



**GOVERNMENT OF  
WESTERN AUSTRALIA**

**Department of Health**

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**Department of Treasury**

## Midland Health Campus Project

### **Project 12053**

### **Services Agreement**

The State of Western Australia (**State**)

and

St John of God Midland Health Campus ABN 18 152 874 845 (**Operator**)

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## SERVICES AGREEMENT

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**This Agreement is made on 2012**

**between**

**The State of Western Australia (State)**

**and**

**St John of God Midland Health Campus (ABN 18 152 874 845) (Operator)**

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### Recitals

- A. The State has invited proposals to design, construct, operate and maintain the Health Campus.
- B. The State has selected the Operator to undertake the Project.
- C. This Agreement sets out the terms on which the Operator agrees to operate the Health Campus, (subject to Clause 9.1) perform the Patient Transfer Services, perform the Services and hand over the Public Patient Health Campus at the expiry of the Term.
- D. To facilitate the administration of the Project, the State and the Operator are entering into a separate D&C Agreement to record their agreement for undertaking the Works and the Private Works.
- E. In consideration of the Operator undertaking the Services, the State will pay the Operator in accordance with this Agreement.

## Operative Provisions

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### 1. Definitions, interpretation and related matters

#### 1.1 Definitions

In this Agreement:

**Abatement Level** means each level set out in the “Abatement Level” column of the KPI Tables.

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

**Absolute Minimum Volume** means the absolute minimum volume of Services shown by Service Payment Category in Appendix C- to the Payment Schedule.

**ACAT or Aged Care Assessment Teams** means teams of health professionals who conduct assessments of older people, including assessment against specific service eligibility criteria, to facilitate access to Geriatric and Aged Care Services (including accommodation) most appropriate to meet their care needs.

**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 APRA; or
- (b) if an overseas insurer not authorised by 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 or the Key Service Provider to do or obtain the following:

- (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 the 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.

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

**Activity Based Funding** means the method of funding health service providers on the basis of the activity that they undertake.

**Activity Profile** means the type and volume of Services which the State determines that it will contract to purchase in each Financial Year in accordance with the Activity Schedule and the Payment Schedule (which for the avoidance of doubt includes the Casemix Plan), as may be amended by agreement between the parties during a Financial Year.

**Activity Schedule** means the activity schedule set out in Schedule 8.

**Actual Service Volume** means the actual volume for each Service Payment Category as determined in accordance with Section 2.2(a) of the Payment Schedule.

**Acute Hospital Substitution Service** means the services described in Part 4.2.2 of the Services Specification.

**Adjacent Land** is defined in Clause 10.7.

**Admitted Services** means the services described in Part 3 of the Services Specification, and 'Admitted' has a corresponding meaning.

**Adult Mental Health Service** means the services described in Part 3.8.2 of the Services Specification.

**Adverse Event** means an incident in which harm results to a person, including death, disease, injury, suffering or disability.

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

**Aged Care** means the personal care or nursing care provided to frail older Australians and their carers to facilitate independence, good health and wellbeing. For the purposes of this Agreement, aged or older person refers to those aged 65 years or more and Aboriginal or Torres Strait Islanders aged 45 years or more.

**Agreement** means this services project agreement between the State and the Operator.

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

**Anaesthetic Service** means the services described in Part 3.9.4 of the Services Specification.

**Annual Notice** means the notice to be issued by the State pursuant to Section 1 of the Activity Schedule and includes any agreed amendment or revision of that Annual Notice during a Financial Year.

**Annual Report** is defined in Section 6.1(a) of the Reporting Schedule.

**Annual Works Plan** means the plan of that name prepared by the Operator which sets out the Operator's comprehensive plan for the delivery of works to be carried out in each Financial Year which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Anticipated Services Commencement Date** means the day after the Date for Completion (as that term is defined in the D&C Agreement) under the D&C Agreement.

**Appendix** means an appendix to a Schedule.

**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)).

**ASI** means the ambulatory surgery initiative designed to improve patient access to elective, non-admitted procedures at facilities located at hospitals in Western Australia, requiring (among other things):

- (a) a doctor's referral to a specified consultant;
- (b) an election from the patient prior to treatment to be seen as a private (non-admitted) patient; and
- (c) the costs of the program to be met by the Commonwealth government (as to clinical services) and the State government (as to non-clinical services).

**Asset Management Plan** means the plan of that name setting out the maintenance work and lifecycle refurbishment program for the Health Campus (including all Fixed Building Equipment) during the Operational Phase which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Associate** for the purposes of the definitions of "Control", "Change in Control", "Change in Subcontractor Control" and "Subcontractor 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).

**Aboriginal or Torres Strait Islander** refers to persons of the Aboriginal race of Australia or a descendant of an indigenous inhabitant of the Torres Strait Islands.

**Attachment** means an attachment to this Agreement.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, approval, authority or exemption from, by or with, an Authority, stock exchange or any other person, and includes the Hospital Licence and all requirements of an Authority that were required for the purpose of achieving Completion under the D&C Agreement and for the continued operation of the Health Campus under this Agreement.

**Authorised Inpatient Unit** means part of a public hospital (as defined in the Hospitals Act) that is authorised for:

- (a) the reception of persons; and
- (b) the admission of persons as involuntary patients,

under section 21 of the *Mental Health Act 1996* (WA).

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

**Available** means, in respect of a Functional Unit, that that Functional Unit is wholly available to be used for the proper performance of the Services in accordance with this Agreement, and **Availability** and **Unavailable** have corresponding meanings.

**Baby Friendly Health Initiative** means the initiative of that name developed jointly by the World Health Organisation and the United Nations International Children's Emergency Fund in 1991.

**Bariatric Patient** means a patient who has limitations in health, weight and social care due to their weight, physical size, shape, width, health mobility, tissue viability and environmental access, and has a Body Mass Index (BMI) of 40 or greater.

**Base Costs** is defined in Section 2.2(a) of the Change Compensation Schedule.

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

**Bed Day** means:

- (a) subject to paragraph (b), the allocation of one Bed in the Facility for use by a Public Patient or a Private Patient during all or part of any one 24 hour period, but:
- (b) the day of admission to and the day of discharge from the Facility will together be counted as one Bed Day.

**Benchmark Hospitals** means the hospitals identified by the State as such in the Annual Notice for the relevant Financial Year in accordance with Appendix A - to the Payment Schedule and which, as at the Date of this Agreement, are set out in Section 3 to Appendix A - to the Payment Schedule.

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

- (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 similar works and practices;
- (b) in accordance with all Laws, Authorisations and Quality Standards;
- (c) 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 in question under conditions comparable to those applicable to the Project;
- (d) with due expedition and without unreasonable or unnecessary delay;
- (e) in a manner safe to workers, the general public and the Environment; and
- (f) using new and high quality fixtures, fittings, finishes and materials which are free from defects.

**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.

**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).

**Broker's Evidence of Cover** is defined in Clause 24.4.

**Builder** means the person engaged by the Operator 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 or any other person who, in addition or substitution, is engaged by the Operator to undertake all, or substantially all of the Works.

**Builder Novation Deed** means the 'Novation Deed' as defined in the D&C Agreement.

**Builder Overhead** means the 'Builder Overhead' set out in the table in Section 2.3(a) of the Change Compensation Schedule.

**Builder Parent Guarantee** is defined in the D&C Agreement.

**Builder Preliminaries** means the 'Builder Preliminaries' set out in the table in Section 2.3(a) of the Change Compensation Schedule.

**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.

**Building Index** means the Australian Bureau of Statistics Producer Price Index for WA Non-Residential Building and Construction (ABS Catalogue 6427 – Table 15).

**Burns Service** means the services described in Part 3.2.9 of the Services Specification.

**Business Continuity Plan** means the plan of that name prepared by the Operator which sets out the Operator's comprehensive plan for continuity of business in respect of the Health Campus which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Business Day** means any day other than:

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

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

**CAC Terms of Reference** means the terms of reference for the Community Advisory Council as set out in Schedule 20.

**Cancer Centre** means a centre forming the hub level of the hub and spoke model that the WA Cancer Framework is adopting to deliver cancer services within Western Australia.

**Cancer Services** means the services described in Part 3.1.9 of the Services Specification.

**Cancer Unit** means a unit forming the spoke level of the hub and spoke model that the WA Cancer Framework is adopting to deliver cancer services within Western Australia.

**Capacity** is defined in Section 1.2(j)(i) of the Performance Schedule.

**Capped Services** means those Service Payment Categories and DRG Services which are defined as "Capped Services" in Section 1(b) of the Activity Schedule.

**Capped Volume** is defined in Section 2.4 of the Payment Schedule.

**Cardiology Service** means the service described in Part 3.1.2 of the Services Specification.

**Care Type** has the meaning as that term is defined in the Department's Hospital Morbidity Data Set Manual 2011, as updated from time to time.

**Carer** has the same meaning as defined in the *Carer's Recognition Act 2004* (WA).

**Casemix** means the mix of types of patients treated by a hospital or other health care facility, and used to provide the health care industry with a consistent method of classifying types of patients, their treatment and associated costs.

**Casemix Plan** means the plan outlining the volume of inpatient activity by DRG for each type of DRG Service that the State will contract to buy in each Financial Year, as prepared and provided to the Operator in accordance with the Activity Schedule and the Payment Schedule.

**Catchment Area** means the local catchment area for the Services which:

- (a) includes the local government areas of Bassendean, Swan, Mundaring and Kalamunda;
- (b) extends from Bullsbrook in the north, to Wooroloo in the east, Malaga in the west and to Canning Mills and Pickering Brook in the south; and
- (c) in the case of speciality Services, includes the adjacent Chittering Valley, Avon and Central Wheatbelt areas.

**CCU or Coronary Care Unit** is a hospital unit that is specially equipped and staffed to monitor and treat patients with serious heart conditions.

**Ceiling** means the upper limit for the price per Service Payment Category as determined in accordance with Section 3.5 of the Payment Schedule.

**Ceiling Discount** means the percentage used in the calculation of the Ceiling as set out in Section 3.2 of the Payment Schedule.

**CEO** has the same meaning as defined in the Hospitals Act and, as at the Date of this Agreement, is the Director General of Health.

**Change Compensation Amount** means the amount payable in respect of a Variation, determined in accordance with the Change Compensation Schedule.

**Change Compensation Event** means an event which gives rise to the payment of compensation by the State to the Operator, or the Operator to the State, in accordance with the Change Compensation Schedule.

**Change Compensation Schedule** means the change compensation schedule set out in Schedule 10.

**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.

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

**Change in Management** is defined in Clause 32.6(b).

**Charter of Patient Rights** means the Western Australian Public Patient's Hospital Charter as amended from time to time.

**Chief Executive Performance Notice** is defined in Clause 7.15(b).

**Child, Adolescent and Youth Mental Health Service** means the services described in Part 3.8.1 of the Services Specification.

**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 D&C Agreement, any other Project Document 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.

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

**Clinical Nurse** or **CN** means a Registered Nurse who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in the relevant provisions of the *Health Practitioner Regulation National Law (WA) Act 2010 (WA)* on a continuing basis. As at the Date of this Agreement, this refers to a Registered Nurse with pay point level 2, increment 1 to 4.

**Clinical Nurse Specialist** or **CNS** means a Senior Registered Nurse who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in the relevant provisions of the *Health Practitioner Regulation National Law (WA) Act 2010 (WA)* on a continuing basis. As at the Date of this Agreement, this refers to a Senior Registered Nurse with a pay point level 3.

**Clinical Performance KPIs** means those KPIs set out in Section 2.5 of the Performance Schedule.

**Clinical Services** means the services described in the Services Specification (other than in Part 3.9 of the Services Specification) as reviewed, adjusted and amended in accordance with the Payment Schedule, an Annual Notice or otherwise in accordance with a Service Variation or the Project Documents.

**Clinical Services Framework** or **CSF** means the WA Health Clinical Services Framework published by the Department from time to time which, as at the Date of this Agreement, is the 'WA Health Clinical Services Framework 2010-2020 (CSF 2010)' and which sets out the planned approach to public health service provision in Western Australia.

**Clinical Services Plan** means the plan or plans prepared by the Operator which set out the Operator's Clinical Services delivery methodology which, as at the Date of this Agreement, are set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Clinical Support Services** means all services of a clinical nature which are necessary to support the provision of the Clinical Services in accordance with this Agreement including those listed in Part 3.9 of the Services Specification.

**Clinical Support Services Plan** means the plan or plans prepared by the Operator which set out the Operator's Clinical Support Services delivery methodology which, as at the Date of this Agreement, are set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.



**Clinical Urgency Classification** means a clinical assessment of the urgency with which a Patient requires Elective Activity, as represented by a code.

**CMO** means the Chief Medical Officer for the Facility.

**Code Blue** is a coding system term to alert staff of a medical emergency happening to a Patient or Hospital User within the Health Campus, requiring a team of providers (sometimes called a "code team") to rush to the specific location and begin immediate medical management that may include cardiopulmonary resuscitation.

**Colleges** means specialist medical colleges which set and administer the programs of specialist medical training and examinations on a national basis and are largely responsible for maintaining professional standards in the various medical specialties.

**Commencement Date** has the same meaning as in the D&C Agreement.

**Commercial Facilities** means all facilities to be designed, constructed and commissioned by the Operator as part of the Private Works under the D&C 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 Schedule 21.

**Commercial Operator** means a person with whom the Operator or the Key Service Provider contracts for the purpose of undertaking a Commercial Opportunity.

**Commercial Opportunities** means the commercial opportunities permitted in accordance with Clause 22.

**Communications Plan** means the plan of that name prepared by the Operator which sets out the Operator's communication methodology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Community Advisory Council** means the community advisory council constituted and maintained in accordance with Clause 12.6.

**Compensable Contamination** means any Contamination:

- (a) to the extent caused or contributed to by the State (in its capacity as the contracting entity under this Agreement) or any State Personnel;
- (b) in, on or under the Health Campus which was in existence and in situ as at the Date of this Agreement (but excluding any such Contamination in, on or under the Private Site for which the requirement to Remediate under Clause 10.2(c) arose as a result of the grant of the Private Site Lease or works relating to the construction of a private hospital on the Private Site being undertaken by the Operator or an Operator Associate); or
- (c) which has emanated or is emanating to the Health Campus (except to the extent that the emanation of that Contamination was reasonably able to be avoided or its effects mitigated by the Operator by undertaking things a reasonably prudent private hospital operator in the position of the Operator would undertake).

**Compensable Facility** means the Health Campus, but excluding the Private Patient Facility and the Private Proportion of Shared Infrastructure.

**Compensable Intervening Event** means each of the following events:

- (a) **(breach)**: breach by the State of any State Project Document (in its capacity as a contracting entity to the relevant State Project Document);
- (b) **(reckless, unlawful or malicious act)** a reckless, unlawful or malicious act or omission of the State (in its capacity as the contracting entity to this Agreement) or any State Personnel;
- (c) **(suspension)** cessation, suspension or variation of any obligation under this Agreement or performance of part of the Services (or a change in the way the Services are provided) because of a:
  - (i) State direction;
  - (ii) court or tribunal order; or
  - (iii) requirement of Law,in relation to a Heritage Claim, a Native Title Claim or the discovery of an Artefact;
- (d) **(State works)** any works performed by the State (in its capacity as a contracting entity to the relevant State Project Document) or by a third party engaged by the State in the exercise of the State's rights under this Agreement which prevent, hinder or disrupt the Operator in the performance of the Services (excluding where this occurs due to the State exercising its step-in rights in accordance with Clause 28.1); or
- (e) **(Contamination)**: Remediation of Contamination to the extent that it is caused or contributed to by the State (in its capacity as the contracting entity under this Agreement) or any State Personnel.

**Completion** has the meaning given in the D&C Agreement.

**Completion Certificate** means the certificate of completion issued by the State Representative in accordance with Clause 16.6(a) of the D&C Agreement.

**Concurrent Dispute** is defined in Clause 31.4(a).

**Condition Review Date** is defined in Clause 21.2(d).

**Confidential Information** is defined in Clause 35.1(a).

**Consortium Entity** means:

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

**Construction Base Costs** means the direct costs of the builder engaged in respect of the Facility Variation and the builder's subcontractors and where applicable, scaffolding and craneage costs.

**Construction Management Plan** means the project plan for the D&C Phase to be prepared, developed and updated by the Operator in accordance with the D&C Agreement which, as at the Date of this Agreement, is set out in the D&C Agreement and which may be updated from time to time by the Operator in accordance with the D&C Agreement.

**Consultant** means a medical specialist with a current qualification from a registered medical College in an approved speciality.

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

**Consumers** means any actual or potential recipient of health care from the Public Patient Facility.

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

**Contract Material** means:

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

**Contract Particulars** means the particulars set out in Schedule 14.

**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** means the payment calculated in accordance with Section 2 of the Termination Payment Schedule.

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

**Cowie Close** means the parcel of land situated immediately to the north of the eastern portion of the Site which is bounded by the Site to the west and to the south, the Road Reserve for Lloyd Street to the east (as may be amended to accommodate the final design of the proposed Lloyd Street underpass) and by a line extending due east from the northernmost boundary of the Site.

**CPI** means the Perth All Groups Consumer Price Index published quarterly by the Australian Bureau of Statistics.

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

**Critical Care Services** means the services described in Part 3.3 of the Services Specification.

**Critical Care Unit** means that part of the Public Patient Health Campus that is used for the provision of Critical Care Services from time to time.

**Critical Health Services** means Services provided within a Functional Unit categorised as “Critical” in the Functional Unit Categorisation Table.

**CT** means computerised tomography.

**D&C Agreement** means the agreement entitled "Midland Health Campus Project Design and Construction Agreement for the design and construction of the Midland Health Campus" between the State and the Operator and dated on or about the Date of this Agreement.

**D&C Damage Termination Event** means a “Damage Termination Event” as defined in the D&C Agreement.

**D&C Documents** means all documents that the Operator has prepared, prepares or is required to prepare to undertake the Works in accordance with the D&C Agreement.

**D&C Event of Default** means an ‘Event of Default’ as that term is defined in the D&C Agreement.

**D&C Force Majeure Termination Event** means:

- (a) a ‘Force Majeure Termination Event’ as that term is defined in the D&C Agreement; and
- (b) the events referred to in paragraph (i) or (j) of the definition of ‘Immediate Termination Event’, as that term is defined in the D&C Agreement.

**D&C Immediate Termination Event** means:

- (a) an ‘Immediate Termination Event’ as that term is defined in the D&C Agreement (excluding the events referred to in paragraphs (i) and (j) of that definition); or
- (b) termination of the D&C Agreement in accordance with Clause 27.4 of the D&C Agreement.

**D&C Phase** has the same meaning given in the D&C Agreement.

**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 a Builder for the undertaking of the Works.

**D&C Uninsurable Risk Termination Event** means an “Uninsurable Risk Termination Event” as defined in the D&C Agreement.

**Damage Termination Event** is defined in Clause 23.4(b)(iv).

**Date of Completion** has the same meaning given in the D&C Agreement.

**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.

**Day Procedures Unit** or **DPU** means a designated area of the Facility that provides a day service to Patients with a wide range of surgical, medical and diagnostic needs.

**Default Notice** is defined in Clause 27.1(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.

**Default Termination Payment** means the payment calculated in accordance with Section 1 of the Termination Payment Schedule.

**Defect** has the meaning given in the D&C Agreement.

**Definitive Care** means to admit, treat and discharge, or stabilise and transfer, a Patient at the Facility using the range of treatments that can be administered at the Facility, and includes the completion of recommended treatment.

**Demand Variation** is defined in Section 4(d) of the Activity Schedule.

**Department** has the same meaning as the term "Department" under the Hospitals Act and as at the Date of this Agreement means the Western Australian Department of Health.

**Design Base Costs** means the third party design fees including architects', engineers' and other design consultants' fees, payable as a consequence of a Facility Variation.

**Design Departures** is defined in Clause 15.9(a).

**Design Departures Schedule** has the same meaning given in the D&C Agreement.

**Design Issues List** has the same meaning given in the D&C Agreement.

**Design Management Fee** means the 'Design Management Fee' as set out in the table in Section 2.3(a) of the Change Compensation Schedule.

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

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

**Designated Commercial Areas** means the areas designated for the Commercial Facilities as shown in the Master Plan.

**Designated Unit** means a Functional Unit which has been specified as a 'designated unit' for a particular purpose in an Annual Notice.

**Development Lease** means the "Midland Health Campus Development Lease" in respect of the Health Campus between the State and the Operator dated on or about the Commencement Date.

**Disability Access and Inclusion Plan** means the plan of that name prepared by the Operator which sets out the Operator's comprehensive plan for disability access and inclusion at the Health Campus which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Disaster** means any event which requires a response from the SHICC (or its equivalent), including events which:

- (a) pose a serious and widespread risk to health or safety or the Environment; or
- (b) cause substantial and widespread property damage or destruction or personal injury.

**Disaster Measures** is defined in Clause 12.8(a).

**Disaster Preparedness and Response Services** means the service described in Part 5 of the Services Specification.

**Disaster Services Plan** is defined in Clause 12.8(b)(iii).

**Disclosed Information** means:

- (a) all documents and information provided to the Operator by or on behalf of the State prior to the Date of this Agreement that are not incorporated into this Agreement; and
- (b) all documents and information provided to the Operator by or on behalf of the State after the Date of this Agreement.

**Disposition** means the status of the Patient at the end of a Non-Admitted Patient Emergency Department Occasion of Service.

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

**Diversions** means the diversion of an ambulance from a metropolitan hospital emergency department to other metropolitan hospital emergency departments.

**Divisions of General Practice** means a geographically based network of general practitioners.

**DoHA** means the Commonwealth Government Department of Health and Ageing.

**DRG** means a diagnosis related group within the Patient classification scheme nominated from time to time by the State which classifies admissions into groups with similar clinical conditions (related diagnoses) and similar resource usage.

**DRG Services** means the Services referred to in the Casemix Plan and more fully described in the relevant Annual Notice as reviewed, adjusted and amended from time to time in accordance with this Agreement.

**e-health** means medical informatics, referring to the organisation and the delivery of health services and information using information and communication technology.

**Ear, Nose and Throat Service** or **ENT Service** means the service described in Part 3.2.2 of the Services Specification.

**ECT** means electro-convulsive therapy.

**ED Care Coordination Team** means a multidisciplinary group within the ED, which incorporates care coordination practitioners working as part of the ED team to provide skilled assessment, treatment, information and discharge planning and contribute to the Patients' overall treatment and care.

**ED Practitioner** means a healthcare professional who is educated, registered and authorised by the relevant regulatory body to function in an advanced clinical role within an Emergency Department setting.

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

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

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

**Emergency Code Incidents** means emergency events identified and categorised according to Australian Standard (AS 3745-2002).

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

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

**Emergency Department Presentation** means an Occasion of Service where a Patient:

- (a) is registered clerically;
- (b) has been assigned a Unit Medical Record Number; and
- (c) has been triaged (as indicated by a code of 1, 2, 3, 4 or 5).

**Emergency Department Services** means the service described in Part 2 of the Services Specification.

**Emergency Surgery** means surgery which is not Elective Activity performed when the Patient's life or well-being would be in immediate or short term jeopardy without surgical intervention.

**Employer's Liability** is defined in Section 5(a)(i) of the Insurance Schedule.

**Endocrinology Services** means the service described in Part 3.1.4 of the Services Specification.

**Environment** has the same meaning as given to that term 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 4 as may be updated from time to time by the Operator in accordance with this Agreement.

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

**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 Health Campus 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).

**Episode of Care** means the period of Admitted Patient care between a formal or statistical admission and a formal or statistical Separation characterised by only one of the following care types:

- (a) acute care;
- (b) rehabilitation care;
- (c) palliative care;
- (d) geriatric evaluation and management;
- (e) psychogeriatric care;
- (f) maintenance care;
- (g) newborn care; or
- (h) other care (posthumous organ procurement, Hospital boarder etc).

**Equipment Inventory** means an inventory list of all Medical Equipment and Non-Medical FF&E which is used or proposed to be used at or in relation to the Public Patient Health Campus together with information relating to:

- (a) whether each item is either:
  - (i) owned by the Operator or the Key Service Provider; or
  - (ii) the subject of an Equipment Lease;
- (b) for items referred to in paragraph (a)(i):
  - (i) the purchase price;
  - (ii) the date of purchase; and



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

**Equipment Lease** means a lease, hire, hire-purchase, managed equipment service or other finance or similar arrangement entered into in respect of any items of Medical Equipment or Non-Medical FF&E used at or in relation to the Public Patient Health Campus.

**Escalated Written Down Value of the Private Patient Facility** is defined in Section 3.4 of the Termination Payment Schedule.

**ESRG** means the “Extended Service Related Group” classification based on Australian Refined Diagnosis Group (AR-DRG) aggregations which categorises admitted patient episodes into groups representing clinical divisions of hospital activity.

**Event of Default** means any of the following events:

- (a) 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) 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) the Parent Guarantee becomes unenforceable for any reason and is not replaced within 5 Business Days;
- (d) the Operator breaches an obligation in Clauses 7.7, 7.8 or 7.9 in connection with Key Subcontractors;

- (e) the Operator breaches Clause 32.1 in relation to assignment, transfer or disposal of any of its obligations in accordance with the Project Documents;
- (f) the Operator fails to comply with any of its insurance obligations in Clause 24;
- (g) a Change in Control of a Consortium Entity (other than the Operator, a Parent Guarantor or a Key Subcontractor) occurs without the consent of the State in accordance with Clause 32.5;
- (h) the Operator fails to comply with its obligations in connection with a Probity Event in accordance with Clauses 33.4, 33.5 and 33.6;
- (i) a Change in Management occurs and Clause 32.6 applies;
- (j) the Operator fails to remedy any breach of a State Project Document (other than the Interim Management Agreement or any design and construction agreement which has been entered into for the purposes of performing Expansion Works in accordance with Clause 16.1(g)) within 20 Business Days of the breach occurring (other than an Immediate Termination Event);
- (k) there is a cessation of or a threat to cease, or subject to Clause 29.1(c), it becomes unlawful for the Operator to continue the provision of the Services (other than as a result of any event for which the Operator is expressly entitled to suspension of performance in accordance with this Agreement);
- (l) subject to Clause 9.1(c)(iv), there are Failures and, under the Abatement Regime (whether or not the Operator has actually been abated), the Operator:
  - (i) accumulates Failure Points totalling 30% or more of the maximum possible Failure Points accruable in respect of any Monthly Performance Report (and, for the purposes of this calculation, all Failures will be deemed to have a Time Weighting of one); or
  - (ii) the Operator's achievement of the Performance Thresholds in any Monthly Performance Report is in the lowest 25th percentile of the relevant peer hospitals (being either the ACHS Peer Hospitals or WA Metropolitan Peer Hospitals as the case may be) for 30% or more KPIs having an Abatement Level 'A' and which have a Performance Threshold which is measured against either the ACHS Peer Hospitals or the WA Metropolitan Peer Hospitals;
- (m) subject to Clause 9.1(c)(iv), a Persistent Failure occurs;
- (n) the Operator fails to provide a Handover Bond in accordance with Clause 21.2(i)(ii)B;
- (o) subject to Clause 9.1, the Patient Transfer Services have not been completed by the Operator in accordance with Clause 9 on or prior to the date which is 3 weeks following the expiry of the Patient Transfer Period;
- (p) any Authorisation (excluding the Hospital Licence) required for the provision of the Services by the Operator, or the performance by the Operator of any other 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; or
- (q) *[not disclosed]*.

**Excision Area** is defined in Clause 16.2(b)(ii).

**Excision Notice** is defined in Clause 16.2(b).

**Excluded Service** means any DRG Service which is listed as 'excluded' in the Annual Notice or in any Department technical bulletin and, as at the Date of this Agreement, means those Services listed as excluded in Part 3 of the Services Specification.

**Excluded Termination Loss** means any of the following:

- (a) direct expenditure of time by managers and employees consequential upon any loss;
- (b) loss of opportunity;
- (c) loss of anticipated savings;
- (d) unless expressly stated to the contrary in this Agreement, loss of profit, revenue or business;
- (e) damage to reputation;
- (f) unless expressly stated to the contrary in this Agreement, the cost of capital or other financing costs; and
- (g) penalties payable under agreements other than this Agreement or the D&C Agreement or under any Law.

**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 in accordance with Clause 16.

**Expansion Works Notice** is defined in Clause 16.1(a).

**Expansion Works Order** is defined in Clause 16.1(d)(i).

**Expansion Works Price** means the Operator's price for the performance of the Expansion Works, as determined in accordance with Clause 16.1(b)(i) and as may be amended in accordance with the balance of Clause 16.1.

**Expansion Works Program** means the construction program for the Expansion Works (including key milestone dates), as provided by the Operator in accordance with Clause 16.1(b)(ii) and as may be amended in accordance with the balance of Clause 16.1.

**Expansion Works Quote** is defined in Clause 16.1(b).

**Expiry Date** means the date on which the Term expires as determined in accordance with Clause 5.2.

**Extension Event** is defined in the D&C Agreement.

**Facility** means the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure, the Commercial Facilities and all other improvements to be located at the Health Campus.

**Facility Failure** means the failure to achieve the Performance Threshold for any Facility KPI.

**Facility Handover Report** is defined in Clause 21.2(e).

**Facility KPI** means each of the KPIs set out in the Facility KPI Tables.

**Facility KPI Tables** means the tables set out in Section 3 of the Performance Schedule.

**Facility Overheads** means the overheads set out in the table in Section 2.3(a) of the Change Compensation Schedule.

**Facility Variation** means, during the Operational Phase, any modification to the Public Patient Health Campus including, for the avoidance of doubt, an Operator Facility Variation but excluding:

- (a) the Expansion Works;
- (b) any modification as a consequence of Further Development or a Health Initiative; and
- (c) any modification to the Public Patient Health Campus arising in connection with a Service Variation which is not the subject of an Operator Restriction Notice.

**Facility Variation Order** is defined in Clause 15.1(d).

**Facility Variation Price Request** is defined in Clause 15.1(a).

**Facility Variation Quote** is defined in Clause 15.1(b).

**Failure** means a Service Failure, a Facility Failure, a Patient Transfer Failure or any of them, according to the context, and, for the avoidance of doubt, includes the circumstances referred to in the proviso to Section 6.1(a) of the Payment Schedule.

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

**Failure Period** means, where the Failure is:

- (a) associated with a measure of past performance, a period of one day; and
- (b) an ongoing event, the period between the date of the first occurrence of the Failure and the date on which performance in respect of that KPI is restored to a level above the relevant Performance Threshold.

**Failure Points** means the points used in the calculation of the Failure Abatements in accordance with Section 6.7 of the Payment Schedule.

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

**FICANZCA Guidelines** means the guidelines published by the Faculty of Intensive Care, Australia and New Zealand College of Anaesthetists as updated from time to time.

**Final Refurbishment Works** is defined in Clause 21.2(e)(ii).

**Financial Year** means each 12 Month period commencing on 1 July and ending on 30 June.

**Fire and Emergency Services Authority** or **FESA** means the Fire and Emergency Service Authority established under the *Fire and Emergency Services Authority of Western Australia Act 1998* (WA).

**Fit For Purpose** means that, in relation to any thing, it:

- (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 this Agreement.

**Fixed Building Equipment** means all items of furniture, fixtures, fittings and equipment that is not Medical Equipment which are permanently plumbed, wired or fixed to the Public Patient Health Campus.

**Floor** means the lower limit for the price per Service Payment Category as determined in accordance with Section 3.6 of the Payment Schedule.

**Floor Discount** means the percentage used in the calculation of the Floor as set out in Section 3.2 of the Payment Schedule.

**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, militarily 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 by the Operator or an Operator Associate for the purpose of the Project;
- (d) tsunami, lightning, hurricane, cyclone, earthquake, natural disaster, landslide or mudslide;
- (e) water from or action by the sea or tidal wave other than caused by earthquake or seismological disturbance;
- (f) fire or flood at or transgressing onto the Health Campus or explosion at the Health Campus caused by any of the events described in paragraphs (a), (d) or (e) where the Operator can demonstrate that all reasonable preventative measures were taken to minimise the cause and effect of the fire, flood or explosion on the performance of the Services; or
- (g) 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 (other than an obligation to pay money) 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 its obligations in accordance with this Agreement for a continuous period exceeding 6 Months, except in circumstances where:

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

**Four Hour Rule Program** means the Department's program to improve the Patient experience and the quality, efficiency and effectiveness of care provided to the Patient by reducing delays in the ED and improving Patient flow from first contact to discharge.

**FSH** means the Fiona Stanley Hospital

**FTE or Full Time Equivalent** means the financial full time equivalent of a position, and includes the total of productive (including overtime) and non-productive financial equivalence.

**Functional Impairment Measure Codes** means a system of classifying rehabilitation episodes based on the Patient's principal impairment condition

**Functional Unit** means an area (including any bed, chair, capacity, room or clinic, as appropriate) within the Facility, or on the Site, as set out in the Functional Unit Categorisation Table.

**Functional Unit Categorisation Table** means the table set out in Section 5 of the Performance Schedule.

**Further Development** is defined in Clause 16.2(a).

**Further Expansion Works** means the expansion works for the Health Campus, substantially as set out in the Expansion Works Design Documentation and indicatively marked "Further Expansion Works".

**Further Services** means the Health Services purchased by the State as determined in accordance with Section 5 of the Activity Schedule.

**Further Services Fee** means the fee payable by the State in respect of the Further Services as determined in accordance with Section 4 of the Payment Schedule.

**Gastroenterology Service** means the service described in Part 3.1.12 of the Services Specification.

**General Change in Law** means:

- (a) a change in, or repeal of, an existing Relevant Law;
- (b) the enactment or making of a new Relevant Law; or
- (c) a change in the way a Relevant Law is applied or is interpreted as a result of a binding decision of a court of competent jurisdiction whether or not the decision of the court is the first decision on the relevant issue,

but does not include:

- (d) a Project Specific Change in Law;
- (e) a Variation;
- (f) a change in the way a Relevant Law is applied or is interpreted as a result of the failure of the Operator to comply with a Law or any Authorisation, or in response to an illegal act or omission of the Operator (including any breach of this Agreement by the Operator);
- (g) a change in, or enactment of a new, Relevant Law which was not in force at the Date of this Agreement but which:

- (i) had been published prior to the Date of this Agreement in a Government Gazette by way of bill, draft bill or draft statutory instrument, had been introduced prior to the Date of this Agreement as a bill into the Parliament of Western Australia or the Parliament of Australia or of which public notice had been given prior to the Date of this Agreement in a form which is substantially the same as the change in, or new, Relevant Law;
  - (ii) is contained or referred to in any Disclosed Information given or made available in writing (or access is made available to a written version of the Disclosed Information) prior to the Date of this Agreement or any Project Document;
  - (iii) a party experienced and competent in the provision of services similar to the Services would have reasonably foreseen or anticipated prior to the Date of this Agreement; or
  - (iv) is substantially the same as a Relevant Law in force prior to the Date of this Agreement;
- (h) a change in any, or enactment of a new, Relevant Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the GST Law and the *Fringe Benefits Tax Assessment Act 1986* (Cth);
- (i) a change in any, or enactment of a new, statute or regulation relating to employment or industrial relations including an Industrial Award, Agreement or Order;
- (j) a change in the Hospitals Act which specifically relates to private hospitals, the terms of the Hospital Licence or a requirement of the LARU, or the imposition of any conditions in respect of the Hospital Licence;
- (k) the implementation of any Health Initiative;
- (l) a change to a State or Commonwealth government policy or guideline; or
- (m) the introduction of a carbon pollution reduction scheme, in whatever form.

**General Hospital** means a hospital that provides services:

- (a) with a focus on the broader health needs of the specific community it serves, rather than a concentration on the purely clinical aspects of health care; and
- (b) at a level 4 or possibly level 5 according to the clinical service role delineation definitions in the CSF.

**General Medicine Service** means the service described in Part 3.1.1 of the Services Specification.

**General Security Agreement** means the document entitled "General Security Agreement" between the State as chargee and the Operator as chargor in the form set out in Schedule 17.

**General Service Obligations** means the obligations set out in Schedule 1.

**General Surgery Service** means the service described in Part 3.2.1 of the Services Specification.

**Geriatric and Aged Care Service** means the service described in Part 3.1.5 of the Services Specification.

**Geriatric, Evaluation and Management** or **GEM** means the care in which the clinical intent or treatment goal is to maximise health status and/or optimise the living arrangements for a patient with multi-dimensional medical conditions associated with disabilities and psychosocial problems, who is usually (but not always) an older person.

**Good Operating Practice** means:

- (a) complying with all Laws, Authorisations and Quality Standards;
- (b) providing the Health Services with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent service provider performing services similar to the Health Services under conditions comparable to those applicable to the Project, including ensuring that the Health Services are provided:
  - (i) in accordance with the Accreditation Requirements and professional standards set by relevant peak professional bodies;
  - (ii) using reliable long-term and safe operating practices;
  - (iii) in accordance with a technology or methodology that, through experience and research, has proven to reliably lead to a desired result such that it is now endorsed by the relevant professional bodies as best practice; and
  - (iv) using proper equipment, tools and procedures;
- (c) ensuring that sufficient clinical, operation and maintenance personnel are available and are adequately experienced and trained to ensure compliance with this Agreement;
- (d) ensuring that adequate materials, resources and supplies are available to ensure provision of the Services in accordance with the requirements of this Agreement under normal conditions and reasonably anticipated abnormal conditions;
- (e) using reasonable endeavours to continually meet advancements in technology and improve the standards and quality of the Clinical Services, maintenance, refurbishment and repair of the Health Campus and the manner in which they are carried out; and
- (f) providing the Non-Clinical Support Services with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor providing Services similar to the Services under conditions comparable to those applicable to the Project, including using:
  - (i) maintenance, refurbishment and repair practices to ensure that the Health Campus is functioning as designed and Fit For Purpose;
  - (ii) reliable long-term and safe operating practices;
  - (iii) proper equipment, tools and procedures;
  - (iv) workmanship and materials which are Fit For Purpose; and
  - (v) replacement parts that are new.

**Governmental Agency** means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department including



MRA but excluding the State exercising a right or performing an obligation under this Agreement.

**GP** means a general medical practitioner.

**GP Super Clinic** means newly constructed or significantly extended GP facilities which support the delivery of integrated, multidisciplinary primary care services and the training and education of the future primary care workforce.

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

**Gynaecology Service** means the service described in Part 3.2.3 of the Services Specification.

**HACC or Home and Community Care** means the services provided pursuant to the *Home and Community Care Act 1985* (Cth).

**Haematology Service** means the service described in Part 3.1.10 of the Services Specification.

**Handover** means the stage when the Operator has done everything that this Agreement requires to enable the Operator to hand over the Public Patient Health Campus in the required condition at the end of the Operational Phase or earlier termination of this Agreement, including meeting the Handover Condition.

**Handover Bond** means a bond provided to the State in accordance with Clause 21.2(i) or any bond accepted in substitution for or replacement of that bond which 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.

**Handover Condition** is defined in Clause 21.1.

**Handover Escrow Account** is defined in Clause 21.2(i)(ii)A.

**Handover Plan** means the plan of that name to be prepared by the Operator in accordance with this Agreement which sets out the Operator's obligations in respect of the handover of the Public Patient Health Campus and the Services as may be updated from time to time by the Operator in accordance with this Agreement.

**Hard Transfer** is defined in Clause 9.1(c)(iii).

**Health Campus** means the Site and all improvements situated on it (including, for the avoidance of doubt, the Public Patient Facility, the Private Patient Facility, the Shared Infrastructure, the Commercial Facilities and all other improvements situated on the Site).

**Health Campus Requirements** means the State's requirements for the Health Campus as set out in Schedule 5, as may be amended from time to time in accordance with this Agreement.

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

- (a) relieve pressure on, or otherwise improve, Public Patient service provision in Western Australia through the implementation of procedures to address (among other things):
  - (i) alternative methods of treatment away from hospital;
  - (ii) early discharge;
  - (iii) models for the provision of Non-Admitted Services; or
  - (iv) other ambulatory services;
- (b) improve safety, quality and efficiency in the delivery of healthcare;
- (c) explore better ways of delivering services to and for Patients;
- (d) improve management of and dealing with repeat Patients;
- (e) facilitate and improve Patient flow and experience;
- (f) improve standards to the same level as or above Peer Group Hospitals;
- (g) encourage the delivery of care so as to avoid or substitute hospital admission;
- (h) increase involvement in Commonwealth, State and Area Health Service processes and programs;
- (i) encourage participation as key stakeholders in whole of system service delivery planning, initiative development and implementation (including in respect of models of care);

and which includes as at the Date of this Agreement ASI, PRNI, the Hospital at Home Program, the PBS and the Care Awaiting Placement Program.

**Health Services** means the Clinical Services and the Clinical Support Services.

**Heritage Claim** means a claim made in accordance with any Law for the protection, preservation or removal of any Artefact.

**High Dependency Unit** or **HDU** means a designated area within the Public Patient Facility which is specially staffed and equipped to provide a level of observation, care and treatment to Patients that cannot be provided on a general ward but does not require admission into an Intensive Care Unit.

**HISWA** means Healthcare Infection Surveillance of Western Australia;

**Hospital Avoidance Service** means the service described in Part 4.2 of the Services Specification.

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

**Hospital in the Home** or **HITH** means the State funded program that provides short-term care in the patient's home for health conditions that traditionally needed admission to hospital for treatment.

**Hospital Licence** means a 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 any person who falls within any of the following categories:

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

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

- (e) visitors to the Health Campus including users of any carpark on the Health Campus but excluding any Operator Associate; and
- (f) volunteers.

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

**ICT** means information and communication technology.

**ICT Plan** means the plan of that name prepared by the Operator which sets out the Operator's information and communication technology systems methodology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**ICT Requirements** means the requirements for ICT at the Public Patient Health Campus as set out in Schedule 4.

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

**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".

**Imaging Capacity** is defined in Section 1.2(j)(ii) of the Performance Schedule.

**IMA Terms Sheet** means the terms sheet set out in Schedule 22.

**Immediate Termination Event** means each of the following:

- (a) the Operator repudiates this Agreement;
- (b) subject to Clause 9.1(c)(iv), there are Failures and, under the Abatement Regime (whether or not the Operator has actually been abated), the Operator:
  - (i) accumulates Failure Points totalling 50% or more of the maximum possible Failure Points accruable in respect of any Monthly Performance Report (and, for the purposes of this calculation, all Failures will be deemed to have a Time Weighting of one); or
  - (ii) the Operator's achievement of the Performance Thresholds in any Monthly Performance Report is in the lowest 25th percentile of the relevant peer hospitals (being either the ACHS Peer Hospitals or WA Metropolitan Peer Hospitals as the case may be) for 50% or more KPIs having an Abatement Level 'A' and which have a Performance Threshold which is measured against either the ACHS Peer Hospitals or the WA Metropolitan Peer Hospitals;
- (c) 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;
- (d) the Hospital Licence is cancelled, revoked, suspended or otherwise discontinued;
- (e) an Insolvency Event occurs in relation to a Subcontractor or its guarantor, whether or not the Operator is then in breach of a State Project Document, and that Subcontractor or its guarantor is not replaced within 60 Business Days by a party approved by the State (acting reasonably) taking into account the considerations listed in Clause 32.5;
- (f) the D&C Agreement, the State Security or any State Project Document (other than the Interim Management Agreement or any design and construction agreement which has been entered into for the purposes of performing Expansion Works in accordance with Clause 16.1(g)) terminates for Operator default, is repudiated by the Operator or becomes wholly unenforceable due to an act or omission of the Operator or an Operator Associate;
- (g) the Interim Management Agreement (if entered into by the parties) terminates due to an IMA Critical Default Event;
- (h) a Change in Control of the Operator or Parent Guarantor occurs without the consent of the State in accordance with Clause 32.5; or
- (i) Clause 32.5(d) applies in respect of a Listed Entity Change in Control.

**Immunology and Rheumatology Service** means the service described in Part 3.1.13 of the Services Specification.

**Incomplete Works** is defined in Clause 30.5.

**Indemnified Persons** means the State and each State Associate.

**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 31.3.

**Indexation Factor** means, in respect of the Indexed State Benchmark Price and the Indexed Tendered Price, the indexation factor determined in accordance with Appendix B - to the Payment Schedule.

**Indexed State Benchmark Price** means the price determined in accordance with Section 3.4 of the Payment Schedule.

**Indexed Tendered Price** means the Tendered Price as indexed in accordance with Section 3.3 of the Payment Schedule from time to time.

**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,

but excludes any Liability arising from, or in connection with:

- (g) any statutory fine levied against a party arising from any breach of Law by the other party;
- (h) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by, a party;
- (i) wrongful acts committed by a party with reckless indifference to the consequences;
- (j) wilful and intentional default by a party;
- (k) the Abandonment (as that term is defined in the D&C Agreement) of the D&C Agreement or repudiation of this Agreement by the Operator;
- (l) matters that cannot be excluded at Law; or
- (m) a breach of the confidentiality obligations in the D&C Agreement or 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 the 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 Services under this Agreement.

**Industrial Award, Agreement 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), and any agreement including a workplace or enterprise agreement between

an individual or group of individuals and any Consortium Entity or Subcontractor that is lodged, registered or certified under any Law applying in Western Australia.

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

- (a) a claim for 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 and in the future to become allowable or payable within the relevant industry (including a claim in respect of any of those matters described above which arises out of any change in State or Federal awards or work practices); or
- (f) any reduction in the relevant industry working hours per week.

**Infectious Diseases Service** means the service described in Part 3.1.14 of the Services Specification.

**Information Documents** is defined in the RFP.

**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.

**Inpatient** means a Public Patient who undergoes the Operator's formal admission process to receive treatment or care.

**Inpatient Service** means the provision of Services to Inpatients.

**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 connection with 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 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 an 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 Policies** means the insurance policies required to be effected and maintained in accordance with this Agreement.

**Insurance Schedule** means Schedule 13.

**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.

**Intensive Care Unit** or **ICU** means a designated ward of the Public Patient Facility which is specially staffed and equipped to provide observation, care and treatment to Patients with actual or potentially life-threatening illnesses, injuries or complications from which recovery is possible.

**Intensivist** means an intensive care physician that has completed the certification and training program of the College of Intensive Care Medicine of Australia and New Zealand.

**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, dated on or about the Date of this Agreement.

**Interim Management Agreement or IMA** means the agreement to be entered into by the State and the Operator (or the Key Service Provider) in accordance with Clause 9.1 and the IMA Terms Sheet.

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

**Intervening Event** means each of the following events:

- (a) **(Compensable Intervening Event)**: a Compensable Intervening Event;
- (b) **(State act or omission)**: an act or omission by the State in its capacity as the contracting entity to this Agreement which prevents, hinders or disrupts the Operator in the performance of the Services, excluding an act or omission by the State in its capacity as the contracting entity to this Agreement which is:
  - (i) authorised or permitted under any Project Document (where applicable); or
  - (ii) caused by an act or omission of the Operator (other than an act or omission of the Operator authorised or permitted under a Project Document);
- (c) **(fire, flood or explosion)**: fire, flood or explosion at or transgressing onto the Health Campus, not caused or contributed to by the Operator or any Operator Associate, where the Operator can demonstrate that all reasonable preventative measures were taken (having regard to the nature and location of the Health Campus) to minimise the cause and effect of the fire, flood or explosion on the performance of its obligations under this Agreement (but not including fire, flood or explosion which amounts to a Force Majeure Event);
- (d) **(Utility)**: failure of, or interruption to, a Utility upstream of the connection point for the Site for a continuous period of:
  - (i) in the case of water and sewerage, greater than 24 hours; or
  - (ii) in the case of any other Utility, greater than 7 days; or
- (e) **(Disasters/Networking and Planning)**: the Operator's compliance with a Disaster Services Plan in accordance with Clause 12.8 in response to a Disaster which prevents or delays the Operator in the performance of the Services.

**Intervening Event Notice** means a notice given under Clause 17A.1(a).

**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 the Monthly Service Payments and any other items reasonably requested by the State.

**JMO** means a junior medical officer being:

- (a) an intern;
- (b) a medical officer with less than 3 years post-graduating experience; or



- (c) a resident or training registrar (other than a service registrar).

**JMO Benchmark Ratio** is the ratio calculated in accordance with Section 7(a) of Appendix A of the Payment Schedule.

**JMO Minimum Number** is the number calculated in accordance with Section 7(b) of Appendix A of the Payment Schedule.

**KEMH** means King Edward Memorial Hospital.

**Key Performance Indicator** or **KPI** means each of a Facility KPI, a Service KPI, a Patient Transfer KPI or any of them, according to the context.

**Key Personnel** means the persons listed in the Contract Particulars who are to carry out the roles and functions described in the Contract Particulars, as amended from time to time in accordance with Clause 7.8.

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

**Key Subcontractor** means:

- (a) the Key Service Provider;
- (b) any Subcontractor engaged in the provision of the Clinical Services and Clinical Support Services as set out in the Contract Particulars; and
- (c) any other Subcontractors who are required to perform the Services as set out in the Contract Particulars,

and includes any replacement of them in accordance with this Agreement.

**Key Subcontracts** means any agreement entered into between the Operator or the Key Service Provider and a Key Subcontractor in respect of the Services which are (as at the Date of this Agreement) set out in the Contract Particulars.

**KPI Tables** means the Services KPI Tables, the Facility KPI Tables and the Patient Transfer KPI Tables or any of them, according to the context.

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

**LARU Change** means a change in the LARU's requirements for the granting of a Key Approval (as defined in the D&C Agreement) in respect of the Health Campus from the requirements of the LARU as at the date of granting the Approval in Principle (as defined in the D&C Agreement), which leads to the Operator having to change the Design Documentation (as defined in the D&C Agreement), but excluding a change:

- (a) which ought reasonably to have been anticipated by the Operator; and
- (b) to the extent it arises out of the Operator's misunderstanding of the LARU's requirements.

**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.

**Level 2A Neonatal Nursery** means low dependency care of neonates in a Designated Unit as defined in the WA Health CSF 2010-2020 under the role delineation for Neonatology - CSF level 4.

**Liability** includes any debt, obligation, claim, action, 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.

**[not disclosed]**

**Lifecycle Fee** means the fee calculated in accordance with Section 1 of Appendix D - of the Payment Schedule, or, if the State exercises its rights under Clause 29 to terminate only the Operator's rights and entitlements in respect of the Private Patient Facility, Section 2 of Appendix D - of the Payment Schedule, and payable by the State to the Operator as part of the Monthly Service Payment.

**Lifecycle Refurbishment Works** means capital works (including the Final Refurbishment Works) associated with lifecycle refurbishment or lifecycle replacement of any part of the building fabric or Fixed Building Equipment within the Public Patient Facility (but excluding the Private Patient Facility, the Commercial Facilities and the Private Patient Facility proportion of any Shared Infrastructure) as required to meet the Operator's obligations under this Agreement, but excluding:

- (a) all maintenance works (whether planned, reactive or otherwise);
- (b) all grounds maintenance works;
- (c) the maintenance, replacement, refurbishment or purchase of Medical Equipment, Non-Medical FF&E and Consumables; and
- (d) any Expansion Works or Facility Variations.

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

**Management Fee** is defined in Section 2.4(a) of the Change Compensation Schedule.

**Mandatory Requirement** means an item categorised as such or the equivalent in any notice or direction of, or review undertaken by, the LARU, and which must be rectified immediately or within a certain time specified by the LARU.

**Master Plan** means the master plan for the Health Campus to be prepared by the Operator under the D&C Agreement, 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.

**Maternity Service** means the service described in Part 3.4 of the Services Specification.

**Maximum Payment Amount** or **MPA** means the maximum amount that the State will pay to the Operator for Services provided during a Financial Year as determined in accordance with Section 2.3 of the Payment Schedule.

**Medical Equipment** means any item of equipment required by the Operator for use at or in relation to the Public Patient Health Campus for the direct provision of Health Services to Public Patients that has a depreciable life greater than one year.

**Medical Equipment Expenditure** is defined in Clause 18.2.

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

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

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

**Medical Services** means the services described in Part 3.1 of the Services Specification.

**Medical Technology Plan** means the plan of that name prepared by the Operator which sets out the Operator's medical technology methodology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Medicare Benefits Schedule** or **MBS** means the DoHA publication which is updated regularly and maintained by the Department.

**Medication Incident** means any event where the expected course of events in the support or administration of medications is not followed.

**Mental Health Legal Status** means a Patient's status as 'voluntary' or 'involuntary' under the *Mental Health Act 1996* (WA).

**Mental Health Liaison Team** means a multi-disciplinary team which reviews Patients presenting to the ED who require mental health assessment.

**Mental Health Service** means the service described in Part 3.8 of the Services Specification.

**MHC Advisory Group** means the advisory group established in accordance with Clause 7.6.

**Minimum Required Annual Medical Equipment Expenditure** is defined in Clause 18.2(c).

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

**Minister for Health** means the Minister for the time being responsible (under whatever title) for the administration of the Hospitals Act.

**Month** means:

- (a) the period commencing on the Services Commencement Date and ending on the last day of the then-current calendar month;
- (b) each calendar month commencing on the first day of that month; and

- (c) the period commencing on the first day of the last calendar month during the Operational Phase and ending on the Expiry Date.

**Monthly Activity Report** is the report required in accordance with Section 3.3 of the Reporting Schedule.

**Monthly Performance Report** means the report or reports prepared in accordance with Section 2.6 of the Reporting Schedule.

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

**Moral Rights** 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.

**MRI** means magnetic resonance imaging.

**NATA** means the National Association of Testing Authorities.

**National Cost Weights** means the national cost weights for Public Patients nominated by the State for use in the classification and counting of the Services from time to time, which are recalculated annually by the NHCDC and which, as at the Date of this Agreement, are the "2009-2010 National Cost Weights for AR-DRG v5.2".

**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.

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

**Neonatology Service** means the service described in Part 3.5 of the Services Specification.

**Neurology Service means** the service described in Part 3.1.6 of the Services Specification.

**Newborn Emergency Transport Service or NETS** means the mobile intensive care unit for infants provided by the State.

**New Contract** means a contract that replaces the Private Patient Facility Lease, but without imposing on the new party any liability for any breach of the Private Patient Facility Lease by the Operator or the Key Service Provider prior to the date of that contract (including in respect of rectifying any defect or damage to the Private Patient Facility) and with a term equal to the period from the Termination Payment Date to the expiry date of the Private Patient Facility Lease had it not been terminated.

**NGO** means a non-government organisation.

**NHA** means the National Healthcare Agreement which came into effect from 1 July 2009 (replacing the Australian Healthcare Agreement (AHCA) 2003-2008) as varied or substituted by agreement between the State and Commonwealth governments from time to time.

**NHCDC** means National Hospital Cost Data Collection or, if that collection ceases to exist, its successor or any alternative collection recognised by the public hospital system in Western Australia.

**NMAHS** means the North Metropolitan Area Health Service.

**Nominated Entity** is defined in Clause 38.1(c).

**Non-Admitted Services** means the services described in Part 4 of the Services Specification, and **Non-Admitted** has a corresponding meaning.

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

**Non-Clinical Support Services Plan** means the plan or plans prepared by the Operator which set out the Operator's Non-Clinical Support Services delivery methodology which, as at the Date of this Agreement, are set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Non-Medical FF&E** means all items of loose furniture and portable equipment required for the initial fitout and ongoing operation of the Public Patient Health Campus in accordance with the D&C Agreement and this Agreement that do not fall within the definition of Fixed Building Equipment, Medical Equipment or Consumables.

**Non-Monetary Consideration** is defined in Clause 38.1(e).

**Non-Monetary Consideration Supplies** is defined in Clause 38.1(g).

**Notice** is defined in Clause 37.1(a).

**Notice of Dispute** is defined in Clause 31.1(b).

**Nurse Practitioner** means a person registered under *the Health Regulation National Law (WA) Act 2010* (WA) whose name is entered on the Register of Nurses kept under that Law as being qualified to practise as a nurse practitioner.

**Occasion of Service** means any examination, consultation, treatment, attendance or other service provided to a Public Patient, on each occasion such service is provided to non-Inpatients. For the avoidance of doubt, each diagnostic test or simultaneous set of related diagnostic tests for the one Public Patient referred to a licensed pathologist consists of one 'Occasion of Service'.

**OHS Accreditation Scheme** is defined in Clause 11.1(a).

**OHS Laws** is defined in Clause 11.1(a).

**Older Adult Mental Health Service** means the services described in Part 3.8.3 of the Services Specification.

**On-call** means exclusively rostered and in a state of availability to return to duty within a specified period of time.

**Operating Lease** means the "Midland Health Campus Operating Lease" in respect of the Health Campus between the State and the Operator.

**Operating Theatres Service** means the service described in Part 3.9.5 of the Services Specification.

**Operational Base Costs** means the direct costs of the Operator directly and necessarily incurred as a result of implementing essential work-arounds to enable provision of the Services during the implementation of a Facility Variation.

**Operational Phase** means the period commencing on the Services Commencement Date and ending on the Expiry Date.

**Operational Phase Works** means any works to be undertaken by the Operator during the Operational Phase, including any Facility Variations and Expansion Works but excluding rectification of any Defects.

**Operations Payment Claim** means the Operator's payment claim issued pursuant to Clause 13.3(a).

**Operations Payment Statement** means the statement of that name to be prepared by the State in accordance with Clause 13.3.

**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) any Secondment Staff;
- (g) officers, agents, advisers, consultants, contractors, employees and volunteers of the Operator, the Builder and any Subcontractor; and
- (h) any visitor to the Health Campus invited onto the Health Campus by the Operator or an Operator Associate, excluding State Associates.

**Operator Facility Variation** is defined in Clause 15.2.

**Operator Representative** means the person nominated as such in the Contract Particulars, or such other person as may be appointed from time to time to replace that person in accordance with Clause 7.5.

**Operator Restriction Notice** is defined in Clause 14.5(a).

**Operator Service Variation** is defined in Clause 14.2.

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

- (a) are in existence before the Date of this Agreement, or come 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 performance of the Services or the Project,

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

**Ophthalmology Service** means the service described in Part 3.2.4 of the Services Specification.

**Orthopaedic Service** means the service described in Part 3.2.5 of the Services Specification.

**Outpatient** means any Patient who is not an Inpatient.

**Outpatient Service** means the service described in Part 4.1 of the Services Specification.

**Outstanding Item** is defined in the D&C Agreement.

**PACS** means the Picture Archiving and Communication System, which is an electronic system for the real time or near-real time storage, communication, archiving and retrieval of images acquired via multiple modalities, and simultaneously accessible from multiple sites.

**Paediatric Service** means the service described in Part 3.6 of the Services Specification.

**Palliative Care Service** means the service described in Part 3.1.11 of the Services Specification.

**Parent Guarantee** means the parent company guarantee in the form set out in Schedule 16.

**Parent Guarantor** means each person required to give a Parent Guarantee as specified in the Contract Particulars.

**Part** means a part to the Services Specification.

**Pathology and Laboratory Medicine Service** means the service described in Part 3.9.1 of the Services Specification.

**Patient** means any person who is treated at or from the Health Campus or is the recipient of a Service and includes any Public Patient or Private Patient.

**Patient Transfer Failure** means a failure to meet the Performance Threshold for any Patient Transfer KPI.

**Patient Transfer KPI Tables** means the tables set out in Section 4 of the Performance Schedule.

**Patient Transfer KPIs** means the KPIs set out in the Patient Transfer KPI Tables.

**Patient Transfer Payment** is defined in Section 8 of the Payment Schedule.

**Patient Transfer Period** means the period commencing on the Date of Completion and expiring on the date which is 7 days after the Date of Completion.

**Patient Transfer Plan** means the plan of that name prepared by the Operator which sets out the Operator's comprehensive plan for the delivery of the Patient Transfer Services which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**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 or the State under Clause 9.1(c).

**Payment Schedule** means the payment schedule set out in Schedule 9.

**Payroll Tax** means, subject to Section 9 of the Payment Schedule, pay-roll tax payable by the Operator or the Key Service Provider in respect of WA taxable wages (as that term is defined in the *Pay-roll Tax Assessment Act 2002* (WA)) which are paid by the Operator or the Key Service Provider to any of their employees who are directly employed by the Operator or the Key Service Provider (as applicable) in relation to the delivery of Services to Public Patients as part of the Project.

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

**Peer Group Hospitals** means each of Armadale-Kelmscott Hospital, Rockingham Hospital, Bentley Hospital and Osborne Park Hospital and which term includes such additional or substitute hospitals having comparable services (in terms of both size and scope) which the State defines as Peer Group Hospitals from time to time for each relevant element of the Services.

**Performance Bond** means a performance bond which satisfies the requirements of Clause 4.3.

**Performance Data** means the data referred to in Sections 2.5 and 3.3 of the Reporting Schedule.

**Performance Schedule** means the performance schedule set out in Schedule 6 as updated, amended or substituted by the State from time to time.

**Performance Threshold** means each performance threshold set out in the "Performance Threshold" column of the KPI Tables.

**Periodic Performance Report** is defined in Section 2.6(f) of the Reporting Schedule.

**Permitted Unavailability** means the temporary Unavailability of a Functional Unit (or a part thereof) which is required to facilitate:

- (a) planned preventative maintenance;
- (b) Lifecycle Refurbishment Works; or
- (c) planned maintenance, replacement or installation of new Fixed Building Equipment, Medical Equipment or Non-Medical FF&E,

in accordance with the Operator's obligations under this Agreement.

**Persistent Failure** means, in respect of any KPI, the repeated occurrence of the same Failure:

- (a) having a monthly Reporting Period, the same Failure occurring within 9 Reporting Periods in any 12 Month period;
- (b) having a quarterly Reporting Period, the same Failure occurring within 3 Reporting Periods in any 12 Month period;
- (c) having a 6 monthly Reporting Period, the same Failure occurring within 3 Reporting Periods in any 24 Month period; and
- (d) having an annual Reporting Period, the same Failure occurring within 2 Reporting Periods in any 36 Month period.

**Personnel** means:

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

**Pharmacy Service** means the service described in Part 3.9.3 of the Services Specification.



**Planned Expansion Works** means the expansion works for the Health Campus, substantially as set out in the Expansion Works Design Documentation and indicatively marked “Planned Expansion Works”.

**Planned Expansion Works Design Variation** is defined in Clause 16.1(a)(ii).

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

- (a) the Annual Works Plan;
- (b) the Asset Management Plan;
- (c) the Business Continuity Plan;
- (d) the Communications Plan;
- (e) the Construction Management Plan;
- (f) the Disability Access and Inclusion Plan;
- (g) the Environment Management Plan;
- (h) the Handover Plan;
- (i) the ICT Plan;
- (j) the Patient Transfer Plan;
- (k) the Reconciliation Action Plan;
- (l) the Safety, Quality and Risk Management Plan;
- (m) the Services Plans;
- (n) the Traffic Management and Transport Plan; and
- (o) the Workforce Plan,

to be prepared, developed and updated by the Operator in accordance with this Agreement.

**Plastics and Reconstructive Surgery Service** means the service described in Part 3.2.8 of the Services Specification.

**PMH** means Princess Margaret Hospital for Children.

**Post Termination Interest Charge** is defined in Section 3.5 of the Termination Payment Schedule.

**PPF Handover Condition** means, in relation to the Private Patient Facility, the condition which the Private Patient Facility would be in had the Operator complied with all of its obligations under this Agreement (to the extent those obligations apply to the Private Patient Facility), the Operating Lease and the Hospital Licence, taking into account the condition of the Private Patient Facility upon Completion (assuming all “Defects” (as defined in the D&C Agreement) had then been rectified) and fair wear and tear.

**PPF Termination Event** is defined in Section 3.2(a) of the Termination Payment Schedule.

**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.

**Primary Care** means the first level of care received or the provision of care at the entry point to the health care system of a patient

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

**Private Hospital Guidelines** means the 2008 Guidelines for the Construction, Establishment and Maintenance of Private Hospitals and Day Procedure Facilities issued by the CEO pursuant to the Hospitals Act as amended or substituted from time to time.

**Private Hospital Licence** means a licence granted under Part IIIA of the Hospitals Act in respect of the operation of a private hospital (as that term is defined in the Hospitals Act).

**Private Patient** means a person who elects to be treated at or from the Facility by a medical practitioner of his or her own choice and who elects to be responsible for paying the costs of the provision of the Services (and includes, without limitation, a veteran affairs patient or a worker’s compensation or other insurance covered patient who has elected to be a private patient).

**Private Patient Facility** means that part of the Health Campus as is 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 the D&C Agreement and which is shown shaded in pink in the plan set out in Attachment 5.

**Private Patient Facility Lease** means the lease of the Private Patient Facility to be granted by the State to the Operator or the Key Service Provider pursuant to this Agreement.

**Private Patient Facility Termination Payment** means the payment calculated in accordance with Section 3 of the Termination Payment Schedule.

**Private Site** means the area shown marked “Private Hospital Site Boundary Lease” on the plan set out in Attachment 7.

**Private Site Lease** means the lease of the Private Site which may be granted by the State to the Operator or the Key Service Provider pursuant to this Agreement.

**Private Proportion of Shared Infrastructure** means that proportion of the Shared Infrastructure that is equal to the proportion of the capital contribution by the Operator to the Shared Infrastructure.

**Private Works** has the same meaning as given in the D&C Agreement.

**[not disclosed]**

**PRNI** means the privately referred non-Inpatient scheme which has been implemented at various public hospitals in the State to improve non-Inpatient access to certain services.

**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.

**Procurement Plan** means, in relation to the procurement of a Facility Variation or any element of the Expansion Works, a plan which must:

- (a) reflect and be in compliance with the Procurement Principles;
- (b) show details of the proposed procurement and contracting strategy;
- (c) be prepared in proportion to the scale and complexity of the relevant work, the level of risk involved, prevailing market conditions and time constraints;
- (d) include a full description of the works and services to be procured, including:
  - (i) a description of the consulting services required, including architects, technical consultants, programming and scheduling consultants and quantity surveyors (but excluding project management consultants);
  - (ii) a description of the scope of works to be procured; and
  - (iii) a description of any associated services;
- (e) where requested, include a summary of the contract preliminaries that are proposed to be included within each proposed subcontract compared against the Builder Overhead (as determined in accordance with Section 2.3 of the Change Compensation Schedule);
- (f) incorporate an estimate of the capital cost of the relevant works the subject of the Procurement Plan and the effect of the relevant works on the Lifecycle Fee (to be prepared by a professionally qualified quantity surveyor if required by the State), on the basis that, in relation to any Shared Infrastructure the subject of a Facility Variation, any adjustment to the Lifecycle Fee will be in relation to the State's proportion of that Shared Infrastructure only, as agreed or determined in accordance with Clause 15.1;

- (g) include a list of not less than three of each of the Operator's proposed design consultants, builder and subcontractors (to the extent that the subcontractors are known to or intended to be engaged directly by the Operator) which the Operator reasonably considers are capable of undertaking the relevant works and services and whom the Operator intends to invite to tender in respect of the relevant Facility Variation or Expansion Works;
- (h) contain details of all certifications, warranties, defects liability periods and maintenance agreements to be included in each contract or subcontract which the Operator proposed to enter into (or procure the entering into of) in relation to the relevant works; and
- (i) if applicable, set out the Operator's detailed reasons as to why the Operator believes that the Procurement Principles will be able to be achieved without a tender process being undertaken in accordance with the Change Compensation Schedule.

**Procurement Principles** means, in relation to the procurement of a Facility Variation or any element of the Expansion Works, that the procurement is:

- (a) transparent in respect of process, cost, scope and outcome;
- (b) results in a reasonable level of competition within the market;
- (c) is fairly conducted in its process; and
- (d) delivers value for money to the State.

**Project** means:

- (a) undertaking the Works;
- (b) subject to Clause 9.1, 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 the D&C Agreement, the Interim Management Agreement (if entered into by the parties) and this Agreement.

**Project Documents** means:

- (a) the D&C Agreement
- (b) if entered into by the parties, the Interim Management Agreement;
- (c) this Agreement;
- (d) the Development Lease;
- (e) the Operating Lease;
- (f) the Interface Agreement;
- (g) the D&C Subcontract;

- (h) the Key Subcontracts;
- (i) the State Security;
- (j) each Service Novation Deed;
- (k) the Builder Novation Deed;
- (l) the Builder Parent Guarantee; and
- (m) any other document the parties agree 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 (including any Intellectual Property Rights in the Contract Material).

**Project Specific Change in Law** means:

- (a) a change:
  - (i) in, or repeal of, a Relevant Law or the enactment of a new Relevant Law;
  - (ii) in the interpretation or application of an existing Relevant Law, brought about by:
    - A. a change in, or repeal of, another Relevant Law; or
    - B. the enactment of a new Relevant Law,which specifically and only affects the Project;
- (b) a change in the way a Relevant Law (which specifically and only affects the Project) is applied or interpreted as a result of a:
  - (i) binding decision of a court of competent jurisdiction which reverses, overrules or refuses to follow an earlier binding decision of a court of competent jurisdiction where that earlier decision exists at the Date of this Agreement; or
  - (ii) decision which is the first decision on the relevant issue which specifically and only affects the Project,

but does not include:

- (c) a Variation;
- (d) a General Change in Law;
- (e) a change in Relevant Law solely on the basis that it has a greater effect on the Operator than other companies;
- (f) a change in the way a Relevant Law is applied or is interpreted as a result of the failure of the Operator to comply with a Law or any Authorisation, or in response to an illegal act or omission of the Operator (including any breach of this Agreement by the Operator);
- (g) a change in, or enactment of a new, Relevant Law which was not in force at the Date of this Agreement but which:

- (i) had been published prior to the Date of this Agreement in the Government Gazette by way of bill, draft bill or draft statutory instrument, had been introduced prior to the Date of this Agreement as a bill into the Parliament of Western Australia or the Parliament of Australia or of which public notice had been given prior to the Date of this Agreement in a form which is substantially the same as the change in, or enactment of a new, Law;
  - (ii) is contained or referred to in any Disclosed Information given or made available in writing (or access is made available to a written version of the Disclosed Information) prior to the Date of this Agreement or any Project Document;
  - (iii) a party experienced and competent in performing services similar to the Services would have reasonably foreseen or anticipated prior to the Date of this Agreement; or
  - (iv) is substantially the same as a Relevant Law in force prior to the Date of this Agreement,
- (h) a change in the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the GST Law and the *Fringe Benefits Tax Assessment Act 1986* (Cth) (or the introduction of a tax affecting companies generally);
  - (i) the introduction of a carbon pollution reduction scheme, in whatever form;
  - (j) a change in the terms of the Hospital Licence or a requirement of the LARU, or the imposition of any conditions in respect of the Hospital Licence;
  - (k) the implementation of any Health Initiative; or
  - (l) any change to a State or Commonwealth government policy or guideline.

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

**Proposed Rectification Plan** is defined in Section 6.2(b) of the Payment Schedule.

**Proposed Rectification Time** is defined in Section 6.2(b)(iv) of the Payment Schedule.

**Provision of Services Relating to Conception, Contraception & Gynaecology Services Plan** means the plan of that name prepared by the Operator which sets out the Operator's delivery methodology of services relating to conception, contraception & gynaecology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Psychiatric Consultation Liaison Service** means a multi-disciplinary team which is available to review Admitted Patients throughout the Public Patient Facility who require psychiatric assessment and management advice.

**Public Patient** means an Eligible Person who is treated at, in or from the Facility, other than a Private Patient.

**Public Patient Facility** means that part of the Facility as is dedicated to or used for the diagnosis, accommodation and treatment of Public Patients and includes the Private Patient Facility if the State exercises its rights under Clause 29 to terminate only the Operator's rights and entitlements in respect of the Private Patient Facility.

**Public Patient Facility Assets** means:

- (a) all Medical Equipment, Non-Medical FF&E and Consumables owned by the Operator or the Key Service Provider and used at or in relation to the Public Patient Health Campus;
- (b) the Operator's or the Key Service Provider's interests as lessee in any Equipment Lease or other lease of Medical Equipment, Non-Medical FF&E and Consumables used at or in relation to the Public Patient Health Campus;
- (c) the Operator's or the Key Service Provider's interests in any contracts entered into by the Operator for the supply of goods or services to the Public Patient Health Campus; and
- (d) all other assets used at or in relation to the Public Patient Health Campus.

**Public Patient Health Campus** means the Health Campus excluding the Private Patient Facility and which, for the avoidance of doubt, includes:

- (a) the Public Patient Facility;
- (b) the Shared Infrastructure;
- (c) the Commercial Facilities (to the extent that these are situated within the Public Patient Facility); and
- (d) all other improvements on the Site (other than the Private Patient Facility),

and including, for as long as the Operator is accessing, constructing, operating, repairing and/or maintaining that area in accordance with its obligations under clause 3.1(a) of the Development Lease or Operating Lease (as applicable), Cowie Close, for the purposes of the Operator's repair, maintenance and safety obligations under this Agreement.

**Quality Standards** means:

- (a) the standards, policies, guidelines, instructions and other procedures set out in, or otherwise expressly referred to in:
  - (i) the Services Specification;
  - (ii) the Health Campus Requirements; and
  - (iii) the Performance Schedule;
- (b) all Accreditation Requirements;
- (c) all Plans;
- (d) the Building Code of Australia;
- (e) the relevant standards, codes and guides of Standards Australia and Standards New Zealand (or, where an Australian Standard or a New Zealand Standard does not exist, the relevant British Standard or International Standard);
- (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 and Commonwealth government policies and relevant guidelines relating to the safety and quality of the Services;
- (l) the requirements of the LARU;
- (m) all requirements of Utility providers and Governmental Agencies; and
- (n) all other standards, codes, specifications and requirements relevant to the Works, the Services or the Health Campus,

as may be amended from time to time.

**Radiology and Nuclear Medicine Service** means the service described in Part 3.9.2 of the Services Specification.

**Reasonable Break Costs** means the additional costs actually and reasonably incurred by the Operator as a direct result of termination for convenience in accordance with Clause 29.1 or Clause 29.5(d) and which are not recovered under any other aspect of the Convenience Termination Payment, as follows:

- (a) the cost of any materials or goods ordered that cannot be cancelled;
- (b) the reasonable costs payable under a Subcontract or any "Subcontract" under the D&C Agreement (as defined therein) to terminate that subcontract (which may include loss of profit, cost of capital or financing costs), including the termination for convenience break costs set out in the D&C Subcontract as at the Date of this Agreement (which may include loss of profit, cost of capital or financing costs);
- (c) the costs of demobilisation including the cost of any relocation of equipment used or personnel engaged in connection with the Works or the Services;
- (d) any deposits paid in advance by the Operator (or its subcontractors) for goods and materials ordered by the Operator (or its subcontractors) for the Works and which the Operator (or its subcontractor) is liable to accept, but only if title to the goods and materials would pass to the State upon payment by the State to the supplier of the balance of the price; and
- (e) the break costs payable in connection with a Performance Bond or other form of security provided by the Operator to the State; but
- (f) otherwise excluding Excluded Termination Loss,

provided that:

- (g) the costs and expenses are incurred under arrangements that are consistent with terms that have been entered into in the ordinary course of business, in compliance with this Agreement or the D&C Agreement (as applicable) and on reasonable commercial terms;



- (h) in respect of the costs set out in paragraphs (b) and (e), the costs would not have been otherwise incurred if this Agreement was not terminated in accordance with its terms;
- (i) the costs have not as yet been otherwise paid by the State;
- (j) the costs have been offset by any receipts and gains which have been maximised by the Operator using its best endeavours; and
- (k) the Operator has taken all reasonable steps to mitigate and minimise these costs and expenses including obtaining the prior approval of the State to incur any costs after receiving the notice terminating this Agreement, that it seeks to recover as part of the Convenience Termination Payment.

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

**Reconciliation Action Plan** means the plan of that name prepared by the Operator which sets out the Operator's comprehensive reconciliation action plan which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

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

- (a) the D&C Documents;
- (b) the Plans;
- (c) the Medical Records;
- (d) the audited accounts referred to in Clause 34.1(e);
- (e) all records in connection with the receipt of revenue;
- (f) National Police Certificates;
- (g) all records and information relating to the effects of a Force Majeure Event; and
- (h) 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.

**Rectification Plan** is defined in Section 6.2(d) of the Payment Schedule.

**Rectification Time** means the period in which the Operator is required to Rectify a Failure as determined in accordance with Section 6.2 of the Payment Schedule and which commences on and from the time at which the Operator or any of the Personnel became aware, or ought reasonably to have become aware, of the relevant Failure.

**Rectify** means to remove the impact of a Failure and (where the Failure is an ongoing event) restore performance to a level above the relevant Performance Threshold and **Rectification** has a corresponding meaning.

**Registered Nurse** or **RN** means a person registered under the *Health Practitioner Regulation National Law (WA) Act 2010* (WA) in the nursing and midwifery profession whose name is entered on Division 1 of the 'Register of Nurses' kept under that Law as a registered nurse.

**Registrar** means experienced medical officers appointed to positions in hospitals or community health services.

**Rehabilitation** means care in which the clinical intent or treatment goal is to improve the functional status of a patient with an impairment, disability or handicap.

**Rehabilitation Service** means the service described in Part 3.7 of the Services Specification.

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

**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 Health Campus; or
  - (iii) has access to confidential information concerning the Project; or
- (c) an entity or any person with Control over a Consortium Entity.

**Relevant Expansion Works** is defined in Clause 16.1(a)(i).

**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 Person** is defined in Clause 7.11(a)(i).

**Relevant Relief Event** is defined in Clause 6.4(a).

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

**Remediate** and **Remediation** have the same meaning as given in the D&C Agreement.

**Renal Service** means the service described in Part 3.1.8 of the Services Specification.

**Reporting KPI** means those KPIs contained in the KPI Tables for which the Performance Threshold is denoted by 'Reporting'.

**Reporting Period** means the relevant period for the reporting of each KPI as indicated in the "Frequency of reporting" column in the KPI Tables.

**Reporting Period Failure Points** means the total Failure Points in a Reporting Period used in the derivation of the Failure Abatement calculated in accordance with Section 6.6 of the Payment Schedule.

**Reporting Schedule** means the reporting schedule set out in Schedule 7, as amended, updated or substituted by the State from time to time.

**Reputable Insurer** means an insurance company having a financial performance rating of at least A- by AM Best or a financial strength rating of at least A by Standard and Poor's (Australia) Pty Limited.

**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.

**Resident Medical Officer** means a registered medical practitioner who is employed as a 'Resident Medical Officer'.

**Respiratory Service** means the service described in Part 3.1.3 of the Services Specification.

**Restricted Service** means any DRG Service which is listed as 'restricted' in the Annual Notice or in any Department technical bulletin.

**Review Period** means 10 Business Days from the date that the State receives a Submitted Document to be reviewed in accordance with the Review Procedures which is clear and unambiguous and otherwise complies with the requirements of this Agreement in respect of that Submitted Document, 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 number of Submitted Documents have been submitted by the Operator to the State in a short period of time, in which case a reasonable period of time will apply.

**Review Procedures** means the procedures for review of and comment on a Submitted Document as set out in Schedule 12.

**Revised Reporting Period** means the revised reporting period following a Failure as implemented by the State in accordance with Section 6.4(a) of the Payment Schedule.

**RFP** means the "Midland Health Campus Request for Proposals for the development and operation of the Midland Health Campus" issued by the State in respect of the Project.

**RMO** means a resident medical officer.

**Role Delineation** means the role delineation set out in Schedule 3 as amended or substituted from time to time in accordance with an Annual Notice or a Service Variation.

**Rolling Indexation Average** means the escalation factor as determined in accordance with Appendix B of the Payment Schedule.

**RPH** means Royal Perth Hospital

**Rural and Remote Hospitals** means all health services and infrastructure that reside outside the metropolitan area and within the scope of the WA Country Health Service.

**Safety, Quality and Risk Management Plan** means the plan of that name prepared by the Operator which sets out the Operator's safety, quality and risk management methodology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Same-Day** means an Episode of Care in which the Patient is admitted and separated on the same date.

**SCGH** means Sir Charles Gairdner Hospital.

**Schedule** means a schedule to this Agreement.

**SDH** means Swan District Hospital.

**SECG** means the State Emergency Coordination Group established under the *Emergency Management Act 2005* (WA).

**Secondment Staff** means any medical, nursing or other clinical staff (including JMOs) or other staff (including non salaried medical practitioners who provide services at a public hospital or hospitals and who hold an indemnity from the Minister for Health) provided to the Operator by the State or a public hospital during the Operational Phase on a temporary, secondment or rotational basis.

**Section** means a section of a Schedule.

**Section 10E Land** means the land shown cross hatched in red on the plan set out in Attachment 6.

**Security Interest** means:

- (a) a mortgage, charge, pledge or lien;
- (b) a security or preferential interest or arrangement of any kind; and
- (c) any other right of, or arrangement with, a creditor to have that creditor's claims satisfied prior to other creditors with, or from the proceeds of realisation of, any asset including:
  - (i) a retention of title arrangement other than in the course of day-to-day trading; and
  - (ii) a deposit of money by way of security,

but excludes a charge or lien arising in favour of a Governmental Agency by operation of statute.

**Senior Registered Nurse or SRN** means a person who:

- (a) is a Registered Nurse; and
- (b) is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in the relevant provisions of *the Health Practitioner Regulation National Law (WA) Act 2010* (WA) on a continuing basis.

**Sentinel Event** means a rare adverse event leading to serious harm or death that is caused by health care rather than patient illness.

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

**Service Failure** means a failure to meet the Performance Threshold for any Service KPI.

**Service Fee** means the fee determined in accordance with Section 2.1(a) of the Payment Schedule.

**Service Handover Period** means the period:

- (a) in the case of an Immediate Termination Event or early termination of this Agreement in accordance with its terms, commencing on the date on which the State serves a notice of termination on the Operator and ending on the date of termination of the Term; and
- (b) in the case of the natural expiry of the Term, the period commencing on the date which is 6 months prior to the expiry of the Term and ending on the last day of the Term.

**Service KPI** means each of the KPIs set out in the Service KPI Tables.

**Service KPI Tables** means the tables set out in Section 2 to the Performance Schedule.

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

**Service Novation Deed** means a deed in the form of Schedule 19.

**Service Payment Category** means the Service categories relevant for the payment of the Operator as identified in the table set out in Section 3 to the Activity Schedule.

**Service Variation** means any change to the way in which the Services are delivered, the introduction of new Services or the cessation of existing Service Payment Categories including, for the avoidance of doubt, an Operator Service Variation but excluding:

- (a) any increase or decrease in the volume of the existing Services;
- (b) any change to the Services which is the subject of an Annual Notice which has been properly issued by the State in accordance with the Activity Schedule;
- (c) the implementation of any Health Initiative by the Operator in accordance with Clause 12.9;
- (d) any conversion to a national pricing mechanism in accordance with Section 7 of the Payment Schedule;
- (e) any Demand Variation;
- (f) any change to the Quality Standards; and
- (g) any change to the Reporting Requirements.

**Service Variation Order** is defined in Clause 14.1(a).

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

**Services Commencement Date** means the day after the Date of Completion.

**Services Plans** means the Clinical Services Plan, the Clinical Support Services Plan, the Non-Clinical Services Plan, the Medical Technology Plan and the Provision of Services Relating to Conception, Contraception & Gynaecology Services Plan.

**Services Specification** means the specification for the Clinical Services, and, to the extent set out in Section 3.9 of Schedule 2, the Clinical Support Services, as set out in Schedule 2 as varied from time to time in accordance with this Agreement.

**Shared Infrastructure** means those parts of any infrastructure, services, facilities and equipment on the Health Campus (including, where applicable, Medical Equipment and Non-Medical FF&E and infrastructure, services, facilities and equipment located in the Public Patient Facility) in relation to which both the State and the Operator have made or will make capital cost contributions and which the parties intend will be used for the provision of both the Services and services to Private Patients.

**SHICC or State Health Incident Coordination Centre** means the centre of that name convened by the Department, or its equivalent or replacement from time to time.

**Site** means Lot 515 on Deposited Plan 50077, being the whole of the land in Certificate of Crown Land Title Volume LR3020 Folio 986.

**Site Conditions** means any physical conditions on, under, or over the surface, or in the vicinity of the Health Campus, 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, partially completed structures, Artefacts or in-ground works;
- (c) **(vegetation)**: pastures, grasses or other vegetation on the Health Campus;
- (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 habitation or occupation by persons or animals;
  - (ii) degraded in its capacity to support plant life;
  - (iii) Contaminated; or
  - (iv) otherwise environmentally degraded;
- (h) **(physical conditions)**: all other physical conditions and characteristics of or in the vicinity of the Health Campus, on or below 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 Health Campus,

whether or not they were in existence or known to the Operator before the Date of this Agreement.

**Specialist Hospital** means a hospital that:

- (a) may provide some General Hospital services but will be largely configured to focus on particular specialty services such as mental health, aged care, rehabilitation and elective surgery;
- (b) does not have an emergency department; and
- (c) will provide services at level 4 or possibly level 5 in their specialty according to the clinical service role delineation definitions in the CSF.

**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.

**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; and
- (b) any other officers, agents, advisers, consultants, contractors or employees of the State,

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

**State Benchmark Price** means the benchmark price determined in accordance with Appendix A - to the Payment Schedule.

**State Funded Equipment** means an item of Medical Equipment or Non-Medical FF&E which was funded by the State as detailed in Attachment 3 of the D&C Agreement or through a specific arrangement outside the arrangements set out in the Payment Schedule.

**State Personal Property** is defined in Clause 40.1.

**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 WA and any Utility Company.

**State Project Documents** means:

- (a) this Agreement;
- (b) if entered into by the parties, the Interim Management Agreement;
- (c) the D&C Agreement;
- (d) the Development Lease;
- (e) the Operating Lease;
- (f) the State Security;
- (g) the Builder Novation Deed;

- (h) each Service Novation Deed; and
- (i) any other document the parties agree is a State Project Document.

**State Rehabilitation Centre or SRC** means the joint Commonwealth and State funded rehabilitation centre being built as part of FSH.

**State Representative** means the person nominated as such in the Contract Particulars, 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 7.2.

**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 Services.

**Step-in Event** is defined in Clause 28.1.

**Stock Price** is defined in Clause 21.3(d).

**Stroke Unit** means the section of the Public Patient Health Facility which is dedicated to comprehensive acute and rehabilitation programs for people with stroke.

**Stroke Unit Services** means the services described in Part 3.1.7 of the Services Specification.

**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 a Subcontractor subcontracts any part of the Services or any other works or services which the Operator undertakes pursuant to this Agreement, whether or not there is an executed Subcontract (and which, for the avoidance of doubt, includes the Key Subcontractors and the Key Service Provider).

**Subcontractor Control** means:

- (a) being in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting; or
- (b) having a relevant interest (as defined in Section 608 of the Corporations Act) in more than 50% of the securities (as defined in the Corporations Act),

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

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



- (a) the Plans; and
- (b) any other document which the State determines from time to time will be a Submitted Document.

**Surgical Services** means the services described in Part 3.2 of the Services Specification.

**Target Level** means each level set out in the “Target Level” column of the KPI Tables.

**Tax** means any tax, levy, impost, deduction, charge, duty or withholding which is levied or imposed by a Governmental Agency or the Parliament of Western Australia, including any income, capital gains, withholding, stamp and transaction tax, duty or charge together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in connection with the above and **Taxation** will be construed accordingly.

**Teaching, Training and Research Service** means the service described in Part 6 of the Services Specification.

**Telehealth** means the use of telecommunication technologies to provide health care services and access to medical and surgical information for training and educating health care professionals and consumers, to increase awareness and educate the public about health-related issues, and to facilitate medical research across distances.

**Tender Process** means the process described in Section 3.6 of the Termination Payment Schedule.

**Tender Process Monitor** is defined in Section 3.5(f) of the Termination Payment Schedule.

**Tendered Price** means the prices as set out in Section 3.2 of the Payment Schedule.

**Term** means the term commencing on the Date of this Agreement and ending on the Expiry Date.

**Terminated Agreement** means this Agreement, the D&C Agreement or both, depending on which one has been terminated.

**Termination** means the Expiry Date or earlier date of termination of the Term.

**Termination Payment** means a Default Termination Payment, a Convenience Termination Payment or a Private Patient Facility Termination Payment, or any of them (as applicable).

**Termination Payment Date** means the date for payment of a Termination Payment, as set out in Clause 30.4.

**Termination Payment Schedule** means the schedule set out in Schedule 11.

**Tertiary Hospital** means a major hospital dedicated to specific sub-speciality care, including centres of excellence, research and development, and which provides services at a level 6 according to the clinical services role delineation definitions.

**Therapeutic Goods Administration** or **TGA** means the Therapeutic Goods Administration, ABN 40 939 406 804, being a Commonwealth regulatory agency for medical drugs and devices.

**Third Party IP Claim** is defined in Clause 36.7(a).

**Time Weighting** means the time weighting calculated in accordance with Section 6.8 of the Payment Schedule.

**Traffic Management and Transport Plan** means the plan of that name prepared by the Operator which sets out the Operator's traffic management methodology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Trauma Service** means the service described in Part 3.2.10 of the Services Specification.

**Triage Category** refers to the five triage classifications on the Australasian Triage Scale used in the emergency departments of hospitals to classify and prioritise patients' needs for medical and nursing care as published by the Australasian College of Emergency Medicine (or its replacement) from time to time.

**Uninsurability Notice** is defined in Clause 24.14(a).

**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** is defined in Clause 23.4(b)(iii).

**Unit Medical Record Number** means the client identifier number (being a maximum of ten numeric or alphanumeric characters) which, in relation to hospitals in Western Australia, is retained by the hospital for a particular patient for all admissions within that hospital.

**Unsold Equipment** is defined in Clause 21.3(j).

**Urology Service** means the service described in Part 3.2.6 of the Services Specification.

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

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

**Variation** means any Service Variation or Facility Variation, according to the context.

**Variation Order** means a Facility Variation Order or a Service Variation Order or both, according to the context.

**Vascular Surgery Service** means the service described in Part 3.2.7 of the Services Specification.

**WA Health Elective Surgery Wait List** or **Waitlist** means the centralised list of patients requiring care that is managed by the Department.

**WA Metropolitan Peer Hospitals** means other hospitals within the WA metropolitan area that treat public patients and are of a similar size and scope to the Public Patient Facility as determined by the State from time to time.

**WACHS** means the Western Australian Country Health Service.

**WA Health Management Information Group** or **WAHMIG** means the group created to establish a coordinated approach to the management of data, information and reporting for the Department, supporting effective and efficient business practices and enabling the improvement of health service performance.

**WANDAS** means the Women and Newborn Drug and Alcohol Service provided by the State.

**WAPMHU** means WA Perinatal Mental Health Unit provided by the State.

**WARM** means the Western Australian Review of Mortality.

**Weighted Separation** means an Episode of Care of a DRG Service which has been adjusted for its complexity relative to all Episodes of Care (such complexity to be determined by applying the appropriate cost weight assigned to that DRG as set out in the National Cost Weights as varied from time to time and if the National Cost Weights ceases to be published its successor or alternative recognised by the public hospital system in Western Australia and notified to the Operator by the CEO).

**Workforce Plan** means the plan of that name prepared by the Operator which sets out the Operator's workforce management methodology which, as at the Date of this Agreement, is set out in Attachment 4 as may be updated from time to time by the Operator in accordance with this Agreement.

**Works** has the meaning given in the D&C Agreement.

**Works Program** has the meaning given in the D&C Agreement.

**Written Down Value** means the amount at which an asset is recognised after deducting accumulated depreciation as determined in accordance with the Australian equivalents to International Financial Reporting Standards and generally accepted industry practice.

## 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, 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 40;
    - B. the Schedules; and
    - C. the Attachments.
  - (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 40, the General Service Obligations, the Payment Schedule, the Performance Schedule, the Activity Schedule, the Review Procedures, the Change Compensation Schedule, the Termination Payment Schedule, Attachment 2 (Requirements for Plans), the Insurance Schedule, the Parent Guarantee, the General Security Agreement and the Specific Security Deed;
- (ii) subject to paragraph (vi), the Services Specification, the Role Delineation and the Reporting Schedule;
- (iii) the Design Departures Schedule;
- (iv) subject to paragraph (vi), the Master Plan, the Health Campus Requirements and the ICT Requirements;
- (v) the remaining Schedules and Attachments; and
- (vi) the Bid Design Documentation (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 (e), 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 subparagraph (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 subparagraph (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 subparagraph (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 subparagraph 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), which direction will not constitute a Variation.
- (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)(vi), 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 Health Campus;
- (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 Indices

Subject to any required adjustment to the indexation mechanism expressly set out in the Payment Schedule (which takes priority over this Clause 1.5), the following rules apply to all amounts in this Agreement that are required to be adjusted in accordance with an index:

- (a) if there is a change in the coverage of the index from that applying at the Date of this Agreement and that index is linked to a new index, the defined term is to be referable to the new index; or
- (b) if the index is published and:
  - (i) there is a change in its coverage and it is not linked to another index; or
  - (ii) there is a change in its periodicity,

the parties must request that the President of the Institute of Actuaries (or the President's nominee) determines:

- (c) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
- (d) if it is not, what other index should be used as a substitute index for the purpose of the defined term's use in this Agreement.

## 1.6 State review of Operator performance

- (a) **(Review):** The State will from time to time during the Term review the Operator's performance in accordance with this Agreement and prepare a performance report in accordance with the State's requirements for reviewing the performance of contractors engaged by the State.
- (b) **(Performance report):** The State may provide the performance report to any Authority.
- (c) **(Liaise with Operator):** In reviewing and reporting on the Operator's performance, the State will:
  - (i) liaise with the Operator;
  - (ii) notify the Operator of the form of the performance report including the criteria against which the Operator's performance will be assessed;
  - (iii) provide any other information or guidelines relevant to the performance review and the preparation of the performance report; and
  - (iv) provide the proposed performance report to the Operator for its review.
- (d) **(Reasonable assistance):** The Operator:
  - (i) must provide all assistance reasonably required by the State in conducting a performance review and preparing a performance report in accordance with this Clause 1.6; and
  - (ii) may provide comments to the State on the proposed performance report.
- (e) **(Comments):** The State will:
  - (i) include any comments provided by the Operator in the completed performance report; or
  - (ii) respond to the Operator in respect of any comments the Operator has on the proposed performance report.

## 1.7 Open book basis of Agreement

- (a) Without limiting any other Clause of this Agreement, the State has the right to request that the Operator make available to the State any information, records and other documentation in whatever form which relate to this Agreement, the Services and the Project on an open book basis, provided that information, records and other documentation relating to the builders preliminaries, labour, equipment, materials, subcontract, finance, overhead, administrative and other costs and profit margins will only be requested and used by the State for the purposes of verifying all relevant costs for Facility Variations and Expansion Works.
- (b) For the purposes of this Clause 1.7, "open book basis" includes the Operator providing to the State any information, 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 information, records and documentation or answer any questions the State may have in respect of the information, records and documentation.
- (c) The Operator must allow the State to review and undertake audits to enable it to verify compliance with this Clause 1.7.



## 1.8 Records of the Operator and the Key Service Provider

- (a) Subject to paragraph (b), but otherwise 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 or the Key Service Provider;
  - (ii) any third party documents or communications where the Operator or the Key Service Provider 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; or
  - (v) documents relating to the Operator's or the Key Service Provider's internal cost structures and treatment or 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 paragraph (a) prevents:
  - (i) the Auditor-General or the Ombudsman from having access to the records described in paragraph (a) which they are entitled to have at Law or for the purpose of satisfying the powers and responsibilities of the Auditor-General referred to in Clause 12.12(b); or
  - (ii) the State from having access to the information contained in the materials described in paragraphs (a)(i) and (ii) to the extent that information is required by the State under Clause 1.7 or Clause 34.1.

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## 2. Interaction with other Project Documents

- (a) Prior to the Date of Completion, if a matter is dealt with in both the D&C Agreement and either this Agreement and/or the Interim Management Agreement:
  - (i) generally, the provisions in the D&C 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 this Agreement will prevail;
    - B. the Operator's or the Key Service Provider's (as the case may be) obligations under the Interim Management Agreement, the provisions in the Interim Management Agreement (if entered into) will prevail; and
    - C. the Expansion Works, any design and construction agreement entered into in accordance with Clause 16.1(g) 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 the D&C Agreement and either this Agreement or the Interim Management Agreement:
  - (i) generally, where provisions relate more closely to:
    - A. the Services or the Patient Transfer Services, the provisions in this Agreement will prevail; or
    - B. the Operator's or the Key Service Provider's (as the case may be) obligations under the Interim Management Agreement, the provisions of the Interim Management Agreement (if entered into) will prevail,
  - to the extent of any overlap or inconsistency; but
  - (ii) where provisions relate more closely to the Works (including Defects, Works insurances and Expansion Works), the provisions in the D&C Agreement will prevail to the extent of any overlap or inconsistency.

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### **3. Conditions Precedent to Services**

Without prejudice to any obligation of the Operator which is expressly required to be performed on an earlier date, the commencement of the Services under this Agreement is conditional upon:

- (a) a Completion Certificate being issued;
- (b) subject to Clause 9.1, the Patient Transfer Plan being finalised by the Operator in accordance with this Agreement and to the reasonable satisfaction of the State;
- (c) the provision of the Parent Guarantee by the Operator in accordance with Clause 4.1;
- (d) the provision of the Performance Bond referred to in Clause 4.2(a) by the Operator in accordance with Clauses 4.2 and 4.3;
- (e) the Operator complying with its obligations under Clause 4.10 in respect of the State Security;
- (f) evidence in the form required by Clause 24.4 that the Operator has complied with its insurance obligations set out in Clause 24; and
- (g) the Operator entering into the Operating Lease in accordance with Clause 5.3,

and in any event the Services must not commence earlier than the Anticipated Services Commencement Date without the written consent of the State.

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### **4. Security**

#### **4.1 Parent Guarantee**

The Operator must, on or before the Date of this Agreement, procure the Parent Guarantor to sign and deliver to the State a Parent Guarantee.

## 4.2 Performance Bond

- (a) [not disclosed]
- (b) [not disclosed]
- (c) **(Release of Initial Performance Bond)**: Upon 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) [not disclosed]
- (e) **(Release of end of Term Performance Bond)**: Upon receipt of the Performance Bond referred to in paragraph (d), the State will release to the Operator the Performance Bond then held under paragraph (b).
- (f) **(Final release)**: The State will release the Performance Bond held under paragraph (d) on the later of:
  - (i) 12 months after the Expiry Date; and
  - (ii) the date on which any Termination Payment which is required to be paid under this Agreement is actually paid.

## 4.3 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.

## 4.4 Demands under Performance Bond

- (a) The State may immediately make a demand under any Performance Bond where:
  - (i) the State is reasonably 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.

#### **4.5 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 on the Performance Bond and obtains cash as a consequence, the State must 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.

#### **4.6 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 31), 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.

#### **4.7 Replacement Performance Bond**

- (a) The Operator must, no later than 2 months before the expiry of a Performance Bond (if the date which is 12 months after the Expiry Date 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 12 months after its date of issue.
- (b) The Operator must repeat compliance with paragraph (a) at all times until the date which is 12 months after the Expiry Date.

#### **4.8 New Performance Bond on rating downgrade or loss of licence**

The Operator must monitor the rating of the current issuer of a Performance Bond and 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.

#### **4.9 Failure to replace Performance Bond**

If the Operator fails to replace the Performance Bond in accordance with Clause 4.7 or 4.8, the State may call on the Performance Bond that is to be replaced.

#### **4.10 State Security**

- (a) By the Commencement Date, the Operator must provide to the State:
  - (i) each State Security (other than the Parent Guarantee which is provided in accordance with Clause 4.1), as executed by all parties to it (other than the State); and
  - (ii) evidence of stamping (if necessary) of each State Security
- (b) The Operator must ensure that at all times until 12 months after the Expiry Date, each State Security is valid and enforceable in accordance with its terms.
- (c) Each State Security must not contain any provision inconsistent with the rights of the State in this Agreement.

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### **5. Term and tenure**

#### **5.1 Commencement date**

Subject to Clause 3, this Agreement commences on the Date of this Agreement.

#### **5.2 Expiry Date**

The Term will expire on:

- (a) the date which is 20 years after the Anticipated Services Commencement Date; or
- (b) any earlier date on which this Agreement is terminated in accordance with Clause 29 or otherwise at Law,

(in each case the **Expiry Date**), unless the State gives the Operator written notice not later than 12 months prior to the Expiry Date that it requires an extension of the Term, in which case:

- (c) the Term will be extended by an additional 2 year period on the same terms as this Agreement except for this Clause 5.2 (and the definition of 'Expiry Date' will be deemed to be amended accordingly); and
- (d) the parties must do all things reasonably necessary (including in respect of the extension of the Operating Lease) to give effect to that extension of the Term.

#### **5.3 Grant of Lease**

- (a) (**Lease Term**): Subject to Completion having occurred, the State will grant the Operating Lease to the Operator:
  - (i) for a term which will correspond with the Operational Phase; and

- (ii) on the terms and conditions set out in the form of the Operating Lease which is annexed to this Agreement as Attachment 3 (and the Operator authorises the State to complete all outstanding items in the Operating Lease).
- (b) **(Parties bound)**: Whether or not the Operating Lease has been executed by both parties by the Date of Completion, each party will be bound by the terms and conditions to be contained in the Operating Lease as set out in Attachment 3 on and from the Date of Completion as if the Operating Lease had been fully completed and executed.

## 5.4 State's licence

The Operator grants to the State, the State Associates and any other person authorised by the State, a non-exclusive, free of charge licence (including the right to sub-license) to access or use the Facility and the Health Campus for any of the purposes set out in this Agreement.

## 5.5 Further extension

Regardless of whether or not the State exercises its option at Clause 5.2, the parties may agree to extend the operation of this Agreement for an additional term to be agreed, in which case each party must do all things reasonably necessary (at its own cost in all respects) to record and give effect to that extension.

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# 6. General obligations

## 6.1 Operator's fundamental obligations

- (a) The Operator must provide the Services in accordance with this Agreement, including:
  - (i) in accordance with the Services Specification and the Health Campus Requirements;
  - (ii) in accordance with Good Operating Practices;
  - (iii) in accordance with the Plans; and
  - (iv) ensuring that for the duration of the Operational Phase the Health Campus is Fit For Purpose.
- (b) All Clinical Services must be provided by the Operator on or from the Health Campus.
- (c) The Operator must perform the Services having regard to the highest standard of Patient care and safety at all times.
- (d) The Operator must comply with the ICT Requirements.

## 6.2 Operator takes all risks

- (a) The Operator must deliver the Project in accordance with the Project Documents.
- (b) The Operator accepts all risks in connection with delivering the Project except as expressly provided in the State Project Documents, and the Operator is not entitled to make any Claim against the State or any State Associate in respect of those risks.

### 6.3 Acts or omissions of the Operator

Without limiting Clause 6.2, if a State Project Document confers on the Operator a right to make a Claim against the State or State Associates, 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.

### 6.4 Mitigation by the Operator

- (a) In this Clause 6.4, "**Relevant Relief Event**" means the occurrence of any event which entitles the Operator to:
  - (i) compensation;
  - (ii) relief from performance of any of its obligations in any State Project Document (excluding the Interim Management Agreement); or
  - (iii) 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 Relevant Relief Events will be reduced to the extent the Operator fails to comply with its obligations set out in paragraph (b).

### 6.5 The Operator

- (a) The Operator has been incorporated for the sole purpose of performing this Project. For the duration of the Term, the Operator must not conduct any other business or undertaking except as permitted by paragraph (b).
- (b) During the Term 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 this 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 under this Agreement or the exercise of its rights under the State Project Documents.
- (d) The Operator must:

- (i) notify the State immediately if it or a Consortium Entity 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 administrative or governmental proceedings;
- (ii) provide to the State written particulars of any litigations, arbitration, Tax claim, dispute or administrative or other proceeding in relation to the Facility or the provision of the Services of which the Operator or Key Service Provider becomes aware involving a claim exceeding the amount of *[not disclosed]*; and
- (iii) provide to the State promptly upon request, all documents provided by the Operator (or any Related Body Corporate) to the Australian 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).

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## 7. Contract administration

### 7.1 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.

### 7.2 State Representative

- (a) **(Appointment):** The State Representative is the person set out in the Contract Particulars or such other person as may be appointed from time to time to replace that person in accordance with this Clause 7.2.
- (b) **(Directions):** The State Representative may:
  - (i) give directions and notices to be given by the State; and
  - (ii) receive all notices and documents to be received by the State,in connection with this Agreement.
- (c) **(Agent):** The State Representative will carry out all its functions in accordance with this Agreement as the agent of the State.
- (d) **(Compliance):** 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 7.4.
- (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.

### 7.3 Directions in breach of the Agreement or any Law

- (a) If the State issues the Operator with a direction and the Operator reasonably believes that, if complied with by the Operator, the direction will cause the Operator to breach this Agreement or any Law, the Operator must give notice to the State as soon as reasonably practicable setting out the details of the likely breach and why it will be caused by the direction.
- (b) Within 10 Business Days of receipt of the Operator's notice given under Clause 7.3(a), the State may in writing:
  - (i) withdraw the relevant direction (which the State must do if compliance with the direction will cause the Operator to breach any Law);
  - (ii) amend the relevant direction;
  - (iii) issue a new direction;
  - (iv) if the State agrees that the direction will cause the Operator to breach this Agreement, issue a Service Variation in accordance with Clause 14.1 to overcome the potential breach, in which case the provisions of Clause 14 apply, and, following implementation of the Service Variation, the Operator must comply with the relevant direction; or
  - (v) refer the matter to dispute resolution under Clause 31.
- (c) If the State does not do any of the things in Clause 7.3(b), the Contractor may refer the matter to dispute resolution under Clause 31.
- (d) The Operator is not relieved from liability to perform its obligations in accordance with this Agreement by the issue of any direction from the State.

### 7.4 Further State delegations

- (a) The State and 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 7.4 will be deemed to be a direction of the State Representative.

### 7.5 Operator Representative

- (a) **(Appointment):** The Operator Representative is the person set out in the Contract Particulars or such other person as may be appointed from time to time to replace that person in accordance with this Clause 7.5.

- (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 Health Campus 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 D&C Agreement and this Agreement will hold the same position within the Operator's organisation at all times during the Term.
- (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 Term 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 Project throughout the Term;
  - (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 Project.

## 7.6 MHC Advisory Group

- (a) **(Establishment):** The parties will establish a team consisting of:

- (i) the State Representative and two other representatives of the State notified by the State to the Operator from time to time;
  - (ii) the Operator Representative and two other persons nominated by the Operator to the State from time to time; and
  - (iii) such other members as the parties may agree from time to time,

(together the **MHC Advisory Group**).
- (b) **(Chair of meetings)**: The State Representative will chair MHC Advisory Group meetings.
- (c) **(Appointment of delegates)**: The members of the MHC Advisory Group may, by notice to the other members of the MHC Advisory Group , appoint a delegate to:
  - (i) attend any MHC Advisory Group meetings in their absence; and
  - (ii) otherwise discharge their responsibilities in accordance with this Clause 7.6.
- (d) **(Functions)**: The functions of the MHC Advisory Group will be to:
  - (i) monitor the provision of the Services and the Project generally and compliance with this Agreement;
  - (ii) endeavour to resolve any matters referred to the MHC Advisory Group by a party, including any Disputes referred to the MHC Advisory Group in accordance with Clause 31;
  - (iii) review all progress reports provided by the Operator and its Subcontractors; and
  - (iv) discuss and consider any other issues in connection with the Project (including the nature and timing of any Expansion Works).
- (e) **(Meetings)**: The MHC 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)**: At each MHC Advisory Group meeting, the Operator must report to the MHC Advisory Group on, and the MHC Advisory Group must discuss and consider:
  - (i) any issues arising out of any reports, plans or manuals provided to the State in accordance with this Agreement;
  - (ii) any issues relating to the accreditation or licensing of the Facility;
  - (iii) quality assurance and safety concerns;
  - (iv) any Variation or proposed Variation;
  - (v) Services delivery issues and any other issues in connection with the Services Specification;

- (vi) details of the Operator's performance against the Plans including any issues arising in relation to the performance of the Services in accordance with the Plans;
  - (vii) revenue received by the Operator in respect of car parking and other Commercial Opportunities on the Health Campus;
  - (viii) complaints and issues of public concern relevant to the Services; and
  - (ix) any other issues notified by the State.
- (g) **(Minutes)**: The State must take minutes of each MHC Advisory Group meeting and distribute such minutes prior to the next MHC Advisory Group meeting.
- (h) **(Other attendees)**: The State may require that the Operator procures the attendance of senior representatives of any Subcontractors or any of the Operator Associates at any meeting of the MHC 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 MHC Advisory Group from time to time provided that the chair of the MHC 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 MHC Advisory Group is advisory only and its decisions or recommendations are not binding on the parties.
- (j) **(Rights and obligations unaffected)**: Neither the parties' involvement in the MHC Advisory Group nor the discussion of any issues at the MHC Advisory Group affects the parties' respective rights and obligations in accordance with this Agreement.
- (k) **(No restriction)**: The MHC 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 MHC Advisory Group in connection with anything which any such member does or fails to do in its capacity as a member of the MHC 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 Health Campus (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.

## 7.7 Subcontracting

- (a) The Operator may not subcontract any part of the Clinical Services without the prior consent of the State (which may be granted or withheld at the State's discretion).
- (b) Subject to paragraph (c), the Operator:

- (i) may only subcontract the Clinical Support Services if the number of Subcontracts entered into in respect of the Clinical Support Services does not exceed two without the prior written consent of the State; and
  - (ii) the Operator may not:
    - A. award any new or additional Subcontract in respect of the Clinical Support Services; or
    - B. change the identity of any Subcontractor engaged in respect of the Clinical Support Services,without:
    - C. the prior written consent of the State, which consent may be granted or withheld in the State's absolute discretion;
    - D. executing, and procuring the execution by the relevant Subcontractor of, a form of the Service Novation Deed which has been approved by the State, and providing a copy of the executed Service Novation Deed to the State; and
    - E. complying with Clause 7.8(e).
- (c) For the avoidance of doubt, paragraph (b) does not apply to Subcontracts entered into by the Operator or the Key Service Provider with visiting medical officers and agency clinical staff.
- (d) The Operator:
  - (i) may only subcontract the Non-Clinical Support Services if the number of Subcontracts entered into in respect of the Non-Clinical Support Services does not exceed one without the prior written consent of the State (which consent may be granted or withheld in the State's absolute discretion); and
  - (ii) may not change the identity of any Subcontractor engaged in respect of the Non-Clinical Support Services without first:
    - A. notifying the State in writing of the proposed change in identity;
    - B. demonstrating to the reasonable satisfaction of the State that the proposed new 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
    - C. the Operator executing, and procuring the execution by each relevant Subcontractor of, a form of the Service Novation Deed which has been approved by the State and providing a copy of the executed Service Novation Deed to the State.
- (e) Without limiting Clause 32.5, if there is a Change in Control in relation to a Key Subcontractor or the Key Service Provider, or a Change in Subcontractor Control in relation to any other Subcontractor, engaged in respect of the Clinical Support Services or the Non-Clinical Support Services:
  - (i) the Operator must:

- A. notify the State in writing of the Change in Control or Change in Subcontractor Control;
  - B. demonstrate to the reasonable satisfaction of the State that the person who has taken Control or Subcontractor Control of that 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) if the State is not reasonably satisfied in relation to the matters set out in subparagraph (e)(i)(B), the State may require the replacement of the relevant Subcontractor in which case the Operator must terminate (or must, if applicable, procure that the Key Service Provider terminates) the relevant Subcontract and paragraph (b)(ii) or (d)(ii) (as the case may be) will apply in relation to the appointment of a replacement Subcontractor.
- (f) 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 agrees that a breach by a Subcontractor or a failure by a Subcontractor to comply with the obligations of the Operator in accordance with this Agreement, which amounts to a breach by the Operator of this Agreement, is a breach or failure of the Operator; and
  - (iii) is entirely responsible for, and indemnifies the State against, all Liabilities suffered or incurred by the State in connection with any acts, omissions, defaults, negligence or termination of any Subcontractors (and those of the employees and agents of any Subcontractors).
- (g) The State consents to the appointment by the Operator of the Key Service Provider, and by the Operator or the Key Service Provider of the Key Subcontractors listed in the Contract Particulars.
- (h) **(Service Novation Deeds):**
  - (i) The Operator must promptly, but in any event within 10 Business Days, after the execution of any Subcontract with a value in excess of *[not disclosed]* per annum or with any Key Subcontractor set out in Section 5 of the Contract Particulars deliver to the State, a Service Novation Deed:
    - A. substantially in the relevant form set out in Schedule 19, provided that any change from the relevant form set out in Schedule 19 must be agreed with the State (acting reasonably) prior to execution of the Service Novation Deed; and
    - B. executed by the Operator and the Key Service Provider in the case of the Subcontract between the Operator and the Key Service Provider; and
    - C. executed by the Operator and the relevant Subcontractor in the case of all Subcontracts entered into between the Operator and the relevant Subcontractor which require Service Novation Deeds; and

- D. executed by the Operator, the Key Service Provider and the relevant Subcontractor in the case of Subcontracts entered into between the Key Service Provider and the relevant Subcontractor which require Service 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 19 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 Service Novation Deed executed in accordance with paragraph (i) by executing the relevant Service Novation Deed.

## 7.8 Key Personnel and Key Subcontractors

- (a) The Operator must, or must ensure that the Key Service Provider:
  - (i) employs or engages the Key Personnel and Key Subcontractors in the positions stated in the Contract Particulars or equivalent positions; and
  - (ii) ensures that the Key Personnel and Key Subcontractors possess the appropriate skill, expertise, authority and qualifications.
- (b) Subject to Clause 7.7, the Operator must not replace the Key Personnel or any Key Subcontractors in their roles as Key Subcontractors or permit the replacement of any Key Subcontractor or Key Personnel by the Key Service Provider:
  - (i) without the State's prior approval in accordance with paragraphs (c) and (e); or
  - (ii) unless directed by the State to do so in accordance with Clause 7.12 .
- (c) If the Operator or the Key Service Provider seeks to replace any 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 Service Provider;
  - (ii) the member of Key Personnel has died;
  - (iii) the member of Key Personnel has become permanently incapable, or incapable on a long-term basis, 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 its 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.

- (d) If any of the events described in paragraph (c)(i) to (iv) occur without notice to the Operator or the Key Service Provider, the Operator is not required to obtain prior approval from the State, but rather must within 10 Business Days of becoming aware (or the Key Service Provider becoming aware) of the relevant event, propose to the State a replacement Key Personnel who 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 is available to perform the role.
- (e) If the Operator or the Key Service Provider seeks to replace any Key Subcontractor:
  - (i) the Operator must:
    - A. demonstrate 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
    - B. procure the execution by the replacement Key Subcontractor of, a Service Novation Deed in a form reasonably approved by the State; and
  - (ii) the State may grant or withhold its consent to the appointment of any replacement Key Subcontractor, such consent not to be unreasonably withheld.

## 7.9 Key Subcontracts

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

## 7.10 Personnel

In performing the Services and the Operator's obligations under this Agreement, the Operator will use only suitably qualified and competent Personnel experienced and thoroughly trained in all aspects of the Services which they will be performing. The Operator must ensure that all Personnel engaged in the provision of the Services:

- (a) possess the appropriate skill, expertise, authority and qualifications to exercise their functions;
- (b) when present on the Health Campus or in the Public Patient Facility, are suitably clothed with appropriate uniforms, identification badges or labels and security passes and are equipped with the appropriate safety equipment;
- (c) comply with any rules applicable to the Health Campus as set out in this Agreement or as notified from time to time by the State;
- (d) comply with any directions of the State and the State Representative given under this Agreement;
- (e) attend and comply with the requirements of any Health Campus induction program required by the State; and
- (f) act in good faith in the exercise of their functions.



## 7.11 Personnel requirements

- (a) The Operator must ensure that:
- (i) all Personnel or persons who may perform any of the Services or volunteer services on the Health Campus (**Relevant Persons**) undergo pre-employment health screening (including a medical examination if necessary) by a qualified occupational health professional to establish in each case that the Relevant Person does not pose, at that time, any danger to the health or well-being of other persons, including Hospital Users; and
  - (ii) all Relevant Persons, prior to them commencing the performance of any part of the Services, the Operational Phase Works or any other activity (including volunteer services) contemplated by this Agreement, provide to the Operator:
    - A. a current assessment notice issued under section 12 of the Working with Children (Criminal Record Checking) Act 2004 (WA) and again when a previous assessment expires;
    - B. a National Police Certificate, and subsequently at any time when reasonably requested by the State Representative; and
  - (iii) to the extent not prohibited by Law, all Relevant Persons undergo such medical screening, examination or treatment and provide such information during the Term, when reasonably requested to do so by the State Representative as required, to ensure that the State is able to comply with its legal obligations in respect of the health of the Hospital Users.
- (b) If:
- (i) a Relevant Person does not have a current assessment notice as described in paragraph (a)(ii)(A); or
  - (ii) any police clearance conducted under paragraph (a)(ii)B evidences that any Relevant Person has committed a criminal offence punishable by imprisonment or detention (which is not a spent conviction within the meaning of the *Spent Convictions Act 1988* (WA)),
- then the State may, without prejudice to its other rights under this Agreement, request the Operator to promptly remove that Relevant Person from the Health Campus and any involvement in the provision of the Services.
- (c) The Operator must ensure that, without limiting paragraphs (a) and (b), the State is notified if any event occurs in relation to a Relevant Person which causes, or has the potential to cause, that Relevant Person to pose a danger to the health or well-being of Hospital Users, including where a Relevant Person:
- (i) has contracted or been exposed to a potentially serious or contagious illness or disease (including if that Relevant Person has travelled to areas where the risk of contracting any such illness or disease is elevated);
  - (ii) has been convicted of a criminal offence; or
  - (iii) would no longer pass screening tests of the type referred to in paragraph (a) if those tests were re-applied,

in which the case the Operator must, upon request by the State, remove that Relevant Person from the Health Campus.

## 7.12 Removal of personnel

- (a) The State may, acting reasonably, direct the Operator to remove any individual employed or engaged by the Operator or any individual employed or engaged by a Subcontractor from the Health Campus or from their involvement in any activity connected with the Project (provided that, if the individual being removed is the Hospital Chief Executive, then this paragraph (a) will only apply in the event that the parties have first complied with Clauses 7.15(b) and 7.15(c)).
- (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 7.10.
- (c) On receipt of a direction in accordance with paragraphs (a) or (b), the Operator must take immediate steps to:
  - (i) remove or procure the removal of the individual from the Health Campus or from any activity connected with the Project;
  - (ii) prevent or procure that the relevant individual does not have access to the Health Campus or confidential information; and
  - (iii) if necessary, appoint an alternative individual acceptable to the State.
- (d) Following removal in accordance with this Clause 7.12, the individual must not:
  - (i) be employed or engaged in connection with activities connected with the Project; and
  - (ii) have access to the Health Campus or any confidential information, without the prior approval of the State.

## 7.13 Security of payment

- (a) This Clause will apply only to the extent that the *Construction Contracts Act 2004* (WA) (**CCA**) applies to any Subcontract.
- (b) Expressions defined or used in the CCA have the same meaning for the purposes of this Clause 7.13 (unless the context otherwise requires).
- (c) If the CCA applies to any Subcontract the Operator must:
  - (i) within 2 Business Days of receiving any application or notice in accordance with the CCA, give a copy of that application or notice to the State; and
  - (ii) within 1 Business Day of receiving any notice of a Subcontractor's intention to suspend work under a Subcontract in accordance with the CCA, give a copy of that notice to the State.

## 7.14 Engagement of employees

If, at any time during the Term, 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 (other than any such person who was previously employed by the State

at Swan District Hospital and who was engaged by the Operator on and from the earlier of the Services Commencement Date and the date of commencement of the Interim Management Services), 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 as may be agreed between the parties).

### 7.15 Hospital Chief Executive

- (a) As soon as reasonably practicable prior to the appointment of any person as Hospital Chief Executive:
  - (i) the Operator will notify the State of the name and relevant experience of the person who the Operator proposes to appoint as Hospital Chief Executive;
  - (ii) the State will consider the proposed appointment in a timely manner, having regard to the interests of the Operator in making a timely appointment of a suitable candidate; and
  - (iii) if required by the State, the Operator will discuss with and consider any views the State may have on the proposed appointment provided that the decision to appoint will remain that of the Operator.
- (b) If, at any time, the State is of the view that the Hospital Chief Executive is not adequately performing his or her obligations under this Agreement or is otherwise unsuitable to carry out those obligations, the State may issue a notice to that effect to the Operator (**Chief Executive Performance Notice**).
- (c) The chief executive officer of the Operator (unless the subject of a Chief Executive Performance Notice, in which case the person to whom that person is immediately responsible) and the CEO (or a representative of the CEO) must meet within 10 Business Days of the issue of a Chief Executive Performance Notice to discuss and attempt to agree measures to address the concerns that led to the issue of the Chief Executive Performance Notice.

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## 8. Requirements for Plans

- (a) The Plans as at the Date of this Agreement are contained in Attachment 4.
- (b) The Plans must use a consistent template (where possible) and comply with the relevant requirements set out in Attachment 2 (Requirements for Plans) (if applicable) and the reasonable requirements of the State at all times.
- (c) The Operator must prepare and update each of the Plans:
  - (i) in accordance with any requirements for updating each of the Plans set out in Attachment 2 (Requirements for Plans);
  - (ii) if reasonably requested by the State Representative to do so; and
  - (iii) as otherwise necessary to reflect any changes to the nature or status of the Project or the Services.

- (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 perform the Services and the Operator's other obligations under this Agreement in accordance with the Plans.

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## 9. Interim Management and Patient Transfer

### 9.1 Interim management

- (a) The State must provide a draft copy of the Interim Management Agreement by not later than 1 March 2013, following which the parties must:
  - (i) meet to discuss the process for negotiation of the Interim Management Agreement; and
  - (ii) acting reasonably, do all things reasonably necessary to:
    - A. attempt to agree the form and terms of; and
    - B. execute,the Interim Management Agreement prior to 1 July 2013 (provided that the Operator may elect that the Interim Management Agreement is instead entered into by the Key Service Provider, in which case it must, once the form and terms of the Interim Management Agreement are agreed, procure the execution of the Interim Management Agreement by the Key Service Provider).
- (b) The parties acknowledge that, unless otherwise agreed between the parties, the Interim Management Agreement will be based on the IMA Terms Sheet with amendments to the dates set out in the IMA Terms Sheet to reflect changes in the Works Program (if any).
- (c) If:
  - (i) by 1 July 2013 (or any later date agreed between the parties), the parties have not agreed on the terms of and executed the Interim Management Agreement; or
  - (ii) the parties have entered into the Interim Management Agreement but:
    - A. the term of the Interim Management Agreement has expired; or
    - B. the Interim Management Agreement is terminated,prior to the Date of Completion,then,
  - (iii) the Patient Transfer Services will be performed by the State (**Hard Transfer**);

- (iv) the Operator will be granted relief from its obligation to achieve Performance Thresholds in relation to various KPIs to the extent and for the duration (if any) set out in the “Relief if Hard Transfer” column of the KPI Tables; and
- (v) the remainder of this Clause 9 will not apply.

## 9.2 Patient Transfer Plan

The Operator must submit an updated Patient Transfer Plan to the State Representative for review in accordance with the Review Procedures:

- (a) 3 months prior to the commencement of the Patient Transfer Period; and
- (b) at such other times as reasonably requested by the State Representative.

## 9.3 Patient Transfer Services

- (a) Subject to the parties, or the Key Service Provider in substitution for the Operator, entering into the Interim Management Agreement, the Operator must perform the Patient Transfer Services in accordance with the Patient Transfer Plan and in order to meet the Patient Transfer KPIs within the Patient Transfer Period.
- (b) Once the Operator is satisfied that the Patient Transfer Services have been completed, it must provide notice of that fact to the State together with such evidence of the satisfactory performance of the Patient Transfer Services as the State may require.
- (c) The State must:
  - (i) inspect the performance of the Patient Transfer Services (and the Operator must provide such access to the Health Campus and all records and other information as the State may require in this regard);
  - (ii) notify the Operator whether or not it is satisfied that the Patient Transfer Services have been completed in accordance with this Agreement; and
  - (iii) if the State is not satisfied that the Patient Transfer Services have been satisfactorily performed in accordance with the Operator's obligations under this Clause 9, direct the Operator as to which steps it requires the Operator to take in order to complete the Patient Transfer Services, in which case:
    - A. the Operator must comply with any such direction; and
    - B. paragraphs 9.3(b) to 9.3(d) will apply again.
- (d) For the avoidance of doubt:
  - (i) the Operator maintains full responsibility for the timely and satisfactory performance of the Patient Transfer Services (including in respect of the clinical governance of and responsibility for all patients transferring from SDH to the Health Campus) at all relevant times;
  - (ii) the Operator also has sole responsibility for the clinical governance of all patients at SDH from the commencement of the Patient Transfer Period until completion of the Patient Transfer Services; and

- (iii) the State assumes no Liability in this regard by virtue of any direction given under subparagraph (c)(iii).
- (e) The Operator must ensure that all clinical staff directly involved in the provision of the Patient Transfer Services will be employees of, or contractors engaged by, the Operator or the Key Service Provider for the duration of the Patient Transfer Services.

## **9.4 Patient Transfer Payment**

- (a) Subject to paragraph (b), following service of the State's notice under Clause 9.3(c)(ii) that the Patient Transfer Services have been satisfactorily performed by the Operator:
  - (i) the Operator must provide a tax invoice to the State in respect of the Patient Transfer Payment (if a positive number); and
  - (ii) the State must pay the Patient Transfer Payment to the Operator within a reasonable period following receipt of the Operator's tax invoice.
- (b) Subject to this Agreement, the Patient Transfer Payment:
  - (i) will be the only compensation payable by the State to the Operator in respect of its costs, expenses and losses incurred in the course of the performance of the Patient Transfer Services; and
  - (ii) will be reduced by:
    - A. any abatements calculated in accordance with the Abatement Regime; and
    - B. the amount of any additional cost incurred by the State as a result of the Operator not performing the Patient Transfer Services in accordance with this Clause 9.

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## **10. Health Campus**

### **10.1 Condition of Site**

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

- (a) the Health Campus;
- (b) the existence, location, condition or availability of any Utility or infrastructure on or servicing the Health Campus; and
- (c) any Site Conditions.

### **10.2 Contamination**

- (a) If the Operator discovers any Contamination in, on, over, under or emanating from the Health Campus (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, at its cost:
  - (i) Remediate:
    - A. any Contamination in, on, or under the Health Campus; or
    - B. any Contamination which has emanated or is emanating from or to the Health Campus,  
  
if required by, and in accordance with, all Laws and any Environmental Notice (provided that, to the extent that the Remediation is in respect of Compensable Contamination, the State will reimburse (subject to the Operator's compliance with paragraphs (d) to (f)) to the Operator its costs actually and reasonably incurred in:
    - C. undertaking that Remediation; and
    - D. performing its obligations under subparagraphs (ii) and (iii);
  - (ii) comply with all requirements of any Authority in connection with any Contamination referred to in subparagraph (i) or the Remediation of such Contamination; and
  - (iii) take all reasonable steps to avoid or mitigate the effects of any Compensable Contamination of the type referred to in paragraph (c) of the definition of "Compensable Contamination".
- (d) If the Operator is required to Remediate any Compensable Contamination in accordance with paragraph (c), 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 Compensable Contamination encountered and why the Operator believes the Contamination is Compensable Contamination;
    - B. the method by which the Operator believes the Compensable Contamination should be Remediated;
    - C. the additional work and additional resources which the Operator estimates to be necessary to Remediate the Compensable Contamination;
    - D. the Operator's estimate of the cost of the measures necessary to Remediate the Compensable Contamination; and
    - E. the steps the Operator is proposing to take to avoid or mitigate the effects of any Compensable Contamination.

- (e) Within 5 Business Days of receipt of the notice provided in paragraph (d), the Operator and the State must meet to agree on a method of Remediation of the Compensable Contamination and the steps the Operator must take to avoid or mitigate the effects of any Compensable Contamination.
- (f) If the parties are unable to agree on the method of Remediation and the steps the Operator must take to avoid or mitigate the effects of any Compensable Contamination, either party may refer the matter to dispute resolution in accordance with Clause 31.
- (g) 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;
  - (ii) if the Environmental Notice is addressed to the State, obtain the consent of the State prior to commencing any action to challenge or appeal the Environmental Notice on behalf of the State;
  - (iii) if required by the State, lodge an appeal or challenge against the Environmental Notice (which will be at the State's cost to the extent that it relates to Compensable Contamination);
  - (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.

### 10.3 Artefacts

- (a) Any Artefacts discovered on or under the surface of the Health Campus will be the property of the State.
- (b) If an Artefact is discovered in the Health Campus 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 in accordance with 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) comply with any direction of the State in respect of any Artefact.

#### **10.4 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 connection with any part of the Health Campus; 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 Health Campus or any part of them as a consequence of a Native Title Claim or Heritage Claim.
- (b) If there is a Native Title Claim or Heritage Claim in connection with the Health Campus or any part of it, then the Operator must:
  - (i) continue to perform its obligations in accordance with 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.

#### **10.5 General Environment provisions**

The Operator must ensure that in delivering the Project:

- (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:
  - (i) any non-compliance with the requirements of this Clause 10.5;
  - (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) if the Operator causes or contributes to an Environmental Incident, the Operator must at its own cost:
  - (i) take immediate and reasonable action to stop the activity causing or contributing to the Environmental Incident; and
  - (ii) rectify and repair any loss or damage arising from the Environmental Incident in accordance with any applicable obligations under any Law, Authorisations and other requirements of this Agreement.

## 10.6 General Health Campus provisions

- (a) The Health Campus may be accessed by the Operator only for the purpose of delivering the Services and otherwise exercising its rights or performing its obligations under this Agreement or the Project Documents.
- (b) The Operator acknowledges that smoking is not permitted anywhere on the Health Campus, and must ensure that the Personnel and Hospital Users comply with this requirement.
- (c) The State may (acting reasonably) refuse admittance to, or require the removal or non-admittance of, any person (other than Operator Personnel, who are addressed in Clause 7.12) from the Facility or the Health Campus whose presence poses, or is reasonably believed by the State to pose, a risk to the health or well-being of the Hospital Users. Such action does not relieve the Operator of any of its obligations under this Agreement.
- (d) If the State refuses admittance or requires the removal of a person under this Clause 10.6 or otherwise under this Agreement, the Operator must, at its own cost, promptly remove the person and (if the person is a Relevant Person) arrange a replacement for the Relevant Person.
- (e) The Operator must ensure the continuous supply of Utilities to and within the Health Campus sufficient to perform its obligations under this Agreement and (without limitation) to ensure the continuous uninterrupted provision of the Services.

## 10.7 Adjacent Land

The Operator must use its best endeavours to procure an unconditional option to purchase the Section 10E Land or other land adjacent to the Site which is suitable (in the reasonable opinion of the Operator) for the construction of a private hospital (**Adjacent Land**) within 18 months (or such longer period as allowed by the State in its discretion) of the Date of this Agreement.

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## 11. Safety and Industrial Relations

### 11.1 Occupational health, safety and rehabilitation

- (a) **(OHS Laws):** In this Clause 11:
  - (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* (Cth); and
  - (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 Term 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 Services.

- (c) **(Comply with OHS Laws):** Without limiting Clause 25.2, the Operator must:
- (i) comply with all OHS Laws, ensure its employees, contractors and volunteers 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) **(Cooperation and notice):** The Operator must:
- (i) cooperate with any other contractors or other persons engaged in or associated with the business of the State in order to maintain uniform health and safety practices and ensure compliance with OHS Laws; and
  - (ii) cooperate with the State to enable the State to comply with its obligations in accordance with all relevant OHS Laws.
- (e) **(Ultimately responsible):** The Operator accepts that it is responsible for:
- (i) the control and management of the Health Campus and the performance of the Services for the purposes of delivering the Project and discharging the duties imposed by the OHS Laws; and
  - (ii) all health and safety at the Health Campus,
- 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.

## 11.2 Breach of OHS Laws

Any breach by the Operator or its employees, contractors or volunteers of OHS Laws or the requirements of this Clause 11 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 Services (and the Operator must bear any cost it incurs as a result of the suspension).

### **11.3 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 11.3 in the event that a reportable situation (as that term is defined in the *Dangerous Goods Safety Act 2004* (WA)) occurs.

### **11.4 Audit**

The State may, at any time and from time to time, perform an audit of the Operator's Records and inspect the Health Campus to identify whether the Operator has breached this Clause 11 or any requirements of a Plan relating to workplace health and safety.

### **11.5 Occupational health and safety incident reports**

The Operator must immediately notify the State if:

- (a) a significant occupational health and safety incident occurs on the Health Campus that causes, or is likely to cause, a reduction in the Services, personal injury, death or damage to property or closure of all or part of the Health Campus; or
- (b) any incident which is reportable under OHS Laws occurs on the Health Campus.

### **11.6 Industrial issues**

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

- (i) Subject to this Clause 11.6, the Operator is solely responsible for the management of all Industrial Relations Matters in connection with delivering the Services including the conduct of all proceedings, conferences, negotiations and dealings with unions and union representatives, provided that the Operator must comply with any direction of the State in relation to any Industrial Relations Matter which does not relate solely to the Operator's own employees.
- (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 relations 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 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;

- D. ensure that its Personnel do not engage in workplace behaviour which contravenes Health Campus policies in relation to workplace behaviour and fitness for work; and
- E. provide evidence of its compliance with this subparagraph (a)(ii) if requested by the State to do so.

**(b) No Claims as a result of changes in terms of employment**

Any Liability of the Operator arising 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 provided expressly 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 Services, and the Health Campus; and
  - B. all matters relevant to the employment of labour at the Health Campus.

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## **12. Provision of Services and Operations**

### **12.1 Services**

- (a) The Operator must provide the Services in accordance with the Annual Notice, the Activity Schedule and the terms of this Agreement.
- (b) Subject to paragraph (c), the Operator must at all times make the whole of the Public Patient Facility available for the provision of Services to Public Patients.
- (c) Notwithstanding paragraph (b):
  - (i) the Operator may admit Private Patients to the Public Patient Facility provided that admission of Private Patients does not adversely impact the Operator's ability to provide the Services to Public Patients in accordance with this Agreement;
  - (ii) use of the Shared Infrastructure by the Operator in relation to Private Patients must not adversely impact the Operator's ability to provide the Services to Public Patients in accordance with this Agreement; and

- (iii) the use of any part of the Private Patient Facility or the Private Proportion of Shared Infrastructure by the Operator during the provision of the Services will be at no extra charge to the State.
- (d) Without limiting Clause 1.3(d), the Activity Schedule forms part of this Agreement, and the parties must each comply with their obligations set out in the Activity Schedule.
- (e) For the avoidance of doubt, the performance of any Services within the Private Patient Facility does not relieve the Operator from its obligations under this Agreement in respect of the performance of those Services.
- (f) Notwithstanding anything else contained in this Agreement, the Operator is not required to provide the following services as part of the Services:
  - (i) termination services (medical or surgical);
  - (ii) sterilisation services (male or female);
  - (iii) artificial conception procedures and reproductive technology; or
  - (iv) contraception services,provided that the Operator must manage the non-provision of these services in accordance with the Provision of Services Relating to Conception, Contraception & Gynaecology Services Plan, as approved by the State.

## 12.2 General obligations during Operational Phase

Without limiting Clause 6.1, the Operator must comply with the General Service Obligations in relation to the performance of the Services and the delivery of the Project at all times throughout the Operational Phase.

## 12.3 Licensing

The Operator must ensure that, at all times during the Operational Phase, the Operator or the Key Service Provider:

- (a) to the extent required by Law, procures, maintains and renews the Hospital Licence in a form and substance sufficient to provide the Services from the Public Patient Facility in accordance with this Agreement;
- (b) complies with all material terms and conditions attaching to or contained in the Hospital Licence;
- (c) ensures that any Adverse Licence Condition is promptly and unconditionally addressed or rectified and removed or withdrawn;
- (d) on request, provides to the State full and certified copies of the Hospital Licence; and
- (e) procures and maintains the issue of a provider number for the Facility and the making of a declaration under Section 121-5 of *the Private Health Insurance Act 2007* (Cth) that the Facility is a private hospital.

## 12.4 Accreditation

The Operator must provide the State with a copy of any report relating to the Accreditation Requirements received from the Australian Council on Healthcare Standards (or other

accrediting body that provides any of the Accreditation Requirements) upon request by the State.

## 12.5 Medicare agreement

- (a) The parties acknowledge the provisions of the *Medicare Agreements Act 1992* (Cth) and of the NHA whereby medical principles and commitments have been agreed between the parties to the NHA.
- (b) The Operator further acknowledges and agrees that:
  - (i) those principles and commitments and any amendments to them and any future Medicare principles and commitments agreed between those same parties will be honoured and observed in the operation of the Facility; and
  - (ii) the Operator must do all things necessary to facilitate, and not do anything to prejudice, the State's rights and entitlements under the *Medicare Agreements Act 1992* (Cth).

## 12.6 Community Advisory Council

- (a) The Operator must, from the Date of Completion and thereafter throughout the Operational Phase, confirm and maintain a community advisory council (**Community Advisory Council**) of not less than 6 members of whom:
  - (i) 1 must be the chief executive officer, the deputy chief executive officer, the director of medical services or the director of nursing (or any substitute or replacement position) of the Operator employed at the Public Patient Facility or his nominated delegate approved by the State (acting reasonably); and
  - (ii) 75% must be community representatives of whom 2 must be appointed by the State.
- (b) The Community Advisory Council must act in accordance with the CAC Terms of Reference and all applicable State and Commonwealth guidelines from time to time.
- (c) Rules governing meetings of the Community Advisory Council will be determined from time to time by the Community Advisory Council.
- (d) Members of the Community Advisory Council (other than the members referred to in subparagraph (a)(ii)) may only be appointed by the Operator after consultation with the State and may not be removed without prior consultation with the State.

## 12.7 Volunteer organisations and donations

- (a) The Operator must identify and adopt an ongoing role at the Public Patient Health Campus for volunteer and auxiliary organisations in a manner that complements and contributes to the Services and that develops and maintains strong relationships and links with the local community.
- (b) The role of the volunteer and auxiliary organisations referred to in paragraph (a) is to:
  - (i) assist the Operator's Personnel with non-medical tasks;
  - (ii) assist with and provide supplies and companionship to Public Patients on the campus;

- (iii) provide services or assistance to the local community; and
  - (iv) provide members of the community with an opportunity to volunteer at the Health Campus.
- (c) The Operator must ensure that:
  - (i) each volunteer and auxiliary organisation referred to in paragraph (a) is registered as a non-profit organisation by the Department of Fair Trading;
  - (ii) all volunteers have a police clearance and sign a confidentiality agreement and conflict of interest declaration document as required by the State;
  - (iii) volunteers attend an initial orientation workshop prior to commencing services followed by annual updates; and
  - (iv) volunteers are issued with ID cards and are easily identifiable.
- (d) The Operator must ensure that all donations received by the Operator for the benefit of Public Patients are:
  - (i) held on trust for the benefit of Public Patients; and
  - (ii) applied solely for the benefit of Public Patients.
- (e) On the Expiry Date or earlier date of termination of the Term, the Operator must pay any donations then held by the Operator to the State or its nominee to be held by the State or its nominee upon the trusts set out in paragraph (d) above.
- (f) The Operator will, in addition to the powers otherwise conferred upon trustees by Law, have the following powers:
  - (i) to open any account or accounts with any bank or banks and to operate by and in all usual ways any such account or accounts;
  - (ii) to pay out of all moneys held all Taxes and all reasonable expenses incurred in acting as trustee in respect of the above trusts;
  - (iii) to give effectual receipts and discharges for all donations received; and
  - (iv) to do all such other things as may be incidental to the exercise of the above powers and authorities.

## 12.8 Disasters/Networking and Planning

- (a) The Operator must participate in, and contribute to, Disaster and counter Disaster planning, implementation measures, simulated Disasters and other training exercises and related activities as reasonably determined from time to time by the Department or otherwise required to be complied with by the State (including pursuant to the *Emergency Management Act 2005* (WA), the Hospitals Act or any other Law or statute) (**Disaster Measures**).
- (b) If:
  - (i) the State gives notice that a Disaster has occurred or is likely to occur; or
  - (ii) issues a Disaster Services Plan,



the Operator must:

- (iii) fulfil the roles set out in the State emergency or disaster services plan adopted or approved by the Department from time to time, including to any emergency or disaster services plan adopted or approved pursuant to the *Emergency Management Act 2005* (WA), the Hospitals Act or any other Law (**Disaster Services Plan**); and
  - (iv) without limiting Clause 10.6(e), use its best endeavours to ensure the continuous supply of Utilities to the Health Campus.
- (c) The Operator must use its best endeavours to comply with the obligations set out in paragraphs (a) and (b) notwithstanding that it may otherwise be prevented or released from its obligation to do so by the fact that the Disaster or disaster the subject of the Disaster Measures or Disaster Services Plan also constitutes a Force Majeure Event.
- (d) The Operator must participate in the Department's reviews and planning of disaster services to Public Patients in the Perth metropolitan area to the same extent as the public hospitals in the Perth metropolitan area.
- (e) The Operator must promptly report all matters which might or have the potential to constitute a Disaster to the Department in accordance with protocols or rules determined by the Department, the SECG, any other Authority or the LARU from time to time and must provide appropriate notification in accordance with the protocols advised to it from time to time (which at the Services Commencement Date is the Department's dedicated 24/7 emergency call line).
- (f) If the Operator's compliance with the Disaster Services Plan in accordance with paragraph (b) requires the Operator to perform:
- (i) services which are substantially of the nature of the Services, the Operator will be entitled to payment in respect of those services in accordance with the Payment Schedule as if those services were "Services" for the purposes of this Agreement; or
  - (ii) services which are different to the Services, the Operator is entitled to be reimbursed the reasonable additional cost of delivery of the services performed (excluding any element of profit),

and in each case the Operator may include a claim for the payment of these amounts in the next Operations Payment Claim to be submitted by the Operator under Clause 13 (provided that, in the case of a claim for costs as referred to in subparagraph (ii), this claim must be supported by such information as the State may reasonably require on an open-book basis).

- (g) The Operator's obligations under this Clause 12.8 and its right to receive payment under paragraph (f) will not constitute a change to the Maximum Payment Amount, unless expressly advised by the State.

## 12.9 Health Initiatives

- (a) The parties acknowledge that it is likely that, in order to meet requirements for the delivery of high quality and cost effective health care initiatives, the State may require the implementation of various Health Initiatives.
- (b) If the State has notified the Operator of its requirement for the Operator to implement a Health Initiative at the Health Campus, the Operator must implement that Health Initiative at the Health Campus.

- (c) In further developing and implementing any Health Initiative pursuant to paragraph (b) above, the Operator must:
  - (i) take a development as well as implementation role;
  - (ii) comply with protocols and guidelines developed and applied by the State in the State's public hospitals (as far as is practicable given that the Facility is a private hospital);
  - (iii) share all relevant data with the State, including in respect of cause, process and outcomes of Health Initiatives; and
  - (iv) ensure that all Intellectual Property created in the course of the implementation of a Health Initiative is vested in the State or the State is granted an irrevocable, perpetual, royalty-free, non-exclusive, transferable licence (including the right to sublicense) to use that Intellectual Property for any purpose in connection with the Project.
- (d) The parties acknowledge and agree that, to the extent that the implementation of any Health Initiative by the Operator under this Clause would otherwise constitute a Facility Variation or a Service Variation, then any corresponding compensation or reimbursement to which the Operator may be entitled will be determined in accordance with Clauses 14 or 15 as if the implementation of that Health Initiative was a Facility Variation or a Service Variation respectively.
- (e) The Operator must at all times endeavour to create and develop additional health initiatives, reforms, schemes and programs which are consistent with the provision of the Services under this Agreement, and must provide the State (on the State's reasonable demand) evidence of the Operator's endeavours.
- (f) Any health initiative which the Operator seeks to implement in accordance with paragraph (e) will be treated as an Operator Service Variation for the purposes of Clause 14.
- (g) To the extent that the PBS becomes available to private providers of public health services, the Operator must promptly implement that element of the PBS (such that that element of the PBS is fully implemented within 2 years (or as otherwise agreed by the State acting reasonably) of it becoming available) in order to procure reimbursements from the Commonwealth under the PBS as they relate to the Facility and the Services.

## 12.10 Private Patient Facility

In operating the Private Patient Facility, the Operator:

- (a) must maintain (or, if applicable, ensure that the Key Service Provider maintains) a Private Hospital Licence in respect of the Private Patient Facility at all times;
- (b) is only entitled to provide services to Private Patients which are complementary to, and do not interfere with, the Services provided from the Public Patient Health Campus;
- (c) must not make inappropriate transfers of Patients from the Private Patient Facility to the Public Patient Facility, or inappropriate reclassifications of Private Patients to Public Patients (both as defined by the NHA 'unforeseen requirements');
- (d) must ensure that the provision of the Services and the performance of its obligations under this Agreement are in no way prejudiced or compromised;

- (e) must do all things reasonably necessary to ensure that the Private Patient Facility is able to operate to its full capacity in accordance with the Private Facility role delineation as at the Date of this Agreement at all times, regardless of the presence of any Disaster or emergency situation and any other circumstances;
- (f) subject to paragraph (b) and Section 7 of the Activity Schedule, may use the Public Patient Facility for the treatment of Private Patients, but only to the extent that the Services continue to be provided as required in this Agreement and no Public Patient in any way suffers a detriment or is denied access to treatment, and the Operator indemnifies the State in respect of any loss or damage suffered by the State as a result of the Operator's use of the Public Patient Facility for the treatment of Private Patients; and
- (g) must ensure that any naming rights granted in respect of any part of the Private Patient Facility do not endure beyond the term of the Operator's or Key Service Provider's leasehold interest in the Private Patient Facility.

## 12.11 Private Leases

- (a) Unless the Operator's rights and entitlements in respect of the Private Patient Facility have otherwise been expressly terminated under this Agreement, the State must, upon the natural expiry of the Term in accordance with Clause 5.2(a) (including any extension of the Term under Clause 5.2(c)) grant the Operator (or, if nominated by the Operator, the Key Service Provider) the Private Patient Facility Lease.
- (b) In all cases where the State is required to grant the Private Patient Facility Lease or the Private Site Lease to the Operator (or, if nominated by the Operator, the Key Service Provider) under this Agreement then:
  - (i) unless otherwise agreed between the parties, the lease will incorporate:
    - A. the terms set out in:
      - 1) in the case of the Private Patient Facility Lease, the terms sheet contained in Schedule 23; and
      - 2) in the case of the Private Site Lease, the terms sheet contained in Schedule 24;
    - B. any other terms expressly referred to in this Agreement as being incorporated in the Private Patient Facility Lease or Private Site Lease (as applicable); and
    - C. any other terms and conditions agreed to between the parties (acting reasonably);
  - (ii) the parties must act reasonably in attempting to agree the full form of the Private Patient Facility Lease or Private Site Lease (as applicable) as soon as practicable following the date on which the circumstances giving rise to the grant of the Private Patient Facility Lease or Private Site Lease (as applicable) occur in accordance with this Agreement, provided that the parties will be deemed to have entered into the Private Patient Facility Lease or Private Site Lease (as applicable) on the terms set out in Schedule 23 or Schedule 24 respectively from the date on which the circumstances giving rise to the grant of the Private Patient Facility Lease or Private Site Lease (as applicable) occur in accordance with this Agreement until the full form of the Private Patient Facility Lease or

Private Site Lease (if any) is agreed between and executed by the parties;

- (iii) each party acknowledges and agrees that the terms for the Private Patient Facility Lease or Private Site Lease (as applicable) set out in Schedule 23 or Schedule 24 respectively are sufficient to constitute a binding and enforceable lease and intend to be legally bound by them; and
- (iv) in the absence of agreement between the parties on the other terms for the Private Patient Facility Lease or Private Site Lease (as applicable), the parties will share the Shared Infrastructure on a fair and equitable basis.

## 12.12 Audit

- (a) The State may, at any time and from time to time, perform an audit of the Operator's Records and inspect the Health Campus to identify the Operator's compliance with any of its obligations under this Agreement or the Project Documents.
- (b) Without limiting paragraph (a), the parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary:
  - (i) the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA) (or any substituted legislation) are not limited or affected by the terms of this Agreement and each party submits to those powers and responsibilities;
  - (ii) the Operator may be the subject of an audit by the Auditor General pursuant to the *Auditor General Act 2006* (WA) or the *Financial Management Act 2006* (WA); and
  - (iii) without limiting subparagraph (i), the Operator covenants with the State that it will cooperate and comply with the directions of the Auditor General in relation to any audit referred to in subparagraph (ii).

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## 13. Payment during the Operational Phase and Performance standards

### 13.1 Monthly Service Payment

- (a) The Operator will be paid the Monthly Service Payment:
  - (i) calculated in accordance with the Payment Schedule;
  - (ii) adjusted in accordance with this Agreement; and
  - (iii) payable in arrears.
- (b) No Monthly Service Payments are payable prior to the Services Commencement Date.

### 13.2 Other payments

- (a) The State will pay any payment (other than the Monthly Service Payment) which becomes due and payable to the Operator, and the Operator will pay any payment

which becomes due and payable to the State, at the time specified in, and in accordance with, this Agreement or the relevant State Project Documents.

- (b) If no time is specified for the payment of the relevant amount in accordance with paragraph (a), then a claim for that amount may be submitted by the Operator together with the next Operations Payment Claim, and will be paid by the State within 20 Business Days (or such longer time as may be reasonable in the circumstances) of receipt of that Operations Payment Claim.
- (c) The Operator must not claim an entitlement to payment (in an Invoice or otherwise) of any amount which has already been claimed from the State or otherwise compensated, whether as part of the Monthly Service Payment, any other payment to which the Operator is entitled under this Agreement or otherwise.

### 13.3 Payment

- (a) **(Operations Payment Claim):** The Operator must prepare and provide to the State a payment claim (an **Operations Payment Claim**) for the Monthly Service Payment for that Month:
  - (i) calculated in accordance with the Payment Schedule (and Clause 12.8, if applicable);
  - (ii) which complies with the Reporting Schedule and the Activity Schedule; and
  - (iii) which, for the avoidance of doubt, may be split into separate Operations Payment Claims in respect of:
    - A. Non-Admitted Services, and Admitted Services which are not DRG Services;
    - B. other Admitted Services; and
    - C. any other matters the subject of an Operations Payment Claim,(provided that any Failure Abatements relating to Services the subject of an Operations Payment Claim must also be set out within that Operations Payment Claim),as soon as practicable after the end of the relevant Month.
- (b) **(Operations Payment Statement):** The State:
  - (i) may recalculate the amounts in any Operations Payment Claim if the State believes that this is necessary for the Operations Payment Claim to correctly reflect the amount payable to or by the Operator in accordance with this Agreement; and
  - (ii) will, within 5 Business Days after receipt by the State of an Operations Payment Claim, provide to the Operator a statement (**Operations Payment Statement**) stating the amount payable to or by the Operator and any recalculations made to the amounts set out in the Operations Payment Claim.
- (c) **(Invoice):** The Operator will provide the State an Invoice in respect of any supplies (as defined in the GST Law) the subject of the Operations Payment Statement within 2 Business Days of receipt of the Operations Payment Statement.

- (d) **(Timing of payment):** Subject to paragraph (c) and Clause 39.2, payment of the amount stated to be payable to or by the Operator in an Operations Payment Statement will be made by the State to the Operator or by the Operator to the State (as applicable) within 10 Business Days of receipt of the Invoice described in paragraph (c), provided that the State must use its reasonable endeavours to make that payment within 5 Business Days of receipt of the relevant Invoice.
- (e) **(Payment not evidence of proper performance):** The payment of Monthly Service Payments by the State to the Operator will not of itself be evidence that the Services have been performed by the Operator in accordance with the State Project Documents.

#### 13.4 Performance assessment and reporting

- (a) **(Objectives):** The objectives of the KPIs are to measure the Operator's performance in accordance with this Agreement. The Operator must set up an electronic system to record and report the Operator's performance against each KPI, which system must contain an audit log and data amendment tracking capability that meets standards as reasonably prescribed by the State from time to time.
- (b) **(Achievement of KPI):** In performing the Services, subject to Clause 9.1(c)(iv), the Operator must achieve each of the Performance Thresholds, and endeavour to achieve each of the Target Levels.
- (c) **(Performance Data):** The Operator must:
  - (i) subject to the State providing reasonable prior notice, give the State access to (for the purposes of review) the Performance Data at all reasonable times;
  - (ii) ensure the availability and continuous integrity of the Performance Data;
  - (iii) ensure that all Performance Data is not amended or deleted without the State's consent; and
  - (iv) ensure that the Performance Data is accurate and keep a copy of all Performance Data for 7 years after its collection.
- (d) **(Other information):** The Operator must, in addition to the other requirements of this Clause, maintain (in electronic format) a log for recording the start and end times and any other information requested by the State from time to time, in respect of all Failures in a form that can be audited by the State.
- (e) **(Audit):**
  - (i) At any time up to 12 Months after the end of the Operational Phase, the State may give notice to the Operator requiring an audit of the Performance Data, the Monthly Performance Reports or the Monthly Activity Reports to verify their accuracy (**Performance Audit Notice**).
  - (ii) If the State gives the Operator a Performance Audit Notice:
    - A. the State will appoint and notify the Operator of a person to conduct the audit (Performance Auditor), at the State's cost and on terms reasonably determined by the State; and
    - B. the Operator must, within a reasonable period, make the Performance Data, the Monthly Performance Reports and the

Monthly Activity Reports available, and provide all necessary assistance (including access to senior management and personnel as reasonably required by the Performance Auditor), to the Performance Auditor.

(f) **(Inaccurate data or reports):** If:

- (i) a report provided to the State in accordance with Section 3.4 of the Reporting Schedule;
- (ii) the report prepared by the Performance Auditor in accordance with subparagraph (e)(ii); or
- (iii) any review of the Performance Data, the Monthly Activity Report or the Monthly Performance Reports,

reveals that the Performance Data, a Monthly Activity Report or a Monthly Performance Report is not accurate, the Operator must:

- (iv) fix the inaccuracy and reissue the relevant data or report to the State;
- (v) reassess the occurrence or extent of any Failure and reduce the amount of the next Operations Payment Claim by any positive amount equal to the actual amount of any Failure Abatements which should have been incurred plus interest payable at the Default Rate; and
- (vi) pay the costs of the Performance Auditor, or reimburse the State for any costs of the Performance Auditor paid by the State (provided that the State must pay these costs itself if the audit reveals that the inaccuracy was a material one and the resolution of that inaccuracy works to the favour of the Operator).

(g) **(No limitation to State claim):**

- (i) The deduction of any Failure Abatement from the Monthly Service Payment does not in any way affect or limit any right or remedy of the State pursuant to this Agreement or in Law or in equity.
- (ii) The State may make a Claim against the Operator in respect of any loss or damage suffered or incurred by the State arising out of or in connection with any Failure or other failure to provide the Services in accordance with this Agreement to the extent that the State has not been fully compensated for that loss or damage by the deduction of the Failure Abatement.

(h) **(No penalty):** The Operator agrees to exclude and waives any right of the benefit to the application of any legal rule or norm, including in accordance with any Law, relating to the enforceability of this Clause 13.4 or the characterisation of it as a penalty.

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## 14. Service Variations

### 14.1 Service Variations proposed by the State

- (a) **(Directing a Service Variation):** The State may, at any time during the Term, give the Operator a written request requiring the Operator to undertake a Service Variation (**Service Variation Order**).

(b) **(Contents of Service Variation Order):** The Service Variation Order must (subject to paragraph (c)) include particulars of:

- (i) any adjustment to the Monthly Service Payment or the payment of any other amount, (and which may be an increase or a reduction to those amounts) calculated in accordance with the Change Compensation Schedule; and
- (ii) the effect (if any) of the proposed Service Variation on:
  - A. the Abatement Regime and the KPIs;
  - B. the Services Specification; and
  - C. any other relevant information related to the proposed Service Variation,

and the Operator must notify the State within 15 Business Days of the date of the Service Variation Order whether it agrees with the contents of the Service Variation Order (provided that, if the Operator does not issue any such notice within this period, the Operator will be deemed to have agreed with the contents of the Service Variation Order).

(c) **(Additional Information):** To the extent that the State is unable or unwilling to provide any of the information listed in paragraph (b) in relation to a Service Variation Order, the State may request in its Service Variation Order that the Operator provide that information, in which case:

- (i) the Operator must provide the information requested within 10 Business Days of the date of the Service Variation Order; and
- (ii) if that information is agreed by the State, it will be deemed to form part of the Service Variation Order for the purpose of this Clause 14.

(d) **(Service Variation Order dispute):** If:

- (i) the Operator issues a notice under paragraph (b) disputing the contents of a Service Variation Order; or
- (ii) the State disputes any information provided by the Operator under paragraph (c),

then:

- (iii) the dispute will be determined in accordance with Clause 31; and
- (iv) the Operator must comply with paragraph (e):
  - A. in respect of the whole of the Service Variation Order (in the case of a dispute of the type referred to in subparagraph (d)(i)); and
  - B. in respect of that part of the Service Variation Order which is not in dispute (in the case of a dispute of the type referred to in subparagraph (d)(ii)),

until such time as the dispute is resolved in accordance with Clause 31, at which point:



- C. the Service Variation Order will be deemed to be amended if required in accordance with the determination or agreement reached under Clause 31; and
  - D. the parties must do all things necessary to implement any changes to the Service Variation Order required as a result of any agreement reached or determination made under Clause 31 so that those changes have retrospective effect, including adjusting any payment made in the next Operations Payment Claim.
- (e) **(Implementation of Service Variation Order):** On or prior to the date for implementation set out in the Service Variation Order (or, if no such date is specified, as soon as possible following the issue of a Service Variation Order):
- (i) this Agreement is amended in the manner set out in the Service Variation Order; and
  - (ii) the Operator must do all things necessary to implement the Service Variation Order.

## 14.2 Service Variations proposed by the Operator

- (a) The Operator may, for its convenience, request the State to direct a Service Variation during the Operational Phase by submitting a notice to the State which contains details of the proposed Service Variation (including those details referred to in Clause 14.1(c) (**Operator Service Variation**)).
- (b) The State may, acting reasonably and having regard to (among other things):
  - (i) any material adverse effect which the Operator would suffer in respect of its cost of or ability to deliver the Services or perform its other obligations under this Agreement were a Service Variation not to be directed; and
  - (ii) whether or not it is reasonable that the Operator should bear the consequences of that material adverse effect in the ordinary course of business,direct a Service Variation in accordance with the Operator's notice by issuing a Service Variation Order.
- (c) The Operator is not relieved from performing or observing its obligations in accordance with this Agreement as a result of the failure by the State to issue a Service Variation Order in connection with a Service Variation requested by the Operator.
- (d) If the State issues a Service Variation Order in accordance with this Clause 14 in respect of any Operator Service Variation, then this will be treated as a Service Variation Order issued under Clause 14.1(a), provided that:
  - (i) the State will not be required to reimburse the Operator in respect of any start-up, implementation or similar costs in relation to the Operator Service Variation; and
  - (ii) to the extent that the Operator Service Variation is in the nature of new Services, the State will pay for those new Services using the same principles as are set out in the Payment Schedule.

### 14.3 Not to commence before issue

- (a) The Operator must not begin any work in respect of a Service Variation, and will not be entitled to make any Claim against the State or any State Associate in respect of a Service Variation, until the State has issued a Service Variation Order in respect of the Service Variation.
- (b) The Operator will not be entitled to make any Claim against the State or any State Associate in respect of a Service Variation under this Agreement unless the State has issued a Service Variation Order in respect of the Service Variation.

### 14.4 Implementation of Service Variations

All Service Variations the subject of a Service Variation Order and implemented during the Operational Phase must be implemented so as to cause no disruption to the provision of the balance of the Services by the Operator (save to the extent of disruptions or suspension of obligations agreed by the Operator and the State in consultations prior to the issue of, and as specified in, the Service Variation Order) and, for the avoidance of doubt, the Operator will not be entitled to any relief in respect of the performance of the Services or its other obligations under this Agreement as a result of the implementation of any Service Variation.

### 14.5 Service Variation requiring Facility Variation

- (a) If the Operator is of the view that a Service Variation Order will not be able to be implemented due to restraints in the size or configuration of the Facility which were not included in the Design Requirements, then the Operator may (within 5 Business Days of its receipt of a Service Variation Order) issue a notice to the State, specifying details of the restriction which, in the Operator's opinion, will prevent it from implementing the Service Variation Order (**Operator Restriction Notice**).
- (b) The State may request additional information in relation to the matters the subject of an Operator Restriction Notice, which information the Operator must promptly provide to the State.
- (c) If the State (acting reasonably):
  - (i) agrees that the matters set out in the Operator Restriction Notice will prevent the implementation of a Service Variation in accordance with the Service Variation Order, then the State must withdraw that Service Variation Order and may not reissue the Service Variation Order without also issuing a Facility Variation Order in accordance with Clause 15 (or if the Services Variation Order is reissued in the D&C Phase, a "Variation Request" under the D&C Agreement); or
  - (ii) does not agree that the matters set out in the Operator Restriction Notice will prevent the implementation of a Service Variation in accordance with the Service Variation Order, then it must give notice to this effect to the Operator and the Operator must implement the Service Variation in accordance with the Service Variation Order and this Clause 14 (provided that any ongoing dispute in that regard will be resolved in accordance with the dispute resolution procedure in Clause 31).

### 14.6 Operator's rights

Without limiting any express right in respect of Facility Variations or Service Variations conferred under Clause 15 or this Clause 14, the Operator's rights in relation to Facility

Variations or Service Variations under Clause 15 or this Clause 14 are the Operator's sole remedy in respect of any Facility Variation or Service Variation.

#### 14.7 Giving effect to Service Variation

The parties must promptly do all things necessary to give effect to any Service Variation, including implementing any required variation to this Agreement or any Project Document.

#### 14.8 Increased Role Delineation

- (a) The Operator must give prior notice to the State if it is intending to deliver any Service or Service Payment Category in a manner which is in excess of the then-current Role Delineation.
- (b) If the Operator delivers any Service or Service Payment Category in a manner which is different to or in excess of the then-current Role Delineation (irrespective of whether or not a notice has been given by the Operator under paragraph (a)), then:
  - (i) the State may (in its discretion) elect to give notice to the Operator requiring the Operator to cease delivering that Service or Service Payment Category in that manner and to instead deliver that Service or Service Payment Category in accordance with the then-current Role Delineation; and
  - (ii) the Operator must promptly comply with any notice issued by the State under subparagraph (i).

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### 15. Facility Variations

#### 15.1 Facility Variations proposed by the State during Operational Phase

- (a) **(Directing a Variation):** At any time during the Operational Phase, the State may give the Operator a written request for the Operator to submit a Facility Variation Quote for a proposed Facility Variation, including:
  - (i) any measurements, evidence of cost or other specific information that the State requires the Operator to include in its Facility Variation Quote; and
  - (ii) a notification as to whether or not the State requires a Procurement Plan to be prepared in respect of that Facility Variation,**(Facility Variation Price Request).**
- (b) **(Submission of Facility Variation Quote):** If the State issues a Facility Variation Price Request, the Operator must submit a "**Facility Variation Quote**" to the State:
  - (i) within 20 Business Days of receipt of the Facility Variation Price Request; or
  - (ii) at such later time as agreed by the State (acting reasonably).
- (c) **(Contents of Facility Variation Quote):** A Facility Variation Quote must contain:
  - (i) the Operator's estimate of the program for undertaking the Facility Variation;

- (ii) where the proposed Facility Variation relates to any new or existing Shared Infrastructure, the Operator's proposed expected usage of that Shared Infrastructure within the Public Patient Facility and the Private Patient Facility (which must take into account the proposed proportionate usage of that Shared Infrastructure as between the Services and any services provided to Private Patients during the Operational Phase);
  - (iii) the Operator's fixed price quote for the cost of undertaking the proposed Facility Variation (which must be calculated in accordance with the Change Compensation Schedule) and payment terms;
  - (iv) if applicable, details of how the Operator's ability to comply with the Quality Standards, Performance Schedule, warranties, insurance requirements and any other obligations of the Operator under this Agreement, the Project Documents or the Plans may be adversely affected by the proposed Facility Variation;
  - (v) if applicable, details of how the proposed Facility Variation may lead to non-compliance with any Law or Authorisation, including the Hospital Licence; and
  - (vi) any additional information reasonably requested by the State whether or not such request is included in any Facility Variation Price Request.
- (d) **(State response to Facility Variation Quote):** Within 20 Business Days (or such longer period as the State reasonably requires, given the size and complexity of the proposed Facility Variation) after receiving a Facility Variation Quote, the State must:
- (i) issue a written notice to the Operator directing the Operator to carry out the Facility Variation on the terms (including as to payment) set out in the Facility Variation Quote (**Facility Variation Order**);
  - (ii) notify the Operator that it does not agree with the Facility Variation Quote and its reasons;
  - (iii) notify the Operator that it does not wish to proceed with the proposed Facility Variation or that it will undertake the proposed Facility Variation itself; or
  - (iv) if it has not previously done so, require the Operator to prepare and implement a Procurement Plan in connection with the Facility Variation in accordance with the Change Compensation Schedule, in which case the Operator must submit an updated Facility Variation Quote prepared in accordance with the Change Compensation Schedule and the process set out in paragraphs (b) to (d) inclusive will apply again,
- provided that the State may not issue a Facility Variation Order if it will result in the Operator being in contravention of any Law.
- (e) **(State implemented Facility Variations):** If the State elects under paragraph (d)(iii) to implement a Facility Variation itself, then:
- (i) the Operator may not object to the implementation of the Facility Variation by the State;
  - (ii) the State may carry out the relevant Facility Variation itself or with any contractor the State elects in its discretion (and the State may, but is not

- obliged to, invite the Operator to tender for those works alongside third party tenderers);
- (iii) the Facility Variation carried out by or on behalf of the State in accordance with paragraph (d)(iii) and this paragraph (e) must comply with the requirements of Clause 15.6 (excluding Clauses 15.6(a)(i), (a)(viii), (a)(x) and (a)(xii));
  - (iv) the Operator must cooperate with the State and its contractors in the implementation of the Facility Variation (including in relation to the execution of any coordination, interface or other documentation reasonably required by the State) and provide the State and its contractors with all access to the Health Campus and information about the Health Campus that the State reasonably requires in relation to the implementation of the Facility Variation; and
  - (v) the State must use reasonable endeavours not to (and use reasonable endeavours to ensure that its contractors do not) interfere with the provision of the Services and the Operator's lawful activities on the Health Campus.
- (f) **(Failure to agree):** If the State informs the Operator in accordance with paragraph (d)(ii) that it does not agree with the Facility Variation Quote and agreement on the Facility Variation Quote is not reached within 5 Business Days of the State's notice under paragraph (d)(ii), then:
- (i) if the State disputes that the amount for the Facility Variation has been determined in accordance with the Change Compensation Schedule:
    - A. the State may issue its calculation of the Facility Variation Quote determined in accordance with the Change Compensation Schedule;
    - B. if the Operator does not accept the State's Facility Variation Quote (including as may have been amended by agreement of the parties) within 10 Business Days of receipt of that Facility Variation Quote (or such longer time as the parties may agree), the matter will be referred for resolution in accordance with Clause 31.3; and
    - C. paragraph (d) (excluding subparagraph (ii)) applies to the Facility Variation Quote determined in accordance with Clause 31; or
  - (ii) if the terms that the parties are unable to agree do not relate to the amount payable for the Facility Variation, the State may issue a Facility Variation Order on terms determined by the State acting reasonably and the Operator must implement the Facility Variation in accordance with the Facility Variation Order but may refer the matter to dispute resolution in accordance with Clause 31.
- (g) **(Payment for Facility Variation):** If the Operator implements a Facility Variation in accordance with a Facility Variation Order, the State will (subject to Clause 15.3) pay the Operator the amount for implementing the Facility Variation as set out in the Facility Variation Order in accordance with the Change Compensation Schedule.
- (h) **(No costs):** Except as set out in Clause 15.8, or if required by court order or any determination under the dispute resolution procedure under Clause 31, the State

will not pay the Operator's costs of preparing a Facility Variation Quote or a Procurement Plan or resolving any dispute in relation to a Facility Variation Quote or Procurement Plan.

## **15.2 Facility Variations proposed by the Operator**

- (a) Without limiting Clause 14.5 the Operator may, for its convenience, request the State to direct a Facility Variation during the Operational Phase by submitting a notice to the State which contains details of the proposed Facility Variation and satisfies the requirements of Clause 15.1 (**Operator Facility Variation**).
- (b) The State may, in its sole and absolute discretion, direct a Facility Variation in accordance with the Operator's notice by issuing a Facility Variation Order in respect of that Operator Facility Variation.
- (c) The Operator is not relieved from performing or observing its obligations in accordance with this Agreement as a result of the failure by the State to issue a Facility Variation Order in connection with an Operator Facility Variation.

## **15.3 Performance of Facility Variation Order**

If the State issues a Facility Variation Order in accordance with Clauses 15.1 or 15.2:

- (a) the Operator will, subject to complying with any conditions in the Facility Variation Order, carry out the Facility Variation;
- (b) in respect of a Facility Variation Order issued in respect of any Operator Facility Variation (which, for the avoidance of doubt, does not include a Facility Variation Order issued in response to an Operator Restriction Notice issued under Clause 14.5), the Operator will carry out the Operator Facility Variation at its own cost and will not be entitled to make any Claim against the State in connection with the Operator Facility Variation;
- (c) the Operator must do all things reasonably necessary to obtain all relevant Authorisations, or variations to existing Authorisations, to the extent required to perform the Facility Variation; and
- (d) if, despite having complied with paragraph (c), the Operator has not been able to obtain the relevant Authorisations, the State must withdraw the Facility Variation Order.

## **15.4 Not to commence before issue**

- (a) The Operator must not begin any work in respect of a Facility Variation, and will not be entitled to make any Claim against the State or any State Associate in respect of a Facility Variation, until the State has issued a Facility Variation Order in respect of the Facility Variation.
- (b) The Operator will not be entitled to make any Claim against the State or any State Associate in respect of a Facility Variation under this Agreement unless the State has issued a Facility Variation Order in respect of the Facility Variation.

## **15.5 Updated documents**

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

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

## 15.6 Implementation of Facility Variations

All Facility Variations to the Public Patient Health Campus the subject of a Facility Variation Order and implemented during the Operational Phase:

- (a) **(Design, Construction and Commissioning)**: must be designed, constructed and commissioned in accordance with:
  - (i) the drawings and specifications for the Facility Variation prepared by the Operator, as described in the Facility Variation Order;
  - (ii) Best Construction Practices;
  - (iii) all requirements of the LARU;
  - (iv) all Authorisations required for the Facility Variation;
  - (v) all other applicable Laws;
  - (vi) all applicable standards (including the Quality Standards);
  - (vii) the lawful requirements of any Authority;
  - (viii) all conditions in the Facility Variation Order;
  - (ix) all Plans;
  - (x) the timetable and payment schedule set out in the Facility Variation Order;
  - (xi) where applicable (as specified in the Facility Variation Order), the Design Requirements; and
  - (xii) all other requirements of this Agreement;
- (b) **(Fit For Purpose)**: must be designed and constructed so that:
  - (i) the Operator provides and will continue to provide the Services in accordance with this Agreement; and
  - (ii) that part of the Public Patient Health Campus comprising the State Facility Variation is Fit For Purpose; and
  - (iii) any equipment forming part of the Facility Variation is selected, procured, manufactured, installed, commissioned and tested in accordance with Best Construction Practices and is Fit For Purpose.
- (c) **(Minimal Disruption)**: must be implemented so as to cause no disruption to the provision of the Services by the Operator (save to the extent of disruptions or suspension of obligations agreed by the Operator and the State in consultations prior to the issue of, and as specified in, the Facility Variation Order);

- (d) **(Workmanlike manner)**: must be implemented in an expeditious, proper and workmanlike manner;
- (e) **(Completion)**: must, where required by the State, be certified by the State as being complete and ready for occupation; and
- (f) **(Commissioning)**: must be commissioned in accordance with the commissioning tests specified in the Facility Variation Order.

## 15.7 Giving effect to Facility Variation

The parties must promptly do all things necessary to give effect to any Facility Variation, including implementing any required variation to this Agreement or any Project Document.

## 15.8 Cost of preparation of Facility Variation Quote and Expansion Works Quote

- (a) Subject to paragraph (b), if:
  - (i) the Operator is required to prepare a Facility Variation Quote in accordance with Clause 15.1(b) or an Expansion Works Quote in accordance with Clause 16.1(b); and
  - (ii) the cost of preparing that Facility Variation Quote or Expansion Works Quote (including any associated Procurement Plan) in the aggregate, together with all other Facility Variation Quotes or Expansion Works Quotes prepared during that Financial Year, exceeds *[not disclosed]* (amended to reflect CPI increases from the June quarter 2012),  
  
the State will pay the Operator's third party costs actually and reasonably incurred in preparing the Facility Variation Quote or Expansion Works Quote (including any Procurement Plan) to the extent that those costs are in excess of the figure referred to in subparagraph (ii), such payment to be made:
    - (iii) if the relevant Facility Variation Quote or Expansion Works Quote has been prepared and submitted in accordance with this Agreement and the State does not issue a Facility Variation Order or an Expansion Works Order (as the case may be), within 40 Business Days of receiving an invoice from the Operator; or
    - (iv) if the State does issue a Facility Variation Order or an Expansion Works Order, as part of the amount payable by the State for the Facility Variation or Expansion Works.
- (b) For the avoidance of doubt, the State will not pay any of the Operator's or Key Service Provider's internal costs, including labour and time management, of preparing a Facility Variation Quote or Expansion Works Quote (including any Procurement Plan), nor will those internal costs be used in the calculation of the threshold figure set out in subparagraph (a)(ii).

## 15.9 Design Departures Schedule and Design Issues List

The parties acknowledge and agree that:

- (a) the Design Departures Schedule and the Design Issues List are lists of issues or perceived issues with the compliance of the design of the Health Campus with the requirements of the D&C Agreement (**Design Departures**), that were identified either by the Operator or the State;



- (b) the resolution of any matters arising out of any Design Departure (including in 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 the Clinical Services, Clinical Support Services and Non-Clinical Support Services 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 and maintained; and
- (vii) the Services can be provided in accordance with this Agreement, including meeting the KPIs,

is the Operator's responsibility and does not of itself give rise to a Variation or relief from performance of the Services in accordance with this Agreement.

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## 16. Expansion

### 16.1 Expansion Works

- (a) The State may, at any time during the Term, give the Operator notice of:
  - (i) its requirement that all or any part of the Expansion Works be undertaken (the **Relevant Expansion Works**);
  - (ii) in respect of any element of the Planned Expansion Works, details of any variations it requires to be made to the design of the Expansion Works (in whole or in part) set out in the Master Plan (**Planned Expansion Works Design Variation**);
  - (iii) in respect of any element of the Further Expansion Works, sufficient information to enable the Operator to undertake the design of the required element of the Further Expansion Works; and
  - (iv) the date by which the State (acting reasonably) requires provision of the Expansion Works Quote,
 (the **Expansion Works Notice**).
- (b) Prior to the date referred to in subparagraph (a)(iv), the Operator must (at the Operator's cost in all respects) provide to the State:
  - (i) its proposed Expansion Works Price (as varied by any Planned Expansion Works Design Variation) in respect of the Relevant Expansion Works, to be determined in accordance with the Change Compensation Schedule in the same manner as a Facility Variation (including in respect of the preparation of the Procurement Plan under Section 2.5 and the

carrying out of the tender process in Section 2.6 of the Change Compensation Schedule), and which for the avoidance of doubt, and subject to paragraph (c), must be based on the terms and conditions of the D&C Agreement;

- (ii) its proposed Expansion Works Program in respect of the Relevant Expansion Works;
- (iii) the identity of the Operator's builder and other contractors proposed to be engaged in respect of the Relevant Expansion Works;
- (iv) if applicable, details of how the Operator's ability to comply with the Quality Standards, Performance Schedule, warranties, insurance requirements and any other obligations of the Operator under this Agreement, the Project Documents or the Plans may be adversely affected by the proposed Expansion Works;
- (v) if applicable, details of how the proposed Expansion Works may lead to non-compliance with any Law or Authorisation, including the Hospital Licence; and
- (vi) any other information that the Operator would be required to give as part of a Facility Variation Quote under Clause 15.1(b),

**(Expansion Works Quote).**

(c) If the Operator:

- (i) is unable to obtain an Expansion Works Price based on the terms and conditions of the D&C Agreement; or
- (ii) is able to obtain an Expansion Works Price based on the terms and conditions of the D&C Agreement but is also able to obtain a lower Expansion Works Price based on amended terms and conditions of the D&C Agreement,

the Operator must notify the State prior to the date for submission of the Expansion Works Quote referred to in subparagraph (a)(iv), in which case:

- (iii) if subparagraph (c)(i) applies, the State must; or
- (iv) if subparagraph (c)(ii) applies, the State may,

allow the Operator to submit (in addition to the Expansion Works Price provided on the basis of the terms of the D&C Agreement (if obtainable)) an Expansion Works Price based on amended terms and conditions of the D&C Agreement.

- (d) As soon as practicable following receipt of the Expansion Works Quote, the State must issue a notice to the Operator:
  - (i) confirming the State's agreement to the items set out in the Expansion Works Quote (**Expansion Works Order**);
  - (ii) requesting further information in relation to any matter the subject of the Expansion Works Quote (including in respect of the Operator's pricing methodology and tender process but without prejudice to the State's rights in respect of the Procurement Plan as set out in the Change Compensation Schedule);

- (iii) disputing that the Expansion Works Price was properly determined in accordance with the Change Compensation Schedule and requiring the Operator to submit a revised Expansion Works Price; or
- (iv) notwithstanding subparagraph (iii), requiring the Operator to seek a reduction in the Expansion Works Price or variation to the Expansion Works Program (whether as a result of the State's budgetary or timing restrictions or otherwise),

**(State Response Notice).**

- (e) To the extent that a State Response Notice is:
  - (i) an Expansion Works Order, then paragraph (g) will apply;
  - (ii) of the type referred to in subparagraph (d)(ii), then the Operator must provide an updated Expansion Works Quote incorporating further information requested within 5 Business Days of the date of the State Response Notice;
  - (iii) of the type referred to in subparagraph (d)(iii), then the State may:
    - A. require the Operator to provide an updated Expansion Works Quote incorporating the revised Expansion Works Price determined in accordance with the Change Compensation Schedule; or
    - B. issue an Expansion Works Order on the terms of the Expansion Works Quote as determined in accordance with the Change Compensation Schedule; or
  - (iv) of the type referred to in subparagraph (d)(iv), then the Operator must use its best endeavours to obtain a reduction in the proposed Expansion Works Price or variation to the Expansion Works Program (as the case may be) from the proposed Expansion Works builder to be engaged by the Operator, and must submit an updated Expansion Works Quote incorporating that updated information within a period of 10 Business Days following the date of the State Response Notice,

and in the case of subparagraphs (ii), (iii)(A) and (iv) above, paragraph (d) will again apply in relation to the resubmitted Expansion Works Quote.

- (f) If, following the submission of a revised Expansion Works Quote which was required due to the reasons set out in subparagraphs (d)(iii) or (iv), the State is still not satisfied with the Expansion Works Quote, then:
  - (i) if the Expansion Works Quote required resubmission for the reasons set out in subparagraph (d)(iii), the State may:
    - A. refer the matter to dispute resolution in accordance with Clause 31.3; or
    - B. issue an Expansion Works Order on the terms of the Expansion Works Quote but with such amendments as the State requires in order to make that Expansion Works Quote comply with the Change Compensation Schedule; or
  - (ii) if the Expansion Works Quote required resubmission for either of the reasons set out in subparagraph (d)(iv), or the Operator does not agree

with any Expansion Works Order issued by the State pursuant to paragraph (f)(i)B, then:

- A. the State may implement the works the subject of the relevant Expansion Works Notice itself in which case the Expansion Works must comply with the requirements of Clause 15.6 (excluding Clauses 15.6(a)(i), (a)(viii), (a)(x) and (a)(xii));
- B. the Operator may not object to the implementation of the relevant Expansion Works by the State;
- C. the State may carry out the relevant Expansion Works itself or with any contractor the State elects in its discretion (and the State may, but is not obliged to, invite the Operator to tender for those works alongside third party tenderers);
- D. the Operator must cooperate with the State and its contractors in the implementation of the relevant Expansion Works (including in relation to the execution of any coordination, interface or other documentation reasonably required by the State) and provide the State and its contractors with all access to the Health Campus and information about the Health Campus that the State reasonably requires in relation to the implementation of the Relevant Expansion Works; and
- E. the State must use reasonable endeavours not to (and use reasonable endeavours to ensure that its contractors do not) interfere with the provision of the Services and the Operator's lawful activities on the Health Campus.

(g) If:

- (i) the State issues an Expansion Works Order in respect of the whole of the Expansion Works Quote; or
- (ii) the matters the subject of the Expansion Works Quote are otherwise agreed or determined in accordance with this Clause,

then the Operator must undertake the works (including all associated design works) in accordance with the terms of the D&C Agreement, as varied to make it applicable to the performance of the Expansion Works as required by the State (acting reasonably) and as otherwise specified in an Expansion Works Order, including by:

- (iii) inserting the Expansion Works as the "Works";
- (iv) inserting the Expansion Works Price as the "Price";
- (v) inserting the Expansion Works Program as the "Works Program";
- (vi) inserting the Expansion Works Design Documentation (in the case of the Planned Expansion Works) or the State's information given under Clause 16.1(a)(iii) (in respect of the Further Expansion Works) as the "Design Documentation";
- (vii) inserting, as the 'Daily LD Rate', an amount reasonably determined by the State as being a fair, reasonable and genuine pre-estimate of its loss in respect of delayed completion of the Expansion Works;

- (viii) amending the definition of “Commencement Date” to be the date on which the matters referred to in subparagraph (i) or (ii) above (as applicable) have occurred;
  - (ix) deleting the following Clauses:
    - A. 2 (Conditions Precedent); and
    - B. 20 (Private Works);
  - (x) including a provision that any Operator default under the D&C Agreement which does not also constitute an Event of Default or Immediate Termination Event under this Agreement will not of itself enable the State to terminate this Agreement under Clause 29.5; and
  - (xi) making any other amendments to the terms of the D&C Agreement required in order to give effect to this Clause 16.1.
- (h) The State may issue a revised form of the D&C Agreement taking into account the variations referred to in paragraph (g), however the issue or failure to issue a revised version of the D&C Agreement will not affect the parties’ obligations under this Clause 16.
- (i) Any dispute in relation to the parties’ obligations under this Clause 16 (including in respect of the revised version of the D&C Agreement) will be resolved in accordance with the dispute resolution procedure in Clause 31.
- (j) For the avoidance of doubt:
  - (i) except as set out in Clause 15.8, the Operator’s compliance with this Clause 16 is to be at the Operator’s cost in all respects unless expressly stated to the contrary;
  - (ii) subject to Clause 17A, the Operator will not be entitled to any relief in relation to the performance of the Services and its other obligations under this Agreement as a result of the performance of the Expansion Works;
  - (iii) the State may require that the Expansion Works are constructed in phases by issuing two or more Expansion Works Notices, in which case the provisions of this Clause 16 will apply in full in relation to each Expansion Works Notice;
  - (iv) any increase in the volume of the Services resulting from the Expansion Works (once completed) will be paid for by the State in accordance with the corresponding pricing mechanism in the Payment Schedule; and
  - (v) the State may issue a Service Variation Order pursuant to Clause 16 in relation to the Services to be performed from the Expansion Works at any time following the issue of the Expansion Works Notice.
- (k) The parties must promptly do all things necessary to give effect to the incorporation of the Expansion Works into the Health Campus, including implementing any required variation to this Agreement or any Project Document.
- (l) The Operator must do all things reasonably requested by the State (including the provision of information, documents and plans) in order to ensure the grant of State or Commonwealth funding for all or any part of the Expansion Works.

## 16.2 Further Development

- (a) Without limiting the obligations to undertake the expansion in accordance with Clause 16.1, the parties acknowledge that the continued use of the Facility and the Health Campus as a facility for the provision of comprehensive health services may require the further development of the Health Campus to enable the provision of new or alternative services other than in accordance with the Master Plan and as otherwise dealt with in this Agreement (**Further Development**).
- (b) If at any time during the Term the State requires any undeveloped portion of the Site for Further Development (and for the avoidance of doubt, “undeveloped” includes portions of the Site which are landscaped or on which grade car parking is situated), the State may issue a notice to the Operator setting out details of:
  - (i) the Further Development required by the State;
  - (ii) the area and boundaries of that portion of the Site on which the Further Development will occur (the **Excision Area**);
  - (iii) resulting amendments required to be made to this Agreement and any Project Document; and
  - (iv) any new documentation required to be entered into in order to implement the Further Development and/or the excision of the Excision Area from the balance of the Site (which will (subject to paragraph (d)) be a partial surrender of lease or grant of new lease or sublease at the State’s election),

**(Excision Notice).**

- (c) Following any surrender of lease or grant of lease or sublease, any Excision Area will not form part of the Site or the Health Campus for the purposes of the D&C Agreement or this Agreement.
- (d) Without prejudice to the balance of this Clause 16.2, the State will not require the grant of a new lease or sub-lease over the Excision Area where the intended use of the Further Development is the provision of some or all of the services referred to in Clause 12.1(f).
- (e) If the permitted use of the Further Development is or becomes the provision of some or all of the services referred to in Clause 12.1(f):
  - (i) the State shall ensure, whether or not the Excision Area is leased, licensed or otherwise transferred to a third party operator or service provider, that the Excision Area:
    - A. is located adjacent to the eastern boundary of the Site;
    - B. has a separate entrance and car park which are away from any entrances to, or car parks on, the Health Campus;
    - C. is separately fenced with no direct access for patients, staff or visitors to the Excision Area or Further Development from the Facility or a car park located on the Health Campus; and
    - D. is not connected to the Health Campus by, or through, any Utility or Shared Infrastructure, and

- (ii) the State shall not require the Operator to place logos, branding and similar marks or any signs belonging to or relating to the Excision Area or Further Development on the Health Campus and will not require the Operator to make any reference to the Excision Area or Further Development on any of its signs.
- (f) Following the issue of an Excision Notice:
  - (i) the parties must take all steps necessary to
    - A. in the case of a partial surrender of the Excision Area, excise the Excision Area from the Operating Lease or Development Lease (as appropriate) and the definition of "Site" in the D&C Agreement or this Agreement (as the case may be) (including the execution and registration of a surrender of lease to be prepared by the State); or
    - B. in the case of a sublease of the Excision Area to the State, enter into and procure the registration of a sublease, to be prepared by the State incorporating the terms set out in paragraph (g) below;
  - (ii) the State may commence and undertake works relating to the Further Development (and the Operator acknowledges that those Further Development works may be undertaken by third party entities);
  - (iii) the Operator must provide such assistance to the State and any of the State's contractors in relation to the performance of any Further Development works procured by the State by third parties including providing such rights of access to the Health Campus as may reasonably be required by the State;
  - (iv) the State must use reasonable endeavours not to (and use reasonable endeavours to ensure that its contractors do not) materially and unreasonably interfere with the provision of the Services and the Operator's lawful activities on the Health Campus; and
  - (v) to the extent that the Excision Area incorporates developed car parking facilities as a result of which those developed car parking facilities will no longer be available for use by the Operator, any Operator Associate or Hospital User accessing the balance of the Site, the State must either:
    - A. provide replacement car parking facilities within the Excision Area (in substantially similar numbers to the developed car parking facilities which are no longer available) and make these available for use by the Operator or any Operator Associate or Hospital User seeking to access the balance of the Site on the same or substantially the same terms as those car parking facilities would have been made available to those people had they not formed part of the Excision Area; or
    - B. issue a Facility Variation Price Request to the Operator in accordance with Clause 15.1 in relation to the provision of replacement car parking facilities on the balance of the Site (provided that, if the State does not agree to the corresponding Facility Variation Quote in accordance with the procedure set out in Clause 15, the State must undertake the requisite works itself under Clause 15.1(d)(iii) and the balance of Clause 15 will apply).

- (g) Where the State elects to take a sublease of the Excision Area, the sublease will be on terms reasonably required by the State which will include (but not be limited to) the following:
  - (i) a nominal annual rent;
  - (ii) a term comprising the balance of the Term (less one day) or any shorter period required by the State;
  - (iii) a permitted use allowing the construction and operation of the Further Development;
  - (iv) access to and egress from the Excision Area over all parts of the Health Campus reasonably required by the State; and
  - (v) assumption by the State of site and construction risk relating to the Further Development.
- (h) For the avoidance of doubt, the Operator is not entitled to any compensation for the loss or diminution of the value of the Excision Area land, or its interest in the Excision Area land, arising from the State's exercise of its rights under this Clause 16.2 other than as expressly set out in this Agreement.

### 16.3 Operator's acknowledgements

Notwithstanding any other provision in this Agreement or any Project Document:

- (a) the State gives no commitment, nor is obliged in any way, to continue to cause the further development or expansion of the Health Campus in accordance with the Master Plan or otherwise;
- (b) the Operator is aware that the State may purchase any range of Services from the Operator at the Public Patient Facility and (other than as expressly set out in the Payment Schedule) the State does not commit, nor is obliged, to purchase any particular mix of Services so as to ensure the continued viability and operation of any particular Service on the Health Campus; and
- (c) if this Agreement is terminated:
  - (i) prior to the natural expiration of the Term for any reason; or
  - (ii) by effluxion of time,

in circumstances where the Operator is entitled to remain in occupation of the Private Patient Facility or any part it, the State has no obligation whatsoever (other than as set out in the Private Patient Facility Lease) to the Operator to continue to operate (or cause a third party to continue to operate) the Public Patient Health Campus either:

- (iii) at all; or
  - (iv) so as to provide either:
    - A. a similar range of Services to those set out in; or
    - B. Services at a level of acuity according to,
- the Role Delineation then current on the date of termination or expiration of the Term.



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## **17. Change in Law**

### **17.1 Change in Law during Operational Phase**

- (a) *[not disclosed]*
- (b) *[not disclosed]*
- (c) The notice specified in subparagraphs (a)(i) and (ii) and (b)(i) and (ii) must be in writing and must set out full details of the Project Specific Change in Law or the General Change in Law (as the case may be) and the likely effect of the Project Specific Change in Law or the General Change in Law (as the case may be) on the Agreement.

### **17.2 Conditions precedent**

- (a) It is a condition precedent to the Operator's entitlement (if any) in accordance with Clause 17.1 that:
  - (i) the Operator has submitted a notice in accordance with Clause 17.1(a) or 17.1(b) as applicable;
  - (ii) neither the Operator nor any Operator Associate has, by any act or omission, directly or indirectly caused the Project Specific Change in Law or the General Change in Law (as the case may be); and
  - (iii) the Operator is taking all reasonable steps to mitigate the effects of the Project Specific Change in Law or the General Change in Law (as the case may be).
- (b) If:
  - (i) the State considers that a Project Specific Change in Law or a General Change in Law has occurred that has had or will have an effect on the cost of delivering the Services in accordance with this Agreement or the D&C Agreement; and
  - (ii) the Operator has not submitted a notice in accordance with Clause 17.1,the State may request the Operator to, and the Operator must, submit a notice that complies with the requirements of Clause 17.1.
- (c) Without limiting any express right in respect of a Project Specific Change in Law or a General Change in Law conferred under this Agreement, the Operator's rights in relation to compensation under Clause 17.1 are the Operator's sole remedy in respect of any change of Law (including a Project Specific Change in Law or a General Change in Law).

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## **17A. Intervening Events**

### **17A.1 Occurrence of Intervening Event**

- (a) If:
  - (i) an Intervening Event has occurred; and

- (ii) that Intervening Event has prevented or delayed or may prevent or delay the performance by the Operator of its obligations under this Agreement,

the Operator must issue a notice to the State notifying the State of the occurrence of, and providing reasonable details of, the Intervening Event (**Intervening Event Notice**).

- (b) If the effect of the Intervening Event continues beyond the submission of the first Intervening Event Notice, the Operator must issue an updated Intervening Event Notice every 10 Business Days for the period of the Intervening Event or for the period that the effect of the Intervening Event endures.

## 17A.2 Operator entitled to relief

If an Intervening Event Notice is issued under Clause 17A.1, to the extent that the Operator:

- (a) (**no breach**): has not, or any Operator Associate has not, by an act or omission (other than an act or omission authorised or permitted by this Agreement), directly or indirectly caused the Intervening Event; and
- (b) (**reasonable steps**): has taken and is continuing to take all proper and reasonable steps to avoid or minimise the duration and effect of the Intervening Event,

then:

- (c) (**relief**): to the extent that the Intervening Event or the consequences of the Intervening Event delay or prevent the Operator from:
  - (i) providing the Services in accordance with this Agreement, the Operator must provide the Services in accordance with Clause 17A.5;
  - (ii) otherwise complying with its obligations under this Agreement, the obligation to do so will be suspended; or
  - (iii) Rectifying a Service Failure within a Rectification Time, if any, then the Rectification Time will be extended in accordance with the Services Specification,

but only for the duration of the Intervening Event or until the consequences of the Intervening Event cease to prevent or delay performance of that obligation, or would have ceased to prevent performance had the Operator continued to comply with paragraph (b), and

- (d) (**no breach**): if, and to the extent that, the Operator's obligations are suspended under paragraph (c) or Clause 17A.5, any failure by the Operator to perform the obligations which are so suspended will not:
  - (i) be a breach of this Agreement; or
  - (ii) constitute an Event of Default or give rise to a Failure Abatement which would otherwise arise but for the obligation of the Operator being suspended.

## 17A.3 Rectification of damage

- (a) Subject to paragraph (b), the Operator must rectify any damage which is consequent on the occurrence of any Intervening Event so that the Operator satisfies its Fit For Purpose obligations under this Agreement.

- (b) If the Intervening Event is also a Compensable Intervening Event, the costs of rectifying any such damage will be payable by the State in accordance with Clause 17A.4.

#### **17A.4 Compensable Intervening Events**

If:

- (a) Clauses 17A.2(a) and (b) are satisfied;
- (b) the Intervening Event is also a Compensable Intervening Event; and
- (c) the Operator has complied and continues to comply with Clause 17A.2(b),

then the State will:

- (d) if:
  - (i) the Operator's ability to reach the Maximum Payment Amount within a Financial Year is directly and materially impacted;
  - (ii) the Operator is wholly or substantially prevented from performing the Services by a Compensable Intervening Event; and
  - (iii) the Operator has taken all reasonable steps to mitigate that loss throughout that Financial Year,

continue to pay the Monthly Service Payment in connection with the Services affected by the Intervening Event for the period of suspension under Clause 17A.2(c) as if those Services had been provided after deducting:

- (iv) the amount of recurrent costs which are not in fact incurred by the Operator during the period; and
  - (v) to the extent that the Compensable Intervening Event or the risk giving rise to the Compensable Intervening Event is required to be insured against in accordance with this Agreement, the proceeds of such insurances that are paid or would have been payable had the Operator complied fully with its obligations in accordance with this Agreement or the terms of the relevant insurance policy; and
- (e) pay:
  - (i) any additional costs actually and reasonably incurred by the Operator as a direct result of the Compensable Intervening Event or by reason of continuing to provide the Services in accordance with this Clause 17A.4 and 17A.5 which:
    - A. would not have been incurred by the Operator but for the Compensable Intervening Event or but for the Operator's obligation under this Clause 17A.4 and Clause 17A.5; and
    - B. are not otherwise taken into account by payment of the Monthly Service Payment for the relevant period or any other payment made by the State to the Operator under a Project Document;
  - (ii) any additional Liabilities incurred by the Operator pursuant to a Subcontract; and

- (iii) all costs reasonably incurred by the Operator in rectifying damage (of the types and for which sufficient details are given under Clause 17A.1),

arising as a direct result of the Compensable Intervening Event.

### **17A.5 Operator obligation to continue to perform**

If an Intervening Event occurs:

- (a) the Operator must, unless it is impossible to do so given the nature of the Intervening Event:
  - (i) continue to provide the Services and otherwise perform its obligations under this Agreement;
  - (ii) amend its methodology for performing the Services as necessary to provide the Services during the Intervening Event; and
  - (iii) perform the Services in accordance with Good Operating Practice; and
- (b) subject to the Operator having complied with its obligations under this Clause 17A, any failure by the Operator to perform its obligations under this Agreement pursuant to paragraph (a) which arises as a direct result of the Intervening Event will not be a breach of this Agreement by the Operator, constitute an Event of Default or give rise to any Failure Abatement for the duration of the Intervening Event.

### **17A.6 Payment terms**

The Operator may claim:

- (a) 50% of amounts due to the Operator under Clause 17A.4(d) with the next Operations Payment Claim submitted by the Operator in accordance with Clause 13.2, with an adjustment to take place at the end of the relevant Financial Year (taking into account the Operator's obligations to mitigate under Clause 17A.4(d), which adjustment:
  - (i) must be reflected in the first Operations Payment Claim submitted by the Operator in accordance with Clause 13.2 in the next Financial Year; and
  - (ii) will, for the avoidance of doubt, entitle the State to set-off any overpayment for that Financial Year in accordance with Clause 39.2); and
- (b) payment of amounts due to the Operator under Clause 17A.4(e) with the next Operations Payment Claim submitted by the Operator in accordance with Clause 13.2,

and (subject to Clause 13.3) the relevant amounts will be paid at the same time as the relevant Operations Payment Claim.

### **17A.7 Cessation of Intervening Event**

The Operator must notify the State immediately after it ceases to be prevented or delayed from performing any of its obligations under this Agreement as a result of an Intervening Event.

## 17A.8 Disputes

Any disputes about the calculation of costs and compensation under this Clause 17A may be referred by either party for resolution in accordance with Clause 31.

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## 18. Equipment

### 18.1 General Equipment obligations

- (a) Without limiting any other obligation of the Operator under this Agreement or any Project Document, the Operator must:
  - (i) ensure that all Medical Equipment and Non-Medical FF&E necessary to perform the Services is maintained in accordance with Good Operating Practice and available at all times and in accordance with this Agreement; and
  - (ii) ensure that it has sufficient Consumables at the Public Patient Facility to perform the Services in accordance with this Agreement.
- (b) The Operator must ensure that all Medical Equipment and Non-Medical FF&E will be either:
  - (i) owned by the Operator;
  - (ii) the subject of an Equipment Lease:
    - A. which includes a right for it to assign and novate its rights and obligations in accordance with the agreement to the State (or its nominee) prior to the end of the term of that agreement or on termination of this Agreement;
    - B. which will not terminate, be suspended or impose more onerous terms on the Operator or the State if the State was to exercise any of its rights in accordance with the Project Documents;
    - C. which allows security to be taken over it;
    - D. the term of which does not extend beyond the Term, unless otherwise agreed by the State; and
    - E. is able to be terminated in the circumstances set out in Clause 21.3(h); or
  - (iii) owned or leased by a Subcontractor.

### 18.2 Minimum Required Annual Medical Equipment Expenditure

*[not disclosed]*

### 18.3 State Funded Equipment

- (a) Subject to this Clause 18.3, all State Funded Equipment will be the property of the Operator or the Key Service Provider.
- (b) Any State Funded Equipment that:

- (i) is not Shared Infrastructure may only be used for the purpose of delivery of the Services to Public Patients; and
  - (ii) is Shared Infrastructure must not be used for purposes other than the delivery of the Services to Public Patients by more than the proportion that it was not funded by the State.
- (c) State Funded Equipment may not be sold or otherwise disposed of without the consent of the State and in accordance with paragraph (d).
- (d) If the Operator or the Key Service Provider intends to sell or otherwise dispose of any State Funded Equipment that is:
  - (i) not Shared Infrastructure, it must:
    - A. inform the State of that intention;
    - B. give the State the option to take title to the State Funded Equipment for nil consideration (and, if this option is exercised, title to the State Funded Equipment will immediately vest in the State); and
    - C. if the State:
      - 1) does not exercise its option under subparagraph B; and
      - 2) agrees that the State Funded Equipment can be sold or disposed of,promptly pay the State the higher of the sales proceeds and Fair Market Value of the State Funded Equipment upon that sale or disposal.
  - (ii) Shared Infrastructure, it must:
    - A. inform the State of that intention;
    - B. give the State the option to take title to the State Funded Equipment at a price calculated as Fair Market Value multiplied by the percentage of the original capital cost of the State Funded Equipment not funded by the State (and, if this option is exercised, title to the State Funded Equipment will vest in the State upon payment by the State of that price);
    - C. if the State:
      - 1) does not exercise its option under subparagraph B; and
      - 2) agrees that the State Funded Equipment can be sold or disposed of,promptly upon that sale or disposal pay the State an amount equal to the higher of:
      - 3) the sale proceeds; and
      - 4) Fair Market Value of the equipment,

multiplied by the percentage of the original capital cost of the State Funded Equipment which was funded by the State.

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## **19. Asset management**

### **19.1 Availability of Functional Units**

- (a) The Operator must ensure that all Functional Units are Available at all times during the Operational Phase for use in delivery of the Services, except in respect of a Permitted Unavailability.
- (b) Where a Functional Unit is Unavailable (whether pursuant to a Permitted Unavailability or otherwise), the Operator must ensure that:
  - (i) in respect of a Permitted Unavailability, the State receives prior notification in writing of the proposed Permitted Unavailability of the Functional Unit (or part thereof) by the Operator, together with details of the anticipated duration of the proposed Unavailability and its effect on and likely disruption (if any) to the performance of the Services in accordance with this Agreement;
  - (ii) inconvenience and discomfort to Patients is avoided at all times;
  - (iii) disruption to delivery of the Services is avoided or minimised to the extent that is reasonably possible; and
  - (iv) the Operator does all things necessary to ensure that the Functional Unit becomes Available again as soon as possible.
- (c) Any Unavailability of a Functional Unit (whether or not it is a Permitted Unavailability) does not in any way relieve the Operator of its obligations to perform the Services in accordance with this Agreement.

### **19.2 Asset maintenance obligations**

- (a) During the Operational Phase, the Operator must maintain and keep the Health Campus in good repair and condition in accordance with:
  - (i) the Quality Standards;
  - (ii) Best Construction Practices;
  - (iii) the Asset Management Plan and the Annual Works Plan; and
  - (iv) all applicable Laws.
- (b) The Operator must notify the State immediately if any unplanned events or incidents occur during asset maintenance, asset refresh or refurbishment works which endanger, or have the potential to endanger, Hospital Users or cause the Operator to be in breach of any Law or its obligations under this Agreement.

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## **20. Force Majeure**

### **20.1 Notice**

If the Operator is of the reasonable opinion that a Force Majeure Event has occurred during the Operational Phase that affects the Public Patient Health Campus, the Operator must, no

later than 5 Business Days after it forms that opinion, submit a notice to the State which must also 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.

## **20.2 Meeting**

Within 5 Business Days of the date of the notice submitted in accordance with Clause 20.1, 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) the steps to be taken to overcome the effects of the Force Majeure Event.

## **20.3 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 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.

## **20.4 Obligations suspended**

- (a) The obligations of each party under 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) The 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).



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## 21. Handover

### 21.1 Handover Condition

In this Clause 21, “**Handover Condition**” means the required condition of the Public Patient Health Campus upon the Expiry Date, which:

- (a) if the Expiry Date is the date specified in Clause 5.2(b), is the condition that the Public Patient Health Campus:
  - (i) was in as at Completion (assuming all Defects and Outstanding Items had been rectified in accordance with the Operator’s obligations under the D&C Agreement and this Agreement), fair wear and tear excepted; and
  - (ii) would be in as at that date if the Asset Management Plan had been fully implemented;
- (b) if the Expiry Date is the date specified in Clause 5.2(a) (including any extension of the Expiry Date in accordance with the terms of this Agreement), is the condition referred to in paragraph (a), and also the condition that the items identified in the Asset Management Plan must be in so that those items have a residual life for the relevant period of time after the Expiry Date in accordance with their Service Life as at that date without any major maintenance or refurbishment work;
- (c) in each case, is Fit for Purpose, and allows the State:
  - (i) to assume the provision of the Services itself or through a third party on and from the termination of this Agreement, without having to perform any act, or incur any cost, that should have been performed or incurred by the Operator under this Agreement; and
  - (ii) to provide the Services at the Public Patient Health Campus to meet the KPIs for a period of 5 years following the date which is 20 years after the Anticipated Services Commencement Date or the earlier termination of this Agreement;
- (d) in each case ensures that all Infrastructure, Utility works and significant Building Engineering Services components (including all pipework, ductwork, cabling, items of plant, control systems and similar components) will not require replacement for a period of not less than 5 years as at the Expiry Date; and
- (e) is a condition which it would have been in if all of the Operator’s obligations under this Agreement had been complied with.

### 21.2 Facility Handover

- (a) This Clause 21.2 applies if the Operational Phase has commenced.
- (b) The Operator must prepare, update and submit the Handover Plan to the State Representative not later than 24 months prior to the Expiry Date (or immediately, if the Expiry Date has been determined in accordance with Clause 5.2(b)) and (for the avoidance of doubt) Clause 8 will apply in respect of the Handover Plan.
- (c) Upon the Expiry Date the Operator must:
  - (i) (**Handover Condition**): hand over the Public Patient Health Campus (including all rights, title and interest in the Public Patient Health Campus)

to the State or its nominee free from any encumbrances and in a state and condition which complies with the Handover Condition and the Handover Plan;

- (ii) **(transfer)**: transfer to the State or its nominee all rights, title, interest and warranties in plant and equipment required to allow the State or its nominee to operate, maintain and repair the Public Patient Health Campus (as applicable) to the standards required in accordance with this Agreement free from any encumbrances; and
  - (iii) **(manuals)**: deliver to the State or its nominee all manuals, records, plans and other information under the control of the Operator which are relevant to the design, construction, commissioning, operation, maintenance or repair of the Public Patient Health Campus (as applicable).
- (d) **(Joint inspection)**: The Operator and the State must carry out joint inspections of the Public Patient Health Campus:
  - (i) at least:
    - A. 3 years before the expected expiry of the Operational Phase; and
    - B. every 6 Months after that initial inspection until the end of the Operational Phase; or
  - (ii) if this Agreement is to be terminated prior to the natural expiry of the Operational Phase, such shorter period before the Expiry Date as is required by the State,

(each a "**Condition Review Date**").
- (e) **(Program to achieve proper Handover)**: Following each inspection in accordance with paragraph (d), the Operator must give to the State a written report (**Facility Handover Report**) specifying:
  - (i) whether the Public Patient Health Campus will, as at the Expiry Date, be in a condition which satisfies the Handover Condition; and
  - (ii) the works to be undertaken or services to be performed to enable the Public Patient Health Campus to meet the Handover Condition on the Expiry Date and a program for undertaking such works or services (**Final Refurbishment Works**).
- (f) **(Disputing Facility Handover Report)**: If the State does not agree with any aspect of the Facility Handover Report:
  - (i) the State may give details of such objections to the Operator; and
  - (ii) the parties will discuss in good faith to reach agreement on:
    - A. the scope of the Final Refurbishment Works; and
    - B. a program for carrying out the Final Refurbishment Works.
- (g) **(No agreement reached)**: If the parties cannot reach agreement on the relevant aspects of the Facility Handover Report within 10 Business Days of the date on which the objections are provided in accordance with paragraph (f), the matters

may be referred by either party for resolution by an Independent Expert in accordance with Clause 31.3.

- (h) **(Update of Works Program or Asset Management Plan):** Within 1 Month of the delivery of each Facility Handover Report, the Asset Management Plan must be amended by the Operator to include the Final Refurbishment Works the Operator is required to undertake in accordance with the then current Facility Handover Report. The updated Asset Management Plan will be submitted to the State for review in accordance with the Review Procedures.
- (i) **(Implement program):** Without limiting the Operator's obligations in accordance with this Agreement, the Operator must:
  - (i) carry out the Final Refurbishment Works and implement the program *agreed or resolved in accordance with this Clause 21.2; and*
  - (ii) *[not disclosed]*
- (j) **(Interest on Handover Escrow Account):** Interest earned on money standing to the credit of the Handover Escrow Account will be deposited into the Handover Escrow Account and the Operator will be entitled, on request, to receive copies of the statements of account for the Handover Escrow Account.
- (k) **(Excess amounts in Handover Escrow Account):** If at any time the balance of the Handover Escrow Account exceeds the estimated total costs of the Final Refurbishment Works (as agreed or resolved in accordance with this Clause 21.2) then the amount of the excess will be a debt due and payable from the State to the Operator.
- (l) **(Payments from Handover Escrow Account):** The State may draw on the Handover Escrow Account:
  - (i) to fund the completion of any Final Refurbishment Works undertaken by the State in accordance with paragraph (p) or reimburse the State's costs of undertaking any Final Refurbishment Works;
  - (ii) to pay the Operator any amount due and payable in accordance with paragraph (k);
  - (iii) to pay the Operator the costs of undertaking the Final Refurbishment Works provided that the balance of the Handover Escrow Account will not be less than the estimate of the total costs of the Final Refurbishment Works outstanding at that time; and
  - (iv) no later than 20 Business Days after completion of all Final Refurbishment Works, to pay the balance of the Handover Escrow Account to the Operator.
- (m) **(Money remaining in Handover Escrow Account):** If after:
  - (i) the State has recovered the amounts (if any) owing in accordance with paragraph (l)(i); and
  - (ii) any set-off or deduction by the State in accordance with Clause 39.2,there is any money remaining in the Handover Escrow Account, then such money must be paid by the State to the Operator.

- (n) **(Calls on Handover Bond):** The State may make a demand on the Handover Bond to make any payment in accordance with paragraph (l)(i).
- (o) **(Return of Handover Bond):** The State must return any Handover Bond to the Operator within 20 Business Days after completion of all Final Refurbishment Works required to be undertaken.
- (p) **(Completion of Final Refurbishment Works by the State):** If the Operator fails to undertake any Final Refurbishment Works when required to do so in accordance with this Clause 21, the State may undertake and complete those Final Refurbishment Works.
- (q) **(State election):** The State may, by giving the Operator reasonable prior notice at any time during the Term, relieve the Operator from its obligation to:
  - (i) implement any Final Refurbishment Works; or
  - (ii) undertake any part of the lifecycle refurbishment program set out in the Asset Management Plan, in which case the State will no longer be required to pay the Lifecycle Fee component of the Monthly Service Payment in respect of those obligations which the Operator has been relieved from performing.

### 21.3 Equipment Handover

- (a) The Operator is not entitled to, and must ensure that the Key Service Provider does not, remove Medical Equipment, Non-Medical FF&E or Consumables from the Public Patient Health Campus within the last 12 months prior to the Expiry Date, other than Medical Equipment, Non-Medical FF&E and Consumables removed as permitted by this Clause.
- (b) As soon as reasonably practicable, but in any event:
  - (i) no later than 6 months prior to the Expiry Date (if calculated in accordance with Clause 5.2(a) or (if applicable) Clause 5.2(c)); or
  - (ii) prior to the Expiry Date, in the event of the earlier termination of this Agreement,the Operator must submit to the State an Equipment Inventory.
- (c) The Operator must conduct a stocktake of all Consumables and provide a copy of that stocktake to the State as soon as reasonably practicable, but in any event:
  - (i) not later than 12 months prior to the Expiry Date (if calculated in accordance with Clause 5.2(a) or (if applicable) Clause 5.2(c)); or
  - (ii) prior to the Expiry Date, in the event of the earlier termination of this Agreement.
- (d) The Consumables (other than stale or obsolete Consumables, which will have a nil value) will be valued at:
  - (i) for unused Consumables, cost; or otherwise
  - (ii) market value, as determined by the State (acting reasonably)(the **Stock Price**).

- (e) On conclusion of the stocktake, the State and the Operator must agree on and initial a stocktake list of Consumables and agree the Stock Price.
- (f) If reasonably requested by the State, the Operator must do all things reasonably necessary to ensure that there is a supply of various Consumables within the Public Patient Facility as required by the State sufficient to provide Public Patient Services from the Public Patient Facility in accordance with the Role Delineation and Casemix Plan for a period of not less than 3 months after the Expiry Date (or a lesser period in the case of Consumables having a usable lifespan of less than 3 months).
- (g) To the extent that they are owned by the Operator or the Key Service Provider, the State agrees to acquire and the Operator agrees to relinquish, or procure that the Key Service Provider relinquishes, as at the Expiry Date the unencumbered title in:
  - (i) those items of Medical Equipment and Non-Medical FF&E listed in the Equipment Inventory referred to in paragraph (b) that the State elects to acquire, for:
    - A. in the case of State Funded Equipment, nil consideration; and
    - B. in the case of all other items used in the Public Patient Facility which are not the subject of an Equipment Lease, the lesser of:
      - 1) market value (as determined by the State, acting reasonably); or
      - 2) Written Down Value,  
multiplied by the proportion of usage at the Public Patient Facility; and
  - (ii) those Consumables:
    - A. on the stocktake list that the State elects to acquire; and
    - B. the balance of any Consumables that the State has requested the Operator to purchase in accordance with paragraph (f),  
  
at the Stock Price.
- (h) In respect of those items referred to in the Equipment Inventory which are the subject of an Equipment Lease, the Operator must, at its cost and prior to the Expiry Date, procure the novation or termination of any Equipment Lease to enable the State to acquire possession of that Medical Equipment or Non-Medical FF&E in accordance with paragraph (g)(i) above.
- (i) On the day which is 20 Business Days after the Expiry Date, the State must pay the purchase price (determined as outlined in paragraph (g) above) to the Operator, in which case title to and risk of the assets which the State agrees to purchase under paragraph (g) will pass to the State, free of encumbrances and claims of third parties (except insofar as those assets are the subject of a novated finance or similar lease), upon payment of the purchase price to the Operator.
- (j) The Operator is only entitled to remove from the Public Patient Health Campus the Medical Equipment and Non-Medical FF&E which, in accordance with paragraph (g), the State elects not to acquire (the '**Unsold Equipment**'). The State must not obstruct, hinder or delay the removal of the Unsold Equipment by or on behalf of the Operator in accordance with the provisions of this Clause 21.3.

- (k) If the Operator fails to remove all or any of the Unsold Equipment within 60 days of the later of:
  - (i) the Expiry Date; and
  - (ii) the date on which the State elects not to acquire that Unsold Equipment under paragraph (g),then unencumbered title to such Unsold Equipment will automatically vest in the State and the State's costs of removing and dealing with any such Unsold Equipment will be a debt due and owing from the Operator to the State.
- (l) For the avoidance of doubt, title to all Fixed Building Equipment will pass to the State at the Expiry Date for nil consideration (to the extent that it has not already).

## 21.4 Services Handover

- (a) Upon the Expiry Date the Operator must:
  - (i) **(access)**: provide the State with all access to the Health Campus that the State requires in order to exercise its rights under this Agreement;
  - (ii) **(novation)**: procure the novation to the State or its nominee of:
    - A. such contracts for works or services to which it or the Builder or a Subcontractor is a party as they relate to the Services or the Public Patient Health Campus (as applicable) as the State may nominate;
    - B. any leases, subleases and licences agreed to by the State; and
    - C. any warranties in respect of Medical Equipment, Fixed Building Equipment and Consumables;
  - (iii) **(Intellectual Property Rights)**: grant or procure the grant to the State or its nominee of such Intellectual Property Rights as will enable the State or its nominee to be in a position to design, construct, operate, commission, maintain and repair the Public Patient Health Campus in order to meet the KPIs;
  - (iv) **(Insurances)**: to the extent the Operator has not already done so, pay to the State or its nominee any insurance proceeds from any Insurance Policies for the reinstatement or replacement of the Public Patient Health Campus to the extent not already reinstated or replaced, and assign to the State any rights available to the Operator under the Insurance Policies;
  - (v) **(Authorisations)**: must do all acts and things necessary to enable the State (or its nominee) to have transferred or obtained all Authorisations necessary for the operation, maintenance and repair of the Public Patient Health Campus;
  - (vi) **(operations)**: do all other acts and things to enable the State (or its nominee) to be in a position to deliver the Project at the standards stated in this Agreement, with minimum disruption;
  - (vii) **(Medical Records)**: provide to the State all original Public Patient Medical Records and all other Records and copies of other information

and documentation provided by the State for the purposes of the Project (including all Disclosed Information); and

- (viii) **(Branding):** subject to Clause 30, remove all logos, branding and similar marks belonging to or relating to the Operator, an Operator Associate, a Consortium Entity or a Subcontractor from all places within or adjacent to the Public Patient Health Campus (other than as specified by the State), and make good any damage caused by that removal.
- (b) Without limiting paragraphs (a) and (c), the Operator must, before the end of the Operational Phase, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for the Project to the State or its nominee in accordance with the Handover Plan including:
  - (i) meeting with the State and such other persons notified by the State not less than 12 months prior to the commencement of the Service Handover Period to discuss the Project and to attempt to agree arrangements associated with the Handover of the Public Patient Health Campus and the Services;
  - (ii) providing access to its operations for the purpose of familiarisation;
  - (iii) providing sufficient information as is required to ensure the safety and quality of Patient care;
  - (iv) providing sufficient information to the State or its nominee to determine the status and condition of the Project, any works programs in place at the time and the Operator's workforce profile;
  - (v) providing reasonable assistance to the State in securing the supply to the State of goods and services to the extent that such supply is necessary for the operation of all or any part of the Public Patient Health Campus or provision of the Services; and
  - (vi) permitting the State and any of its invitees (including any potential replacement operator of the Public Patient Health Campus) to gain access to the Public Patient Health Campus and to observe the delivery of the Services and the performance of the Operator's other obligations under this Agreement.
- (c) Without limiting paragraphs (a) and (b):
  - (i) the Operator must ensure that adequate numbers of qualified staff (as nominated by the State, acting reasonably) remain at the Public Patient Health Campus for a period of 3 months following the Expiry Date for the purposes of ensuring a seamless transition of the Services; and
  - (ii) the State will pay to the Operator its additional staff costs actually and reasonably incurred in complying with subparagraph (i) as agreed between the parties (both acting reasonably).
- (d) The Operator must not, and must ensure that the Key Service Provider does not, without the prior written consent of the State (which may not be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any of the Operator's employees or contractors or any of the Key Service Provider's employees or contractors who work solely and exclusively at or in relation to the Health Campus, where:

- (i) the variation takes effect in the Service Handover Period unless it is a variation:
    - A. imposed by a determination or order of the Australian Industrial Relations Commission; or
    - B. made in the ordinary course of business and, when aggregated with any other variation which takes effect during the Service Handover Period, represents an increase in the remuneration of that employee or contractor of the Operator or the Key Service Provider which results in that remuneration not exceeding the remuneration which that employee or contractor would have then received had it been employed directly by the State;
  - (ii) the variation first takes effect after the Expiry Date;
  - (iii) the variation results in the employment being for a fixed term, the expiry of which is more than 12 months after the Expiry Date;
  - (iv) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
  - (v) the variation relates to the provision of a benefit (but excluding base salary and the employee's legal entitlements) which the employee will, or may have, a contractual right to receive after the Expiry Date; or
  - (vi) subject to Clause 7.14(b), the variation prevents, restricts or hinders the employee from working for the State or from performing the duties the employee performed for the Operator or the Key Service Provider.
- (e) The Operator:
- (i) acknowledges that the State will not be liable to pay any accruals or entitlements to any employee or contractor of the Operator or the Key Service Provider who, at the State's election, agrees to take employment from the State or any replacement operator following the Expiry Date; and
  - (ii) must do all things necessary to ensure that the State or any replacement operator does not incur any liability of the type referred to in subparagraph (i).

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## 22. Commercial Opportunities

### 22.1 Sources of revenue and returns

Other than in respect of car parking (which is addressed in Clause 33.10), the Operator may only derive revenue or other returns from:

- (a) interest or other returns on moneys held by or on behalf of the Operator in accordance with this Agreement and in connection with the operation of the Private Patient Facility; and
- (b) any other revenue or return approved by the State from activities approved by the State or permitted in accordance with this Agreement.



## 22.2 Commercial Opportunities

- (a) Subject to the prior approval of the State (which will not be unreasonably withheld provided that the provisions of this Clause 22.2 are complied with), the Operator or the Key Service Provider may grant a sublease of a Commercial Facility which forms part of a Designated Commercial Area to a Commercial Operator for the sole purpose of carrying out a Commercial Opportunity, provided that the Operator must not, and must ensure that the Key Service Provider does not, grant a sublease to a Commercial Operator:
  - (i) of any part of the Health Campus which is not a Designated Commercial Area; and
  - (ii) with a term (including any option) that exceeds the Term.
- (b) The Operator must:
  - (i) comply with all Laws in respect of the granting and management of any sublease granted to a Commercial Operator; and
  - (ii) do all things necessary to ensure that each Commercial Operator does not do or omit to do any thing which would result in the Operator being in breach of any Project Document.
- (c) Each sublease granted to a Commercial Operator must contain a clause which permits the sublease to be unconditionally novated to the State or terminated, at the State's election, if this Agreement and the Operating Lease are terminated.
- (d) A reference to a sublease in this Clause 22.2 includes any other right of access to the Health Campus granted by the Operator or the Key Service Provider (as the case may be) to a Commercial Operator.
- (e) The Operator must ensure that each Commercial Operator:
  - (i) only undertakes activities which are complementary to being located at a hospital;
  - (ii) does not at any time sell alcohol or tobacco products;
  - (iii) does not operate a business at which unhealthy food and drink sales make up more than 20% of its sales revenue; and
  - (iv) does not operate a business which does not provide any amenity to the Health Campus or any Hospital User, or which has the potential to impede the Expansion Works or any Further Development,at or from the Health Campus.
- (f) The Operator assumes all risk in relation to design, construction and operation of any Commercial Facility, and indemnifies the State in relation to any loss, damage, cost or Claim suffered by the State in relation to any Commercial Opportunity.
- (g) The State may, at any time during the Term, notify the Operator that it requires the termination of any Commercial Opportunity and associated sublease, in which case:
  - (i) the Operator must do all things necessary to terminate and ensure the cessation of that Commercial Opportunity; and

- (ii) the State will pay the Operator its additional costs and losses actually and reasonably incurred in association with that termination.
  - (h) If the State terminates only the Operator's rights and entitlements in respect of the Private Patient Facility under Clause 29.1, the Operator must:
    - (i) do all things reasonably necessary to promptly collect all rent payable under the subleases of the Commercial Facilities; and
    - (ii) *[not disclosed]*
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## **23. Risk and Liability**

### **23.1 Risk of loss or damage**

Without limiting the D&C Agreement, the Operator bears the risk of loss or damage to:

- (a) the Health Campus during the Operational Phase; and
- (b) unfixed goods and materials (whether on or off the Health Campus), including anything:
  - (i) provided by the State to the Operator;
  - (ii) brought onto the Health Campus by a Subcontractor; or
  - (iii) used or to be used in delivering the Project,

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 delivery of the Services.

### **23.2 State election to reinstate**

Within 60 Business Days (or such longer period as the State reasonably requires) of any loss or damage to the Health Campus of which the Operator notifies the State under Clause 23.1, the State must notify the Operator whether it requires the Operator:

- (a) to repair or rebuild all or part of the Health Campus; or
- (b) not to repair or rebuild the Health Campus,

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

### **23.3 Reinstatement**

- (a) If the State notifies the Operator that it requires the Operator to repair or rebuild all or part of the Health Campus in accordance with Clause 23.2(a), the Operator must:
  - (i) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
  - (ii) 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:

- A. all, or the relevant part of, the Health Campus complies with the requirements of the State Project Documents;
  - B. to the greatest extent possible, the Operator continues to comply with its obligations in accordance with the State Project Documents; and
  - C. the State is fully informed of the progress of the repair and reinstatement activities; and
- (iii) bear the cost of repairing or rebuilding all, or the relevant part of, the Health Campus, unless the loss or damage was caused by:
- A. a Force Majeure Event; or
  - B. subject to the Operator or Consortium Entity having notified the State as soon as the Operator receives written notification from its insurers or insurance brokers that the relevant risk has become Uninsurable, an Uninsurable risk,

in which case:

- C. 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 the Insurance Schedule, or its obligations under the relevant Insurance Policy, or where the loss or damage was occasioned by an Uninsurable risk; or
- D. subject to paragraph (b), to the extent the cost of repair or rebuilding all or the relevant part of the Health Campus is less than the proceeds of any insurance taken out by the Operator under this Agreement, the difference must be shared between the State and the Operator in the proportion of capital cost that each party has made to the Health Campus,

and the parties must comply with the provisions of Clause 15 in relation to those repairs or rebuilding works as if those works were a Facility Variation for the purposes of that Clause.

- (b) If the State notifies the Operator in accordance with paragraph (a) to repair or rebuild the Health Campus, but excluding the Private Patient Facility, then the Operator:
- (i) is entitled to retain that proportion of the proceeds (if any) of any insurance taken out by the Operator under this Agreement received as a result of the loss or damage referred to in Clause 23.1 which equates to the proportion of the Operator's capital cost contribution towards the Health Campus; and
  - (ii) may elect by written notice to the State not later than 30 days after the State's notice under paragraph (a), to repair or rebuild the Private Patient Facility at its own cost, including by using any insurance proceeds received in accordance with subparagraph (b)(i).

## 23.4 Consequences of not repairing or rebuilding

If the State notifies the Operator not to repair or rebuild the Health Campus in accordance with Clause 23.2(b), and the loss or damage:

- (a) does not wholly or substantially prevent the performance of all of the Services, the notice of the State in accordance with Clause 23.2(b) will be deemed to be a Variation to omit the relevant part of the Health Campus from the Project and the State must issue a Variation Order in that respect; or
- (b) wholly or substantially prevents the performance of all of the Services 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 29.3 or 29.4 respectively;
  - (ii) a breach by the State of a State Project Document or negligent or wilful act or omission of the State or a State Personnel then this Agreement will be deemed to be terminated for convenience in accordance with Clause 29.1;
  - (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 29.2; or
  - (iv) any matter not covered by paragraphs (i), (ii) or (iii), then a "**Damage Termination Event**" has occurred and Clause 29.2 will apply,

and in the event of either paragraph (a) or (b), the Operator must pay to the State any proceeds of insurance in respect of the Public Patient Health Campus (excluding the Private Proportion of Shared Infrastructure) relating to the loss or damage 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 Health Campus arising in connection with delivering the Project.
- (b) If any loss of or damage to real or personal property of third parties occurs in connection with delivering the Project, 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 Operator 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;
- (b) any loss of or damage to property of the Indemnified Person (other than the Public Patient Health Campus which is subject to the regime set out in Clauses 23.1 to 23.5 inclusive); 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 Health Campus by the Operator or the Operator's 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 directly due to:

- (d) a fraudulent, negligent, unlawful or wilful act or omission of the Indemnified Person; or
- (e) 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

- (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 Services 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 Services, 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 Exclusion of liability for 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 or the Key Service Provider recovers 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.
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## **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 the Insurance Schedule:
  - (i) on the terms and conditions set out in the Insurance Schedule 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, and any limitations regarding this requirement must be notified to and agreed 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 the Insurance Schedule.
- (b) Subject to paragraph (c), the Insurance Policies must be maintained until the dates set out in the Insurance Schedule.
- (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 Medical Malpractice, Compulsory Motor Vehicle insurance and Compulsory Workers Compensation 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 existing Medical Malpractice policy, and in respect of each renewal, subject to the relevant persons to whom the policy will be provided executing a confidentiality undertaking in the terms already agreed, the Operator will provide a copy of the Medical Malpractice policy to the State as set out in paragraph (a).
- (c) The Operator has advised the State that it is exempt from obtaining statutory workers compensation cover (under Section 164 of the *Workers' Compensation and Injury Management Act 1981* (WA)). The Operator must advise the State in writing within 5 Business Days of the exemption being withdrawn.

## 24.4 Proof of Insurance Policies

- (a) Save as set out in Clause 24.3 above, on or before the commencement of the Operational Phase 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 broker's evidence of cover incorporating policy wording and schedules (**Broker's Evidence of Cover**) evidencing the insurance effected and maintained.
- (b) The Broker's 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, the Broker's Evidence of Cover or certificates of currency which relates to other projects.



- (d) The State will keep the Insurance Policies, the Broker's 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.

## **24.5 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 (without limitation):
  - (i) effect and maintain the Insurance Policies and pay the premiums (and 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 27 (Default);
  - (iii) suspend the performance of the Services until evidence of insurance required by this Agreement is produced to the State (in which case no Services Fee or other compensation will be payable by the State to the Operator); or
  - (iv) refuse payment of any amount due to the Operator until evidence of insurance required by this Clause 24 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 2 of the Insurance Schedule;
- (b) in the case of Medical Malpractice, as soon as practicable, inform the State in writing of any occurrence or occurrences that may give rise to a claim, or claims in the aggregate, with a possible value of 50% or greater of any limit of cover provided;
- (c) keep the State informed of subsequent developments concerning the claim; and
- (d) ensure that the Key Personnel and Key Subcontractors 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 loss 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, and must procure that the Key Service Provider does 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 Insurances Policies are primary and not secondary to the indemnities referred to in this Agreement, provided that the State is not obliged to make a claim or institute proceedings against any insurer under the Insurances 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 during the Term review the adequacy and appropriateness of the Insurance Policies (subject to Clause 24.3) and may (without limitation) determine whether, in the State's reasonable opinion:
  - (i) any additional insurance policies are required; or
  - (ii) 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 and accompanying schedules or Broker's Evidence of Cover (subject to Clause 24.3) 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 paragraph (d)) as soon as practicable thereafter at the Operator's own cost (except to the extent that the relevant cost is greater than that taken into account by the escalation of the Service Fee in accordance with Appendix B of the Payment Schedule and the year to year changes as set out in the Annual Notice under Section 1 of the Activity Schedule, in which case the additional cost will be borne by the State), 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 31.

#### **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 27 (Default);
  - (ii) suspend the performance of the Services until evidence of insurance required by this Agreement is produced to the State (in which case no Services Fee or other compensation will be payable by the State to the Operator); or
  - (iii) refuse payment of any amount 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:

- (a) towards replacement or repair of the Facility or the Public Patient Facility Assets; or
- (b) to discharge the relevant liability or make good the relevant loss,

as applicable, and must be applied towards the Public Patient Health Campus 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 risks**

- (a) If an Insurance Facility becomes Uninsurable, the Operator must notify the State in writing within 10 Business Days after becoming so aware, or if the Key Service Provider becomes so 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 Services or any other 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 31, 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) Each Monthly Service Payment will be adjusted each Financial Year 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 the Key Service Provider, 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 Services 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 Health Campus (excluding the Private Patient Facility and the Private Proportion of Shared Infrastructure) and loss or damage resulting from performance of the relevant 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 31.

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## **25. Compliance with Laws**

### **25.1 Authorisations**

The Operator must:

- (a) obtain and maintain all Authorisations in connection with the Project (including all conditions of such Authorisations); and
- (b) comply with the terms and conditions of each Authorisation.

## 25.2 Compliance with Laws

- (a) The Operator must comply with and ensure that all elements of the Project comply with:
  - (i) all applicable Laws; and
  - (ii) if applicable, the Code of Practice for the Building and Construction Industry in Western Australia.
- (b) The Operator must:
  - (i) give all notices and pay all fees and other amounts required to be paid in connection with delivering the Project; and
  - (ii) give the State copies of all documents (including Authorisations and other notices) issued to it in connection with the Project by any Authority or the LARU.
- (c) 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 Project.

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## 26. Representations and warranties

### 26.1 Corporate representations

The Operator represents and agrees that:

- (a) **(Project Documents)**: the execution, delivery and performance of the Project Documents to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (b) **(valid and legally binding)**: each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (c) **(not trustee)**: it is not the trustee or Responsible Entity (as that term is defined in the Corporations Act) of any trust nor does it hold any property subject to or impressed by any trust;
- (d) **(no subsidiaries)**: it has no subsidiaries;
- (e) **(no tax consolidation)**: it is not part of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth), except with the consent of the State;
- (f) **(no other trade)**: it has not traded since its incorporation, other than for the purposes of entering into the Project Documents and delivering the Project and has no Liabilities other than those that have arisen in connection with entering into the Project Documents; and
- (g) **(no material financial change)**: there has been no material change in the financial condition of the Operator (since its incorporation), and the Builder or the Key

Subcontractors (since the date of their last audited accounts) which would prejudice the ability of the Operator to perform its obligations in accordance with the Project Documents.

## 26.2 Operator's representations and warranties

The Operator represents and warrants to the State that it:

- (a) **(informed itself)**: has informed itself as to the nature of the Project;
- (b) **(assessed risks)**: has assessed the risks which it is assuming in accordance with the State Project Documents;
- (c) **(Site Conditions)**: has examined the Health Campus and its surroundings and has done everything possible to inform itself sufficiently as to access to those areas and the Site Conditions which may affect delivery of the Project;
- (d) **(own investigations)**: enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (e) **(resources and expertise)**: has the resources and expertise required to perform the obligations imposed on the Operator in accordance with this Agreement including to perform the Services and deliver the Project in accordance with this Agreement; and
- (f) **(examination)**: has examined all the information made available by the State or State Associates to the Operator in connection with the Health Campus and the Project, including the Disclosed Information and the State Project Documents.

## 26.3 Disclosed Information

- (a) The Operator agrees that:
  - (i) the State and State Associates have not made and make no representation, and give no warranty or guarantee about the accuracy, adequacy or completeness of, and owe no duty of care in connection with the Disclosed Information;
  - (ii) the Disclosed Information is provided by the State for information purposes only;
  - (iii) 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 in accordance with this Agreement which may not have been provided to the Operator or to which no reference has been made;
  - (iv) all Intellectual Property Rights in the Disclosed Information and the State Project Documents remain the property of the State;
  - (v) the Disclosed Information does not form part of this Agreement or constitute an invitation, offer or recommendation by or on behalf of the State; and
  - (vi) if the Disclosed Information was prepared by third parties, the State is a mere conduit in connection with the information contained in that Disclosed Information.

- (b) The Operator represents and agrees that it did not rely upon any Disclosed Information or the adequacy, accuracy, suitability or completeness of the Disclosed Information for the purposes of entering into this Agreement.
- (c) To the extent permitted by Law, the Operator will not, and must 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 Disclosed Information;
  - (ii) the provision of, or the purported reliance upon, or use of, the Disclosed Information 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.
- (d) 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 (c).

## 26.4 Repetition of representations and warranties

Each representation and warranty:

- (a) contained in this Agreement is made on the Date of this Agreement; and
- (b) contained in Clauses 26.1 and 26.2(e) will be deemed to be repeated each day during the Term,

with reference to the facts and circumstances then subsisting.

## 26.5 Reliance on representations and warranties

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

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## 27. Default

### 27.1 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 Operational Phase; 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 during the Operational Phase, 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 date 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 (acting reasonably) has no requirements in relation to that Event of Default, a statement to that effect.
- (c) *[not disclosed]*

## **27.2 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, to provide or replace the Handover Bond or is the event referred to in paragraph (q) 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.

## **27.3 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.

## **27.4 When extensions to be given**

- (a) Subject to paragraph (b), if the Operator gives a notice in accordance with Clause 27.3(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 27.1(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.

## 27.5 Disputes

If the Operator considers that the time stated in the notice given by the State in accordance with Clause 27.4 is not reasonable or there is a failure to agree a remedy program as required by Clause 27.2(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 31; 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.

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## 28. Step-in by the State

### 28.1 Right of step-in

If:

- (a) an Immediate Termination Event occurs or, (in relation to subparagraph (b)(i) of the definition of Immediate Termination Event) is reasonably likely (in the reasonable opinion of the State) to occur;
- (b) an Event of Default has occurred;
- (c) the State is required by Law to act to discharge a statutory power or duty; or
- (d) a Force Majeure Event occurs or both parties agree that it is reasonably likely to occur,

during the Operational Phase (each a **Step-in Event**), the State or a nominee of the State may elect to immediately:

- (e) temporarily assume total or partial management and control of the whole or any part of the Services or the Public Patient Health Campus;
- (f) access the Health Campus; and
- (g) take such other steps as are necessary in the reasonable opinion of the State to deliver the Project and minimise the effect of the Step-in Event.

### 28.2 Suspension of the Operator's obligations

If the State has exercised its step-in rights in accordance with Clause 28.1, the Operator's obligations in accordance with the State Project Documents will be suspended for the affected period but only to the extent necessary to enable the State to exercise those step-in rights.

### 28.3 Payments

Any Liability reasonably suffered or incurred by the State or any nominee of the State arising in connection with the exercise by the State of its step-in rights in accordance with Clause 28.1 will be a debt due and payable from the Operator to the State.

## **28.4 Operator to assist the State**

The Operator must provide the State with all necessary assistance in a timely manner to enable it to exercise its step-in rights in accordance with Clause 28.1 effectively and expeditiously and, without limitation, the Operator must:

- (a) provide the State access at all times to the Health Campus, and the State may take possession and control of the Health Campus and any plant and equipment on the Health Campus and utilise them, to the extent that the State reasonably considers necessary for the proper exercise of the State's step-in rights under this Clause 28;
- (b) provide, and the State may take possession and control of any documents, information, and materials in the possession or control of the Operator or the Key Service Provider or which are kept at the Health Campus, that the State reasonably considers necessary for the proper exercise of the State's step-in rights under this Clause 28;
- (c) to the extent required by the State, enforce or make available to the State or its nominees all rights and benefits of the Operator under the Project Documents or any Subcontract. The State will use reasonable endeavours to comply with the obligations of the Operator under such contracts but is not liable to the Operator for any failure to comply;
- (d) provide all reasonable assistance to the State or its nominees to take possession and control of the Health Campus and any equipment and supplies, and to operate the Public Patient Health Campus, and otherwise in the exercise of the State's step-in rights under this Clause 28; and
- (e) to the extent required by the State, provide the State access to and use of the Operator's Systems which are used directly or indirectly in relation to the provision of the Services until such time as the State has deployed its own replacement information systems.

## **28.5 Acknowledgments**

The Operator agrees that the State will have no Liability to the Operator, and the Operator or Key Service Provider will not be entitled to make any Claim against the State in connection with the exercise by the State of its rights in accordance with Clause 28.1 except:

- (a) if the State has acted fraudulently, in bad faith or with gross negligence; or
- (b) to the extent that this Agreement expressly provides otherwise.

## **28.6 Power of attorney**

The Operator irrevocably:

- (a) appoints the State, and the State's nominees from time to time, jointly and severally as the Operator's attorney with full power and authority to exercise the State's rights in accordance with this Clause 28; and
- (b) agrees to ratify and confirm whatever action is taken by the attorney appointed by the Operator.

## **28.7 Cessation of step-in rights**

- (a) The State may, at any time, cease to exercise its rights in accordance with this Clause 28 on 5 Business Days notice to the Operator.

- (b) The State must cease to exercise its step-in rights on 5 Business Days notice to the Operator where the State has exercised its rights in accordance with Clause 28.1 and:
  - (i) the relevant event is remedied or ceases; or
  - (ii) in the case of an exercise of the State's rights under Clause 28.1(a) or (d) due to the reasonable likelihood of an event occurring, that reasonable likelihood has ceased.
- (c) If the State has ceased to exercise its step-in rights in accordance with this Clause 28, the Operator must immediately recommence performing any obligations suspended due to the exercise of such step-in rights.

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## 29. Termination

### 29.1 Termination for convenience

- (a) Subject to Clause 29.6, the State may, at any time, terminate this Agreement at its convenience by giving the Operator not less than 20 Business Days notice, in which case Clause 30 will apply.
- (b) The State may, at any time, terminate only the Operator's rights and entitlements in respect of the Private Patient Facility at its convenience by giving the Operator no less than:
  - (i) if the Operator has an unconditional option to purchase the Adjacent Land at the time the State's notice is given, 3 years' notice; or
  - (ii) if the Operator does not have an unconditional option to purchase the Adjacent Land at the time the State's notice is given and the requirements of Clauses **Error! Reference source not found.** and **Error! Reference source not found.** have been satisfied, 4 years notice,
 in which case:
  - (iii) this Agreement and the Project Documents will remain on foot in all other respects; and
  - (iv) Clause 30.3 will apply.
- (c) 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, this Agreement will be deemed to have been terminated for convenience by the State under paragraph (a) and Clause 30 will apply.

### 29.2 Termination for Force Majeure, Uninsurable Risk Termination Event or Damage Termination Event

- (a) If a Force Majeure Termination Event, an Uninsurable Risk Termination Event or a Damage Termination Event occurs, then the State or the Operator may terminate this Agreement by giving notice to the other party, in which case Clause 30 will apply.
- (b) Subject to Clause 29.6, the termination of this Agreement for a Force Majeure Termination Event, Uninsurable Risk Termination Event or Damage Termination

Event will take effect upon the date stated in the notice given in accordance with paragraph (a).

### 29.3 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 27.4), (or prior to the expiration of that period if the State determines (acting reasonably) that:
    - A. the Event of Default is of the type referred to in paragraph (l)(i) of the definition of Event of Default;
    - B. an Event of Default of that type has occurred previously during the previous 10 years of the Term; and
    - C. the Event of Default will not be remedied within that period);
  - (ii) an Event of Default has occurred which is not capable of remedy and the State has issued a notice under Clause 27.1(b)(iii)B; or
  - (iii) an Event of Default has occurred which is not capable of remedy, the State has issued a notice under Clause 27.1(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 27.1(b)(iii)A (as may be extended in accordance with Clause 27.4),

in which case Clause 30 will apply, provided that, in the case of an Event of Default of the type referred to in paragraph (j) of the definition of Event of Default, the breach relates to a material term of the State Project Documents.

- (b) Subject to Clause 29.6, 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).

### 29.4 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, in which case Clause 30 will apply.
- (b) Subject to Clause 29.6, 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).

### 29.5 Termination of the D&C Agreement

If the D&C Agreement is terminated:

- (a) for a D&C Event of Default, then the State may terminate this Agreement as if for an Event of Default by giving notice to the Operator;
- (b) for a D&C Force Majeure Termination Event, D&C Uninsurable Risk Termination Event or a D&C Damage Termination Event, then the State may terminate this

Agreement as if for a Force Majeure Termination Event by giving notice to the Operator;

- (c) for a D&C Immediate Termination Event, then the State may terminate this Agreement as if for an Immediate Termination Event by giving notice to the Operator; and
- (d) for convenience by the State, then the State may terminate this Agreement for convenience under Clause 29.1 by giving notice to the Operator,

and any termination of this Agreement under this Clause 29.5 will take effect upon the date stated in the notice given by the State to the Operator in accordance with paragraphs (a) to (d) (inclusive).

## 29.6 Termination of the Private Patient Facility

Despite any other provisions of Clause 29 or 30, if the Operator's rights and entitlements in respect of the Private Patient Facility are to be terminated by the State (and without limiting any other requirements in respect of a valid termination, for any such termination to be valid) in accordance with this Clause 29 (other than under Clause 29.1(b)):

- (a) for any reason during the D&C Phase or under Clause 29.2 during the Operational Phase, the State must have first provided the Operator with 20 Business Days written notice of the termination; or
- (b) during the Operational Phase under Clauses 29.1(a), 29.3 or 29.4, the State must have first provided the Operator with not less than three years' (or four years', if Clause 29.1(b)(ii) applies) written notice of the termination.

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## 30. Consequences of Termination

### 30.1 Termination during D&C Phase

If this Agreement is terminated during the D&C Phase and:

- (a) **(default termination)**: that termination is in accordance with Clause 29.3 (Termination for Event of Default), Clause 29.4 (Immediate Termination Event) or Clause 29.5(a) or (c), then the State may elect to:
  - (i) terminate the Project (including in respect of all arrangements concerning the Private Works and the Private Facility), in which case:
    - A. the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number);
    - B. the State will pay to the Operator the Private Patient Facility Termination Payment (if a positive number) or the Operator will pay to the State the Private Patient Facility Termination Payment (if a negative number);
    - C. other than as specified in subparagraphs A and B, no Termination Payment or other compensation will be payable by the State to the Operator;
    - D. the State Project Documents will each terminate, other than:

- 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - E. the Operator must ensure that all logos, branding and similar marks belonging to or relating to the Operator, an Operator Associate, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Facility (other than as specified by the State), and make good any damage caused by that removal;
  - F. for the avoidance of doubt, the State may resume the control and occupation of the whole of the Health Campus, and title to the Works, the Private Works, the Facility, the Shared Infrastructure and any other improvements situated on the Site will vest in the State (to the extent that it has not already done so); or
- (ii) terminate the Project but allow the Operator to continue to construct and operate the Private Patient Facility, in which case:
- A. the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number);
  - B. other than as specified in subparagraph A but subject to subparagraph E, no Termination Payment (including any Private Patient Facility Termination Payment) or other compensation will be payable by the State to the Operator;
  - C. title to the Works, the Public Patient Facility, the Shared Infrastructure and any other improvements situated on the Site (other than the Private Works and the Private Patient Facility) will vest in the State (to the extent that it has not already done so);
  - D. subject to subparagraph E(1)(b) below, the State Project Documents will each terminate, other than:
    - 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe the State under this Agreement, the Interim Management Agreement (if entered into by the parties) and the D&C Agreement;
  - E. within 20 Business Days (or as otherwise extended by agreement in writing between the parties), the parties must use reasonable endeavours to agree in writing a methodology and process and related agreements for completion of the Private Works, in which case;

- 1) if written agreement is reached between the parties within the period set out above in this subparagraph E:
    - a) upon completion of the Private Works the State must grant the Operator, or, if nominated by the Operator, the Key Service Provider, a lease of the Private Patient Facility to enable the Operator or the Key Service Provider (as the case may be) to conduct operations from the Private Patient Facility:
      - i) to be in respect of the footprint of the Private Patient Facility only (excluding any Shared Infrastructure); and
      - ii) otherwise on terms and conditions agreed or determined in accordance with Clause 12.11, and
    - b) the State Security will remain in full force and effect, varied to grant security to the State in respect of any residual liability of the Operator under the balance of the Project Documents (and the Operator agrees to do all things reasonably necessary to vary each State Security accordingly, or to provide appropriate replacement securities if any State Security is unable to be so varied, and to affirm the enforceability of the Parent Guarantee); or
  - 2) if the parties fail to reach agreement within the period set out above in this subparagraph E, the State must terminate the Private Patient Facility in which case Clause 30.1(a)(i) applies (including as it relates to the Private Patient Facility);
- (b) **(termination for convenience):** that termination is in accordance with Clause 29.1 (Termination for convenience) or Clause 29.5(d), then the State may elect to:
- (i) terminate the Project (including in respect of all arrangements concerning the Private Works and the Private Facility), in which case:
    - A. the State will pay to the Operator the Convenience Termination Payment and the Private Patient Facility Termination Payment;
    - B. other than as specified in subparagraph A or the Interim Management Agreement (if entered into by the parties), no Termination Payment or other compensation will be payable by the State to the Operator;

- C. the State Project Documents will each terminate, other than:
    - 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - D. the Operator must ensure that all logos, branding and similar marks belonging to or relating to the Operator, an Operator Associate, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Facility (other than as specified by the State), and make good any damage caused by that removal;
  - E. for the avoidance of doubt, the State may resume the control and occupation of the whole of the Health Campus, and title to the Works, the Private Works, the Facility, the Shared Infrastructure and any other improvements situated on the Site will vest in the State (to the extent that it has not already done so), provided that title to the Private Works will only pass to the State upon payment of the Private Patient Facility Termination Payment and the Operator must grant to the State a licence to access, use and otherwise do all things necessary to and within the Private Works to enable the State to operate the Private Patient Facility as part of the Health Campus;
- (ii) terminate the Project but allow the Operator to continue to construct and operate the Private Patient Facility, in which case:
- A. the State will pay to the Operator the Convenience Termination Payment;
  - B. other than as specified in subparagraph A or the Interim Management Agreement but subject to subparagraph E below, no Termination Payment or other compensation will be payable by the State to the Operator;
  - C. subject to subparagraph E(1)(c), the State Project Documents will each terminate, other than:
    - 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - D. title to the Works, the Public Patient Facility, the Shared Infrastructure and any other improvements situated on the Site (other than the Private Works and the Private Patient Facility) will vest in the State (to the extent that it has not already done so);



- E. within 20 Business Days (or as otherwise extended by agreement in writing between the parties), the parties must use reasonable endeavours to agree in writing a methodology and process and related agreements for completion of the Private Works, in which case;
- 1) if written agreement is reached between the parties within the period set out in paragraph E:
    - a) upon completion of the Private Works, the Operator, or, if nominated by the Operator, the Key Service Provider, will be granted the Private Patient Facility Lease in respect of the Private Patient Facility, on terms agreed or determined in accordance with Clause 12.11;
    - b) the State Security will remain in full force and effect, varied to grant security to the State in respect of any residual liability of the Operator under the balance of the Project Documents (and the Operator agrees to do all things reasonably necessary to vary each State Security accordingly, or to provide appropriate replacement securities if any State Security is unable to be so varied and to affirm the enforceability of the Parent Guarantee); and
    - c) the State agrees not to (and the Private Patient Facility Lease will contain covenants by the State that it will not) appoint a private hospital operator to provide services equivalent to, or substantially similar to, any of the Clinical Services at the Public Patient Health Campus for a period equivalent to the then-balance of the Term (had this Agreement remained in effect); or
  - 2) if the parties fail to reach agreement within the period set out in paragraph E, the State must terminate the Private Patient Facility in which case Clause 30.1(b)(i) applies (including as it relates to the Private Patient Facility);
- (c) **(Force Majeure or damage termination):** that termination is in accordance with Clause 29.2 (Termination for Force Majeure, Uninsurable Risk Termination Event or Damage Termination Event) or Clause 29.5(b) then:
- (i) the whole of the Project (including in respect of all arrangements concerning the Private Works and the Private Facility) terminates;
  - (ii) the State Project Documents will each terminate, other than:

- A. in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
  - B. the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
- (iii) the State must pay the Operator:
  - A. the amount for Works undertaken prior to Termination which would have been payable if Termination had not occurred and the Operator had issued an invoice on Termination; and
  - B. deposits properly and reasonably paid in advance by the Builder for goods and materials ordered by the Builder for the Works and which the Builder is liable to accept, but only if title to the goods and materials passes to the State upon payment by the State to the supplier of the balance of the price;
- (iv) if the Private Works have been wholly or substantially damaged by the relevant Force Majeure Termination Event or Damage Termination Event, then:
  - A. no Termination Payment is payable by the State to the Operator; and
  - B. the Operator is not required demolish and remove that part of the Private Works as has then been constructed, or reinstate any part of the Site on which the Private Works were being undertaken; or
- (v) if the Private Works have not been wholly or substantially damaged by the relevant Force Majeure Event or Damage Termination Event, then the State must pay to the Operator the Private Patient Facility Termination Payment;
- (vi) other than as specified in subparagraphs (ii), (iii), (iv) and (v), no Termination Payment or other compensation will be payable by the State to the Operator; and
- (vii) title to the Works, the Private Works, the Facility, the Shared Infrastructure and any other improvements situated on the Site will vest in the State (to the extent that it has not already done so), provided that title to the Private Works will only pass to the State upon payment of the Private Patient Facility Termination Payment and the Operator must grant to the State a licence to access, use and otherwise do all things necessary to and within the Private Works to enable the State to operate the Private Patient Facility as part of the Health Campus.

## 30.2 Termination during Operational Phase

If this Agreement is terminated during the Operational Phase and:

- (a) **(default termination):** that termination is in accordance with Clause 29.3 (Termination for Event of Default), Clause 29.4 (Immediate Termination Event) or Clause 29.5(a) or (c), then the State may elect to:

- (i) terminate the Project (including in respect of all arrangements concerning the Private Works and the Private Facility), in which case:
  - A. the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number);
  - B. the State must grant the Operator or, if nominated by the Operator, the Key Service Provider, the Private Patient Facility Lease in respect of the Private Patient Facility on terms agreed or deemed to have been agreed in accordance with Clause 12.11 (except that the term of the Private Patient Facility Lease will be the three year notice period referred to in clause 29.6(b));
  - C. upon the expiry of the three year notice period referred to in Clause 29.6(b), the State will pay to the Operator the Private Patient Facility Termination Payment (if a positive number) or the Operator will pay to the State the Private Patient Facility Termination Payment (if a negative number);
  - D. other than as specified in subparagraphs A and C, no Termination Payment or other compensation will be payable by the State to the Operator;
  - E. the State Project Documents will each terminate, other than:
    - 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - F. the Operator must ensure that, upon expiry of the three year notice period referred to in Clause 29.6(b), all logos, branding and similar marks belonging to or relating to the Operator, an Operator Associate, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Facility (other than as specified by the State), and make good any damage caused by that removal; and
  - G. for the avoidance of doubt, the State may resume the control and occupation of the whole of the Health Campus, and, upon expiry of the three year notice period referred to in Clause 29.6(b), title to the Private Facility will vest in the State (to the extent that it has not already done so);
- (ii) terminate the Project but allow the Operator to continue to operate the Private Patient Facility, in which case:
  - A. the Operator will pay to the State the Default Termination Payment (if a negative number) or the State will pay to the Operator the Default Termination Payment (if a positive number);

- B. other than as specified in subparagraph A, no Termination Payment or other compensation will be payable by the State to the Operator;
  - C. subject to subparagraph E below, the State Project Documents will each terminate, other than:
    - 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - D. the State must grant the Operator or, if nominated by the Operator, the Key Service Provider, the Private Patient Facility Lease in respect of the Private Patient Facility on terms as agreed or determined under Clause 12.11 (provided that the term of the Private Patient Facility Lease will be for a period equivalent to the balance of the Term (had this Agreement remained in effect) plus 20 years); and
  - E. the State Security will remain in full force and effect, varied to grant security to the State in respect of any residual liability of the Operator under the balance of the Project Documents (and the Operator agrees to do all things necessary to vary each State Security accordingly, or to provide appropriate replacement securities if any State Security is unable to be so varied, and to affirm the enforceability of the Parent Guarantee);
- (b) **(termination for convenience):** that termination is in accordance with Clause 29.1 (Termination for convenience) or Clause 29.5(d), then the State may elect to:
- (i) terminate the Project (including in respect of all arrangements concerning the Private Works and the Private Facility), in which case:
    - A. the State must grant the Operator or, if nominated by the Operator, the Key Service Provider, the Private Patient Facility Lease in respect of the Private Patient Facility on terms agreed or deemed to have been agreed in accordance with Clause 12.11 (except that the term of the Private Patient Facility Lease will be the notice period referred to in Clause 29.6(b));
    - B. the State will pay to the Operator the Convenience Termination Payment and, upon expiry of the notice period referred to in Clause 29.1(b), the Private Patient Facility Termination Payment;
    - C. other than as specified in subparagraph B or the Interim Management Agreement, no Termination Payment or other compensation will be payable by the State to the Operator;
    - D. the State Project Documents will each terminate, other than:

- 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - E. the Operator must ensure that, upon expiry of the three year notice period referred to in Clause 29.6(b), all logos, branding and similar marks belonging to or relating to the Operator, an Operator Associate, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Facility (other than as specified by the State), and make good any damage caused by that removal; and
  - F. for the avoidance of doubt, the State may resume the control and occupation of the whole of the Health Campus, and, upon expiry of the three year notice period referred to in Clause 29.6(b), title to the Private Patient Facility will vest in the State (to the extent that it has not already done so) provided that title to the Private Patient Facility will only pass to the State upon payment of the Private Patient Facility Termination Payment and the Operator must grant to the State a licence to access, use and otherwise do all things necessary to and within the Private Patient Facility to enable the State to operate the Private Patient Facility as part of the Health Campus;
- (ii) terminate the Project but allow the Operator to continue to operate the Private Patient Facility, in which case:
- A. the State will pay to the Operator the Convenience Termination Payment;
  - B. other than as specified in subparagraph A or the Interim Management Agreement, no Termination Payment or other compensation will be payable by the State to the Operator;
  - C. subject to subparagraph E, the State Project Documents will each terminate, other than:
    - 1) in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
    - 2) the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
  - D. the State must grant the Operator or, if nominated by the Operator, the Key Service Provider, the Private Patient Facility Lease in respect of the Private Patient Facility on terms as agreed or deemed to have been agreed in accordance with Clause 12.11, provided that:
    - 1) the term of the Private Patient Facility Lease will be for a period equivalent to the balance of the Term

(had this Agreement remained in effect) plus 20 years;  
and

- 2) the State agrees that, during the term of the Private Patient Facility Lease it will not appoint a private hospital operator to provide services equivalent to, or substantially similar to, any of the Clinical Services at the Public Patient Health Campus for a period equivalent to the balance of the Term (had this Agreement remained in effect) (and the Private Patient Facility Lease will be amended to incorporate a provision to that effect); and

- E. the State Security will remain in full force and effect, varied to grant security to the State in respect of any residual liability of the Operator under the balance of the Project Documents (and the Operator agrees to do all things necessary to vary each State Security accordingly, or to provide appropriate replacement securities if any State Security is unable to be so varied, and to affirm the enforceability of the Parent Guarantee);

- (c) **(Force Majeure or damage termination):** that termination is in accordance with Clause 29.2 (Termination for Force Majeure, Uninsurable Risk Termination Event or Damage Termination Event) or Clause 29.5(b) then:

- (i) the whole of the Project (including in respect of all arrangements concerning the Private Works and the Private Facility) terminates;
- (ii) the State Project Documents will each terminate, other than:
  - A. in respect of obligations which are expressly stated to continue post-termination and without prejudice to any antecedent liability of a party; and
  - B. the State Security in respect of amounts that the Operator may owe to the State under this Agreement, the Interim Management Agreement (if entered into by the parties) or the D&C Agreement;
- (iii) the State must pay the Operator the amount for Services delivered prior to Termination which would have been payable if Termination had not occurred and the Operator had issued an invoice on Termination;
- (iv) if the Private Patient Facility has been wholly or substantially damaged by the relevant Force Majeure Termination Event or Damage Termination Event, then:
  - A. no Termination Payment is payable by the State to the Operator; and
  - B. the Operator is not required to demolish and remove the Private Patient Facility; or
- (v) if the Private Patient Facility has not been wholly or substantially damaged by the relevant Force Majeure Event or Damage Termination Event, then the State must pay to the Operator the Private Patient Facility Termination Payment;

- (vi) other than as specified in subparagraphs (ii), (iii), (iv) and (v), no Termination Payment or other compensation will be payable by the State to the Operator; and
- (vii) title to the Facility, the Shared Infrastructure and any other improvements situated on the Site will vest in the State (to the extent that it has not already done so), provided that title to the Private Patient Facility will only pass to the State upon payment of the Private Patient Facility Termination Payment and the Operator must grant to the State a licence to access, use and otherwise do all things necessary to and within the Private Patient Facility to enable the State to operate the Private Patient Facility as part of the Health Campus;

### 30.3 Termination of Private Patient Facility Only

If the rights and entitlements of the Operator in respect of the Private Patient Facility only are terminated for convenience by the State in accordance with Clause 29.1(b), then:

- (a) the Operator must vacate the Private Patient Facility at the end of the notice period referred to in Clause 29.1(b) and relinquish it to the State in a state of repair and condition which is consistent with the PPF Handover Condition;
- (b) the Operator must ensure that all logos, branding and similar marks belonging to or relating to the Operator, an Operator Associate, a Consortium Entity or a Subcontractor are removed from all places within or adjacent to the Private Patient Facility (other than as specified by the State), and make good any damage caused by that removal;
- (c) the State will pay to the Operator the Private Patient Facility Termination Payment as soon as practicable after the end of the notice period referred to in Clause 29.1(b);
- (d) other than as specified in paragraph (c), no Termination Payment or other compensation will be payable by the State to the Operator;
- (e) for the avoidance of doubt, this Services Agreement and the balance of the Project Documents will continue to remain in full force and effect in relation to the whole of the Facility; and
- (f) *[not disclosed]*; or
- (g) *[not disclosed]*.

### 30.4 Payment of Termination Payment

- (a) If this Agreement is terminated under Clause 29, then any payment of a Termination Payment from one party to the other must be made within 45 days of determination of the Termination Payment in accordance with the Termination Payment Schedule (the **Termination Payment Date**).
- (b) Any Dispute relating to the amount of a Termination Payment may be referred by either party for determination by an Independent Expert in accordance with Clause 31.3.

### 30.5 Incomplete Works

- (a) If, upon termination of this Agreement for any reason:

- (i) a Facility Variation Order or Expansion Works Order has been issued by the State; and
  - (ii) the works the subject of that Facility Variation Order or Expansion Works order have not been completed in accordance with the terms of this Agreement (**Incomplete Works**),
- then:
- (iii) the Operator must provide to the State copies of all information and documentation relating to those Incomplete Works; and
  - (iv) without limiting any of the State's rights under this 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 any of the Incomplete Works, and the Operator must provide any such documentation or information to the State within 10 Business Days of the State's request for it to do so;
- (b) The Operator's obligations under subparagraph (a) include:
- (i) doing all things necessary to enable the State or its nominated operator:
    - A. to progress the design documentation in relation to the Incomplete Works;
    - B. to progress the procurement of any Subcontract;
    - C. to own all Intellectual Property Rights in relation to the Incomplete Works including all associated design documentation or to be granted an irrevocable, perpetual, royalty-free, non-exclusive, transferable licence (including the right to sub-license) to use the Intellectual Property Rights in relation to the Incomplete Works for any purpose in connection with the Project; and
    - D. to ensure a smooth transition to the State or its nominated operator;
  - (ii) to the extent reasonably possible, making available to the State or the State's nominated operator, all tools, plant and equipment, data, software, vehicles, facilities and information which have been directly or indirectly used by or made available to the Operator in relation to the Incomplete Works; and
  - (iii) the Operator arranging to assign or novate to the State or the State's nominated operator the benefit of any Subcontract and any other contract, arrangement, warranty or understanding relating to the Incomplete Works to which the Operator is a party and which, in the opinion of the State, is necessary or desirable for the Project, including facilitating any discussions between the Subcontractors and the State or the State's nominated operator.

### 30.6 Miscellaneous obligations on termination

- (a) (**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 30 to the extent that the Operator fails to comply with its obligations in accordance with this Clause 30.

- (b) **(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 30.
- (c) **(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) in accordance with this Clause 30.
- (d) **(No obligation to employ)**: The Operator acknowledges and agrees that, where this Agreement is terminated (whether by expiry of the Term or otherwise):
  - (i) the State will not be obliged to employ any employees of the Operator or any Consortium Entity; and
  - (ii) the employment of any employees of the Operator or any Consortium Entity, 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.
- (e) **(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 Project on its own or with another operator and the Operator must do all things and execute all further documents necessary to ensure that the State is free to continue with the Project, in the manner set out in this Clause 30 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 Project.
- (f) **(Other consequences)**: If this Agreement is terminated by reason of an Immediate Termination Event or an Event of Default, the Operator agrees that the State may:
  - (i) bar the Operator and any Consortium Entity, and any of their respective Related Bodies Corporate, from participating in any other tender or procurement process relating to the Project; and
  - (ii) deduct amounts owing from the Operator to the State from the Performance Bond prior to releasing the Performance Bond.
- (g) **(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.
- (h) **(Further assurances)**: Each party will do all things reasonably necessary to give effect to the arrangements contemplated by this Clause 30.

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## 31. Dispute resolution

### 31.1 Disputes

- (a) Disputes will be resolved in accordance with this Clause 31.

- (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 31, each party must continue to comply with its obligations in accordance with this Agreement.
- (d) Subject to Clause 31.5, the parties agree that unless and until a party has complied with the requirements of this Clause 31, 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.

### 31.2 Consideration by MHC Advisory Group

- (a) Subject to paragraph (b), if a Notice of Dispute has been delivered in accordance with Clause 31.1(b), the MHC 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 31.3.
- (b) If this Agreement expressly provides that a Dispute will or may be directly referred for determination by an Independent Expert, then this Clause 31.2 will not apply and the Dispute will be referred directly to an Independent Expert for resolution in accordance with Clause 31.3.

### 31.3 Independent Expert

- (a) (**Agreement**): If this Agreement expressly provides that a Dispute will or may be directly referred for determination by an Independent Expert (including a referral under Clause 31.2(a)(ii)), then within 5 Business Days after:
  - (i) if referred under Clause 31.2(a)(ii), the date of that referral; or
  - (ii) in all other cases, the delivery of the Notice of Dispute in accordance with Clause 31.1(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 31.3 (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 Health Campus, 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); 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.

### 31.4 Joinder and consolidation of Disputes

- (a) Subject to paragraph (b), if a Dispute is referred for determination in accordance with Clause 31.3 of this Agreement and also Clause 30.3 of the D&C Agreement, **(Concurrent Disputes)**, the Independent Expert must consolidate the Concurrent Disputes if the Independent Expert determines:
  - (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.

### 31.5 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 31.1(b) and:

- (a) Clause 31.2 applies and within 20 Business Days after the delivery of the Notice of Dispute in accordance with Clause 31.1(b) the MHC Advisory Group has not:
  - (i) resolved the Dispute; or
  - (ii) agreed that the Dispute be referred to an Independent Expert in accordance with Clause 31.3;
- (b) the Dispute has been referred for determination by an Independent Expert in accordance with Clause 31.3 and:
  - (i) the agreed Independent Expert or any new Independent Expert agreed in accordance with Clause 31.3(f) did not execute an agreement in accordance with Clause 31.3(d);
  - (ii) the Independent Expert failed to make a determination in accordance with Clause 31.3, including within the time set out in Clause 31.3(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;
- (c) the parties have complied with Clause 31.2 but have not agreed to refer the Dispute to an Independent Expert in accordance with Clause 31.3; or
- (d) either party has failed to comply with any of the requirements of this Clause 31.

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## **32. Assignment and ownership of Operator**

### **32.1 Assignment by the Operator**

Except as expressly permitted in accordance with this Agreement or the State Security, 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.

### **32.2 Restrictions on sale, lease and parting with possession**

- (a) Subject to paragraph (c), 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 Health Campus, except:
    - (iii) as expressly permitted in accordance with this Agreement;
    - (iv) the grant by the Operator to the Key Service Provider of a sub-lease or licence of the Facility; or
    - (v) 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, license, 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 provision of the Services.
- (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.

### **32.3 Assignment by the State**

- (a) The State may not sell, transfer or 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.

## 32.4 Initial status of ownership

*[not disclosed]*

## 32.5 Change in Control

- (a) **(Prohibition):** Subject to paragraph (d), the Operator must ensure that there is no Change in Control of a Consortium Entity (excluding a Key Subcontractor) without the prior consent of the State (which may be given or 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; and
  - (iv) all other information necessary for the State to determine:
    - A. whether to consent to the Change in Control of the Consortium Entity (excluding a Key Subcontractor); or
    - B. the Probity Investigations (if any) the State wants to undertake.
- (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 (excluding a Key Subcontractor);
  - (ii) the State does not consent to the proposed Change in Control of the Consortium Entity (excluding a Key Subcontractor) (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 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 29.4 will apply.

### **32.6 Change in Management**

- (a) Subject to paragraph (c), 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 32.6, 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.
- (c) Where a Change in Management of the Operator or Key Service Provider occurs due to the injury, illness or death of a person, the termination of that person's employment or their resignation or where the person has committed a breach of any express or implied term of its contract of employment which would warrant termination, such change will not be an Event of Default provided the relevant person is replaced within a reasonable time by a person with the same or better management skills, appropriate experience and capacity as the person being replaced.

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## **33. Business Activities**

### **33.1 Restrictions on business**

Subject to Clause 22.2, the Operator must not conduct any business other than the Project and the carrying out of its obligations and the exercise of its rights in accordance with the Project Documents and the operation of the Private Patient Facility without the State's prior consent.

### **33.2 Restrictions on acquisition of property and liabilities being incurred**

The Operator must not acquire or hold any property or incur any Liability other than for the purposes of the Project and the operation of the Private Patient Facility without the State's prior consent.

### **33.3 Tax consolidation**

The Operator must not engage in any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) without the State's prior consent.

### **33.4 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.

### **33.5 Meeting**

Upon receipt of a notice in accordance with Clause 33.4 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.

### **33.6 Failure to agree**

If the State and the Operator fail to meet or agree to a course of action in accordance with Clause 33.5, the Operator must take any action required by the State to remedy the Probity Event (including conducting a Probity Investigation).

### **33.7 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.

### **33.8 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.

### **33.9 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.

### **33.10 Car parking**

- (a) Subject to paragraph (b), the Operator must:
  - (i) operate all parking facilities on the Health Campus; and
  - (ii) pay all revenue received as a result of the operation of those parking facilities to the State, less:
    - A. *[not disclosed]*
    - B. the proportion of car parking revenue relating to Private Patients, calculated as that proportion of the capital cost of the car parking facility funded as a Private Proportion of Shared Infrastructure.
- (b) In operating parking facilities in the manner set out in paragraph (a), the Operator must:
  - (i) comply with the State's public hospitals car parking policy (including in respect of staff parking charges);
  - (ii) not discriminate in any way between parking made available for Public Patients as compared to that made available for Private Patients (provided that the Operator may implement different parking policies



based on a person's classification as a Patient, visitor or member of staff);

- (iii) liaise and cooperate with the MRA and all relevant Authorities in relation to applicable parking policies and strategies;
- (iv) obtain, maintain and comply with all Authorisations necessary to enable it to do so;
- (v) provide the State with regular reports and accounts in relation to car parking revenue; and
- (vi) charge for non-staff parking at a rate of *[not disclosed]* per hour and a maximum charge of *[not disclosed]* for stays of up to 24 hours (amended in each case to reflect increases to the CPI between the June quarter in 2015 and the last June quarter prior to the then-current date).

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## 34. Project Information

### 34.1 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 Key Subcontractors (excluding PerthRadClinic Ltd (ABN 57 099 0943 594)) (during the Operational Phase) 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 they apply to any Records, including in relation to the creation, maintenance, storage, transportation and destruction of those Records.

### 34.2 Medical Records

- (a) All Medical Records delivered to the Operator by the State from time to time during the Term remain the property of the Minister for Health in the Minister for Health's capacity as the board (as that term is defined in the Hospitals Act) of the Facility (and its successors). The Minister for Health and its successors are entitled to access the Medical Records at all times.
- (b) The Operator acknowledges and agrees that:
  - (i) Medical Records delivered to it by the State are subject to the FOI Act and the Privacy Legislation and may be required to be delivered to the Minister for Health or the Minister for Health's successor under the FOI Act or the Privacy Legislation if required for the purposes of the FOI Act or the Privacy Legislation; and
  - (ii) it will provide all assistance reasonably required by the State in relation to the processing of any applications made under the FOI Act.
- (c) The Operator must, at all times during the Operational Phase, ensure that:
  - (i) the Medical Records of all Public Patients bear appropriate identification as is agreed by the State and the Operator from time to time;
  - (ii) subject to paragraphs (a) and (b) and to Clause 21.4(a)(vii), all Medical Records of Public Patients remain the property of the Operator; and
  - (iii) copies of any Medical Records which are in the Operator's possession are provided to other health care facilities in the event that the Public Patient to which they relate is transferred to or treated from that facility.
- (d) The Operator must, as required by any Authority or the LARU or requested by the Department or any other private hospital or public hospital (as defined in the Hospitals Act) make the Medical Records of all Public Patients treated at the Facility available in a manner consistent with State requirements.

### 34.3 Freedom of information

- (a) The Operator must establish, operate and maintain at the Facility a policy permitting access by Public Patients to their 'Personal Information' (as defined in the *Privacy Act 1988* (Cth)) which is consistent with the spirit and intent of the Privacy Legislation and the FOI Act.
- (b) 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.

### 34.4 Equipment Inventory

The Operator must:

- (a) as soon as reasonably practicable, but in any event not later than 3 months prior to the Date for Completion (as defined in the D&C Agreement); and
  - (b) thereafter at annual intervals,
- submit to the State an Equipment Inventory.

### 34.5 Reporting Schedule

Without prejudice to the balance of this Clause 34, the Operator must comply at all relevant times with the Reporting Schedule.

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## 35. Confidentiality

### 35.1 Confidentiality

- (a) **(Confidentiality obligations):** Subject to paragraphs (c), (d) and (e), the Operator must and must ensure that the Operator's Associates keep confidential the State Project Documents, all Records and all Disclosed Information (**Confidential Information**).
- (b) **(Commercial in Confidence Information):** Subject to paragraphs (h), (i) and (k), the State must keep confidential the Commercial in Confidence Information.
- (c) **(Medical Records):** Subject to paragraph (h), the Operator:
  - (i) must not, and must ensure that the Personnel do not, disclose any personal, confidentiality or other information of Patients (including Medical Records) or their Consumers; and
  - (ii) must otherwise maintain the confidentiality of all Medical Records and other information of Public Patients in accordance with the Hospitals Act, the Privacy Legislation and all other applicable statutes.
- (d) **(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.
- (e) **(Disclosure to Operator's Associates):** Without limiting the Operator's obligations in accordance with paragraph (a), the Operator may disclose Confidential Information to the Operator Associates to the extent necessary for the purpose of undertaking the Project.
- (f) **(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.
- (g) **(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.
- (h) **(State may disclose):** Subject to the State marking the relevant information as confidential and using reasonable endeavours to inform the recipient that the relevant information is 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).
- (i) **(Limited disclosure):** Subject to the State marking the relevant information as confidential and using reasonable endeavours to inform the recipient that the relevant information is 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 to the extent reasonably necessary:
  - (i) for the purpose of performing the State's obligations under this Agreement;
  - (ii) to satisfy the reasonable 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 of the Department of Health of Western Australia and the Department of Treasury of Western Australia.
- (j) **(Government websites):** Subject to paragraph (k), 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.

- (k) **(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 range in aggregate of Ceiling Discounts and Floor Discounts;
  - (ii) the aggregate average expected and actual dollar and percentage difference between the amount paid by the State to the Operator for the Services and the State's cost of providing the equivalent services at Benchmark Hospitals;
  - (iii) the expected and actual annual total amount paid by the State to the Operator for performance of the Services;
  - (iv) the expected and actual amount paid by the State to the Operator for Service Variations, Facility Variations, Expansion Works, Compensable Contamination and Compensable Intervening Events; and
  - (v) the total expected amount payable by the State to the Operator under the Project Documents as compared against the State's public sector comparator,

however, the State may not disclose this information on a per Service Payment Category basis.

## 35.2 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.

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## 36. Intellectual Property

### 36.1 Operator's Background IP

- (a) Subject to the terms and conditions of this Clause 36, the Operator's Background IP remains vested in the Operator (or the 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-licences) to use the Operator's Background IP:
  - (i) to receive the benefit of the Services during the Term;
  - (ii) to manage the Health Campus (whether with or without the Operator) after the Term;
  - (iii) for any purpose in connection with the Project and associated with the further development of improvements on or in the vicinity of the Health Campus; and
  - (iv) to exercise the rights referred to in subparagraphs (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.

### **36.2 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 the Operator's own cost.

### **36.3 Project IP**

- (a) 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.
- (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.

### **36.4 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 to the State, including by executing any transfer or other document.

### **36.5 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 Services;
- (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 described in Clause 36.1(b) or 36.1(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 36.3(a);
- (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.

### **36.6 Non-infringement**

- (a) The Operator must perform the Services, 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 Services or the State's receipt of the Services, 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 work is not degraded and the infringement or alleged infringement ceases.

### 36.7 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 or use of the Services;
  - (ii) the use of 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 subparagraph (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 36.5 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 sub-licensees 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 the Operator in paragraph (d) include any Operator Associate.

### **36.8 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 Services, 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).

### **36.9 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-license and permit further sub-licenses including to the Operator for the purpose of performing the Services) to use and reproduce all Subcontractor Background IP to the extent necessary to enable the Operator to perform the Services;
- B. grants to the State an irrevocable, non-exclusive, transferable, worldwide royalty free licence (with the right to assign to a purchaser of the Works or the Health Campus and to sub-licence and permit further sub-licensees including to the Operator for the purpose of performing the Services) 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 (c); and
  - 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 Subcontract contains conditions that the Key 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 Subcontract or the provision of any of the services or work to be performed under the Key Subcontract, whether before or after the date of the Key Subcontract, with the intent that such rights will, by virtue solely of the Key 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 a Key Subcontract 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 36.1(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 and defend the licence, for the benefit of the State, at the Operator's cost.

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## 37. Notices

### 37.1 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 37.1, "**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 the Contract Particulars (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 the Contract Particulars; 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 37.1. 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 5.2 (Expiry Date);
  - (ii) Clause 14 (Service Variations);
  - (iii) Clause 15 (Facility Variations);
  - (iv) Clause 16 (Expansion);
  - (v) Clause 17.1(a) and 17.1(b) (Change in Law);
  - (vi) Clause 20.1 (Force Majeure);
  - (vii) Clause 23.1 (Risk of loss or damage);
  - (viii) Clause 23.2 (State election to reinstate);
  - (ix) Clause 24.6(a) (Notices of potential claims);
  - (x) Clause 27 (Default);
  - (xi) Clause 29 (Termination);
  - (xii) Clause 30 (Consequences of Termination);
  - (xiii) Clause 31 (Dispute resolution);
  - (xiv) Clauses 32.5(b), (c) and (d) (Change in Control);
  - (xv) Clause 33.4 (Notice of Probity Event); and
  - (xvi) Clause 36.1(d) (Intellectual Property licence),

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).

### 37.2 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.

### 37.3 Continuing events

If the events upon which the Claim in accordance with Clause 37.2(b) is based or the consequences of the events are continuing, the Operator must continue to give information required by Clause 37.2(b) every 20 Business Days after the Claim in accordance with Clause 37.2(b) was submitted, until 21 Business Days after the events or consequences have ceased.

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## 38. Taxes

### 38.1 GST General

- (a) **(Application of Clause)** 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).
- (b) **(Construction):** In this Clause 38.1:
  - (i) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
  - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and

- (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (c) **(Nominated entity):** The State confirms that the entity nominated to be responsible for the administration of the State's GST reporting obligations **(Nominated Entity)** is registered for GST as at the Date of this Agreement. The parties acknowledge that the Nominated Entity will be responsible for administering the obligations in accordance with this Clause on behalf of the State.
- (d) **(GST Exclusive Consideration):** Unless otherwise expressly stated, and except in connection with a supply to which paragraph (e) applies, all prices or other sums payable or consideration to be provided in accordance with this Agreement are exclusive of GST.
- (e) **(Non-Monetary Consideration):** Subject to paragraph (g), if some or all of the consideration for a taxable supply made by a party in connection with this Agreement is not expressed as an amount of money **(Non-Monetary Consideration)** and also constitutes a taxable supply by the recipient, the parties agree that:
  - (i) the Non-Monetary Consideration is GST inclusive and will not be increased on account of GST under paragraph (f); and
  - (ii) the Operator will, after consultation with and the approval of the State (such approval will not be unreasonably withheld or delayed), instruct at its own cost a suitably qualified professional valuer to determine the GST inclusive market value of any Non-Monetary Consideration provided by the supplier and the recipient; and
  - (iii) the Operator will notify the State of the amount determined by the valuer within 15 days of the end of the month in which this Agreement is entered or 15 days of the end of the month in which the value is able to be determined (if it cannot be determined as at the Date of this Agreement).
- (f) **(Payment of GST):**
  - (i) Subject to subparagraph (e)(i), if GST is payable on any supply made by a party **(Supplier)** under or in connection with this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
  - (ii) The recipient will pay the amount referred to in subparagraph (f)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this Agreement.
- (g) **(Gross-up of Non-Monetary consideration supplies):** If, at any time a Supplier has a GST liability for a tax period in connection with a taxable supply to which paragraph (e) applies **(Non-Monetary Consideration Supplies)** that, due to a difference in value between the Non-Monetary Consideration and the Non-Monetary Consideration Supplies, exceeds the input tax credit to which the supplier is entitled in respect of its acquisition of the recipient's taxable supplies which represented the Non-Monetary Consideration **(Acquisition)** for that tax period (the excess being the **Shortfall**):
  - (i) the recipient must pay to the supplier an amount equal to the Shortfall plus GST within 5 Business Days of being requested in writing by the supplier to do so; and

- (ii) the parties will do all things required, including issuing new tax invoices and adjustments notes (if necessary) to give effect to this paragraph (g).
- (h) **(Tax invoices):**
  - (i) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under paragraphs (f) or (g).
  - (ii) In the case of a supply to which paragraph (e) applies, the Supplier must issue a tax invoice or adjustment note within 5 days after the time it is required to obtain the valuation referred to in subparagraph (e)(ii).
  - (iii) The recipient can withhold payment of any amount payable in accordance with this Clause 38.1 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (i) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this Agreement, the amount payable by the recipient in accordance with this Clause 38.1 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (j) **(Reimbursements):** Where a party is required in accordance with this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
  - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
  - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## 38.2 General liability for Taxes

As between the State and the Operator, the Operator bears the risk of, and must pay, all Taxes incurred or imposed in connection with:

- (a) the execution, stamping, delivery and performance of any Project Document and each transaction effected or made in accordance with or in connection with it;
- (b) any amendment to, or any consent, approval, waiver, release, surrender or discharge of or in accordance with any Project Document; and
- (c) the Project,

except as provided in Clause 38.1.

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## 39. General

### 39.1 Interest

- (a) Except in relation to the payment of the Private Patient Facility Termination Payment for termination for convenience (as calculated in accordance with Section 3.3 of the Termination Payment Schedule), in which case the Post Termination Interest Charge applies, if a party fails to pay any amount payable by that party to

the other party within the time required in accordance with this Agreement, then it must pay interest on that amount in accordance with paragraph (b).

- (b) Interest is:
  - (i) payable from the due date until payment is made before and, as an additional and independent obligation, after any judgment or other thing into which the Liability to pay the money payable becomes merged;
  - (ii) calculated on daily balances at the Default Rate; and
  - (iii) capitalised Monthly.
- (c) The amount calculated in accordance with paragraph (b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

### **39.2 Set-off**

- (a) Without limiting or otherwise affecting the State's rights in accordance with any other provision of this Agreement or at Law, the State may deduct from any monies due and payable to the Operator in accordance with this Agreement:
  - (i) any amount due and payable by the Operator to the State (whether in accordance with or relating to this Agreement, the D&C Agreement or any other State Project Document); or
  - (ii) any amount claimed by the State against the Operator (acting reasonably) arising in connection with this Agreement, the D&C Agreement or any other State Project Document.
- (b) The Operator must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless the Operator is compelled by Law to make such a deduction or withholding.
- (c) If the Operator is compelled by Law to make a deduction or withholding, it must:
  - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
  - (ii) provide to the State all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

### **39.3 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.



### 39.4 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 Document as a result of a breach by the State of a term of any State Project Document but for paragraphs (a) to (d) (inclusive).

### 39.5 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.

### 39.6 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.

### 39.7 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.

### **39.8 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.

### **39.9 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.

### **39.10 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.

### **39.11 Amendments to Project Documents**

- (a) This Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) 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 Document without the State's prior consent.

### **39.12 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.

### **39.13 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.

#### **39.14 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;
  - (vii) the State's rights in connection with Handover; or
  - (viii) any right or obligation arising on termination of this Agreement.
- (b) Nothing in this Clause 39.14 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.

#### **39.15 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.

#### **39.16 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.

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## **40. Personal Property Securities Act**

### **40.1 State's Personal Property**

For the purposes of this Clause 40, "**State Personal Property**" means all personal property the subject of a security interest granted in favour of the State under this Agreement.

### **40.2 Further assurance**

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:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) 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
- (c) enabling the State to exercise rights in connection with the security interest.

### **40.3 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.

### **40.4 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.

### **40.5 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; and
- (b) upon request by the State, of the present location or situation of any State Personal Property.

**40.6 Costs and expenses relating to PPSA and registration**

- (a) Everything the Operator is required to do under this Clause 40 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 40, including preparing, registering and maintaining any financing statement or financing change statement.

## Execution page

Executed as an agreement

### State

Signed for and on behalf of

**The State of Western Australia**

represented 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 MLA

*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 – General Service Obligations

The Operator must ensure at all times during the Operational Phase that, in performing the Services and delivering the Project:

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### 1. Access

- (a) **(Opening hours)**: the Public Patient Facility is open and functioning 24 hours a day, 7 days a week in accordance with the Role Delineation and to meet the Activity Profile;
- (b) **(Definitive Care)**: Definitive Care is provided at the Facility for a minimum of 97% of presenting Public Patients;
- (c) **(Role Delineation)**: the Operator maintains a capability in the Public Patient Facility at least equal to the levels detailed in the Role Delineation at all times;
- (d) **(Urgent or essential treatment)**: no person presenting at the Health Campus, whether as a Public Patient or a Private Patient, requiring urgent or essential treatment is denied appropriate care;
- (e) **(Level of clinical care)**: all Public Patients and Private Patients are afforded the same level of clinical care (and priority, in the case of Shared Infrastructure) and are treated in accordance with the Charter of Patient Rights;
- (f) **(Management of Services)**: the provision of Services is managed evenly throughout each Financial Year having regard to seasonal variations, the Activity Profile, Further Services and the Maximum Payment Amount for each Financial Year;
- (g) **(Clinical need)**: access to the provision of Services for Public Patients is based on clinical need;
- (h) **(Bariatric Patients)**: Bariatric Patients who are Public Patients are appropriately accommodated;
- (i) **(Sufficient Bed allocation)**: Public Patients are allocated sufficient Beds in the Public Patient Facility to enable provision of the Services to Public Patients;
- (j) **(Disabled Patients)**: there is no impediment to access to care for disabled and/or handicapped Public Patients;
- (k) **(Indigenous and non-English speaking Patients)**: there is no impediment to access to care for Indigenous and non-English speaking Public Patients (for example, in relation to the provision of translation services to those Public Patients and their families);
- (l) **(Public Patient charges)**: no Public Patient is charged a fee in respect of any Service that a Public Patient would not normally be charged for in a public hospital prescribed by regulations (as defined in the Hospitals Act) under the relevant schedule of fees for public hospitals issued under the Hospitals Act;

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### 2. System interaction

- (a) **(Complexity)**: progress is made to encourage low-risk procedures being performed in the community and for higher acuity but medium complexity procedures being performed at the Facility;
- (b) **(Interaction)**: all Services seamlessly interact with the Department and all primary care, community health and community mental health services in accordance with the Department's policies as updated from time to time;

- (c) **(Integration):** the Operator demonstrates (through accreditation reports) integration with primary health care systems including collaboration with local GPs and networks to:
- (i) improve awareness of services provided by the Health Campus;
  - (ii) facilitate the referral of patients within the Catchment Area for appropriate services; and
  - (iii) ensure a seamless transition between acute, sub-acute and community care including effective discharge planning and management;

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### 3. Partnering relationships

- (a) **(Partnering):** partnering relationships are entered into with other health providers and the local community, through collaboration between clinicians across health facilities and strong engagement with the community as well as Patients. These multiple partnerships must:
- (i) facilitate a holistic and integrated local health system; and
  - (ii) ensure that Patients experience a seamless and sustainable health service, regardless of organisational boundaries;
- (b) **(Recognition):** recognition and consideration is given to:
- (i) Indigenous Australians in service delivery planning and execution;
  - (ii) the increasing acuity of patients treated (for example, increasing incidence of co-morbidities with the ageing of the population); and
  - (iii) the aging population;
- (c) **(Catchment Area):** service delivery is tailored to the population predominantly resident in the Catchment Area;
- (d) **(Education):** ongoing education is given to staff, Patients, Carers and the community;
- (e) **(Support):** in relation to the treatment of each Public Patient, caregivers and health workers (including relatives and friends of the Public Patient, community health workers and voluntary health workers) are given reasonable advice and support;

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### 4. Performance standards

- (a) **(KPIs):** the KPIs are met;
- (b) **(Peer Group Hospitals):** the Services provided to Public Patients are to quality standards equal to or better than those prevailing and operating in the Peer Group Hospitals as measured by the KPIs;
- (c) **(Guidelines):** the Services comply with all current State, Department and other policies and relevant guidelines at all times;
- (d) **(Tertiary transfer):** Patients who reside within the Catchment Area and who are patients at a tertiary facility who no longer require tertiary level care but who require Services within the Role Delineation are accepted from tertiary hospitals in a timely manner;
- (e) **(New procedures):** new procedures, devices and technology used or undertaken by any Personnel are first approved by the CMO or are in accordance with applicable State policies;



- (f) **(Accreditation of medical practitioners)**: appropriate accreditation and credentialing is achieved and maintained by all medical practitioners engaged in the provision of the Services, including those undertaking new procedures;

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## 5. Approach to care

- (a) **(Structure of Services)**: the delivery of Services is structured based on the categorisation of a Patient's diagnosis and clinical need;
- (b) **(Multidisciplinary approach)**: a multidisciplinary approach to Patient care is adopted where appropriate, and the Services are provided in a manner that promotes coordinated care delivery and the seamless flow of Patients within the Western Australian health service, enabling effective communication between the multidisciplinary teams;
- (c) **(Models of care)**: Services are delivered having regard to the Department's models of care;
- (d) **(Public Patient transport)**: the source hospital is responsible for all arrangements, governance and costs associated with Public Patient transport (for example, transfers to another hospital, off-site Inpatient appointments or tests etc);
- (e) **(Teaching and training)**: an ongoing commitment to teaching and training is demonstrated;
- (f) **(Holistic health care)**: holistic health care prevention and promotion strategies are implemented to support the Services;
- (g) **(Elective Activity)**: the delivery of Elective Activity as part of the Services:
- (i) does not detrimentally impact on the Operator's ability to treat non-Elective Activity, and the Operator must take active steps to reduce the volume of Elective Activity undertaken as part of the Services if required in order to enable it to manage and perform Non-Elective Activity; and
  - (ii) takes into account Patient priorities as specified in the Services Specification;

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## 6. Facility

- (a) **(service lives)**: the relevant service lives set out in the Bid Design Documentation are achieved;
- (b) **(Handover condition)**: the Public Patient Health Campus continues to meet the Handover Condition and the Private Patient Facility continues to meet the PPF Handover Condition;
- (c) **(By-Laws)**: the By-Laws are complied with;
- (d) **(Asset Management Plan)**: the Asset Management Plan is fully implemented and up to date at all relevant times;

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## 7. Coding and auditing requirements

- (a) **(coding)**: coding of all Episodes of Care in accordance with the requirements set out in Section 8 of the Activity Schedule is completed within 21 days of the end of each Month;
- (b) **(morbidity data sets)**: the State Representative is able to access all morbidity data sets (including HMDS, EDIS and Non-Admitted data sets, if used) without delay as required;
- (c) **(audits)**: the Operator participates in all audits (including audits in respect of coding methodologies and outcomes and compliance with medical documentation standards in

alignment with current National and State coding standards) undertaken at Peer Group Hospitals or as required by the Department or the State or Commonwealth governments or other relevant accreditation bodies including:

- (i) the HISWA Program;
- (ii) the Western Australian Audit of Surgical Mortality; and
- (iii) WARM,

and the State may undertake further comprehensive auditing of data and coding methodology at the Operator's cost if routine auditing reveals systemic irregularities in coding outcomes;

- (d) **(quality indicators)**: the Operator uses and reports on codes that are of an equivalent level to those specified in the WA Health Clinical Incidents Management Policy, as updated from time to time;

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## **8. Consumer satisfaction**

- (a) the Operator participates in the WA Health Patient Satisfaction Surveys run by the Department, or its current equivalent;
- (b) the Operator conducts its own satisfaction surveys for Public Patients at least annually that relate to the overall patient experience, including the experience of Consumers and Carers in accordance with its Safety, Quality and Risk Management Plan;
- (c) the results of surveys are tabled at Community Advisory Council meetings;

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## **9. Complaint management**

- (a) the Operator provides to the State such information in relation to the Services and the Project that the State reasonably requires including without limitation all information reasonably required to answer ministerial enquiries and parliamentary questions within the given timeframes and using the required format as directed by the State;
- (b) reports on complaint data as specified in the WA Health Complaint Management Policy 2009 and the WA Health Complaint Management Toolkit 2009 (or current equivalent as amended from time to time) are provided in a timely manner;
- (c) the State is kept advised in respect of any changes which have been recommended and implemented to rectify any Consumer or community complaints;

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## **10. Clinical and corporate governance**

- (a) principles of good corporate governance (honesty, openness, procedural fairness, care and diligence) are adhered to, including robust processes for addressing and reporting on the triple bottom line while partnering with Government to achieve the Ministers' obligations as a Minister of the Crown;
- (b) a hospital business continuity plan for the Health Campus that aligns with current Department Business Continuity Plans is developed, implemented and maintained, and the Operator attends Department business plan meetings as required;
- (c) whole of health planning requirements (that includes maintaining a service delivery strategy for the Health Campus that aligns with the relevant Clinical Services Framework and the

Department's Clinical Services Plans as updated from time to time) are implemented and complied with;

- (d) implementation of and compliance with systems for ensuring the Operator implements and acts on the standards and guidelines for the credentialing and scope of practice of clinicians according to the standards set by the Australian Commission on Safety and Quality in Healthcare and the WA Health Office of Safety and Quality in Healthcare as updated from time to time;
- (e) systems for ensuring all required staff working on the Health Campus are working within a defined scope of practice and maintaining current registration and licensing with the relevant Authority are implemented and complied with;
- (f) Personnel delivering Clinical Services have and maintain appropriate registration with the Australian Health Practitioner Regulation Agency, Medical Board of Australia and any required professional Colleges responsible for the medical specialties for the relevant Services delivered by those Personnel;
- (g) staff, services and infrastructure provided are credentialed for the required scope of practice according to the relevant credentialing agency for that specialty service;
- (h) a clinical governance system that ensures a systematic and integrated approach to assurance and review of clinical responsibility and accountability, that improves quality and safety resulting in optimal patient outcomes and aligns with the WA Strategic Plan for Safety and Quality in Healthcare (2008-2013) or its current equivalent is implemented and complied with;
- (i) clinical handover standards for the transfer of professional responsibility and accountability for Patient care to ensure safety and quality of care are complied with;
- (j) clinically appropriate workforce ratios of Personnel to Patients to ensure safety and quality of Patient care are implemented and complied with;
- (k) standards for informed Patient consent prior to any treatment whereby the Patient is fully informed of the details and risks of the proposed treatment and their consent is documented in the medical record are complied with. Patient consent practices should comply with the Department's *Consent to Treatment Policy for the Western Australian Health System* (2009) or its current equivalent as updated from time to time;
- (l) processes for regular internal audit and management review in line with requirements from ACHS, WA Health Corporate Governance Unit, Office of the Auditor-General and the Department's audit requirements are implemented and complied with; and
- (m) clinical staff performance monitoring and systems to continuously review and improve performance, including peer review mechanisms, are implemented and complied with.

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## 11. Admission and Discharge Criteria

- (a) The Admission and Discharge criteria developed by the Operator for the management of the Public Patient Facility will be based on good clinical practice taking into account the requirements of this Agreement (in particular the access provisions detailed in this Schedule 1).
- (b) The Operator will provide the above criteria to the State prior to the commencement of the Operational Phase and then, as updated or amended.
- (c) The State will review the Admission and Discharge criteria as presented and where, in its reasonable opinion, a criterion is inconsistent with the Operator's obligations under this

Agreement, require amendments to be made to the relevant criterion so that it is consistent with this Agreement.

## **Schedule 2 – Services Specification**

*[not disclosed]*

### **Schedule 3 - Initial Role Delineation**

*[not disclosed]*

## Schedule 4 – ICT Requirements

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### 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 this 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 Section 1(a) of these ICT Requirements, the 'end-to-end' ICT System for the Public Patient Health Campus referred to in Section 1(a) of these ICT Requirements must include, among other things, the enabling infrastructure described in Section 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 Section 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.

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## 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; and
- (b) DDICAT and OAM all communications services and associated infrastructure required to present the connection to the Operator's WAN referred to in Section 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.

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# 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

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,

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;
  - (ii) the State's Billing Systems; 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* (WA) 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 and reviewing clinical workbench, pathology results and existing picture archiving and communications system and 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 Section 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.

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.	[Not disclosed]
Portfolio A Application Availability	[Not disclosed]
Portfolio B Application Availability	[Not disclosed]
% of time Applications accessible by State	[Not disclosed]

In the above table:

**"Portfolio A"** means:

- patient administration system;
- clinical information system;
- picture archiving and communication system; and
- emergency department information system; and

“**Portfolio B**” means:

- pharmacy system;
- radiological information system; and
- other functional unit information systems.

## 5.2 Reporting

- (a) 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.
- (b) During the Operational Phase, the Operator must report on the performance of the platform for Interoperability provided by the Operator under Section 3.2(b)(i) of these ICT Requirements.

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## 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 Section 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 Record	means a longitudinal electronic record of summary healthcare 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.

<b>Term</b>	<b>Meaning</b>
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, 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"> <li>1. the ICT Systems; or</li> <li>2. Personal ICT Equipment being used at the Public Patient Health Campus.</li> </ol>
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	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

Term	Meaning
Plan	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 “ <i>Information Technology Infrastructure Library</i> ” 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.
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 this 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"> <li>1. Communications Rooms and all non-ICT infrastructure and equipment housed within and/or directly supporting the operation of these rooms;</li> <li>2. power infrastructure (including power supply and in-rack power distribution);</li> <li>3. cooling infrastructure; and</li> <li>4. server and communications racks.</li> </ol>
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.

<b>Term</b>	<b>Meaning</b>
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"> <li>1. Patients' access to electronic meal ordering systems;</li> <li>2. Patients' access to electronic Health Campus information and resources;</li> <li>3. Patients' access to internet web browsing;</li> <li>4. Patients' telephony and video-calling;</li> <li>5. Patients' access to radio, television channels and movies services;</li> <li>6. Patients' access to electronic gaming systems, such as Xbox;</li> <li>7. Patients' access to their own Health Campus billing and accounts information;</li> <li>8. clinical access to Clinical Information Systems at the Patient bedside; or</li> <li>9. realising efficiencies in Health Campus workflows, such as streamlining bed management workflows.</li> </ol>
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"> <li>10. laptop computers;</li> <li>11. tablet computers;</li> <li>12. smart phones; and</li> <li>13. personal digital assistants.</li> </ol>
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"> <li>1. provides a secure unified access point, often in the form of a web-based user interface; and</li> <li>2. is designed to aggregate and personalise information through Portal Based Applications.</li> </ol>
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"> <li>1. allow integration of multiple content sources, regardless of locality;</li> <li>2. have a formally defined structure;</li> <li>3. provide formally defined mechanisms for operations against remote content sources; and</li> <li>4. communicate and interchange content with other web applications.</li> </ol>
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.

<b>Term</b>	<b>Meaning</b>
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"> <li>1. iCM;</li> <li>2. HCARE CMS;</li> <li>3. others as directed by the State; and</li> <li>4. the systems described in paragraphs 1 to 3 (inclusive) above as replaced or superseded from time to time.</li> </ol>
State's Enterprise Applications	means any Enterprise Applications used by the State.
State's Enterprise Services	means the State's ICT Systems' resources presented for integration into and/or access via the ICT Systems, such as: <ol style="list-style-type: none"> <li>1. the State's Enterprise Services Bus;</li> <li>2. the State's Active Directory services;</li> <li>3. the State's email services;</li> <li>4. the State's Unified Communication Services; and</li> <li>5. the State's infrastructure monitoring systems.</li> </ol>
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"> <li>1. the document titled "WA Health Facility Guidelines for Engineering Services";</li> <li>2. the document titled "WA Health Tertiary Facility Classification Specification";</li> <li>3. the document titled "Health Architecture Reference Framework";</li> <li>4. the document titled "WA Health – Facilities Reference Guide"; and</li> <li>5. the collection of documents referred to by the State as the <i>Enterprise Architecture Standards Information Base</i>.</li> </ol>
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"> <li>1. TOPAS; and</li> <li>2. HCARE CMS.</li> </ol>
State's Picture Archiving and	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

<b>Term</b>	<b>Meaning</b>
Communications Systems	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"> <li>1. a secure and unified systems integration point across facilities;</li> <li>2. a framework for information access across the State's ICT systems;</li> <li>3. a framework for collaboration between people across facilities;</li> <li>4. a framework for the management of electronic content across facilities; and</li> <li>5. a framework for the management of business documents across facilities.</li> </ol>
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	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: <ol style="list-style-type: none"> <li>1. specialist referral services;</li> <li>2. Patient consultations and second opinion advice;</li> <li>3. remote Patient monitoring;</li> <li>4. Patient education;</li> <li>5. health professional education; and</li> <li>6. support and administrative tasks related to the provision of health delivery.</li> </ol>
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 5 - Health Campus Requirements

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### 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.

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### 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.

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### 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:

- (h) 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;
- (i) 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;
- (j) delivery of a Health Campus that positively contributes to Patient healing, visitor experience and staff satisfaction through incorporation of EBD principles;
- (k) delivery of a Public Patient Facility that encourages provision of quality care in the most appropriate clinical setting;
- (l) provision of a safe, welcoming and non-institutional / non-threatening environment for Patients and visitors to the Health Campus;
- (m) provision of a safe and high quality work environment;

- (n) delivery of a Health Campus that is capable of meeting its specified post disaster role;
- (o) delivery of a Health Campus that is capable of meeting the 2008 edition of the redundancy planning requirements;
- (p) 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;
- (q) 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;
- (r) delivery of a Health Campus that integrates seamlessly with the Midland town centre and adjacent facilities and amenities within the Midland Redevelopment Area; and
- (s) 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.

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## **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.

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## 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).

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)*.

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.

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## **6. Precinct Planning Requirements**

### **6.1 General Requirements**

Subject to Clause 9.6 of the D&C 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 Parking<sup>1</sup> 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:

- (i) the Midland Metro Concept Plan 2010;
- (j) the Midland 2017 - The Challenge; and
- (k) the draft Midland City 2041.

### **6.2 Metropolitan Redevelopment Authority**

The MRA is the determining Authority for Development Applications.

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<sup>1</sup> 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.

### 6.3 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 the D&C 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.

### 6.5 Development Application

Without limiting Clause 9.1 of the D&C 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 the D&C 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, 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 the D&C 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 licensing);
- (f) Therapeutic Goods Administration (**TGA**);
- (g) Department of Mines and Petroleum (for dangerous goods licensing); 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.

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.

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## **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 Guidelines<sup>2</sup> - 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](http://www.health.wa.gov.au/hrit/docs/procedures/WA_HFG_for_Engineering_Services_2006.pdf);
- (b) Australasian Health Facility Guidelines (AHFG)  
<http://www.healthfacilityguidelines.com.au/>;
- (c) Western Australia Health Facility Guidelines for Infection Control, Revision 1, March 2007

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<sup>2</sup> Except Section E, which is superseded by the document titled 'Western Australia Health Facility Guidelines for Engineering Services' (2006).

[http://www.health.wa.gov.au/hrit/docs/procedures/WA\\_HFG\\_for\\_Infection\\_Control\\_2006.pdf](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**);
- (e) <http://www.gbca.org.au/green-star/rating-tools/green-star-healthcare-v1/1936.htm>;
- (f) 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](http://www.health.wa.gov.au/parking/docs/Access_and_Parking_Strategy_Web.pdf);
- (g) 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>;
- (h) 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](http://www.transport.wa.gov.au/mediaFiles/cycling_end_of_trip.pdf); and
- (i) 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.
  - (ix) The design and construction of the Health Campus must be demonstrably aligned with the ESD objectives.
- (b) 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.
- (c) 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:
  - promoting staff efficiency through careful schematic design of Functional Units during the Schematic Design Stage, including by minimising travel distances between frequently used spaces;
  - (i) making efficient use of space by locating support areas so that they may be shared by adjacent Functional Units; and/or
  - (ii) 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**

- (a) 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:
  - (b) room naming and numbering protocols;
  - (c) use of symbols and codes to denote furniture, fittings and equipment;
  - (d) use of symbols and codes to denote individual components of each of the Building Engineering Services;
  - (e) numbering and lettering (grids, dimensions and references); and
  - (f) 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 ensembles 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 the D&C 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:
  - avoiding costly errors;
  - (i) determining the quality of finish to be achieved;
  - (ii) validating / refining design;
  - (iii) communicating the design to Key Users and confirming their understanding and support; and
  - (iv) ensuring design meets operational objectives.

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## 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 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:
  - be legible from the primary circulation routes;
  - (i) provide access to clinical departments and Patient services; and
  - (ii) 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:
  - Patient privacy in adjoining Patient areas; and
  - (i) 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 the D&C 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.

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## **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 setbacks (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 setbacks 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.

(e) 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.

(f) 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.
- (g) 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).
- (h) 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:
  - develop a set of integrated services drawings that detail the layout of each of the individual services within ceiling spaces; and
  - (i) 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 4 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.

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## **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:
  - enhance services for the local community by providing a comprehensive suite of services at the Health Campus;
  - (i) 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;
  - (ii) comply with and enhance the long term Master Plan requirements of the Health Campus; and
  - (iii) 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:
- 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;
- (i) 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;
- (ii) 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;
- (iii) separate site for the Private Patient Facility with potentially no components of Shared Infrastructure; or
- (iv) 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 the D&C 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 the D&C Agreement, the Operator is not entitled to any payment from the State in respect of the Commercial Facilities.

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## 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](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](mailto:ICN@cciwa.com)

Web: [www.icnwa.org.au](http://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](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 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.

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/>.

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## 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 the D&C Agreement and this Agreement, the definition used in the D&C 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.

- (a) **Building Records Policy** means the Building Management and Works Building Records Policy or its future equivalent.

(b) **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:

- (c) **assisting the Patient healing process;**
- (d) **improved Patient outcomes and staff well-being;**
- (e) **a reduction in environmental stress; and**
- (f) **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.

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## 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/](http://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](http://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](http://www.wbdg.org/design/psychiatric.php).

## Schedule 6 – Performance

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### 1. Performance requirements

#### 1.1 Quality Standards

The Quality Standards include:

- (a) **(quality standards)** standards from the WA Health Office of Safety and Quality in Healthcare, the Australian Commission on Safety and Quality in Healthcare, the ACHS, Standards Australia, the Department and the National Standards for Mental Health Services, or other standards chosen by the State as updated from time to time;
- (b) **(service level and range)** the current Casemix Plan as updated from time to time in accordance with this Agreement;
- (c) **(customer focus)** ACHS EQuIP Functions, Standards and Criteria (as amended or substituted from time to time) to demonstrate evidence of:
  - (i) customer focus – involvement of consumer and carer input at all stages of care delivery, with systems to evaluate the need for and success of this, including consumer input into governance (for example, the Community Advisory Council);
  - (ii) clearly visible and effective complaint management mechanisms, and the use of these to ensure improvements to systems of care;
  - (iii) culturally appropriate service delivery with consideration for consumers/ patients from culturally and linguistically diverse backgrounds and consumers / patients with special needs;
  - (iv) age appropriate service delivery with consideration for consumers/ patients from all age groups;
  - (v) accessibility for people with disabilities allows for people with physical and/or intellectual disability to have the same opportunities as other people to access information, feedback, buildings, facilities, services and events;
  - (vi) access to and delivery of appropriate mental health services with a coordinated approach to meet the ongoing needs of Consumers / Patients; and
  - (vii) all other matters the subject of the ACHS EQuIP Functions, Standards and Criteria; and
- (d) **(miscellaneous)** all requirements of:
  - (i) the *Carers Recognition Act 2004* (WA);
  - (ii) the NMAHS Disability Access and Inclusion Plan 2007-2012;
  - (iii) the NMAHS Aboriginal Cultural Respect and Security Framework 2010;
  - (iv) the WA Open Disclosure Policy 2009;
  - (v) the Consent to Treatment Policy for the WA Health System 2009; and
  - (vi) the Correct Patient, Correct Procedure, Correct Site Policy and Guidelines for WA Health Services,

as amended, updated or substituted from time to time.

## 1.2 General provisions for KPIs

In Sections 2, 3 and 4:

- (a) KPIs will be reviewed biennially for amendment, update or substitution by the State, and may be varied by the State from time to time by notice in writing to the Operator to reflect changes at Peer Group Hospitals or otherwise as required by the State or Commonwealth provided that:
  - (i) unless otherwise agreed by the Operator:
    - A. the adjustment will not lead to the number of KPIs for each Abatement Level exceeding the number as at the Date of this Agreement multiplied by the number of Weighted Separations in the most recent Annual Notice, divided by the number of Weighted Separations in the first Annual Notice issued under this Agreement;
    - B. the Performance Threshold for new or amended KPIs must be set as:
      - 1) the *[not disclosed]* percentile of WA Metropolitan Peer Hospitals;
      - 2) the *[not disclosed]* percentile of ACHS Peer Hospitals; or
      - 3) Reporting where determined necessary by the State in order to address any services issues at the Public Health Campus (whether they be real or perceived);
  - (ii) the Operator is not liable for Failure Abatement in relation to new KPIs introduced in accordance with this Section 1.2(a) for a period of 12 months from the date of introduction of that new KPI; and
  - (iii) where the Performance Threshold of an existing KPI has been increased in accordance with this Section 1.2(a), the previous Performance Thresholds (prior to the increase) will apply for a period of 12 months after the date of increase, after which time the new Performance Thresholds will apply;
- (b) for each KPI in relation to which a Target Level or Performance Threshold is calculated by reference to a percentile:
  - (i) a high rate is desirable for KPIs with a Target Level of *[not disclosed]* percentile, and the actual Performance Threshold required is to at least meet or exceed the relevant percentile rate; and
  - (ii) a low rate is desirable for KPIs with a Target Level of *[not disclosed]* percentile, and the actual Performance Threshold required is to at least meet or be less than the relevant percentile rate,

provided that:

- (iii) where the Peer Group Hospitals are not comprised of enough health care organisations to make the designated percentile rate meaningful (in the reasonable opinion of the State), the closest percentile rate that can be calculated within the Peer Group Hospitals will be utilised; and
- (iv) the Operator must ensure its reports from the ACHS are customised to include *[not disclosed]* percentiles in addition to the standard fields in these reports;

- (c) for each KPI measured against:
  - (i) the ACHS Peer Hospitals, the data definitions and measurement will be as defined by the ACHS; and
  - (ii) a WA Metropolitan Peer Hospital, the data definitions as at the Date of this Agreement are provided in the Information Documents;
- (d) unless otherwise specified, these indicators apply for both adult and paediatric populations;
- (e) in relation to the “Frequency of Reporting” column, reference to:
  - (i) “Annually” means reporting is required once for each Financial Year based on actual results from 1 July to 30 June;
  - (ii) “Six monthly” means reporting is required twice for each Financial Year based on actual results from 1 July to 31 December, and from 1 January to 30 June;
  - (iii) “Quarterly” means reporting is required four times for each Financial Year based on actual results from 1 July to 30 September, from 1 October to 31 December, from 1 January to 31 March and from 1 April to 30 June;
  - (iv) “Monthly” means reporting is required once in each Month; and
  - (v) “Event based” means reporting is required within the specified period after the occurrence of the relevant event;
- (f) in relation to each Abatement Level, reference to:
  - (i) “A” means a high impact Failure;
  - (ii) “B” means a moderate impact Failure; and
  - (iii) “C” means a low impact Failure;
- (g) for KPIs relating to chemotherapy (as set out in the first row of Table 17) and Outpatient Care (as set out in Table 18), where the volume of relevant Patients requiring treatment is more than 110% of that included in the Annual Notice, the Performance Threshold will be deemed to be met if the Performance Threshold would have been met if it were not for volumes above 110% of the amount set out in the Annual Notice;
- (h) for ease of reference only, reference to a number in brackets at the end of a KPI is a reference to the corresponding ACHS indicator number as included in the 2011 publication of ‘ACHS Clinical Indicator Summary Guide’ for the category in which it occurs (unless otherwise specified within the brackets);
- (i) the “Relief if Hard Transfer” column only applies in the event of a Hard Transfer; and
- (j) in relation to the Functional Unit Categorisation Table only:
  - (i) “**Capacity**” is calculated in accordance with the following:  

$$A = B \times (C \div 365)$$

where:

A =            the Capacity;

B = the number of continuous days during which a Functional Unit is Unavailable (other than as a result of a Permitted Unavailability); and

C = in relation to the relevant Functional Unit, the volume of Services delivered by the Operator in the previous 12 month period (or which would have been delivered, had the Operator complied with its obligations under this Agreement);

(ii) “**Imaging Capacity**” is calculated in accordance with the following:

$$A = B \times (C \div 365)$$

where:

A = the Imaging Capacity;

B = the number of days in the relevant Reporting Period during which a Functional Unit is Unavailable (other than as a result of a Permitted Unavailability); and

C = the number of examinations (as defined in the MIQN (as per the WA Medical Imaging Quality Networks report) and including all associated imaging tests and procedures requested) during the previous 12 month period (or which would have been completed, had the Operator complied with its obligations under this Agreement); and

(iii) following the implementation of any Facility Variation, Service Variation, Expansion Works or any other thing which impacts on the number of Functional Units within the Facility, the Performance Threshold in the Functional Unit Categorisation Table will be deemed to have been adjusted to represent the nearest whole number (rounded down) that maintains the same ratio of “Indicative Quantity” to Performance Threshold as set out in the Functional Unit Categorisation Table as at the Date of this Agreement.

## 2. Service KPIs

### 2.1 Consumer satisfaction

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 1.

**TABLE 1: KPIs FOR PATIENT/CONSUMER SATISFACTION**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Overall satisfaction	[not disclosed]	[not disclosed]	Annually	C	[not disclosed]

### 2.2 Complaint management

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 2.

**TABLE 2: COMPLAINT INDICATORS**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Proportion of complaints responded to within 30 working days	[not disclosed]	[not disclosed]	Quarterly	C	[not disclosed]
Number of complaints per 1,000 Occasions of Service (including Inpatient Separations) referred from an external agency including names of agencies	[not disclosed]	[not disclosed]	Quarterly	N/A	[not disclosed]
Total number and category of new complaints received per 1,000 Occasions of Service (including Inpatient Separations)	[not disclosed]	[not disclosed]	Quarterly	N/A	[not disclosed]

## 2.3 Governance

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 3.

**TABLE 3: GOVERNANCE DATA**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
% of medical practitioners credentialed with a defined scope of practice	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
% of medical practitioners registered	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
% of nurses and midwives registered	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
% of required allied health and health science practitioners registered	[not disclosed]	[not disclosed]	Annually	A	[not disclosed]
% of required staff holding a current Working with Children Check	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
% of required trade staff and contractors registered and insured	[not disclosed]	[not disclosed]	Annually	A	[not disclosed]
% of staff holding a current criminal record screening clearance	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
% of required staff completed mandatory reporting of child sexual abuse training	[not disclosed]	[not disclosed]	Quarterly	B	[not disclosed]
% of staff identify themselves as Aboriginal or Torres Strait Islander	[not disclosed]	[not disclosed]	Annually	N/A	[not disclosed]

## 2.4 Access

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 4.

**TABLE 4: Access KPIs**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Availability of back up facilities (emergency power etc)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	A	<i>[not disclosed]</i>
Non-availability of Critical Health Services	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	A	<i>[not disclosed]</i>
Unplanned and unexpected readmissions to the Facility for the same or related condition on the same or next day	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	A	<i>[not disclosed]</i>
Total hours on Diversion for Emergency Department per Month (subject to ambulance distribution being based on Role Delineation, Catchment Area and previous years' average distribution at general hospitals)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	B	<i>[not disclosed]</i>
Total hours on Diversion for Maternity Services per Month	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	B	<i>[not disclosed]</i>
Number and proportion of Public Patients who are waitlisted for Elective Activity and have been waiting more than the desired time for their Clinical Urgency Classification	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	B	<i>[not disclosed]</i>
ED patient transfers to tertiary facilities as a percentage of ED Occasions of Service.	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	B	<i>[not disclosed]</i>
Inpatient transfers to tertiary facilities as a percentage of Inpatient Separations	<i>[not disclosed]</i> %	<i>[not disclosed]</i>	Monthly	B	<i>[not disclosed]</i>
Number of Patients transferred to another hospital because of unavailability of staff that should have been available to deliver the Services in accordance with the Role Delineation and Activity Profile.	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	N/A	<i>[not disclosed]</i>
Total number of appropriate adult Patients referred to an ICU, who have documented evidence by an Intensivist that they could not be Admitted to the unit because of inadequate resources (1.1 - Intensive Care)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>

## 2.5 Clinical performance KPIs

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Tables 5 to 23 (inclusive):

**TABLE 5: HOSPITAL WIDE CLINICAL KPIs**



KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Adverse transfusion events related to a blood transfusion episode (6.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	A	<i>[not disclosed]</i>
Unplanned return to the operating room during the same admission (2.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	B	<i>[not disclosed]</i>
Number of Patients who develop one or more pressure ulcers during their admission (3.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	B	<i>[not disclosed]</i>
Inpatient falls (4.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	B	<i>[not disclosed]</i>
Informed consent is obtained and recorded in compliance with the <i>Consent to Treatment Policy for the Western Australian Health System (2009)</i>	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	B	<i>[not disclosed]</i>
Inpatients experiencing major medical complications while undergoing ECT (4.2 – Mental Health Inpatient)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Unplanned and unexpected hospital re-admissions for the same or related condition within 28 days of separation at the Health Campus (1.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	C	<i>[not disclosed]</i>
Number of falls in inpatients aged 65 yrs and older (4.4)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	N/A	<i>[not disclosed]</i>
Number of all Emergency Code Incidents (Code Blue, Red, Black, Yellow, Brown, Purple, Orange, CBR)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>
Number of Medication Incidents	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>
Number of reported Clinical Incidents at the Health Campus	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>

**TABLE 6: MEDICATION SAFETY**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
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Medication errors resulting in an adverse event requiring intervention beyond routine observation and monitoring (2.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	A	<i>[not disclosed]</i>
Documentation of a Patient's known adverse drug reactions in the medication chart (3.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	N/A	<i>[not disclosed]</i>

**TABLE 7: INFECTION CONTROL INDICATORS**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Rate of health care associated bloodstream infection due to Staphylococcus aureus (MSSA & MRSA) – HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	A	<i>[not disclosed]</i>
Rate of central line associated bloodstream infections in Haematology / Oncology / Outpatient IV Therapy Units - HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	A	<i>[not disclosed]</i>
Rate of central line associated bloodstream infections in ICU – HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	A	<i>[not disclosed]</i>
Rate of healthcare associated Clostridium Difficile infection – HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	A	<i>[not disclosed]</i>
Rate of healthcare associated infections due to Methicillin-resistant Staphylococcus aureus (MRSA) – HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	A	<i>[not disclosed]</i>
Rate of surgical site infection following elective hip and knee arthroplasty – HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	A	<i>[not disclosed]</i>
Results from Hand Hygiene Initiative Audits – HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	B	<i>[not disclosed]</i>
Rate of occupational exposure to blood and/or body fluids- HISWA	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	B	<i>[not disclosed]</i>

**TABLE 8: AGED CARE**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Documented assessment of cognitive function for aged care patients using a validated tool such as Abbreviated Mental Test Score or Mini-Mental State Examination (4.1 -Internal Medicine)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Number of aged care Patients for whom there is documented objective assessment of physical function on admission, and at least once more during their Inpatient stay (4.2 – Internal Medicine)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Number of aged care Patients with a diagnosis of acute delirium who have surveillance or monitoring of safety in place	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	N/A	<i>[not disclosed]</i>

**TABLE 9: ANAESTHETIC**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Intervention to relieve respiratory distress (3.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	B	<i>[not disclosed]</i>
Intervention by an anaesthetist for a temperature less than 35 degrees (3.3 Recovery period)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	B	<i>[not disclosed]</i>

**TABLE 10: EMERGENCY DEPARTMENT SERVICES**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
% of Patients allocated to Triage Category 1 who are attended to immediately (1.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	A	<i>[not disclosed]</i>
% of Patients allocated to Triage Category 2 who are attended to within 10 minutes (1.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	B	<i>[not disclosed]</i>
% of Patients allocated to Triage Category 3 who are attended to within 30 minutes (1.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	C	<i>[not disclosed]</i>

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
% of Patients allocated to Triage Category 4 who are attended to within 60 minutes (1.4)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	C	<i>[not disclosed]</i>
% of Patients allocated to Triage Category 5 who are attended to within 120 minutes (1.5)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	C	<i>[not disclosed]</i>
Median wait time for Patients to be attended to for each Triage category	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>
% of ED Attendances with a length of Episode of Care of < 4 hours	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	B	<i>[not disclosed]</i>

**TABLE 11: GASTROINTESTINAL ENDOSCOPY**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Number of Patients treated for possible perforation following polypectomy (1.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Number of Patients treated for possible perforation not related to polypectomy (1.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Number of Patients treated for possible perforation related to dilatation (2.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Number of Patients treated for possible perforation secondary to instrument related causes (2.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Number of Patients treated for possible perforation related to upper GIT polypectomy (2.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>

**TABLE 12: INTENSIVE CARE**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Total number of adult Patients being treated appropriately for VTE prophylaxis, according to local protocol, within 24 hours of admission to the ICU (3.1)	[not disclosed]	[not disclosed]	Six Monthly	B	[not disclosed]

**TABLE 13: INTERNAL MEDICINE**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Patients with acute myocardial infarction requiring thrombolysis who receive thrombolytic therapy within 1 hr of presentation to the hospital (1.5)	[not disclosed]	[not disclosed]	Six Monthly	A	[not disclosed]
Number of Patients discharged with a diagnosis of CHF who have no contraindications to the use of ACE1/A2RA and who are prescribed an ACEI/A2RA (1.1)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Number of Patients discharged with a diagnosis of CHF who have no contraindications to use of beta blockers and who are prescribed beta blocker therapy (1.2)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Number of Patients discharged with a diagnosis of CHF and atrial fibrillation who have no contraindications to the use of warfarin, who are prescribed warfarin (1.3)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Number of Patients discharged with any diagnosis of CHF who are referred for a chronic disease management service that includes physical rehabilitation (1.4)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Monitoring and prevention of symptomatic hypoglycaemia: at least 4 blood glucose measurements on 1st post-operative day (2.2)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Monitoring and prevention of symptomatic hypoglycaemia: Blood glucose level less than 4mmol/l in post-operative period (2.3)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Total number of Patients discharged from a general medical unit with any diagnosis of COPD who are referred for a chronic disease management service that includes physical rehabilitation (5.1)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Patients Admitted with a diagnosis of acute asthma for whom there is documented objective assessment of severity on initial presentation (5.2)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Patients Admitted with a diagnosis of acute asthma for whom there is documented objective assessment of severity in addition to initial assessment to facilitate ongoing management (5.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Patients Admitted with a diagnosis of acute asthma for whom there is documented evidence of an appropriate discharge plan (5.4)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>

**TABLE 14: MENTAL HEALTH INPATIENT**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Inpatient with an attempted or actual suicide during admission (6.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	A	<i>[not disclosed]</i>
Inpatients with a complete documented physical examination within 48 hours of admission (2.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Inpatients experiencing major complications while in seclusion (5.5)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Inpatient separations having physical restraint who experience major complications while under restraint (5.8)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Inpatients who undertake significant self mutilation during admission (6.4)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Inpatients suffering significant other injuries during admission (6.5)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Inpatients allocated a diagnosis within 24 hours of admission (1.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Inpatients with a diagnosis on discharge which is documented in the medical record (1.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Inpatients with an individual care plan, which is constructed and regularly reviewed with the Patient (1.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Number of Inpatients who have a discharge summary / letter at the time of discharge (9.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six monthly	C	<i>[not disclosed]</i>

<b>KPI</b>	<b>Target Level</b>	<b>Performance Threshold</b>	<b>Frequency of reporting</b>	<b>Abatement Level</b>	<b><i>[not disclosed]</i></b>
Inpatients who have a multidisciplinary review recorded in the medical record at least every three months (10.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients having at least 2 episodes of seclusion in an admission or within a 1 month period of an extended admission (5.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients having seclusion for more than 4 hours in 1 episode, in an admission (5.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients in seclusion who were not reviewed by sight by a medical practitioner or nurse on at least a half hourly basis (5.4)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Total Inpatients having seclusion (5.6)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients having at least one episode of physical restraint in an admission (5.7)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients who assault during admission (6.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients who assault twice or more during admission (6.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>

**TABLE 15: NEONATOLOGY**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
% of babies in the neonatal unit referred for management by an attending paediatrician or neonatologist	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	B	<i>[not disclosed]</i>
Rate of live births suffering a Grade 2 or 3 Hypoxic-ischaemic Encephalopathy	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>
Transfers to Level 2b or 3 tertiary neonatal units including use of NETS	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>
Unplanned and unexpected readmission to a neonatal unit / special care nursery (SCN)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	N/A	<i>[not disclosed]</i>

**TABLE 16: OBSTETRICS**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Number of inborn term babies transferred / Admitted to a neonatal special care nursery at the Health Campus for reasons other than congenital abnormality (10.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Rate of primipara requiring surgical repair of the perineum for fourth degree tear (3.6)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Rate of selected primipara undergoing caesarean section (1.4)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Rate of primipara requiring surgical repair of the perineum for third degree tear (3.5)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Rate of high risk women undergoing caesarean section who receive appropriate pharmacological thromboprophylaxis (6.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Rate of women delivering vaginally following a previous primary caesarean section (2.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Rate of selected primipara with intact perineum or unsutured perineal tear (3.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Rate of selected primipara undergoing episiotomy and no perineal tear while giving birth vaginally (3.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>



KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Rate of primipara sustaining a perineal tear and no episiotomy (3.3)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Rate of primipara undergoing episiotomy and sustaining a perineal tear while giving birth vaginally (3.4)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Rate of women who give birth vaginally who receive a blood transfusion during same admission (7.1)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Rate of women who undergo a caesarean section who receive a blood transfusion during same admission (7.2)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Rate of deliveries with birth weight less than 2750g at 40wks gestation or beyond (8.1)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
% of term babies born with an Apgar score of less than 7 at five minutes post delivery (9.1)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]

**TABLE 17: ONCOLOGY**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Patients who wait more than 14 days to commence chemotherapy treatment	[not disclosed]	[not disclosed]	Six Monthly	B	[not disclosed]
Proportion of Patients who had chemotherapy treatment for breast conservation with complete follow up	[not disclosed]	[not disclosed]	Six Monthly	B	[not disclosed]
Proportion of Patients for whom there are multidisciplinary handovers and / or case conferences with tertiary oncology teams	[not disclosed]	[not disclosed]	Six monthly	N/A	[not disclosed]

**TABLE 18: OUTPATIENT CARE**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Proportion of Patients not seen within the desired timeframe for each Outpatient category according to the Department's Operational Directive (0125/08) Specialist Outpatient Services Access Policy –	[not disclosed]	[not disclosed]	Monthly	N/A	[not disclosed]

Metropolitan Health Services, as amended from time to time					
Proportion of Patients not seen within the desired timeframe for each Outpatient category according to the Department's Operational Directive (0125/08) Specialist Outpatient Services Access Policy – Metropolitan Health Services, as amended from time to time	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	B	<i>[not disclosed]</i>
Ratio of new to follow up appointments per Patient for each specialty, excluding multidisciplinary clinics	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	N/A	<i>[not disclosed]</i>

**TABLE 19: PAEDIATRICS**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Surgical - Number of children with a preoperative diagnosis of acute appendicitis who undergo appendicectomy with normal histology (1.2)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Surgical - Number of children with a preoperative diagnosis of acute appendicitis who undergo appendicectomy with normal histology, but significant other intra-abdominal pathology (1.3)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>

**TABLE 20: PALLIATIVE CARE**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Proportion of patients who have 24hr access to an experienced palliative care nurse	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	B	<i>[not disclosed]</i>
Access to an experienced multidisciplinary team including a doctor, nurse specialist / Consultant and allied health professionals	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Quarterly	B	<i>[not disclosed]</i>

**TABLE 21: REHABILITATION MEDICINE – AGED CARE AND ADULT REHABILITATION**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Number of separations for which there is an appropriate discharge plan for a Patient (4.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Patients Admitted to a rehabilitation unit/facility for whom there is a documented established multi-disciplinary rehabilitation plan within 7 days of Patient admission (3.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Percentage of rehabilitation patients who receive initial Functional Impairment Measure assessments performed within 3 days of admission and discharge Functional Impairment Measure assessments within 3 days of anticipated discharge	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Monthly	N/A	<i>[not disclosed]</i>

**TABLE 22: STROKE**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	<i>[not disclosed]</i>
Inpatients with a diagnosis of ischaemic stroke presenting to the hospital within 4.5 hrs of stroke onset with documented evidence of administration of an intravenous thrombolysis agent (3.5- Internal Medicine)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	A	<i>[not disclosed]</i>
Number of separations for which there is an appropriate discharge plan for a Patient (4.1)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	C	<i>[not disclosed]</i>
Inpatients with a primary diagnosis of acute stroke with documented evidence of a swallowing screen conducted prior to having food or drink (3.1-Internal Medicine)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients with a primary diagnosis of acute stroke that had a documented scan (CT or MRI) of their brain within 24hrs of presentation to the Health Campus (3.2- Internal Medicine)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>
Inpatients with a primary diagnosis of acute stroke with documented physiotherapy assessment within 48hrs of presentation to the Health Campus (3.3 - Internal Medicine)	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Six Monthly	N/A	<i>[not disclosed]</i>

Inpatients with a primary diagnosis of acute stroke who have documented treatment in a stroke unit at any time during their admission (3.8-Internal Medicine)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
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**TABLE 23: SURGICAL**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Rate of cancellation of procedure after arrival: Administrative / organisational reasons for all surgical Patients	[not disclosed]	[not disclosed]	Six monthly	B	[not disclosed]
Laparoscopic Cholecystectomy - Bile duct injury requiring operative intervention 7.1	[not disclosed]	[not disclosed]	Six Monthly	B	[not disclosed]
Otolaryngology - Significant reactionary haemorrhage following tonsillectomy 9.1	[not disclosed]	[not disclosed]	Six Monthly	C	[not disclosed]
Rate of cancellation of procedure after arrival: Pre-existing medical condition for all surgical Patients	[not disclosed]	[not disclosed]	Six monthly	N/A	[not disclosed]
Rate of cancellation of procedure after arrival: Acute medical condition	[not disclosed]	[not disclosed]	Six monthly	N/A	[not disclosed]
Urology - TUR for benign prostatomegaly: Blood transfusion during same admission (2.4)	[not disclosed]	[not disclosed]	Six Monthly	N/A	[not disclosed]
Plastic surgery – Number of completely excised malignant skin tumours (4.1)	[not disclosed]	[not disclosed]	Six monthly	N/A	[not disclosed]

## 2.6 Quality indicators

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 24.

**TABLE 24: QUALITY INDICATORS**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Number of confidentiality and data protection breaches (including breaches of the Privacy Legislation)	[not disclosed]	[not disclosed]	Monthly	A	[not disclosed]

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Number of category 4 and 5 deaths (WARM)	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
Number of reportable Sentinel Events	[not disclosed]	[not disclosed]	Monthly	A	[not disclosed]
Percentage of category 4 & 5 deaths referred for further investigation (WARM)	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
Percentage of reportable Sentinel Events reported to DoH Office of Safety & Quality in Healthcare (OSQH) within 7 working days of the event occurrence	[not disclosed]	[not disclosed]	Monthly	A	[not disclosed]
Sentinel event investigation findings reported to DoH OSQH within 45 days of event notification	[not disclosed]	[not disclosed]	Quarterly	A	[not disclosed]
Compliance with the provision of Medical Records on transfer of patient to another Facility as stated in Clause 34.2(c)(iii)	[not disclosed]	[not disclosed]	Six Monthly	B	[not disclosed]
Compliance with requirements of discharge information sent to continuing care provider within 24 hours of discharge	[not disclosed]	[not disclosed]	Six monthly	B	[not disclosed]
Percentage of deaths with a completed review within 6 months from date of death (WARM)	[not disclosed]	[not disclosed]	Quarterly	B	[not disclosed]
In-hospital standardised mortality rates	[not disclosed]	[not disclosed]	Annually	N/A	[not disclosed]

## 2.7 Other indicators

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 25.

**TABLE 25: OTHER INDICATORS**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Non- KPI Reports not provided within the specified timeframe	[not disclosed]	[not disclosed]	Monthly	B	[not disclosed]
Timely provision of requisite reporting information in relation to	[not disclosed]	[not disclosed]	Annually	B	[not disclosed]

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
monthly Reporting KPIs over the term of the Financial Year	<i>disclosed</i>				
Timely provision of requisite reporting information in relation to quarterly Reporting KPIs over the term of the Financial Year	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Annually	B	<i>[not disclosed]</i>
Timely provision of requisite reporting information in relation to six-monthly Reporting KPIs over the term of the Financial Year	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Annually	B	<i>[not disclosed]</i>
Timely provision of requisite reporting information in relation to annually Reporting KPIs over the term of the Financial Year	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Annually	B	<i>[not disclosed]</i>
Achieve the Target Level when measured on an annual average basis for three KPIs marked with a “*” with a Failure categorisation of A	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Annually	B	<i>[not disclosed]</i>
Achieve the Target Level when measured on an annual average basis for six KPIs marked with a “*” with a Failure categorisation of B	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Annually	C	<i>[not disclosed]</i>
Submission of a Rectification Plan where required under the Abatement Regime	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Within the time required by the Abatement Regime	C	<i>[not disclosed]</i>

### 3. Facility KPIs

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Tables 26, 27 and 28.

**TABLE 26: Facility Availability KPIs**

Indicator	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Functional Unit categorised as Critical in the Functional Unit Categorisation Table and not Available for 24 hours or more except in respect of a Permitted Unavailability in relation to which the Operator has complied, and continues to comply, with its obligations under Clause 19.1(b).	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Within 1 Business Day of the occurrence of each Failure, then at the end of each Rectification Time if not Rectified	C	<i>[not disclosed]</i>

Functional Unit categorised as High in the Functional Unit Categorisation Table and not Available for 48 hours or more except in respect of a Permitted Unavailability in relation to which the Operator has complied, and continues to comply, with its obligations under Clause 19.1(b).	[not disclosed]	[not disclosed]	Within 1 Business Day of the occurrence of each Failure, then at the end of each Rectification Time if not Rectified	C	[not disclosed]
Functional Unit categorised as Low in the Functional Unit Categorisation Table and not Available for 10 days or more except in respect of a Permitted Unavailability in relation to which the Operator has complied, and continues to comply, with its obligations under Clause 19.1(b).	[not disclosed]	[not disclosed]	Within 1 Business Day of the occurrence of each Failure, then at the end of each Rectification Time if not Rectified	C	[not disclosed]

**TABLE 27: LARU MANDATORY REQUIREMENTS INDICATORS**

Indicator	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Each Mandatory Requirement attended to and rectified to the satisfaction of the LARU within the timeframe specified by the LARU, or as otherwise agreed with the LARU.	[not disclosed]	[not disclosed]	Within 5 Business Days of the occurrence of each Failure, then at the end of each Rectification Time if not Rectified	A	[not disclosed]

**TABLE 28: ASSET MANAGEMENT INDICATORS**

Indicator	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Timely provision (including updating) of the Asset Management Plan and the Annual Works Plan in accordance with this Agreement.	[not disclosed]	[not disclosed]	Annually	B	[not disclosed]
Maintenance of the Public Patient Health Campus in good repair and condition in accordance with the Operator's asset maintenance obligations under Clause 19.2(a) of this Agreement.	[not disclosed]	[not disclosed]	Monthly	B	[not disclosed]

#### 4. Patient Transfer KPIs

The Operator must meet the Performance Thresholds, and endeavour to achieve the Target Levels, for all KPIs set out in Table 29.

**TABLE 29: INDICATORS FOR PATIENT TRANSFER PERIOD**

KPI	Target Level	Performance Threshold	Frequency of reporting	Abatement Level	[not disclosed]
Timely completion: All patients transferred from SDH within the Transfer Period	[not disclosed]	[not disclosed]	Transfer Report	A (per day)	[not disclosed]
Patients requiring transfer from SDH to the Health Campus (as identified in the Patient Transfer Plan) arrive at the Health Campus in accordance with the Patient Transfer Plan	[not disclosed]	[not disclosed]	Transfer Report	A (per patient)	[not disclosed]
Number of serious Adverse Events directly related to the Patient Transfer Services.	[not disclosed]	[not disclosed]	Transfer Report	A	[not disclosed]
Cancellations of Elective Activity that is scheduled surgery on first day of the	[not disclosed]	[not disclosed]	Transfer Report	A	[not disclosed]



Operational Phase					
Particular Health Services commencing later than the time for commencement of that particular Health Service as identified in the Patient Transfer Plan	<i>[not disclosed]</i>	<i>[not disclosed]</i>	Transfer Report	A	<i>[not disclosed]</i>

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## 5. Functional Unit Categorisation Table

*[Not disclosed]*

## Schedule 7 – Reporting Requirements

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### 1. General obligations

The Operator must:

- (a) provide reports in the areas of performance, activity, finance, facility management and other reporting;
- (b) provide all reports outlined in this Schedule, and those required by the ACHS, State (acting reasonably) and Commonwealth Governments, to the State Representative;
- (c) provide all reports in the manner and format required by the State;
- (d) provide to the State such information in relation to the Services and the Project that the State reasonably requires including all information reasonably required to answer ministerial enquiries and parliamentary questions within the given timeframes, using the required format as directed by the State;
- (e) provide all reports in accordance with the timeframes indicated in this Schedule, as updated from time to time, including:
  - (i) weekly reports provided within 2 Business Days of the end of the period;
  - (ii) monthly reports provided within 7 Business Days of the end of the period;
  - (iii) quarterly reports provided within 14 Business Days of the end of the period;
  - (iv) six monthly reports provided within 21 Business Days of the end of the period;
  - (v) annual reports (other than the Annual Report) provided within 20 Business Days of the end of the period; and
  - (vi) if no period is specified, at reasonably periodic intervals as required by the State and notified to the Operator;
- (f) ensure all ICT systems have the capability to provide all data reasonably required by the State in the manner and format specified in the ICT Requirements;
- (g) work with the Department in providing data, at least as provided by the Peer Group Hospitals;
- (h) provide all data and reports to State central data collections in the manner and format and within the timeframes as set out in Annexure A of the LARU Additional Licence Terms and Conditions 2010 (or its then-current equivalent); and
- (i) upon request, grant permission to the State Representative to access all activity data sets held centrally by the State.

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### 2. Performance Reporting

#### 2.1 Clinical and Corporate Governance

The Operator must report on the following:

- (a) policies and practices for the Health Campus including the review of existing policies and creation of new policies, both clinical and non-clinical, annually;

- (b) compliance with the Department's policies to the extent that they are relevant to the Services and any policies introduced by the Operator, reported annually;
- (c) compliance with and revision of the Operator's own business continuity plan and alignment with the current Department business continuity plan as updated from time to time, reported annually;
- (d) compliance with and revision of the Operator's service delivery plan and alignment with the Clinical Services Framework and Department's Clinical Service Plan as updated from time to time, reported annually;
- (e) clinical staff performance monitoring and systems to continuously review and improve performance, including peer review mechanisms, reported annually;
- (f) all governance indicators as specified in the Performance Schedule;
- (g) results of annual reviews of high volume and/or high cost clinical procedures conducted at the Facility as nominated by the Department. In conducting each review, the Operator must assess:
  - (i) the training of practitioners and staff; and
  - (ii) the procedures used and the outcome of these procedures,and the Operator must report the results of each of these reviews to the State promptly upon completion; and
- (h) evidence (as required by the State) of current licensing with the LARU and report on any LARU key recommendations or areas for improvement.

## **2.2 Safety and Quality**

The Operator must:

- (a) provide verbal reports to the State Representative for all Sentinel Events on the day of the Clinical Incident, or the day the Operator becomes aware of the Clinical Incident with a written report following at a reasonable timeframe (but in any event not later than the date for provision of the next Monthly Performance Report in accordance with this Agreement);
- (b) provide an annual report summarising the outcomes of the Operator's continuous quality improvement process including any changes implemented through the process;
- (c) report annually on compliance with all aspects of the Safety, Quality and Risk Management Plan including explanation of deviations from the plan; and
- (d) report annually on all revisions or amendments to the Safety, Quality and Risk Management Plan including revised areas of the plan.

## **2.3 Risk Management**

The Operator must:

- (a) provide verbal reports to the State Representative for high and extreme levels of clinical, corporate and occupational health and safety risks (as identified in accordance with the Safety, Quality and Risk Management Plan) on the day the risk is identified, or the day the Operator becomes aware the risk has been identified, with a written report following at a reasonable timeframe (but in any event not later than the date for provision of the next Monthly Performance Report in accordance with this Agreement);

- (b) report annually on compliance with all aspects of the Safety, Quality and Risk Management Plan including explanation of deviations from the plan; and
- (c) report annually on all revisions or amendments to the Safety, Quality and Risk Management Plan including revised areas of the plan.

## **2.4 System Interaction**

The Operator must:

- (a) provide annual reports to the Community Advisory Council for noting, and to the State Representative following provision to the Community Advisory Council, that demonstrate evidence of a response to any recommendations suggested by members of the Community Advisory Council and outline achievements to improve the Consumer experience at the Health Campus; and
- (b) report to the State annually on integration strategies with primary healthcare systems including integration with local general practitioners and local community networks.

## **2.5 Key Performance Indicators and Targets**

The Operator must:

- (a) collate and submit data required by ACHS, or other relevant external accreditation body, in line with the established collection periods and simultaneously provide copies of that data to the State;
- (b) provide the State with a copy of any report relating to the accreditation of the Facility received from the ACHS or other external accreditation body within 14 days of receipt of the report;
- (c) provide the State with a copy of satisfaction surveys issued and report on the results and outcomes of the surveys annually;
- (d) provide an annual report on the number of ministerial and parliamentary enquiries or complaints received and responded to in relation to the Services;
- (e) report on all KPIs :
  - (i) that are applicable at the time the relevant Services are provided by the Operator (depending on, among other things, the size and type of organisation, and whether there are sufficient numbers of patients at that organisation for meaningful data to be obtained); and
  - (ii) within the required timeframe (and where the Operator does not report on a KPI the reason for this needs to be outlined);
- (f) provide any other reports or information reasonably required by the State or Commonwealth, including but not limited to any future changes in clinical indicator reporting requirements; and
- (g) in relation to the Clinical Performance KPIs, generate reports (in a form approved by the State) for review at the Community Advisory Council meetings and other relevant hospital safety and quality or clinical governance committees.

## **2.6 Performance Failures**

The Operator must submit to the State each Month during the Operational Phase, within 7 days of the end of the Month (unless otherwise stated) a report (the **Monthly Performance**

**Report)** setting out the level of the Operator's performance of the Services against each KPI which is required to be reported against within that Month, and which must contain full details of (among other things):

- (a) each Failure;
- (b) in respect of each Failure, details of each parameter used to calculate the associated Failure Abatements in accordance with the Payment Schedule, including, where applicable, the following:
  - (i) the nature of the Failure;
  - (ii) the date, time, extent and duration of the Failure;
  - (iii) the specific location of the Failure;
  - (iv) the required date and time of Rectification and the actual date and time of Rectification; and
  - (v) the actual Performance Threshold for the Failure;
- (c) the total of any Failure Abatements, including a detailed break down of how these were calculated;
- (d) any written report required in accordance with Section 2.3(a) above; and
- (e) any other information that the State reasonably requires in relation to the calculation of Failure Abatements,

provided that, in respect of any Failures relating to KPIs which have a quarterly, six monthly or annual Reporting Period:

- (f) the Operator is required to comply with this Section 2.6 by submitting the equivalent of the Monthly Performance Report as it relates to those Failures and any corresponding Failure Abatements at the same time as the relevant periodic report is submitted in accordance with Section 1(e)(iii), (iv) or (v) as applicable (each a **Periodic Performance Report**); and
- (g) in each Month where one or more Periodic Performance Reports are required to be submitted by the Operator in addition to the relevant Monthly Performance Report, each of the Periodic Performance Reports and the Monthly Performance Report submitted in or in respect of Month will together be deemed to be the "Monthly Performance Report" for the purposes of this Agreement.

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### 3. Activity Reporting

#### 3.1 General

The Operator must submit reports on hospital activity for Admitted, emergency and Non-Admitted public patient episodes as required by the State and Commonwealth Governments. These reporting requirements may change from time to time at the discretion of the State.

#### 3.2 Weekly reports

Weekly submission (Monday to Sunday) of data on Patients on waitlists containing all WA Health Elective Surgery Wait list data, according to the business rules and definitions currently described by the WA Health Management Information Group (WAHMIG) as

amended from time to time, to be submitted no later than 2 Business Days following each weekly reporting period.

### 3.3 Monthly reports

The Operator must submit to the State each Month during the Operational Phase, within seven days of the end of the Month (unless otherwise stated):

- (a) the **“Monthly Activity Report”** (in the form required by the State) setting out the volume of the Services undertaken for the immediately preceding Month, and which must contain full details of (among other things):
  - (i) the Services provided by Service Payment Category during the Month to which the report relates, reconciled with the information contained in the individual Patient records;
  - (ii) the Services provided by Service Payment Category from the commencement of that Financial Year to the end of the Monthly period to which the report relates;
  - (iii) the contracted level of Services to be provided from the commencement of that Financial Year to the end of the Monthly period to which the report relates;
  - (iv) the variance between the contracted level of Services and actual Services provided from the commencement of that Financial Year to the end of the Monthly period to which the report relates;
  - (v) any Further Services provided as a result of activity purchased by the State outside the MPA;
  - (vi) Functional Unit Unavailability below the Performance Threshold set out in the Functional Unit Categorisation Table;
  - (vii) the Operator’s:
    - A. methodology and calculations in determining; and
    - B. pay-roll tax statements in respect of,the amount of any Payroll Tax paid by the Operator in respect of the relevant Month;
  - (viii) the number of Bed Days within the Critical Care Unit used by the Operator for the preceding Month;
  - (ix) supporting information (including claim forms) identifying any amounts reimbursed to the Operator from the Commonwealth in accordance with the PBS that would not have been available as at the Date of this Agreement; and
  - (x) any other information that the State reasonably considers appropriate;
- (b) a report containing all data currently described and defined in the Hospital Morbidity System Data Requirements Reference Guide (2010), as amended from time to time, for each Inpatient Episode of Care; and
- (c) details of any Industrial Relations Matters 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.

### 3.4 Audit report

The Operator must provide to the State, within 120 days of the end of each Financial Year during the Operational Phase, an audit report, prepared by an independent and reputable auditor, who has audited the Performance Data, the Monthly Performance Reports and the Monthly Activity Reports for that Financial Year.

### 3.5 Six Monthly reports

On a six monthly basis, within 22 days after the end of the six month period (unless otherwise stated), the Operator must provide:

- (a) **(Emergency Medicine Service):** a report setting out:
  - (i) the number of cases reviewed by a psychiatrist in the Emergency Department
  - (ii) the number of transfers to other facilities, by specialty; and
  - (iii) the Patient's Department of Veteran's Affairs file number (if applicable).
- (b) **(Non-Admitted Services):** a report setting out:
  - (i) the number of occasions of service by type of service (for example, physiotherapy session, day therapy clinic, general medicine clinic);
  - (ii) the source of referral (for example, Emergency Department, other public hospital, GP, specialist, external specialist);
  - (iii) the type of referral and services offered (for example, post- and pre-operative, post admission; specialty clinics);
  - (iv) Patient's area of residence (for example, within Catchment Area, outside Catchment Area);
  - (v) average number of treatments per Patient;
  - (vi) number of group sessions per Patient; and
  - (vii) average waiting time for treatment per urgency classification (measured from time of receipt of referral);
- (c) **(Mental Health Designated Units):** a report setting out (for each unit):
  - (i) the number of Bed Days;
  - (ii) the number of Public Patients; and
  - (iii) the number of Patients Admitted to general wards with subsequent transfer to the Mental Health Designated Units.
- (d) **(Rehabilitation Designated Units):** a report setting out (for each unit):
  - (i) the number of Bed Days;
  - (ii) the number of Public Patients; and
  - (iii) the number of Patients Admitted to general wards with subsequent transfer to the Rehabilitation Designated Units.
- (e) **(Chemotherapy Designated Unit):** a report setting out:

- (i) the number of Episodes of Care; and
  - (ii) the number of Public Patients treated; and
- (f) **(Palliative Care)**: a report setting out the number of Public Patients transferred to an appropriate facility for palliative care services.

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## 4. Financial Reporting

### 4.1 Invoices and Accounts

The Operator must submit to the State with each Operations Payment Claim a list of:

- (a) all Admitted Patients treated at the Facility during the period to which the Operations Payment Claim relates showing in relation to each Public Patient:
  - (i) admission number;
  - (ii) medical record number;
  - (iii) admission status ;
  - (iv) date and time of admission;
  - (v) date and time of discharge;
  - (vi) care type;
  - (vii) patient date of birth;
  - (viii) DRG;
  - (ix) Admitted from (establishment);
  - (x) readmission status;
  - (xi) number of Bed Days;
  - (xii) the Service Payment Category;
  - (xiii) hospital discharge ward;
  - (xiv) discharge clinician (Medical Registration Number);
  - (xv) discharged to (establishment);
  - (xvi) mode of separation;
  - (xvii) the number of leave days;
  - (xviii) the Mental Health Legal Status; and
  - (xix) Functional Impairment Measure Codes.
- (b) All Emergency Department Patients treated at the Facility during the period to which the Operations Payment Claim relates showing in relation to each Public Patient:



- (i) event and medical record number;
  - (ii) date and time of Triage, seen and discharge;
  - (iii) patient post code;
  - (iv) Triage code;
  - (v) diagnosis;
  - (vi) discharge type; and
  - (vii) source of referral; and
- (c) all Non-Admitted Patients treated at the Facility during the period to which the Operations Payment Claim relates showing in relation to each Public Patient:
  - (i) admission number (where applicable);
  - (ii) medical record number;
  - (iii) patient post code;
  - (iv) date and time of appointment;
  - (v) visit type;
  - (vi) clinic type;
  - (vii) appointment category code;
  - (viii) group session identifier; and
  - (ix) source of referral.

The Operator must provide additional data or data sets as requested from time to time consistent with requirements under the hospitals funding arrangements between the Commonwealth, State and Territory Governments and the Department's operational instructions and circulars issued from time to time.

## **4.2 Financial Statements**

- (a) The Operator must provide to the State annual financial statements for the Financial Year to be prepared in accordance with the accounting standards and other requirements issued by the Australian Accounting Standards Board including but not limited to:
  - (i) certification of financial statements;
  - (ii) statement of comprehensive income;
  - (iii) statement of financial position;
  - (iv) statement of changes in equity;
  - (v) statement of cash flows, and
  - (vi) relevant notes to the financial statements as required.

- (b) Financial statements for the Financial Year must be audited and included within the Operator's annual report for the Health Campus.

#### **4.3 Financial Audits**

The Operator must provide to the State, within 120 days of the end of each Financial Year during the Operational Phase, an audit report, prepared by an independent and reputable auditor, who is a member of the Certified Practising Accountants of Australia or Institute of Chartered Accountants or National Institute of Accountants, and who has audited the financial statements for that Financial Year for the annual report.

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## **5. Facility Management Reporting**

### **5.1 Asset Management Reporting**

The Operator must provide comprehensive and regular reporting to the State on asset management activities undertaken by the Operator under this Agreement. This includes:

- (a) annual reporting of:
  - (i) all non-compliances with the scheduled asset maintenance works within the Annual Works Plan for the previous Financial Year, the reasons for non-compliance and the remedial action taken (or the proposed rectification plan if the works are outstanding);
  - (ii) all non-compliances with the scheduled Lifecycle Refurbishment Works within the Annual Works Plan for the previous Financial Year, the reasons for non-compliance and the remedial action taken (or the proposed remedial action if the works are outstanding);
  - (iii) all non-compliances with the scheduled maintenance, replacement, refurbishment or purchase of Medical Equipment, Non-Medical FF&E and Consumables within the Annual Works Plan for the previous Financial Year, the reasons for non-compliance and the remedial action taken (or the proposed remedial action if the works are outstanding);
  - (iv) details of any asset disposal during the previous Financial Year; and
  - (v) performance against the Facility KPIs during the previous Financial Year;
- (b) monthly reporting of:
  - (i) all non-compliances with the scheduled asset maintenance works within the Annual Works Plan for the previous Month, the reasons for non-compliance and the remedial action taken (or the proposed remedial action if the works are outstanding);
  - (ii) all non-compliances with the scheduled Lifecycle Refurbishment Works within the Annual Works Plan for the previous Month, the reasons for non-compliance and the remedial action taken (or the proposed remedial action if the works are outstanding);
  - (iii) all reactive maintenance or asset replacement undertaken during the previous Month due to asset Failure;

- (iv) details of any asset Failures, Failures in respect of Availability or any Unavailability of a Functional Unit which does not constitute a Failure, including:
  - A. management of service provision used in the absence or Unavailability of the asset or Functional Unit if applicable;
  - B. action taken for asset repair or replacement or reinstatement of the Functional Unit to full Availability;
  - C. timeframe taken for asset repair or replacement or reinstatement of the Functional Unit to full Availability; and
  - D. mitigation strategies to be implemented for the risk management of future Failures; and
- (v) details of any proposed amendments to the Annual Works Plan in respect of the scheduled asset maintenance and Lifecycle Refurbishment Works for the forthcoming 3 month period; and
- (c) preparing and maintaining (so that it is at all times kept up to date), an asset register which details all assets of the Public Patient Health Campus in the format required by the State.

## 5.2 Medical Equipment expenditure reporting

The Operator must provide a report on an annual basis detailing the expenditure in respect of Medical Equipment which the Operator has made in accordance with Clause 18.2 of this Agreement.

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## 6. Other Reporting

### 6.1 Annual Report

- (a) The Operator must publish, freely available to the State and the public, an annual report on the operations of the Facility establishing compliance with the requirements set out in this Schedule (the **Annual Report**). The report must be published within five Months of the end of each Financial Year.
- (b) The Annual Report must cover the requirements set out in this Reporting Schedule, giving emphasis to the range, quality, responsiveness and appropriateness of Services delivered.
- (c) The Annual Report must report in reasonable detail as required by the State on (among other things) the following topics:
  - (i) role and structure of the Health Campus;
  - (ii) reporting structure to Government;
  - (iii) delineation of services;
  - (iv) information and communication technology systems;
  - (v) advances in medical procedures and technology;
  - (vi) Health Campus interaction with the rest of the Department ;
  - (vii) Health Campus interaction with the local community including general practitioners and community organisations;

- (viii) Key Personnel including staff turnover;
- (ix) medical staff;
- (x) teaching, training and research;
- (xi) operational report;
- (xii) Patient and Consumer satisfaction and complaints;
- (xiii) Carers recognition report;
- (xiv) Reconciliation Action Plan 2008-2013 (as updated from time to time);
- (xv) disability access and inclusion;
- (xvi) performance and quality indicators and targets (including performance against KPIs);
- (xvii) Facility activity and utilisation;
- (xviii) audited financial statements for the Financial Year in accordance with Sections 4.2 and 4.3 of this Schedule;
- (xix) revenue received with respect to Commercial Opportunities and car parking; and
- (xx) the Escalated Written Down Value of the Private Patient Facility and details of any change to that value during the last Financial Year.

## **6.2 Value Adding Initiatives Implementation Plans**

- (a) The Operator must provide to the State:
  - (i) on a quarterly basis, within 14 days of the end of the quarter, reports in relation to the proposed implementation or discontinuation of each initiative proposed as value adding to the Agreement, as identified in paragraph (b); and
  - (ii) on an annual basis, within 14 days of the end of each Financial Year, progress reports on each of those initiatives which are continuing, including details of the progress of the implementation of each initiative, and detailed implementation plans when available.
- (b) These reports must be provided for:
  - (i) Challenger Institute of Technology;
  - (ii) Curtin University;
  - (iii) Community Services Centre;
  - (iv) Foundation Housing;
  - (v) Child Advocacy Services;
  - (vi) Raphael Centre Services; and
  - (vii) any other initiatives as agreed between the Operator and the State.

## **6.3 General Undertakings**

- (a) The Operator must provide the State (within five Business Days of its receipt or sending) a copy of any notice, report, order or communication sent by or received by the Operator:
  - (i) to or from or with any Governmental Agency or other person in relation to the Facility, the services or any Public Patient Facility Assets which is material to the performance of the Operator's obligations in respect of the Project; and
  - (ii) to or from any person alleging anything which constitutes a material breach by the Operator of any Project Document.
- (b) When the communication is oral, the Operator must pass on the substance of the communication in writing to the State.

## Schedule 8 – Activity

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### 1. The Annual Notice

- (a) At least four months prior to the commencement of the Operational Phase and then at least four months prior to the commencement of each Financial Year during the Operational Phase, the State will provide the Operator with the Annual Notice for the coming Financial Year.
- (b) The Annual Notice will specify:
- (i) the Activity Profile (including the Casemix Plan);
  - (ii) the Maximum Payment Amount;
  - (iii) templates and reporting requirements, counting rules and guidelines for the Monthly Performance Reports and Monthly Activity Reports;
  - (iv) changes in the Clinical Services Framework that impact on the Health Campus;
  - (v) the current State purchasing priorities;
  - (vi) the current list of excluded Services (**Excluded Services**);
  - (vii) the current list of restricted Services (**Restricted Services**);
  - (viii) Capped Volumes within certain DRG Services or Service Payment Categories (**Capped Services**) as contemplated by Section 2.4 of the Payment Schedule;
  - (ix) the current list of Functional Areas wards categorised as Designated Units;
  - (x) the National Cost Weights that will be utilised for the purposes of determining DRG cost weights in the coming Financial Year;
  - (xi) category weights by Triage and Disposition for ED Services as determined in accordance with Section 4 of Appendix A to the Payment Schedule;
  - (xii) the group of hospitals defined as “Benchmark Hospitals” for the purpose of calculating the State Benchmark Price within each Service Payment Category;
  - (xiii) if applicable, any updates to the list of “Error” or ‘Unrelated Operating Room Procedure’ DRGs;
  - (xiv) if applicable, any updates to the Benchmark Hospital ward designation table set out in Section 6 of Appendix A to the Payment Schedule;
  - (xv) the JMO Benchmark Ratio and the JMO Minimum Number for the calendar year commencing on the next 1 January;
  - (xvi) details of any State Benchmark Price for Non-Admitted Activity which the State is introducing for the purposes of Section 3.1(c) of the Payment Schedule; and
  - (xvii) any other matter which the State deems relevant, acting reasonably, for inclusion in the Annual Notice.

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## 2. The Activity Profile

- (a) The Activity Profile will provide the profile of Clinical Services the State expects to purchase from the Operator in the coming Financial Year. The Activity Profile will be expressed both in terms of funding units of measure and Episodes of Care (for example, Separations for Admitted Services, Occasions of Service for all other Services).
- (b) In determining the Activity Profile, the State must, amongst other things, in good faith, take account of the following:
  - (i) the current version of the Clinical Services Framework;
  - (ii) other changes in the need for Clinical Services;
  - (iii) the Operator's performance in the provision of Services to the Catchment Area;
  - (iv) the Operator's performance in providing Services in accordance with the Role Delineation, the Quality Standards, the Performance Schedule and the Services Specification in the previous and current Financial Year;
  - (v) movement in funding by the Commonwealth and/or the Treasury of the Western Australian Government;
  - (vi) changes in the incidence of private health insurance in the Catchment Area;
  - (vii) changes in the Role Delineation (as reflected in the Clinical Services Framework); and
  - (viii) the Hospital Licence.
- (c) In preparing the Activity Profile, the State will not reduce the volume for any Service Payment Category for a Financial Year by more than 10% of the lesser of either:
  - (i) the volume for that Service Payment Category specified in the previous Financial Year's Activity Profile; and
  - (ii) the actual volume of Services provided in respect of that Service Payment Category in the previous Financial Year (excluding any Further Services).
- (d) Where the State has amended the Role Delineation as reflected within the Annual Notice, the Operator will be required to transition its provision of Services to the required Role Delineation within the first four months of the Financial Year to which the relevant Annual Notice relates.

### 3. Service Payment Categories

- (a) The Activity Profile contains volumes of activity by Service Payment Category. These are aggregated within three Patient service types and are as set out below:

PATIENT SERVICE TYPE	SERVICE PAYMENT CATEGORY	UNIT OF MEASURE
Admitted Services	General Admitted Activity	Weighted Separations
	Elderly Mental Health Activity in a Designated Unit	Bed Days
	Adult Mental Health Activity in a Designated Unit	Bed Days
	Aged Rehabilitation Activity in a Designated Unit	Bed Days
	Other Rehabilitation Activity in a Designated Unit	Bed Days
	Activity in a Designated Chemotherapy Unit	Weighted Separations
Emergency Department Services	Emergency Department Activity	Weighted Occasions of Service
Non Admitted Services	Medical Led Outpatients	Occasions of Service
	Allied Health Led Outpatients	Occasions of Service
	Nursing Led Outpatients	Occasions of Service
	Multi-Disciplinary Led Outpatients	Occasions of Service

The algorithm in Appendix A to this Activity Schedule explains the methodology for categorising the Admitted Services patient service type into the corresponding Service Payment Categories.

- (b) The units of measure utilised in reporting and funding activity within Service Payment Categories for the purposes of the Reporting Schedule and the Payment Schedule vary between Service Payment Categories and are calculated per individual Patient Episode of Care as follows:

**(i) Weighted Separation (General Admitted Activity):**

(1 \* DRG weight)

This calculation relates only to those Admitted Episodes of Care in circumstances where the Functional Unit in which the Patient was being treated immediately prior to discharge is not considered a Designated Unit as set out in the Annual Notice.

The weight utilised to calculate Weighted Separations is that set out in the Annual Notice.



**(ii) Bed Days (in Designated Units):**

((discharge date) – (admission date) – (total leave days))

This calculation is:

- A. as per the definition set out in the National Health Data Dictionary as at the Date of this Agreement and may vary from time to time in line with that definition; and
- B. inclusive of admission and separation dates and relates only to those Admitted Episodes of Care in relation to circumstances where the Functional Unit in which the Patient was being treated immediately prior to discharge is in the list of Designated Units as set out in the Annual Notice.

**(iii) Weighted Separation (in Designated Chemotherapy Unit):**

( 1 \* (Weight for Chemotherapy DRG))

This calculation relates only to those Same-Day Admitted Episodes of Care in circumstances where the Functional Unit in which the Patient was being treated immediately prior to discharge is considered a Designated Chemotherapy Unit as set out in the Annual Notice.

Regardless of the DRG assigned to these Episodes of Care, the weight used to calculate Weighted Separations in a Designated Chemotherapy Unit is that for the chemotherapy-specific DRG published within the results of the applicable National Cost Weight as indicated in the Annual Notice.

**(iv) Weighted Occasion of Service (Emergency Department):**

( 1 \* category weight)

The weight utilised to calculate weighted ED Occasions of Service is the relative cost weight calculated annually by the State for the category (Triage and Disposition) of the Patient Occasion of Service. The process undertaken to calculate these weights is set out in Section 4 of Appendix A to the Payment Schedule.

**(v) Occasion of Service (Non-Admitted Activity):**

(1)

This calculation relates only to those clinic types specified within the Activity Profile as being Non-Admitted Services.

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## **4. Volume Management**

*[not disclosed]*

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## **5. Further Services**

- (a) The State will from time to time request to procure further services from the Operator separate from the Activity Profile and the MPA (the **Further Services**), in which case the State will provide to the Operator a notice detailing the type and volume of Further Services required as well as the State's proposed Further Services Fee, which will be determined in accordance with Section 4 of the Payment Schedule.

- (b) Following agreement in respect of the Further Services Fee in accordance with Section 4 of the Payment Schedule, the Operator must provide the Further Services during the relevant Financial Year in accordance with its obligations under this Agreement as if they were the Services.
- (c) Within the Monthly Performance Report and Monthly Activity Report, Further Services are to be reported separately from those Services within the MPA.
- (d) Further Services and the Further Services Fee will not be included for the purposes of any of the calculations or determinations related to the targets set in the Activity Profile and the associated Maximum Payment Amount.

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## 6. Patient transfers

- (a) Without prejudice to the Services Specification, no Public Patient may be transferred from the Health Campus to another public hospital except:
  - (i) in relation to Excluded Services and Restricted Services (to the extent of the restriction stated in the Annual Notice) (following assessment and stabilisation if necessary);
  - (ii) where the appropriate level of treatment is not available at the Health Campus, (following assessment, and stabilisation (if necessary)); or
  - (iii) where the Patient requires a level of care that can be provided by a non-metropolitan hospital closer to the patient's residence.
- (b) Activity resulting from a Public Patient transfer as permitted in accordance with paragraph (a) will be categorised and remunerated in the following manner:
  - (i) Health Campus Episodes of Care where the Patient is transferred to a higher acuity hospital and whose admission at the Public Patient Health Campus is less than 12 hours will be funded by the State as an ED attendance, categorised by the Patient's Triage and a Disposition of "Admitted";
  - (ii) Episodes of Care for Mental Health Patients (being those Patients with a Mental Health Service Payment Category) subsequently transferred to a higher acuity hospital, and whose length of stay at the Health Campus is between 12 hours and 20 days in length, will be funded via the Bed Day rate for adult mental health Designated Unit activity. For the purposes of this protocol only, the length of stay is calculated as:
 
$$((\text{Health Campus discharge date}) - (\text{Health Campus admission date}) + 1) ;$$
  - (iii) Episodes of Care where Patients are transferred in to the Public Patient Health Campus from another facility and subsequently have an admission of between four hours and 12 hours will be funded by the State as an ED attendance, categorised by the Patient's Triage and a Disposition of "Admitted"; and
  - (iv) Episodes of Care where Patients are transferred into the Public Patient Health Campus from another facility and subsequently have an admission of less than four hours will be funded by the State as an ED attendance, categorised by the Patient's Triage and a Disposition of "Non Admitted".

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## 7. Reversal of Patient election

- (a) In relation to reversals of Patient election (and subject to paragraphs (b) and (c)), the Operator may only claim payment for an Episode of Care which relates to a reversal of Patient election from private to public in relation to Admitted Services, provided that, in relation to that reversal and Episode of Care, the Operator:
  - (i) complies at all times with the NHA; and
  - (ii) certifies to the State that the relevant reversal and resulting Episode of Care resulted from 'unforeseen circumstances' as defined under the NHA.
- (b) Where a claim for payment is made by the Operator under paragraph (a), this will be subject to review and approval by the State, and will only be paid for by the State to the extent that the Operator has complied with its obligations under paragraph (a).
- (c) Episodes of Care that experience a change in Patient election from the Public Patient Facility to the Private Patient Facility in the same or next day cannot be charged to the State.

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## **8. Other Activity Classification Protocols**

### **8.1 General admitted activity**

#### **Excluded and Restricted Services**

If a Patient presents to the ED and requires services which are Excluded Services or Restricted Services (to the extent of the restriction in the Annual Notice), the Operator must transfer that Patient to a suitable facility following assessment and, if required, initial stabilisation.

### **8.2 Designated unit activity**

#### **(a) Mental Health**

All Separations from Mental Health Designated Units will attract a cost weight of zero (0) as this activity will be funded via occupied Bed Days (excluding leave).

#### **(b) Rehabilitation**

All Separations from Rehabilitation Designated Units with a Care Type of Rehabilitation will attract a cost weight of zero as this activity will be funded via occupied Bed Days (excluding leave).

#### **(c) Chemotherapy**

All same day Separations from Chemotherapy Designated Units will attract a cost weight equivalent to the weighted separation for the Chemotherapy DRG code in any given Financial Year, regardless of the DRG code given to that Episode of Care actually receives.

### **8.3 Error DRG / Unrelated or proc DRGs**

- (a) Episodes of Care assigned to 'Error' or 'Unrelated Operating Room Procedure' DRGs will be subjected to quality assurance and checking in accordance with this Agreement prior to payment.
- (b) The Operator may be required by the State to (in which case it must) submit further information to substantiate the Episode of Care.
- (c) As at the Date of this Agreement, the relevant DRGs are as follows, however these may be updated from time to time:

- (i) Error DRGs (901Z, 902Z and 903Z); and
- (ii) Unrelated Operating Room Procedures (960Z, 961Z, and 962Z).

#### **8.4 ICU/CCU activity**

The cost of providing ICU/CCU care is reflected in the cost weight of the DRG and as such no separate units of measure (for the purposes of funding) are calculated for this.

This approach recognises appropriate ICU/CCU facilities and services are provided in line with the Role Delineation as specified in the current Clinical Services Framework

#### **8.5 Emergency Department activity**

An emergency medicine Occasion of Service refers to the provision of Triage, assessment, and medical care and/or treatment of Patients suffering from a medical condition and/or injury. Without limitation, the following are not emergency medicine Occasions of Service:

- (a) when a Patient is treated but does not see a recognised ED Practitioner;
- (b) when a Patient chooses to attend an after hours GP clinic without receiving medical assessment or treatment; and
- (c) when a Patient does not wait to be attended by a Medical Officer or Nurse Practitioner.

#### **8.6 Non-Admitted activity**

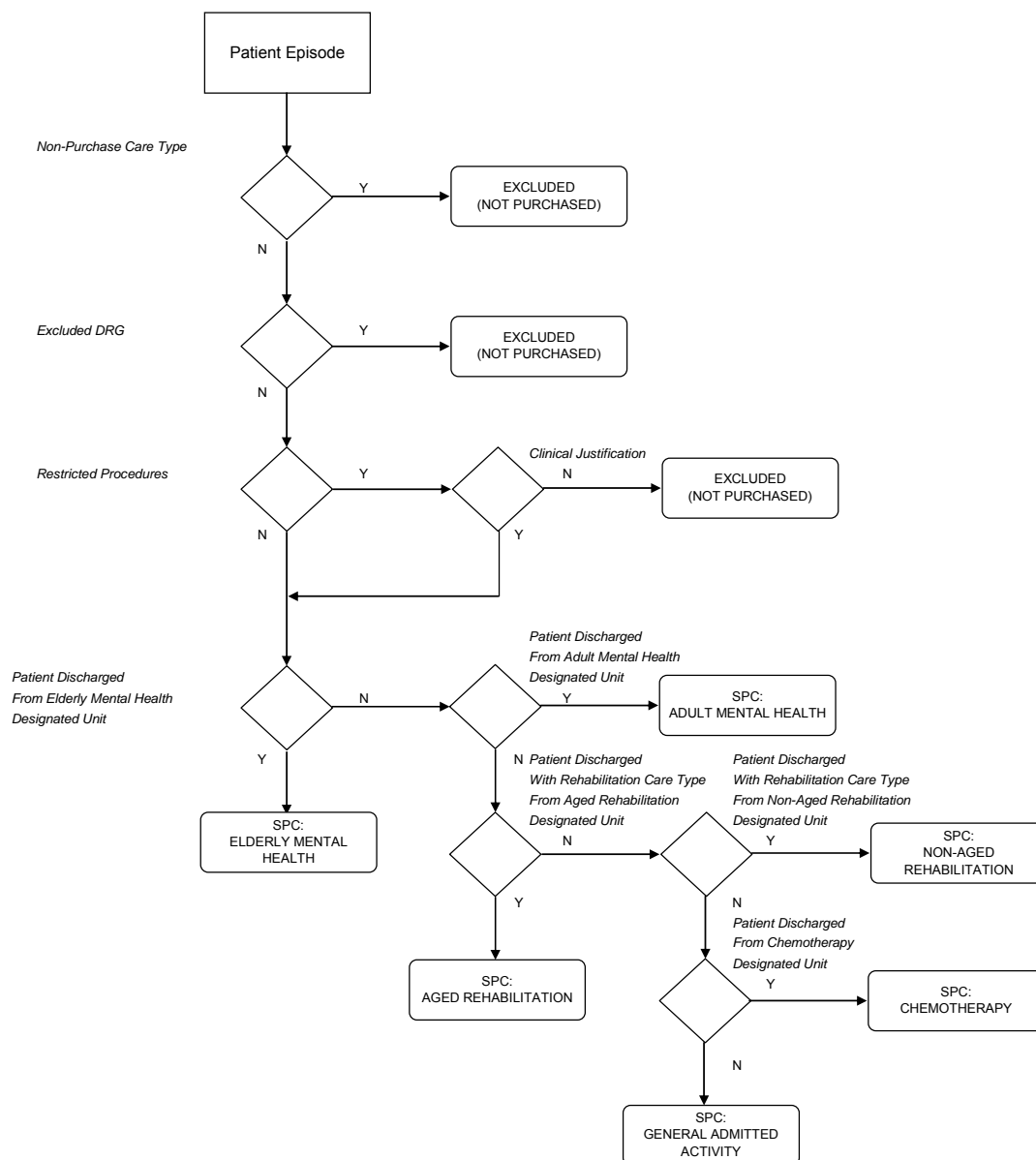
- (a) The expected profile of Non-Admitted Services to be purchased from the Operator in the coming Financial Year will be included in the Activity Profile. The types of clinics to be provided are specified within the Services Specification.
- (b) Non-Admitted Services provided to Inpatients attract a payment of zero.

## APPENDIX A

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**CATEGORISING ADMITTED PATIENT ACTIVITY  
IN TO SERVICE PAYMENT CATEGORIES (SPC)**


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## **Schedule 9 – Payment Schedule**

***[not disclosed]***

## Schedule 10 – Change Compensation

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### 1. General Principles

- (a) This Change Compensation Schedule is used to calculate the Change Compensation Amount that applies in respect of a Variation.
- (b) The Operator must take all proper and reasonable steps to mitigate any increases in costs resulting from a Variation. The Operator will not be entitled to compensation in connection with a Variation for any costs or losses that could have been so mitigated.
- (c) The compensation calculation in this Change Compensation Schedule must take into account any insurance proceeds or damages or other compensation or amount received by the Operator, or which ought to have been received by the Operator if the Operator and the Personnel had complied with the terms of this Agreement and the relevant Insurance Policy, as a result of the occurrence of the Change Compensation Event, such that the Operator is not compensated twice in respect of the same cost or loss.
- (d) Any reference in the Variation Order to price, value, revenue, rates, fees or a similar amount will be a reference to that amount exclusive of GST (other than such an amount expressly agreed to be GST inclusive).

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### 2. Facility Variation

#### 2.1 Formula for calculating compensation

- (a) The Change Compensation Amount for a Facility Variation will be calculated as follows:
$$C = BC + FO + MF$$
where:
  - C = the Change Compensation Amount for the Facility Variation;
  - BC = the Base Costs of the Facility Variation calculated in accordance with Section 2.2;
  - FO = the Facility Overhead applicable to the Facility Variation, calculated in accordance with Section 2.3; and
  - MF = the Management Fee calculated in accordance with Section 2.4.
- (b) If the Change Compensation Amount is positive, it is an amount payable by the State to the Operator. If the Change Compensation Amount is negative, it is an amount payable by the Operator to the State.
- (c) The Operator is not entitled to receive any margin or mark up in respect of implementing a Facility Variation, and the Operator's sole entitlement in respect of the performance of any Operational Phase Works will be the Management Fee calculated in accordance with Section 2.4.
- (d) The State may require the Operator to prepare and act in accordance with a Procurement Plan in connection with the Facility Variation for the purpose of determining the whole of, or part of, the Change Compensation Amount. If the State notifies the Operator that the Operator is required to prepare and act in accordance with a Procurement Plan, then Section 2.5 applies.
- (e) If the State varies a Facility Variation by issuing another Facility Variation Order:



- (i) the two Facility Variations are taken to be one Facility Variation; and
- (ii) the Change Compensation Amount for the Facility Variation is recalculated taking into account the second Facility Variation Order and the work already completed in undertaking the first Facility Variation.

## 2.2 Determining Base Costs

- (a) **Base Costs** means those actual costs (including Design Base Costs, Construction Base Costs and Operational Base Costs (as applicable)) properly and reasonably incurred by the Operator or the Key Service Provider, directly attributable to a Facility Variation which, where the proposed Variation relates to any new Medical Equipment, Non-Medical FF&E or Shared Infrastructure, takes into account only those Base Costs which reflect the percentage capital cost contribution by the State for that new Medical Equipment, Non-Medical FF&E or Shared Infrastructure (as agreed or determined in accordance with Clause 15.1) but excluding:
  - (i) any profit or other margin; and
  - (ii) the cost of project management services provided by the Operator.
- (b) The Operator warrants that, in calculating the relevant Base Costs in accordance with these Change Compensation Principles, all Base Costs must be exclusive of any margin, Design Management Fee, Builder Preliminaries, Builder Overheads and other like costs.
- (c) For the avoidance of doubt, to the extent that the Facility Variation incorporates any element of Shared Infrastructure, the Base Costs will incorporate only those costs incurred by the Operator (as agreed or determined in accordance with Clause 15.1) that relate to the State's proportion of that Shared Infrastructure.

## 2.3 Determining Facility Overheads

*[not disclosed]*

## 2.4 Determining Management Fee

*[not disclosed]*

## 2.5 Procurement Plan

- (a) If the State has notified the Operator in its Facility Variation Price Request issued under Clause 15.1(a) that a Procurement Plan is required:
  - (i) the Operator must prepare and submit a Procurement Plan to the State in respect of the relevant Facility Variation in accordance with this Section 2.5;
  - (ii) the Operator must ensure that the Procurement Plan at all times (unless agreed otherwise by the State) complies with the Procurement Principles and contains the information set out in the definition of "Procurement Plan" in Clause 1; and
  - (iii) the State may, acting reasonably, direct the Operator to (in which case the Operator must) update a Procurement Plan (at the Operator's cost) at any time if the current version is out of date or the details are not accurate or adequate.
- (b) Within 20 Business Days (or within such time as otherwise agreed between the parties) of receipt by the State of a draft of a Procurement Plan, the State may do any of the following:
  - (i) approve the Procurement Plan, in which case that draft becomes the Procurement Plan for the purposes of the Facility Variation;

- (ii) provide comments on the draft of the Procurement Plan, in which case the Operator must, having due regard to those comments, prepare an updated draft Procurement Plan and submit that updated draft Procurement Plan to the State within 5 Business Days of receipt of the State's comments. The procedures in this Section 2.5 apply to the updated draft of the Procurement Plan until the updated draft Procurement Plan is approved by the State; or
  - (iii) direct that the Procurement Plan must address particular matters or include particular items, in which case the Operator must prepare an updated draft Procurement Plan that addresses those matters or includes those items identified by the State (as the case may be) and submit that updated draft Procurement Plan to the State within 5 Business Days of receipt of the State's comments. The procedures in this Section 2.5 apply to the updated draft of the Procurement Plan until the updated draft Procurement Plan is approved by the State.
- (c) If the State does not do any of the things in Section 2.5(b), the Procurement Plan is deemed to be rejected by the State.
- (d) The State may, by reasonable notice to the Operator, require that the Operator make available (at the Operator's cost) the relevant Personnel to explain the drafts of any Procurement Plan, or any aspect of the drafts, and the Operator must make those Personnel available and provide information to the State in such form as the State may reasonably request from time to time in order to ensure that the Procurement Plan is in accordance with this Agreement.
- (e) The Operator must ensure that it and all Personnel comply with the Procurement Plan as agreed or determined in accordance with this Section 2.5 in the performance of its obligations in relation to any applicable Facility Variation or element of the Expansion Works. This Section 2.5 applies to all updates of a Procurement Plan as well as to its initial preparation. For the avoidance of doubt, the Operator is not required to comply with a Procurement Plan to the extent it has not been approved by the State in accordance with Section 2.5(b).
- (f) The State will not be liable for any delay caused to the performance of any works under a Facility Variation or element of the Expansion Works if the State does not approve or provide comments under paragraph (b) within the time periods specified in that paragraph (b).

## 2.6 Tender Process

- (a) **(Requirement for tender):** In relation to each element of the Expansion Works, and any Facility Variation, the Operator must, if required by the State at any time, undertake a tender process in accordance with this Section 2.6 and the relevant Procurement Plan (if applicable).
- (b) **(Scope of tender process):** The scope of the tender process must be the scope of work that the State notifies the Operator is to be the subject of the tender process.
- (c) **(No related parties)** The Operator and any Related Corporation of the Operator are not permitted to submit a quotation or tender under the tender process unless approved by the State.
- (d) **(State input)** The Operator must comply with all other requirements that the State notifies it of in respect of the conduct of the tender process.
- (e) **(Transparency)** The Operator must ensure that the tender process provides fair competition, is transparent in respect of process, cost, scope and outcome, results in a reasonable level of competition within the market and complies with Section 2.3 of this Schedule.

- (f) **(State notification):** The Operator must ensure that the State is notified of all tender opening dates, at least 10 Business Days prior to the scheduled tender opening date, so that a representative of the State can be present. The Operator must select a Subcontractor from the tender process in consultation with the State. The State's involvement in the tender process does not affect or alter any of the Operator's obligations under the Agreement in respect of Subcontracts.
- (g) **(Tender Process Material):** The Operator must permit the State to review all materials that are submitted in the tender process and provide any other information that the State reasonably requires (including such written consents as are required by Law to carry out any probity investigations). The Operator must ensure that all communication between the Operator and tenderers is documented and properly recorded.
- (h) **(Selection Criteria):** The Operator must demonstrate to the reasonable satisfaction of the State that the Subcontractor it intends to select and engage is the best choice having regard to the:
  - (i) price quoted in the prevailing market conditions;
  - (ii) experience and capability of that Subcontractor in the context of the relevant Facility Variation; and
  - (iii) ability of the Subcontractor to carry out the work in respect of the Facility Variation in the manner required by this Agreement,

and that the Subcontractor is experienced, creditworthy, reputable and competent and holds any necessary registrations or licences and has sufficient resources to carry out the scope of work the subject of the tender process. Where the recommended Subcontractor is not the lowest price, the Operator must provide detailed reasons why it intends to select the Subcontractor.

- (i) **(Effect of Tender process):** Subject to paragraph (j), the Operator must submit a quote to the State immediately after the outcome of the tender process. The price received as a result of the tender process must comply with Section 2.3 of this Schedule and will be an input into the calculation of the Change Compensation Amount in substitution for the entire amount for the scope of work that was included in the original Facility Variation Quote by the Operator.
- (j) **(State not satisfied):** If, following the conduct of the tender process, the State is not reasonably satisfied with the Facility Variation Quote, it may:
  - (i) accept the first Facility Variation Quote provided by the Operator;
  - (ii) instruct the Operator not to proceed with the work in respect of the relevant Facility Variation (in which case the State will not be liable for any costs incurred by the Operator to that date); or
  - (iii) proceed to implement the work that would otherwise have been performed in respect of the relevant Facility Variation itself, through Subcontractors selected by itself.

## 2.7 State participation

In relation to any Facility Variation or any element of the Expansion Works, the State may (but is not obliged to):

- (a) attend, or have its nominated auditor attend, the opening of tender submissions received from, or negotiations with, any consultant, builder, contractor or subcontractor engaged or proposed to be engaged in respect of the relevant works; and

- (b) review, or have its nominated auditor review, all proposed contracts and subcontracts intended to be entered into in respect of the relevant works (and the Operator must ensure that any amendments required by the State are made to the relevant contract or subcontract prior to its execution),

and the Operator must give the State reasonable prior notice of any of the events referred to in paragraphs (a) and (b) above.

## **2.8 Lifecycle Fee**

Any variation to the Lifecycle Fee required following the implementation of any Expansion Works or Facility Variation must be determined in accordance with the same methodology used to determine the Lifecycle Fee as at the Date of this Agreement.

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## **3. Service Variation**

### **3.1 General Principles**

- (a) A Service Variation will not usually give rise to a Change Compensation Amount.
- (b) If a Change Compensation Amount is payable in respect of a Service Variation:
  - (i) it may be by the State or by the Operator;
  - (ii) it is determined having regard to the principles in Section 3.2;
  - (iii) it must not result in the cost of the Service to the State being more than the State would pay to deliver the Service itself;
  - (iv) it may be payable by way of an adjustment to the Monthly Payment Amount or by making another payment; and
  - (v) there will be no change to the Maximum Payment Amount unless specifically detailed in the Service Variation Order.
- (c) Where, in relation to a Service Variation Order, the Operator is requested to provide information to the State in order to support any proposed price for a Service Payment Category or any other claim for compensation, the Operator must do so on an open book basis and ensure any unit prices or amounts of compensation are calculated based on the most efficient form of delivery which offers the best value for money for the State in order to comply with the Service Variation Order.
- (d) If Commonwealth funding is made available to Peer Group Hospitals for the change that is the subject of a Service Variation, the funding will be made available to the Operator on the same basis and subject to the same restrictions as apply to the Peer Group Hospitals.

### **3.2 Change to the method of Service delivery**

#### **(a) Normal business**

If a Service Variation Order requires the Operator to change its method of Service delivery in a manner to be consistent with required changes at Peer Group Hospitals, then the Operator will meet any costs, or benefit from any savings, that occur as a result of implementing the Service Variation and no Change Compensation Amount is payable.

#### **(b) Change not implemented at Peer Group Hospitals**

If the required change to the method of service delivery as detailed in the Service Variation Order is not being implemented at Peer Group Hospitals, the State will (acting reasonably) specify whether the required change represents 'Normal Business' or if a Change Compensation Amount is payable to the Operator. If the State determines (acting reasonably) that a Change Compensation Amount is payable to the Operator, the Service Variation Order will detail the method and conditions associated with payment of the Change Compensation Amount.

### **3.3 Change to the type of services that are delivered**

#### **(a) Introduction of new Services**

If a new Service with an existing Service Payment Category is introduced then no Change Compensation Amount is payable and the new Service will be paid for in accordance with the Payment Schedule.

#### **(b) Introduction of new Service Payment Category**

- (i) If a Service Variation Order requires a new Service to be introduced that does not have an existing Service Payment Category the State and the Operator will agree a price for the new Service.
- (ii) The agreed price will be included within the Service Variation Order and represent the Tendered Price of a new Service Payment Category, to be escalated in future years in accordance with the Payment Schedule, with an associated Ceiling and Floor if and when the State Benchmark Price is available.
- (iii) If the Service is also introduced at Peer Group Hospitals, the Ceiling and Floor discounts to the State Benchmark Price of the most closely related Service Payment Category (as determined by the State) will also apply to the ongoing determination of this price on an ongoing basis in accordance with the Payment Schedule.
- (iv) If the State and the Operator cannot agree on a price for the new Service, then either party may refer the matter to Dispute resolution in accordance with Clause 31.

#### **(c) Change in role delineation of existing Service**

- (i) If a Service Variation Order requires an increase in the Role Delineation for an existing Service and the Operator can reasonably demonstrate to the State's satisfaction that:
  - A. the current version of the National Cost Weights for determining the acuity of the service, or other existing method for remunerating the Service are not reflective of the reasonable costs of delivering this Service with an increased Role Delineation; and
  - B. the Operator's costs will increase as a result of the Service Variation Order,the Service Variation will be considered to be a new Service Payment Category and the Change Compensation Amount will be determined in accordance with Section 3.3(b).
- (ii) If the above circumstances apply to Services within the General Admitted Activity Service Payment Category, the use of a separate Service Payment Category for those Services will cease if the State deems that a future change to the National Cost Weights being applied for General Admitted Activity adequately reflects the reasonable costs of delivering the Service, and the method of remuneration as outlined in Section 3.3(a) will apply from that point forward.

## **Schedule 11 – Termination Payments**

*[not disclosed]*

## **Schedule 12 – Review Procedures**

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### **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 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 in a manner and at the time necessary to allow the State to properly understand and review the Submitted Documents in accordance with these Review Procedures (including the timeframes for review of Submitted Documents by the State under these Review Procedures).
- (d) For the avoidance of doubt, the State will not unreasonably withhold its consent to minor amendments to the Submitted Documents made by the Operator and which are submitted for review in accordance with these Review Procedures.

#### **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.

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### **2. Further information**

- (a) Subject to paragraph (b), the Operator must as soon as reasonably practicable upon request by the State:
  - (i) submit any further or other information, data or documents; and
  - (ii) 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.
- (b) Upon receipt of a request under Section 2(a), the Operator must submit the information, data or documents or make available the appropriately qualified personnel in sufficient time to enable the State to provide its comments within the Review Period.

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### **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**

Subject to the Operator complying with Section 2(b), if the State fails to comment on or respond to any Submitted Document submitted in accordance with Sections 1.1 and 2 within the Review Period, then:

- (a) the State shall be deemed to have returned the Submitted Document to the Operator with no comment; and
- (b) the Operator may proceed to undertake the Services in accordance with the Submitted Document,

however, without limiting Section 8, the State's failure to comment will not in any way relieve the Operator from, or alter, affect or reduce, the obligations and Liabilities of the Operator under 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.

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## **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; 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 any relevant warranty given by it as set out in this Agreement, including under Clause 26.

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## **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 form.

## **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 Activity Report.

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## **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:

- (a) the Operator may refer the matter for determination in accordance with Clause 31; and
- (b) subject to the Operator having first given written notice to the State that it disputes the amendments sought by the State, including reasons, the Operator may proceed with the works or to perform the Services in accordance with the Submitted Document at its own cost and risk, unless otherwise directed by the State.

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## **7. No duty to review**

Notwithstanding the Review Procedures, the State or the reviewing parties assume or owe no 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.

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## **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 Services or other obligations 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), 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.

### **Schedule 13 - Insurance**

*[Not disclosed]*

## Schedule 14 – Contract Particulars

### 1. State Representative

Name:	Paul Grove
Position:	Contract Manager, Midland Health Campus
Facsimile:	08 9346 4647
Telephone:	08 9346 7517
Email:	Paul.Grove@health.wa.gov.au

### 2. 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

### 3. Key Personnel

Name	Role and function
Ian Anderson	Chief Executive Officer
Dr Tony Robbins	Director of Medical Services
Jeffrey Williams	Director of Nursing and Midwifery
Darren Jones	Director of Workforce
Martin Loney	Director of Mission

### 4. Key Subcontracts

Component of Services
Agreement between the Operator and the Key Service Provider under which the Key Service Provider will provide all Services
Agreement between the Key Service Provider and PerthRadClinic Ltd (ABN 57 099 943 594) and the partners of Perth Radiological Clinic Partnership under which PerthRadClinic Ltd (ABN 57 099 943 594) and the partners of Perth Radiological Clinic Partnership will

Component of Services
provide the Radiology and Nuclear Medicine Service
Agreement between the Key Service Provider and PMST Pty Ltd (ACN 136 606 267) as trustee for the Pharmacy Services Management Trust under which PMST Pty Ltd (ACN 136 606 267) will provide the Pharmacy Service

## 5. Key Subcontractors

Name	Role and function
St John of God Health Care Inc (ARBN 051 960 911)	Performance of the Services
PerthRadClinic Ltd (ABN 57 099 943 594) and the partners of Perth Radiological Clinic Partnership	Performance of the Radiology and Nuclear Medicine Service
PMST Pty Ltd (ACN 136 606 267) as trustee for the Pharmacy Services Management Trust	Performance of the Pharmacy Service

## 6. Address for service of notices

### 6.1 State

Attention:	Paul Grove
Address:	Sir Charles Gairdner Hospital, Contract Management Unit, 3rd Floor "R" Block, Verdun Street, Nedlands, WA 6009
Facsimile:	08 9346 4647

Email:	Paul.Grove@health.wa.gov.au
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**6.2 Operator**

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

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**7. Parent Guarantor**

Name	St John of God Health Care Inc (ARBN 051 960 911)
Attention:	Company Secretary
Address:	Level 2, 12 Kings Park Road, West Perth 6005
Facsimile:	(08) 9322 2082
Email:	paul.volich@sjog.org.au

## **Schedule 15 – Master Plan**

## Schedule 16 - Parent Guarantee

**THIS DEED OF GUARANTEE is given on                      day of                      2012**

By **St John of God Health Care Inc** (ARBN 051 960 911) incorporated in Western Australia with limited liability of Level 2, 12 Kings Park Road, West Perth 6005 (the **Guarantor**)

### In favour of

The State of Western Australia (the "**State**")

### Background

The State has entered into the following agreements with St John of God Midland Health Campus (ABN 18 152 874 845) (the **Operator**):

- (a) the Design and Construction Agreement dated **[#Note: To be inserted]** (the **D&C Agreement**); and
  - (b) the Services Agreement dated **[#Note: To be inserted]** (the **Services Agreement**);
- (each an **Agreement**, together, the **Agreements**).

The Guarantor agrees to guarantee and indemnify the State in respect of the Operator's obligations under the Agreements in accordance with the terms of this Deed.

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## 1. Operative provisions

- (a) Subject to clause 4, the Guarantor irrevocably and unconditionally guarantees to the State the due performance, observance and fulfilment by the Operator of all the warranties, terms and conditions expressed in the Agreements and on the part of the Operator to be performed, observed or fulfilled.
- (b) Subject to clause 4, the Guarantor indemnifies the State and agrees at all times hereafter to keep the State indemnified from and against all damages, costs, losses, expenses and claims which the State may suffer or incur as a result of the breach by the Operator of any of the covenants, terms and provisions or conditions contained in each Agreement and on the part of the Operator to be performed, observed or fulfilled.
- (c) Subject to clause 4, as a separate and distinct obligation from the Guarantor's obligations in clauses 1(a) and 1(b) the Guarantor agrees to indemnify and keep indemnified the State against any loss that the State may suffer by reason of:
  - (i) the Operator going into liquidation (except for the purpose of amalgamation or reconstruction);
  - (ii) going into receivership;
  - (iii) being wound up or making any arrangement, assignment or composition with its creditors;
  - (iv) either of the Agreements being wholly or partly void, voidable, illegal, invalid or unenforceable against the Operator; or
  - (v) a disclaimer of any contract or property (including the Agreements) made by a liquidator of the Operator pursuant to Part 5.6, Division 7A of the Corporations Act or other applicable laws;



- (d) Subject to clause 4, the liability of the Guarantor in accordance with this Deed is not affected by the granting of time or other indulgence or concession to the Operator or by the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the State against the Operator or by any neglect or omission to enforce such rights or by the liquidation of the Operator or by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from its obligations hereunder or any part thereof.
- (e) Each liability and obligation of the Guarantor contained in this Deed:
- (i) is a continuing guarantee, indemnity or obligation, is irrevocable and remains in full force and effect until all of the obligations of the Guarantor required to be performed and observed in accordance with this Deed have been performed and observed and all of the moneys payable in accordance with this Deed and all other moneys payable in accordance with this Deed have been paid in full;
  - (ii) is not to be or be considered as wholly or partially discharged by the payment at anytime of any of the moneys payable under it by a settlement of account or by any other matter or thing and will apply to the present and future balance of the moneys payable under it; and
  - (iii) is enforceable notwithstanding that any negotiable or other instrument, security interest, guarantee or agreement is still in circulation or outstanding.
- (f) This Deed continues and remains in full force until fulfilment by the Operator of all the terms, provisions and conditions on the part of the Operator to be performed, observed and fulfilled under each Agreement in accordance with the terms of the applicable Agreement.
- (g) This Deed is governed by and takes effect and is construed according to the laws from time to time in force in the State of Western Australia and the parties hereby submit to the authority of the courts having jurisdiction in the State of Western Australia and any injunctions, orders or judgments issued or granted therefrom are enforceable, insofar as they are enforceable at law, within the State of Western Australia.
- (h) Despite any other provision of this Deed (with the exception of clause 1(c)(iv)), the liability of the Guarantor to the State under or in connection with this Deed (whether that liability arises under a specific provision of this Deed, for breach of contract, negligence or otherwise) is no greater than the liability of the Operator to the State under or in connection with the Agreements. If the circumstance described in clause 1(c)(iv) arises, the liability of the Guarantor to the State under or in connection with this Deed (whether that liability arises under a specific provision of this Deed, for breach of contract, negligence or otherwise) is no greater than the liability of the Operator to the State under or in connection with the Agreements as if the circumstance described in clause 1(c)(iv) had not arisen.

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## **2. Defences and cross claims available to the Guarantor**

Despite any other provision of this Deed, the Guarantor is entitled to raise any set-off, counterclaim or defence in connection with the Guarantor's liabilities under this Deed which the Operator would have in connection with the Agreements.

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## **3. Goods and Services Tax**

### **3.1 Definitions**

Capitalised expressions which are not defined in this clause 3 but which have a defined meaning in the GST Law have the same meaning in this clause 3.

In this Deed:

**GST** means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation in accordance with this Deed but does not include any interest or penalty, fine, or other charge imposed on the State after it has received the relevant guarantee or indemnity payment due under this Deed.

**GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made in accordance with that Act.

**Payment** means:

- (a) the amount of any monetary consideration (other than a GST Amount payable in accordance with this paragraph); and
- (b) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

### 3.2 Payment exclusive of GST

The parties agree that:

- (a) all Payments have been set or determined at an amount which is net of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the State to the Guarantor, the GST Amount in respect of the Payment must be paid to the State as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the State will provide to the Guarantor a tax invoice, before any GST Amount is payable in accordance with this clause 3.

### 3.3 Net Down of Reimbursements

If a payment (including a Payment as defined in this clause 3) to the State is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the State, then the payment will be reduced by the amount of any input tax credit to which the State is entitled for that loss, cost or expense.

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## 4. Liability

*[not disclosed]*

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## 5. Definitions and Interpretation

### 5.1 Definitions

**Annual Notice** has the meaning given in the Services Agreement.

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

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

**Contract Sum** has the meaning given in the D&C Agreement.

**D&C Agreement State Project Documents** means the "State Project Documents" as defined in the D&C Agreement.

**Insurance Policy** means an insurance policy required to be effected under either the D&C Agreement or the Services Agreement.

**Interim Management Agreement** has the meaning given in the Services Agreement.

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

**Key Services Subcontract** means the subcontract between the Operator and the Key Service Provider dated on or about the date of the Services Agreement for the performance by the Key Service Provider of the Services that the Operator is required to perform under the Services Agreement.

**Liability** includes any debt, obligation, claim, action, 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.

**Liquidated Damages** means liquidated damages for delay in achieving "Completion" (as that term is defined in the D&C Agreement) pursuant to clause 14.10 of the D&C Agreement.

**Maximum Amount** means the Maximum Payment Amount as set out in the most recent Annual Notice at that time or, where an Annual Notice has never been issued, an amount equal to 50% of the Contract Sum.

**Maximum Payment Amount** has the meaning given in the Services Agreement.

**Performance Bond** means a Performance Bond (as that term is defined in the D&C Agreement or Services Agreement (as the case may be)) provided by the Operator under clause 25.2 of the D&C Agreement or clause 4.2 of the Services Agreement (as the case may be).

**Performance Bond Amount** means the amount of each of the Performance Bonds provided by the Operator to the State at the time of the relevant claim in accordance with

- (a) clause 25.2 of the D&C Agreement; and
- (b) clause 4.2 of the Services Agreement.

**Services Agreement State Project Documents** means the "State Project Documents" as defined in the Services Agreement.

**State Project Documents** means the D&C Agreement State Project Documents and the Services Agreement State Project Documents and **State Project Document** has a corresponding meaning.

**IN WITNESS THEREOF** the parties have executed this Deed on the day and year hereinbefore mentioned.

**Executed** 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**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
The Honourable Colin James Barnett

\_\_\_\_\_  
Print Name

**The Common Seal of St John of God Health Care Inc** was affixed to this document in the presence of:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Company Secretary/Director Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## **Schedule 17 – General Security Agreement**

*[not disclosed]*

## **Schedule 18 – Specific Security Deed**

**Schedule 19 – Service Novation Deed****Form of Service Novation Deed**

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Date ►

Between the parties

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Operator	<b>St John of God Midland Health Campus ABN 18 152 874 845</b> of Level 2, 12 Kings Park Road, West Perth 6006
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Subcontractor	<b>[insert details of Subcontractor] ABN [insert]</b>
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State	<b>The State of Western Australia</b> of C/- Department of Health, 189 Royal Street, East Perth, Western Australia 6004
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Background	<ol style="list-style-type: none"><li>1. The State is responsible for the operation and management of the Midland Health Campus.</li><li>2. The State and the Operator have entered into the Services Agreement which provides for (among other things) the provision by the Operator of for the Services at the Midland Health Campus.</li><li>3. The Operator and the Subcontractor have entered into the Principal Agreement.</li><li>4. Clauses 7.7 and 7.8 of the Services Agreement provide that the Operator must procure the execution of a Service Novation Deed by a Subcontractor in certain circumstances.</li></ol>
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The parties agree	as set out in the Operative part of this deed, in consideration of, among other things, the mutual promises contained in this deed.
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## Operative part

### 1 Definitions, interpretation and deed components

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#### 1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
<b>Amount Due</b>	means the amount, as at the Effective Date, certified by the Operator as due but not paid to the Subcontractor under the Principal Agreement.
<b>Claim</b>	<p>includes any claim, demand, action, proceeding or suit of any nature, whether actual or threatened:</p> <ol style="list-style-type: none"><li>1 under, arising out of, or in any way in connection with this deed;</li><li>2 arising otherwise under any law including:<ol style="list-style-type: none"><li>(A) by statute;</li><li>(B) in tort for negligence or otherwise, including negligent misrepresentations; or</li><li>(C) for restitution,</li></ol></li></ol> <p>and includes any payment of money (including damages) or claim for an increase in any amount payable under this deed.</p>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Effective Date</b>	<p>the effective date specified in the notice given by the State to the Operator:</p> <ol style="list-style-type: none"><li>1 under Clause 28.1 of the Services Agreement exercising its right to step-in under the Services Agreement; or</li><li>2 under Clause 29 of the Services Agreement exercising its right to terminate the Services Agreement.</li></ol>



Term	Meaning
<b>Loss</b>	<p>1 any liability of any kind whatsoever, cost, expense, loss, personal injury (including illness), death or damage; and</p> <p>2 in relation to a Claim (including a Claim by a third party), includes amounts payable on the Claim and (whether or not the Claim is successful) legal costs and disbursements on a full indemnity basis,</p> <p>whether or not such liability, cost, expense, loss, personal injury, death or damage, Claim (including a Claim by a third party) is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.</p>
<b>Principal Agreement</b>	the contract for [ <i>insert subcontract details</i> ] dated [ <i>insert details</i> ] between the Operator and the Subcontractor.
<b>Services Agreement</b>	the "Midland Health Campus Project Services Agreement" dated [ <i>insert details</i> ] between the Operator and the State.

## 1.2 Services Agreement definitions

Capitalised terms which are not defined in this deed have the meanings given to them in the Services Agreement.

## 1.3 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:
  - (1) statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (2) 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.

## **1.4 This deed prevails**

To the extent of any inconsistency between this deed and the Principle Agreement, this deed prevails unless the parties expressly agree otherwise.

## **2 Novation**

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### **2.1 Novation**

On and from the Effective Date, the parties novate and restate the Principal Agreement so that:

- (a) the State replaces the Operator under the Principal Agreement as if it is an original party to the Principal Agreement; and
- (b) a reference in the Principal Agreement to the Operator must be read as a reference to the State.

### **2.2 Assumptions of rights and obligations**

- (a) On and from the Effective Date, the State:
  - (1) obtains the rights and assumes the obligations of the Operator under the Principal Agreement;
  - (2) must comply with the Principal Agreement; and
  - (3) must pay the Subcontractor the Amount Due.
- (b) On and from the Effective Date, the Subcontractor must comply with the Principal Agreement on the basis that the State has replaced the Operator under the Principal Agreement in accordance with this deed.
- (c) The:
  - (1) Operator releases the Subcontractor; and
  - (2) Subcontractor releases the Operator,in relation to any liability arising under the Principal Agreement after the Effective Date.

### **2.3 Release and acknowledgement by continuing party**

- (a) The Subcontractor does not release the Operator from any of the Operator's obligations or any liability which arose under or in respect of the Principal Agreement before the Effective Date.
- (b) The Operator remains liable for all of its obligations under the Principal Agreement which arose before the Effective Date.
- (c) The State does not accept liability for any obligations that arose under the Principal Agreement before the Effective Date.

- (d) The Subcontractor acknowledges and agrees that the State is not liable under or in respect of the Principal Agreement or in respect of the subject matter of the Principal Agreement for any act or omission by the State which occurred before the Effective Date.
- (e) The State may exercise rights and enforce obligations under the Principal Agreement notwithstanding that the rights and obligations are in respect of events which occurred prior to the Effective Date.

## 2.4 Indemnity

The Operator indemnifies the State against any Loss or Claim suffered or incurred by the State in connection with any act or omission of the Operator in respect of the Principal Agreement, which occurred before the Effective Date.

## 3 Representations

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### 3.1 General representations

- (a) The Subcontractor and the Operator each represent that it is a corporation as that expression is defined in the Corporations Act having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the Corporations Act;
- (b) Each party represents to each other party that:
  - (1) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
  - (2) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
  - (3) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
  - (4) **binding obligations:** this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors' rights;
  - (5) **transaction permitted:** the execution, delivery and performance by it of this deed do not and will not violate:
    - (A) any law, regulation, authorisation, ruling, consent, judgment, order or decree of any Governmental Agency;
    - (B) its constitution, memorandum and articles of association or other constituent documents; or
    - (C) any encumbrance, undertaking or document which is binding upon it or on any of its assets,and do not and will not result in:
    - (D) the creation or imposition of any encumbrance or restriction of any nature on any of its assets; or

- (E) the acceleration of the date of payment of any obligation existing under any encumbrance, undertaking or document which is binding upon it or on any of its assets; and
- (6) **Authorisations:** any authorisations, consents, permits, registrations, approvals or similar things required in connection with the execution, delivery and performance by it and the validity and the enforceability against it of this deed and its performance of the transactions contemplated by this deed have been, or will by execution of this deed, have been, obtained or effected and are, or will by execution of this deed be, in full force and effect and there has been no material default by it in the performance of any of the terms and conditions of any of them.

### 3.2 Survival and repetition

The representations given in clause 3.1:

- (a) survive the execution of this deed and the occurrence of the Effective Date; and
- (b) are regarded as repeated on the Effective Date with respect to the facts and circumstances then subsisting.

## 4 Stamp duty

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The Operator must pay all stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes including but not limited to any fines and penalties which may be payable in relation to the execution, delivery, performance or enforcement of this deed.

## 5 General

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### 5.1 Assignment

Except as expressly contemplated by this deed or agreed to by the State, neither the Operator nor the Subcontractor may assign or transfer any of its rights or obligations under this deed or the Principal Agreement.

### 5.2 Further Assurances

The 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 Principal Agreement or otherwise to give effect to the terms of this deed.

### 5.3 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 will be enforceable, insofar as they are enforceable at law, within the State of Western Australia.

## **5.4 Attorneys**

Each of the attorneys (if any) executing this deed states that they have no notice of revocation of their power of attorney.

## **5.5 Waivers**

- (a) 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.
- (b) 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.

## **5.6 Notices**

- (a) 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 last notified in writing to the party giving the notice, the party to whom or upon which the notice is to be given or served.
- (b) A notice delivered or sent in accordance with paragraph (a) will be deemed to have been given and received:
  - (1) if delivered by hand, upon receipt;
  - (2) if posted, 3 days after posting; and
  - (3) if sent by facsimile transmission, upon confirmation of correct transmission of the facsimile.

## **5.7 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.

Signing page

Executed as a deed

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**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**

**Subcontractor**  
by

*sign here*



\_\_\_\_\_  
Company Secretary/Director

*print  
name*

\_\_\_\_\_

*sign here*



\_\_\_\_\_  
Director

*print  
name*

\_\_\_\_\_

**State**

Signed, sealed and delivered for and on behalf of  
**The State of Western Australia**  
by THE HONOURABLE [Insert], Minister for  
Health for the time being  
in the presence of

\_\_\_\_\_  
The Hon. [Insert]

*print name  
of witness* \_\_\_\_\_

*Witness  
sign here ►* \_\_\_\_\_

*Witness  
address* \_\_\_\_\_

*Witness  
occupation* \_\_\_\_\_

**Schedule 20 – CAC Terms of Reference**

- (a) The role of the Community Advisory Council is to actively provide and encourage community participation to improve and enhance Patient care and the Services at and from the Health Campus.
- (b) It is intended that the Community Advisory Council will:
  - (i) make recommendations to the State and the Operator (through the North Metropolitan Community Advisory Council, as that council exists from time to time) concerning the delivery of Services to Public Patients of a range, quality and responsiveness reasonably expected by the local community;
  - (ii) participate in North Metropolitan Community Advisory Council meetings as required;
  - (iii) review performance of the Services;
  - (iv) provide input into policy review;
  - (v) review de-identified Patient information;
  - (vi) facilitate the participation of appropriate community and consumer representation on Health Campus committees;
  - (vii) review responses to de-identified Patient and Carer complaints;
  - (viii) facilitate broad community consultation;
  - (ix) provide a consumer perspective on activities, initiatives and projects that impact on the provision of the Services;
  - (x) emphasise Patient and Operator rights and responsibilities;
  - (xi) encourage effective communication between:
    - A. Patients and staff;
    - B. care providers within the Facility;
    - C. Facility care providers and external health providers; and
    - D. the Facility and the community;
  - (xii) provide feedback to the State and the Operator in respect of:
    - A. the improvement of Patient care and the Services;
    - B. the Facility's performance in terms of Patient care indicators;
    - C. the Facility's Patient care policies and procedures;
    - D. the adequacy of response mechanisms to complaints;
    - E. appropriate mechanisms to ensure broad community consultation and participation;
    - F. the development of consumer evaluation and Patient satisfaction surveys; and



- G. a consumer perspective on activities, initiatives and projects that impact on the Hospital Users;
  - (xiii) provide a forum for community input into the provision of Patient focused Services at the Facility;
  - (xiv) provide a forum to raise and examine suggested changes to the systems surrounding care provision;
  - (xv) encourage communication to maximise the coordination between all care providers both internally and externally; and
  - (xvi) provide feedback and advice to the Operator to enhance the patient focus of the Services.
- (c) It is intended that Community Advisory Council will have a broad based membership that takes into account the profile of the Hospital Users and the Catchment Area and that would include the following:
- (i) a representative of the Health Consumer's Council;
  - (ii) community representatives from Disabilities Services;
  - (iii) community representatives;
  - (iv) a Patient support group representative;
  - (v) indigenous representatives; and
  - (vi) Operator representatives.

**Schedule 21 – Commercial in Confidence Information**

*[not disclosed]*

**Schedule 22 - IMA Terms Sheet**

*[not disclosed]*

**Schedule 23 - Term Sheet for Private Patient Facility Lease**

*[not disclosed]*

**Schedule 24 - Term Sheet for Private Site Lease**

*[not disclosed]*

**Attachment 1 – Bid Design Documentation**

## **Attachment 2 – Requirements for Plans**

### **Attachment 3 – Operating Lease**



## **Attachment 4 – Existing Plans**

*[Not disclosed]*

**Attachment 5 – Private Patient Facility**

**Attachment 6 - Section 10E Land**

**Attachment 7 – Private Site**

*[Not disclosed]*