

Queen Elizabeth II Medical Centre Car Parking Project

Project Number: BMW14583/10

At-Grade Car Parks Management Agreement

The Minister for Health incorporated as the board of the Sir Charles Gairdner Hospital under s7 of the *Hospitals and Health Services Act 1927* (WA) in its capacity as delegate of the Queen Elizabeth II Medical Centre Trust (the **Delegate**)

Capella Parking Pty Limited (ACN 151 427 119) in its capacity as trustee of the Capella Parking Unit Trust (**Project Co**)

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Deed made on

Parties

The Minister for Health incorporated as the board of the Sir Charles Gairdner Hospital under s7 of the *Hospitals and Health Services Act 1927* (WA) in its capacity as delegate of the Queen Elizabeth II Medical Centre Trust (the **Delegate**)

Capella Parking Pty Limited (ACN 151 427 119) of Level 4, Podium Building, 120 Collins Street, Melbourne, Vic, 3000 in its capacity as trustee of the Capella Parking Unit Trust (**Project Co**)

Background

1. The State has conducted a public tender process and selected Project Co as the preferred tenderer for the Project.
2. This document sets out the terms on which the Delegate agrees to grant Project Co the right to collect the Parking Charges in connection with the At-Grade Car Parks.

1. Definitions and interpretation

1.1 Definitions

Unless otherwise expressly defined in this document, capitalised terms used in this document have the meanings given to them in the Project Agreement.

In this document:

Allocation Notice means a notice substantially in the form of Schedule 2 to this document.

At-Grade Car Parking Bays means the parking bays that the Delegate allocates to Project Co in accordance with an Allocation Notice.

At-Grade Car Parks Land means, at the date of this document, the areas of land identified on the Licence Plan on which the At-Grade Car Parking Bays are situated, as replaced in accordance with this document.

At-Grade Services means the Services (as defined in the Project Agreement) relevant to the At-Grade Car Parking Bays or the At-Grade Car Parks Land.

Available has the meaning given by Clause 7.1.

[not disclosed]

By-Laws means the *Queen Elizabeth II Medical Centre (Delegated Site) By-Laws 1986* (WA) as amended from time to time.

Delegate's Associates means agents, advisers, consultants, contractors and employees of the Delegate, but does not include the State, the State's Associates, Project Co, Project Co's Associates or the Trust.

Licence means the licence to access the At-Grade Car Parks Land granted in accordance with Clause 4.1 of this document.

[not disclosed]

Licence Fee Commencement Date means the later of:

- (a) 10 October 2012; and
- (b) the Stage 1A Completion Date.

Licence Fee Payment Date has the meaning given to that term in Section 1.1 of Schedule 4.

Licence Plan means the plan of the Reserve showing, as coloured areas, the At-Grade Car Parks Land set out in Schedule 3 (Licence Plan) as replaced from time to time in accordance with Clause 6.5.

Minimum Number of At-Grade Car Parking Bays means the number of At-Grade Car Parking Bays specified in column 3 (Total At-Grade Parking Bays) of Schedule 1 (Minimum Number of At-Grade Car Parking Bays) on the relevant date.

Parking Equipment means all equipment and machinery required to undertake the collection of Parking Charges, including card readers, boom gates, ticket machines and associated works required to install and commission these elements, as well as any Parking Charge specific signage.

Project Co Default means the occurrence of any one or more of the following:

- (a) **(fraud)**: Project Co or any Project Co Associate engages in fraud, collusion, misleading or deceptive conduct in performing their obligations in accordance with this document;
- (b) **(false representation)**: a representation or warranty given by Project Co in accordance with this document is found to be materially incorrect or misleading;
- (c) **(finance default)**: either:
 - (i) any event that would cancel Project Co's or Finance Co's ability to obtain or continue to have available finance in accordance with the Financing Documents; or
 - (ii) a Continuing Draw Stop Event (as defined in Clause 39.22(f) of the Project Agreement) (Restriction of Funding) occurs or Project Co breaches its obligations under Clauses 39.22(a), 39.22(b) and 39.22(d) (Restriction of Funding) of the Project Agreement;
- (d) **(breach)**: Project Co fails to remedy any breach of this document within 20 Business Days (other than any other Project Co Default, a Termination Event, or a Service Failure);
- (e) **(non payment)**: any amount due to the Delegate from Project Co in accordance with this document has not been paid to the Delegate or any other person nominated by the Delegate within 14 days of the due date for that payment, and that payment is still not made 7 days after Project Co receives written notice from the Delegate seeking payment of that overdue amount; and
- (f) **(permitted use)**: use of the At-Grade Car Parking Bays other than in accordance with the Licence.

Project Agreement means the agreement between Project Co and the State entitled 'Queen Elizabeth II Medical Centre Car Parking Project – Project Agreement' dated on or about the date of this document.

Services Commencement Date means the later of 10 October 2012 and the Stage 1A Completion Date.

Step-In Event has the meaning given in Clause 13.1.

Subordination Conditions has the meaning given to it in the Finance Side Deed.

Term means the term of this document stated in Clause 2.2.

Termination Event means:

- (a) Project Co wholly or substantially abandons the installation of the Parking Equipment or delivery of the Services; or
- (b) an Insolvency Event occurs in relation to Project Co, whether or not Project Co is then in breach of this document.

1.2 Interpretation

In this document 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), a trust, a trustee 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 document;
- (e) **(other persons)**: a reference to any party or person includes each of their trustees, legal representatives, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(Authority)**: a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, 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, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, institute, association or body;
- (g) **(this document)**: a reference to this document or to any other deed, agreement, document or instrument includes a reference to this document or such other deed, agreement, document or instrument 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 document;
- (l) **(inclusive)**: a reference to this document includes all Schedules;

- (m) **(Clauses):** a reference to:
 - (i) a Clause or Schedule is a reference to a Clause or Schedule of or to this document;
 - (ii) a paragraph is a reference to a 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 document 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 document 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 document.

1.3 Related matters

- (a) Any provision of this document 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) In complying with or accepting any obligation or risk in accordance with this document, Project Co must procure that, to the extent applicable, Project Co's Associates are required to comply with or accept the relevant obligation or risk and not cause Project Co to breach its obligations in accordance with this document.
- (c) If the day on or by which any thing is to be done in accordance with this document is not a Business Day, that thing must be done on the next Business Day.

1.4 Authorities

- (a) Project Co agrees that:
 - (i) the Trust and the Delegate have jurisdiction over the Reserve and 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

- (ii) except as otherwise expressly provided in this document, Project Co bears the full risk of all occurrences of the kind referred to in paragraph (a)(i) and will not be entitled to make any Claim against the Delegate in connection with such occurrences.
- (b) Where the Trust or the Delegate gives a direction to Project Co in the exercise of their statutory functions or powers or otherwise exercises their statutory functions or powers (each a **Specified Delegate Action**) in a manner which is inconsistent with Project Co's rights under this document (disregarding for this purpose, this Clause 1.4 and Clause 1.4 (Authorities) of the Project Agreement), Project Co will, as soon as reasonably practicable after the earlier of:
 - (i) becoming aware of; or
 - (ii) having access to information such that Project Co, acting reasonably, should have been aware of,such Specified Delegate Action, notify the State (who will be deemed to have directed a Modification Order consistent with such exercise of statutory function or power unless the relevant Specified Delegate Action is immediately withdrawn).

2. Conditions Precedent

2.1 Commencement

- (a) Subject to paragraph (b), this agreement will not commence unless and until Financial Close has been achieved in accordance with the Project Agreement.
- (b) The following Clauses of this document commence at the date of this document:
 - (i) Clause 1; and
 - (ii) this Clause 2.

2.2 Term

Subject to Clause 2.1, the term of this agreement commences on the Services Commencement Date and ends on the Expiry Date (**Term**).

3. By-Laws

Project Co acknowledges and agrees that:

- (a) the By-Laws apply to the At-Grade Car Parks Land and that the Delegate is responsible for administering the By-Laws;
- (b) the Delegate will collect and keep any fines or penalties applicable to the At-Grade Car Parking Bays imposed under the By-Laws; and
- (c) Project Co will not and will ensure that Project Co's Associates do not do any act that would cause an offence under the By-Laws to be committed.

3A Fines and Penalties

The Delegate agrees to use its reasonable endeavours to ensure that fines and penalties are issued (including to the extent that any Users do not park in allocated parking bays) in a manner consistent with normal business practices relating to the management and operation of hospital car parks.

4. Possession and control of At-Grade Car Parks Land

4.1 Grant of Licence

- (a) The Delegate grants Project Co a licence to access, use and occupy the At-Grade Car Parks Land for the purpose of carrying out the Services and for no other purpose, unless the Delegate otherwise agrees in writing.
- (b) Project Co agrees that the rights granted to Project Co in this Clause 4.1 are not exclusive and will, at all times, be subject to those rights of access to any part of the At-Grade Car Parks Land which the Delegate, any Authority or the State may wish to exercise in the lawful exercise of their statutory functions.
- (c) The rights conferred on Project Co in accordance with this Clause 4.1 are personal rights in contract only and do not create any tenancy or any estate or interest in the At-Grade Car Parks Land.
- (d) Project Co may permit Project Co's Associates to access the At-Grade Car Parks Land for the purpose of carrying out the Services in accordance with this agreement or the Project Agreement.
- (e) Project Co agrees that it must carry out its obligations in accordance with this agreement so as not to impede the Delegate from carrying out its statutory duties in accordance with Laws.
- (f) The Delegate agrees that in exercising its statutory duties in accordance with Laws it must not cause any material disturbance or interference to the carrying out of the Services.
- (g) Project Co must comply and ensure that Project Co's Associates comply with any requests from the Delegate in connection with access to the At-Grade Car Parks Land, which may include the Delegate requiring that access passes are worn at all times and that security clearances are undertaken. The parties acknowledge that if the Delegate gives a direction to Project Co in relation to access to the At-Grade Car Parks Land which is inconsistent with Project Co's rights of access in accordance with this document, Project Co is entitled to claim relief under Clause 15.1(i) (State breach) of the Project Agreement.
- (h) Project Co accepts the At-Grade Car Parks Land and any structures or other things on, above or adjacent to, or under the surface of, the At-Grade Car Parks Land in its present condition and state of repair and subject to:
 - (i) all defects (except as expressly provided otherwise in this document), including all sub-surface conditions;
 - (ii) any Contamination, waste or other hazardous substances, whether or not known to the Delegate, the Trust or any of the Delegate's Associates, or any Authority; and
 - (iii) all easements and rights of way in favour of any Authority or other person.
- (i) The rights and obligations in this Clause 4.1 exist for the duration of the Term.

4.2 Licence Fee

[not disclosed]

4.3 Early access

Commencing on Financial Close and ending on the Services Commencement Date, the Delegate will provide Project Co and Project Co's Associates access to the At-Grade Car Parks Land to the fullest extent necessary to install and commission the Parking Equipment and to perform the At-Grade Reconfiguration Works.

5. Contract Administration

5.1 Integration with the Project Agreement

- (a) Project Co acknowledges the provisions of Clause 5 (Contract Administration) of the Project Agreement.
- (b) The Project Co Representative appointed in accordance with the Project Agreement will be the principal point of contact for the Delegate for the purpose of this document.
- (c) The Delegate may attend the meetings of the Management Team convened in accordance with Clause 5.5 (Management Team) from time to time and is entitled to raise any concerns in connection with the matters addressed in this document at such meetings.

5.2 Subcontracting

Project Co:

- (a) is not relieved from any of its obligations and Liabilities in accordance with this document as a result of subcontracting any of those obligations or Liabilities;
- (b) 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 Project Co in accordance with this document is a breach or failure of Project Co; and
- (c) is entirely responsible for all Liabilities suffered or incurred by the Delegate in connection with any acts, omissions, defaults, negligence or termination of any Subcontractors (and those of the employees and agents of any Subcontractors) and any Subcontracts.

5.3 National Police Certificates

Project Co must obtain a National Police Certificate for all persons engaged in delivering the At-Grade Services and, if requested, provide a copy of the National Police Certificate to the Delegate in advance of the relevant persons commencing performance of the At-Grade Services.

6. At-Grade Car Parking Bays

6.1 Number of At-Grade Car Parking Bays

- (a) The Delegate will endeavour to allocate to Project Co at least the Minimum Number of At-Grade Car Parking Bays on the dates set out in Schedule 1.
- (b) Subject to Clause 7, if the number of At-Grade Car Parking Bays allocated to Project Co in accordance with this document is less than the Minimum Number of At-Grade Car Parking Bays on a specified date, Project Co will be entitled to submit a Claim to the Delegate in accordance with Clause 21.6 (Variations to the number of Parking Bays) of the Project Agreement. Any entitlement to compensation will be assessed in accordance with that Clause 21.6 (including Clause 21.6(c)) (Variations

to the number of Parking Bays) of the Project Agreement and Project Co is not entitled to make any other Claim in connection with the Minimum Number of At-Grade Car Parking Bays.

6.2 Allocation Notice

- (a) The Delegate may at any time after the Services Commencement Date, and from time to time thereafter, allocate At-Grade Car Parking Bays to Project Co (including exercising the rights contemplated in Clause 21.6(a) (Variations to the number of Parking Bays) of the Project Agreement) by issuing an Allocation Notice to Project Co.
- (b) An At-Grade Car Parking Bay will be allocated to Project Co if it is included in the most recently issued Allocation Notice. If a revised Allocation Notice removes an At-Grade Car Parking Bay from Project Co it will cease to be allocated to Project Co.
- (c) The Allocation Notice will identify the At-Grade Car Parking Bays allocated to Project Co by reference to the Licence Plan.
- (d) Each Allocation Notice replaces any prior Allocation Notice. Allocation Notices take effect from the date stated therein (provided that no Allocation Notice may operate retrospectively).

6.3 Access to Utilities

- (a) The Delegate must use reasonable endeavours to ensure that Project Co has access to all Utilities it requires to be able to perform the Services.
- (b) The Delegate may shut down any of the Utilities for safety, repair or maintenance purposes but will:
 - (i) where practicable, give Project Co 48 hours notice of such shutdown; and
 - (ii) so far as is reasonably practicable, do so in a manner and at a time that avoids undue disruption to the performance of the At-Grade Services by Project Co.
- (c) Project Co is not entitled to make any Claim against the Delegate for a failure of the Delegate to provide electricity or communications services to the At-Grade Car Parking Bays, other than a Claim against the State in accordance with Clause 7.

6.4 Exempt Bays

- (a) Subject to Clause 21.6 of the Project Agreement (Variations to the number of Parking Bays), Project Co agrees that during the Term the Delegate may utilise up to 150 parking bays in aggregate across the Reserve for its own and other site purposes and no Parking Charges will be imposed and Project Co is not entitled to collect Parking Charges in connection with these parking bays (**Exempt Bays**).
- (b) The Exempt Bays do not form part of the Minimum Number of At-Grade Car Parking Bays.

6.5 Variation to Licence Plan

- (a) The parties agree that the Reserve is the subject of an ongoing construction works plan.
- (b) As such, the Delegate may from time to time by notice to Project Co replace the Licence Plan with an amended Licence Plan which reflects the At-Grade Car Parks

Land. For the purposes of this document any amended plan will constitute the Licence Plan or on from the date notified by the Delegate.

- (c) Nothing in this Clause will vary the Minimum Number of At-Grade Car Parking Bays.

7. Availability of At-Grade Car Parking Bays

7.1 Availability

- (a) The Delegate will endeavour to ensure that all At-Grade Car Parking Bays are **"Available"**, in accordance with this Clause 7.
- (b) Notwithstanding paragraph (a), the Delegate will have no Liability and Project Co is not entitled to make any Claim in connection with any failure to make At-Grade Car Parking Bays Available other than as set out in this Clause 7.
- (c) An At-Grade Car Parking Bay will be Available if it:
 - (i) is safe to Users;
 - (ii) is accessible to Users;
 - (iii) is fit to use as a car parking facility; and
 - (iv) has the necessary access to Utilities to enable Project Co to perform the At-Grade Services (including ticketing and revenue collection).
- (d) Notwithstanding paragraph (c) an At-Grade Car Parking Bay will not cease to be Available if:
 - (i) it is being used by the Delegate for the purposes of routine planned maintenance and the Delegate has given not less than 5 Business Days prior notice;
 - (ii) it is the subject of reactive maintenance (whether or not the Delegate has given any notice);
 - (iii) it is being used by the Delegate for the purposes of performing minor works on any part of the Reserve; or
 - (iv) it is being accessed by third parties with relevant access rights (such as Utility service providers) consistent with their right of access,

and would otherwise be Available, provided that the unavailability of each At-Grade Parking Bay is for no longer than 4 Business Days.

7.2 Variations to the number of At-Grade Car Parking Bays

- (a) If:
 - (i) Project Co considers in its reasonable opinion that an At-Grade Car Parking Bay is not Available; and
 - (ii) the reason the At-Grade Car Parking Bay is not Available is not caused or contributed to by an act or omission of Project Co or Project Co Associates;

then Project Co may submit a notice to the Delegate including details of the location of the At-Grade Car Parking Bay that is not Available and the reasons why it is not Available.

- (b) If the Delegate:
- (i) is reasonably satisfied that the relevant At-Grade Car Parking Bay is not Available for the reasons stated in paragraph (a), then the Delegate may replace any At-Grade Car Parking Bay that is not Available with an alternative and Available parking bay; or
 - (ii) is not reasonably satisfied that the At-Grade Car Parking Bay is not Available for the reasons stated in paragraph (a), the Delegate must notify Project Co of this opinion and Project Co may dispute the Delegate's opinion in accordance with Clause 15.
- (c) If the Delegate replaces the At-Grade Car Parking Bay that is not Available within 3 Business Days of receiving a notice from Project Co in accordance with paragraph (a), or the At-Grade Car Parking Bay otherwise becomes Available in accordance with Clause 7.1 within such period, then, subject to paragraph (d), Project Co will not be entitled to make any Claim in connection with the At-Grade Car Parking Bay not being Available.
- The Delegate will replace the relevant At-Grade Car Parking Bay by issuing an Allocation Notice.
- (d) If:
- (i) the Delegate does not replace an At-Grade Car Parking Bay that is not Available; or
 - (ii) the Car Park Unavailability Threshold is exceeded during any Financial Year,
- Project Co is entitled to submit a Claim to the State in accordance with Clause 21.6 (Variations to the number of Parking Bays) of the Project Agreement. Any entitlement to compensation will be assessed in accordance with that Clause and Project Co is not entitled to make any other Claim in connection with the At-Grade Car Parking Bay not being Available.
- (e) For the purpose of paragraph (d), the following definitions apply:
- (i) **Lost Car Park Days** means, in any Financial Year, the aggregate of:
 - A. the number of days during which any At-Grade Car Parking Bay is not Available; multiplied by
 - B. the number of At-Grade Car Parking Bays that are not Available on each such day; and
 - (ii) the **Car Park Unavailability Threshold** means 2500 Lost Car Park Days.

8. Operation

8.1 Appointment to operate and manage

The Delegate appoints and authorises Project Co to operate and manage the At-Grade Car Parking Bays and collect the Parking Charges, subject to the terms of this document.

8.2 Parking Charges

The Parking Charges that Project Co may collect in connection with the At-Grade Car Parking Bays are those parking charges stated in the By-Laws from time to time.

8.3 Services

- (a) Project Co must deliver the At-Grade Services to the At-Grade Car Parks in accordance with the Project Agreement.
- (b) If:
 - (i) Project Co fails to comply with paragraph (a); and
 - (ii) as a result, the State is entitled to step-in under Section 8 of Appendix A of the Services Specifications (but has not done so),the Delegate may take over any affected areas or Services and ensure compliance at Project Co's cost and risk. The provisions of Section 8 of Appendix A of the Services Specification will apply to any such intervention by the Delegate.

8.4 Signage

Project Co may erect or permit to be erected on At-Grade Car Parking Bays during the Term only those signs:

- (a) required by Law; or
 - (b) provided for in the Services Specifications,
- unless otherwise approved by the Delegate (in its absolute discretion).

9. Revenue and payment

9.1 Collection of Revenue

- (a) Project Co must on each day deposit all:
 - (i) Parking Charges (including GST) collected from the At-Grade Car Parking Bays on behalf of the Delegate; and
 - (ii) amounts (including GST) received from Staff as credits for Staff access passes in respect of the At-Grade Car Parking Bays,during the prior day, into a bank account (the **Delegate Account**) nominated by the Delegate which:
 - (iii) will be controlled by the Delegate;
 - (iv) will be maintained in accordance with Laws; and
 - (v) to which Project Co will be granted "view only" access, to facilitate bank reconciliations and reporting.
- (b) The parties agree that they will work cooperatively together to achieve the objectives of the regime described in paragraph (a).

9.2 Payment obligation

- (a) Notwithstanding Clause 20.1(g), the Delegate must pay to Project Co the balance of the Delegate Account by way of irrevocable direct debit to an account nominated by Project Co at 4.00pm on each Business Day and otherwise must not deduct or remove any money from the Delegate Account.
- (b) The Delegate acknowledges and agrees that the payment made by the Delegate to Project Co in accordance with paragraph (a) is in consideration for Project Co

operating and managing the At-Grade Car Parking Bays and collecting the Parking Charges in respect of the At-Grade Car Parking Bays in accordance with this agreement (**Management Fee**) and is inclusive of GST.

- (c) Within 5 Business Days of the end of each Month during the Term, Project Co must provide a tax invoice (as defined in the GST Law) to the Delegate in respect of the Management Fee (inclusive of GST) paid by the Delegate to Project Co in the previous Month. The Delegate must notify Project Co if a tax invoice is not provided by Project Co.
- (d) If, pursuant to paragraph (d), the Delegate requests that Project Co provides a tax invoice for a Month and Project Co fails to do so within 1 Business Day of the Delegate making that request, then Project Co must immediately repay to the Delegate that part of the Management Fee for the Month that is referable to GST. For the avoidance of doubt, Clause 20.1(e) and 20.1(g) will then apply.

9.3 Outgoings

Project Co acknowledges and agrees that:

- (a) it is liable for paying all costs and expenses associated with the installation of Parking Equipment and the performance of the Services; and
- (b) it has no Claim against the Delegate in connection with, and accepts all risk of the actual cost of the installation and commissioning of the Parking Equipment and the performance of the Services being greater than the amounts it receives in accordance with this Clause 9.

10. Handover

10.1 Parking Equipment

At the end of the Term, Project Co must at its own cost:

- (a) deliver the Parking Equipment to the Delegate without charge in a state and condition the same as that which applies to the Parking Equipment in the New Car Park; and
- (b) make good any damage to the At-Grade Car Parking Bays caused by Project Co.

10.2 Handover

Upon the Expiry Date Project Co must:

- (a) **(conditions)**: handover the At-Grade Car Parking Bays and the At-Grade Car Parks Land (including all rights, title and interest in them) to the Delegate free from any encumbrances;
- (b) **(transfer)**: transfer to the Delegate all rights, title and interest in plant and equipment required to allow the Delegate or its nominee to perform the At-Grade Services to the standards required in accordance with the Project Agreement free from any encumbrances;
- (c) **(manuals)**: deliver to the Delegate or its nominee all manuals, records, plans and other information under the control of Project Co which are relevant to the At-Grade Car Parking Bays and the At-Grade Car Parks Land;
- (d) **(novation)**: procure the novation to the Delegate or its nominee of:

- (i) such contracts for works or services to which it or the Operator is a party as they relate to the At-Grade Car Parking Bays as the Delegate may nominate; and
- (ii) any leases, subleases and licences agreed to by the Delegate;
- (e) **(Intellectual Property Rights):** to the extent that it is reasonably practicable to do so, grant or procure the grant to the Delegate or its nominee of Intellectual Property Rights as will enable the Delegate or its nominee to be in a position to perform the At-Grade Services to the standard stated in the Project Agreement;
- (f) **(Authorisations):** do all acts and things necessary to enable the Delegate or its nominee to have transferred or obtained all Authorisations necessary for the performance of the At-Grade Services; and
- (g) **(operations):** do all other acts and things to enable the Delegate (or its nominee) to be in a position to deliver the At-Grade Services at the standards stated in the Project Agreement, with minimum disruption.

10.3 Assistance in securing continuity

Project Co must, before the end of the Term, do all things reasonably required by the Delegate to ensure the smooth and orderly transfer at the end of the Term of responsibility for the At-Grade Services to the Delegate or its nominee including:

- (a) meeting with the Delegate and such other persons notified by the Delegate to discuss the At-Grade Services;
- (b) providing access to its operations for the purpose of familiarisation; and
- (c) providing sufficient information to the Delegate or its nominee to determine the status of the At-Grade Services.

10.4 Transfer of responsibility

Project Co must facilitate the smooth transfer of responsibility for the At-Grade Services to a new operator or the Delegate, and Project Co must take no action at any time during or after the Term which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

11. Risk and Liability

11.1 Project Co takes all risks

- (a) Project Co is not entitled to make any Claim against the Delegate or the Trust in connection with the Project and the State Project Documents except as otherwise expressly provided in the State Project Documents.
- (b) Project Co accepts all risk in connection with Project except as otherwise expressly provided in the State Project Documents.

11.2 Acts or omissions of Project Co

Without limiting Clause 11.3, if this document confers on Project Co a right to make a Claim against the Delegate, the Trust or the Delegate's Associates, the amount of Project Co's Claim shall be reduced to the extent that the event for which Project Co is entitled to bring a Claim was caused or contributed to by any:

- (a) negligent act or omission of Project Co or a Project Co Associate; or
- (b) breach by Project Co of this document.

11.3 Mitigation by Project Co

- (a) Project Co must:
 - (i) use its best endeavours to mitigate the effects of any event for which the State is required to pay compensation in accordance with this document or the Project Agreement; and
 - (ii) for this purpose, comply with all reasonable directions of the Delegate concerning the relevant event and its consequences.
- (b) The Delegate's Liability in connection with an event referred to in paragraph (a) will be reduced to the extent Project Co fails to comply with its obligations set out in paragraph (a).

11.4 Indemnity for Project Co breach

Project Co indemnifies the Delegate and employees and officers of the Delegate (**Indemnified Persons**) against any Liability incurred in connection with any breach by Project Co or any Project Co Associate of this document.

11.5 Third party liability indemnity

Project Co indemnifies the Delegate, the Indemnified Persons and the Trust against:

- (a) any loss of or damage to property of the Delegate, the Indemnified Persons or the Trust; and
 - (b) any Liability incurred in connection with any loss of or damage to third party property or injury to, disease or death of a person,
 - in each case arising from or in connection with:
 - (i) delivering the At-Grade Services; or
 - (ii) the use or occupation of the At-Grade Car Parks Land by Project Co or Project Co's Associates,
- provided that Project Co's Liability to indemnify will be reduced to the extent that any such damage, injury, death or disease or Liability arises due to:
- A. a fraudulent, negligent, unlawful or wilful act or omission of the Delegate, the Indemnified Persons or the Trust; or
 - B. a breach by the Delegate of this document.

11.6 Application of Civil Liability Act

- (a) In this Clause 11.6 only, "Legislation" means Part 1F of the *Civil Liability Act 2002* (WA) and any equivalent statutory provision in any other state or territory.
- (b) The operation of the Legislation is excluded in relation to all and any rights, obligations and Liabilities arising out of or in connection with this document delivering the Project whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (c) Without limiting the generality of paragraph (a), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as stated in this document 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 or otherwise at Law.

- (d) Project Co must:
- (i) include a term in each Subcontract that excludes the application of the Legislation in relation to all and any rights, obligations or Liabilities of either party in accordance with each Subcontract whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort (including negligence), in equity or otherwise at Law; and
 - (ii) require each Subcontractor to include, in any further contract that it enters into with a third party for the undertaking of the Works, the performance of the Services or delivery of the Project, a term that excludes the application of the Legislation in relation to all and any rights, obligations or Liabilities of either party in accordance with each further contract whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort (including negligence), in equity or otherwise at Law.

11.7 Liability for Indirect or Consequential Loss

- (a) Despite any provision of this document, neither the Delegate nor any of the Delegate's Associates has any Liability to Project Co or any Project Co Associate, nor will Project Co or any Project Co Associate be entitled to make any Claim, in respect of Indirect or Consequential Loss incurred or sustained by Project Co as a result of any act or omission of the Delegate (whether negligent or otherwise) or as a result of a breach of a State Project Document by the Delegate.
- (b) Despite any provision of this document, except to the extent that economic loss is insured or required to be covered in an insurance policy held by Project Co or a Consortium Entity in compliance with this document, neither Project Co nor any Project Co Associate has any Liability to the Delegate or any Delegate's Associate, nor will the Delegate or any Delegate's Associate be entitled to make any Claim, in respect of any Indirect or Consequential Loss.
- (c) Without creating any Liability not otherwise set out in this document, the following do not constitute Indirect or Consequential Loss:
 - (i) Liability arising from criminal acts or fraud on the part of Project Co or any other Project Co Associate or the Delegate or any Delegate's Associate;
 - (ii) Liability arising from wilful default under any Project Document on the part of Project Co or any Project Co Associate or the Delegate or any Delegate's Associate;
 - (iii) Liability incurred in connection with any loss of or damage to third party property or injury to, disease or death of a person;
 - (iv) Liability to the extent of which, by Law, the parties cannot limit or exclude;
 - (v) any amounts payable by Project Co under Clause 14.3;
 - (vi) any other amounts expressly payable to Project Co under the Project Documents, including any Revenue; or
 - (vii) any other amounts expressly payable to the Delegate under the State Project Documents.

12. Default

12.1 Notice of Project Co default

- (a) Project Co must:
 - (i) promptly notify the Delegate upon the occurrence of a Project Co Default or other breach of this document; and
 - (ii) immediately take steps to:
 - A. where possible, commence the remedy of; and
 - B. mitigate the effects of,a Project Co Default or other breach of this document.
- (b) If a Project Co Default occurs, the Delegate may give Project Co a notice (**Default Notice**) which contains:
 - (i) details of the Project Co Default;
 - (ii) if the Project Co Default is capable of being remedied, a date by which Project Co must remedy that Project Co Default; and
 - (iii) if the Project Co Default is not capable of being remedied, a date by which Project Co must comply with any reasonable requirements of the Delegate in connection with that Project Co Default.

12.2 Project Co to comply with Default Notice and provide remedy program

If the Delegate gives a Default Notice to Project Co, then:

- (a) Project Co must comply with the Default Notice; and
- (b) unless the relevant Project Co Default is a failure to pay money:
 - (i) Project Co must give the Delegate a program to either remedy the Project Co Default or comply with any reasonable requirements of the Delegate in accordance with the terms of the Delegate's notice which will specify steps to address the underlying cause of the Project Co Default and to avoid a similar Project Co 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, Project Co must implement and comply with the remedy program.

12.3 Requests for extensions to remedy period

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

12.4 When extensions to be given

- (a) Subject to paragraph (b), if Project Co gives a notice in accordance with Clause 12.3 and Project Co is and has been diligently pursuing:
 - (i) the remediation of a Project Co Default; or
 - (ii) compliance with any reasonable requirements of the Delegate in connection with a Project Co Default that is not capable of remedy,then the time stated in the Default Notice will be extended by such period as the Delegate determines is reasonably required to enable Project Co to either remedy the Project Co Default or comply with any reasonable requirements of the Delegate.
- (b) Project Co is not entitled to more than three extensions in connection with the same circumstances constituting a Project Co Default.

12.5 Disputes

If Project Co considers that the time stated in the notice given by the Delegate in accordance with Clause 12.4 is not reasonable or there is a failure to agree a remedy program as required by Clause 12.2 it:

- (a) may (provided that it is and has either been diligently pursuing the remediation of the Project Co Default or compliance with any reasonable requirements of the Delegate) refer the matter for resolution in accordance with Clause 15; and
- (b) whilst the matter is being determined, must continue to diligently pursue either the remediation of the Project Co Default or compliance with any reasonable requirements of the Delegate.

12.6 Project Co Default which is an Event of Default or Immediate Termination Event

Notwithstanding this Clause 12, if a Project Co Default is also an Event of Default, this Clause 12 will have no application to the extent that Project Co is complying with its obligations under Clause 27 (Default) of the Project Agreement.

12.7 Restriction of funding

Clause 39.22 (Restriction of Funding) of the Project Agreement is incorporated into this document by reference.

13. Step-In

13.1 Right of step-in

If:

- (a) an Emergency occurs;
- (b) a Termination Event occurs;
- (c) a State Cure Notice (as that term is defined in the relevant side deed) has been issued by the Operator in accordance with the Operator Side Deed;
- (d) the Delegate is required by Law to act to discharge a statutory power or duty; or
- (e) a Force Majeure Event occurs,

(**Step-in Event**), the Delegate or a nominee of the Delegate may elect to:

- (f) temporarily assume total or partial management and control of the whole or any part of the At-Grade Services;
- (g) access the At-Grade Car Parks; and
- (h) take such other steps as are necessary in the reasonable opinion of the Delegate to deliver the At-Grade Services and minimise the effect of the Step-in Event,

provided that the Delegate must not exercise any of its rights under paragraphs (f), (g) or (h) to the extent that the State has already exercised its rights under Clause 28.1(f), (g) or (h) (Right of Step-in) of the Project Agreement in connection with the same Services.

13.2 Suspension of Project Co's obligations

If the Delegate has exercised its step-in rights in accordance with Clause 13.1, Project Co's obligations in accordance with this agreement will be suspended (and the failure by Project Co to perform the suspended obligation will not constitute a breach of this agreement by Project Co or an Event of Default) for the affected period but only to the extent necessary to enable the Delegate to exercise those step-in rights.

13.3 Payments

Any Liability suffered or incurred by the Delegate or any nominee of the Delegate arising out of or in connection with the exercise of the Delegate of its step-in rights in accordance with Clauses 13.1(a) (if the Emergency was caused by a Project Co Default), 13.1(b) or 13.1(c), will be a debt due and payable from Project Co to the Delegate within 20 Business Days or such other time agreed between the parties.

13.4 Project Co to assist Delegate

Project Co must provide the Delegate with all necessary assistance in a timely manner to enable it to exercise its step-in rights in accordance with Clause 13.1 effectively and expeditiously.

13.5 Acknowledgments

Project Co agrees that the Delegate will have no Liability to Project Co, and Project Co will not be entitled to make any Claim against the Delegate in connection with the exercise by the Delegate of its rights in accordance with Clause 13.1 except if:

- (a) the Delegate has acted fraudulently, in bad faith, with wilful misconduct or with gross negligence; or
- (b) to the extent that this document expressly provides otherwise.

13.6 Power of Attorney

Project Co irrevocably:

- (a) appoints the Delegate, and the Delegate's nominees from time to time, jointly and severally as Project Co's attorney with full power and authority to exercise the Delegate's rights in accordance with this Clause 13.6; and
- (b) agrees to ratify and confirm whatever action is taken by the attorney appointed by Project Co.

13.7 Cessation of step-in rights

- (a) The Delegate may, at any time, cease to exercise its rights in accordance with this Clause 13.7 on 5 Business Days notice to Project Co.

- (b) The Delegate must cease to exercise its step-in rights on 5 Business Days notice to Project Co where the Delegate has exercised its rights in accordance with:
 - (i) Clauses 13.1(a) or 13.1(b) and the Project Co Default has been remedied (if applicable); or
 - (ii) Clauses 13.1(c), 13.1(d) or 13.1(e) and the relevant event is remedied or ceases.
- (c) If the Delegate has ceased to exercise its step-in rights in accordance with Clause 13.7, Project Co must immediately recommence performing any obligations suspended due to the exercise of such step-in rights.
- (d) If a Step-in Event occurs of the type referred in Clause 13.1(a) (except if the Emergency is caused by a Project Co Default or Termination Event) or Clause 13.1(d) and the number of At-Grade Parking Bays available to Project Co is less than the Minimum Number of At-Grade Parking Bays on that date, Project Co is entitled to submit a Claim for compensation in accordance with Clause 21.6 (Variations to the number of Parking Bays) of the Project Agreement.

14. Termination

14.1 Termination for Project Co Default

- (a) Subject to the Finance Side Deed, the Delegate may terminate this agreement by giving Project Co a notice if any of the following events occurs:
 - (i) if the relevant Project Co Default is also an Event of Default, where the State is entitled to and has terminated the Project Agreement; or
 - (ii) otherwise:
 - A. Project Co fails to remedy a Project Co Default within the period set out in the Default Notice (as extended, if at all, in accordance with Clause 12.4); or
 - B. if a Project Co Default is not capable of remedy, Project Co fails to diligently comply with any reasonable requirements of the Delegate to overcome the consequences of the Project Co Default within the time stated in the notice given by the Delegate in accordance with Clause 12.1 (as extended in accordance with Clause 12.4).
- (b) Termination of this agreement for a Project Co Default will take effect upon the date stated in the notice given by the Delegate in accordance with paragraph (a).

14.2 Termination for Termination Event

- (a) Subject to the Finance Side Deed, the Delegate may terminate this agreement immediately by notice and without granting Project Co any cure period if a Termination Event occurs.
- (b) Termination of this agreement for a Termination Event will take effect upon the date stated in the notice given by the Delegate to Project Co in accordance with paragraph (a).

14.3 Compensation on Termination

On termination of this agreement pursuant to Clause 14.1, Project Co must pay to the Delegate within 20 Business Days after such amount is agreed between the parties or determined in accordance with Clause 15 (or, if the Project Agreement has also been

terminated for an Event of Default or Immediate Termination Event, the date on which the State pays the corresponding Default Termination Amount to Project Co) an amount equal to:

- (a) all costs (including loss of operating revenue and finance costs) and Liabilities incurred by the Delegate in undertaking the At-Grade Services (itself or through a third party) after the date of the relevant Project Co Default or breach until the date the Term of this agreement would have ended (in the absence of such Project Co Default), including the costs of appointing a replacement operator and any resulting cost overruns, less:
 - (i) the amount that the Delegate would have incurred in respect of those At-Grade Services had they been undertaken by Project Co in accordance with this agreement; and
 - (ii) any additional operating revenues received by the Delegate in undertaking the At-Grade Services (itself or through a third party) after the date of the relevant Project Co Default or breach until the date the Term of this agreement would have ended (in the absence of such Project Co Default); and
- (b) to the extent not otherwise covered, damages for loss of benefit of this agreement,

but excluding the loss of the Licence Fee that would have been payable after the date of termination until the date the Term of this agreement would have otherwise expired. For the avoidance of doubt, any unpaid Licence Fee amounts due and payable and not paid in accordance with this agreement are to be paid in accordance with and subject to Schedule 15 (Termination Amounts) of the Project Agreement (if applicable).

14A Force Majeure Events

- (a) The obligations of each party in accordance with this agreement which are affected by a Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its obligations in accordance with this agreement.
- (b) A party's failure to perform its obligations in accordance with this agreement which are suspended in accordance with paragraph (a) will not be a breach of this agreement, a Project Co Default or a Termination Event during the period of suspension in accordance with paragraph (a).

15. Dispute resolution

15.1 Disputes

- (a) If a dispute arises between the parties in connection with any fact, matter or thing in connection with this document (**Dispute**), the Dispute will be resolved in accordance with this Clause 15.
- (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 15 each party must continue to comply with its obligations in accordance with this document.
- (d) Subject to Clause 15.4, the parties agree that unless and until a party has complied with the requirements of this Clause 15, a party may not commence any court proceedings in connection with any Dispute except if the party seeks urgent interlocutory, injunctive or declaratory relief.

- (e) If there is a Dispute under this document which also raises a Dispute as to the same matter under the Project Agreement the parties agree that that parties to the Dispute may be joined for the purpose of resolving the matter of the Dispute.

15.2 Consideration by Senior Management

If a Notice of Dispute has been delivered in accordance with Clause 15.1(b), senior representatives from the Delegate and Project Co 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:

- (a) assist the parties to resolve the Dispute; or
- (b) agree that the Dispute be referred to an Independent Expert in accordance with Clause 15.3.

15.3 Expert determination

- (a) **(Referral to Independent Expert):** Disputes that arise between the parties may be referred to an Independent Expert for resolution in accordance with this document upon the agreement of both parties to do so
- (b) **(Failure to agree on Independent Expert):** If the parties fail to agree on the Independent Expert within 5 Business Days of the delivery of a Notice of Dispute, then an Independent Expert will be nominated by the Chairperson of the Institute of Mediators and Arbitrators Australia.
- (c) **(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 (a) or (b) (as applicable).
- (d) **(Referral):** If the Independent Expert so agreed or nominated executes an agreement in accordance with paragraph (c), then the Dispute must be referred to that Independent Expert for determination.
- (e) **(New independent expert):** If the Independent Expert agreed or nominated does not, or either party does not, execute an agreement in accordance with paragraph (c), then the parties must agree or nominate another independent expert in accordance with this Clause 15.3 (but the parties will only have the opportunity to agree or nominate one further Independent Expert after the initial Independent Expert).
- (f) **(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 (c); 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.
- (g) **(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.

- (h) **(Representation):** The parties may be legally represented at any such conference.
- (i) **(Privacy):** All conferences will be held in private.
- (j) **(Visit):** The Independent Expert may visit the At-Grade Car Parking Bays and the parties will facilitate the Independent Expert's access to any of those areas.
- (k) **(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 (a) to (j); or
 - (ii) within 30 Business Days after receipt of submissions in accordance with paragraph (f)(ii).
- (l) **(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.
- (m) **(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.
- (n) **(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.
- (o) **(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.

15.4 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 15.1(b) and:

- (a) Clause 15.3 applies and within 20 Business Days after the delivery of the Notice of Dispute in accordance with Clause 15.1(b) the senior representatives have not:
 - (i) resolved the Dispute; or
 - (ii) agreed that the Dispute be referred to an Independent Expert in accordance with Clause 15.3;
- (b) the Dispute has been referred for determination by an Independent Expert in accordance with Clause 15.3 and:
 - (i) the agreed Independent Expert and any new Independent Expert agreed in accordance with Clause 15.3(e) did not execute an agreement in accordance with Clause 15.3(c);
 - (ii) the Independent Expert failed to make a determination in accordance with Clause 15.3, including within the time set out in Clause 15.3(k); 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 appeal the determination; or
- (c) either party has failed to comply with any of the requirements of this Clause 15.

16. Assignment and ownership

16.1 Assignment by Project Co

- (a) The provisions of Clause 31 (Assignment and ownership) of the Project Agreement apply to this agreement to the extent applicable, except references to the State are deemed to be references to the Delegate.

16.2 Assignment by Delegate

- (a) The Delegate may not sell, transfer or assign or otherwise dispose of its interest in this agreement without the prior consent of Project Co.
- (b) Project Co 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 Government 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;
 - (iii) the proposed transferee has agreed to be bound by the relevant State Project Documents.
- (c) Notwithstanding the above, any transfer effected by the *Queen Elizabeth II Medical Centre Act 1966* (WA) will be permitted and not in breach of this agreement.

17. Confidentiality

17.1 Confidentiality

- (a) **(Confidentiality obligations):** Subject to paragraphs (b) and (c), Project Co must and must ensure that Project Co's Associates and any prospective financier or equity investor keep confidential this document and Records and Disclosed Information (to the extent relevant to the Delegate, Delegate's Associates or the At-Grade Car Parks) (Confidential Information). Subject to paragraph (e) and (f), the Delegate must keep confidential, and must ensure that the Delegate's Associates keep confidential, the Confidential Information.
- (b) **(Permitted disclosure):** Project Co is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of Project Co; or
 - (ii) the disclosure of which is:
 - A. required by Law, including in accordance with the *Freedom of Information Act 1992* (WA);
 - B. required by a relevant stock exchange;
 - C. to the State or a State Associate in accordance with the Project Agreement;

- D. consented to by the Delegate; or
 - E. made to a court in the course of proceedings to which Project Co is a party.
- (c) **(Disclosure to Project Co's Associates):** Without limiting Project Co's obligations in accordance with paragraph (a), Project Co may disclose Confidential Information to:
- (i) Project Co's Associates to the extent necessary for the purpose of undertaking the Project; or
 - (ii) subject to paragraph (d), any prospective financier or equity investor of the Project.
- (d) **(No disclosure):** Project Co must not disclose any Confidential Information to any prospective financier or equity investor of the Project until, if required by the Delegate, the Delegate has carried out any Probity Investigations in connection with the relevant entities.
- (e) **(Delegate may disclose):** The Delegate may at any time disclose the Confidential Information:
- (i) to any State department or Minister;
 - (ii) to the Trust, any State Associate or Delegate's Associate to the extent necessary for the purpose of the Project;
 - (iii) in accordance with all Laws;
 - (iv) in the course of official duties by the Minister for Health of Western Australia, the Premier of Western Australia, the Trust, the Treasurer of Western Australia, the Department of Health of Western Australia or the Department of Treasury and Finance of Western Australia;
 - (v) to satisfy the requirements of parliamentary accountability;
 - (vi) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties;
 - (vii) in accordance with policies of the Western Australian government;
 - (viii) in annual reports of Western Australia Department of Health and the Department of Treasury and Finance; and
 - (ix) in accordance with the *Freedom of Information Act 1992* (WA), the *Ombudsman Act 1976* (Cth) or the *Parliamentary Commissioner Act 1971* (WA).
- (f) **(Government websites):** The contents of this document and any other document in connection with this document which is authored or authorised by the State or a Governmental Agency may be published on any Western Australian government internet website.

17.2 Public Announcements

Project Co 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).

18. Intellectual Property

18.1 Definitions

For the purposes of this Clause 18:

- (a) **"Contract Material"** means all programs, documents, materials or information prepared by or for or on behalf of Project Co; and
- (b) **"Moral Rights"** has the meaning given to it in the *Copyright Act 1968* (Cth).

18.2 Ownership of Intellectual Property

The Delegate agrees that Project Co and applicable third parties retain ownership of the Intellectual Property Rights in all material which Project Co uses or creates in connection with the installation of the Parking Equipment and delivery of the Services which is the subject of any Intellectual Property Right or similar right.

18.3 Intellectual property licence

- (a) Project Co:
 - (i) grants to the Delegate and any nominee of the Delegate;
 - (ii) must ensure that the person legally entitled to do so, grants to the Delegate and any nominee of the Delegate; and
 - (iii) must do all things reasonably necessary to give effect to the grant to the Delegate and any nominee of the Delegate of,

a non-exclusive, royalty-free, irrevocable and transferable licence (to arise immediately upon the creation of any relevant material and including a right to sub-license) to use, exercise, reproduce, communicate, adapt and modify all the Intellectual Property Rights in or used in the Contract Material (whether owned by Project Co or not) for any purpose in connection with the At-Grade Services. The Delegate holds the benefit of this licence for itself and for and on behalf of the Trust.
- (b) Notwithstanding the terms of this Clause 18.3, to the extent that any item of Contract Material is commercially available off-the-shelf third party software, Project Co must:
 - (i) if Project Co is legally able to do so, licence that item of Contract Material to the Delegate on the terms of the licence granted to Project Co by the third party licensor; or
 - (ii) if Project Co is not legally able to licence that item of Contract Material to the Delegate without the consent of the licensor, use all reasonable endeavours to procure the consent of the licensor to grant such a licence to the Delegate.
- (c) If Project Co is, or reasonably considers it will be, after having used its reasonable endeavours, unable to grant to the Delegate the rights required in accordance with Clause 18.3(b), it must promptly notify the Delegate of that failure and the Delegate and Project Co will negotiate in good faith with respect to Project Co obtaining for the Delegate's benefit, such rights or arrangements as the Delegate reasonably requires.
- (d) If Project Co and the Delegate are unable to obtain such rights for the Delegate, Project Co will continue to use reasonable endeavours to work with the Delegate in order to allow the Delegate to use or take full benefit of the third party software.

18.4 Moral Rights

- (a) Project Co warrants that it has been given or has the benefit of a consent from every individual involved in the delivery of the At-Grade Services who has or may have in the future any rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute that may exist, or may come to exist, anywhere in the world (**Moral Rights**) relating to the Project or anything else provided by Project Co as part of or in connection with the At-Grade Services (**Copyright Works**).
- (b) Project Co warrants that each consent referred to in paragraph (a):
 - (i) allows the Delegate and any nominee of the Delegate to do any act or omission (whether before or after the date of the consent) in connection with the exercise by Delegate of its rights of ownership or use of the Copyright Works, which may (but for the consent) infringe the individual's Moral Rights; and
 - (ii) satisfies the requirements for consent set out in the *Copyright Act 1968* (Cth).
- (c) If requested by the Delegate, Project Co must provide to the Delegate copies of the consents referred to in this Clause 18.4 as soon as practicable and in any case within 30 Business Days of receipt of a request from the Delegate.

18.5 Project Co acknowledgements

Project Co agrees that:

- (a) it will not breach any Intellectual Property Rights or Moral Rights of any person in delivering the At-Grade Services;
- (b) it owns or has a licence in all Intellectual Property Rights in the Contract Material and, except if the provisions of a licence of third party software to which Clause 18.3 refers prohibit it from doing so, is able to grant the assignments and licences contemplated by this document;
- (c) neither the Delegate or any sub-licensee of the Delegate is liable to pay any third party any licence or other fee in connection with the use of the Contract Material licensed to the Delegate in accordance with Clause 18.3; and
- (d) the use of the Contract Material licensed or sublicensed to the Delegate in accordance with Clause 18.3, in accordance with this document and the terms of the relevant licence will not infringe any Intellectual Property Rights or Moral Rights or breach any Laws.

19. Notices

19.1 General Notices

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this document (in this Clause 19.1, "**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) sent by email in the form of a .pdf file letter (or such other form agreed by the Delegate) to the email address,

of the addressee set out below (or as otherwise notified by that party to each other party from time to time).

Project Co Representative: Nik Kemp

Address: Level 4, Podium Building, 120 Collins Street, Melbourne, Victoria, 3000

Email: nik.kemp@capellacapital.com.au

Telephone: 03 9667 5602

Delegate Representative: Dr David Russell-Weisz, Chief Executive NMAHS

Address: , Sir Charles Gairdner Hospital, Hospital Avenue, NEDLANDS WA 6009

Email: DJ.Russell-Weisz@health.wa.gov.au

- (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; 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):** With respect to 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 19.1. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) Project Co must ensure that, with respect to any communications in accordance with or in connection with this document:
 - 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 the Delegate 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.

19.2 Notice of Claims

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

- (a) a notice in which Project Co 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 Delegate no later than 15 Business Days from the earlier of when Project Co 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 Clause 19.1(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.

19.3 Continuing events

If the events upon which the Claim in accordance with Clause 19.2(b) is based or the consequences of the events are continuing, Project Co must continue to give information required by Clause 19.2(b) every 20 Business Days after the Claim in accordance with Clause 19.2(b) was submitted, until 21 Business Days after the events or consequences have ceased.

20. Taxes

20.1 GST

- (a) **(Construction):** In this Clause 20.1:
 - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law and GST includes any payment made under or in accordance with the *State Entities (Payments) Act 1999* (WA);
 - (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.
- (b) **(Nominated entity):** The Delegate confirms that the entity nominated to be responsible for the administration of the Delegate's GST reporting obligations **(Nominated Entity)** is registered for GST as at the date of this document. The parties acknowledge that the Nominated Entity will be responsible for administering the obligations in accordance with this Clause on behalf of the Delegate.

- (c) **(Additional amount):** Unless otherwise expressly stated, and except in connection with a supply to which Clause 20.1(d) applies, all prices or other sums payable or consideration to be provided in accordance with this document are exclusive of GST.
- (d) **(Non-monetary consideration):** Subject to Clause 20.1(i), if some or all of the consideration for a taxable supply made by a party in connection with this document 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 Clause; and
 - (ii) Project Co will, after consultation with and the approval of the Delegate (such approval not to be unreasonably withheld or delayed), instruct a suitably qualified professional valuer to determine, in accordance with the principles set out by the Commissioner of Taxation in GST Ruling GSTR 2001/6 or any replacement ruling, the GST inclusive market value of any Non Monetary Consideration provided by the supplier and the recipient; and
 - (iii) Project Co will notify the Delegate of the amount determined by the valuer within 15 days of the end of the month in which this document is entered.
- (e) **(Payment of GST):**
- (i) Subject to Clause 20.1(d)(i), if GST is payable on any supply made by a party (Supplier) under or in connection with this document, 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 Clause 20.1(e)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this document.
- (f) **(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 Clause 20.1(d) applies (**Non Monetary Consideration Supplies**) that exceeds the input tax credit to which the supplier is entitled in respect of its acquisition of the recipient's taxable supplies (**Acquisition**) for that tax period:
- (i) the consideration for the Non Monetary Consideration Supplies is not GST inclusive and that consideration must be increased on account of GST under Clause 20.1(e);
 - (ii) the recipient of the Non Monetary Consideration Supply must pay to the supplier the amount by which that consideration must be increased on account of GST under Clause 20.1(e) less the input tax credit (if any) to which the supplier is entitled in respect of the Acquisitions within 5 Business Days of being requested in writing by the supplier to do so; and
 - (iii) the parties will do all things required, including issuing new tax invoices and adjustments notes (if necessary) to give effect to this Clause 20.1(f).
- (g) **(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 Clause 20.1(e) or Clause 20.1(f).

- (ii) In the case of a supply to which Clause 20.1(d) applies, the Supplier must issue a tax invoice or adjustment note within 20 days of the end of the month in which this document is entered consistent with the valuation referred to in Clause 20.1(d)(ii).
 - (iii) The recipient can withhold payment of any amount payable in accordance with this Clause 20.1 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (h) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this document, the amount payable by the recipient in accordance with this Clause 20.1 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.
- (i) **(Reimbursements):** Where a party is required in accordance with this document 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.

20.2 General liability for Taxes

As between the Delegate and Project Co, Project Co bears the risk of, and must pay, all Taxes incurred or imposed in connection with:

- (a) the execution, stamping, delivery and performance of this 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 this document.

21. General

21.1 Interest

- (a) If a party fails to pay any amount payable by that party to the other party within the time required in accordance with this document, then it must pay interest on that amount in accordance with Clause 21.1(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.

21.2 Set-off

- (a) Without limiting or otherwise affecting the Delegate's rights in accordance with any other provision of this document or at Law, the Delegate may deduct from any monies due and payable to Project Co in accordance with this document;
 - (i) any amount due and payable by Project Co to the Delegate (whether in accordance with or relating to this document).
- (b) Project Co must make all payments to the Delegate free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.
- (c) If Project Co 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 Delegate 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.

21.3 Relationship of the parties

- (a) No duty of good faith is implied on the Delegate in connection with its relationship with Project Co.
- (b) This document and the relationship created by it, are not 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 document, Project Co must not act as or represent itself to be the servant or agent of the Delegate.

21.4 Delegate's rights, duties, powers and functions

- (a) Unless this document expressly provides otherwise, nothing in this document gives rise to any duty on the part of the Delegate to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with this document.
- (b) Nothing contained in this document or contemplated by this document has the effect of constraining the Delegate or placing any fetter on the Delegate's discretion to exercise or not to exercise any of its, duties, powers or functions.
- (c) Subject to paragraph (d), Project Co will not be entitled to make any Claim against the Delegate for any Liability relating to any exercise or failure of the Delegate to exercise its duties.
- (d) Paragraphs (a) to (c) do not limit any Liability of the Delegate which the Delegate would have had to Project Co in accordance with any State Project Document as a result of a breach by the Delegate of a term of any State Project Document but for paragraphs (a) to (c).

21.5 Reasonable endeavours

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

- (a) the Delegate 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 Delegate cannot guarantee the relevant outcome; and
- (c) the Delegate, 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 a Governmental Agency; or
 - (ii) act in any other way that the Delegate regards as not in the public interest.

21.6 Entire agreement

This document constitutes the entire agreement and understanding between the parties and supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this document.

21.7 Counterparts

This document 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.

21.8 Governing law

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

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

21.10 Variations and waivers

No variation, modification or waiver of any provision in this document, 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.

21.11 Amendments

- (a) This document may only be varied by a deed executed by or on behalf of each party.
- (b) Project Co may not at any time after the date of this document:
 - (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,

this document without the Delegate's prior consent.

21.12 Joint and several liability

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

21.13 Indemnities

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this document.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this document.
- (d) The Delegate and Project Co agree that:
 - (i) each indemnity or promise referred to in this document in favour of Indemnified Persons or the Trust is held on trust by the Delegate for the benefit of any of the Indemnified Persons and the Trust from the date of this document; and
 - (ii) the consent of the Indemnified Persons and the Trust referred to in paragraph (i) will not be required for any amendment to, or waiver of rights in accordance with a State Project Document.

21.14 Clauses to survive termination

- (a) All provisions of this document which expressly or by implication from their nature are intended to survive termination, completion or expiration of this document will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the Delegate'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 Delegate;
 - (v) any indemnity, performance bond or other financial security given in accordance with this document;
 - (vi) the Delegate's rights in respect of Handover; or
 - (vii) any right or obligation arising on termination of this document.
- (b) Nothing in this Clause 21.14 prevents any other provision of this document, as a matter of interpretation, also surviving the termination of this document.

- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this document. All rights and obligations in accordance with this document survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this document.

21.15 Costs and expenses

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

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

21.16 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 document.

21.17 Trustee limitation of liability

- (a) Project Co enters into this document and each other Project Document to which it is expressed to be a party only in its capacity as trustee of the Capella Parking Unit Trust and in no other capacity.
- (b) A liability arising under or in connection with this document and each other Project Document to which it is expressed to be a party (whether that liability arises under a specific provision of this document or any other Project Document which is expressed to be a party, for breach of contract or otherwise) can be enforced against Project Co only to the extent to which it can be satisfied out of the property of the Capella Parking Unit Trust out of which Project Co is entitled to be indemnified for the liability.
- (c) The limitation of Project Co's liability under this Clause 21.17 applies despite any other provision of this document or any other Project Document to which it is expressed to be a party (other than Clause 21.18(b)) and extends to all liabilities and obligations of Project Co in relation to any representation, warranty, conduct, omission, agreement or transaction relating to this document or any other Project Document which is expressed to be a party.

21.18 No action against Project Co personally

- (a) The Delegate may not:
 - (i) sue Project Co personally;
 - (ii) seek the appointment of a liquidator, administrator, receiver or similar person to Project Co; or
 - (iii) provide in any liquidation, administration or arrangement of or affecting Project Co.
- (b) The provisions of Clause 21.18(a) will not apply to any obligation or liability of the Project Co to the extent it is not satisfied because there is a reduction in the extent or an extinguishment of the Project Co's indemnification out of the assets of the Capella Parking Unit Trust as a result of Project Co's fraud, wilful default, gross negligence or breach of trust.

Schedule 1 – Minimum Number of At-Grade Car Parking Bays

[not disclosed]

Schedule 2 – Allocation Notice

Allocation Notice

At-Grade Car Parks Management Agreement

To: Project Co

Allocation of At-Grade Car Parks

Words and expressions defined in the document dated [#] between the Sir Charles Gairdner Hospital Board acting as the Delegate of the QEII Medical Centre Trust under the Instrument of Setting Aside and Delegation dated 24 October 1986, as published in the Western Australia Government Gazette (the **Delegate**) and Project Co (the **Agreement**) will have the same meanings when used in this notice.

1. This notice is an Allocation Notice under Clause 6.2 of the Agreement.
2. The Delegate hereby allocates to Project Co each of the Parking Bays shaded red on the attached copy of the Licence Plan, being [#] Parking Bays.
3. This allocation takes effect on and from [#].
4. This Allocation Notice replaces all previous Allocation Notices, on and from the date specified in paragraph 3 above.

Signed

.....

For and on behalf of the Delegate

Schedule 3 – Licence Plan

Schedule 4 – Licence Fee

[not disclosed]