) comply with the Quality Standards and be in accordance with Best Construction Practices.
- (b) All Building Engineering Services in the Public Patient Facility must be designed giving maximum consideration to occupant comfort, particularly that of Patients (e.g. placement of return air in relation to beds in Inpatient Rooms, placement of lighting, accessibility).
- (c) Provision for plant, ceiling spaces and services ducts must accommodate the built form as well as provide capacity for the Planned Expansion and any Further Expansion as described within the Master Plan.
- (d) All Building Engineering Services in the Public Patient Facility and other ceiling mounted items (including Medical Equipment such as pendants, patient hoists and Non-Medical FF&E which is ceiling mounted) must be fully coordinated to ensure that reflected ceiling plans are tidy and coherent, and minimum ceiling heights are maintained. The Operator is encouraged to:
 - (i) develop a set of integrated services drawings that detail the layout of each of the individual services within ceiling spaces; and
 - (ii) commission an independent peer review for integrated Building Engineering Services at key design milestones.

9.11 Information, Communications and Technology

The ICT Requirements are addressed in Schedule 12 of this Agreement.

9.12 Technology and Innovation

It is recognised that Australian, international and industry standards do not necessarily keep pace with technological advances. This should not limit the Operator's ability to pursue technological solutions and innovation in the design and construction of the Health Campus. Technologies and innovations which may be considered for incorporation, or for which future provision may be made, include:

- (a) alternative architectural design concepts, which may relate to emerging models of care or facility management systems;
- (b) alternative building materials, such as digital smart glass;
- (c) RFID to track assets, supplies, Patients and staff;
- (d) computerised physician order entry (**CPOE**) to improve clinical work flows and reduce errors,
- (e) point of care testing;
- (f) diagnostics miniaturised;

- (g) use of handheld / portable intelligent devices for charting, responding to calls and similar tasks;
- (h) waste management systems (including ducted waste management systems, and clinical waste macerators);
- (i) automatic guided vehicles for the distribution of linen, meal trolleys and removal of waste;
- (j) robotic pharmacy equipment;
- (k) automated drug dispensing units; and
- (l) integration of management systems for Building Engineering Services.

The Operator is encouraged to enter into dialogue with the State where it perceives that significant value / Patient benefit can be achieved through adoption of technologies, innovations and alternative solutions.

10. Private And Commercial Facilities

10.1 Private Patient Facility

The State has a strong desire to broaden the health services choices for people in the Catchment Area. Incorporation of private health facilities into the Health Campus is considered vital.

- (a) The State envisages that private health services could take a number of forms, including:
 - (i) inpatient services, including medical, surgical, obstetrics, rehabilitation and other specialities;
 - (ii) a medical centre with a range of ambulatory primary health, diagnostic, therapeutic and support services;
 - (iii) a short stay procedures centre; or
 - (iv) a combination of these.
- (b) The Operator is encouraged to provide private health services on the Health Campus that:
 - (i) enhance services for the local community by providing a comprehensive suite of services at the Health Campus;
 - (ii) take into account the State's requirements for a design solution that allows for, and can accommodate, the Planned Expansion and any Further Expansion in line with the principles set out within these Health Campus Requirements and the Master Plan;
 - (iii) comply with and enhance the long term Master Plan requirements of the Health Campus; and
 - (iv) provide an opportunity for short term and longer term financial benefits to the State through the availability of alternative service models and associated facilities through the private sector.

- (c) The Facility strategy could take a number of forms, including:
 - (i) fully integrated model in which the Private Patient Facility is closely linked or embedded with the Public Patient Facility, with potentially many components of Shared Infrastructure;
 - (ii) partially integrated model in which some aspects of the Private Patient Facility (e.g. inpatient services) are embedded with the Public Patient Facility and some (e.g. medical centre) are stand alone, with potentially many components of Shared Infrastructure;
 - (iii) co-located model in which the Private Patient Facility is on the Health Campus, but separate from the Public Patient Facility, with potentially few components of Shared Infrastructure;
 - (iv) separate site for the Private Patient Facility with potentially no components of Shared Infrastructure; or
 - (v) incremental model in which the Private Patient Facility is initially integrated but, over time moves to a co-located model as the market for private health services matures.
- (d) In accordance with Clause 20 of this Agreement, the Operator is not entitled to any payment from the State in respect of the Private Patient Facility.
- (e) The Private Patient Facility must comply with the licensing standards and guidelines of the LARU as relevant to the classification of the Private Patient Facility.
- (f) The Private Patient Facility must not be designed, constructed and commissioned to a lesser standard than that required by the specification for the Public Patient Facility.

10.2 Commercial Facilities

The development of the Health Campus creates opportunities for allied commercial operations. The State supports such development provided it adds to the overall amenity and objectives of the Health Campus.

- (a) The Operator is encouraged to consider commercial development opportunities on the Site that:
 - (i) enhance Patient, visitor and staff services at the Health Campus;
 - (ii) take into account the State's requirements for a design solution that allows for, and can accommodate, the Planned Expansion and any Further Expansion in line with the principles set out within the Health Campus Requirements and the Master Plan;
 - (iii) are complementary to, and consistent with, the delivery of public health services and the promotion of public health (e.g. alcohol or cigarette sales are not permitted and retail food outlets and vending machines must be able to demonstrate a high proportion of healthy food options consistent with the document titled '*Healthy Options WA Food and Nutrition Policy for WA Health Services and Facilities*', April 2009, Department of Health WA);

- (iv) are complementary to, and consistent with, the corporate image of the Department;
 - (v) comply with and enhance the long term Master Plan requirements of the Health Campus; and
 - (vi) provide short term and longer term financial benefits to the State (where located on the Health Campus).
- (b) Commercial Opportunities may include:
 - (i) retail opportunities, such as retail pharmacy, gift shop, newsagency, florist, café / retail food outlets, convenience store, hairdresser / beautician;
 - (ii) consulting suites;
 - (iii) vending machines;
 - (iv) parking;
 - (v) ancillary accommodation (e.g. medi-hotel);
 - (vi) staff amenities, such as a gymnasium;
 - (vii) child care; and
 - (viii) other facilities or services that are complementary to the operation of the Health Campus.
- (c) All parking facilities must be provided and managed in compliance with the document titled '*Access and Parking Strategy for Health Campuses in the Perth Metropolitan Area*', July 2010, Department of Health Western Australia.
- (d) In accordance with Clause 20 of this Agreement, the Operator is not entitled to any payment from the State in respect of the Commercial Facilities.

11. Application of Government Policy & Schemes

11.1 State Government Policies & Schemes

The following State Government policies and schemes apply to the Project:

(a) Buy Local Policy

The Buy Local Policy aims to maximise supply opportunities for competitive local Western Australian businesses when bidding for State government contracts.

The Policy confirms the Western Australian Government's commitment to buying locally, and aims to maximise the participation of local and small businesses in the supply of goods, services, housing and works purchased or contracted by Governmental Agencies or their agents on behalf of the State Government.

The policy can be downloaded at:

<http://www.ssc.wa.gov.au/policies02.asp?id=19>

(b) Building Local Industry Policy

The Government aims to maximise the opportunities for local businesses in major development projects and Government procurement in Western Australia for the benefit of the State.

The Building Local Industry Policy is a clear and unequivocal statement that local businesses have a legitimate expectation that they will be given a full, fair and reasonable opportunity to be considered for major work and contracts being undertaken in Western Australia in both the public and private sector.

The policy can be downloaded at:

http://www.commerce.wa.gov.au/ScienceInnovation/PDF/Publications/Industry_Development/Building_local_indus1.pdf

(c) Australian Industry Participation Plan

The Operator must demonstrate a commitment to working constructively with Western Australian and Australian industry to identify and develop options for increasing local content in the Midland Health Campus project.

The State has enlisted the assistance of the Industry Capability Network of Western Australia (**ICNWA**) to maximise opportunities for local companies to participate in the development of the Project.

The Operator must give consideration to enlisting the assistance of the ICNWA and ProjectConnect to assist contractors to maximise opportunities for Western Australian and Australian businesses.

ICNWA will provide a free and confidential Australian vendor identification service to those interested in sourcing from competitive local business.

ProjectConnect provides an on-line database service that matches projects and potential suppliers.

To obtain the ICNWA service, the Operator must contact:

The Manager

Industry Capability Network (Western Australia)

180 Hay Street

EAST PERTH WA 6004

Telephone: +61 8 9365 7629

Fax: +61 8 9365 7550

Email: ICN@cciwa.com

Web: www.icnwa.org.au

For further information on ProjectConnect, the Operator must contact:

The Manager
ProjectConnect
180 Hay Street
EAST PERTH WA 6004
Telephone: +61 8 9365 7555
Fax: +61 8 9365 7550
Email: david.kobelke@cciwa.com
Web: www.projectconnect.com.au

(d) Priority Start Building Policy

The Priority Start Building Policy is used by all State Governmental Agencies to ensure that Government achieves a significant contribution in the engagement of apprentices in the building and construction industry by:

- (i) identifying and rewarding head contractors that maintain a minimum level of apprentice engagement;
- (ii) increasing the role and responsibility of head contractors;
- (iii) ensuring pre-determined target numbers of apprentices are met through Government contracting arrangements; and
- (iv) developing a stronger training culture and increased commitment to training within the whole of the building and construction industry through its private works contracts.

The policy can be downloaded at:

<http://www.trainingwa.wa.gov.au/apprenticentre/detcms/apprenticeships-and-training/apprenticentre/binary-files/priority-start---building-policy.en?oid=com.arsdigita.cms.contenttypes.FileStorageItem-id-7432615>

(e) The State Government's Percent for Art Scheme

The Western Australian State Government Percent for Art Scheme allocates up to one percent of the estimated total construction cost of each State capital works project, valued at \$[not disclosed] and over, to commission Western Australian artwork.

The Percent for Art Scheme is a partnership between the Department of Culture and the Arts and Building Management and Works in recognition of the intrinsic value of arts being seen, heard and felt in our buildings and structures.

A provisional sum of \$[not disclosed] is allocated for procuring artworks under the Percent for Art Scheme.

To find out more about the Percent for Art Scheme refer to:

<http://www.dtf.wa.gov.au/cms/content.aspx?id=3728>; and

http://www.dca.wa.gov.au/programs/Initiatives/public_art/percent_for_art/about_percent_for_art.

(f) Project Signboard Policy

The Project signboard erected on Site during the D&C Phase must comply with the Building WA Capital Works Projects Signage Style Guide which is included in the Information Documents. Refer to:

[http://www.health.wa.gov.au/hrit/docs/procedures/State Govt CW Signage .pdf](http://www.health.wa.gov.au/hrit/docs/procedures/State_Govt_CW_Signage.pdf).

(g) Building Records Policy

The building records initiative collects stores and maintains hard copy and electronic drawings associated with all Western Australian Government buildings.

The *State Records Act 2000* (WA), in conjunction with the Building Management and Works' Building Records Policy specifies CADD drawings as State Archives. Section 3 of the *State Records Act 2000* (WA) defines a State Archive as 'a State Record that is to be retained permanently'. The CADD Protocols for Contractual Deliverables (**BMW Manual**) serve to meet BMW's legislative obligation to retain State Archive Records in accordance with the requirements of the *State Records Act 2000* (WA).

The BMW Manual aims to:

- (i) provide consultants with a set format for all BMW CADD drawings at key project milestones (tender and completion);
- (ii) ensure BMW is able to capture and retrieve drawings as required by the *State Records Act 2000*; and
- (iii) enhance consistency across disciplines and improve readability for future users.

Techniques and methods used by consultants throughout the design documentation phase can vary from the requirements in the BMW Manual however drawings related to tender, practical completion (or Completion in the case of the Project) as well as changes made during the Defects Liability Period must conform to the prescribed protocols.

The CADD Protocols for Contractual Deliverables is available online at: <http://www.dhw.wa.gov.au/CADD/>.

12. Glossary and Acronyms

Capitalised terms used in this Schedule but not defined in this section 12 have the meaning given to those terms in this Agreement or the Services Agreement (as applicable). In the event that a term is defined in both this Agreement and the Services Agreement, the definition used in this Agreement will prevail for the purposes of this Schedule.

In this Schedule, the following words and phrases have the following meanings unless the context otherwise requires:

ACEM means the Australasian College for Emergency Medicine.

AGV or **Automatic Guided Vehicle** means a mobile robot that follows markers or wires in the floor, or uses vision or lasers.

ANZCA means the Australian and New Zealand College of Anaesthetists.

BMI or **Body Mass Index** means a person's weight in kilograms (kg) divided by their height in metres (m) squared.

Building Local Industry Policy means the State government policy of that name or its future equivalent.

Building Records Policy means the Building Management and Works Building Records Policy or its future equivalent.

Buy Local Policy means the State government policy of that name or its future equivalent.

Cancer Unit means the unit within the Public Patient Facility which is equipped for delivery of cancer services.

CCTV means closed circuit television.

Corrective Services Patient means any Patient that is in the custody of the DCS.

CPTED means crime prevention through environmental design.

Critical Care Areas means CCU, ICU and HDU.

CSSD or **Central Sterilisation Service Department** means the unit within the Public Patient Facility which is equipped for the collecting, decontamination, assembling, packing, sterilisation, storing and distribution of sterile goods and equipment to Patient care areas.

DCS means the Department of Corrective Services, Western Australia.

Development Application means the application prepared by the Operator and submitted to the MRA for Development Approval for the Health Campus.

Development Approval means the approval to construct the Health Campus granted to the Operator by the MRA in response to the Development Application.

EBD or **Evidence Based Design** means the process of basing design decisions about the built environment on credible research to achieve optimal outcomes, which in the context of the Health Campus includes:

- (a) assisting the Patient healing process;
- (b) improved Patient outcomes and staff well-being;
- (c) a reduction in environmental stress; and
- (d) improved safety for all Hospital Users.

Endoscopy Suite means each Functional Unit within the Public Patient Facility comprised of a self-contained suite of rooms equipped to perform endoscopy

procedures, which includes any setup room, procedure room, recovery room and disinfection and cleaning area

Expansion Works means the Planned Expansion Works and the Further Expansion Works or either of them, according to the context.

Expansion Works Design Documentation means all parts of the Bid Design Documentation which describe the Expansion Works, as further developed by the parties.

EPA Guidance Statement No. 3 means the guidance document titled '*Separation Distances between Industrial and Sensitive Land Uses*' published by the Environmental Protection Authority of Western Australia.

FESA means the Fire and Emergency Services Authority of Western Australia.

Further Expansion Works means the expansion works for the Health Campus, substantially as set out in the Expansion Works Design Documentation and marked 'Further Expansion Works'.

GBCA means the Green Building Council of Australia.

Green Star means the comprehensive, national, voluntary environmental rating system developed and administered by the Green Building Council of Australia that evaluates the Environmental design and construction of buildings.

Health Campus Objectives is defined in section 3 of these Health Campus Requirements.

Healthcare Rating Tool means the tool developed and administered by the Green Building Council of Australia to support sustainable planning, design and construction of high-performance healthcare facilities in Australia, as updated from time to time.

HVAC means heating, ventilation and air-conditioning.

Inpatient Room means any room with a bed within the Public Patient Facility which is used to accommodate an Inpatient, including a room with a neonatal cot.

Kit of Parts means a parts library describing the standardised building elements for the Health Campus.

Mental Health Unit means the Authorised Inpatient Unit within the Public Patient Facility which is equipped for the delivery of the Mental Health Service.

Midland Health Campus Site Specific Guidelines means the *Midland Health Campus Site Specific Guidelines* adopted by the MRA.

Midland Redevelopment Area means the Redevelopment Area as defined in Section 12 of the *Metropolitan Redevelopment Authority Regulations 2011* (WA).

Midland Redevelopment Scheme means the scheme of that name made under Part 4 of the *Midland Redevelopment Act 1999* (WA) (repealed) and given current operation under Part 5 of the *Metropolitan Redevelopment Authority Act 2011* (WA).

Office of the Government Architect means the Office of the Government Architect in Western Australia.

Operating Suite means each Functional Unit within the Public Patient Facility comprised of a self-contained suite of pre-operative, peri-operative and post-operative rooms with all necessary Equipment to perform surgical or procedural activity required by the Services Specification.

OSH means occupational safety and health.

Paediatric Unit means the unit within the Public Patient Facility which is equipped for the delivery of the Paediatric Service.

Percent for Art Scheme means the Western Australian State Government Percent for Art Scheme or its future equivalent.

Permit Authority means a permit authority for a building as defined in the *Building Act 2011* (WA).

Planned Expansion Works means the expansion works for the Health Campus, substantially as set out in the Expansion Works Design Documentation.

Priority Start Building Policy means the State government policy of that name or its future equivalent.

Project Objectives means the State's key objectives for the Project as set out in section 3 of these Health Campus Requirements.

Radiology Unit means the unit within the Public Patient Facility which is equipped for the delivery of the Radiology and Nuclear Medicine Service.

RFID or Radio Frequency Identification means a technology system used to remotely track and identify objects using a tag that is placed on the object and a device that can remotely read the information stored in the tag.

Room Data Sheets means a system for defining the requirements, finishes and fittings of each and every room or allocated space within a facility, and in the context used, the Public Patient Facility.

RACP means the Royal Australasian College of Physicians.

Structure Plan means the *Midland Health Campus Structure Plan* (May 2011) prepared by Cox / Hames Sharley for the Department.

TGA or Therapeutic Goods Administration means the Therapeutic Goods Administration, ABN 40 939 406 804, being a Commonwealth regulatory agency for medical drugs and devices.

13. Acknowledgements

The following sources are acknowledged in the preparation of these Health Campus Requirements:

- (a) Australasian Health Facility Guidelines v. 4.0, Australasian Health Infrastructure Alliance through NSW Health (December 2010)
<http://www.healthfacilityguidelines.com.au/>;
- (b) Design Considerations for Mental Health Facilities, AIA Committee on Architecture for Health. Washington, DC (1993);

- (c) ESD Design Guide for Australian Government Buildings (Ed. 2), Department of the Environment and Heritage, Commonwealth of Australia (2006);
- (d) Fiona Stanley Hospital Project Brief, Part A – The Hospital, Department of Health (2008);
- (e) Green Building Council of Australia website: www.gbca.org.au/;
- (f) Guideline: Eligibility Criteria and Procedures for Registration in the General Area of Practice: Building Services Engineering, National Engineering Registration Board (2008);
- (g) Heritage Strategy for the Midland Central Redevelopment Area, Midland Redevelopment Authority (2004);
- (h) Interior Design Manual for New Construction and Renovations of Hospitals and Clinics, Office of Construction and Facilities Management, Department of Veterans Affairs, Mississippi US (May 2008);
- (i) Midland Health Campus Site Specific Guidelines, Midland Redevelopment Authority (2011);
- (j) Midland Health Campus Structure Plan, Cox / Hames Sharley (May 2011);
- (k) Midland Redevelopment Authority Policy 2.12 - Noise Attenuation, Midland Redevelopment Authority (May 2010);
- (l) new Royal Children's Hospital Project Brief, Volume 2 – Part B: Architectural Specifications (November 2007);
- (m) Outpatient Health Care Facility, Robert F. Carr (2008)
www.arch.ttu.edu/people/faculty/alajlouni_r/classes/fall%202008/ARCH%205691/Reading%20Assignments/Aug-29-2008/Outpatient%20Health%20Care%20Facility.pdf;
- (n) Queensland Health Work Place & Office Accommodation Policy and Guidelines (v1.3), Design Standards Unit, Queensland Health;
- (o) Safer places, The planning system and crime prevention, Commission for Architecture and the Built Environment, Office of the Deputy Prime Minister and the Home Office, London UK (2004); and
- (p) Whole Building Design Guide: Psychiatric Facility, Robert F Carr:
www.wbdg.org/design/psychiatric.php.

Schedule 11 – Services Specification

[Not disclosed]

Schedule 12 – ICT Requirements

1. Overview

In relation to the ICT provision at the Public Patient Health Campus, the Operator has the following responsibilities noting that the relevant plans guide the implementation and operation of the ICT Requirements:

- (a) The Operator must DDICAT and OAM a Fit For Purpose, 'end-to-end' ICT System for the Public Patient Health Campus that:
 - (i) supports the business requirements of all the departments and ancillary services provided from the Public Patient Health Campus and enables the Operator to deliver the Services in accordance with the Services Agreement;
 - (ii) ensures Interoperability between the ICT System for the Public Patient Health Campus and the State's ICT Systems and enables the Public Patient Health Campus to function effectively as part of the Department;
 - (iii) is managed according to an accepted ITSM standard, such as ITIL; and
 - (iv) complies at all times with these ICT Requirements, the ICT Plans and the terms of the Project Documents.
- (b) Without limiting the generality of clause 1(a) of these ICT Requirements, the 'end-to-end' ICT System for the Public Patient Health Campus referred to in clause 1(a) of these ICT Requirements must include, among other things, the enabling infrastructure described in clause 2 of these ICT Requirements and such applications as:
 - (i) a patient administration system;
 - (ii) a clinical information system;
 - (iii) a pharmacy system;
 - (iv) a picture archiving and communications system;
 - (v) a radiological information system;
 - (vi) an emergency department information system; and
 - (vii) any other information and communication technologies which are necessary for, or reasonably required to enable the Operator to, deliver the Services and comply with its other obligations under the Project Documents.
- (c) The Operator must, at all times throughout the Term, ensure that the ICT Systems, including those applications referred to in clause 3.6(d) of these ICT Requirements, comply with all Laws, including any requirements of any Governmental Agency relevant to:
 - (i) Electronic Medical Records;
 - (ii) Personally Controlled Electronic Health Records;
 - (iii) the Health Identifier Service;

- (iv) Electronic Discharge Summaries;
- (v) Secure Message Delivery;
- (vi) the National Authentication Service for Health; and
- (vii) the National E-Health Security and Access Framework.

2. Infrastructure and Operation

2.1 Overview

- (a) Except as otherwise provided in these ICT Requirements, the Operator is not required to comply with either the State's Facility Reference Guide or the State's Facility Classification Specification. However, the Operator must:
 - (i) reasonably consider these specifications, as a means to achieving for the ICT System similar functionality and performance as delivered at other State facilities, and to optimise Interoperability with ICT systems operating at other State facilities; and
 - (ii) provide the State with documentation detailing all points of non-compliance with the State's Facility Classification Specification, including a supporting narrative.
- (b) The Operator must DDICAT and OAM its ICT infrastructure which forms part of the ICT Systems to:
 - (i) (connectivity) maintain an internet connection and functional LAN, WLAN and WAN; and
 - (ii) (mobility) operate the WLAN such that it is functional inside the Public Patient Facility structures and across the Health Campus external to the structures, using current technology across the entire Health Campus.

2.2 Operator's Wide Area Network

The Operator must:

- (a) present, into at least one of the Public Patient Facility's core-tier Communications Rooms, at least one connection to its WAN;
- (b) DDICAT and OAM all communications services and associated infrastructure required to present the connection to the Operator's WAN referred to in clause 2.1(b)(i) of these ICT Requirements, including:
 - (i) WAN data services;
 - (ii) WAN switching and/or routing infrastructure; and
 - (iii) WAN firewalls and/or security infrastructure.

2.3 Operator's Local Area Network

In order to access the ICT Services, the Operator must DDICAT and OAM a LAN as part of the ICT Systems which ensures the performance of the Services in accordance with the Services Agreement.

2.4 Operator's Wireless Local Area Network

The Operator must DDICAT and OAM a WLAN as part the ICT Systems which:

- (a) has wireless access points located throughout the Public Patient Facility and the Health Campus (indoors and outdoors) as required to support the requirements and performance of the Services;
- (b) is an extension to the LAN operated by the Operator as an alternate means of access to ICT Services; and
- (c) is secured to at least the State's standard for WLAN security, and is accepted in writing by the State as such.

2.5 System Architecture

- (a) **(OSI Layer 3 protocol)** The Operator must align with the State's adoption of IPv6 as the preferred OSI Layer 3 network protocol when it designs and constructs the ICT System. The State's approach involves, where technically and commercially feasible:
 - (i) ensuring all components of the State's ICT Systems and infrastructure are capable of simultaneously operating using IPv6 and IPv4 at OSI Layer 3 in a dual-stack operation;
 - (ii) ensuring the State's ICT Systems and applications are configured to prefer IPv6 as the OSI Layer 3 protocol, but will use IPv4 to communicate with legacy systems as required; and
 - (iii) implementing IPv4 without IPv6 at OSI Layer 3 only where delivery of a specific functional outcome cannot be achieved using IPv6, such as where IPv6 is not supported by a specific component of the State's ICT Systems, or where dual-stack operation of IPv4 and IPv6 is not supported.
- (b) **(IPv4 addressing)** The Operator must use an IPv4 address space that does not conflict with the State's IPv4 address space in the design, implementation, configuration, acceptance testing and OAM of the ICT Systems.
- (c) **(IPv6 addressing)** The Operator must allocate a discrete IPv6 address space for use exclusively at the Health Campus in the design, implementation, configuration, acceptance testing and OAM of the ICT Systems. This exclusivity of address space does not apply to Externally Accessible ICT Services.
- (d) **(State's ICT Acceptable Use Policy)** The Operator must, and must procure that its Personnel, comply with the State's ICT Acceptable Use Policy (2009), as updated from time to time, when accessing the State's ICT Systems. The current version of this policy as at the Date of this Agreement has been provided by the State to the Operator, and updates will be provided by the State to the Operator from time to time for the duration of the Term.
- (e) **(Facility's ICT Acceptable Use Policy)** The Operator must, prior to commencement of the Operational Phase, develop and, throughout the Term, enforce, a Facility ICT Acceptable Use Policy. The Facility ICT Acceptable Use Policy must, as a minimum:
 - (i) align with the State's ICT Acceptable Use Policy; and
 - (ii) detail the conditions governing access to, and use of, ICT Systems such as:

- A. access to the internet using the ICT Systems (including from the Patient Entertainment System);
- B. access to the Internet using Personal ICT Equipment;
- C. access to Clinical Information Systems; and
- D. access to and/or use of any other ICT System.

2.6 Passive Infrastructure

The Operator must DDICAT and OAM any Passive Infrastructure required to support the proper delivery of the Services and to meet the normal operational requirements of all ICT Systems and Medical ICT Systems.

2.7 Radio Networks

The Operator must, during the D&C Phase, install and, throughout the Operational Phase, maintain, the infrastructure required by:

- (a) WA Police and the Department of Corrective Services to enable those parties to use their critical radio network; and
- (b) the Department of Health to use its Metropolitan Emergency Radio Network.

2.8 Public Internet Content

- (a) Without limiting its other obligations under the Project Documents, the Operator must not, without the prior written consent of the State, publish on any publicly accessible web page any information or content relating to, whether directly or indirectly, the Public Patient Health Campus (Public Patient Health Campus Web Information). The State may from time to time throughout the Term:

- (i) review any Public Patient Health Campus Web Information; and/or
 - (ii) request the Operator to modify and/or remove any Public Patient Health Campus Web Information,

on or from (as the case may be) any publicly accessible web page controlled by the Operator.

- (b) The Operator must ensure that the ICT Services are not published as Externally Accessible ICT Services without the prior written approval of the State.

3. Interoperability

3.1 Overview

The Operator must DDICAT and OAM ICT Systems that are capable of, and always deliver, safe, efficient, accurate, timely and consistent exchange of required information with the State's ICT Systems, using formats and protocols specified by the State from time to time, especially as relevant to:

- (a) patient information;
- (b) reporting requirements; and

- (c) automated workflows.

3.2 Interoperability platforms

- (a) **(State's Portal environment)** The State:

- (i) will present the State's Portal environment into the Public Patient Facility (via the State's Enterprise Services Demilitarised Zone) to provide appropriate access to the State's Enterprise Applications for personnel authorised by the State (in its sole and absolute discretion); and
- (ii) will be responsible for all aspects of design, provision, implementation and OAM of the State's Enterprise Services Demilitarised Zone, including identity and access management for personnel authorised by the State (in its sole and absolute discretion).

- (b) The Operator:

- (i) **(Operator's platform for Interoperability)** must DDICAT and OAM a platform for Interoperability amongst various workflows, business processes and ICT systems operating at the Public Patient Facility, including:
 - A. the ICT Systems;
 - B. the State's ICT Systems; and
 - C. the Facility's IELVS (or similar) operated by the Operator;
- (ii) **(Operator's Portal)** must DDICAT and OAM a Portal environment which allows integration into and presentation via the State's Portal environment as a Portal Based Application in accordance with the WA Health Portal Standards as described in the State's Facilities Reference Guide;
- (iii) **(Enterprise Services Bus)** must DDICAT and OAM an Enterprise Services Bus to present service endpoints which:
 - A. accepts event-driven service provision requests from endpoints on the State's Enterprise Services Bus;
 - B. generates event-driven service provision requests to endpoints on the State's Enterprise Services Bus;
 - C. subscribes to published service endpoints on the State's Enterprise Services Bus; and
 - D. publishes services to which service endpoints on the State's Enterprise Services Bus can subscribe; and

- (c) **(security and accessibility frameworks)** must ensure that the DDICAT and OAM of the ICT Systems aligns with the functional objectives of the National E-Health Security and Access Framework and, in particular, must ensure that this framework's guiding rules are applied in accordance with its risk management approach and assurance methodology.

3.3 Unified Communications

- (a) **(Federated Unified Communications)** The Operator will be expected to federate with the State's state-wide approach to Unified Communications, which requires the Operator's authentication directory be federated with the State's authentication directory.
- (b) **(State's conferencing technology)** The Operator's ICT Systems must be able to inter-operate with the State's conferencing technology.
- (c) **(TeleHealth inter-operability)** The Operator's ICT Systems must be able to integrate and inter-operate with the State's Unified Communications as deployed at other State facilities such that TeleHealth facilities located at the Public Patient Facility seamlessly integrate with and operate as part of the state-wide TeleHealth service.

3.4 Public Patient electronic records

- (a) During the Operational Phase, the Operator must provide and maintain:
 - (i) a Personally Controlled Electronic Health Record as defined by the relevant national standards;
 - (ii) an Electronic Health Record as required by the Department; and
 - (iii) an Electronic Medical Record which includes all of the information related to an Episode of Care,
- (b) in respect of each Public Patient.

3.5 Information Transfer Requirements

The Operator's platform for Interoperability must meet the requirements of the State's Frameworks, Guides and Standards relating to standards for messaging protocols and formats and alignment to national and international standards for messaging and interoperability, particularly those relevant to health services. Without limiting the foregoing, the Operator must ensure that, for the duration of the Operational Phase, the ICT System:

- (a) **(HL7)** processes updated Patient information, including demographics, received via a HL7 data feed (or other as agreed in writing with the State) from the State's ICT Systems;
- (b) **(HL7 near real-time feed)** provides a near real-time HL7 feed (or other as agreed in writing with the State) of Patient information, or other timeframe as required by the State;
- (c) **(HL7 version)** supports, as a minimum, HL7 message standard version 2.3 or above, as published by Standards Australia, for all areas, including patient administration, pathology, referrals, and discharges. The ICT Systems must support each component of HL7 v3 within a reasonable timeframe of that component being ratified by Standards Australia and NEHTA;
- (d) **(exchange of financial information)** exchanges financial information with the State's ICT Systems using a messaging protocol and format agreed in writing by the parties from time to time, such as HL7 detailed financial transaction messages, to allow agreed Patient accounting information to be processed by:

- (i) the State's Patient Administration Systems; and/or
 - (ii) the State's Billing Systems; and/or
 - (iii) other systems as required by the State from time to time;
- (e) **(imaging)** exchanges and manages DICOM-compliant images, including detection and notification of image replicas, and provide for storage of them within the State's Picture Archiving and Communications System;
- (f) **(Public Patient electronic records)** develops and uses Public Patient Electronic Health Records and Public Patient Electronic Medical Records which:
 - (i) effectively support the interchange of information from other Electronic Health Records and Electronic Medical Records according to the rules for the interchange of this information as defined under the relevant national standards for Personally Controlled Electronic Health Records; and
 - (ii) effectively support the exchange of information with the State's Patient information records system including incorporating the WA Health Enterprise Master Patient Index;
- (g) **(Patient Identifiers)** uses the nationally-issued Individual Healthcare Identifier as the primary unique identifier for Patients within all information exchanged between the State and the Operator;
- (h) **(Provider Identifiers)** uses the WA Health Provider Identifier and National Provider Identifier for clinicians as the primary unique identifier for each clinician delivering clinical services at the Public Patient Facility within all information exchanged between the State and the Operator; and
- (i) **(Patient information)** stores, transmits and uses all clinical and non-clinical Patient information in accordance with the State Records Act (2000) and any relevant Law.

3.6 Applications

- (a) The Operator must develop in the D&C Phase and maintain throughout the Operational Phase non-production instances of Facility Interfaced and Interoperable ICT Systems including development and testing instances which accurately reflect production instances, and which can be used to test:
 - (i) planned upgrades and modifications to the ICT Systems without impacting production instances of ICT Systems; and
 - (ii) integration and/or data exchange between ICT Systems and the State's ICT Systems without impacting production instances of ICT Systems.
- (b) All of the Operator's applications must integrate, in near-real time, with the State's platform for Interoperability for managing Patient administration and records and common clinical and non-clinical functions including:
 - (i) acceptance and exchange of Electronic Health Record Alerts from any of the State's Enterprise Applications nominated by the State from time to time (such as the State's Patient Administration Systems and the State's Clinical Management Systems);

- (ii) ensuring the Services are delivered in a manner that ensures the exchange of all information that supports the scheduling of each Episode of Care and related Episodes of Care;
 - (iii) creation of Patient Details Reports for Patient admissions;
 - (iv) creation of Electronic Discharge Summaries and general practitioner notifications;
 - (v) processing internal hospital electronic referrals and consult requests;
 - (vi) viewing / reviewing clinical workbench, pathology results and existing picture archiving and communications system / radiological information system reports;
 - (vii) management of electronic prescribing; and
 - (viii) management of shared Electronic Medical Records and Electronic Health Records.
- (c) **(Application providers)** The Operator is not required to utilise the State's clinical and non-clinical applications as part of the ICT Systems. If the Operator elects to utilise the same clinical and non-clinical applications used by the State, it must procure them from the relevant provider as the State will not be the service provider to the Operator.
- (d) **(Application functionality)** The Operator's Fit For Purpose Enterprise Applications must include, among other things, the following functionality:
 - (i) a patient administration system;
 - (ii) a clinical information system;
 - (iii) a pharmacy system;
 - (iv) a picture archiving and communications and system;
 - (v) a radiological information system; and
 - (vi) an emergency department information system.

3.7 DNS Namespace and email

- (a) **(Allocation from State's namespace)** The State will allocate the public DNS namespace "mhc.health.wa.gov.au" for use in relation to the Public Patient Facility. The Operator must DDICAT and OAM this namespace.
- (b) **(Operator's name servers)** When developing the ICT System, the Operator must provide the State with the OSI Layer 3 addresses for the Operator's nominated public DNS name servers, intended to host the public DNS namespace "mhc.health.wa.gov.au".
- (c) **(Email traffic)** For the duration of the Operational Phase, the Operator must ensure that all email traffic between the State and the Operator:
 - (i) traverses the State's private WAN connection between the State and the Public Patient Facility; and

- (ii) does not traverse the internet in a format easily read by anyone other than the intended recipient(s) of that email traffic.
- (d) **(State's email routing)** The State will route all email originating within the State's ICT Systems and destined to any public DNS namespace legitimately representing the Public Patient Health Campus, including "mhc.health.wa.gov.au", via the State's WAN connection to the Public Patient Health Campus, specifically being forwarded to the Operator's nominated email gateway(s), such that email traffic originating from a State's Associate which is addressed to one or more Personnel is routed via the State's WAN link to the Public Patient Health Campus under normal conditions. The Operator must provide the State with:
 - (i) details of all public DNS namespaces legitimately representing the Public Patient Health Campus; and
 - (ii) details of the OSI Layer 3 address(es) of the Operator's nominated email gateway(s) operating on or contactable via the LAN,at the Date of this Agreement and promptly following any update of the relevant information by the Operator during the Term.
- (e) **(Operator's email routing)** The Operator must ensure all email originating from Personnel and destined to the public DNS namespace "health.wa.gov.au" or any subdomain thereof (except "mhc.health.wa.gov.au") is routed via the State's WAN connection to the Public Patient Health Campus, specifically being forwarded by the ICT Systems to the State's nominated email gateway(s), such that email traffic originating from any Personnel which is addressed to one or more State's Associate(s) is routed via the State's WAN link to the State's ICT Systems under normal conditions. The State will provide the Operator with details of the OSI Layer 3 address(es) for the State's nominated email gateway(s) promptly following the Date of this Agreement and following any update of that information by the State from time to time during the Term.
- (f) **(Service outage or other fault on State's WAN link)** The Operator must, during the D&C Phase, configure its ICT Systems such that in the event of a service outage or other fault on the State's WAN link, the State's ICT Systems and the ICT Systems automatically negotiate an encrypted mechanism for forwarding email communications via the internet (or other agreed alternative communications mechanism), with the type and level of encryption which satisfies the State's requirements for email communications security and is accepted in writing by the State.

4. Identity and Access Management

The Operator must DDICAT and OAM a Federated Identity and Access Management platform that:

- (a) **(access)** allows personnel, authorised by the State (in its sole and absolute discretion) to securely view Public Patient Facility clinical records and to securely view the Department's clinical records from within the Public Patient Health Campus; and
- (b) **(identity and access management)** allows the access described in clause 4(a) of these ICT Requirements, without requiring users operating at the Public Patient Health Campus to have a user credential on the State's platform (e.g. an "HE number").

5. Performance and Reporting

5.1 Performance

The Operator must ensure that at all times throughout the Term the ICT Systems are suitably robust and reliable that they achieve the performance thresholds specified in the table below.

TABLE X: INDICATORS FOR ICT

Indicator	Performance Threshold
On-line Application Performance – 99.0% of screens, refreshes, ajax calls and transactions (all for single transactions such as add, edit, delete, retrieve and excluding reports and refreshes of multiple transactions) responded to within the stated time.	<i>[not disclosed]</i>
Portfolio A Application Availability	<i>[not disclosed]</i>
Portfolio B Application Availability	<i>[not disclosed]</i>
% of time Applications accessible by State	<i>[not disclosed]</i>

Portfolio A

- Patient administration system;
- Clinical information system;
- Picture archiving and communication system; and
- Emergency department information system.

Portfolio B

- Pharmacy system;
- Radiological information system; and
- Other functional unit information systems.

5.2 Reporting

- The Operator must automate all reporting pertaining to performance of Clinical Services, Clinical Support Services and Non-Clinical Support Services at the Public Patient Facility. Reports must be provided in accordance with the Performance Schedule and the Reporting Schedule of the Services Agreement.
- During the Operational Phase, the Operator must report on the performance of the platform for Interoperability provided by the Operator under clause 3.2(b)(i) of these ICT Requirements.

6. Requirements for ICT Plans

6.1 ICT System Development Plan

- (a) **(Development of ICT System Development Plan)** The Operator must develop, implement and maintain an ICT System Development Plan.
- (b) **(General Content Requirements)** The ICT System Development Plan must detail how the Operator will develop, test and deploy the 'end-to-end' ICT Systems described in these ICT Requirements. The ICT System Development Plan must describe how the ICT Systems will achieve the Interoperability and required information transfer at the commencement of the Operational Phase and throughout the Term of this Agreement.
- (c) **(Specific Content Requirements)** The Operator must describe in the ICT System Development Plan when in the first 5 years of the Operational Phase, it will design, provide, implement and OAM Unified Communications to:
 - (i) deliver core Unified Communications services, specifically including:
 - A. the telephony component of voice services;
 - B. any and all integrated Unified Communications services required for the delivery of TeleHealth; and
 - C. any and all integrated Unified Communications services required to enhance the delivery of any off-site Services, that might operate from the Public Patient Facility; and
 - (ii) integrate and inter-operate with the State's Unified Communications as deployed at other State facilities such that:
 - A. voice calls initiated from the Public Patient Facility to other State facilities and sites will be routed as Voice over IP via the State's WAN connection into the Public Patient Facility in preference to being routed via the public communications infrastructure; and
 - B. TeleHealth facilities located at the Public Patient Facility seamlessly integrate with and operate as part of the state-wide TeleHealth service.

6.2 ICT Service Plan

- (a) **(Development of ICT Service Plan)** The Operator must develop, implement and maintain an ICT Service Plan for the Operational Phase.
- (b) **(General Content Requirements)** The ICT Service Plan must include:
 - (i) the Facility ICT Systems Architecture documentation, including:
 - A. ICT solution overview; and
 - B. ICT solution architecture documentation;
 - (ii) the Operator's plan for the development and maintenance of the applications forming part of the ICT Systems (including the applications described in clause 3.6(d) of these ICT Requirements);

- (iii) an Availability Management Plan;
 - (iv) a Capacity Management Plan;
 - (v) a Service Improvement Plan;
 - (vi) a Technology Adoption Plan;
 - (vii) a Data Governance Plan;
 - (viii) an Information Lifecycle Management Plan;
 - (ix) the Facility ICT Security Policy;
 - (x) an Information Security Management Plan;
 - (xi) the ICT component of the business continuity plan;
 - (xii) a Systems Criticality Matrix, including supporting discussion;
 - (xiii) a Systems Maintenance Schedule;
 - (xiv) a Development, Testing, Deployment and Mitigation Plan; and
 - (xv) the detailed ITIL-compliant (or equivalent) ITSM procedures and processes required for the proper OAM of each component of the Facility ICT Systems Architecture.
- (c) **(Specific Content Requirements)** The Operator must ensure that the ICT Service Plan presents the detailed specifications for the interface between the Operator's WLAN infrastructure and each of:
- (i) the WAN connection(s) operated by the State;
 - (ii) the WAN connection(s) operated by the Operator; and
 - (iii) an internet connection operated by the Operator.
- (d) **(Review and update of ICT Service Plan)** The ICT Service Plan must be reviewed and updated at least annually during the Term in accordance with the Services Agreement to ensure:
- (i) new and emerging technologies are included in the Technology Adoption Plan (as appropriate);
 - (ii) implications of new and emerging technologies (including those in the Technology Adoption Plan), and of changes to the ICT Systems, are reflected in review and update of:
 - A. the Data Governance Plan;
 - B. the Information Lifecycle Management Plan; and
 - C. the Systems Criticality Matrix;
 - (iii) inclusion of plans to incorporate any changes in the State's Frameworks, Guides and Standards that will be required to maintain and/or enhance Interoperability between the ICT Systems and the State's ICT Systems; and

- (iv) any planned maintenance to the ICT Systems and its requisite downtime is recorded.

Appendix A –

Glossary

Capitalised terms used in these ICT Requirements but not defined in this Appendix A have the meaning given to those terms in the D&C Agreement or the Services Agreement (as applicable). In the event that a term is defined in both the D&C Agreement and the Services Agreement, the definition used in the D&C Agreement will prevail for the purposes of these ICT Requirements.

In these ICT Requirements, the following words and phrases have the following meanings unless the context otherwise requires.

Term	Meaning
Availability Management Plan	means the plan to be developed by the Operator and regularly updated throughout the Term which demonstrates and details processes to ensure that each of the ICT Systems is appropriate for, and can achieve, any relevant targets detailed in these ICT Requirements.
Capacity Management Plan	means the plan to be developed by the Operator and regularly updated throughout the Term which demonstrates and details processes to ensure the ICT Systems will, and have the capacity to, meet the current and reasonably expected future requirements of delivering the Services in a cost-effective manner.
Communications Rooms	means any or all of: 1. core-tier / central computer rooms; 2. distribution-tier / hub communications rooms; and 3. access-tier / floor communications rooms.
Data Governance Plan	means the plan of that name to be developed by the Operator and regularly updated throughout the Term which describes the governance model for all clinical and non-clinical data created, recorded, stored or accessed as part of the ICT Systems.
DDICAT	means, in respect of the D&C Phase under the D&C Agreement, the Operator's obligation to design, develop, install, configure and acceptance test the relevant matter.
Development, Testing, Deployment and Mitigation Plan	means the plan to be developed and annually updated by the Operator which demonstrates and details processes for the development of any ICT Systems, and which must include mitigation strategies for the occurrence of any faults in any of the ICT Systems, also including the conducting of tests of ICT Systems before deployment, including testing integration with the State's ICT Systems.
DICOM	means Digital Imaging and Communications in Medicine, being the world standard for handling, storing, printing and transmitting medical imaging data and enables integration of scanners, servers, printers, workstations and network hardware.
DNS	is acronym for Domain Name System.
Electronic Discharge Summary	means a computerised legal version of the collection of information about events during care by a provider or organisation that complies with AS4700.6 (Int) 2007. For the avoidance of doubt, the provider or organisation is the Operator.
Electronic Health	means a longitudinal electronic record of summary healthcare

Term	Meaning
Record	information generated by one or more encounters, in any care delivery setting.
Electronic Health Record Alert	means Patient information from one clinical ICT system which is made available in near-real time to another clinical ICT system for near-real time integration into a Patient's Electronic Health Record as controlled by the receiving clinical ICT system.
Electronic Medical Record	means a computerised legal version of much of the data found in a paper medical record, which aggregates data from disparate computer systems and scanned documents, including clinical, demographic and administrative data.
Enterprise Applications	means, in respect of a party, any clinical or non-clinical application provided by that party for consumption by Hospital Users.
Enterprise Services Bus	means infrastructure which supports endpoints through publication and consumption of service endpoints, and in this case refers to that OAM by the Operator.
Externally Accessible ICT Services	means any ICT services and applications specifically published for public access and consumption via the internet.
Facility ICT Acceptable Use Policy	means the acceptable use policy developed by the Operator and which is applicable to Hospital Users accessing or otherwise making use of ICT Systems.
Facility ICT Security Policy	means the set of business rules and processes to be developed by the Operator and regularly updated throughout the Term defining how traffic within the ICT Systems will be treated when traversing logical security boundaries within the network infrastructure.
Facility ICT Systems Architecture	means the technical architecture of, and high level interaction between, all components of the ICT Systems, required for the ICT Systems to operate as a single coordinated system.
Facility Interfaced and Interoperable ICT Systems	means the set of ICT Systems which interface or otherwise interoperate with any of the State's ICT Systems.
Facility's IELVS	means the Public Patient Facility's integrated extra low voltage systems which enable the monitoring and control of systems, plant and equipment on the Health Campus, such as HVAC (i.e. heating, ventilating and air conditioning), building access controls and elevators.
Federated Identity and Access Management or FIAM	means policies, practices and protocols to manage the identity and trust into IT users and devices across organisations, in this case across the Operator and the Department.
Healthcare Identifier Service	means the national service which enables healthcare operators to associate health information about a healthcare individual accurately, securely and consistently within a healthcare context. This association includes use within electronic communications such as discharge summaries, prescriptions and referrals.
HL7	means Health Language 7.
ICT	means Information and Communications Technology.
ICT Plans	means the ICT System Development Plan and the ICT Service Plan as described in section 6 of these ICT Requirements.
ICT Service Plan	means the plans, as described in section 6.2 of these ICT Requirements, to be developed by the Operator and regularly updated throughout the Term which set out the architecture, design,

Term	Meaning
	implementation and OAM processes and procedures to allow the Operator to meet these ICT Requirements.
ICT Services	means any ICT functional capability accessible via: <ol style="list-style-type: none"> 1. the ICT Systems; or 2. Personal ICT Equipment being used at the Public Patient Health Campus.
ICT Systems	means the hardware, software and platforms owned by, and under the operation and management of, the Operator as further described in these ICT Requirements.
ICT System Development Plan	means the plan described in section 6.1 of these ICT Requirements.
Individual Healthcare Identifier	means the unique identifier assigned by Medicare to any person who receives healthcare, using a limited amount of identifying information.
Information Lifecycle Management Plan	means the plan to be developed by the Operator and regularly updated throughout the Term which describes, in detail, the lifecycle of information within the ICT Systems, and the management of that information during and between each stage of the lifecycle of that information.
Information Security Management Plan	means the plan to developed by the Operator and regularly updated throughout the Term which demonstrates and details processes to protect and manage the security of information stored on the ICT Systems.
Interoperability	means the exchange of information between the Operator and the State using formats and protocols specified by the State, as updated from time to time by the State.
IPv4	means Internet Protocol Version 4.
IPv6	means Internet Protocol Version 6.
ITIL	means Information Technology Infrastructure Library, being the set of concepts and practices for managing information and communication technology services, information technology development and information technology operations, entitled "Information Technology Infrastructure Library" and published by the United Kingdom Office of Government Commerce.
ITSM	means Information Technology Service Management, being the framework model of which ITIL is a well-known example.
LAN	means the Local Area Network OAM by the Operator at the Health Campus.
Medical ICT Systems	means any ICT systems intrinsic to the normal operation and use of Medical Equipment which is under the OAM of the Operator, but specifically excludes the ICT Systems.
Metropolitan Emergency Radio Network	means the communications infrastructure owned, operated and maintained by the Western Australia Department of Health that enables communications between disaster-site deployed medical teams, the State Health Incident Coordination Centre (SHICC) and all metropolitan hospitals' emergency departments, as required by the State's health disaster and emergency management obligations under the State Emergency Management Plan for Human Epidemic (October 2008).
National Authentication Service for Health	the nationwide, secure authentication service for healthcare organisations and personnel to exchange e-health information, being finalised by NEHTA as at the Date of this Agreement.

Term	Meaning
National E-Health Security and Access Framework	means the document titled “National E-Health Security and Access Framework” (V1.0, 2009) published and amended from time to time by NEHTA.
National Provider Directory	means the directory of provider identifiers, issued, owned and maintained by the Commonwealth Government, representing a Nationally-authoritative source of provider identifiers.
NEHTA	the National E-Health Transition Authority Limited (ABN 18 114 638 336).
OAM	means, in respect of the Operational Phase under the Services Agreement, the Operator’s obligation to operate, administer and maintain the relevant matter.
OSI Layer 3	means the network layer of the 7 layer Open Systems Interconnection model of communications system organisation utilised in computer networking. (Layer 1 – Physical, Layer 2 – Data Link, Layer 3 – Network, Layer 4 – Transport, Layer 5 – Session, Layer 6 – Presentation, Layer 7 – Application.)
Passive Infrastructure	any rooms, infrastructure and equipment required for the OAM of the ICT Systems, but which does not necessarily itself interface with the ICT Systems, including: <ol style="list-style-type: none"> 1. Communications Rooms and all non-ICT infrastructure and equipment housed within and/or directly supporting the operation of these rooms; 2. power infrastructure (including power supply and in-rack power distribution); 3. cooling infrastructure; and 4. server and communications racks.
Patient Details Report	means a report of the necessary medical and clinical data in such form as agreed in writing between the State and Operator from time to time.
Patient Entertainment System	means those parts of the ICT Systems dedicated to providing entertainment for Patients, and which might also be used for any or all of the following: <ol style="list-style-type: none"> 1. Patients’ access to electronic meal ordering systems; 2. Patients’ access to electronic Health Campus information and resources; 3. Patients’ access to internet web browsing; 4. Patients’ telephony and video-calling; 5. Patients’ access to radio, television channels and movies services; 6. Patients’ access to electronic gaming systems, such as Xbox; 7. Patients’ access to their own Health Campus billing and accounts information; 8. clinical access to Clinical Information Systems at the Patient bedside; or 9. realising efficiencies in Health Campus workflows, such as streamlining bed management workflows.
Patient Identifier	means the primary unique identifier for Patients issued, owned and maintained by the Department.
Personal ICT Equipment	means any ICT equipment which is owned by a natural person who is a Hospital User or Personnel and which includes: <ol style="list-style-type: none"> 10. laptop computers;

Term	Meaning
	11. tablet computers; 12. smart phones; and 13. personal digital assistants.
Personally Controlled Electronic Health Record	means a type of Electronic Health Record that is initiated and personally controlled by an individual.
Pharmaceutical Benefits Scheme or PBS	means the Department of Health and Ageing publication which is updated regularly and maintained by the Department.
Portal	means the platform for integrating information, people and processes across the organisational boundaries of the Operator and the Department which: <ol style="list-style-type: none"> 1. provides a secure unified access point, often in the form of a web-based user interface; and 2. is designed to aggregate and personalise information through Portal Based Applications.
Portal Based Application	means applications behaving in a fundamentally more controlled and intelligent fashion than simple HTML pages, and having all of the following characteristics: <ol style="list-style-type: none"> 1. allow integration of multiple content sources, regardless of locality; 2. have a formally defined structure; 3. provide formally defined mechanisms for operations against remote content sources; and 4. communicate and interchange content with other web applications.
Public Patient Electronic Health Record	the Electronic Health Record pertaining to encounters delivered by the Operator to Public Patients attending the Health Campus.
Public Patient Electronic Medical Record	the Electronic Medical Record pertaining to encounters delivered by the Operator to Public Patients attending the Health Campus.
Secure Message Delivery	means the application of NEHTA messaging specifications and the use of NEHTA infrastructure services to transfer unspecified, opaque content between healthcare operators.
Service Improvement Plan	means the plan of that name to be developed by the Operator and regularly updated throughout the Term which demonstrates and details processes to align and realign the ICT Systems to the changing needs to the Services by identifying and implementing improvements to the relevant ICT Systems.
State's Billing System	means the State's billing systems as advised by the State from time to time and includes, as at the Date of this Agreement Power Health Solutions' PBRC-AE v1.11.
State's Clinical Management Systems	include: <ol style="list-style-type: none"> 1. iCM; 2. HCARE CMS; 3. others as directed by the State; and 4. the systems described in paragraphs 1 to 3 (inclusive) above as replaced or superseded from time to time.
State's Enterprise Applications	means any Enterprise Applications used by the State.
State's Enterprise	means the State's ICT Systems' resources presented for integration

Term	Meaning
Services	into and/or access via the ICT Systems, such as: <ol style="list-style-type: none"> 1. the State's Enterprise Services Bus; 2. the State's Active Directory services; 3. the State's email services; 4. the State's Unified Communication Services; and 5. the State's infrastructure monitoring systems.
State's Enterprise Services Bus	means infrastructure which supports endpoints through publication and consumption of service endpoints, and in this case refers to that OAM by the State.
State's Enterprise Services Demilitarised Zone	means the semi-private OSI Layer 3 network subnet(s) hosting infrastructure used to securely present the State's Enterprise Services to the ICT Systems.
State's Facility Reference Guide	means the document titled "WA Health – Facilities Reference Guide" as updated from time to time.
State's Facility Classification Specification	means the document titled "WA Health Tertiary Facility Classification Specification" as updated from time to time.
State's Frameworks, Guides and Standards	means the collection of documents available from the State describing the State's ICT Enterprise Architecture for facilities as updated from time to time, including: <ol style="list-style-type: none"> 1. the document titled "WA Health Facility Guidelines for Engineering Services"; 2. the document titled "WA Health Tertiary Facility Classification Specification"; 3. the document titled "Health Architecture Reference Framework"; 4. the document titled "WA Health – Facilities Reference Guide"; and 5. the collection of documents referred to by the State as the Enterprise Architecture Standards Information Base.
State's ICT Acceptable Use Policy	means the document titled "WA Health Acceptable Use Standard – Information Communications and Technology (ICT)", as updated from time to time.
State's ICT Systems	means any ICT systems which are owned by and/or under the OAM of the State, but specifically excludes the ICT Systems and any Medical ICT Systems.
State's Patient Administration Systems	means the State's patient administration systems as advised by the State from time to time and includes, as at the Date of this Agreement: <ol style="list-style-type: none"> 1. TOPAS; and 2. HCARE CMS.
State's Picture Archiving and Communications Systems	means the State's picture archiving and communication system, as advised by the State from time to time, and includes, as at the Date of this Agreement, the AGFA Picture Archiving and Communications System, which leverages the AGFA radiology information system for all workflow.
State's Portal	means the Interoperability platform provided by the State to provide personnel, authorised by the State in its sole and absolute discretion, with appropriate access to the State's Enterprise Applications, and which provides: <ol style="list-style-type: none"> 1. a secure and unified systems integration point across facilities;

Term	Meaning
	<ol style="list-style-type: none"> 2. a framework for information access across the State's ICT systems; 3. a framework for collaboration between people across facilities; 4. a framework for the management of electronic content across facilities; and 5. a framework for the management of business documents across facilities.
State's WAN	means the wide area network OAM by the State.
Systems Criticality Matrix	means the document to be produced and managed by the Operator which presents the relative importance of each discrete set of functionality delivered by the ICT Systems, accompanied by supporting discussion within the ICT Service Plan, and which forms part of the ICT Service Plan.
Systems Maintenance Schedule	means a schedule developed by the Operator describing the planned maintenance, upgrades and scheduled service outages for all the ICT Systems, in accordance with which the Operator must perform planned maintenance, upgrades and scheduled service outages, including any engineering works relevant to the ICT Systems.
Technology Adoption Plan	means the plan to be developed by the Operator and regularly updated throughout the Term which outlines the estimated targets for the integration into the ICT Systems of any technological developments anticipated over the subsequent rolling 3 years, and which aligns with the ICT Service Plan.
TeleHealth	<p>means the delivery of clinical services to Patients at a distance using ICT to provide real time (synchronous) and store and forward (asynchronous) assessment and ongoing management of Patients. Clinical services provided via this methodology include:</p> <ol style="list-style-type: none"> 1. specialist referral services; 2. Patient consultations and second opinion advice; 3. remote Patient monitoring; 4. Patient education; 5. health professional education; and 6. support and administrative tasks related to the provision of health delivery.
Unified Communications	means the use of a single, integrated platform, based on internet protocol, to deliver a consistent user experience of real-time and non-real-time communications functionality.
WA Health Enterprise Master Patient Index	means the index of all Patient Identifiers, issued, owned and maintained by the Department, representing the authoritative source of Patient identifying, and Patient demographic, information in Western Australia.
WA Health Enterprise Provider Directory	means the directory of all WA Health Provider Identifiers, issued, owned and maintained by the Department, representing an authoritative source of provider identifiers within Western Australia.
WA Health Provider Identifier	means the primary unique identifier for health providers, issued, owned and maintained by the Department.
WAN	means the wide area network OAM by the Operator at the Health Campus.
WLAN	means the Wireless Local Area Network OAM by the Operator at the Health Campus.

Schedule 13 – Requirements for Design Documentation

1. Requirements for Master Plan

- (a) The Master Plan (which must include drawings at an appropriate scale) must convey the layout of all facilities on the Site and their integration within the broader Midland Redevelopment Area. The drawings must clearly illustrate the location of the Public Patient Facility, the Private Patient Facility, Shared Infrastructure and the Commercial Facilities for the stage of development being undertaken under this Agreement and subsequent development stages.

In particular, the Master Plan must include:

- (i) a Site context plan;
 - (ii) a Site layout plan (for the Health Campus lot);
 - (iii) layout plans, sections and elevations for all facilities to be constructed at the Health Campus for the stage of development being undertaken under this Agreement;
 - (iv) detailed facade sections for all facilities to be constructed at the Health Campus for the stage of development being undertaken under this Agreement;
 - (v) layout plans and elevations for the Planned Expansion Works (as that term is defined in the Services Agreement); and
 - (vi) graphic images including coloured elevations, rendered perspectives (minimum of two views) and 3D renders.
- (b) The drawings included in the Master Plan must clearly identify:
- (i) all buildings, outbuildings, service areas, courtyards, paths, steps, retaining walls, roadways, carparking (including any multistorey or basement), bicycle parking, landscape elements, engineering services and entry / egress and circulation routes for pedestrians and vehicles (including emergency vehicles);
 - (ii) designated areas for Commercial Facilities;
 - (iii) designated areas for the Planned Expansion Works and any Further Expansion Works (as those terms are defined in the Services Agreement);
 - (iv) the location of Utility Infrastructure and the layout of Utilities within the Site including connection locations;
 - (v) the massing and form of the Public Patient Facility, the Private Patient Facility and any Commercial Facilities;
 - (vi) the size of any carparking facilities including the total number of bays and the footprint of the facility;
 - (vii) the proposed allocation of parking bays between staff and visitors;

- (viii) proposed traffic arrangements on Centennial Place, Clayton Street, Lloyd Street and within the Site;
 - (ix) setbacks from all roadways and site boundaries; and
 - (x) Australian height datum levels for the Public Patient Facility, the Private Patient Facility and the Commercial Facilities.
- (c) The Master Plan must clearly address:
 - (i) how the Health Campus development satisfies the principles of:
 - A. the Structure Plan;
 - B. the Midland Health Campus Site Specific Guidelines;
 - C. the Midland Health Campus Design Intent / Context Plan;
 - D. the Midland Health Campus Building Heights Plan; and
 - E. the Midland Health Campus Access and Movement Plan;
 - (ii) how the Health Campus contributes and adds value to the broader Midland Redevelopment Area;
 - (iii) how the Health Campus acknowledges the heritage of the Site and adjacent heritage listed buildings;
 - (iv) the proposed Service Life for the Health Campus, including:
 - A. the Public Patient Facility (which may include plant and/or carparking facilities);
 - B. the Private Patient Facility;
 - C. the Shared Infrastructure; and
 - D. the Commercial Facilities;
 - (v) the proposed design for the Health Campus, and, in particular, the Public Patient Facility, the Private Patient Facility, Shared Infrastructure and the Commercial Facilities, including any themes and how these have been incorporated into all elements of the design from external architecture through to the design of the interior; and
 - (vi) the proposed expansion strategy for the Public Patient Facility and broader Health Campus, including:
 - A. adaptability of areas within the Public Patient Facility to accommodate changes in service delivery and/or emerging models of care;
 - B. other future proofing strategies within the design of the Public Patient Facility to the extent feasible, such as:

- 1) ensuring that services which will likely expand are not “land-locked” and are optimally located within the Public Patient Facility to enable expansion by extending the Public Patient Facility or expanding into the adjacent service area;
 - 2) providing acuity adaptable inpatient rooms and treatment rooms that can swing to alternate functions within minimal equipment cost and no construction;
 - 3) ensuring that engineering services are appropriately sized with capacity for the Planned Expansion Works, and, where appropriate, for Further Expansion Works; and
 - 4) provision of additional beds as part of the initial development which ultimately transfer from Private Patient to Public Patient beds;
- C. the proposed development staging to deliver a coherent and “complete” campus environment at the completion of each stage of the campus development; and
- D. the proposed measures to minimise impact on delivery of the Services and Health Campus amenity during execution of future development stages.
- (d) The Master Plan must give consideration to the requisite helicopter flight paths for the WA Police facility located on Clayton Street.

2. Fire and Life Safety Engineering Report

- (a) As part of preparing the Design Documentation under this Agreement, the Operator may propose deviations from the ‘deemed to satisfy’ provisions of the Building Code of Australia in respect of fire and life safety in the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commercial Facilities provided that any alternative solutions do not compromise delivery of the Services or result in unreasonable operational constraints at the Public Patient Facility.
- (b) The Fire Services Consultancy Subcontractor engaged by the Operator (that will be a Key Subcontractor under this Agreement) must prepare the Fire and Life Safety Engineering Report, addressing the following:
- (i) the relevant Authorities and Key Users having an interest in the fire and life safety engineering design;
 - (ii) a description of the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commercial Facilities including building classification, development purpose and egress;
 - (iii) occupant characteristics, human behaviours and evacuation;

- (iv) justification to support any alternative solutions including any fire scenario modelling and assumptions; and
- (v) a detailed schedule of all deviations from the 'deemed to satisfy' provisions of the Building Code of Australia, the proposed alternative solutions and an assessment of any operational impacts or constraints. This part of the Fire and Life Safety Engineering Report must be prepared in consultation with the Building Surveyor Consultancy Subcontractor engaged by the Operator (that will also be a Key Subcontractor under this Agreement).

3. Acoustic Design Report

- (a) The Acoustic Design Report must:
 - (i) confirm the acoustic conditions (noise and vibration) at the Site;
 - (ii) confirm the acoustic design criteria for the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commercial Facilities in accordance with Good Industry Practice; and
 - (iii) specify the design details required to address the acoustic design criteria.
- (b) The Acoustic Design Report must incorporate the following acoustic design features to the extent required to meet the acoustic design criteria referred to above:
 - (i) structural vibration isolation;
 - (ii) sound attenuating façade materials (e.g. double glazing);
 - (iii) use of acoustically rated materials for doors, walls and ceilings;
 - (iv) insulation and lagging; and
 - (v) vibration isolation mounts for equipment.

4. Flexibility and Expansion Report

The Flexibility and Expansion Report must detail the following:

- (a) the specific design features that will maximise future flexibility and expansion capacity of the Public Patient Facility, giving consideration to:
 - (i) the location of functional units and buildings on the Site;
 - (ii) optimising in-ground service runs and major riser locations to ensure site-wide flexibility;
 - (iii) the capacity of Utility Infrastructure;
 - (iv) redundancy provisions generally within the design of the Public Patient Facility, the Private Patient Facility and the Shared

- Infrastructure including any spare riser capacity and other plant area;
- (v) anticipated / required department relocations and the design provisions to enable these with minimal inconvenience and impact on the Services;
- (vi) external access and / or connection points for the Planned Expansion Works (as that term is defined in the Services Agreement);
- (vii) where future expansion is envisaged to occur over occupied space, any specific allowances for enabling this to occur with minimal inconvenience and impact on the Services;
- (viii) noise treatments to minimise future construction noise;
- (ix) access routes, access panels and other building treatments (e.g. lift sizes and capacity, external access points, gantries, hoists and slab design) to enable major pieces of plant and equipment (including Fixed Building Equipment and Medical Equipment (as those terms are defined in the Services Agreement)) to be easily installed, removed, replaced, relocated and maintained; and
- (x) incorporation of emerging and future technologies and/or technologies that become viable as the Public Patient Facility expands (e.g. use of automatic guided vehicles);
- (b) the proposed construction methodology for the Planned Expansion Works (as that term is defined in the Services Agreement), giving consideration to:
 - (i) construction access;
 - (ii) proposed foundation and slabstructural systems (or any limitation on options);
 - (iii) staging to ensure minimum impact and disruption to Health Campus operations; and
 - (iv) the requirement to undertake the Planned Expansion Works within an operational campus environment; and
- (c) strategies to prevent construction-related nosocomial infection, for which aspergillus and legionella species are the most frequent causes, including:
 - (i) dust minimisation strategies for the Planned Expansion Works (e.g. locating air-intake grilles away from planned expansion zones); and
 - (ii) preventive measures to decrease the transmission of legionella during construction or renovation activities involving disruption to water systems of the Health Campus including supply, cooling towers, evaporative condensers, locally produced reverse-osmosis water, heated potable water systems and heating and air-conditioning systems.

Schedule 14 – Schematic Design Report, Design Development Report and Final Design Report

1. Schematic Design Report

The Schematic Design Report must, as a minimum:

- (a) describe the design process undertaken by the Operator to the completion of the Schematic Design Stage, including a brief overview of Key User engagement;
- (b) describe the design philosophy for the Health Campus (covering both the Works and Private Works);
- (c) include an explanation of the functional planning of the Public Patient Facility and the Private Patient Facility and how this aligns with the Operator's proposed model of care;
- (d) include details of the manner in which Evidence Based Design (as defined in the Health Campus Requirements) has been incorporated into the design of the Health Campus;
- (e) include a description of the Site servicing strategy and provide details of all Infrastructure and Utility works / upgrades to be provided including details of proposed capacity, identified points of failure, proposed redundancy measures and intended Service Life of all major components of these works;
- (f) include a description of the structural systems used for the foundations, substructure and superstructure of the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commerical Facilities;
- (g) include for each of the Building Engineering Services within the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commerical Facilities:
 - (i) the design philosophy;
 - (ii) an overall system description; and
 - (iii) the intended Service Life of all major components including pipework, ductwork, cabling, plant, control systems and the like;
- (h) include details of the acoustic design criteria and proposed acoustic treatments for the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commerical Facilities;
- (i) provide details of the flexibility and expansion measures incorporated within the design of the Health Campus (which may be in the form of attaching the Flexibility and Expansion Report);
- (j) include a preliminary schedule of finishes and construction materials for the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commerical Facilities including all relevant performance or output criteria;

- (k) include a summary of the ESD Initiatives to be incorporated into the Project;
- (l) describe the status of the Design Documentation;
- (m) include schematic design drawings and schedules for the Health Campus prepared during the Schematic Design Stage for all disciplines (covering both the Works and Private Works) as follows:
 - (i) Site plan (including Infrastructure works on and adjacent to the Site);
 - (ii) Infrastructure works plans (to the extent not shown on the Site plan described in paragraph (i) above);
 - (iii) access plans for the Health Campus (illustrating traffic and pedestrian circulation patterns for patients, visitors and staff);
 - (iv) architectural plans, sections and elevations (showing reduced levels);
 - (v) photo-realistic renders of the Health Campus covering all external façades, key and typical internal views;
 - (vi) structural engineering loading diagrams, layouts and sections;
 - (vii) system schematic layouts for Building Engineering Services;
 - (viii) external works and landscaping layouts;
 - (ix) preliminary schedules of accommodation for any departments / Functional Units nominated by the State; and
 - (x) preliminary Room Data Sheets (as defined in the Health Campus Requirements);
- (n) in respect of the proposed design of the Health Campus, include:
 - (i) a report on statutory compliance including in respect of the *Disability Discrimination Act 1992* (Cth), OHS Laws (as defined in Clause 10.1(a)(ii)), fire engineering and relevant planning legislation;
 - (ii) any update to the Design Departures Schedule as agreed between the State and the Operator;
 - (iii) a list of the key design assumptions for each design discipline; and
 - (iv) a list of outstanding issues for resolution during the Design Development Stage; and
- (o) incorporate such other information reasonably requested in writing from time to time by the State.

2. Design Development Report

The Design Development Report must, as a minimum:

- (a) include an overview of Key User engagement during the Design Development Stage;
- (b) identify any material differences to the design since the Schematic Design Report was provided, including in respect of paragraphs (b) to (h) (inclusive) above for the Schematic Design Report;
- (c) include as appendices the following documents which have been updated as at the end of the Design Development Stage:
 - (i) the Fire and Life Safety Engineering Report;
 - (ii) the Acoustic Design Report;
 - (iii) the Flexibility and Expansion Report; and
 - (iv) the Design Management and Stakeholder Engagement Plan (which incorporates the safety in design process);
- (d) include design development drawings and schedules for the Health Campus prepared during the Design Development Stage addressing all design disciplines (covering both the Works and Private Works) as follows:
 - (i) Site plan (including Infrastructure works on and adjacent to the Site);
 - (ii) Infrastructure works plans (to the extent not shown on the Site plan described in paragraph (i) above);
 - (iii) 1:200 scale drawings of all external areas of the Health Campus including external elevations of all façades and elevations of courtyards and the like;
 - (iv) updated photo-realistic renders of the Health Campus covering all external façades, key and typical internal views;
 - (v) 1:200 scale drawings on a floor by floor basis (including roof and basement areas) for the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure and the Commercial Facilities which clearly identifies each department / Functional Unit;
 - (vi) 1:100 architectural plans, sections and elevations showing construction and materials;
 - (vii) 1:100 coordinated reflected ceiling plans;
 - (viii) for key patient and visitor spaces and key clinical and clinical support areas as nominated by the State;
 - A. 1:50 room layouts identifying the nature and location of Fixed Building Equipment, Medical Equipment and Non-Medical FF&E (all as defined in the Services Agreement), location of service panels/outlets, access control and other health service needs;
 - B. 1:50 selected internal elevations; and

- C. 1:50 coordinated reflected ceiling plans;
- (ix) 1:50 and 1:20 construction sections – for façade, perimeter wall sections showing finishes at junctions of walls, floors and ceilings;
- (x) structural engineering loading diagrams, layouts and sections;
- (xi) system schematic layouts for Building Engineering Services;
- (xii) external works and landscaping layouts;
- (xiii) roof layout and drainage details;
- (xiv) 1:50 lift, stairs and riser details; and
- (xv) all schedules including access management schedules, signage, nurse call, BMS, security and the like;
- (e) include a schedule of accommodation for any departments / Functional Units nominated by the State;
- (f) include Room Data Sheets (as defined in the Health Campus Requirements) for any departments / Functional Units nominated by the State;
- (g) include an updated schedule of finishes and construction materials including all relevant performance or output criteria;
- (h) include an updated summary of the ESD Initiatives to be incorporated into the Project;
- (i) in respect of the proposed design of the Health Campus, include:
 - (i) an updated report on statutory compliance including in respect of the *Disability Discrimination Act 1992* (Cth), OHS Laws (as defined in Clause 10.1(a)(ii)), fire engineering and relevant planning legislation;
 - (ii) any update to the Design Departures Schedule as agreed between the State and the Operator; and
 - (iii) an updated list of the key design assumptions for each discipline;
- (j) include details of how the Design Documentation addresses the outstanding issues set out in the Schematic Design Report;
- (k) include details of any other material issues which will need to be resolved prior to preparation of the “for construction” documentation; and
- (l) incorporate such other information reasonably requested in writing from time to time by the State.

3. Final Design Report

The Final Design Report must, as a minimum:

- (a) address each of the requirements for the Schematic Design Report and the Design Development Report as at the completion of the Detailed Design Stage, so that it may be read and understood as a stand-alone report;
- (b) include all “For Construction” drawings and schedules for the Health Campus;
- (c) include as appendices the following documents which have been updated as at the end of the Detailed Design Stage:
 - (i) the Fire and Life Safety Engineering Report;
 - (ii) the Acoustic Design Report;
 - (iii) the Flexibility and Expansion Report; and
 - (iv) the Design Management and Stakeholder Engagement Plan (which incorporates the safety in design process); and
- (d) incorporate such other information reasonably requested in writing from time to time by the State.

Schedule 15 – Major Plant and Equipment

1. Major Plant and Equipment

Discipline	Item
Mechanical	Chillers
	Air Handling Units
	Fan Coil Units
	Computer Room Air Conditioning (CRAC) Units
	Cooling Towers
	Boilers
	Pumps
	Building Management System
Electrical	
	Generators
	Uninterrupted Power Supply (UPS) Units
	Transformers
	High Voltage (HV) Switchgear
	Energy Meters
	Lighting Control System
Hydraulic	
	Domestic Water Pumps
	Reverse Osmosis (RO) Water Maker Unit
	Reverse Osmosis (RO) Water Pressure Pumps
	Domestic Hot Water Pump Set
	Transfer Pumps
Fire	Pumps (Duty and Electric)
	Fire Indicator Panel

	Emergency Warning and Intercommunications System (EWIS) Panel
	Sprinkler Control Valves

Schedule 16 – Independent Certifier Agreement

Agreement

Independent Certifier Agreement

The State of Western Australia

St John of God Midland Health Campus

St John of God Health Care Inc

Brookfield Multiplex Constructions Pty Ltd

[Insert Independent Certifier]

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Independent Certifier Agreement

Date ►

Between the parties

State	The State of Western Australia
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Operator	St John of God Midland Health Campus incorporated in Western Australia with limited liability, ACN 152 874 845, of Level 2, 12 Kings Park Road, West Perth 6005
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Private Operator	St John of God Health Care Inc , ARBN 051 960 911 of Level 2, 12 Kings Park Road, West Perth 6005
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Builder	Brookfield Multiplex Constructions Pty Ltd , ABN 70 107 007 527 of The Old Swan Brewery, Level 2, 173 Mounts Bay Road, Perth 6000
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Independent Certifier	[##], ACN [##] of [##]
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Recitals	<ol style="list-style-type: none">1 The State and the Operator entered into the Design and Construction Agreement.2 The Operator and the Builder entered into the D&C Subcontract.3 It is a condition of the Design and Construction Agreement that the State and the Operator enter into this agreement and that the Operator procures the Builder to enter into this agreement.4 The State and the Operator wish to appoint the
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Independent Certifier to perform the Independent Certifier Services on the terms and conditions set out in this agreement.

5 The Operator, the Private Operator and the Builder wish to appoint the Independent Certifier to perform the D&C Subcontract Independent Certifier Services on the terms and conditions set out in this agreement.

6 This is the "Independent Certifier Agreement" as referred to in the Design and Construction Agreement.

The parties agree

as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

Operative Part

1 Definitions and interpretation

1.1 Definitions

In this agreement:

Term	Meaning
Advisor	means a person with suitable expertise and experience required to determine a Dispute having regard to the nature of the Dispute, appointed in accordance with Clause 10.2.
APRA	means the Australian Prudential Regulation Authority.
Associate	for the purposes of the definitions of "Control" and "Change in Control", has the same meaning as "associate" in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of Section 12 of the Corporations Act).
Authorisation	any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, approval, authority or exemption from, by or with an Authority or stock exchange.
Authority	any Governmental Agency, administrative or judicial body or tribunal.
Builder Delay Costs	means the amount payable by the Private Operator to the Builder in respect of a "Compensable Extension Event" (as that term is defined in the D&C Subcontract) calculated in accordance with Clause 16.9 of the D&C Subcontract.
Business Day	any day other than: <ol style="list-style-type: none"> 1 a Saturday or a Sunday; or 2 a holiday for Perth gazetted in the <i>Public and Bank Holidays Act 1972</i> (WA).

Change in Control	occurs where, at any time any person (whether alone or with any Associate) ceases to or commences to, directly or indirectly, have Control of an entity.
Claim	<p>means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity):</p> <ol style="list-style-type: none"> 1 under, arising out of, or in any way in connection with this agreement; 2 at Law; or 3 for specific performance, restitution, payment of money (including damages), or any other form of relief.
Client Parties	the State, the Operator, the Private Operator and the Builder.
Commercial Facilities	has the meaning given in the Design and Construction Agreement.
Compensable Extension Event	has the meaning given in the Design and Construction Agreement.
Completion	means that stage when all the Completion Criteria have been satisfied.
Completion Criteria	means those criteria that are required to be satisfied to achieve Completion under the Design and Construction Agreement as set out in Schedule 5 (Completion Criteria) of the Design and Construction Agreement and otherwise expressly specified in the Design and Construction Agreement.
Completion Plan	means the plan of that name prepared by the Operator which sets out the Operator's plan for Completion set out in Attachment 8 to the Design and Construction Agreement, as may be updated from time to time by the Operator in accordance with the Design and Construction Agreement.
Completion Report	has the meaning given in the Design and Construction Agreement.

Completion Tests	means those tests which are required to be successfully completed prior to Completion in order to demonstrate that Completion has been achieved, including those set out in the Completion Plan.
Confidential Information	any information directly or indirectly connected to, or in respect of, the Health Campus or the performance of the Independent Certifier's Obligations including any information of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the Client Parties and the Builder, the State or the Health Campus generally.
Control	<ol style="list-style-type: none"> 1 control or influence of, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies; 2 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 3 having a relevant interest (as defined in Section 608 of the Corporations Act) in more than 20% of the securities (as defined in the Corporations Act), of an entity (whether alone or together with any Associates).
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Date for Completion	means [<i>insert date</i>], as extended in accordance with the Design and Construction Agreement.
Date for D&C Subcontract Completion	means [<i>insert date</i>], as extended in accordance with the D&C Subcontract.
Defect	means: <ol style="list-style-type: none"> 1 any component of the Works or the Health Campus which does not comply with the requirements of the Design and Construction Agreement; 2 without limiting paragraph 1, any component of the Health Campus which is not Fit For Purpose; or 3 any defect, shrinkage, fault or omission in the Works or the Health Campus.

Delay Costs	means the amount payable by the State to the Operator in respect of a Compensable Extension Event calculated in accordance with Clause 14.9 of the Design and Construction Agreement.
Design and Construction Agreement	the "Design and Construction Agreement for the design and construction of the Midland Health Campus" between the State and the Operator dated <i>[insert]</i> .
D&C Subcontract	the "Design and Construction Subcontract for the design and construction of the Midland Health Campus" between the Operator, the Private Operator and the Builder dated <i>[insert]</i> .
D&C Subcontract Completion	means that stage when all the D&C Subcontract Completion Criteria have been satisfied.
D&C Subcontract Completion Criteria	means those criteria that are required to be satisfied to achieve D&C Subcontract Completion under the D&C Subcontract as set out in Schedule 5 (Completion Criteria) of the D&C Subcontract and otherwise expressly specified in the D&C Subcontract.
D&C Subcontract Completion Plan	means the plan of that name prepared by the Builder which sets out the Builder's plan for D&C Subcontract Completion set out in Attachment 8 to the D&C Subcontract, as may be updated from time to time by the Builder in accordance with the D&C Subcontract.
D&C Subcontract Completion Report	means the "Completion Report" as that term is defined in the D&C Subcontract.
D&C Subcontract Completion Tests	means those tests which are required to be successfully completed prior to D&C Subcontract Completion in order to demonstrate that D&C Subcontract Completion has been achieved.
D&C Subcontract Independent Certifier Services	means those services to be provided by the Independent Certifier in respect of the D&C Subcontract as listed in sections 1, 2 and 3 of Schedule 3.
D&C Subcontract Independent Certifier	that part of the Fee that is attributable to the performance of the D&C Subcontract Independent Certifier Services.

Services Fee	
D&C Subcontract Works	means all Works and Private Works to be performed by the Builder under the D&C Subcontract.
D&C Subcontract Works Program	means the works program that applies to the D&C Subcontract, as updated from time to time in accordance with the D&C Subcontract.
Design Documentation	has the same meaning as in the Design and Construction Agreement.
Design Requirements	has the same meaning as in the Design and Construction Agreement.
Dispute	any real or perceived conflict, difference of opinion, or unresolved issue in relation to this agreement or the parties' rights or obligations under this agreement.
Equipment	has the meaning given in the Design and Construction Agreement.
Fee	the amount payable to the Independent Certifier for the performance of the Services in accordance with clause 3.2 and Schedule 4.
Fit For Purpose	means: <ol style="list-style-type: none"> 1 satisfies each of the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from the Design Requirements as those requirements exist at Completion; 2 is capable of enabling the Operator to perform the Services in accordance with the Services Agreement as the Services Agreement is agreed as at Completion.
Fitness For Purpose Warranty	means the obligation imposed on the Operator in Clause 5.2 of the Design and Construction Agreement.

Governmental Agency	any organ of government, government entity, government authority, body politic (but excluding any political party) or government department, but excluding the State exercising a right or performing an obligation under the Design and Construction Agreement.
GST	has the meaning given in the GST Law.
GST Exclusive Consideration	is defined in clause 11.1(d).
GST Law	has the same meaning as in the <i>A New Tax System (Goods and Services) Tax Act 1999</i> (Cth).
Health Campus	the Midland Health Campus to be designed, constructed and commissioned by the Operator on the Site in accordance with the Design and Construction Agreement, including, for the avoidance of doubt, the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure, the Commercial Facilities and all other improvements to be situated on the Site.
Independent Certifier's Representative	[insert name of representative]
Independent Certifier Services	means those services to be provided by the Independent Certifier in respect of the Design and Construction Agreement as listed in sections 1, 2 and 3 of Schedule 2.
Independent Certifier Services Fee	that part of the Fee that is attributable to the performance of the Independent Certifier Services.
Independent Certifier's Obligations	all of the liabilities, obligations and requirements imposed or assumed by the Independent Certifier under this agreement, express or implied, or arising from or in connection with this agreement from time to time including the performance of the Independent Certifier's obligations as amended by any variation to the agreement.
Independent Certifier's Vehicles	is defined in clause 7.1(d).

Insolvency Event	<p>the occurrence of any of the following events:</p> <ol style="list-style-type: none"> 1 (informs creditors): a corporation informs its creditors generally that it is insolvent; 2 (receiver): a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation; 3 (execution): a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days; 4 (application): an application is made for the administration, dissolution or winding up of a corporation which application is not stayed, withdrawn or dismissed within 10 Business Days of being made; 5 (winding up): an order is made for the administration, dissolution or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; 6 (resolution): a resolution is passed for the administration or winding up of the corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; 7 (arrangement or composition): a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; 8 (statutory demand): <ol style="list-style-type: none"> (i) a corporation fails to comply with, or apply to have set aside, a statutory demand within 10 Business Days of the time for compliance; or (ii) if the corporation applies to have the statutory demand set aside within 10 Business Days of the time for compliance, the application to set aside the statutory demand is unsuccessful and the corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application; 9 (execution levied against it): a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge; or 10 (insolvency): a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts in
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	accordance with any applicable Law.
Insurance Policies	the insurance policies described in clause 7.1.
Interface Agreement	means the “Interface Agreement for the cooperation and coordination of activities in relation to the design, construction, operation and maintenance of the Health Campus” between the Operator, the Private Operator and the Builder dated [<i>insert</i>].
Key Personnel	each of the Independent Certifier’s personnel identified in section 9 of Schedule 4.
Law	<p>all applicable present and future laws including:</p> <ol style="list-style-type: none"> 1 Commonwealth, Western Australian or local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or Australian Standards), requirements, regulations, by-laws and other subordinate legislation; 2 common law; and 3 principles of equity, <p>whether or not existing at the date of this agreement.</p>
Liability	includes any debt, obligation, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.
Loss	<ol style="list-style-type: none"> 1 any liability of any kind whatsoever, cost, expense, loss, personal injury (including illness), death or damage; and 2 in relation to a Claim or Third Party Claim, includes amounts payable on the Claim and (whether or not the Claim is successful) legal costs and disbursements on a full indemnity basis, to the extent those costs are reasonably incurred, <p>whether or not such liability, cost, expense, loss, personal injury, death or damage, Claim or Third Party Claim is based on contract, statute, warranty, tort (including negligence),</p>

	indemnity or otherwise.
Outstanding Item	<p>means a minor Defect which in the reasonable opinion of the Independent Certifier:</p> <ol style="list-style-type: none"> 1 will not prevent the Health Campus from being Fit For Purpose; and 2 will not prevent the Operator from satisfying the Fitness For Purpose Warranty.
Prescribed Rate	the rate of interest prescribed from time to time under section 8 of the <i>Civil Judgments Enforcement Act 2004</i> (WA) plus 2% per annum, calculated as simple interest.
Private Patient Facility	means that part of the Health Campus to be dedicated to or used for the diagnosis, treatment and accommodation of admitted and non-admitted Private Patients that will be designed, constructed and commissioned as the Private Works in accordance with the Design and Construction Agreement.
Private Patient	means a Private Patient as that term is defined in the Services Agreement.
Private Works	means all works necessary to complete the Private Patient Facility and the Commercial Facilities in accordance with and so as to comply with the Design and Construction Agreement.
Project Advisory Group	means the project advisory group established in accordance with clause 6.5 of the Design and Construction Agreement.
Project Documents	the agreements described in Schedule 1.
Public Patient Facility	means that part of the Health Campus to be dedicated to or used for the diagnosis, treatment and accommodation of Public Patients.
Public Patient	means a Public Patient as that term is defined in the Services Agreement.

Record	<p>means any information or documents created or procured by the Independent Certifier in connection with delivering the Services, including:</p> <ol style="list-style-type: none"> 1 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; and 2 all purchase orders, invoices, accounts, payment claims and records (insofar as they relate to the Health Campus or the Independent Certifier's Obligations under this agreement) showing all of the costs incurred in the performance of the Independent Certifier's Obligations under this agreement, including any documents or information that supports any purchase order, invoice, account, payment claim or record.
Related Entity	a "related entity" as defined in the <i>Corporations Act 2001</i> (Cth).
Relevant Period	<p>in respect of any Record:</p> <ol style="list-style-type: none"> 1 a minimum of 7 years after the creation of the Record; and 2 any additional length of time required under any Law or by any Government Agency.
Representatives	the representatives of the parties specified under clause 12.2 and Representative means the representative of the respective party as the context requires.
Review Procedures	means the procedures for review of and comment on a Submitted Document as set out in Schedule 2 of the Design and Construction Agreement.
Schedule of Rates	the schedule of rates in section 9 of Schedule 4.
Services	means the Independent Certifier Services and the D&C Subcontract Independent Certifier Services
Services Agreement	means the document entitled "Midland Health Campus Project Services Agreement" entered into between the Operator and the State and dated on or about the date of the Design and Construction Agreement.

Shared Infrastructure	has the meaning given in the Design and Construction Agreement.
Site	the area described as the “Site” in the Design and Construction Agreement.
State	<p>subject to clauses 7.2(d) and 8.5:</p> <ol style="list-style-type: none"> 1 the State of Western Australia as the contracting entity under this agreement; or 2 the State of Western Australia as the Crown in right of the State of Western Australia and includes a department established under the <i>Public Sector Management Act 1994</i> (WA) and a Minister, <p>(as the context requires).</p>
Subcontractor	means any person to whom the Operator or another Subcontractor subcontracts any part of the Works, whether or not there is an executed Subcontract (which for the avoidance of doubt, includes the Key Subcontractors).
Submitted Document	has the meaning given in the Design and Construction Agreement.
Substitute Independent Certifier	is defined in clause 6.8(e)(1).
Supplier	is defined in clause 11.1(f).
Term	is defined in clause 2.
Third Party Claim	<p>any claim, demand, action, proceeding or suit of any nature, whether actual or threatened, initiated by a person other than the parties to this agreement, including but not limited to any Claim by:</p> <ol style="list-style-type: none"> 1 or with respect to any person engaged in or associated with the performance of the Independent Certifier Services or the D&C Subcontract Independent Certifier Services, for damages or workers’ compensation payments or contribution to such payments; 2 any relevant authority or other person, for any premium or

	<p>levy associated with the performance of the Independent Certifier Services or the D&C Subcontract Independent Certifier Services; or</p> <p>3 any relevant authority or other person, for an indemnity for or recovery of workers' compensation benefits paid or other costs and expenses incurred under the <i>Workers' Compensation and Injury Management Act 1981 (WA)</i> or like legislation and paid to or with respect to any person engaged in or associated with the performance of the Independent Certifier Services or the D&C Subcontract Independent Certifier Services.</p>
Variation	has the meaning given in the Design and Construction Agreement.
Works	<p>means all design services and work necessary for the design, construction, completion and commissioning of the Public Patient Facility and the Shared Infrastructure in accordance with and so as to comply with the Design and Construction Agreement including:</p> <p>1 all work as a consequence of any Variations;</p> <p>2 procurement and installation of all Equipment; and</p> <p>3 the remediation of any Outstanding Items and the rectification of any Defects.</p>
Works Program	means the works program that applies to the Design and Construction Agreement, as updated from time to time in accordance with the Design and Construction Agreement.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) **(references)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to this agreement;

- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(authority)**: a reference to any Authority, institute, association or body is:
 - (1) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (2) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (g) **(this agreement)**: a reference to this agreement or to any other deed, agreement, document, instrument or guidelines includes a reference to this agreement or such other deed, agreement, document, instrument or guidelines as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (k) **(headings)**: headings are for convenience only and do not affect the interpretation of this agreement;
- (l) **(inclusive)**: a reference to this agreement includes all Schedules and Attachments;
- (m) **(clauses)**: a reference to:
 - (1) unless expressly stated otherwise, a Clause, Schedule or Attachment is a reference to a Clause, Schedule or Attachment of or to this agreement;
 - (2) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the Clause in which the reference appears; and
 - (3) a Section is a section of a Schedule;
- (n) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) **(\$)**: a reference to "\$" is to Australian currency;

- (p) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (q) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (r) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this agreement or any part;
- (s) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) **(remedy)**: the use of the word "remedy" or any form of it in this agreement means that the event to be remedied must be cured or its effects overcome; and
- (u) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this agreement.

1.3 Provisions limiting or excluding Liability

Any provision of this agreement which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.4 Business Day

If the day on or by which any thing is to be done in accordance with this agreement is not a Business Day, that thing must be done on the next Business Day.

1.5 Civil Liability

Part 1F of the *Civil Liability Act 2002* (WA) does not apply to this agreement.

1.6 State's interests

Unless expressly stated or prohibited by Law, nothing in this agreement gives rise to any duty on the part of the State to consider interests other than the State's own interest (including the public interest) when exercising any of its rights or performing any of its obligations.

1.7 Amendments

Any amendment to this agreement must be in writing and signed by all parties.

1.8 Waiver

- (a) No party to this agreement may rely on the words or conduct of another party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

- (b) In this clause 1.8:
 - (1) conduct includes delay in the exercise of a right;
 - (2) right means any right arising under or in connection with this agreement and includes the right to rely on this clause; and
 - (3) waiver includes an election between rights and remedies.

1.9 Ambiguity

- (a) If any party discovers any inconsistency, ambiguity or discrepancy in this agreement, that party must promptly notify the other parties.
- (b) The State will, acting reasonably, direct the parties as to the interpretation to be followed by the parties in performing their obligations under this agreement with respect to the Independent Certifier Services, provided that any direction must not be inconsistent with the Design and Construction Agreement.
- (c) The Operator will, acting reasonably and, to the extent applicable, consistent with any direction given by the State pursuant to clause 1.9(b), direct the parties as to the interpretation to be followed by the parties in performing their obligations under this agreement with respect to the D&C Subcontract Independent Certifier Services, provided that any direction must not be inconsistent with the D&C Subcontract.

2 Term

The term of this agreement commences on the date this agreement is executed and will continue until:

- (a) in respect of the Independent Certifier Services, 30 days after the Independent Certifier notifies the State and the Operator that it has completed all the Independent Certifier Services and discharged all of its obligations, functions and duties under this agreement; and
- (b) in respect of the D&C Subcontract Independent Certifier Services, 30 days after the Independent Certifier notifies the Operator, the Private Operator and the Builder that it has completed all the D&C Subcontract Independent Certifier Services and discharged all of its obligations, functions and duties under this agreement;

subject to the earlier termination of this agreement in accordance with its terms or at Law,

(Term).

3 Appointment of Independent Certifier

3.1 Appointment

- (a) The State and the Operator appoint the Independent Certifier to perform the Independent Certifier Services.
- (b) The Operator, the Private Operator and the Builder appoint the Independent Certifier to perform the D&C Subcontract Independent Certifier Services.
- (c) The Independent Certifier confirms its acceptance of the appointment in this clause 3 and agrees to perform the Independent Certifier Services and the D&C Subcontract Independent Certifier Services as required by this agreement.

3.2 Payment

- (a) The Fee is the aggregate of the Independent Certifier Services Fee and the D&C Subcontract Independent Certifier Services Fee.
- (b) In consideration of the provision of the Independent Certifier Services under this agreement, the State and the Operator are severally liable to each pay the Independent Certifier 50% of the Independent Certifier Services Fee.
- (c) In consideration of the provision of the D&C Subcontract Independent Certifier Services under this agreement, the Private Operator and the Builder are severally liable to each pay the Independent Certifier 50% of the D&C Subcontract Independent Certifier Services Fee.
- (d) The relevant Client Party must pay its proportion of the Fee calculated as set out in Schedule 4 and otherwise in accordance with Schedule 4.
- (e) Nothing in this agreement makes any Client Party liable for any other Client Party's proportion of the Fee.
- (f) Unless expressly stated otherwise in this agreement, the Fee is the Independent Certifier's sole entitlement to payment.

4 Representations, warranties and acknowledgements

4.1 Representations and warranties

The Independent Certifier represents and warrants to the Client Parties that:

- (a) it is a corporation as that expression is defined in the Corporations Act having limited liability, duly incorporated and registered and validly existing under the Corporations Act;
- (b) it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) it has full power and authority to enter into and perform its obligations under this agreement;

- (d) it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
- (e) this agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms;
- (f) the execution, delivery and performance by it of this agreement does not and will not violate, breach, or result in a contravention of:
 - (1) any Law;
 - (2) its constitution or other constituent documents; or
 - (3) any encumbrance or document which is binding on it or any of its assets;
- (g) the information provided by it in connection with this agreement is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (h) 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);
- (i) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform the Services;
- (j) in performing the Services, the Independent Certifier will:
 - (1) comply with the requirements of this agreement;
 - (2) comply with all Laws, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience and skill which would be expected of an expert professional providing services similar to the Independent Certifier Services and D&C Subcontract Independent Certifier Services for projects similar to this project; and
 - (3) act independently and impartially of the Client Parties;
- (k) at all times it will:
 - (1) act within the time requirements for the performance of its obligations under this agreement or where no time is prescribed, promptly;
 - (2) ensure that its personnel, consultants and subcontractors employed or engaged in connection with the Services are appropriately technically qualified and have the experience and ability (technical or otherwise, as the role requires) to discharge the duties of the Independent Certifier for which they are employed or engaged; and
 - (3) have sufficient personnel, consultants, subcontractors and other resources necessary to perform its obligations under this agreement;
- (l) it will be available for consultation as the Client Parties may reasonably require from time to time during the Term;

- (m) no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations and the discharge of its duties and functions under this agreement;
- (n) it and its Related Entities are not a partner, joint venturer, employee or agent of any of the Client Parties (unless each of the Client Parties has otherwise agreed in writing); and
- (o) it has disclosed in writing to all other parties all contractual relationships that it and any of its Related Entities has in connection with this project and all contractual relationships that it and any of its Related Entities has with any of the Client Parties.

4.2 Acknowledgements

The Independent Certifier acknowledges and agrees that:

- (a) it has received a copy of the Design and Construction Agreement and that it has read, and is familiar with, the terms of the Design and Construction Agreement to the extent that it relates to the Independent Certifier Services;
- (b) it has received a copy of the D&C Subcontract and that it has read, and is familiar with, the terms of the D&C Subcontract to the extent that it relates to the D&C Subcontract Independent Certifier Services;
- (c) its obligations under this agreement with respect to the Independent Certifier Services extend to, and include, the obligations, functions, duties and services of the "Independent Certifier" as described in the Design and Construction Agreement;
- (d) its obligations under this agreement with respect to the D&C Subcontract Independent Certifier Services extend to, and include, the obligations, functions, duties and services of the "Independent Certifier" as described in the D&C Subcontract;
- (e) each of the Client Parties:
 - (1) is relying on the skill and expertise of the Independent Certifier in performing its obligations under this agreement; and
 - (2) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this agreement;
- (f) without limiting clauses 4.1(j) and 4.2(e), the Client Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under this agreement;
- (g) it has no authority to give directions to the Client Parties other than as may be expressly set out in this agreement;
- (h) it must perform the Services in a manner which will not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person, except where it is the unavoidable consequence of performing the Services; and

- (i) it shall keep the Client Parties fully and regularly informed as to all matters affecting or relating to the Independent Certifier Services and the D&C Subcontract Independent Certifier Services.

4.3 Repetition of acknowledgement, representation and warranty

Except as otherwise provided, each acknowledgement, representation and warranty specified in this clause 4 or otherwise under this agreement is made on the date of this agreement and will be deemed to be repeated immediately before each notice or certificate is issued by the Independent Certifier under this agreement with reference to the facts and circumstances then subsisting.

5 Independent Certifier's Obligations

5.1 Performance of the Services

- (a) The Independent Certifier must perform the Services in accordance with this agreement and at the times specified in the Works Program, the D&C Subcontract Works Program, the Completion Plan and the D&C Subcontract Completion Plan.
- (b) The Independent Certifier's obligations and responsibilities in respect of the D&C Subcontract Independent Certifier Services must not conflict with its obligations to perform the Independent Certifier Services. If the Independent Certifier's obligations and responsibilities in respect of the D&C Subcontract Independent Certifier Services conflict with the obligations to perform the Independent Certifier Services and the conflict cannot be resolved to the reasonable satisfaction of the Client Parties, the obligations and responsibilities with respect to the Independent Certifier Services will prevail to the extent of the conflict.
- (c) The Independent Certifier must, in performing the Services:
 - (1) act as a professional experienced in performing services of a kind as the Services;
 - (2) act honestly, fairly and reasonably;
 - (3) take into consideration all documents, information and material (whether written or oral) that any Client Party places before the Independent Certifier provided that it is relevant to the decision being made by the Independent Certifier at that time;
 - (4) make a reasonable determination on any matter which it is required to make in respect of the Services in any form the Independent Certifier so desires and stating the Independent Certifier's determination;
 - (5) not waive, act in a manner which waives or gives effect to any waiver of any terms or conditions of the Project Documents, or any amendments or variations to the Project Documents; and
 - (6) not act in a way which discharges or releases the respective obligations of the parties to the Project Documents, without the prior written consent of those parties, except as required in order to

perform the Services (such as certifying that Completion has occurred).

- (d) The Client Parties and the Independent Certifier acknowledge and agree as follows:
- (1) the Independent Certifier must certify whether or not the Completion Tests have been passed and whether the requirements of Completion have otherwise been achieved (which certification is binding on the parties, with the exception of manifest error of the Independent Certifier);
 - (2) the Independent Certifier must certify whether or not the D&C Subcontract Completion Tests have been passed and whether the requirements of D&C Subcontract Completion have been achieved (which certification is binding on the parties, with the exception of manifest error of the Independent Certifier);
 - (3) if requested to do so by the Operator and the State, the Independent Certifier must determine whether a claim for an extension of time should be granted, including the duration of any extension of time to which the Operator is entitled in accordance with clause 14 of the Design and Construction Agreement (which determination is binding on the parties, with the exception of manifest error of the Independent Certifier);
 - (4) the Independent Certifier must determine whether a claim for an extension of time should be granted, including the duration of any extension of time to which the Builder is entitled in accordance with clause 16 of the D&C Subcontract (which determination is binding on the parties, with the exception of manifest error of the Independent Certifier);
- (e) If the Independent Certifier certifies that the Completion Tests have not been passed or the requirements of Completion have not been achieved, then following the completion of any rework, repeat testing or any other action that may be required to be undertaken by the Operator, the Independent Certifier must provide a further certification under clause 5.1(d)(1). The Independent Certifier must continue to repeat this process and provide further certification until:
- (1) it certifies that the Completion Tests have been passed and the requirements of Completion have been achieved; or
 - (2) the Client Parties (excluding the Private Operator) otherwise agree.
- (f) If the Independent Certifier certifies that the D&C Subcontract Completion Tests have not been passed or the requirements of D&C Subcontract Completion have not been achieved, then following the completion of any rework, repeat testing or any other action that may be required to be undertaken by the Builder, the Independent Certifier must provide a further certification under clause 5.1(d)(2). The Independent Certifier must continue to repeat this process and provide further certification until:

- (1) it certifies that the D&C Subcontract Completion Tests have been passed and the requirements of D&C Subcontract Completion have been achieved; or
- (2) the Private Operator and the Builder otherwise agree.

5.2 Conflict of Interest

- (a) Without limiting the operation of clauses 4.1(m) and 4.1(n), if any conflict or risk of conflict of interest arises during the Term, the Independent Certifier must:
 - (1) immediately notify the Client Parties in writing of that conflict or risk; and
 - (2) take such action as directed by the State to avoid, prevent or mitigate a conflict or risk of conflict arising out of, or in connection with, the performance of the Services.
- (b) If the Independent Certifier fails to take such action in accordance with clause 5.2(a)(2), the State may terminate this agreement immediately by written notice to the Independent Certifier.
- (c) If, in the State's reasonable opinion, a conflict or risk of conflict cannot be properly managed, the State may immediately terminate this agreement with respect to the Services by written notice to the Independent Certifier.
- (d) If this agreement is terminated under clauses 5.2(b) or 5.2(c), the Independent Certifier will not be entitled to any Fees or to make any Claim against any Client Party, including for any part of the Fee for any part of the Services performed up to the date of the termination.

5.3 Independent Certifier's Representative

The Independent Certifier must:

- (a) appoint an Independent Certifier's Representative to carry out all of the functions of the Independent Certifier in accordance with this agreement;
- (b) ensure that the Independent Certifier's Representative is engaged on a day to day basis in the performance of the Services;
- (c) procure that the Independent Certifier's Representative attends all Project Advisory Group meetings as requested by the Project Advisory Group for the duration of the Works; and
- (d) not, without the prior written consent of the Client Parties:
 - (1) remove the Independent Certifier's Representative; or
 - (2) substitute another person as the Independent Certifier's Representative.

5.4 Key Personnel

- (a) The Independent Certifier must:

- (1) ensure that the Key Personnel are employed or otherwise retained by the Independent Certifier to carry out the functions of the Independent Certifier assigned to them in section 9 of Schedule 4; and
 - (2) not, without the prior written consent of the Client Parties:
 - (A) remove any of the Key Personnel; or
 - (B) substitute another person for one or more of the Key Personnel.
- (b) Subject to clause 5.4(c), the consent of the Client Parties under clause 5.4(a)(2) must not be unreasonably withheld or delayed if:
 - (1) the Client Parties have directed the replacement of any of the Key Personnel;
 - (2) the Key Personnel has resigned from its employment;
 - (3) the Key Personnel has died;
 - (4) the Key Personnel has become incapable of performing its duties due to injury or illness;
 - (5) the Key Personnel has committed a breach of any express or implied term of its contract of employment or independent contract and, after consultation with the Client Parties, the Independent Certifier's reasonable opinion is that the person's employment or contract should be terminated; or
 - (6) without limiting clause 5.4(a), the Key Personnel has been reassigned from its position,and the Independent Certifier has demonstrated that the proposed replacement is appropriately technically qualified, has experience and ability (technical or otherwise, as the role requires) at least as equivalent to the person being replaced and is of good repute.
- (c) Without limiting clauses 5.4(a) and 5.4(b), if any of the Key Personnel cease to perform the Services, the Independent Certifier must provide a replacement acceptable to the Client Parties at no additional cost to the Client Parties.
- (d) The Independent Certifier must not, without the prior approval of the Client Parties, directly or indirectly approach or communicate with any officer, employee or consultant of the Client Parties having any connection or involvement with the Works or the Private Works, with respect to:
 - (1) an offer of employment; or
 - (2) the availability of employment,with the Independent Certifier or any related entities of the Independent Certifier.
- (e) The Independent Certifier must not directly or indirectly offer or accept a bribe, gift or inducement to or from (as the case may be) any officer, employee or consultant of the Client Parties in connection with the Services.

5.5 Facilities

- (a) Subject to clause 5.5(b), the Independent Certifier must establish and maintain such facilities in Perth, Western Australia as are necessary for the:
 - (1) performance of the Services; and
 - (2) discharge of the Independent Certifier's Obligations, functions, powers and duties in accordance with this agreement.
- (b) During the term of this agreement, the Operator will provide reasonable on-site accommodation for two personnel of the Independent Certifier, including the use of a phone line and internet connection.

5.6 Quality assurance and audit

- (a) The Independent Certifier must implement a quality assurance system complying with the requirements of ISO AS NZS 9001:2000 to ensure that the Services comply with the requirements of this agreement.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this agreement as a result of:
 - (1) its compliance with the quality assurance requirements of this agreement; or
 - (2) any acts or omissions of the Client Parties with respect to the quality assurance requirements of this agreement, including any audit under clause 5.6(c).
- (c) The Independent Certifier must:
 - (1) at the request of any Client Party in respect of the performance of the Independent Certifier's Obligations, allow any audit of its quality assurance system under this agreement by a third party;
 - (2) give that third party access to premises occupied by the Independent Certifier where the Independent Certifier's Obligations are being performed;
 - (3) permit that third party to inspect applicable information relevant to the quality assurance audit; and
 - (4) fully cooperate with that third party in respect of the carrying out of the quality assurance audit.

5.7 Time requirements

- (a) Without limiting clause 4.1(k), if, at any time during the performance of the Services, the Independent Certifier is of the opinion that it will not be able to perform the Services within the time specified in the Works Program, or the D&C Subcontract Works Program, or the Completion Plan or the D&C Subcontract Completion Plan, the Independent Certifier must provide notice of that opinion to the Client Parties setting out:
 - (1) the reasons why it will not be able to perform the Services within the time set out in the Works Program or the D&C Subcontract

Completion Plan, or the Completion Plan or the D&C Subcontract Completion Plan; and

- (2) what documents, information or materials (if any) are outstanding from any Client Party that are preventing the Independent Certifier from performing the Services.
- (b) The giving of notice by the Independent Certifier under this clause 5.7 does not constitute nor will it be taken to constitute any waiver by any party of any breach of this agreement or the granting of any extension of time or other indulgence by any Client Party in respect of the performance of the Services.

5.8 Records, access and audit

- (a) The Independent Certifier must maintain for the Relevant Period a complete set of all Records in whatever form that relate to the performance of the Independent Certifier's Obligations.
- (b) Without limiting its obligations under clause 5.8(a), the Independent Certifier must comply with the requirements of the *State Records Act 2000* (WA) insofar as that Act applies to any of the Records.
- (c) At any time and from time to time during the Relevant Period, each Client Party has the right to inspect and audit the Records held and maintained by the Independent Certifier in accordance with this agreement. Upon a Client Party's request, the Independent Certifier must make such Records available to that Client Party (including proper access to the Key Personnel or, as the case may be, replacement key personnel, and facilities) to enable that Client Party to perform any inspection and audit of such Records.

5.9 Confidentiality and Publicity

- (a) The Independent Certifier must keep confidential details of this agreement, the Project Documents and all information and documents (including the Confidential Information) provided to, or by, the Independent Certifier in connection with the Services and not provide, disclose, or use such information or documents except:
 - (1) to the extent necessary for the purpose of performing the Independent Certifier's Obligations under this agreement provided that the persons to whom the information is disclosed are bound by the confidentiality obligations imposed on the Independent Certifier under this clause 5.9;
 - (2) as authorised in writing by the State and, if the information to be disclosed relates to the Operator, the Private Operator or the Builder, the Operator, the Private Operator or the Builder, as the case may be;
 - (3) as is required by a Law or to the extent required by a stock exchange, and no more; or
 - (4) when required (and only to the extent required) to the Independent Certifier's professional advisers and the Independent Certifier must ensure that those professional advisers are bound by the

confidentiality obligations imposed on the Independent Certifier under this clause 5.9.

- (b) The Independent Certifier must not make or publicise any announcements, advertisements or releases relating to this agreement or the Works or the Private Works without the prior approval of the Client Parties, except to the extent where the Independent Certifier is required by Law to make a statement in which case, the Independent Certifier must:
 - (1) first provide a draft of the proposed statement to the Client Parties; and
 - (2) make such changes as the Client Parties may reasonably require (having regard to the nature and content of the requirement of Law to make the statement).

5.10 Public disclosure of agreement details

- (a) The State may publicly disclose the identity of the Independent Certifier, the value of this agreement and this agreement (other than information that the State considers is confidential or which would involve the disclosure of information that has a commercial value).
- (b) The Independent Certifier, the Operator, the Builder and the Private Operator acknowledge that this agreement and the information held or compiled by the State in relation to this agreement and the Independent Certifier's Obligations supplied under this agreement are subject to the *Freedom of Information Act 1992* (WA).

5.11 Copies of communications

The Independent Certifier must:

- (a) promptly give to each Client Party copies of all written communications relating to the performance of the Services between:
 - (1) the Independent Certifier and third parties; and
 - (2) the Independent Certifier and another Client Party; and
- (b) copy any email correspondence relating to the performance of the Services with a Client Party to the other Client Parties.

6 Obligations of the Client Parties

6.1 No interference or influence

- (a) The Client Parties must not interfere with or attempt to influence or direct the Independent Certifier in the performance of any of the Services.
- (b) Clause 6.1(a) does not prevent the Client Parties from providing information or written comments to the Independent Certifier setting out that Client Party's opinion on a particular matter relating to this agreement or the Services,

provided that nothing in this clause 6.1(b) will require the Independent Certifier to act in accordance with that information or written submission.

6.2 Cooperation

- (a) Without limiting or otherwise affecting any of the Client Parties' obligations under this agreement or the Design and Construction Agreement or the D&C Subcontract, and to enable the Independent Certifier to perform the Services, the Client Parties must:
 - (1) perform their respective functions with respect to the Services in accordance with the Design and Construction Agreement and the D&C Subcontract and this agreement;
 - (2) reasonably cooperate with the Independent Certifier;
 - (3) provide the Independent Certifier with all information, documents and materials within its possession, custody or control reasonably requested by the Independent Certifier for the purpose of the performance of the Services or required to be provided to the Independent Certifier under this agreement or the Design and Construction Agreement, or the D&C Subcontract, at the times reasonably required by the Independent Certifier;
 - (4) allow the Independent Certifier to attend all meetings relevant to the performance of the Services; and
 - (5) promptly provide the Independent Certifier with whatever other assistance the Independent Certifier may reasonably require in connection with the performance of the Services and its obligations, duties and functions under this agreement, including attending any meetings at the request of the Independent Certifier, provided that all meetings must be held in Perth, Western Australia.
- (b) The Operator must provide the Independent Certifier with the latest Works Program, the D&C Subcontract Works Program, the Completion Plan and the D&C Subcontract Completion Plan as and when amended.

6.3 Attendances at meetings with Independent Certifier

- (a) The Client Parties must procure the attendance of their respective Representatives at meetings that the Independent Certifier reasonably requests the Client Parties to attend under clause 6.2(a)(5).
- (b) All meetings contemplated by this clause 6.3 will be held in Perth, Western Australia.

6.4 Additional Information

If:

- (a) any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Services; and
- (b) the information, documents or particulars are not provided by any of the Client Parties,

then:

- (c) the Independent Certifier must give notice to the Client Parties' Representatives of the details of that information, documents or particulars and demonstrating the need and the reasons why they are required; and
- (d) if the Client Parties are satisfied that the need and the reasons have been demonstrated, then the relevant Client Party (if that information, documents or particulars are in its possession) must ensure that the Independent Certifier is promptly provided with the required information, documents or particulars at that Client Party's own cost.

6.5 Right to enter, inspect and test

- (a) The Independent Certifier (and any person authorised by the Independent Certifier) for the purposes of performing the Services may, at any time before the expiry of the Term, upon giving reasonable notice to the Client Parties, enter the Site and any other place where the Works, the Private Works or materials are being tested, provided that the Independent Certifier:
 - (1) observes (and ensures that any of its authorised persons observe) the reasonable rules or requirements of the Operator and the Builder as to safety or security on the Site and any other place where the Works or the Private Works are being tested which are applied generally by the Operator or the Builder (including protocols relating to Site management, safety, security, insurance and industrial relations matters) details of which the Operator has made known in writing to the Independent Certifier within a reasonable period prior to those persons accessing those places;
 - (2) does not delay, obstruct or interfere with (and ensures that its authorised persons do not delay or obstruct or interfere with) the performance of the Works and the Private Works; and
 - (3) does not damage (and ensures that its authorised persons do not damage) the Works and the Private Works or any equipment or property on the Site,

in connection with the exercise or purported exercise of rights under this clause 6.5. The Client Parties acknowledge that the obligations on the Independent Certifier to comply with the Operator's requirements as set out in this clause must not prevent or unreasonably hinder the Independent Certifier in performing the Services.

- (b) The Operator and the Builder must give such assistance as is reasonably required by the Independent Certifier in respect of any inspection or certifying any testing under clause 6.5(a), including the Operator and the Builder providing access to such part of the Works and the Private Works and all relevant Design Documentation as may be required by the Independent Certifier for the purpose of performing the Services, including if those Works or the Private Works are located on the premises of a Subcontractor.

6.6 Coordination

The Client Parties must ensure that, during the performance of the Works and the Private Works, the Client Parties and any employee, agent, representative, advisor, consultant, contractor or subcontractor of the Operator:

- (a) fully cooperate with the Independent Certifier; and
- (b) provide the Independent Certifier with whatever information and support as is reasonable to facilitate the performance of the Services in accordance with this agreement.

6.7 Client Parties to have no liability

Each party acknowledges that none of the Client Parties is liable, or may be taken to have or to have assumed a liability, or to have become (on enforcement of any of their powers or otherwise) liable, for:

- (a) the performance of any obligation of any other Client Party under this agreement or the Project Documents; or
- (b) any act or omission of the Independent Certifier or for any Claim or liability arising from the Independent Certifier's exercise of its functions, or failure to exercise its functions, under this agreement.

This clause 6.7 does not apply to relieve any party from any obligation arising under this agreement.

6.8 Change to Independent Certifier Services, suspension of Independent Certifier Services and appointment of Substitute Independent Certifier

(a) Change to Services:

- (1) The Client Parties (excluding the Private Operator and the Builder) may, by written notice to the Independent Certifier, direct the Independent Certifier to make a change to the Independent Certifier Services.
- (2) The Operator, the Private Operator and the Builder may, by written notice to the Independent Certifier, direct the Independent Certifier to make a change to the D&C Subcontract Independent Certifier Services,

(including an addition or omission) which is within the general scope of this agreement. The Independent Certifier must comply with the direction, provided the increase or decrease in the Fee payable in relation to the change is agreed or determined in accordance with clause 6.8(b).

(b) Change to Fee:

- (1) The increase or decrease in the Independent Certifier Services Fee to be paid to the Independent Certifier due to a change to the Independent Certifier Services referred to in clause 6.8(a)(1) is to be determined in accordance with the relevant part of the Schedule of Rates.

- (2) The increase or decrease in the D&C Subcontract Independent Certifier Services Fee to be paid to the Independent Certifier due to a change to the D&C Subcontract Independent Certifier Services referred to in clause 6.8(a)(2) is to be determined in accordance with the relevant part of the Schedule of Rates.
- (c) **Increase to Fee cannot be determined:** If the increase or decrease in the Fee cannot be determined by reference to the Schedule of Rates, it will be a reasonable amount agreed between the Independent Certifier and those Client Parties that are entitled to agree to the change in the relevant Services. If those parties are unable to agree, the matter will be referred for resolution in accordance with clause 10.
- (d) **Suspension of Services:** The Client Parties may jointly, by written notice to the Independent Certifier, direct the Independent Certifier to suspend any or all of the Services for the period specified in that notice.
- (e) **Substitute Independent Certifier:** The Independent Certifier acknowledges that:
 - (1) the Client Parties who are entitled to direct an addition under clause 6.8(a), may appoint another certifier (**Substitute Independent Certifier**) to carry out any addition requested under clause 6.8(a) which has not been carried out by the Independent Certifier within a reasonable time after the direction was given;
 - (2) any certification or determination of a Substitute Independent Certifier appointed in accordance with clause 6.8(e)(1) must be treated (as between the Client Parties but not as between the Client Parties and the Independent Certifier) as if it is a certification or determination of the Independent Certifier. The Substitute Independent Certifier will have all of the rights and powers of the Independent Certifier under this agreement in connection with the addition to Services.
- (f) **Effect of change:** Despite a change to the Services, or the appointment of a Substitute Independent Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 6.8, in accordance with this agreement. Without prejudice to any Claim in respect of the performance of the Services, the Independent Certifier is not responsible for the acts or omissions of the Substitute Independent Certifier.

7 Insurance

7.1 Insurance Policies

- (a) **(Public Liability Policy)** The Independent Certifier must maintain a public liability policy. The public liability policy must:
 - (1) cover liability for loss of, or damage to, property and the death or sickness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance);

- (2) to the extent commercially available from the insurance market from time to time:
 - (A) cover the Client Parties for claims against them arising out of or in connection with any negligent act or omission of the Independent Certifier or its directors, agents or employees, arising out of or in connection with the services required under this agreement;
 - (B) provide that any breach of the conditions of the policy by an insured must not in any way prejudice or diminish any rights which the Client Parties have under the policy;
 - (C) provide that the insurance is primary with respect to the interests of the Client Parties and any other insurance and self-insurance arrangements maintained by the Client Parties is excess to and not contributory with the policy;
 - (D) include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each party insured and a failure by any insured party to observe and fulfil the terms and conditions will not affect any other party; and
 - (E) provide that a notice of claim given to the insurer by an insured under the policy must be accepted by the insurer as a notice of claim given by the Client Parties where the Client Parties are also an insured;
 - (3) be endorsed to cover:
 - (A) the use of unregistered motor vehicles and plant and equipment; and
 - (B) sudden and accidental pollution; and
 - (4) be for an amount of *[not disclosed]* in respect of any one occurrence and unlimited in the aggregate during any one 12 month period of insurance.
- (b) **(Professional Indemnity Policy)** The Independent Certifier must maintain a professional indemnity policy. The professional indemnity policy must:
- (1) be for an amount of *[not disclosed]* in respect of any one claim and *[not disclosed]* in the aggregate during any one 12 month period of insurance;
 - (2) cover liability arising from any act, error or omission in connection with or arising out of the professional activities and duties under this agreement;
 - (3) cover claims in respect of this agreement under the *Competition and Consumer Act 2010 (Cth)*, *Fair Trading Act 2010 (WA)* and any similar legislation in any other State or Territory insofar as they relate to the provision of professional advice; and

- (4) include one full automatic reinstatement of the limit of liability in each 12 month period of insurance.
- (c) **(Insurance of employees)** The Independent Certifier must insure against liability for death of or injury to natural persons employed or engaged by the Independent Certifier including liability by statute and at common law. This insurance cover must:
 - (1) to the extent permitted by Law, be extended to indemnify the Client Parties for their statutory and common law liability to natural persons employed or engaged by the Independent Certifier; and
 - (2) be for not less than [*not disclosed*] common law liability in respect of any one event.
- (d) **(Motor Vehicle insurance)** In addition to any compulsory motor vehicle third party insurance required to be taken out by the Independent Certifier under any Law, the Independent Certifier must also take out motor vehicle insurance for the Independent Certifier's vehicles brought on to the Site or used in connection with the Independent Certifier's Obligations whether owned, hired or leased (**Independent Certifier's Vehicles**). The motor vehicle insurance must:
 - (1) cover third party property damage liability (and include bodily injury gap protection) arising from or in connection with the use of the Independent Certifier's Vehicles; and
 - (2) be for an amount of not less than [*not disclosed*] for any one claim or occurrence and unlimited in the aggregate; and
 - (3) other than compulsory motor vehicle third party insurance required by virtue of any Law, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Client Parties.

7.2 General

- (a) The Independent Certifier must, at its own cost and expense, as a minimum, effect and maintain the Insurance Policies set out in clause 7.1:
 - (1) on the terms and conditions set out in clause 7.1 and otherwise on terms acceptable to the Client Parties, acting reasonably;
 - (2) from insurers with a credit rating of A- or better with Standard and Poors which either:
 - (A) carry on business in Australia and are authorised by APRA; or
 - (B) if overseas insurers, cover claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Client Parties.
- (b) The Client Parties must not unreasonably withhold or delay their approval of an insurer or the terms and conditions of the Insurance Policies.
- (c) Without limiting clause 7.2(a), the Independent Certifier must:

- (1) pay all premiums and all deductibles applicable to the Insurance Policies when due; and
 - (2) promptly reinstate any insurance required under this clause 7 if it lapses or if cover is exhausted.
- (d) For the purposes of the Insurance Policies, the State includes the Crown in the right of the State, any Parliament, department, agency or instrumentality of the State of Western Australia, any Minister (including the State), whether body corporate or otherwise, and their officers, employees, consultants, contractors, agents, and personnel.
- (e) To the extent appropriate, the Insurance Policies must state they are governed by the laws of Western Australia and that each insurer irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- (f) The effecting and maintaining of insurance by the Independent Certifier does not, in any way, affect or limit the liabilities or obligations of the Independent Certifier under this agreement.

7.3 Term

- (a) The Insurance Policies must come into effect on or before the commencement of the Independent Certifier's Obligations under this agreement or before the Independent Certifier first comes onto Site, which ever is the earlier.
- (b) Subject to clause 7.3(c), the Insurance Policies must be maintained until the Independent Certifier has fully complied with and discharged all the Independent Certifier's Obligations or the end of the Term or any extension of the Term, which ever is the later.
- (c) If the wording of any Insurance Policy required by this clause 7 is constructed on a claims made basis, the insurance must be renewed or otherwise maintained without interruption for a period of 7 years after the expiration or termination of this agreement.

7.4 Approval of the proposed terms and conditions of the Insurance Policies

- (a) The proposed terms and conditions of the Insurance Policies, other than the Professional Indemnity Policy, must be provided by the Independent Certifier:
 - (1) to the Client Parties for approval at least 5 Business Days before the date of execution of this agreement (or such other period as may be agreed to by the Client Parties); and
 - (2) to the Client Parties for approval within 28 days of the date set for each annual renewal with respect to the Services.
- (b) The Independent Certifier must make the terms and conditions of the Professional Indemnity Policy available for inspection in Perth, Western Australia, by a representative of each of the Client Parties, as nominated in writing from time to time, for approval:
 - (1) at least 5 Business Days before the date of execution of this agreement (or such other period as may be agreed to by the Client Parties); and

- (2) within 28 days of the date set for each annual renewal.
- (c) Any inspection conducted under clause 7.4(b) is subject to the following conditions:
 - (1) the Client Parties must ensure and procure that its representatives keep the terms of the Professional Indemnity Policy confidential;
 - (2) the representatives of the Client Parties must not take any notes during the inspection, other than:
 - (A) checking items off against a pre-prepared checklist listing the requirements of this agreement for the Professional Indemnity Policy, and
 - (B) if a representative considers that the Professional Indemnity Policy does not comply with the requirements of this agreement, recording the reasons for that non-compliance; subject to a copy of such reasons being provided by the Client Party to the Independent Certifier within 2 Business Days of carrying out the inspection; and
 - (3) the representatives of the Client Parties must not retain any copies of the Professional Indemnity Policy.

7.5 Proof of Insurance Policies

Whenever requested in writing by the Client Parties, the Independent Certifier must:

- (a) produce to the Client Parties certificates of currency for the Insurance Policies;
- (b) except in the case of the Professional Indemnity Policy, produce to the Client Parties copies of the Insurance Policies or insurance broker's evidence of cover document (that contains the entirety of the wording including any relevant schedules and endorsements) evidencing the insurance effected and maintained.

7.6 Failure to produce proof of Insurance Policies

- (a) If, after being requested in writing by the Client Parties to do so, the Independent Certifier fails to produce evidence of compliance with its insurance obligations under this clause 7 to the satisfaction and approval of the Client Parties within 10 Business Days of the request, then the Client Parties may:
 - (1) exercise their rights under clause 9; or
 - (2) refuse payment of any amount due to the Independent Certifier until evidence of insurance required by this clause 7 is produced to the Client Parties.
- (b) The rights given to the Client Parties by this clause 7.6 are in addition to any other rights the Client Parties may have.

7.7 Notices of potential claims

The Independent Certifier must:

- (a) as soon as practicable, inform the Client Parties in writing of any occurrence that may give rise to a claim in excess of *[not disclosed]*; and
- (b) keep the Client Parties informed of subsequent developments concerning the claim.

7.8 Insurance Policy claim

- (a) If and to the extent that the Independent Certifier may be insured against Loss that it suffers in respect of an event or circumstance, the Independent Certifier must (unless the Client Parties assumes joint or sole responsibility in making the claim) promptly notify circumstances and make and pursue a claim against the relevant insurer in respect of that event or circumstance.
- (b) The insurance claim must be properly prepared by the Independent Certifier in the manner and time required by the relevant insurer and Insurance Policy.

7.9 Independent Certifier's further obligations

- (a) The Independent Certifier must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.
- (b) The Independent Certifier must give the Client Parties notice of cancellation, non-renewal or a material alteration of any of the Insurance Policies within 3 Business Days of receiving such notice from an insurer.

7.10 Insurance Policies primary

- (a) The Insurance Policies are primary and not secondary to the indemnities referred to in this agreement. However, the Client Parties are not obliged to make a claim or institute proceedings against any insurer under the Insurance Policies before enforcing any of its rights or remedies under the indemnities referred to in this agreement, or generally.
- (b) The parties acknowledge that if a claim is made under an Insurance Policy by a Client Party, it is their intention that the insurer cannot require the Client Party to exhaust any indemnities referred to in this agreement before the insurer considers or meets the relevant claim.
- (c) The Independent Certifier acknowledges that regardless of whether the Insurance Policies respond or not, and regardless of the reason why the Insurance Policies respond or fail to respond, the Independent Certifier is not released (in whole or in part), from any of its obligations under the indemnities referred to in this agreement, or generally.

7.11 Insurance review

- (a) The Client Parties may from time to time review the types and amounts of the Insurance Policies. As part of this review, the Client Parties must ascertain whether, in the Client Parties' reasonable opinion, any additional insurance policies are required or whether any Insurance Policies effected and maintained at the time of the review are still required or require amendment.
- (b) To allow the Client Parties to perform this function, the Independent Certifier must, promptly upon request by the Client Parties, except in the case of the

Professional Indemnity Policy, provide to the Client Parties copies of the Insurance Policies and accompanying schedules.

- (c) The Independent Certifier must commence negotiations to obtain insurances or amend the Insurance Policies within 10 Business Days of receiving notice from the Client Parties, and must, subject to clause 7.11(d), as soon as practicable thereafter at the Client Parties' cost, obtain insurances or amend the Insurance Policies to reflect the recommendations of the Client Parties review.
- (d) The Independent Certifier must promptly notify the Client Parties if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising from the Client Parties' review. The parties must determine what action, if any, is to be taken following receipt of this notification and where a Dispute arises in respect of this matter it must be referred for Dispute resolution in accordance with clause 10.

8 Liability and indemnities

8.1 References to Independent Certifier

For the purposes of this clause 8, any act, error or omission caused by the Independent Certifier's officers, directors, employees is deemed to be an act, error or omission of the Independent Certifier.

8.2 General indemnity

The Independent Certifier indemnifies the Client Parties jointly and severally against any Loss, Claim or Third Party Claim suffered or incurred by or made against the Client Parties arising out of or in connection with and to the extent caused by any act, error or omission by the Independent Certifier or its employees, agents or consultants in breach of this agreement or any negligent, wrongful, reckless or unlawful act or omission, in connection with the provision of the Services under this agreement.

8.3 Exclusion

Each of the Client Parties, separately, are not entitled to recover Loss under the indemnity in clause 8.2 to the extent that party has caused or contributed to the Loss.

8.4 Conduct of litigation

- (a) If a Third Party Claim is made against any of the Client Parties in the circumstances described in clause 8.2, the relevant Client Party must as soon as reasonably practicable:
 - (1) notify the Independent Certifier in writing of the Third Party Claim; and
 - (2) provide the Independent Certifier with such details as are available to the Client Party about the Third Party Claim.
- (b) Nothing in clause 8.4(a) requires the Client Parties to provide legal advice received in relation to a Third Party Claim to the Independent Certifier.

- (c) If the Independent Certifier acknowledges in writing that it is liable to indemnify the Client Parties against the Third Party Claim under clause 8.2 the Client Parties may either:
 - (1) conduct the defence of the Third Party Claim itself; or
 - (2) at any time require, by notice to the Independent Certifier, that the Independent Certifier take over the defence of the Third Party Claim.
- (d) The party conducting the defence of the Third Party Claim must keep the other parties informed of all material matters relating to the conduct of any defence or response in respect of the Third Party Claim.
- (e) The party conducting the defence of the Third Party Claim must have regard to the other parties' expressed views if those views are confirmed in writing and are reasonable having regard to the legitimate interests of the party conducting the defence of the Third Party Claim.
- (f) The parties will act with the utmost good faith to each other in relation to the Third Party Claim.
- (g) The party conducting the defence cannot settle the Third Party Claim without the prior consent of the other party, which consent shall not be unreasonably withheld. Further, in considering whether a settlement is reasonable, the parties must take into account reputational and economic matters.

8.5 Benefit of indemnities

In clause 8.2, "State", as a Client Party, includes the Crown in the right of the State of Western Australia, any Parliament, department, agency or instrumentality of the State of Western Australia, any Minister (including the State), whether body corporate or otherwise, and their officers, employees, consultants, contractors, agents, and personnel.

8.6 Enforcement of indemnities

The Client Parties need not incur any cost or make any payment before enforcing any right of indemnity under this clause 8.

9 Termination and consequences

9.1 Termination for breach

The Client Parties may jointly terminate this agreement immediately by written notice to the Independent Certifier if:

- (a) the Independent Certifier is in material breach of the terms of this agreement and the breach is, in the reasonable opinion of the Client Parties, not remediable;
- (b) the Independent Certifier is in material breach of the terms of this agreement and the breach is, in the reasonable opinion of the Client Parties, remediable and such breach has not been remedied within 10 Business Days after service

- by a Client Party of a notice specifying the breach and requiring it to be remedied;
- (c) the Independent Certifier refuses or persistently fails to perform all or any part of its obligations, duties and functions under this agreement;
- (d) the Independent Certifier fails to provide proof of the Insurance Policies under clause 7.6;
- (e) an Insolvency Event occurs; or
- (f) there is a Change in Control of the Independent Certifier without the consent of the Client Parties under clause 13.5.

9.2 Termination for convenience

The Client Parties may, in their absolute discretion for any reason whatsoever, serve on the Independent Certifier a notice of termination of this agreement and the appointment of the Independent Certifier, on a date specified in the notice, being not less than 10 Business Days after the date of issue of the notice.

9.3 Termination of Design and Construction Agreement

- (a) Subject to paragraph (b), if it has not been terminated earlier, this agreement terminates on the date of termination of the Design and Construction Agreement.
- (b) If the Design and Construction Agreement is terminated, and the D&C Subcontract is novated to the State under the Design and Construction Agreement:
 - (1) this agreement does not terminate in respect of the D&C Subcontract Independent Certifier Services;
 - (2) this agreement is varied to remove all requirements in respect of the Independent Certifier Services including the Independent Certifier Services Fee;
 - (3) the State will take responsibility for the Operator's and Private Operator's obligations in respect of the D&C Subcontract Independent Certifier Services and this agreement is varied accordingly;
 - (4) from the date of termination of the Design and Construction Agreement, the State and the Builder will be severally liable to each pay the Independent Certifier 50% of the D&C Subcontract Independent Certifier Services Fee; and
 - (5) the Operator and the Private Operator will cease to be parties to this agreement.
- (c) The Operator and the Private Operator will be responsible for payment of its portion of the Independent Certifier Fee and the D&C Subcontract Independent Certifier Services Fee for the Independent Certifier Services and the D&C Subcontract Independent Certifier Services (as applicable), up to the date of termination in accordance with Clause 9.8.

9.4 Termination for non-payment

- (a) The Independent Certifier may give notice to the Client Parties if the State, the Operator or the Private Operator (as applicable) fail to pay the Independent Certifier an amount due and payable under this agreement by the time required for payment.
- (b) If the Client Party that has not paid is the State, and any Client Party does not remedy the non-payment within 20 Business Days of receiving the notice, the Independent Certifier may by written notice to the Client Parties terminate this agreement in respect of the Independent Certifier Services. If the Client Party that has not paid is the Operator or Private Operator and any Client Party does not remedy the non-payment within 20 Business Days of receiving the notice, the Independent Certifier may by written notice to the Client Parties, terminate this agreement in respect of the D&C Subcontract Independent Certifier Services. This clause 9.4(b) does not operate to impose an obligation on a Client Party to pay any part of the Fee if it is not otherwise liable to do so under this agreement.
- (c) If a Client Party (other than the party that was responsible for payment) remedies the non-payment, that Client Party may recover the amount from the Client Party that was obliged to pay the amount under this agreement, as a debt due and owing, the amount paid to the Independent Certifier.

9.5 Termination of appointment of Independent Certifier

The appointment of the Independent Certifier will terminate on the date specified in the notice of termination under clauses 9.1, 9.2, 9.3(a) or 9.4 (as the case may be) or the expiry of the Term, whichever is earlier.

9.6 Delivery of documents

On the date of termination of the appointment of the Independent Certifier, the Independent Certifier:

- (a) must deliver to the Client Parties or their nominee, all books, Records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Independent Certifier Services, the D&C Subcontract Independent Certifier Services, this agreement, the Project Documents, the Works and the Private Works; and
- (b) acknowledges and agrees that the Independent Certifier permits the Client Parties to use all those documents for the purposes of the Project Documents, the Works, the Private Works and any other related project.

9.7 Reasonable assistance

Where this agreement is terminated under clauses 9.1, 9.2 or 9.3(a), the Independent Certifier must (at the reasonable cost of the State where termination is under clause 9.2) fully assist (to a reasonable extent) the Client Parties and any successor to the Independent Certifier appointed in order to enable the successor to be in a position to perform the Independent Certifier Services and/or the D&C Subcontract Independent Certifier Services with effect from the date of its appointment.

9.8 Payment until date of termination

- (a) Subject to clauses 5.2(d) and 9.8(b), where the appointment of the Independent Certifier is terminated under this agreement, the Independent Certifier is only entitled to be paid the proportion of the Fee for the Services performed up to the date of the termination.
- (b) Where the appointment of the Independent Certifier is terminated under clause 9.2 or 9.3(a), the Independent Certifier may recover:
 - (1) the proportion of the Fee for the Independent Certifier Services performed up to the date of the termination from the Client Parties liable to pay the Fee, determined in accordance with clause 3.2; and
 - (2) its reasonable costs arising out of the termination from the Client Parties (except the Builder), determined in accordance with clause 3.2 as if those costs formed part of the Fee.

9.9 Termination without prejudice

Termination of this agreement under this clause 9 will be without prejudice to:

- (a) any Claim which the Client Parties may have in respect of any breach of the terms of this agreement which occurred; or
- (b) any rights or liabilities of the parties under this agreement which may have accrued,

before the date of termination.

9.10 Survival of clause 9

This clause 9 survives the expiry or termination of this agreement.

10 Dispute resolution

10.1 Dispute

- (a) If a Dispute arises and is unable to be resolved, then the Dispute will be dealt with in accordance with this clause 10.
- (b) For the avoidance of doubt, any decision by the Independent Certifier is final and binding on the Client Parties and cannot be the subject of a Dispute, except for manifest error.

10.2 Advisor appraisal

- (a) If the Dispute is unable to be resolved (in whole or in part) and relates to:
 - (1) the application of any industry or technical standard or any rules, practices or customs of any trade or profession;
 - (2) the quantum of any compensation (but not the existence of a right to compensation);

- (3) a point of difference that the Client Parties determine must be resolved by an Advisor or requires an expert opinion; or
- (4) any other matter that is expressly to be referred to or determined by an Advisor in this Agreement,

any party may refer the matter in issue to an Advisor for its opinion and this clause 10.2 applies. If a Dispute does not fall within the listed categories and without limiting the obligations of the Client Parties in respect of dispute resolution set out in the Design and Construction Agreement and the D&C Subcontract, any party may pursue any other legal remedy available to it in respect of the Dispute.

- (b) The Advisor will be the natural person nominated by the Client Parties and the Independent Certifier. If within 5 Business Days of the Dispute occurring (or such longer time as the Client Parties and the Independent Certifier agree) the Client Parties and the Independent Certifier fail to agree on the Advisor, then an Advisor will be nominated by the President of the Western Australian Chapter of The Institute of Arbitrators and Mediators Australia.
- (c) The Advisor must:
 - (1) not be an employee or ex employee of a party or of an entity related to a party and not be connected with the performance of this agreement;
 - (2) have appropriate skills and qualifications to appraise the Dispute;
 - (3) be impartial;
 - (4) act as an expert and not as an arbitrator; and
 - (5) observe the rules of natural justice, but will otherwise be entitled to proceed in any manner that the Advisor considers appropriate, without being bound to observe the rules of evidence.
- (d) In addition to using their own expertise, the Advisor will have the power to:
 - (1) inform themselves independently as to the facts and technical matters to which the Dispute relates; and
 - (2) consult with such other professionally qualified persons as the Advisor in their absolute discretion thinks fit.
- (e) The Client Parties and the Independent Certifier must:
 - (1) provide the Advisor with any information, documents and other assistance that the Advisor may reasonably request or direct; and
 - (2) pay their own costs of the appraisal and an equal share of the costs of the Advisor.
- (f) Unless otherwise agreed in writing or required by Law, all communications relation to an Advisor appraisal, including any report or other documentation or communication from or with the Advisor, are admissible as evidence in any legal proceeding unless in writing and signed by the Client Parties and the Independent Certifier.

10.3 Continuity

- (a) Despite the existence of a Dispute, the parties must continue to perform their obligations under this agreement unless the Client Parties, by notice to the Independent Certifier, suspend the Independent Certifier's obligations pending the outcome of the Dispute.
- (b) The Independent Certifier is not entitled to any extension of time or adjustment to fees by reason of suspension of its obligations under this clause 10.3.

10.4 Injunctive or urgent relief

Nothing in this clause 10 prejudices any party's right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a Dispute or any other matter arising under this agreement.

11 Goods and Services Tax

11.1 GST

- (a) The Fee and any other amounts in this agreement (except where otherwise specified) are exclusive of GST and are subject to this clause 11.1.
- (b) This clause shall apply as if the GST Law imposed GST, and was able to impose GST, in the circumstances prescribed in the GST Law, on property of any kind belonging to a State (as that expression is used in section 114 of the *Commonwealth of Australia Constitution Act 1900*).
- (c) In this clause 11.1, terms used and defined in this clause 11.1 have the meaning given to them in the GST Law.
- (d) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of supply (**GST Exclusive Consideration**) except as provided under this clause 11.
- (e) Any amount referred to in this agreement (other than an amount referred to in clause 11.3) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (f) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.

11.2 Payment and invoices

- (a) The recipient must pay the additional amount payable under clause 11.1(f) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.

- (b) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 11.1(f) or at such other time as the parties agree.
- (c) If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement, then the consideration payable in respect of the supply shall also be adjusted as follows:
 - (1) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the recipient to the Supplier; and
 - (2) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply a payment equal to that decrease will be made by the Supplier to the recipient.
- (d) If the adjustment event referred to under clause 11.2(c) gives rise to an adjustment, the Supplier must issue an adjustment note or amended tax invoice, as the case may be, to the recipient as soon as it becomes aware of the adjustment event and any payment that is required under clause 11.2(c) must be made within 30 days of the issuing of the adjustment note or amended tax invoice.

11.3 Reimbursements

If one of the parties is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 11.1(f).

12 Notices

12.1 Procedure for sending notices

- (a) Each communication (including each notice, consent, approval, request, demand and certificate) in accordance with or in connection with this agreement (in this clause 12, "**Notices**"): must be:
 - (1) in writing; and
 - (2) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) All Notices must be:
 - (1) delivered or posted by prepaid post to the address; or

- (2) sent by email in the form of a .pdf file letter (or such other form agreed by the Client Parties) to the email address (provided that the email contains a read receipt request),

of the addressee set out in clause 12.2, or as otherwise notified by that party to each other party from time to time.

12.2 Party details

- (a) The State's notice details are as follows:

State

Address Room 429, 4th Floor, R Block, Sir Charles Gairdner Hospital, Verdun Street, Nedlands 6009

Attention Ian Lacey

Phone (08) 9346 7945

Fax (08) 9346 2669

with a copy to:

State's Representative

Ian Lacey

Address Room 429, 4th Floor, R Block, Sir Charles Gairdner Hospital, Verdun Street, Nedlands 6009

Phone (08) 9346 7945

Fax (08) 9346 2669

- (b) The Operator's notice details are as follows:

Operator

Address Level 2, 12 Kings Park Road, West Perth 6005

Attention Ian Anderson

Phone (08) 9213 3620

Fax (08) 9322 2082

with a copy to:

Operator's Representative

Ian Anderson

Address Level 2, 12 Kings Park Road, West Perth 6005

Phone (08) 9213 3620

Fax (08) 9322 2082

- (c) The Private Operator's notice details are as follows:

Private Operator

Address Level 2, 12 Kings Park Road, West Perth
6005

Attention Ian Anderson

Phone (08) 9213 3620

Fax (08) 9322 2082

with a copy to:

**Private Operator's
Representative**

Ian Anderson

Address Level 2, 12 Kings Park Road, West Perth
6005

Phone (08) 9213 3620

Fax (08) 9322 2082

- (d) The Builder's notice details are as follows:

Builder

Address The Old Swan Brewery, Level 2, 173 Mounts
Bay Road, Perth 6000

Attention Marc Van Heemst

Phone (08) 9483 0899

Fax (08) 9483 0898

with a copy to:

**Builder's
Representative**

Marc Van Heemst

Address The Old Swan Brewery, Level 2, 173 Mounts
Bay Road, Perth 6000

Phone (08) 9483 0899

Fax (08) 9483 0898

- (e) The Independent Certifier's notice details are as follows:

Independent Certifier

Address *[insert]*

Attention [insert]

Phone [insert]

Fax [insert]

with a copy to:

**Independent Certifier's
Representative** [insert]

Address [insert]

Phone [insert]

Fax [insert]

12.3 When notices are deemed to be received

- (a) A Notice is deemed to be received:
 - (1) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (2) in the case of email, 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 stated in clause 12.2; and
 - (3) in the case of delivery by hand, on delivery.
- (b) If the Notice is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (c) In connection with Notices sent by email:
 - (1) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this clause 12.3. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (2) the Independent Certifier must ensure that, in connection with any communications in accordance with or in connection with this agreement:
 - (A) its firewall and/or mail server (as applicable):
 - (i) allows messages of up to 14 MB to be received;
 - (ii) does not trap any messages in the spam filter which have been sent from any Client Party domain; and
 - (iii) automatically sends a receipt notification to the sender upon receipt of a message; and

- (B) its 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.
- (d) Email or similar electronic means of communication must not be used to give Notices under:
 - (1) clause 5.1(d) (Performance of the Services);
 - (2) clause 6.8(d) (Suspension);
 - (3) clause 7.7 (Notices of potential claims);
 - (4) clause 7.9 (Independent Certifier's further obligations);
 - (5) clause 9 (Termination and consequences);
 - (6) clause 10 (Dispute resolution);
 - (7) clause 13.5(b) (No dealing);
 - (8) clauses 2.1(c) and 3.1(a) of Schedule 2 (Specific functions in respect of Completion and extensions of time); and
 - (9) clauses 2.1(c) and 3.1(a) of Schedule 3 (Specific functions in respect of D&C Subcontract Completion and extensions of time),

unless the email is followed by another method of communication of the Notice set out paragraph 12.1(b)(1), in which case the Notice will be deemed to have been given and received by that further method of communication in accordance with paragraph (a).

13 General

13.1 Survival

Clauses 1 (Definitions and interpretation), 5.8 (Records, access and audit), 5.9 (Confidentiality), 7 (Insurance), 8 (Liability and Indemnity) and 9 (Termination), 10 (Dispute resolution), 12 (Notices) and 13 (General) survive termination of this agreement and will continue in full force and effect.

13.2 Governing Law and jurisdiction

This agreement is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

13.3 Entire agreement

This agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

13.4 Counterparts

This agreement may be executed in any number of counterparts.

13.5 No dealing

- (a) Subject to this clause 13.5, the Operator, the Private Operator and the Builder may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the State.
- (b) The Independent Certifier must not, without the prior approval of the Client Parties, and except on such terms and conditions as are determined by the Client Parties:
 - (1) permit a Change in Control of it;
 - (2) assign, transfer, mortgage, novate, charge or otherwise encumber this agreement or any payment or other right, benefit, money or interest under or in respect of this agreement; or
 - (3) subcontract the performance of any of the Independent Certifier Services and/or the D&C Subcontract Independent Certifier Services.
- (c) The Independent Certifier remains responsible for the performance of the Services in accordance with this agreement, despite any subcontracting, and the acts or omissions of any subcontractor will be deemed to be the acts or omissions of the Independent Certifier.
- (d) The State may assign, transfer, mortgage, novate, charge or encumber this agreement or any part of it or any right, benefit, money or interest under this agreement without the consent of the other Client Parties or the Independent Certifier.

13.6 Relationship of the parties

- (a) Nothing in this agreement gives a party authority to bind the other party in any way.
- (b) The Independent Certifier is an independent contractor. The Key Personnel and Independent Certifier's Representative will not be deemed to be employees, agents, subcontractors or consultants of the Client Parties and each party must pay all costs associated with its employees.
- (c) Neither this agreement, nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the parties.

13.7 Corporate power and authority

Each party represents and warrants to the other that it has full power to enter into and perform its obligations under this agreement and that when executed this agreement will constitute legal, valid and binding obligations under its terms.

13.8 Statutory functions

Nothing contained in or implied by this agreement or any document contemplated by this agreement has the effect of constraining the State or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in any Law.

13.9 Costs

Each party must pay its own costs and disbursements in connection with the negotiation, preparation and execution of this agreement.

13.10 Duty

The Independent Certifier must pay any duty in respect of the execution, delivery and performance of this agreement.

13.11 Language

All information and documentation prepared or delivered by the parties under this agreement will be in English.

13.12 Cumulative remedies

The rights, powers, authorities, discretions and remedies arising out of or under this agreement are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Client Parties.

13.13 Variations and waivers

No variation, modification or waiver of any provision in this agreement, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

13.14 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this agreement.

13.15 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

13.16 Enurement

The provisions of this agreement will enure for the benefit of and be binding on the parties and the Independent Certifier and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.

13.17 Attorneys

Each person who executes this agreement 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.

Schedules

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Schedule 1

Project Documents

- 1 the Design and Construction Agreement;
- 2 the D&C Subcontract; and
- 3 the Interface Agreement.

Schedule 2

Independent Certifier Services

1 Primary functions

- (a) Without limiting its obligations under this Schedule and its other obligations under this agreement, the Independent Certifier's primary functions are to:
 - (1) certify whether or not the Completion Tests have been passed and whether the requirements of Completion have otherwise been achieved; and
 - (2) determine whether a claim for an extension of time should be granted, including the duration of any extension of time to which the Operator is entitled in accordance with clause 14 of the Design and Construction Agreement.
- (b) The Independent Certifier is not required to determine the amount of Delay Costs arising out of an extension of time.
- (c) The Independent Certifier must do all things necessary to satisfy itself that Completion has occurred, except that the Independent Certifier is not required to undertake its own testing. The Independent Certifier must perform all of the tasks that are assigned to it in the Design and Construction Agreement.

2 Completion and consequences

2.1 Specific functions in respect of Completion

- (a) The Independent Certifier will be provided with a draft Completion Report by the Operator which satisfies the requirements set out in clause 16.2(b) of the Design and Construction Agreement, within 20 Business Days prior to the Date for Completion.
- (b) The Independent Certifier must within 10 Business Day of receipt of the draft Completion Report:
 - (1) provide any comments in writing on the draft Completion Report to the State and the Operator; and
 - (2) give any reasonable directions to the Operator in relation to preparing for Completion.
- (c) Upon receipt of the Operator's:
 - (1) written notice that it is of the reasonable opinion that it has achieved Completion; and

- (2) updated Completion Report,

the Independent Certifier must certify within 5 Business Days of receipt of the information provided by the Operator in paragraph (c), whether or not Completion has been achieved and must notify the parties in writing of his or her conclusion as to whether Completion has been achieved, and if achieved the date which it is achieved.

- (d) If Completion:

- (1) has been achieved, the Independent Certifier must include in its notification that Completion has been achieved, an attached list of Outstanding Items (if any) which must be remedied, addressed or completed by the Operator within a reasonable period of time as determined by the Independent Certifier; or
- (2) has not been achieved, the Independent Certifier must issue to the State and the Operator a written notice containing details of the reason or reasons why Completion has not been achieved, and the outstanding Completion Criteria that must be satisfied by the Operator as a condition precedent to achieving Completion.

- (e) If the Independent Certifier issues a notice under paragraph (d)(2) that Completion has not been achieved, the Operator must remedy the reason or reasons why Completion has not been achieved as set out in the notification, and the requirements of paragraph (c) and (d) will apply again until:

- (1) the Independent Certifier certifies that Completion has been achieved; or
- (2) the State and the Operator otherwise agree.

3 Assessment of extension of time claims

3.1 Specific functions in respect of assessing extension of time claims

- (a) The Independent Certifier must within 10 Business Days of a request from the State or the Operator under Clause 14 of the Design and Construction Agreement, provide his or her determination as to whether the Operator is entitled to an extension of time and the duration to which the Operator is entitled, determined in accordance with Clause 14 of the Design and Construction Agreement.
- (b) The Independent Certifier must set out and provide the State and the Operator with his or her written reasons for the decision in paragraph (a).
- (c) The Independent Certifier may request further information from the State and the Operator in order to make his or her determination in accordance with paragraph (a) and the State and the Operator must provide that information within 5 Business Days of the Independent Certifier's request.

Schedule 3

D&C Subcontract Independent Certifier Services

1 Primary functions

- (a) Without limiting its obligations under this Schedule and its other obligations under this agreement, the Independent Certifier's primary functions are to:
 - (1) certify whether or not the D&C Subcontract Completion Tests have been passed and whether the requirements of D&C Subcontract Completion have otherwise been achieved; and
 - (2) determine whether a claim for an extension of time should be granted, including the duration of any extension of time to which the Builder is entitled in accordance with clause 16 of the D&C Subcontract.
- (b) The Independent Certifier is not required to determine the amount of Builder Delay Costs arising out of an extension of time.
- (c) The Independent Certifier must do all things necessary to satisfy itself that D&C Subcontract Completion has occurred, except that the Independent Certifier is not required to undertake its own testing. The Independent Certifier must perform all of the tasks that are assigned to it in the D&C Subcontract.

2 Completion and consequences

2.1 Specific functions in respect of D&C Subcontract Completion

- (a) The Independent Certifier will be provided with a draft D&C Subcontract Completion Report by the Builder which satisfies the requirements set out in clause 18.2(b) of the D&C Subcontract, within 20 Business Days prior to the Date for D&C Subcontract Completion.
- (b) The Independent Certifier must within 10 Business Day of receipt of the draft D&C Subcontract Completion Report:
 - (1) provide any comments in writing on the draft D&C Subcontract Completion Report to the Builder; and
 - (2) give any reasonable directions to the Builder in relation to preparing for D&C Subcontract Completion.
- (c) Upon receipt of the Builder's:
 - (1) written notice that it is of the reasonable opinion that it has achieved D&C Subcontract Completion; and

- (2) updated D&C Subcontract Completion Report,

the Independent Certifier must certify within 5 Business Days of receipt of the information provided by the Builder in paragraph (c), whether or not D&C Subcontract Completion has been achieved and must notify the Private Operator and the Builder in writing of his or her conclusion as to whether D&C Subcontract Completion has been achieved, and if achieved the date which it is achieved.

- (d) If D&C Subcontract Completion:

(1) has been achieved, the Independent Certifier must include in its notification that D&C Subcontract Completion has been achieved, an attached list of "Outstanding Items" (as that term is defined in the D&C Subcontract) (if any) which must be remedied, addressed or completed by the Builder within a reasonable period of time as determined by the Independent Certifier; or

(2) has not been achieved, the Independent Certifier must issue to the Builder a written notice containing details of the reason or reasons why D&C Subcontract Completion has not been achieved, and the outstanding D&C Subcontract Completion Criteria that must be satisfied by the Builder as a condition precedent to achieving D&C Subcontract Completion.

- (e) If the Independent Certifier issues a notice under paragraph (d)(2) that D&C Subcontract Completion has not been achieved, the Builder must remedy the reason or reasons why D&C Subcontract Completion has not been achieved as set out in the notification, and the requirements of paragraph (c) and (d) will apply again until the Independent Certifier certifies that D&C Subcontract Completion has been achieved.

3 Assessment of extension of time claims

3.1 Specific functions in respect of assessing extension of time claims

- (a) The Independent Certifier must within 10 Business Days of a request from the Operator, the Private Operator or the Builder under Clause 16 of the D&C Subcontract, provide his or her determination as to whether the Builder is entitled to an extension of time and the duration to which the Builder is entitled, determined in accordance with Clause 16 of the D&C Subcontract.
- (b) The Independent Certifier must set out and provide the Private Operator and the Builder with his or her written reasons for the decision in paragraph (a).
- (c) The Independent Certifier may request further information from the Builder in order to make his or her determination in accordance with paragraph (a) and the Builder must provide that information within 5 Business Days of the Independent Certifier's request.

3.2 Consequences of the Independent Certifier's conclusion

The decision of the Independent Certifier as to the duration of the extension of time is binding on the Private Operator and the Builder, with the exception of manifest error of the Independent Certifier.

Schedule 4

Payment Schedule

1 Payment claim

- (a) The Fee payable by the Client Parties to the Independent Certifier for the provision of the Services will be calculated on a monthly basis, as specified in section 8.
- (b) The Independent Certifier must, at least 3 Business Days before the end of each month and upon termination of this agreement, submit to the relevant Client Parties separate Payment Claims setting out the Fee:
 - (1) for the Independent Certifier Services performed in accordance with this agreement since the last account for which they are responsible under clause 3.2;
 - (2) for the D&C Subcontract Independent Certifier Services performed in accordance with this agreement since the last account for which they are responsible under clause 3.2; and
 - (3) calculated in accordance with this Schedule.

(Payment Claim).
- (c) The Payment Claims submitted under section 1(b) of this Schedule must include:
 - (1) a detailed breakdown of work completed in the previous month and, if applicable, the calculation of amounts claimed to which rates apply;
 - (2) any invoices or receipts necessary to substantiate calculation of amounts claimed to which rates apply; and
 - (3) any other information reasonably required by the Client Parties.

2 Payment Certificate

- (a) Within 5 Business Days of receipt of a Payment Claim under section 1(b) of this Schedule, the Client Party to whom a Payment Claim was issued, acting reasonably, by notice to the Independent Certifier must:
 - (1) advise that the Client Party intends to make the payment set out in its Payment Claim and deliver a **Payment Certificate** to the Independent Certifier for the amount of its Payment Certificate; or

- (2) advise that the Client Party does not intend to make all or part of the payment set out in its Payment Claim, providing the reasons for its decision, and deliver a Payment Certificate to the Independent Certifier for any amounts to which the Client Party maintains that the Independent Certifier is entitled (if any), and section 5 of this Schedule applies in respect of the remainder.
- (b) The amount set out by the Client Party in its Payment Certificate under section 2(a) of this Schedule will be adjusted by:
 - (1) any amounts which the relevant Client Party is owed or entitled to deduct or has deducted under this agreement; and
 - (2) any correction or modification to previous Payment Certificates of the relevant Client Party issued under section 2(a) of this Schedule.
- (c) The Client Party may for any reason in any Payment Certificate:
 - (1) correct any error in any of its previous Payment Certificates; or
 - (2) acting reasonably, modify any of its previous Payment Certificates,previously issued by the Client Party.

3 Tax invoice

- (a) Within 1 Business Day of receipt of a Payment Certificate, the Independent Certifier must provide a tax invoice in a form approved by the Client Parties and any other documentation necessary for the Client Parties to be able to claim any applicable GST or have payment of any GST recognised under the applicable GST legislation.
- (b) The amount in the tax invoice must be the same as the amount in the Payment Certificate.

4 Payment

- (a) Within 20 Business Days of receiving a tax invoice from the Independent Certifier under section 2(a) and any other documentation a Client Party requires, the relevant Client Party must pay the Independent Certifier or the Independent Certifier must pay the relevant Client Party the amount shown in the Payment Certificate (as adjusted under section 2(c)) of this Schedule.
- (b) Any Payment Certificate or payment of moneys under section 3(a) of this Schedule is not:
 - (1) evidence of the value of work or services or that work or services have been satisfactorily performed in accordance with this agreement;

- (2) an admission of liability; or
- (3) approval by the Client Parties of the Independent Certifier's performance or compliance with this agreement,

but is only to be taken as payment on account.

5 Conditions for payment

Notwithstanding anything else in this agreement and without limiting any other right or remedy of the Client Parties, a Client Party will not be required to make all or any part of payment to the Independent Certifier required under this agreement unless the Independent Contractor has properly performed all of the Independent Certifier Services and D&C Subcontract Independent Certifier Services (as the case may be) under this agreement for which the Payment Claim has been issued.

6 Notification of disputed amounts

- (a) The Client Parties may make joint or separate representations to the Independent Certifier in respect of any amount which is disputed.
- (b) If a Client Party disputes, in good faith, any amount set out in the Payment Certificate, the relevant Client Party will be entitled to withhold payment of the amount so disputed (**Disputed Amount**) pending agreement between the parties or resolution of the matter to which the Dispute relates in accordance with clause 10 of this agreement.
- (c) If the determination of any Dispute referred to in section 6(b) of this Schedule shows that:
 - (1) the relevant Client Party has withheld any amount which the Independent Certifier was entitled to be paid; or
 - (2) the Independent Certifier has claimed under section (1) any amount which it was not entitled to be paid,

the relevant Client Party must pay to the Independent Certifier any amount which the Independent Certifier is entitled to be paid or, if the Independent Certifier has been paid an amount which it was not entitled to be paid, the Independent Certifier must repay such amount to the relevant Client Party, with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by a Client Party) or from the date on which over payment was made (in the case of excessive Claims by the Independent Certifier) until all relevant monies have been paid in full and whether before or after judgment.

7 The Fee

The Fee for the Independent Certifier Services (subject to clause 6.8 of this agreement), for those tasks not carried out under the Schedule of Rates will be a lump sum of \$*[insert]* a breakdown of which is set out in section 8, and in which lump sum the Independent Certifier acknowledges that it has allowed for the provision of all labour, materials, work, disbursements and other costs necessary for and arising out of or in connection with the Independent Certifier's Obligations, whether or not expressly mentioned in this agreement.

The Fee for the D&C Subcontract Independent Certifier Services (subject to clause 6.8 of this agreement), for those tasks not carried out under the Schedule of Rates will be a lump sum of \$*[insert]* a breakdown of which is set out in section 8, and in which lump sum the Independent Certifier acknowledges that it has allowed for the provision of all labour, materials, work, disbursements and other costs necessary for and arising out of or in connection with the Independent Certifier's Obligations, whether or not expressly mentioned in this agreement.

8 Monthly payment schedule for the lump sum

For the purposes of section 1 of this Schedule and subject to clause 6.8 of this agreement, the monthly payment of the Fee in respect of each of the Independent Certifier Services and the D&C Subcontract Independent Certifier Services, excluding the services carried out under the Schedule of Rates as listed in section 9 of this Schedule below, is as follows:

8.1 Independent Certifier Services

Month	Payment
TOTAL	

8.2 D&C Subcontract Independent Certifier Services

[illegible]

provided however that the Independent Certifier is not entitled to make a Claim for payment to the extent that the Services have not been carried out for the month in question, whether as a result of suspension under clause 6.8 of this agreement or otherwise. The monthly payment schedule above will be agreed in writing between the parties and updated accordingly.

9 Schedule of Rates

Any additional works and works carried out due to a change to the Services referred to in clause 6.8(a) will be charged at the following rates:

[illegible]

Key Personnel	Position	Rate \$/Day

These rates:

- (a) are based on an 8 hour day and part days will be paid for on a proportional basis; and
- (b) contain allowances for the provision of all labour, materials, work, disbursements (other than as described in and payable under section 10 of this Schedule) and other costs necessary for and arising out of or in connection with the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this agreement.

10 Disbursements

The Independent Certifier is:

- (a) only entitled to reimbursement of disbursements incurred in the course of the performance the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this agreement if those disbursements:
 - (1) have been reasonably and properly incurred for the sole purpose of performing services for which the Independent Certifier is to be paid on a Schedule of Rates basis in accordance with this agreement;
 - (2) where they exceed or are likely to exceed [*not disclosed*], have the prior written approval of the State and the Operator; and
 - (3) are supported by documentation provided to the Client Parties which is satisfactory to them; and
- (b) not entitled to make any Claim against the Client Parties arising out of or in connection with disbursements or other costs incurred in connection with the performance of the Services other than in accordance with section 10(a) of this Schedule.

11 GST

All lump sums, rates and amounts in this Schedule exclude GST.

Signing page

Executed as an Agreement

State

Signed for and on behalf of

The State of Western Australia

by THE HONOURABLE [insert]
, Treasurer for the time being
in the presence of

[insert]

*print name
of witness*

*Witness
sign here ►*

*Witness
address*

*Witness
occupation*

Operator

Signed for
St John of God Midland Health Campus
By

sign here_____
Company Secretary/Director*print name* _____*sign here*_____
Director*print name* _____**Private Operator**

Signed for
St John of God Health Care Inc
By

sign here_____
Company Secretary/Director*print name* _____*sign here*_____
Director*print name* _____

Builder

Signed for
Brookfield Multiplex Constructions Pty Ltd
By

sign here



Company Secretary/Director

print name _____

sign here



Director

print name _____

Independent Certifier

Signed for
[Insert Independent Certifier]
By

sign here



Company Secretary/Director

print name _____

sign here



Director

print name _____

Schedule 17 – Form of Payment Claim**St John of God Midland Health Campus****TAX INVOICE****Midland Health Campus - Design and Construction**

To: North Metropolitan Area Health Service
4th Floor R Block
Verdun Street
NEDLANDS WA 6009

Att: State Representative

Invoice number: _____

Purchase Order: _____

Date: _____

Period (Month / Year): _____ / _____

Claim No: _____

Description: _____

Amount Due per certification \$ _____

Plus GST 10% \$ _____

Tax Invoice Amount (incl GST) \$ _____

Bank details

Payment terms (due date 26th of month)

Signature

Disclaimer

Etc

Midland Health Campus - Design and Construct
St John of God Midland Health Campus - PAYMENT CLAIM

Summary Page

Claim Number: _____

	SUMMARY	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNTS DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
	Project Cost								
A.0	Substructure	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
B.0	Superstructure	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
C.0	Façade	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
D.0	Finishes	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
E.0	Fixtures & Fittings	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
F.0	Specialist Services / Equipment	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
G.0	Services	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
H.0	External Works	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
I.0	Car Parking Areas	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
J.0	BWIC	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
K.0	Off Site Infrastructure	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
L.0	Builders Preliminaries	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
TOTAL PROJECT COST (NET)		\$		\$	0%	\$	\$	\$	\$
M.0	Special Independent Certifier	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
N.0	Bid Costs	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
O.0	Post Bid – SJOG	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
P.0	SJOG Contingency								

	SUMMARY	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNTS DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
Q.0	Statutory Charges	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
R.0	Prototypes	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
S.0	Design Team Fees	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
T.0	Overheads & Profit	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	TOTAL SPECIAL PROVISIONS	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	GROSS PROJECT COST (At current prices)	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	Escalation	INCLUDED							
	Risk Allowance	INCLUDED							
	TOTAL CONSTRUCTION COST	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
U.0	Variations								
	As variation sheet	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	TOTAL VARIATIONS	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	TOTAL REVISED CONSTRUCTION COST	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
V.0	Equipment Inventory								
V.01	Medical Equipment	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
V.02	Non-Medical FF&E	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
V.03	Artwork	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	TOTAL PURCHASED EQUIPMENT COST	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	TOTAL CONSTRUCTION COST	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$

	SUMMARY	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNTS DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
	TOTAL PURCHASED EQUIPMENT COST	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	OVERALL TOTAL	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$
	GOODS and SERVICES TAX	\$	[Not disclosed]	\$	0%	\$	\$	\$	\$

Remarks:

Midland Health Campus - Design and Construct
St John of God Midland Health Campus - PAYMENT CLAIM

Detail Page(s)

Claim Number: _____

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
A.0	Substructure	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
A.01	Excavation & Fill	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
A.02	Piling	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
A.03	Break Down Piles	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
A.04	Foundations & Ground Floor Slab	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
A.05	Tanking, waterproofing, gravel ballast etc	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.0	Superstructure	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.01	Upper Floors	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.02	Columns	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.03	Staircases	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.04	Concrete Roof	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.05	Cores	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.06	Loading Dock Concrete	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.07	Movement Joints	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.08	Structural Steel	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.09	Metal Roofing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.10	Built Up Roofing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.11	ETFE Roofing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
B.12	Roof Safety Systems	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
B.13	Tanking, waterproofing, etc	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
C.0	Facades	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
U.01	Aluminium Windows and Curtain Walling	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
	(breakdown)								
C.02	Metal Cladding	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
C.03	Metal Louvres	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
C.04	Brickwork Facade	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
C.05	Canopies	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.0	Finishes	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.01	Ceilings	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
	(breakdown)								
D.02	Partitions	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
	(breakdown)								
D.03	Internal Glazing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.04	Render	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.05	Tiling	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.06	Carpets & Vinyl	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.07	Entry Mats	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.08	Painting	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.09	Joinery	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
	(breakdown)								

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
D.10	General Metalwork	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.11	Roller Shutters	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.12	Handrails & Balustrades	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.13	Doors	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.14	Door Hardware	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
D.15	Toilet Partitions	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
E.0	Fixtures & Fittings	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
E.01	Sanitary Accessories	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
E.02	Mirrors	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
E.03	Lettering & Signs	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
E.04	Blinds	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
F.0	Specialist Services / Equipment	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
F.01	Swimming Pool	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
F.02	General Specialist Equipment	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.0	Services	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.01	<u>Hydraulic Below Ground</u>	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.01.1	External Civil Stormwater Drainage	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.01.2	Carpark Drainage	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
G.01.3	Subsoil Drainage Below Building	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02	<u>Hydraulic Above Ground</u>	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02.1	Foul Water Drainage	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02.2	Stormwater Drainage	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02.3	Water	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02.4	Gas	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02.5	Sanitary Fixtures & Fittings	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.02.6	Preliminaries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03	<u>Electrical</u>	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.1	HV	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.2	General Power	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.3	Lighting	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.4	Structural Cabling	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.5	Assistance Call System	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.6	Clocks	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.7	Audio Visual	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.8	Carpark Lighting & Power	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.9	General Items	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.10	Testing & Commissioning	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.1	Security	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.03.12	Temporary Power	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
G.03.1	Preliminaries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04	<u>Mechanical</u>	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.1	Equipment	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.2	Ductwork	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.3	Electrical & BMS Controls	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.4	Plumbing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.5	Medical Gases	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.6	Pnematic Tube	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.7	Testing & Commissioning	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.8	General Items	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.04.9	Preliminaries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.05	<u>Fire</u>	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.05.1	Fire Wet	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.05.2	Fire Dry	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.05.3	Testing & Commissioning	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.05.4	Preliminaries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
G.06	<u>Vertical Transportation</u>	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
H.0	External Works	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
H.01	Landscaping	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
H.02	External Works Sundries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
I.0	Car Parking	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
I.01	Roadworks, car parks	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
J.0	BWIC	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
J.01	BWIC	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
K.0	Off Site Infrastructure	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
K.01	WAWA	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
K.02	Western Power	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
K.03	Upgrade to Gas Infrastrucure – SPP Advice	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
K.04	Alinta Gas	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
K.05	Telstra	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.0	Builders Preliminaries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.01	Salaries	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.02	Labour	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.03	Legal Fees	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.04	Construction Fees	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.05	Insurance & Security	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.06	Site Purchases	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.07	Hoarding, Gantry & Access Works	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.08	Electricity	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.09	Water / Sewer	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.10	Communications	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.11	Hubs, Sheds & Offices	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.12	Surveying & Set	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
L.13	Clearing During Construction	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.14	Computers	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.15	Protective Clothing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.16	Security	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.17	Occupational Health & Safety	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.18	Signage – Corporate	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.19	Plan Printing	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.20	Tower Cranes	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.21	Hoisting	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.22	Small Tools	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.23	Freight & Cartage	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.24	Scaffold	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
L.25	Mobile Cranes	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
TOTAL PROJECT COST									
		\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	SPECIAL PROVISIONS	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD	BALANCE TO COMPLETE (PUBLIC)
M.0	Independent Certifier	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
M.01	Certify Time Claims	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
M.02	Certify Completion	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
N.0	Bid Costs	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
N.01	St John of God	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
N.02	Brookfield Multiplex	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
O.0	Post Bid – SJOG	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
O.01	D&C Phase	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
O.02	Operational Commissioning	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
P.0	SJOG Contingency	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
P.01	Project	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
P.02	User Groups	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
Q.0	Statutory Charges	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
Q.01	Allowance	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
R.0	Prototypes	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.0	Design Team Fees	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.01	Architects								
S01.0. ...	(breakdown - deliverables / design stages)	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.02	Structural Engineers	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.03	Mechanical Engineers	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.04	Electrical Engineers	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
S.05	Hydraulic Engineers	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.06	Acoustic Services Engineer	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.07	Quantity Surveyors	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.08	Wind Engineers	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.09	BCA / Stat Approvals Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.10	Safety in Design Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.11	Façade Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.12	Geotech Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.13	Door Hardware Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.14	Radiation Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.15	Survey Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.16	Hydrotherapy Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
S.17	Hydrology Consultant	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
T.0	Overheads & Profit	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
TOTAL SPECIAL PROVISIONS		\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	PROJECT COST	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
	VARIATIONS	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
U.0	Variations	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
U.01	Expansion to GF, 1 st & 2 nd Floor, revised carparking configuration	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
TOTAL PROJECT VARIATIONS									
		\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$

	EQUIPMENT INVENTORY	CONTRACT SUM	%	PUBLIC	% CLAIMED TO DATE	CLAIMED TO DATE (PUBLIC)	PAID TO DATE (PUBLIC)	AMOUNT S DUE THIS PERIOD (PUBLIC)	BALANCE TO COMPLETE (PUBLIC)
V.0	Equipment Inventory	\$		\$	0.00%	\$	\$	\$	\$
V.01	Medical Equipment	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
V.01.0 ...	(breakdown)	\$		\$	0.00%	\$	\$	\$	\$
V.02	Non-Medical FF&E	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
V.02.0 ...	(breakdown)	\$		\$	0.00%	\$	\$	\$	\$
V.03	Artwork	\$	[Not disclosed]	\$	0.00%	\$	\$	\$	\$
TOTAL PROJECT VARIATIONS									
		\$	%[Not disclosed]	\$	0.00%	\$	\$	\$	\$

Schedule 18 – Design Submission Program

Schedule 19 – Rates for Contamination

[not disclosed]

Schedule 20 – Commercial in Confidence Information

[not disclosed]

Attachment 1 – Bid Design Documentation

Bid Design Documentation

Design Departures Schedule

Design Issues List

Design Clarifications (which forms part of the Bid Design Documentation)

Attachment 2 – Bid Works Program

Attachment 3 – Equipment Inventory

Attachment 4 – Capital Cost Proposal Schedule

[not disclosed]

Attachment 5 – Environment Management Plan

Attachment 6 – Construction Management Plan

Attachment 7 – Safety Management Plan

Attachment 8 – Completion Plan

Attachment 9 – Australian Industry Participation Plan

Attachment 10 – Quality Plan

Attachment 11 – Design Management and Stakeholder Engagement Plan

Attachment 12 – Site Delineation Plan

Attachment 13 – Project Management Plan

Attachment 14 – FF&E Plan

Attachment 15 – Communications Plan

Attachment 16 – Training Plan