

CONTRACT SUMMARY

NORTHERN BEACHES HOSPITAL
PUBLIC PRIVATE PARTNERSHIP CONTRACT

29 JUNE 2015



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PURPOSE

This document has been prepared by the State in accordance with the public disclosure requirements of the New South Wales Government's Public Private Partnerships Guidelines (August 2012). It's compliance with these requirements was assessed by the NSW Auditor-General prior to tabling in Parliament.

This report should not be relied upon for legal advice and is not intended for use as a substitute for the contracts. It is based on the contracts dated 11 December 2014. Subsequent amendments or additions to these contracts, if any, are not reflected in this document.

The defined terms used throughout this contract summary are provided in a Glossary in Appendix A.

EXECUTIVE SUMMARY

1. Project scope

On 11 December 2014, the State signed a contract with Healthscope, Australia's leading provider of integrated health care, to design, build, operate and maintain the new Northern Beaches Hospital in Sydney's Frenchs Forest.

Northern Beaches Hospital will be a privately licenced level 5 hospital, providing the highest quality of care to both public and private patients. Working in partnership with the State, Healthscope will establish Northern Beaches Hospital as the flagship health care facility in the local area, providing free public patient services and greater choice for private patients for decades to come.

Currently, around 80 percent of people on the Northern Beaches choose to have their elective surgery off the Northern Beaches in private facilities. Furthermore, current public hospitals in the area treat private patients, with 40 percent of patients electing to use private health insurance. Partnering with Healthscope will provide higher order care for residents and ensure local people no longer have to leave the Northern Beaches to access the majority of their complex health care.

The partnership also ensures that clinical facilities can be shared between public and private patients in a single integrated hospital. This improves clinical outcomes and the local health district's ability to respond to fluctuations in health service demand, reducing pressure on Royal North Shore Hospital by redirecting appropriate patient demand back to Northern Beaches Hospital.

Northern Beaches Hospital will be an integral part of the Northern Sydney Local Health District network, working closely with Mona Vale Hospital, GPs, community health centres and other service providers in the community.

Healthscope is required to implement models of care that follow the principles of:

- (a) teaching, training, education and research
- (b) safe, high quality care, integrated in the overall public health system
- (c) multidisciplinary care and treatment of patients for the full episode of care i.e. from acute to outpatient and into the community
- (d) an expansion in the range of specialties providing services from those currently provided at Mona Vale and Manly Hospitals
- (e) an increase in the level of acuity
- (f) continuity of care within the community

- (g) promoting innovation in service delivery through digital hospital technology
- (h) building on and strengthening strategic links with other local and State-wide services and the National Safety and Quality Health Service Standards
- (i) a shift from inpatient care to community based care
- (j) patient-centred and coordinated care
- (k) participation in NSW Health and Northern Sydney Local Health District health care reform initiatives that are implemented across the health system.

2. Project objectives

Specifically, the Northern Beaches Hospital project (Project) aims to:

- (a) deliver the best quality integrated health services and clinical outcomes to the Northern Beaches community;
- (b) integrate health care to Public Patients and Compensable Patients (otherwise known as private patients) from a single Facility to maximise the range and breadth of services available to the community;
- (c) provide health care teaching, training, education and research within the Facility as part of the Northern Sydney Local Health District;
- (d) consolidate existing health services in the Frenchs Forest location to create critical mass, improving accessibility to health services; and
- (e) address the demand and cost impact of current and future health services by enabling a sustainable health system by changing the patterns of supply and demand. This will be achieved through the Facility's location, its operational and design innovation and digital hospital technologies.

3. Working relationship

The essence of the long-term partnership is an effective working relationship between the State and Healthscope, with both parties striving for Northern Beaches Hospital to be a beacon for best clinical practice. Core to the contract is an ethos of mutual respect, common goals and ethical behaviour. The State believes that a positive and productive working relationship is the best way to maintain a sustainable project, deliver a high quality outcome and support future service delivery and benefits over the life of the partnership.

4. Public patient services

Throughout the long-term partnership with Healthscope, public patients will not be required to pay for treatment and there will be no change to the way public patients access free health services.

Patients will retain their right to choose whether or not they wish to use their private health insurance when they are admitted to Northern Beaches Hospital. Patients will be prioritised according to their health needs and not according to whether they hold private health insurance.

Once the hospital is operational, Healthscope will deliver free services to public patients for the next 20 years. At the end of the contract period, the public portion of the hospital will be handed back to the State. Healthscope will continue to provide services to private patients for another 20 years before the entire facility is returned to the State.

5. Building on experience

The long term partnership with Healthscope reflects what has been learnt from previous and existing partnerships between the State and private and non-government providers to ensure continued best possible health care for patients.

The contract incorporates clear performance indicators and stringent national and state health care standards and licensing requirements. It also provides flexibility for the State and Healthscope so that as demand for services change, new models of care based on best clinical practice can be supported.

Under the contract, the State will purchase services for public patients from Healthscope on an annual volume basis, and ensure capacity exists for all patients. Healthscope is obliged to appropriately manage everyone who presents at the facility and will be responsible for managing patient volume risk in accordance with Key Performance Indicators.

Importantly, services will be purchased according to NSW State National Weighted Activity Units (NWAU) which allocates a cost per treatment. This provides much greater cost transparency to the State and ensures the right services are funded for public patients.

The strength of the contract and funding model will ensure timely access to quality health services, improve the value of the State's investment in public patient care and ultimately help create a sustainable health care system.

6. Clinical services and features of the hospital

Healthscope will provide a full complement of services including (but not limited to):

- (a) Emergency Medicine
- (b) Intensive Care Surgery
- (c) Medicine
- (d) Anaesthetics
- (e) Maternity and Special Care Nursery
- (f) Paediatrics
- (g) Geriatric Medicine
- (h) Inpatient Mental Health
- (i) Renal Dialysis
- (j) Chemotherapy
- (k) Radiology
- (l) Pathology
- (m) Pharmacy
- (n) Teaching, Training, Education and Research.

The hospital will feature:

- (a) 488 hospital beds;
- (b) a 50-space emergency department – an increase on the total 30 spaces that currently exist in Manly Hospital and Mona Vale Hospital;
- (c) 14 operating theatres and six surgical suites;
- (d) state-of-the-art intensive care and critical care units;
- (e) a modern inpatient mental health facility;
- (f) 1,430 car spaces; and
- (g) a helipad.

7. Workforce

It is estimated 1,300 staff will be required to work at the new Northern Beaches Hospital – approximately 400 more than currently employed at Manly and Mona Vale Hospitals. Healthscope will be responsible for all workforce matters at Northern Beaches Hospital including the recruitment and retention of suitably qualified staff.

Permanent Manly and Mona Vale Hospital staff will have the choice to transfer to an equivalent role at the new hospital on their existing award terms and conditions, with a two-year employment guarantee protecting them from changes to their terms and conditions and termination of employment in the first two years except in very limited circumstances, being for serious misconduct, permanent incapacity, or following a proper disciplinary process. This clause prevents Healthscope from making an employee redundant for two years from transfer. No staff member will be forced to transfer to Healthscope.

8. Communications and information

Information has been available since May 2013, with the Request for Proposal Executive Summary document (released in December 2013) on the project website, as well as various other communications materials.

Eighteen separate briefings have been held with staff in 2014 about the new Northern Beaches Hospital and the broader health service redesign changes.

More than 200 presentations have been provided to the community through local Precincts, Rotary Clubs, Lions Clubs, Parents and Citizens Associations, Chambers of Commerce and other community groups across the Northern Beaches area.

More than 1,500 members of the public also attended community drop-in sessions in April, July and August 2014. These sessions were an opportunity for members of the public to have their questions answered about the hospital and the associated roads upgrades.

In addition, members of the public and agencies submitted responses to the proposals through formal Department of Planning and Environment processes.

9. Contract timelines

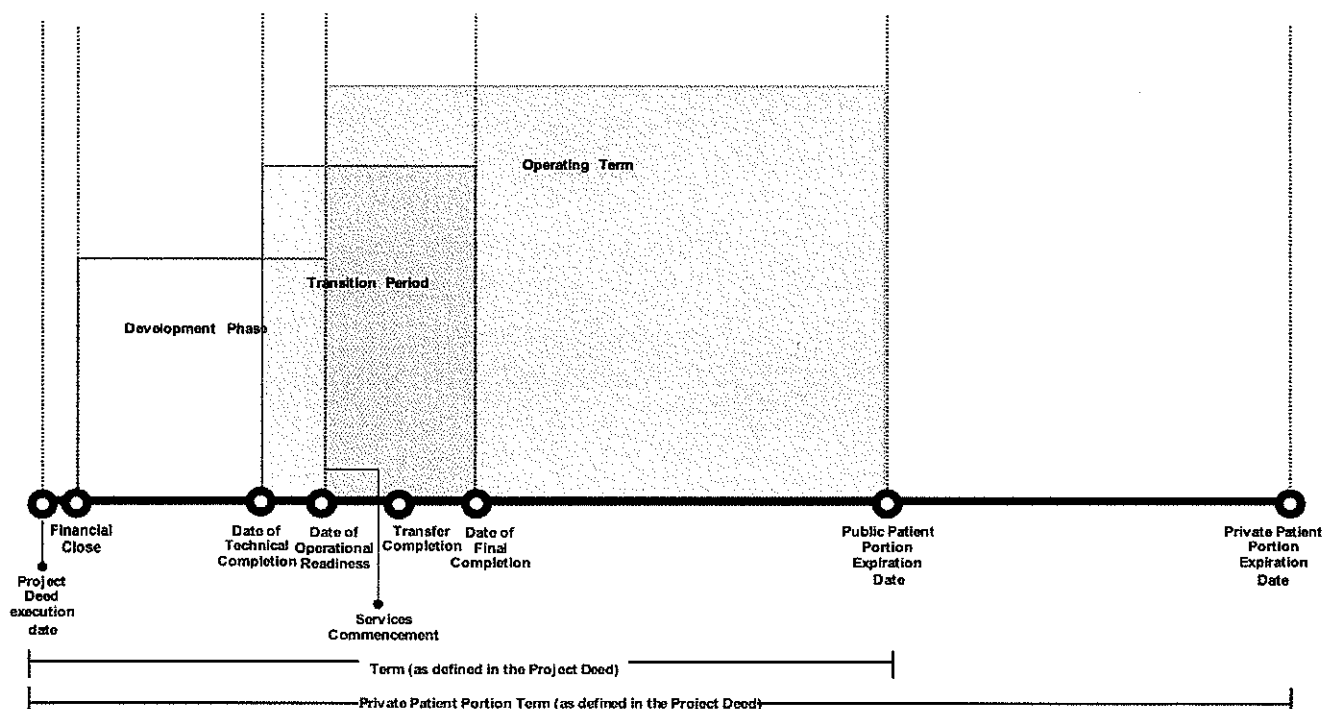
There are three distinct stages to the Northern Beaches Hospital project – Development Phase, Transition Period and Operating Term, (see Figure 1).

10. Asset and cost benefits

Partnering with one of Australia's leading health care providers allows Northern Beaches Hospital to be built faster and at a reduced cost to the taxpayer. The project addresses the demand and cost impact of future service delivery and transfers the long-term cost of asset maintenance to the private sector. The money saved on the capital and long-term maintenance costs can be reinvested by the State into frontline health services.

At the end of the contract period, the public portion of the hospital can be handed back to the NSW Government at no additional cost. Healthscope then has a further 20 years to provide services to private patients before the remaining part of the hospital can also be returned to the State at the contemporary standards of the day.

Figure 1: Northern Beaches Hospital – Development Phase, Transition Period and Operating Term



PROCESS

11. Probity

A Probity Adviser was engaged by the State from 2013 to provide independent probity advice in relation to the procurement process. The Probity Adviser observed, reviewed and provided guidance on the probity framework and procurement processes adopted throughout the Project. The Probity Adviser was chiefly concerned with ensuring the integrity of the procedures and processes of the Project, rather than the project outcomes. As at Financial Close in 2015, the Probity Adviser notified there were no probity issues to suggest the process had not been conducted in a fair and equitable manner.

12. Evaluation criteria and weightings used in tender process

The evaluation criteria was weighted, with the majority weighting apportioned to operational requirements, (A2). The evaluation process involved more than 130 people, including clinicians and subject matter experts on key project components.

Table 1: Evaluation criteria

Evaluation Criteria	
Number	Description
A1	<p><i>The Operator</i></p> <ul style="list-style-type: none"> • The extent to which the Operator's vision and innovative approach, including its consortium's ability to work together internally, for the Project and its commitment to developing and maintaining a cooperative and responsive relationship with the State for all Project phases and that achieves the Project objectives including ensuring on-time and on-budget delivery of the Project (including the Facility). • The respondent's overall approach to achieve the Project objectives. • The respondent's proposed internal project governance and management arrangements to deliver the Project. • The respondent's resourcing, project management staffing structure and experience of personnel transitioning through each phase of the Project i.e. development / construction phase, transition period, operating term. • The proposed intra-consortium relationship management framework, governance and approach. • The proposed strategy of the respondent for achieving and maintaining the hospital licence. • The proposed Project program as to deliver all aspects of the Project. • The proposed stakeholder engagement and communications strategy for engaging with stakeholders, including consumers, carers, clinicians and workforce and the community. • The proposed quality assurance management strategy and controls. • The proposed Northern Beaches Hospital business continuity management framework that will ensure the security of the delivery of the Services during the operating term.
A2	<p><i>Operational</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's proposed operational service delivery model for the Project satisfied the State's requirements.
A2.1	<p><i>Organisational arrangements for operational service delivery</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's hospital management and governance of the services provided to Public Patients and Compensable Patients will facilitate contemporary, best practice hospital operations to meet the State's service requirements.

Evaluation Criteria	
Number	Description
A2.2	<p><i>Management and governance of clinical services</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's management and governance of clinical services will facilitate contemporary, best practice Public Patient and Compensable Patient care, to meet the State's service requirements.
A2.3	<p><i>Service access and patient flow</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's proposed service delivery model for the Facility will satisfy the State's service requirements for service access and Public Patient and Compensable Patient flow.
A2.4	<p><i>Integration and coordination</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's systems, health care providers and care processes are organised and managed so that people get the care they need, when they need it and in ways that are user friendly, achieve the desired result and provide value for money. • The appropriateness of the respondent's systems and strategies to support a coordinated approach to certain aspects of service delivery.
A2.5	<p><i>Disaster management plan</i></p> <ul style="list-style-type: none"> • The respondent's coordination of activities at a strategic level including strategies for interfacing with NSW Health (including the Northern Sydney Local Health District) in relation to disaster management.
A2.6	<p><i>Clinical safety and quality</i></p> <ul style="list-style-type: none"> • The extent to which the respondent has a comprehensive and reliable safety, quality and risk management plan that incorporates contemporary approaches to ensure safe and quality clinical care is provided to Public Patients and Compensable Patients throughout the term of the Project.
A2.7	<p><i>Clinical services</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's proposed service delivery model for the Facility will satisfy the State's specifications for clinical services.
A2.8	<p><i>Clinical support services</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's proposed service delivery model for Northern Beaches Hospital will satisfy the State's specifications for clinical support services.
A2.9	<p><i>Non-clinical support services</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's proposed service delivery models for non-clinical support services will meet the needs of the hospital service profile and site requirements.
A2.10	<p><i>Workforce</i></p> <ul style="list-style-type: none"> • The respondent's approach to workforce matters, including its approach to the recruitment, engagement and retention of suitable personnel at Northern Beaches Hospital for the life of the operating term.

Evaluation Criteria	
Number	Description
A2.11	<p><i>Teaching, training, education and research</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's teaching, training education and research plan will satisfy the State's requirements for teaching, training, education and research, and add value to the respondent's overall bid. • The extent to which the teaching, training education and research plan aligns with the other service delivery plans. • The appropriateness, quality of the respondent's teaching, training, education and research solution for the Project.
A2.12	<p><i>Digital hospital and information management and technology</i></p> <ul style="list-style-type: none"> • The appropriateness of the respondent's digital hospital and information management and technology (IM&T) solution for the Project.
A3	<p><i>Transition</i></p> <ul style="list-style-type: none"> • How the transfer of patients from Existing Hospitals will be completed. • How the Operator will deliver the staff and staff migration requirements, and business continuity at the Existing Hospitals will be maintained.
A3.1	<p><i>Transition</i></p> <ul style="list-style-type: none"> • The extent to which the respondent has a seamless and logical strategy for transition (staff migration, patient transfer and business continuity).
A3.2	<p><i>Operational readiness</i></p> <ul style="list-style-type: none"> • The extent to which the respondent has a comprehensive and appropriate operational readiness plan for the delivery of the Project.
A3.3	<p><i>Staff migration</i></p> <ul style="list-style-type: none"> • The extent to which the respondent can demonstrate its ability to successfully implement a staff migration plan and staff migration process. • The respondent's ability to demonstrate that it will honour all commitments made by the State to Eligible Employees who migrate to the Operator or any subcontractor. • The respondent's strategy for recruitment and retention of migrating employees at the Facility in order to fill positions in the respondent's proposed workforce profile at the beginning of the operating term, and ensuring that the personnel are suitably qualified to meet the requirements for the Services set out in the Project Deed. • Suitability of the staff migration plan to achieve the project workforce objectives, including maximising the number of Eligible Employees that migrate to the Operator. • The respondent's proposed interface with unions and interested workforce associations. • The ability of the respondent to provide a suitable number of experienced personnel and resources through the transition period and the operating term.
A3.4	<p><i>Patient transfer</i></p> <ul style="list-style-type: none"> • The appropriateness of the patient transfer.

Evaluation Criteria	
Number	Description
A3.5	<p><i>Final completion</i></p> <ul style="list-style-type: none"> • The extent to which the respondent has a comprehensive and appropriate final completion plan for the delivery of the Project.
A4	<p><i>Asset solution</i></p> <ul style="list-style-type: none"> • The extent to which the respondent's proposed design, design and construction management, construction and asset management of the Project will satisfy the State's requirements.
A4.1	<p><i>Asset development</i></p> <ul style="list-style-type: none"> • The respondent has prepared all documentation required to obtain approval in principle (other than in respect of Section items 12, 13, 14 of the 'Application for Approval in Principle' form). • The respondent's overall approach to achieve stage 2 development consent. • The details and adequacy of the respondent's design and construction management approach. • The details and adequacy of the respondent's proposed design of the Project, including the extent to which this will ensure: <ul style="list-style-type: none"> - compliance of the proposed design with the Project Deed, design parameters in Schedule 6 of the Project Deed and compliance with accreditation requirements; - quality and detail of the schematic design, design brief and how it has responded to the Project requirements; and - a 'whole of life' approach. • The respondent's site master plan proposal for the site. • The respondent's design is flexible and adaptable to changes in Services delivery and accommodates the planned expansion and any further expansion in a cost effective manner with minimal impact on the operation of the Facility and car parking solution (all aspects both internal and external). • The respondent's medical and non-medical equipment solution enables the delivery of the Services. • The respondent's proposal for achieving technical completion
A4.2	<p><i>Asset management</i></p> <ul style="list-style-type: none"> • The respondent's asset management strategy demonstrating how it will address all of the requirements for the management of Northern Beaches Hospital over the operating term. • The respondent's asset maintenance proposal demonstrating how it will address all of the requirements for the management of Northern Beaches Hospital over the operating term. • The respondent's asset lifecycle proposal demonstrating how it will address all of the requirements for the management of Northern Beaches Hospital over the operating term.
A4.3	<p><i>Handover</i></p> <ul style="list-style-type: none"> • The respondent's handover proposal demonstrating how it will address all of the requirements in the Project Deed. • The respondent's Private Patient Portion handover proposal demonstrating how it will address all of the requirements in the Project Deed.

Evaluation Criteria	
Number	Description
A5	<p><i>Commercial and financial structure</i></p> <ul style="list-style-type: none"> • How the respondent's commercial and financial structure will deliver the Services.
A5.1	<p><i>Shared infrastructure</i></p> <ul style="list-style-type: none"> • The value and nature of the shared assets to be returned to the State at the end of the Public Patient concession (operating term). • Any arrangements applying to those assets not under State control.
A5.2	<p><i>Compensable Patients</i></p> <ul style="list-style-type: none"> • How the Compensable Patient solution will achieve the maximum Compensable Patient conversion. • The commitment to Compensable Patient capacity and Compensable Patient services.
A5.3	<p><i>Car Park</i></p> <p>How the Car Park solution will:</p> <ul style="list-style-type: none"> • achieve the site, patient and visitor requirements; • meet the State's commercial requirements; and • provide value for money to the State.
A5.4	<p><i>Associated Commercial Facilities</i></p> <p>How any associated commercial facilities will:</p> <ul style="list-style-type: none"> • achieve the Site, patient and visitor requirements; • provide benefits to patients, visitors, staff and the community; • meet the State's commercial requirements; and • provide value for money to the State.
B	<p><i>Price</i></p> <p>The extent to which the respondent's price submissions achieve a value for money outcome by taking into account the following:</p> <ul style="list-style-type: none"> • a comparison of the net present cost of the Service payments due to the Operator with the Public Sector Comparator and the financial and risk consequences of the respondent's proposal; • the size and timing of the State Capital Payment; • the discount percentage bid by respondents to the State Price; • the cost to the State of fees to be incurred in relation to the transfer of employees; and • the appropriateness of the respondent's commercial and financial structuring.
B1	<p><i>Pricing Schedules</i></p> <ul style="list-style-type: none"> • Respondents were required to complete the Pricing Schedules referred to in Attachment 4 of Request for Proposal Volume 4.

Evaluation Criteria	
Number	Description
B2	<p><i>Financial model</i></p> <p>Respondents were required to provide financial models in accordance with the detailed requirements set out in Request for Proposal Volume 4, Attachment 3 (Returnable Schedules).</p> <p>Three financial models were required, being:</p> <ul style="list-style-type: none"> • whole project base case; • base case – private business; and • base case – State asset.
B3.1	<p><i>Corporate structure</i></p> <p>The respondent's proposed corporate structure, including:</p> <ul style="list-style-type: none"> • how the respondent's proposed corporate structure achieves the State's corporate structural objectives; and • the level of financial and commercial risk associated with the parties selected given their associated roles.
B3.2	<p><i>Financial structure</i></p> <ul style="list-style-type: none"> • The appropriateness, competitiveness and flexibility of the financing structure for the entire Project (including the Public Patient Portion, Private Patient Portion and Shared Portion). • The certainty of the financing structure for the delivery of the entire Project. • The robustness, sustainability and accuracy of the financial model, including a review of assumptions relating to construction costs, operating costs, lifecycle maintenance costs, facilities management costs, Public Patient and Compensable Patient revenue, taxation and financing.
C	<p><i>Departures</i></p> <p>The extent to which the Operator departs from the Project Documents.</p> <p>In evaluating this criterion the key issues considered include the:</p> <ul style="list-style-type: none"> • nature, extent, risk allocation and value for money impact of any proposed departures to the Project Documents; • level of commitment and confirmation from the Operator and any major Operator related party member and each debt provider that the commercial positions are agreed; and • commercial execution risk including the risk of delay in achieving contractual close and financial close.

13. Project Development

In 1999 the first review of the status of the health services on the Northern Beaches commenced and extensive investigation into options ensued.

In 2006 the State Government announced that services from Manly and Mona Vale Hospitals would be consolidated in a new Northern Beaches Hospital (NBH) at Frenchs Forest. A traditional Business Case and Health Service Planning paper were commissioned in 2011. This original Business Case was finalised in 2012 and established the case for change, the preferred clinical services configuration as well as strategies for Community Health and the Mona Vale Hospital Campus.

Throughout 2012 the options presented within the original Business Case were thoroughly tested and a revised NBH strategy developed. This strategy informed a revision to the original Business Case and in 2013 direction was given to deliver the NBH. 2 May 2013, the Minister for Health issued an invitation for Expressions.

14. Procurement timeline

On 2 May 2013, the Minister for Health issued an invitation for Expressions of Interest from the private sector to design, build, operate and maintain a world-class hospital on Sydney's Northern Beaches.

The NSW Government announced on 13 July 2013 that the consortia led by the following operators lodged Expressions of Interest for the Project:

- (a) Adventist Health care Limited (Sydney Adventist Hospital) (Adventist Health care);
- (b) Healthscope Limited (Healthscope);
- (c) Macquarie University Hospital Operations; and
- (d) Ramsay Health Care Limited (Ramsay).

On 18 September 2013, following an extensive Expression of Interest evaluation process, the State shortlisted Adventist Health care, Healthscope and Ramsay to progress to the next procurement stage and issued Requests For Proposals.

15. Selection of successful respondent

On 29 October 2014, following evaluation of the proposals, the State announced Healthscope as the preferred hospital operator for the Project. Following final negotiations, the Project Deed was executed on 11 December 2014 with financial close on 28 January 2015.

16. Cost benefit analysis

A business case for the project was prepared and provided a sound rationale for Northern Beaches Hospital by concluding that the project addresses the following objectives:

- (a) delivering expanded health services on the Northern Beaches by:
 - (i) providing high quality, safe clinical services;
 - (ii) increasing access to health services by providing care closer to home;

- (iii) expanding hospital and ambulatory services to meet future demand;
 - (iv) ensuring a sustainable health workforce;
 - (v) providing care in the most appropriate clinical setting;
 - (vi) ensuring a financially sustainable system;
 - (vii) consolidating acute clinical services in a single location to build critical mass around service specialties and across the care continuum, therefore creating economies of scale and reduced operating costs;
 - (viii) ensuring that the Northern Beaches community has access to enhanced clinical quality, patient safety and patient focused services within environments that mitigate clinical risk;
 - (ix) enhancing primary and community health care as the frontline of the Northern Beaches catchment service solution;
 - (x) streamlining clinical governance and service structures; and
 - (xi) addressing constraints with existing service delivery levels as a result of infrastructure that is no longer able to accommodate current and future models of care.
- (b) meeting the State's investment and affordability objectives of:
- (i) addressing current and future health services demand and cost impacts;
 - (ii) delivering elements of the Project through a partnership with the private sector to generate long term value for money for the State; and
- (c) improving accessibility to health services.

The cost benefit analysis reported in the business case provided the following estimated economic return when compared to the 'Do minimum' business as usual option:

- (a) a benefit cost ratio of 2.35; and
- (b) estimated discounted benefits (at a discount rate of 7 percent) \$629 million over a 23-year period.

The substantial net benefits of the project are derived from:

- (a) improved patient health outcomes and general health benefits associated with increased capacity;
- (b) improved operational, service and workforce sustainability; and
- (c) residual value of assets at the end of the evaluation period.

17. Results of the public sector comparator

The 'Public Sector Comparator' (PSC) provides an estimate of the risk adjusted cost of the Project if it were to be designed, built and operated by the State. To develop the estimate, the PSC was based on a reference project developed by the State, consistent with the specified performance requirements.

The PSC performs the following central roles:

- (a) provides a benchmark for assessing the net present cost of the private sector bids;
- (b) determines whether the State is receiving financial value for money derived from the procurement of the project; and
- (c) acts as a key management tool during the procurement process.

The raw PSC is the base cost of delivering the project before any valuation of delivery and operating risks.

The risk adjusted PSC includes an adjustment for delivery and operating risks to be transferred to the private sector. The value of itemised delivery and operating risks was determined via statistical simulation using @Risk software.

The PSC used a discount rate of 5.67 percent, determined consistent with Infrastructure Australia's National Public Private Partnership Guidelines. These guidelines specify the discount rate to be the relevant jurisdiction's long-term borrowing rate, taken as the 10-year average of the 10-year NSW Treasury Corporation bond rate, as advised by NSW Treasury at the start of procurement.

The present value of the Operator proposal was evaluated in accordance with NSW Treasury policies on the assessment of complying proposals.

Table 2 – Financial value for money comparison between public sector and private sector project delivery

Description	PSC NPC (\$m)	The Operator Proposal NPC (\$m)	Difference	% Difference
Capital Costs	463	296	-167	-36%
Lifecycle Costs	54	70	16	30%
Operating Costs	2,585	1,775	-810	-31%
Total Raw Costs	3,102	2,141	-961	-31%
Competitive Neutrality	97	0	-97	
Project Risk – Transferred	468	0	-468	
Project Risk - Retained	211	211	0	0%
Total	3,878	2,352	-1,526	-39%

The comparison of the net present cost of the PSC versus the Operator proposal shows a benefit of \$1.526 billion or 39 percent.

18. Public interest evaluation

The public interest evaluation was drafted during the original business case submission. The evaluation considers each of the eight public interest criteria as set out in the NSW Public Private Partnerships Guidelines 2012. These include:

- (a) effectiveness in meeting government objectives;
- (b) achieving better value for money;
- (c) community consultation;
- (d) consumer rights;
- (e) accountability and transparency;
- (f) public access;
- (g) health and safety; and
- (h) privacy.

At finalisation of the NBH Procurement (at RFP Evaluation) a review of the elements of the public interest evaluation against the original business case concluded that there were no significant issues identified that would preclude a PPP procurement for Northern Beaches Hospital as not being in the public interest.

CONTRACT SUMMARY

19. Participants in Northern Beaches Hospital

Public sector parties to the contracts

The public sector parties to the Project Deed are:

- (a) Health Administration Corporation (ABN 45 100 538 161), a corporation sole constituted under section 9 of the *Health Administration Act 1982* (NSW) (HAC); and
- (b) the Northern Sydney Local Health District (ABN 63 834 171 987), (together, the State).

Private sector parties to the contracts

The State selected Healthscope as the successful proponent for the Project. As is customary on projects such as these, Healthscope established special purpose entities with which to contract with the State under the principal Project Documents.

The private sector special purpose entities which are party to the Project Deed are:

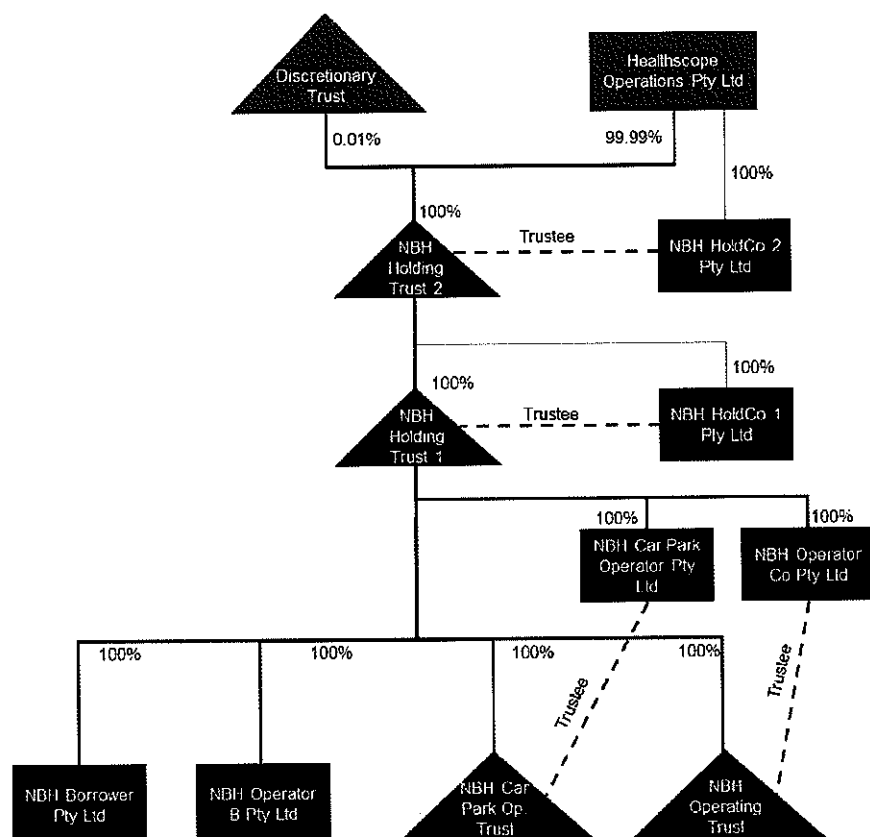
(a) NBH Operator Group

- (i) NBH Operator Co Pty Ltd (ACN 169 029 181) in its capacity as trustee of the NBH Operating Trust (Operator); and
- (ii) NBH Operator B Pty Ltd (ACN 602 943 911) (Operator B)

The Operator is the State's primary counterparty under the Project Deed and, broadly speaking, undertakes obligations and is granted rights under that document. The scope of Operator B's rights and obligations under the Project Deed are more limited relating to design and construction. Specifically, the Operator is appointed by Operator B as its agent in respect of the design and construction of the Project Works.

The ultimate holding entity of the Operator and Operator B is Healthscope Operations Pty Ltd. A structure diagram of the relevant part of the Operator Group is set out here.

Figure 2 – Healthscope Group Structure



(b) Key subcontractors and guarantors

The Operator and Operator B have entered into subcontracts in relation to key aspects of the Project, being the construction of the Facility and the ongoing operation of the Facility thereafter.

Healthscope Operations Pty Ltd (ACN 006 405 152) and Leighton Contractors Pty Limited (ACN 000 893 667) (together, the Construction Contractor) has entered into a subcontract with the Operator to design and construct the Project Works. The Construction Contractor is an unincorporated joint venture under the Construction Contract.

Leighton Contractors Pty Limited's parent company, Leighton Holdings Ltd (ACN 004 482 982) (Construction Contractor Guarantor) has entered into a performance guarantee with the Operator to guarantee certain liabilities and obligations of the Construction Contractor. The Construction Contractor and the Construction Contractor Guarantor have also entered into an associated side contract with the State to facilitate direct dealings between the State and the Construction Contractor should this be required.

Healthscope Operations Pty Ltd (ACN 006 405 152) (Parent Company). The Operator has subcontracted its obligations to perform Services to the Parent Company under the Parent Company Subcontract. The Parent Company has entered into a guarantee in favour of the State to guarantee certain liabilities and obligations of the Operator and has also entered into an associated side contract with the State to facilitate direct dealings between the State and the Parent Company should this be required.

The Operator's parent company, NBH HoldCo 1 Pty Ltd (ACN 602 943 322) in its personal capacity and in its capacity as trustee of the NBH Holding Trust 1 (Operator Holding Company). The Operator Holding Company has entered into an Operator Holding Company Guarantee in favour of the State to guarantee certain liabilities and obligations of the Operator.

The Construction Contractor and the Parent Company are collectively referred to as the Key Subcontractors.

NBH Car Park Operator Pty Ltd (ACN 602 943 902) in its capacity as trustee of the NBH Car Park Operating Trust (Car Park Operator) is engaged by the Operator to operate and maintain the Car Park from the date of operational readiness. Similar to the Operator and Operator B, the Car Park Operator is a special purpose entity established by the Operator to operate the Car Park. Further details of the rights and obligations of the Car Park Operator are set out in section 31.

(c) Independent Verifier

Davis Langdon Australia Pty Ltd (ACN 008 657 289) (Independent Verifier) has been engaged by the State, the Operator and Operator B to carry out independent verification services in relation to the Project Works.

(d) Debt financing parties

National Australia Bank Ltd (ACN 004 044 937) has been engaged as security trustee (Security Trustee) and as agent for the Project's debt financiers and has entered into, amongst others, the Syndicated Facility Agreement, the Financiers Tripartite Deed and the Security Trust Deed.

20. Risk sharing

The risk sharing arrangements for Northern Beaches Hospital are summarised in Table 3.

Table 3: Risk sharing

Risk category	Description	The State	The Operator
Consents			
Extra land acquisition	Risk associated with acquiring interests in additional land that the Operator determines is required for the Project	Does not own risk	✓
Planning approvals	Risk of obtaining planning approvals in addition to those obtained by the State	✓ (as allocated in the Project Deed)	✓ (as allocated in the Project Deed)
	Risk of delays or additional costs to the Operator arising from any modification to planning approvals required by the Operator	✓ (where the modification is directed by the State or is required as a result of the State change)	✓ (in other circumstances)
	Responsibility for complying with relevant planning approval conditions	Does not own risk	✓ (as allocated in the Project Deed)
Hospital licence	Responsibility for obtaining approval in principle and the private hospital licence	Does not own risk	✓
Site			
Site conditions	Risks of geotechnical, marine and other Site conditions	Does not own risk	✓
Contamination not caused by the Operator	Cost relating to the management and removal of unidentified pre-existing contamination, migrating contamination and contamination caused by the State, which are not caused or disturbed by the Operator	✓	

Risk category	Description	The State	The Operator
Contamination for which the Operator is responsible	Cost relating to management and removal of contamination caused by the Operator		✓
Artefacts, heritage claims	Risk that the Site has archaeological and cultural heritage value (above or below ground)	✓ (Costs exceeding a specified threshold)	✓ (Costs up to a specified threshold)
Native title	Risk that the site is the subject of a native title claim	✓	
Design, construction and commissioning			
Design risk	Risk that the design development activities cannot be completed on time and/or to budget and the design does not allow the Operator to comply with the performance requirements of the Project Deed	Does not own risk	✓
Construction risk	Risk that construction activities cannot be completed on time and/or to budget	Does not own risk	✓
Design and construction interfaces	Overall management of interfaces to deliver the Project	Does not own risk	✓
Defects risk	Risk that defects are identified following completion of construction	Does not own risk	✓
Equipment	Responsibility for the selection, procurement and maintenance of equipment	Does not own risk	✓
Fit for purpose (commissioning)	Risk that the Facility is not constructed so as to be fit for purpose or does not comply with contractual obligations	Does not own risk	✓
Completion / commissioning	Risk that the Facility cannot be commissioned in accordance with the agreed completion criteria	Does not own risk	✓

Risk category	Description	The State	The Operator
Operational			
Fit for purpose/ability to meet performance requirements and service levels	Risk that the design and technology of the Northern Beaches Hospital is not able to deliver the services and/or is not fit for purpose at the required service levels	Does not own risk	✓
Volume management	Demand for, type and actual volume of services provided do not meet the State's requirements set out in the Annual Profile	Does not own risk	✓ In accordance with the regime in Project Deed
Health policies and health initiatives	Implementation of health initiatives by the Operator and a change to, or introduction of, health policies	Does not own risk (except to the extent that a Health Initiative might also constitute a Change or Additional Work for which the Operator would be entitled to additional compensation in accordance with the ECE Schedule).	✓
Operational interfaces	Risks associated with managing interfaces with third parties (e.g. utilities, adjoining property owners, etc.)	Does not own risk	✓
Operational costs	Risk that operational costs exceed estimated cost over the operating term of the Northern Beaches Hospital	Does not own risk	✓
Lifecycle costs	Risks associated with the costs of replacement and refurbishment of assets over the operating term of the Northern Beaches Hospital	Does not own risk	✓
KPIs	Meeting required standards with respect to Key Performance Indicators	Does not own risk	✓
Utilities	Ensuring continuous supply of utilities sufficient to perform the Operator's obligations and the continuous uninterrupted provision of the Services	Does not own risk	✓

Risk category	Description	The State	The Operator
Asset management			
Asset performance and cost	Costs of maintenance and performance of assets		✓
Residual life and handover risk	Risks associated with satisfying the State's requirements regarding asset condition and residual design life at the end of the term	Does not own risk	✓
Change in law or policy			
Changes in law or policy	Risk that a change in legislation / regulations, State policy or quality standards will impact the design or construction of the Facility or provision of the services	✓ (Costs exceeding a specified threshold)	✓ (Costs up to a specified threshold)
Tax risk	Risk of changes in income tax, GST or the introduction of a tax	Does not own risk	✓
Force majeure			
Force majeure	Risk that a 'force majeure event' will prevent the Operator from performing its obligations under the Project Deed	✓	✓
Finance risk			
Funding risk	Risk of providing funds to meet design and construction costs of the Project	Does not own risk	✓
Base interest rate risk	Risk of movements in base interest rates	Does not own risk	✓
Foreign exchange risk	Risk of movements in foreign exchange rates	Does not own risk	✓
Operating insurance premium risk	Risk of inability to obtain insurance or material increases in insurance premiums required to design, deliver, operate and maintain the Project	✓ (in respect of certain uninsurable risks)	✓

21. Contractual structure

Summaries of the contractual structure of the Project are provided here in simplified terms.

Project Deed

The principal contract is the 'Project Deed – Northern Beaches Hospital', (the Project Deed), dated 11 December 2014, between the State, the Operator and Operator B. The contract comprises the Project Deed, and attached to this deed are 47 Schedules, four Exhibits and Project Plans, and the complete contract is described in this report simply as the Project Deed.

The Project Deed sets out the rights and obligations of the State and the Operator in respect of, amongst other things:

- (a) the financing, design, construction and commissioning of the Facility;
- (b) the Services to be delivered during the transition from the existing hospitals to the Facility; and
- (c) the provision of the Services and the operation of the Facility. The Services include 'clinical services', 'clinical support services' and 'non-clinical support services'. The 'clinical services' and certain 'clinical support services' are set out in detail in the Services Specification.

The Project Deed also sets out the terms and conditions for the concession in respect of the Private Patient Portion and arrangements for shared infrastructure for the remainder of the Private Patient Portion term.

The Project Plans developed by the Operator prior to signing the Project Deed contains substantial details about the way in which the Operator will satisfy its obligations under the Project Deed and the other Project Documents. The Project Plans were provided to the State as part of the bid, and then evaluated, negotiated and settled prior to signing of the Project Deed. The 'plans requirements' set out in Schedules 37 to 41 (inclusive) of the Project Deed specify the frequency with which the Project Plans need to be updated, and the elements required to be covered in each Project Plan.

Specific provisions within the Project Deed also impose separate requirements in respect of the update and content of Project Plans.

While the State reviewed all Project Plans prior to signing of the Project Deed, any obligations on the State or a State related party in the Project Plans will not be binding on the State unless a corresponding obligation is expressly imposed on the State in a Project Document, to which the State is a party.

Other principal agreements

The Operator will satisfy its obligations under the Project Deed through:

- (a) financing raised via the Borrower. The Borrower will borrow funds from a syndicate of lenders under the 'Syndicated Facility Agreement' dated 27 January 2015 (Syndicated Facility Agreement). There are intercompany loans in place between the Operator and the Borrower pursuant to which debt raised by the Borrower can be on-lent to the Operator as required to fund the Operator's activities.

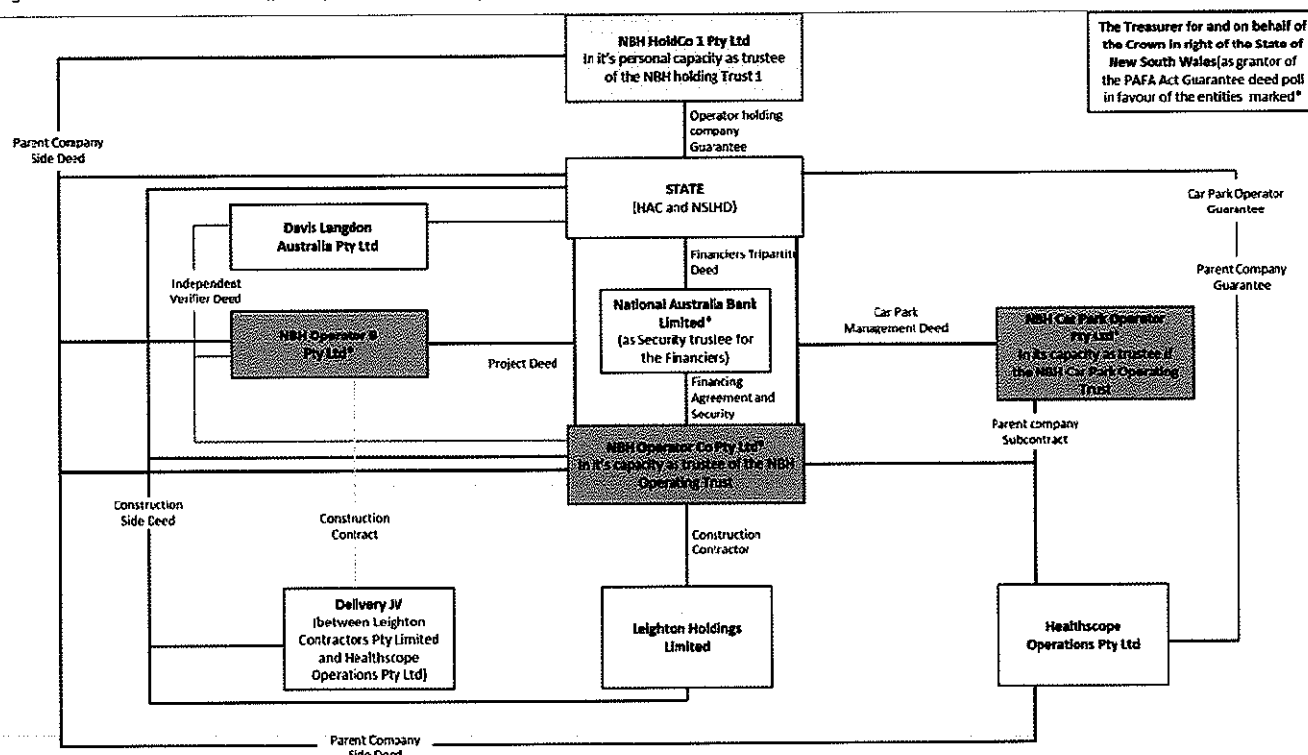
- (b) The performance by the Construction Contractor of their joint and several obligations to the Operator to design and construct the Facility under the 'Delivery Contract – Northern Beaches Hospital' (Construction Contract) between the Operator, Operator B and the Construction Contractor, dated 10 December 2014.
- (c) The performance by the Parent Company of its obligations to the Operator to provide the Services under the 'Management Services Agreement' (Parent Company Subcontract) between the Operator, the Parent Company and the Car Park Operator, dated 10 December 2014.

The Construction Contract and Parent Company Subcontract are collectively referred to as the Key Subcontracts.

- (d) The performance of the Construction Contractor under a Construction Contract is guaranteed to the Operator through a performance guarantee granted by the Construction Contractor Guarantor (Construction Contractor Guarantor Performance Guarantee).
- (e) The performance of the Operator's obligations under the Project Documents is guaranteed by the Parent Company through a guarantee granted by the Parent Company in favour of the State (Parent Company Guarantee).
- (f) The performance of the Operator's obligations under the Project Documents is guaranteed by the Operator Holding Company through a guarantee granted by the Operator Holding Company in favour of the State (Operator Holding Company Guarantee).
- (g) In the event of any default by the Operator under a Key Subcontract or where the Project Deed is terminated, the State will be entitled, under the 'Construction Contract Side Deed' dated 11 December 2014 and the 'Parent Company Side Deed' dated 11 December 2014 (together the Key Subcontractor Side Deeds) to 'Step-in' and effectively assume the Operator's rights and obligations under the relevant Key Subcontract.
- (h) The performance by the Independent Verifier of its obligation to provide independent verification of the Project Works under the 'Independent Verifier Deed – Northern Beaches Hospital' dated 11 February 2015 between the State, the Operator, Operator B and the Independent Verifier (as varied by a variation deed dated 27 February 2015 (Independent Verifier Deed)). Throughout the development / construction phase, the Independent Verifier will perform verification functions with respect to the Project Works, including, for example, reviewing design documentation and issuing notices of construction completion.
- (i) The performance by the Car Park Operator of its obligations to the Operator to operate and maintain the Car Park under the 'Car Park Management Deed – Northern Beaches Hospital' (Car Park Management Deed) between the State, the Car Park Operator and the Operator, dated 11 December 2014.
- (j) The performance of the Car Park Operator under the Car Park Management Deed is guaranteed to the State through a guarantee given by the Car Park Operator Guarantor (Car Park Operator Guarantee).

Some of the State's rights and obligations under the Project Deed and each side contract with Key Subcontractors are subject to restrictions or additional process requirements under the 'Financiers Tripartite Deed – Northern Beaches

Figure 3 – Contract structure (principal contracts only)



Hospital' between the State, the Operator, Operator B, the Borrower and the Security Trustee dated 11 December 2014 (Financiers Tripartite Deed). As an example, the Finance Tripartite Deed requires the State to notify the Security Trustee before it terminates the Project Deed for a default by the Operator, giving the Security Trustee an opportunity to cure the default. Priorities between the State's Security over the project entities and security held by the project's debt financiers are also governed by the Financiers Tripartite Deed.

Several security agreements have been entered into to secure the State's rights relating to the Project. These include:

- (a) The 'Operator / HAC Security' between HAC, the Operator, Operator B and the Borrower, dated 11 December 2014 (Operator / HAC Security), which secures all of the obligations of the Operator, Operator B and the Borrower to HAC under the Project Documents by charges over the assets, undertakings and rights of each of the Operator, Operator B and the Borrower;
- (b) The 'Car Park Operator/HAC Security' between HAC and the Car Park Operator, dated 11 December 2014 (Car Park Operator / HAC Security), which secures all of the obligations of the Car Park Operator to HAC under the car park project documents by charges over the assets, undertakings and rights of the Car Park Operator.

Under the 'PAFA Act Deed Poll of Guarantee' executed by the NSW Treasurer (on behalf of the State of NSW), in favour of the Operator, Operator B, the Borrower, the Car Park Operator and the Security Trustee, dated 11 December 2014 (PAFA Act Guarantee), the State of NSW provides a guarantee of the State's obligations. See section 44 for further information. The contracts to which the State is a party (amongst others) are referred to as the Project Documents throughout this document.

22. Confidentiality

The State is permitted to publicly disclose any information that is not commercially sensitive information. Disclosure of commercially sensitive information must be made in accordance with the requirements under the Project Deed.

Commercially sensitive information includes the information summarised below:

- (a) the financing facilities of the Operator;
- (b) the cost structure, profit margins or intellectual property of the Operator or its subcontractors and the base cases for the Project;
- (c) the competitive advantage or unique characteristic of the Operator, its shareholders, financiers or Subcontractors;
- (d) key milestone dates in relation to the Project;
- (e) particular terms relating to additional work, liquidated damages, payment arrangements with the State (including certain provisions in relation to 'compensation events' and 'relief events' and payment on termination) and the provision of security bonds;
- (f) the terms of the equity investments in the Project;
- (g) exclusive access arrangements;
- (h) certain provisions in relation to the Private Patient Portion;
- (i) certain terms in relation to project plans, design documentation, development application and post-operating term arrangements;
- (j) key personnel;
- (k) the terms of the Project's insurance policies;
- (l) the terms of certain side deeds with third parties and the terms of the contracts to which the State is not a party;
- (m) projected activity schedule; and

(n) certain terms in relation to Key Performance Indicators.

The Project Documents have also been made publicly available according to *Government Information (Public Access) Act 2009* (GIPA Act) requirements. <http://www.treasury.nsw.gov.au/ppp>

23. Auditor-General's function

The Project Documents do not have any effect on the Auditor-General's ability to carry out audit functions. Accordingly, the Project Documents have been made available to the Auditor-General, and both the State and the Operator may be audited.

24. Contract term and asset transfers

Commencement

Upon execution of the Project Deed (11 December 2014), certain provisions of the contract, as identified in clause 3.1(b) of the Project Deed, took effect immediately. The remaining provisions came into effect on 28 January 2015, when all conditions precedent had been satisfied (or waived).

Term of the Public Patient Portion and Shared Portion

The concession in relation to the Public Patient Portion and the Shared Portion will expire 20 years after operational readiness unless extended or the Project Deed is terminated in accordance with its terms.

The State is entitled under the Project Deed to extend the term of the Public Patient Portion for a period of up to five years.

Term of the Private Patient Portion

The concession in relation to the Private Patient Portion commenced on 11 December 2014 and will expire 40 years after operational readiness unless terminated earlier in accordance with the Project Deed. The Operator will be provided access to the Shared Portion under a post-Operating Term Private Patient Portion lease and pursuant to the terms of Schedule 22 to the Project Deed (see section 45).

Asset transfer on handover

At the end of the 20-year operational term, operational control of the Public Portion and Shared Portion is handed to the State at no additional cost to the State (other than equipment owned or leased by the Operator, see section 44). The State can elect for the Operator to continue to operate all or part of the Shared Portion in the post-Operating Term (during which time the State and the Operator share the Facility), and provide services to the State from the Shared Portion. The State will purchase these shared services from the Operator in order to provide services to Public Patients from the Public Patient Portion. For further details about sharing of services provided from the Shared Portion during the post-Operating Term, see section 45.

The Private Patient Portion (including equipment) and the Car Park are handed to the State at no additional cost to the State at the end of the respective 40-year term. See sections 31 and 45 for further details.

25. Primary obligations

The Project Deed sets out the Operator's primary obligations as being:

- (a) the financing, design, construction and commissioning of the Project Works;
- (b) the provision of the Services generally;
- (c) the operation of the completed Facility and Car Park;
- (d) ultimate handover to the state of the Public Patient Portion, Private Patient Portion and Shared Portion; and
- (e) handover of the Car Park.

The State's primary obligations are to:

- (a) grant the Operator all necessary licences and leases;
- (b) participate in the staff selection and migration process (see section 26); and
- (c) make various payments to the Operator, including the 'state capital payment', payments in respect of staff entitlements and patient transfer, and ongoing payments for Services provided by the Operator to public patients (see section 35).

26. Service delivery and quality requirements

The Operator must perform the Services having regard to the highest standard of patient care and safety at all times, as well as in accordance with good operating standards and the quality assurance management plan. The 'Services' are the clinical services provided to Public Patients (as detailed in the Services Specification) and all other services necessary to support the clinical services, including the clinical support services and the non-clinical support services but which does not include the Patient Transfer Services or services provided to Compensable Patients.

During the operating term, the Operator is required to provide the Services to Public Patients in accordance with, amongst other things:

- (a) the Project Deed and the Project Deed Schedules including the Services Specification;
- (b) the Project Plans;
- (c) good operating practices; and
- (d) all health policies applicable to the operation of a private health facility and listed in Schedule 20A of the Project Deed, and ensuring that for the duration of the operating term, the Facility is fit for intended purpose. The Services do not include the Patient Transfer Services or services provided to Compensable Patients. The Operator must perform the Services having regard to the highest standard of patient care and safety at all times.

All health services must be provided by the Operator on or from the Facility (unless the State consents otherwise). The Operator must at all times make the whole of the Public Patient Portion and the Shared Portion available for the provision of Services to Public Patients. The Operator may admit Compensable Patients to the Public Patient Portion provided that use of the Public Patient Portion and the Shared Portion in relation to Compensable Patients does not adversely

impact the Operator's ability to provide Services to Public Patients; and the use of any part of the Private Patient Portion or Shared Portion will be at no extra charge to the State.

Prior to the commencement of each operating year, the State will provide the Operator with an annual notice for the coming operating year (Annual Notice), which will specify, amongst other things, the type and volume of Services which the State determines it will contract to purchase in that operating year (Activity Profile). The Operator must not provide any service, treatment or procedure which is not specified in both the then-current Role Delineation and the Activity Profile for that operating year without the State's consent. Notwithstanding, the Operator must provide clinical treatment for all people presenting at or referred to the Facility in compliance with the Project Deed and the Services Specification (for those within the Role Delineation) or otherwise in accordance with good operating practice.

The Operator's operational obligations include:

- (a) achieving targets in relation to elective surgery and emergency access;
- (b) not inappropriately transferring any patient to another health service or facility unless there is an urgent and critical clinical need to do so. The State is entitled to recover from the Operator the net cost to the State of treating any inappropriately transferred patient;
- (c) doing all things reasonably necessary to ensure all prospective patients within the catchment area use the Facility as their primary hospital;
- (d) procuring, maintaining, renewing and complying with the hospital licence and the Operator's accreditation;
- (e) actively undertaking activities to provide and encourage community participation and to improve and enhance patient care and services at the Facility;
- (f) fulfilling its obligations in relation to volunteer organisations and donations;
- (g) fulfilling its obligations in relation to disaster response and planning; and
- (h) fulfilling its obligations in relation to implementing health initiatives as notified by the State.

The Operator also has obligations in relation to the Private Patient Portion and Compensable Patients including:

- (a) ensuring that the provision of the Services are not prejudiced or compromised and providing only services to Compensable Patients which are complementary to and do not interfere with the Services;
- (b) ensuring that the role delineation of services offered to Compensable Patients is no less than the role delineation of the equivalent Services which the Operator is required to provide to Public Patients under the Project Deed;
- (c) not making inappropriate reclassifications of Compensable Patients to Public Patients;
- (d) using best endeavours to maximise the number of patients who elect to use their private health insurance or are otherwise converted to being Compensable Patients;
- (e) ensuring at all times that the number of beds designated for use by Compensable Patients is not less than the number specified in the Project Deed; and

- (f) entering into and maintaining private health insurance agreements to ensure services for Compensable Patients are attracting the maximum insurance coverage possible and it can maximise the number of patients being converted to Compensable Patients.

27. Employment and industrial relations obligations

Staff migration

The Operator is required to offer employment to all permanent NSW Health employees who work at Manly or Mona Vale Hospital, or who perform services primarily in connection with those hospitals, and whose functions are transferring to Northern Beaches Hospital (Eligible Employees).

Eligible Employees to be offered employment will be identified through a staged Expression of Interest process conducted by the State and the Operator jointly.

Offers of employment to Eligible Employees are to be in a form approved by the State and generally on the following terms:

- (a) the Employee's salary at the time of their transfer to the Operator;
- (b) the award terms and conditions that applied to the equivalent position in NSW Health to that which the Migrating Employee accepts, as well as the continued application of a small number of NSW Health policy directives;
- (c) any approved secondary employment at the time of their transfer to the Operator can continue for a term of existing approval.

The Operator is prevented from terminating the employment of a Migrating Employee for a period of two years, except where the employee engages in serious misconduct, or through the application of reasonable disciplinary procedures, or by agreement. Terms and conditions of employment cannot be varied during this period.

Migrating Employees' service with NSW Health will be recognised by the Operator, and all accrued but untaken sick leave, family and community services leave, annual leave and long service leave that is not cashed out, will transfer. The Operator will be compensated by the State for any such leave entitlements that it assumes. The State will also make a 'migration payment' to the Operator within seven days of 'final completion'.

The State must provide specified employee records on migration.

All of these obligations of the Operator must also be imposed by the Operator on any specified subcontractor.

The Operator indemnifies the State in connection with Migrating Employees from the Migration Date (must be prior to final completion) onwards.

Employment at the facility

The Operator is responsible for all workforce and industrial relations matters at Northern Beaches Hospital, including ensuring that all personnel are properly trained and accredited, and act appropriately. Any liabilities resulting from changes to workforce and industrial relations matters must be satisfied by the Operator.

The Hospital Chief Executive must be approved by the State and the State can give notice if it considers the role is not being properly performed. For Key Personnel, the Operator must give the State notice of the proposed candidate (and their replacement from time to time).

Junior Medical Officers will be employed by the State and a minimum number will be provided to the Operator on a rotation basis at any one time. The Operator will compensate the State for the costs associated with this.

The Operator's work health and safety obligations are set out in the Project Deed. These clauses require the Operator to perform the Services in a safe manner, and comply with all applicable work health and safety laws. The Operator is required to notify the State of any 'notifiable incidents' within 12 hours of the incident occurring. The Operator is also required to engage the Construction Contractor as the 'principal contractor' to discharge its duties under the WHS legislation during the development phase.

28. Approval in principle/hospital licence

The Operator received an approval in principle for a private hospital licence for the Facility (issued by NSW Health) on 22 January 2015. Procurement of a hospital licence, required by law to operate the Facility as a private health facility and provide the Services, is the responsibility of the Operator.

The Project Deed expressly provides that the Operator is solely responsible for, and assumes the risks of, any loss arising in connection with procurement and maintenance of a hospital licence. Changes in law in respect of hospital licence requirements is specifically carved out of the 'Change in Law' regime under which the Operator may otherwise be entitled to relief and compensation.

29. Activities of the State and Operator during the construction period

Operator construction works

During the development phase, the Operator is responsible for the Project Works.

The 'public patient portion works' comprise the development, design, demolition and remediation works (if necessary), refurbishment, construction and commissioning of the Public Patient Portion and the Shared Portion. This includes all site investigations and testing, all connection and installation of utilities and the procurement of associated plant, equipment and materials (all systems and software incorporated in, or necessary to enable their operation), and:

- (a) installing, maintaining, using, repairing, altering, replacing and to pass or convey utilities through any pipes, ducts, conduits or wires leading through the Site and the

construction, modification, or relocation of utilities (Utility Service Works); and

- (b) any changes directed or approved in accordance with the change procedure.

in each case in respect of the Public Patient Portion or the Shared Portion.

The 'private patient portion works' comprise the development, design, demolition and remediation works (if necessary), refurbishment, construction and commissioning of the Private Patient Portion, the Associated Commercial Facilities and the Car Park, including all site investigations and testing, all connection and installation of utilities and the procurement of associated plant, equipment and materials (including all systems and software incorporated in, or necessary to enable their operation), and includes:

- (a) the Utility Service Works; and
- (b) any Changes directed or approved in accordance with the Change procedure set out in the Project Deed,

in each case in respect of the Private Patient Portion or the Car Park.

During the development phase, the Operator must:

- (a) use best endeavours to procure 'Stage 2' planning approvals in respect of the Project;
- (b) design the Facility and prepare all design documentation:
 - (i) in accordance with the construction management plan, good industry practice, the Design Parameters set out in Schedule 6 to the Project Deed and the Request For Proposal design proposal set out in Exhibit 1 to the Project Deed;
 - (ii) so that it complies with all requirements of the licensing authority and so as to obtain and comply with the approval in principle and the hospital licence and all other applicable laws, consents and policies;
 - (iii) so as to satisfy the fit for intended purposes warranty in clause 5.2 of the Project Deed;
 - (iv) so that the Facility complies and will at all times comply with the sustainability requirements; and
 - (v) so that the Services are able to be provided in accordance with or so as to exceed the requirements of the Services Specification and the Services plans, and otherwise in accordance with this document, and so that services are able to be provided to Compensable Patients in accordance with the Project Deed;
- (c) construct the Project Works in accordance with the Project Deed (including the Design Parameters), the final design documentation and the relevant Project Plans;
- (d) use good work practices and materials, which comply with good industry standards and the requirements of the Design Parameters, and which are free from defects; and
- (e) meet the sustainability requirements, including achieving a certified 4 Star Green Star facility.

The Operator warrants that the Project Works will, upon completion and during the term, be fit for intended purpose.

Laws and approvals

In performing its construction activities, the Operator must comply with all applicable laws including those relating to environmental regulation.

While the State procured 'Stage 1' planning approvals for the Project, the Operator is required to use best endeavours to procure 'Stage 2' planning approval for its specific Facility design. The State must provide reasonable assistance to the Operator to enable the Operator to apply for and obtain 'Stage 2' planning approvals, including completing the activities assigned to the State in the 'responsibility matrix' set out in Schedule 44 of the Project Deed. The State retains cost and delay risk where it delays the Operator by not performing its activities within the timeframes specified.

The State bears risk of any legal challenge it instructs the Operator to make in respect of the 'Stage 2' planning approvals.

The Operator is responsible for:

- (a) obtaining all other approvals;
- (b) obtaining and maintaining an approval in principle in respect of its private hospital licence during the development / construction phase;
- (c) obtaining and, on and from the time the hospital becomes operational, maintaining private hospital licence; and
- (d) complying with all conditions of all approvals.

Northern Beaches Hospital site

While the Site is owned by the HAC, the State has granted to the Operator and Operator B a non-exclusive licence to use and occupy the Site during the development / construction phase for the purpose of performing the Project Works (**Construction Licence**). During the services / operations phase, the Operator is granted:

- (a) a licence to occupy the Public Patient Portion and the Shared Portion for the purposes of providing services to Public Patients; and
- (b) a lease over the Private Patient Portion in order to provide services to Compensable Patients and otherwise to perform its obligations in respect of the Project.

In the final 20 years of the Project, after the Public Patient Portion and Shared Portion has been handed back to the State, the Operator is granted a further lease over the Private Patient Portion in order to provide services to Compensable Patients, and a license over certain shared areas in order to access or operate shared services and otherwise to perform its obligations in respect of the Project.

Any archaeological or heritage artefacts discovered on or under the Site will be the absolute property of the State. The Operator must immediately notify the State if any artefacts are discovered, protect them and comply with any State instructions, including any directions to suspend work. Subject to customary mitigation obligations imposed on the Operator, the State takes risk in respect of delay and cost as a result of contamination in or under the Site or the Facility which is:

- (a) unidentified pre-existing contamination; or

- (b) migrated to the Site or the Facility after the date of the Project Deed; or
- (c) was caused or contributed to by the State or a related party of the State.

The primary obligation to remedy contamination is imposed on the Operator. The State may elect to undertake remediation works itself or engage a third party to do so if it cannot agree a remediation action plan with the Operator.

Progressive handover of 'western zone' and 'eastern zone'

The State is required to perform certain early works in respect of the 'eastern zone' and the 'western zone' on the Site, each such zone as described in Exhibit 4 to the Project Deed. These works are expected to be completed in early 2015. As a result, the Construction Licence excludes the 'western zone' until 2 February 2015 and the 'eastern zone' until 2 March 2015.

Retained green space

On and from 2 March 2015 until the end of the 20-year operating term, the Operator is also granted a licence over the 'retained green space', which is an area of approximately 1.5 hectares adjacent to the Site. This is not to be confused with the green space developed on the Site, which is a key part of the hospital design. The licence is given to the Operator for the purpose of performing maintenance works. The Operator may propose, as part of an expansion of the Facility (see section 39), to access, pass across or otherwise use the retained green space. Any such use of the retained green space in connection with an expansion is subject to the approval of the State.

By 2 March 2015, the State is required to have developed an asbestos management plan for remediating asbestos contamination in the retained green space. The State must then remediate the asbestos contamination in accordance with that plan at its own cost and risk. Any asbestos contamination which is not remediated by the State, including for example asbestos contamination which is discovered in the future, will trigger a 'compensation event', meaning that the State will be liable for the cost of remediating such contamination.

Time

The Operator is obliged to achieve each of the completion milestones as follows. Also refer to the Northern Beaches Hospital Phases diagram on page 7.

Completion milestone	Relevant 'date for'
Operational readiness	16 October 2018

Failure by the Operator to achieve timely completion by reference to each of these milestones will entitle the State to claim general damages for breach of contract. It may also have the effect of shortening the 20-year operating term and the 40-year term for the private hospital concession. If the milestone that is delayed is 'transfer completion', the Operator may be required to pay liquidated damages to the State at a daily rate for each day of delay. The daily rate varies depending on how much notice the State is given of the delay in 'transfer completion' – generally, the greater the notice given, the lower the daily rate.

If the Operator is delayed in achieving completion by a 'relief event' (see section 36), it may make a claim for an extension of time. If the delay is caused by a 'compensation event', the Operator may claim for reimbursement in respect of the net financial impact of the delay, in addition to claiming an extension of time.

If the Operator fails to achieve operational readiness within 12 months of the date for operational readiness, the State will be entitled to terminate the Project Deed.

Ultimately, the Operator retains the risk of design and construction of the Project Works not being completed on time or to budget for reasons other than a risk borne by the State under the Project Deed.

If the Operator becomes aware of a matter which will, or is likely to delay completion, it must notify the State and prepare a corrective action plan in respect of the delay. The Operator must take reasonable steps to avoid or minimise the effects of any delay.

The Operator must update the delivery program regularly to reflect changes to the program, delays, corrective action plans and any other details required by the State.

30. Medical and non-medical equipment

The Operator is responsible for procuring medical and non-medical equipment for the Facility. The Operator must comply with the plan and the list agreed with the State governing the medical and non-medical equipment to be procured. The State will only pay for medical or non-medical equipment which is specified and agreed to be State-funded.

All medical and non-medical equipment must be owned by the Operator or be the subject of a lease that meets the requirements set out in the Project Deed. Medical or non-medical equipment that is marked as having high technical obsolescence risk must be procured as late as possible in the development phase.

The aggregate amount of the State's spend in respect of State-funded equipment is strictly controlled in the Project Deed to ensure that the State's spend does not exceed the pre-agreed amount without State approval.

The Operator's maintenance obligations in respect of equipment are addressed in section 32, while section 44 sets out what equipment the Operator is required to hand back to the State at the end of the 20-year operational term.

31. Associated Commercial Facilities

The Associated Commercial Facilities include the retail and commercial facilities, together with urgent care alternate strategies services in the form of a general practice clinic (GP Clinic) and private consulting suites that are to be built and operated within the designated commercial areas.

The Operator has the exclusive right to operate the Associated Commercial Facilities in the Facility, and assumes all associated risk. The State is entitled to terminate Associated Commercial Facilities, but if the termination is in respect of the consulting suites or GP Clinic it must assist with relocation of those Services.

32. Car park

The Car Park is constructed as part of the Project Works, alongside the Facility. Once operational, the Operator is responsible for the operation and maintenance of the Car Park. The Operator must ensure that maintenance is carried out in accordance with the Design Parameters, relevant quality standards, good industry practice and good operating practice, and in an appropriate, effective and efficient, dependable and cooperative manner, and so that the Car Park continues to be fit for purpose.

The Operator is responsible for the operation of the Car Park, including the collection of all parking charges in accordance with the 'Hospital Car Parking Fees Policy: Campuses which are subject to car parking development' published by NSW Health on 20 September 2013, as amended from time to time.

The rights and obligations of the State and the Operator with respect to the Car Park are broadly the same as those of the Operator under the Project Deed, with some amended to reflect the commercial nature of the Car Park, so that the State has less prescriptive rights and the Operator has less prescriptive obligations. The Operator's rights to relief and compensation in terms of the Car Park is narrower in scope compared with that available to the Operator under the Project Deed.

Unless terminated earlier in accordance with the terms of the Car Park Management Deed, the Car Park will be operated by the Operator for a term of 40 years. At the end of that period, the Car Park will be handed to the State.

33. Maintenance

The Operator must ensure that maintenance is carried out in accordance with the Design Parameters, accreditation requirements, relevant quality standards, good industry practice and good operating practice, and in an appropriate, effective and efficient, dependable and cooperative manner, and so that the Facility continues to be fit for purpose.

In maintaining the facility, the Operator must implement the 'asset maintenance plan' and the 'asset lifecycle plan', which are plans bid by the Operator and amended from time to time throughout the term. These two plans must be implemented in accordance with the 'annual works plan', which is issued by the Operator on an annual basis setting out the specific maintenance and refurbishment works proposed to be undertaken in the relevant operating year.

The parties will conduct an annual review of the Operator's asset management strategy, as part of which it must:

- (a) review the 'asset maintenance plan' and the 'asset lifecycle plan', to plan for works for the following five years to ensure it will meet the Operator's obligations under the Project Deed; and
- (b) prepare and issue an 'annual works plan' for the next operating year.

Medical and non-medical equipment

The Operator must ensure that:

- (a) all medical and non-medical equipment necessary to perform the Services is maintained in accordance with good operating practice and available at all times; and
- (b) it has sufficient consumables and supplies at the Public Patient Portion to perform the Services in accordance with the Project Deed.

Where the equipment was paid for by the State, that equipment will be the property of the State, but will be licensed to the Operator for use at the Facility. Such equipment may not be sold or otherwise disposed of without the consent of the State.

In the last three years of the 20-year public facility term (or a later date, if the term is extended), an independent expert will inspect and assess the Public Patient Portion and Shared Portion, including all other improvements on the site and notify the State and the Operator of the estimated cost of making good or rectifying any failure by the Operator to maintain those portions in accordance with the obligations set out above. The Operator will be required to undertake these make-good works and, in the meantime, provide security to the State in respect of those costs in the form of a bond. If the Operator fails to provide a bond as security for these works, the State may deduct from each Monthly Service Payment an amount equal to 120% of the amount of bonding required divided by the number of months remaining until the scheduled expiry of the Term, and deposit that amount in a dedicated account established by the State in its name, which is to be held until the Project Deed is terminated or expires.

34. Performance

In performing the Services, the Operator must achieve the targets, Key Performance Indicators (KPIs) and quality standards set out in the Project Deed. This includes managing waiting lists for elective surgery and strict triage times in the Emergency Department, just as currently happens in other hospitals including Manly and Mona Vale.

The Operator is required to record and report on its performance against the performance regime, and provide the State with access to performance data at all reasonable times. KPIs will be reviewed annually for amendment, update or substitution by the State, and may be varied by the State by notice in writing to the Operator in certain circumstances.

The Operator's Monthly Service Payment will be abated to the extent that the Operator fails to meet the target for any KPI. See section 35 for further information regarding the calculation of the Monthly Service Payment.

35. Intellectual Property

Any intellectual property rights existing prior to the date of the Project Deed and owned by or licensed to a party (Background IP) will remain with that party.

All material created by the Operator in the course, for the purposes or by virtue of the Project in which intellectual property rights subsist as a result of research and development or business systems and processes associated

with the operation of the Facility and/or the Car Park (Project IP) will vest in the State, unless the State elects not to own the Project IP. In this case, the specific Project IP will vest in the Operator provided that the Operator does not commercialise that specific Project IP without the State's consent. Any permitted revenue generated by and attributable to the commercialisation of any Project IP will be shared equally with the State, and the Operator will allocate and spend at least 50 percent of such proceeds on research and development activities.

The Operator grants the State an unrestricted, non-exclusive, royalty free, irrevocable, perpetual, worldwide and assignable licence of any right, title and interest in Background IP necessary or convenient for the use of the Project IP.

The Operator must obtain all moral rights, consents or waivers for the State's use of copyright works subsisting in the Project IP and Background IP licensed for the State's use of the Project IP.

36. Price

Payment obligations

The State must make the following payments to the Operator:

- (a) a capital payment paid after the date of transfer completion (State Capital Payment);
- (b) monthly service payments during the operating term (Monthly Service Payments); and
- (c) a final completion payment.

State Capital Payment

The State must make a one-off State Capital Payment (calculated in accordance with the Project Deed) to Operator B on satisfaction of certain conditions, being that transfer completion has occurred and there is no subsisting Operator Event of Default or Operator Termination Event. Payment must be made on the last day of the interest period under the Syndicated Facility Agreement, but which must be at least 30 days after the date of transfer completion.

Monthly Service Payment mechanism

Monthly Service Payments consisting of fees and reimbursement of costs up to an agreed amount will be made to the Operator once it has commenced providing the Services and they will be the Operator's sole source of remuneration for meeting the requirements under the Project Deed during the operating term. The Monthly Service Payment will be determined in accordance with the payment mechanism which includes:

- (a) a service-based payment which is inclusive of everything required to deliver the Services; and
- (b) an abatement regime which will reduce the Monthly Service Payment if the Operator fails to meet KPIs based on the Project's output specification.

Monthly Service Payment calculation

More specifically, the Monthly Service Payment is comprised of:

- (a) the fee for Services, calculated based on the price paid for particular Service categories (which represents a discount to the State Price) and the actual volume of services provided and recorded in that Operating Month (Service Fee); plus
- (b) a fee for any further services as may be requested by the State from time to time; plus
- (c) an indexed lifecycle component; plus
- (d) amounts by which total contributions in respect of a Migrating Employee in a defined benefit scheme exceed the minimum superannuation contribution for that migrating employee (payable on an annual basis in arrears); minus
- (e) abatements calculated based on the Operator's failures to meet the targets for any KPI; minus
- (f) the fee paid by the Operator as a sharing of revenue for associated commercial facilities at Northern Beaches Hospital; minus
- (g) the reimbursement by the Operator to the State for any payment it has received from a third party in respect of a service or item for which the State has paid the Operator; minus
- (h) a payment for the cost to the State of employing Junior Medical Officers who are used by the Operator in delivering the Services and/or services to Compensable Patients; minus
- (i) any amount payable by the Operator to the State in respect of inappropriate transfers of Patients (being the net cost to the State of treating any Patient who has been inappropriately transferred).

The State will not be required to pay more than a maximum payment amount for any Operating Year (Maximum Payment Amount) (with the exception of further services, as requested by the State from time to time). The Maximum Payment Amount is calculated based on:

- (a) the price paid for each Service category (which represents a discount to the State Price); multiplied by
- (b) the estimated volume for each Service category, as set out annually in the Activity Profile for each operating year.

The Monthly Service Payment will be calculated based on information specified in the Annual Notice issued by the State at least three months prior to the commencement of the operating term and each operating year.

The Operator is responsible for managing activity levels throughout an operating year so as not to exceed the Maximum Payment Amount, and activity in accordance with the levels specified within the Activity Profile and actual patient presentations and referrals. Should the Emergency Department Services and/or non-elective activity volume that presents be significantly higher than that prescribed by the State in the relevant Annual Notice, and this is reasonably likely to prevent the Operator from complying with its obligations and the Operator has complied with certain specified obligations, then the Operator may request to meet with the State with a view to agreeing an adjustment to the Activity Profile. The State, in its absolute discretion may:

- (a) direct the Operator to continue to provide the Services in accordance with the Deed;
- (b) adjust the Activity Profile so as to ensure that the Maximum Payment Amount is not exceeded; or
- (c) purchase further Services from the Operator.

37. Relief events

The State recognises that there may be events out of the Operator's control, which prevent the Operator from performing their obligations.

Depending on the circumstances, if a 'relief event' affects the ability of the Operator to provide Services, delays a 'critical path construction activity' or otherwise affects the ability of the Operator to perform its obligations, the Operator can apply for an extension of time, or relief from its affected obligations. The Operator, however, is not entitled to any compensation from the State, and must, unless it is 'actually or practically impossible to clinically appropriately do so at the facility', continue to provide the Services.

The Project Deed identifies each of the following as a 'relief event':

- (a) fire, explosion, storm, lightning, cyclone, hurricane, tempest, mudslide, landslide, flood, ionising radiation, earthquakes, droughts declared as a state of emergency and high seas inundation, or any natural disaster that occurs on or prior to operational readiness and causes loss or damage to the Site or the Project Works;
- (b) terrorist attack, war, armed conflict, riot, civil commotion, act of sabotage, act of a public enemy or other like activities;
- (c) nuclear, biological or ionising contamination or community-wide pandemics;
- (d) failure by any authority or a utilities provider (gas, water, sewage or electricity) to carry out works or provide services to the Site which it is obliged by law to carry out or provide (provided the Operator has complied fully with good operating practice in respect of the procurement, maintenance and deployment of back-up utilities and services);
- (e) an act or omission by the State (in its capacity as counterparty to the Project Documents) or a related party of the State:
 - (i) not being an act or omission:
 - expressly permitted by the Project Documents; and
 - which occurs within a timeframe expressly allowed for by the Project Documents, except to the extent the act or omission is caused or contributed to by a breach by the Operator of the Project Documents or any negligent or unlawful act or omission of the Operator, including breach of obligations; or
 - (ii) not being the exercise by the State or the NSW Government of any of its functions and powers pursuant to any law, which adversely affects the ability of the Operator to perform its Project obligations.
- (f) anything which occurs after operational readiness and causes loss or damage to the Site, the Public Patient Portion or the Shared Portion;
- (g) any blockade or embargo which directly affects the Site, the Project Works or the provision of Services at the Facility;

- (h) any industrial action within Australia which affects the Site, Facility or a significant part of the facilities or construction management industry;
- (i) during the development phase, any event or occurrence which deprives a party of possession of or access to the Site that it is entitled to;
- (j) works or services performed by the State or another contractor engaged by the State which prevent, hinder or disrupt the provision of Services or otherwise the Operator's activities; or
- (k) a failure of the State to meet the obligations allotted to it in respect of planning approvals, but not to the extent that would constitute a 'compensation event' under the definition of 'compensation event' (see section 38).

Such an event, however, will only become a 'relief event' if it could not have been prevented, was not within the reasonable control of the Operator, or was not caused or contributed to by a failure of the Operator to comply with good industry practice or good operating practice as set out in the Project Deed.

Force Majeure Events

Generally, if a 'relief event' prevents the Operator from fulfilling its obligations under the Project Deed for a continuous period of more than 180 days, it will become a 'force majeure event', provided it could not have been prevented.

Where a 'force majeure event' occurs, the Operator must notify the Client Representative as soon as practicable and then consult with a view to agreeing appropriate measures to mitigate the effects and facilitate continued performance of the Project Deed. If the parties cannot reach agreement on what these measures should be, either party may terminate the Project Deed. The State, however, can suspend the Operator's right to terminate within 20 business days of receipt of the Operator's termination notice.

38. Compensation events

The State is required to compensate the Operator for the net financial impact of certain events. The events that trigger this right to compensation are referred to as 'compensation events', and include each of the following:

- (a) a breach by the State of its obligations under the Project Deed or any other Project Document;
- (b) certain changes in law;
- (c) the exercise by the State of its 'Step-In rights' (see section 43);
- (d) a native title claim which results in the Operator being directed to suspend or cease performance of its obligations;
- (e) the creation of a new encumbrance on the site which inhibits the Operator from performing any of its obligations or exercising its rights;
- (f) a direction by the State to the Operator to contest a condition of development consent or any other approval;
- (g) any change to development consent granted in response to a request by the State for that change;
- (h) the discovery of contamination on the Site that was caused by the State and that the Operator is required to remediate, unless the Operator did not mitigate as it is required to;
- (i) the discovery of a new artefact which results in the

Operator being directed to cease or change the way it performs its activities for more than 10 days or at a cost of more than \$50,000; and

- (j) either of the end dates for planning approval processes specified in Schedule 44 of the Project Deed is exceeded by more than 10 days as a result of the State not performing its allocated obligations in respect of approvals.

To the extent that a 'compensation event' affects the ability of the Operator to provide the Services required, delays a 'critical path construction activity', or causes the Operator to incur additional costs or lose revenue, the Operator is entitled to apply for an extension of time, relief from its obligations, or to claim compensation.

Notwithstanding the occurrence of a 'compensation event', the Operator must continue to perform all obligations under the Project Deed that they are not prevented from performing. The Operator must also continue to perform the Services 'unless it is actually or practically impossible to clinically appropriately do so'.

39. Security

Bonds

During the development phase, the Operator must procure construction bonds and defects liability bonds from the Construction Contractor in favour of the Operator for 5 percent of the contract price of the Project Works (in respect of the construction bond) and 2.5 percent of the contract price of the Project Works (in respect of the defects liability bond). The 'construction bond' may be released to the Construction Contractor on or after the date of operational readiness, provided that the defects liability bond has been provided, and there are no outstanding calls against the construction bond.

During the operating term, the Operator must provide a bond in favour of the State. This will be released by the State at the end of the operating term.

To the extent that any bond is issued in favour of the State, the issuer must meet the minimum credit rating and other requirements set out in the Project Deed.

Generally, if the Operator fails to:

- a) achieve operational readiness by the date it is required to do so, and the failure has not been remedied, or is not being remedied;
- b) rectify all outstanding items; or
- c) rectify a defect,

then the State may require the Operator to call on the construction bond or defects liability bond, irrespective of whether the circumstances relating to the demand are in dispute.

Guarantees

See section 52 for a brief summary of the guarantees given.

40. Changes, additional works and expansion

Either party may propose a Change.

The State may at any time require the Operator to conduct a tender process for Project Works which would be required to effect a proposed Change.

State proposed Changes

The State may propose a Change at any time but will not be obliged to proceed with any Change it proposes. The State may approve, reject or inform the Operator it does not wish to proceed with the proposed change. If the State directs the Operator to carry out a Change, the State will pay the Operator the estimated cost effect (calculated in accordance with Schedule 11 of the Project Deed) of the variation or change and grant any relief as is reasonable for the proposed Change, provided that, unless it is actually or practically impossible to clinically appropriately do so, the Operator must:

- (a) continue to provide the Services and otherwise perform its obligations under the Project Deed;
- (b) amend its methodology for performing the Services as necessary to continue to provide the Services during implementation of the Change; and
- (c) perform the Services in accordance with good operating practice.

The Operator will not be able to claim costs for State proposed Changes which comprise:

- (a) a change or variation required to ensure the Facility or the Services are fit for intended purpose or meet the requirements of the Project Deed;
- (b) certain changes to rectify a Defect in the Project Works or the Facility; or
- (c) maintenance, refurbishment or capital replacement of any part of the Facility in accordance with the Design Parameters, the 'asset management strategy' and the Project Deed.

In general, a Change to Services, the way in which Services are delivered, variations to Service volume, the introduction of new Services, the cessation of existing Service categories or changes to the quality standards or reporting requirements will not, other than in exceptional circumstances, give rise to an estimated cost effect and the Operator will not be compensated for such Changes.

The Operator must pay to the State any cost savings (Change Savings) resulting from a State proposed Change (except to the extent otherwise agreed by the State, acting reasonably).

Operator proposed Changes

If the Operator proposes a Change, the State will consider the Operator's proposed Change in good faith and may in its absolute discretion approve or reject the proposed Change. The Operator bears all risks and costs associated with a Change proposed by the Operator.

Additional Work

The State may require the Operator to undertake work requiring capital expenditure to be carried out within the Facility or on the Site during the operating term (Additional Work). The State may direct the Operator to implement Additional Work, elect not to proceed with Additional Work or may undertake or appoint another contractor to undertake the Additional Work. If the State directs the Operator to implement the Additional Work, the State must pay to the Operator the estimated cost effect of the Additional Work.

Planned expansion and public expansion

In consultation with the State, the Operator developed a 'planned expansion plan' prior to 'financial close' which is included as Schedule 45 to the Project Deed. This plan contemplates 'type 1' expansions (comprising minor expansion within the Facility which do not displace any Services) and 'type 2' expansions (comprising roof extension and expansion within the Facility which requires displacement of certain parts of the Services). In order to effect a 'type 1' or 'type 2' expansion, the Operator must issue the State with a notice of its intention to do so, and satisfy the State that the expansion will not have an adverse impact on Services. Certain other pre-conditions also need to be satisfied by the Operator prior to progressing a 'type 1' or 'type 2' expansion, including there being no subsisting 'operator event of default' or 'default termination event', and the availability of funding in market terms and appropriate planning approvals.

'Type 3' expansions comprise expansion of the Facility towards the east of clinical services, clinical support services and non-clinical support services. In order to effect a 'type 3' expansion, the Operator is required to give the State notice and issue a 'type 3 planned expansion plan'. Similar pre-conditions to those set out above in respect of 'type 1' and 'type 2' planned expansions apply.

Following receipt of a notice from the Operator to undertake a 'type 1', 'type 2' or 'type 3' planned expansion, or at any other time if the State requires, the parties will undertake a 90-day consultation to determine whether the Public Portion and/or the Shared Portion requires expansion. Any such 'public expansion' determined to be undertaken will be undertaken as a Change Procedure and Additional Work Procedure.

41. Defaults under the Project Deed

Operator Event of Default

If a breach occurs which is not an Operator Event of Default, the Client Representative may issue the Operator with a notice requiring it cures the breach within 20 business days. The Operator must comply with the notice.

Each of the following events, however, is an Operator Event of Default:

- (a) any failure to procure a hospital licence within three months of technical completion of the Facility;
- (b) the occurrence of three or more breaches by the Operator of the same obligation, or five or more breaches by the Operator of similar obligations, under a Project Document in any 12-month period;

- (c) the accumulation of more than a specified number of performance failure points in any rolling three-month period;
- (d) any whole or partial cancellation, revocation or suspension of a necessary consent; other than in the ordinary course of business or where it is reinstated within 10 business days;
- (e) the giving of a false representation or warranty by the Operator or Parent Company in a Project Document to which the State is a party, which has a material adverse effect;
- (f) any fraud, collusive, misleading or deceptive conduct on the part of the Operator or a subcontractor;
- (g) any breach by the Operator of a material obligation under a Project Document (other than a failure) which has a material adverse effect;
- (h) any cessation of or threat to stop providing the Services or where it becomes unlawful to continue doing so;
- (i) the commencement of any investigation, by or at the direction of the Australia Securities and Investments Commission, into the Operator or a Material Subcontractor that results in adverse findings against them;
- (j) any failure on the part of the Operator to progress the development activities;
- (k) where the Operator fails to submit or comply with a corrective action plan in respect of a delay in achieving operational readiness identified by the Independent Verifier, or any failure generally to prepare, submit or comply with such a plan;
- (l) the cancellation of any obligation to provide funding under the financing agreements, due to an event of default or failure to provide financing under a financing agreement;
- (m) an insolvency event occurs in relation to Operator B, the Construction Contractor Guarantor, or any other Key Subcontractor (other than the Parent Company or the Operator Holding Company) and that party is not replaced within the prescribed time;
- (n) an insolvency event occurs in relation to the Construction Contractor or Construction Contractor Guarantor during the defect liability period, and within 90 days, the Operator fails to exercise its right to make a demand under the defects liability bond or rectify the defects;
- (o) a change in management of the Operator or Parent Company occurs, unless the relevant person is replaced within a reasonable period by someone with appropriate skills and experience;
- (p) any failure by the Operator to maximise conversion of patients, such that additional Public Patients are presenting at a public hospital in the Northern Sydney Local Health District;
- (q) the Operator fails to obtain the State's consent to refinancing, where it is required to do so under the Project Deed; and
- (r) the occurrence of an event of default as set out in the Car Park Management Deed, which is not remedied in the prescribed manner.

If an Operator Event of Default occurs, the Client Representative is required to give notice to the Operator, and the Operator must remedy the event or prepare and submit a 'draft cure plan'. The State must then either approve or reject the plan. If rejected, however, it may be amended by the Operator and resubmitted for approval.

If, however, a notice is given but the Operator Event of Default is not capable of being Remedied, then the Operator must prepare a 'draft prevention plan', which the State may approve or reject. Again, if rejected it may be amended by the Operator and resubmitted for approval.

Notwithstanding the issue of a default notice, the Operator must continue to perform the Services, and all of its obligations under any Project Documents in so far as it is able to. Ultimately, however, if a default notice has been given and the Operator fails to remedy or pursue a cure or prevention plan, a Step-In Event and an Operator Termination Event will be deemed to have occurred.

42. Termination rights

State termination rights

The Project Deed entitles the State to terminate the Project Deed for a number of reasons. The following is a summary of the State's rights to terminate.

Operator Termination Events

The State will be entitled to terminate this document by notice in writing to the Operator if:

- (a) the Operator fails to submit the application for 'stage 2' development application prior to financial close;
- (b) operational readiness of the Facility has not occurred within 12 months of the 'date for' achieving operational readiness;
- (c) the Operator abandons the Project or displays an intention to permanently abandon the provision of the Project Works, a material part of any of the Services or the operation of the Facility;
- (d) at any time, an insolvency event occurs in relation to the Operator, the Parent Company or the Operator Holding Company;
- (e) following financial close, the Operator fails to commence, within 60 business days the performance of the Operator's activities;
- (f) the Parent Company Guarantee given by the Parent Company or the Operator Holding Company is or becomes void, voidable, illegal, invalid or unenforceable and is not replaced within 10 business days or the Parent Company or the Operator Holding Company (as applicable) breaches a material term of the guarantee;
- (g) an Operator Event of Default has occurred and the Operator fails to remedy or prepare and comply with a cure plan or prevention plan as required by the State;
- (h) the hospital licence is cancelled, revoked, suspended or otherwise discontinued;
- (i) the Operator has not procured and provided to the State a bond as required under this document and fails to do so within 10 business days of receiving notice from the State;
- (j) the Operator has not effected and maintained the insurances it is required to effect and maintain and fails to do so within 10 business days of receiving notice from the State;
- (k) the Operator or a Key Subcontractor ceases to hold an approval required or breaches applicable law, or a Project Document becomes illegal or void, and the issue is not remedied within 30 days;

- (l) the change in control restrictions in the document (see section 47) are breached;
 - (m) the State forms the view (acting reasonably) that there are no reasonable requirements that can be met by the Operator to overcome the consequences of, or compensate the State for an event of default;
 - (n) the Operator accumulates more than a specified number of failure points in any five operating months within a rolling six-month period;
 - (o) in any rolling three-year period, the Operator accumulates more than a specified number of failure points in any rolling three-month period for the third time;
 - (p) a termination event occurs in respect of the Car Park and the Car Park Operator is not replaced with a suitable party within 60 business days of receipt by the Operator of a written notice from the State; or
 - (q) a breach by the Operator of an obligation under a Project Document, which causes the total loss of (or the loss of a substantial part of) the Project Works or use or occupation of the Facility,
- each event being an Operator Termination Event.

Voluntary termination

The State may voluntarily terminate the Project Deed by prior written notice to the Operator. The Project Deed will terminate 20 business days after receipt of such a notice or a later date as specified.

After construction, the State may voluntarily either terminate only the Operator's rights and obligations in respect of the Private Patient Portion or only the Operator's rights and obligations in respect of the Public Patient Portion and Shared Portion. The Operator's rights and obligations in respect of the relevant portion will terminate 20 business days after notice is served (or a later date as specified in that notice), and the Project Deed and the other Project Documents will remain on foot in all other respects.

Termination for an uninsurable risk or force majeure

The State may terminate the Project Deed following the occurrence of an 'uninsurable risk', if:

- (a) the Operator and the State are unable to reach agreement on appropriate measures to manage the risk; and
- (b) the uninsurable risk is a specified material risk and occurs so as to affect all of the public patient portion works, the Public Patient Portion or the Shared Portion.

Alternatively, the State or the Operator may terminate the Project Deed following the occurrence of a 'force majeure event', if:

- (a) the parties are unable to agree on appropriate measures to mitigate the effects of the 'force majeure event' and continue performance of the Project Deed; and
- (b) the 'force majeure event' is continuing or its consequences remain such that the affected party has been or is unable to comply with a material part of its obligations under the Project Deed.

Termination payments

If the Project Deed is terminated under clause 78 of the Project Deed by either party, the State will pay the Operator a termination payment calculated in accordance with Schedule 12 of the Project Deed.

The amount of the termination payment differs depending on the reason for termination.

Failure to achieve conditions precedent

The State may terminate the Project Deed if the conditions precedent set out in clause 3 and Schedule 1 of the Project Deed are not satisfied (or waived in writing) by the State by the 'target financial close date', and the 'target financial close date' is not extended by the State.

In such circumstances, the rights and obligations of the parties under the Project Deed will not commence (except for obligations set out in clause 3.1, which are mainly regarding execution of the PAFA Act Guarantee).

43. Contractual remedies available to the Crown

Should the Operator default on its obligations related to the Project the State will have a number of different contractual remedies available to it. These include:

State Step-In rights

The State is entitled under the Project Deed, and the Key Side Deeds, to step-in and effectively assume the Operator's rights and obligations under the relevant agreement. See section 43 for further details.

Sue for breach

If the Operator breaches any of its obligations under the Project Documents the State is party to, the State may, in addition to, or as an alternative to any of the rights or remedies available to the State under those Project Documents, sue the Operator or exercise any other contractual or other legal or equitable rights it holds against the Operator, including (if relevant and available), its rights under the Operator/ HAC Security. No delay or omission by the State in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

Where the State wishes to make an indemnity demand under the Project Deed in respect of a claim, it may give notice of the claim in accordance with the procedure in section 49 of this document.

Enforce civil penalty provisions

The State may enforce civil penalty provisions under the Project Deed where the Operator has failed to meet certain performance standards.

Set-off rights

In certain situations, the State is entitled to set-off from any amount due from the State to the Operator under a Project Document:

- (a) any debt or moneys owed from the Operator to the State; and
- (b) any claim to money the State reasonably makes against the Operator whether for damages or otherwise and whether or not the amount is disputed.

The Operator does not have these same set-off rights.

Guarantees and bonds

In addition to the security granted to the State under the Operator / HAC Security and the security given in favour of the Operator by the Construction Contractor and the Parent Company as subcontractors, the Operator must also give the State:

- (a) a parent guarantee issued by each of the Parent Company and the Operator Holding Company;
- (b) an unconditional bank bond in favour of the State prior to the Facility reaching operational readiness, securing the operations phase performance of the Operator; and
- (c) in the period leading up to handover of the relevant portion of the Facility, an unconditional bank bond, to secure the performance of the Operator's handover obligations:
 - (i) in respect of the Public Patient Portion and the Shared Portion under the Project Deed; and
 - (ii) in respect of the Private Patient Portion under Schedule 22 to the Project Deed.

These handover bonds are sized depending on the value of the rectification works identified by an independent expert as having to be done in order to ensure that the Public Patient Portion and the Shared Portion, or the Private Patient Portion, (as applicable), meet the handover conditions specified.

Liquidated damages

The Operator may also become liable to pay liquidated damages to the State if 'transfer completion' is delayed. See section 28 for details.

Termination

The State may terminate the Project Deed in the circumstances set out in section 41 above. These include where an Operator Termination Event occurs, on the occurrence of an 'uninsurable risk' or 'force majeure event', or for the State's convenience through its 'voluntary termination' rights.

44. State Step-In rights

Project Deed

The State will have a right to Step-In to the role of the Operator and assume the Operator's service delivery obligations under the Project Deed if any the following occurs:

(a) an event or circumstance which:

- (i) prevents the performance of the Operator's activities under normal circumstances;
- (ii) poses a serious threat to, or causes or is likely to cause material damage or material disruption to:
 - the health or safety of persons;
 - the environment;
 - any real or personal property; or
 - the safe and secure performance of the Operator's activities and the operation of the Facility;
- (iii) will require the provision of Services or alternate services materially greater than that requirements set out under the Project Deed; or
- (iv) requires the State to exercise any of its responsibilities or functions at law;

(b) an Operator Termination Event is deemed to have occurred following failure by the Operator to remedy a default in accordance with the Project Deed or failure to comply with a prevention plan; or

(c) a 'force majeure event' occurs which also constitutes a Step-In Event, (each a Step-In Event).

On the occurrence of any of the Step-In Events and:

- (a) the Operator fails to promptly remedy a breach which has given rise to the Step-In Event and the State reasonably believes that action must be taken in respect of the Step-In Event;
- (b) the State directs a suspension of the Services (or directs the Operator to the Services in a specified manner), or the Operator is unable or unwilling to provide additional or alternative services as requested by the State, and the State reasonably believes that action must be taken in respect of the Step-In Event; or
- (c) the State reasonably believes that the Operator must suspend provision of the Services (or must perform the Services in a specified manner as directed by the State), or the State must take Step-In action in response to a Step-In Event or to discharge a legislative, public or constitutional duty,

the State may take action (provided adequate notice of and reason for action is given in accordance with the Project Deed requirements) and any consequent additional action as it reasonably believes is necessary (Required Action).

During the Step-In period, the Operator and the State must comply with certain cooperation obligations as outlined under the Project Deed.

If the Required Action:

- (a) is not taken as a result of a breach of the Operator's obligations under the Project Deed, the Operator will be entitled to relief and compensation in accordance with the 'compensation event' regime; or
- (b) is taken as a result of a breach of the Operator's obligations under the Project Deed, then to the extent the Required Action prevents the Operator from performing its obligations:
 - (i) the Operator will be relieved of such part of its obligations under the Project Deed; and

- (ii) while the State is taking the Required Action, abatements will be applied in respect of Monthly Service Payments in accordance with the Project Deed and the Operator must pay the State's costs incurred as a result of taking the Required Action.

The State shall give the Operator reasonable notice if it intends to complete or cease the Required Action and the Operator will recommence performance of such obligations which were prevented immediately following step-out by the State. Upon cessation of a Step-In Event, the State shall use its reasonable endeavours to complete the Required Action promptly.

Construction Side Deed/Parent Company Side Deed

Under the Key Contract Side Deeds, the State may step-in at any time:

- (a) when the State may exercise its Step-In rights under the Project Deed;
- (b) if the Operator is in breach or default under the relevant Key Subcontract;
- (c) during the period starting on the date the respective subcontractors have given the State notice of default under the relevant subcontract and ending 60 days later, subject to a suspension if the Security Trustee exercises its rights under the Financiers Tripartite Deed; or
- (d) otherwise as permitted under any Project Document.

During the Step-In period:

- (a) the State will be entitled to enforce all of the rights of the Operator under the Construction Contract in place of the Operator;
- (b) the respective subcontractors' right to terminate the relevant subcontract is largely limited to circumstances where there is a failure to pay amounts owing to the subcontractor;
- (c) the Stepping-In will end on such date notified by the State, on novation as contemplated in the relevant side deed, on expiry of the relevant subcontract or on termination by the relevant subcontract on limited grounds permitted under the side deed.

The State will be liable for certain amounts owing arising prior to the Step-In period and during the Step-In period, provided that such amounts have been independently certified to the reasonable satisfaction of the State.

45. Transition out provisions

At the end of the Term

The Operator must cooperate fully and facilitate the smooth transfer of responsibility of the performance of the Operator's obligation and the operation of the State Asset to a successor of the Operator or the State (including providing reasonable assistance and advice concerning the Operator's obligations and allowing reasonable access to the State Asset), and must not take any action which is calculated or intended to prejudice or frustrate or make more difficult such transfer.

Handover audit

In preparation for handover of the State Asset at the end of the term, the State may require a handover audit of the State Asset. The Operator must provide reasonable assistance to the independent assessor in carrying out the handover audit which may identify, among other things, remediation works required to be carried out by the Operator prior to the end of the term. The State may require a bond to be provided by the Operator for an amount assessed by the independent assessor as the aggregate amount to be expended to ensure the State Asset is in the required handover condition.

Handover obligations

The Operator must, among other obligations:

- (a) hand over the State Asset (including all rights, title and interest in the State Asset) to the State (or its nominee) free from any encumbrances and in a state and condition as agreed in the Project Deed;
- (b) if required by the State, enter into and comply with an interface protocol with the successor operator;
- (c) transfer to the State all medical and non-medical equipment required to allow the State to operate, maintain and repair the State Asset to the standards required under the Project Deed. However, if the equipment belongs to the Operator or is leased to the Operator, the State will be required to pay (lesser market value or written down value) on acquisition of equipment;
- (d) deliver to the State all documents and information concerning the Operator's obligations that are required for the efficient transfer of responsibility of the performance of the Operator's obligations, including manuals, records (including medical records), project plans, data recorded for the operation of the State Asset, valid warranties and guarantees, software licences and other information specified;
- (e) procure novation to the State (or its nominee) of any agreement, sublease or licence relating to the Operator's obligations that the State may nominate, and any warranties in respect of equipment used in relation to the Public Patient Portion;
- (f) grant or procure the grant to the State (or its nominee) of Intellectual Property rights required to enable the State (or its nominee) to take over responsibility of the performance of the Operator's obligations; and
- (g) make arrangements to ensure the continuing supply of utilities to the State Asset.

Staff handover

The Operator is required to cooperate with the State in the handover of any employees that the State requires to continue to operate the Facility, whether to the State or a State appointed operator, in the period leading up to handover. During this period, there are some restrictions on the Operator's ability to vary the terms and conditions of employment of employees who work at the Facility. The Operator is responsible for any entitlements arising from the transfer of employment of employees to the State (or a State appointed operator).

At the end of the Post-Operating Term Private Patient Portion Lease

A regime which is substantially similar applies in respect of the handover of the Private Patient Portion at the end of the 40-year term for the Private Patient Portion (or the earlier termination of the Private Patient Portion). The State may require a handover audit of the Private Patient Portion to identify any failures to meet the required handover condition, with any such anticipated expenditure for make good works secured by a bond.

The general handover obligations for the State Asset also apply in respect of the Private Patient Portion, other than in respect of staff.

46. Sharing the facility – post-operating term

Schedule 22

A bespoke regime has been developed to regulate the sharing of the Facility by the State and the Operator following the end of the 20-year operating phase. This sharing regime is set out in Schedule 22 to the Project Deed and the lease granted to the Operator over the Private Patient Portion over the last 20 years of the Project (being the post-Operating Term).

Facility sharing

During the post-Operating Term, the State will operate the Public Patient Portion and the Operator the Private Patient Portion. In order to facilitate the sharing of the Shared Portion, the State must issue a notice to the Operator electing:

- (a) the shared services which will be provided by the Operator and those parts of the Shared Portion which will be controlled by the Operator in order to provide such services;
- (b) the shared services to be provided by the State and those parts of the Shared Portion which will be controlled by the State in order to provide such services;

Following this election by the State, the parties will negotiate to agree specific services, including standards of performance. The pricing will be based on sinking fund and building lifecycle models that the parties will agree once the services are determined. In broad terms, the party which is purchasing services from a shared area controlled by the other party will be required to contribute to the replacement and lifecycle expenditure incurred by the controlling party by reference to the proportion of services purchased. The State may elect to cease providing services to the Operator or cease purchasing services from the Operator.

Unless the State elects otherwise, the Operator is responsible for the management of the common areas (such as pathways and grounds) and the shared infrastructure (such as central plant).

General obligations

During the post-Operating Term, the Operator:

- (a) must at all times maintain a Hospital Licence in respect of the Private Patient Portion;

- (b) is only entitled to provide services to Compensable Patients which are complementary to, and do not interfere with, the Services provided by the State from the State Asset;
- (c) do all things necessary to ensure that the Private Patient Portion is able to, and does, operate to its full capacity in accordance with the Private Patient Portion role delineation; and
- (d) must ensure that any naming rights granted in respect of any part of the Private Patient Portion do not endure beyond the term of the Operator's interest in the Private Patient Portion.

Customary default and termination events are also included, including non-payment by the Operator or the occurrence of an insolvency event in respect of the Operator or the Parent Company (in each case subject to cure periods).

Destruction and damage

If the Facility is destroyed, or damaged so that the Operator cannot access, occupy or use the Private Patient Portion or the Shared Areas, or a substantial part of either of them, then the State must within six months give the Operator a notice which either:

- (a) terminates Schedule 22 and the Post-Operating Term Private Patient Portion Lease. If the destruction or damage was caused by an act of God or similar 'force majeure' style of event, the State must, upon termination, pay to the Operator the 'force majeure' Termination Payment described in Schedule 12 to the Project Deed;
- (b) sets out that the State intends to reinstate the Facility so that the Private Patient Portion or the Shared Areas (as applicable) are fit for the Operator to access, occupy and use; or
- (c) invites the Operator at its cost to reinstate the Private Patient Portion and (to the extent agreed by the State) (acting reasonably) the part of the Facility (other than the Private Patient Portion) as is required for the Private Patient Portion to be fit for the Operator to access, occupy and use.

While the State is not obliged to repair any such damage or destruction, the Operator is entitled to terminate if the State does not issue the election notice within six months or if the State is not reinstating the Facility (if it elected to do so) expeditiously. If the Operator's termination under this regime resulted following an act of God or similar 'force majeure' style of event, the State must, upon termination, pay to the Operator the 'force majeure' Termination Payment described in Schedule 12 to the Project Deed.

General provisions

The Operator's obligations in respect of the Private Patient Portion in the post-Operating Term are broadly consistent with its obligations for the Private Patient Portion, including the provision of services to Compensable Patients, limitations on inappropriate transfer to the public system, reporting, Associated Commercial Facilities and employment.

For the Operator's handover obligations, see section 44. For a summary of the Operator's insurance obligations during the post-Operating term, see section 49.

47. Transfer of assets

Construction Licence

The State grants the Operator and Operator B a licence to enter, occupy and use the Site to the extent reasonably necessary for the performance of the Project Works. This licence commences from financial close until the date of operational readiness.

Operating term Operator licence

For 20 years from the date of operational readiness (subject to any extensions made in accordance with the Project Deed), the State grants the Operator and Operator B a licence to enter, occupy and use the Public Patient Portion and Shared Portion to the extent reasonably necessary for the performance of the Services under the Project Deed.

Operating term State licence

From the date of operational readiness until its twentieth anniversary (subject to any extensions made in accordance with the Project Deed) or early handover, the Operator grants to the State, related parties of the State or any person authorised by the State, a non-exclusive, free of charge licence to access or use the Site or the Facility to perform its obligations and exercise its rights in accordance with the Project Documents or with laws.

Private Patient Portion lease

For the Private Patient Portion, the State grants the Operator:

- (a) a lease of the Private Patient Portion for a term of 20 years from the date of operational readiness; and
- (b) a call option to enter into a lease for a further term of 20 years, with the date of expiry 40 years from the date of operational readiness. If the Operator fails to exercise or properly exercise its call option, the Operator grants the State an option to require the Operator to lease the Private Patient Portion.

Car Park

The State will enter into a Car Park site lease with the Operator for a term of 40 years after the date of operational readiness. The Operator will sublease the Car Park to the Car Park Operator under a Car Park site sublease.

48. Change in control under the Project Deed

The Project Deed places certain restrictions on the State and the Operator in the event of a 'change in control'.

The Operator undertakes that the Operator Group structure will remain as set out in Schedule 34 of the Project Deed until the expiry of the 'defects liability period'.

Under the Project Deed, the Operator is also restricted from permitting any change in control of the Operator, Operator B, the Parent Company, or any change to the Operator

Group structure prior to the first anniversary of the date of operational readiness, without the State's prior written consent. Any change in ownership of interests, or any transfer of equity by a person to another equity investor will be disregarded.

Within 10 business days of receiving the notice, the State must notify the Operator whether it consents to the proposed change in control.

Change in control of Material Subcontractors

The Operator must promptly notify the State if a change in control of a Material Subcontractor occurs (other than where a change in control of the Parent Company occurs). A change in control of a Material Subcontractor, however, will be permitted, if it occurs in circumstances that mirror those in which a change in control of the Operator is permitted.

Within 20 business days of receiving the notice, the State must notify the Operator of its decision to approve or reject the change in control. If the State does not approve a change in control, the Operator must then terminate any relevant subcontract, and within 60 days re-tender the Project Works or Services being provided by the Material Subcontractor. Depending on the reasons for termination, the State may be liable to pay costs incurred by the Operator as a result of terminating the subcontract, and entering into a new one.

49. Dispute resolution

The Project Deed requires all disputes that arise between the State and the Operator to be resolved in line with the procedures set out in the Project Deed.

Dispute process

Where a party is dissatisfied, the Project Deed requires that they issue a notice to the other party and the Client Representative within 20 business days of the dispute arising. Following issue of the notice, the dispute will be referred to an executive negotiator, who will promptly commence negotiations to resolve the dispute. If no resolution is achieved within the timeframe set out in the Project Deed, the dispute will then be referred for expert determination or arbitration, depending on the circumstances.

If the dispute is referred to arbitration, the Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules will apply and the arbitral tribunal any arbitrator will have the power to grant any legal, equitable or statutory remedy. This process aims to achieve a timely and cost-effective resolution of any dispute, and any award of the arbitral tribunal will be final and binding upon the parties to the dispute.

Disputes under related contracts

The dispute resolution process set out in the Project Deed will not apply to a dispute that is to be dealt with by an equivalent process in the Independent Verifier Deed.

Key Subcontract disputes

The Operator is required to inform the Client Representative of any disputes under the Key Subcontract and any consequences on the Project Deed or its operation. If a dispute occurs under a Key Subcontract, the State may allow the Key Contractor to attend the dispute resolution process, or be joined as a party to the dispute.

Side deeds

Disputes occurring under the Key Subcontractor Side deeds must be resolved in accordance with the dispute resolution provisions in the Project Deed.

Financiers Tripartite Deed

Disputes between the State and the Security Trustee in relation to the production or contents of the 'Step-In report' (which is a report produced and agreed between the State and Security Trustee upon receipt of a Step-In Event notice) are to be resolved in accordance with the expert determination provisions in the Project Deed.

There are no other dispute resolution provisions in the Financiers Tripartite Deed. Accordingly, subject to the Project Deed, any other disputes under the Financiers Tripartite Deed are to be resolved by the courts of NSW.

Operator / HAC Security

Disputes occurring under the Operator / HAC Security must be resolved in accordance with the dispute resolution provisions in the Project Deed.

Continuation of the project

Despite the existence of any dispute, the parties must continue to perform their obligations under the Project Deed.

50. Insurance

Required types of insurance

The Operator is required to maintain the following types of insurance during the development phase:

- (a) contract works insurance to cover the works for an amount of not less than its full replacement or reinstatement value plus the cost of removal of debris, materials stored off site, consultants and professional fees and expediting expenses and cover for escalation;
- (b) public and products (completed operations) liability insurance, with appropriate single occurrence and aggregate liability limits with regards to products and completed operations liability;
- (c) professional indemnity insurance with appropriate single occurrence and aggregate liability limits;
- (d) workers compensation insurance covering claims under statutory schemes and common law;
- (e) compulsory third party motor vehicle insurance as required by law;

- (f) vehicle and equipment insurance to cover loss and/or damage to the Operator's vehicles and associated liability insurance with appropriate single occurrence and aggregate liability limits.

The Operator is required to maintain the following types of insurance during the transition and operating term:

- (a) public and products liability insurance, with appropriate single occurrence and aggregate liability limits with regards to products liability;
- (b) Both:
 - (i) industrial special risks insurance for the full replacement or reinstatement value plus expediting expenses, professional fees, fire extinguishment costs and removal of material and/or debris; and
 - (ii) business interruption insurance for loss of the Monthly Service Payments made to the Operator based on an indemnity period of not less than the construction period of the Facility;
- (c) professional indemnity insurance with appropriate liability limits during any one 12-month period of insurance;
- (d) medical malpractice insurance with appropriate liability limits in the annual aggregate;
- (e) workers compensation insurance covering claims under statutory schemes and where permitted by law, common law liability with appropriate liability limits;
- (f) compulsory third party motor vehicle insurance as required by law;
- (g) vehicle and equipment insurance to cover loss and/or damage to the Operator's vehicles and associated liability insurance with appropriate single event occurrence and aggregate liability limits;
- (h) contract works project insurance – required where additional work, in accordance with the Project Deed, is required to be undertaken by the Operator.

With regards to insurance for the Facility after handover of the State Asset, the Operator retains responsibility for maintaining the industrial special risks / business interruption, public and products liability insurance during this period.

Requirements in relation to insurance

All required insurances must be:

- (a) maintained with reputable insurers with a minimum Standard and Poor financial security rating of A- or A3 by Moody's Investors Service Inc or an equivalent rating with another reputable rating agency;
- (b) on terms approved by the State, acting reasonably; and
- (c) must contain an Australian jurisdiction clause.

The Operator must provide evidence that required insurances are in effect and comply with the requirements of the Project Deed.

Deductible and premium costs

The Operator is responsible for paying the premiums, deductibles and/or excesses payable under any of the Project Insurances required to be effected in accordance with Schedule 5 or as required by law.

Insurance claims procedure

Where the State wishes to make an indemnity demand on the Operator in respect of an insurance claim:

- (a) the State must provide notice of the relevant claim to the Operator as soon as reasonably practicable which contains details of the claim; and
- (b) the State must exercise all available rights and remedies in respect of the claim to mitigate the claim.

The Operator may investigate the claim and defend or compromise in good faith in a commercially reasonable manner, however no claim may be compromised without the prior written consent of the State. The State must cooperate with the Operator and insurer.

Insurance proceeds

If:

- (a) the Operator recovers proceeds under any insurance (other than the proceeds of business interruption insurance) required to be taken out under Project Deed; and
- (b) such proceeds are recovered in connection with voluntary termination by the State or a 'force majeure termination event' which results in the State making a termination payment to the Operator

the Operator must pay the State the net amount it recovers which is not used by the Operator to repair or reinstate the Project Works, the Site or the Facility or used to discharge any insured legal liability to third parties.

To the extent insurance proceeds are received by the Security Trustee, the Security Trustee agrees with the State under the Financiers Tripartite Deed that the insurance proceeds must be applied in accordance with the Project Deed. The Security Trustee will assist the Operator to comply with its insurance proceeds obligations under the Project Deed.

51. Liabilities, indemnities and/or guarantees given by the Crown

Guarantees given by the Crown

The *PAFA Act* Guarantee executed by the NSW Treasurer (on behalf of the State of NSW) in favour of the Security Trustee, the Borrower, the Operator, Operator B and the Car Park Operator (the Beneficiaries), dated 11 December 2014 provides a guarantee by the State of NSW to the Beneficiaries in accordance with section 22B of the *Public Authorities (Financial Arrangements) Act 1987* (NSW), of HAC and the Northern Sydney Local Health District's performance of its payment obligations under the Project Deed, the Operator / HAC Security, the Financiers Tripartite Deed and any other documents approved, in writing by the NSW Treasurer in the future.

52. Significant guarantees and undertakings

The Project contains a number of guarantees and undertakings. Below is a brief summary of the significant guarantees between the parties.

PAFA Act Guarantee

As mentioned in clause 3.1(a)(ii) of the Project Deed, the State of New South Wales guarantees the performance of HAC and the Northern Sydney Local Health District's payment obligations under the Project Deed and other documents.

Parent Company Guarantee

The Parent Company Guarantee is an irrevocable guarantee given to the State by the Operator, under which all of the Operator's obligations are unconditionally guaranteed, subject to certain prescribed limitations.

Operator Holding Company Guarantee

The Operator Holding Company Guarantee is an irrevocable guarantee given to the State by NBH HoldCo 1 Pty Limited in its personal capacity and in its capacity as trustee of the NBH Holding Trust, under which all of the Operator's obligations are unconditionally guaranteed, subject to certain prescribed limitations.

Car Park Operator Guarantee

The Car Park Operator Guarantee is an irrevocable guarantee given to the State by the Operator Operations Pty Ltd, under which all of the Car Park Operator's obligations are unconditionally guaranteed, subject to certain prescribed limitations.

Performance Guarantee

The Performance Guarantee is an irrevocable guarantee given to NBH Operator Co Pty Limited in its capacity as trustee of the NBH Operating Trust and in its capacity as agent for NBH Operator B Pty Limited under the Project Deed, and NBH Operator B Pty Ltd. As part of this, Leighton Holdings Ltd unconditionally guarantees all obligations owed as joint venture participants.

Appendix A – Glossary of Terms

Activity Profile has the meaning given in section 25.

Additional Work has the meaning given in section 39.

Annual Notice has the meaning given in section 25.

Associated Commercial Facilities means retail and commercial facilities, the GP Clinics and private consulting suites constructed as part of the Private Patient Portion. It does not include the Car Park.

Background IP has the meaning given in section 34.

Beneficiaries has the meaning given in section 50.

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

Car Park means the Car Park to be developed on the Site as part of the Project Works.

Car Park Management Deed has the meaning given in section 20.

Car Park Operator means NBH Car Park Operator Pty Ltd (ACN 602 943 902) in its capacity as trustee of the NBH Car Park Operating Trust.

Car Park Operator Guarantee has the meaning given in section 20.

Car Park Operator / HAC Security has the meaning given in section 20.

Change means a change relating to the Project or the Operator's activities.

Change Savings has the meaning given in section 39.

Client Representative means the person appointed by the State as its representative under the Project Deed.

Compensable Patient means a patient treated at the Facility whose costs of treatment are funded by the patient themselves or by a third party including a private health insurer or the Department of Veterans Affairs, WorkCover or the NSW Motor Accident Authority, but not including the State.

Construction Contract has the meaning given in section 20.

Construction Contractor has the meaning given in section 18.

Construction Contractor Guarantor has the meaning given in section 18.

Construction Contractor Guarantor Performance Guarantee has the meaning given in section 20.

Construction Licence has the meaning given in section 28.

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

Eligible Employees has the meaning given in section 26.

Estimated Cost Effect has the meaning given in section 39.

Exhibit means an exhibit to the Project Deed.

Existing Hospitals means Manly Hospital and Mona Vale Hospital.

Facility means Northern Beaches Hospital and all improvements on the site for Northern Beaches Hospital.

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

Financiers Tripartite Deed has the meaning given in section 20.

GP Clinic has the meaning given in section 30.

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

Healthscope has the meaning given in section 1.

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

IM&T means information management and technology.

Independent Verifier means Davis Langdon Australia Pty Ltd (ACN 008 657 289), the independent verifier engaged by the State, the Operator and Operator B to carry out independent verification services in relation to the Project Works.

Independent Verifier Deed has the meaning given in section 20.

Junior Medical Officer means an intern, doctor in a vocational training position, medical officer with less than three years post-graduating experience, or a resident or training registrar (other than a service registrar).

Key Personnel means personnel nominated as such by the Operator to the State.

Key Subcontractor has the meaning given in section 18.

Key Subcontractor Side Deed has the meaning given in section 20.

Key Subcontracts has the meaning given in section 20.

KPI means key performance indicator.

Material Subcontractor means each Key Subcontractor and subcontractors who are party to subcontracts which meet certain materiality thresholds including in respect of term or value, or which is notified as such by the State.

Maximum Payment Amount has the meaning given in section 35.

Migrating Employees means all NSW Health employees who accept an offer of employment from the Operator, or a subcontractor.

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

Monthly Service Payment has the meaning given in section 35.

NBH means Northern Beaches Hospital.

NSLHD means the Northern Sydney Local Health District (ABN 63 834 171 987).

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

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

Operator means NBH Operator Co Pty Ltd in its capacity as trustee of the NBH Operating Trust, along with Operator B, the party selected to enter into the Project Deed with the State. Referred to as Healthscope in the Executive Summary section.

Operator / HAC Security means has the meaning given in section 20.

Operator B means NBH Operator B Pty Ltd, along with the Operator, the party selected to enter into the Project Deed with the State.

Operator Event of Default has the meaning given in section 40.

Operator Holding Company has the meaning given in section 18.

Operator Holding Company Guarantee has the meaning given in section 20.

Operator Termination Event has the meaning given in section 41.

PAFA Act Guarantee has the meaning given in section 20.

Parent Company means Healthscope Operations Pty Ltd (ACN 006 405 152).

Parent Company Guarantee has the meaning given in section 20.

Parent Company Subcontract has the meaning given in section 20.

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

Private Patient Portion means that part of the Facility used for the treatment of Compensable Patients and Associated Commercial Facilities.

Private Patient Portion Term means the period starting 11 December 2014 and ending on the date falling on the fortieth anniversary of the date for operational readiness, unless terminated earlier in accordance with the Project Deed.

Project means the Northern Beaches Hospital project.

Project Deed means the deed entered into between the State, the Operator and Operator B for the financing, design, construction, operation and maintenance of Northern Beaches Hospital.

Project Documents means the contractual agreements setting out the relationships and arrangements for the Project, which includes, amongst other things, the Project Deed and those documents described in section 20.

Project IP has the meaning given in section 34.

Project Objectives has the meaning given in section 2.

Project Plans means the plans for the Project prepared by the Operator in accordance with the requirements set out in the Project Deed, as described in section 20.

Project Works means the development, design, demolition and remediation works (if necessary), refurbishment, construction and commissioning of the Public Patient Portion, Private Patient Portion, the Shared Portion, the Associated Commercial Facilities and the Car Park.

Public Patient means a public patient treated at the Facility that is not a Compensable Patient.

Public Patient Portion means the emergency department and that part of the Facility (including additional works on or expansion of the Facility) used for the treatment of Public Patients (other than the Shared Portion). It includes the Private Patient Portion if the State voluntarily terminates the Operator's rights in respect of the Private Patient Portion.

Public Sector Comparator or PSC means [the Public Sector Comparator, being an estimate of the whole-of-life costs of the Project if delivered by the State.]

Required Action has the meaning given in section 43.

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

Role Delineation means the 'Guide to the Role Delineation of Health Services' published by NSW Health from time to time.

Schedule means a schedule to the Project Deed.

Security Trustee means National Australia Bank Ltd (ACN 004 044 937).

Service Fee has the meaning given in section 35.

Services has the meaning given in section 25.

Services Specification means the specification for the Services set out in Schedule 14 to the Project Deed.

Shared Portion means those parts of any infrastructure, services, facilities and equipment on the Facility which the parties intend will be used for the provision of services to both Public Patients and Compensable Patients.

Site means the site for Northern Beaches Hospital.

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

State means HAC and the Northern Sydney Local Health District.

State Asset means the Public Patient Portion, the Shared Portion and all other improvements on the site, but excluding the Private Patient Portion and the car park.

State Capital Payment has the meaning given in section 35.

State Price means the 'NSW State Price' as issued by NSW Health from time to time.

Step-In Event has the meaning given in section 43.

Syndicated Facility Agreement has the meaning given in section 20.

Utility Service Works has the meaning given in section 28.

Visiting Medical Officer means a Visiting Medical Officer.