

Deed of Guarantee

The Honourable John Joseph Della Bosca the Minister for Health for and
on behalf of the Crown in right of the State of New South Wales
The State

InfraShore Pty Ltd
Project Company

BNY Trust (Australia) Registry Limited
Security Trustee

InfraShore Parking Pty Ltd
InfraShore Parking

InfraShore Asset Management Pty Ltd
ISAM Trustee

Health Administration Corporation
The Authority

The Clayton Utz contact for this document is
John Shirbin/Stuart Cosgriff on +61 2 9353 4000

Clayton Utz
Lawyers
Levels 19-35, No 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

www.claytonutz.com

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Deed of Guarantee dated 23 OCTOBER ~~2008~~ 2008

Parties

The Honourable John Joseph Della Bosca MP, Minister for Health for and on behalf of the Crown in right of the State of New South Wales (the State)

InfraShore Pty Ltd ACN 124 557 008 (Project Company)

BNY Trust (Australia) Registry Limited ACN 000 334 636 in its capacity as the security trustee of the Royal North Shore Hospital PPP Security Trust (Security Trustee)

InfraShore Parking Pty Ltd ACN 124 564 521 (InfraShore Parking)

InfraShore Asset Management Pty Limited ACN 132 745 889 in its capacity as trustee for the InfraShore Asset Management Trust (ISAM Trustee)

Health Administration Corporation a corporation sole constituted under section 9 of the *Health Administration Act 1982*(the Authority)

Background

- A. In pursuance of the *Public Authorities (Financial Arrangements) Act 1987* (NSW), as amended, upon the recommendation of the Minister for Health and with the approval of the Treasurer of the State of New South Wales, the Beneficiaries are to contract with the Authority for the purpose of financing, designing and constructing certain health and related car parking facilities and managing, maintaining and providing certain services in connection with certain health and related car parking facilities upon the terms set out in the Project Documents.
- B. The Beneficiaries and the Authority have requested the State to give this Guarantee of the obligations of the Authority under the Project Documents.
- C. The State has agreed to give this Guarantee of the Guaranteed Obligations.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this Guarantee.

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

"Authority's Act" means the *Health Administration Act 1982* (NSW).

"Beneficiaries" means the Project Company, the Security Trustee, InfraShore Parking and ISAM Trustee and "Beneficiary" means either one of them.

"Consolidated Fund" means the fund formed as referred to in section 39 of the *Constitution Act 1902* (NSW).

"Guarantee" means this Deed of Guarantee.

"Guaranteed Obligations" means the obligations of the Authority to the Beneficiaries (or any of them) under the Project Documents.

"InfraShore Asset Management Trust" means the trust of that name constituted by the trust deed dated on or about the date of this Guarantee.

"Minister for Health" means the Minister of State from time to time administering the Authority's Act.

"Permitted Dealings" means:

- (a) any transfer, assignment, novation or other dealing with the rights, title, interest or obligations of a Beneficiary under the Project Documents and this Guarantee which is permitted under the terms of the Project Documents;
- (b) the granting by a Beneficiary of any mortgage, charge or encumbrance over its rights, title or interest under the Project Documents and this Guarantee; or
- (c) any transfer, assignment, novation or other dealing with the rights, title, interest or obligations of a Beneficiary under the Project Documents and this Guarantee pursuant to the terms of the Project Documents upon enforcement of any mortgage, charge or encumbrance referred to in paragraph (b).

"Project Deed" has the meaning given to that term in paragraph 1 of Schedule 1.

"Project Documents" means the documents listed in Schedule 1 to this Guarantee.

"Royal North Shore Hospital PPP Security Trust" means the trust of that name constituted by the trust deed dated on or about the date of this Guarantee.

"Term" means the period from the date the first Project Document comes into force and effect until the earlier of the date seven months after the date upon which the Authority has fully discharged all Guaranteed Obligations (including any payment of termination payments and interest thereon) under the last of the Project Documents to remain in force; and

"Treasurer" means the Treasurer of the State of New South Wales.

1.2 Rules for interpreting this Guarantee

- (a) Except where the context otherwise requires, a reference in this Guarantee to:
 - (i) the singular number includes a reference to the plural number and vice versa;
 - (ii) any gender includes a reference to the other genders and each of them;
 - (iii) any person or company shall mean and include the legal personal representatives, successors in title and permitted assigns of such person or company as the circumstances may require;
 - (iv) a company includes a corporation and person and vice versa;
 - (v) the Authority shall, in the event that any of it ceases to exist or is reconstituted, renamed or replaced or that its powers or functions or any of them are transferred to any other entity, refer respectively to any such entity, body or group established or constituted in lieu thereof or succeeding to similar powers or functions;
 - (vi) statutes, regulations, ordinances or by-laws shall be deemed for all purposes to include a reference to any statutes, regulations, ordinances or

by-laws amending, consolidating or replacing the same from time to time;

- (vii) month shall be construed as a reference to a calendar month;
 - (viii) a receiver includes a receiver and manager and a liquidator includes a provisional liquidator and official manager; and
 - (ix) this Guarantee or a Project Document is a reference to this Guarantee or a Project Document, as applicable as amended, assigned, novated, supplemented, varied or replaced in accordance with their terms.
- (b) Where a word or phrase is given a defined meaning in this Guarantee, any other part of speech or other grammatical form in respect of such word or phrase shall, unless the context otherwise requires, have a corresponding meaning.
 - (c) This Guarantee (including Schedule 1) constitutes the entire agreement between the parties and supersedes all prior agreements and understandings.
 - (d) The illegality of any provision of this Guarantee shall not affect the validity or enforceability of any other provision.
 - (e) The headings and index used in this Guarantee are for convenience only and shall not affect the interpretation of this Guarantee.
 - (f) Clause 1.9 of the Financier's Tripartite Deed applies to this Guarantee as if set out in full with the necessary changes having been made.

1.3 Business Days

- (a) A "business day" means a day which is not a Saturday, Sunday or public holiday in the State of New South Wales.
- (b) Where any time limit pursuant to this Guarantee falls on a day which is not a business day then the time limit shall be deemed to expire on the next business day.

1.4 Multiple Parties

Where any covenant, condition, agreement, warranty or other provision of this Guarantee expressly or impliedly binds more than one person then it shall bind each such person severally and all such persons jointly.

2. Guarantee

2.1 Guarantee

- (a) Subject to and in accordance with the provisions of this Guarantee, the State hereby unconditionally and irrevocably guarantees to each of the Beneficiaries the due performance by the Authority of the Guaranteed Obligations provided that there shall be no liability upon the State under this Guarantee unless and until:
 - (i) there has been a failure on the part of the Authority to fully and completely perform a Guaranteed Obligation when due;
 - (ii) any period of time allowed to the Authority under the Project Documents to remedy its failure to perform the Guaranteed Obligations has expired; and

- (iii) the relevant Beneficiary has served written notice upon the State advising of such failure by the Authority and requiring the State to satisfy its obligations under this Guarantee within 21 business days of receipt of such notice.
- (b) Subject to clause 2(a), this Guarantee shall be a continuing guarantee notwithstanding any settlement of account, intervening payment or other matter or thing whatsoever to the contrary and the State's liability as guarantor shall not be affected by anything which might otherwise have that effect at law or in equity.
- (c) Subject to clause 2(a), the State shall be and continue to be liable under this Guarantee in respect of the Guaranteed Obligations notwithstanding any discharge of the Authority from any or all of the Guaranteed Obligations for whatever reason including, without limitation, the determination or novation of the Project Documents as a Permitted Dealing or the abolition of or other circumstance resulting in the cessation of the Authority.
- (d) Any liability of the State under this Guarantee shall be discharged out of the Consolidated Fund.
- (e) This Guarantee is irrevocable and shall remain in force until expiration of the Term.
- (f) The Project Company shall not, except pursuant to a Permitted Dealing, without the prior written consent of the Treasurer, assign or encumber the benefit of this Guarantee.
- (g) Nothing in this Guarantee shall be construed as a waiver by the State of any of the provisions of the Act, as amended and this Guarantee is to be read subject to the provisions of the Act.
- (h) The Authority will at all times indemnify and keep indemnified Her Majesty, the State, the Treasurer and the Government of the State of New South Wales against any and all liabilities which all or any of them may incur under or by reason of this Guarantee.

2.2 Independent Obligation

This Guarantee is independent of and unaffected by any other right or remedy which the Beneficiaries may hold at any time in respect of the Guaranteed Obligations.

2.3 Warranty

The State represents and warrants that:

- (a) the recommendation of the Minister for Health and the approval of the Treasurer (as referred to in paragraph A of the Background) authorising the Authority to enter into a "joint financing arrangement" (as defined in the Act) on the terms set out in the Project Documents have been issued and are in full force and effect;
- (b) it is authorised to issue this Guarantee under the Act; and
- (c) its obligations under this Guarantee are valid, binding and enforceable.

3. Notices

- (a) Any notice or demand to be given or made to or by the State, the Authority or the Beneficiaries must be in writing delivered to the address or sent to the facsimile number of the recipient listed below or as notified by the parties from time to time.

To the State:

NSW Treasury
Level 27, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
Facsimile: (02) 9221 7029
Attention: The Secretary

To the Project Company:

InfraShore Pty Ltd
Level 22 ABN ARMO Tower, 88 Phillip Street
Sydney NSW 2000
Facsimile: (02) 8259 5425
Attention: Director, InfraShore

To the Security Trustee:

BNY Trust (Australia) Registry Limited
Level 4, 35 Clarence Street
Sydney NSW 2000
Facsimile: (02) 8295 8652
Attention: Relationship Management Group

To InfraShore Parking:

InfraShore Parking Pty Ltd
Level 22 ABN AMRO Tower, 88 Phillip Street
Sydney NSW 2000
Facsimile: (02) 8259 5425
Attention: Director, InfraShore

To ISAM Trustee:

InfraShore Asset Management Pty Limited

Level 22 ABN AMRO Tower, 88 Phillip Street

Sydney NSW 2000

Facsimile: (02) 8259 5425

Attention: Director, InfraShore

To the Authority:

Health Administration Corporation

73 Miller Street

Sydney NSW 2000

Facsimile: (02) 9391 9831

Attention: NSW Health Representative (Royal North Shore
Hospital and Community Health Services Redevelopment Project)

- (b) Any notice given under this clause 3 shall be deemed to be given:
- (i) if delivered, upon receipt;
 - (ii) if mailed, upon the date two business days after posting; and
 - (iii) if by facsimile, upon receipt by the sender of a confirmation from the intended recipient that the facsimile transmission was legibly received.

4. General

4.1 Sovereign Immunity

Subject only to the provisions of the *Crown Proceedings Act 1988* (NSW), the State waives to the fullest extent permitted by the laws of the State of New South Wales any right to immunity from set-off, legal proceedings, attachment prior to judgment or any other attachment or execution of judgment or process on the grounds of sovereignty of itself and its property in respect of its obligations under this Guarantee.

4.2 Exercise of Rights

Each party may exercise its rights, powers and remedies at its discretion and separately or concurrently with any right, power or remedy. A single or partial exercise of a right, power or remedy by any party does not prevent further exercise of that right or of any other right, power or remedy and failure by any party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

4.3 Waiver

A provision or a right created under this Guarantee may not be waived except by instrument in writing signed by the party granting the waiver.

4.4 Governing Law

This Guarantee is to be governed and interpreted by reference to the laws of the State of New South Wales and the State and any of the Beneficiaries which makes a claim on the State

pursuant to this Guarantee irrevocably submits to the exclusive jurisdiction of the Courts of the State of New South Wales and Courts having jurisdiction in appeals therefrom.

4.5 Variation of Arrangements

No variation to or amendment of any term of this Guarantee may be made except by instrument in writing signed by the State and each Beneficiary.

4.6 Permitted Assigns

The State acknowledges that the Project Company has encumbered or assigned or will encumber or will assign by way of mortgage or charge, its right, title and interest in and to the Project Documents and/or the Guarantee and that such dealing is a Permitted Dealing.

4.7 Enforcement Costs


The State agrees to reimburse the Beneficiaries for any reasonable costs or expenses reasonably incurred by them in connection with the enforcement of their rights under this Guarantee.

Schedule 1 Project Documents

1. Royal North Shore Hospital and Community Health Services PPP Project Deed between the Authority and the Project Company ("**Project Deed**");
2. Construction Side Deed (as defined in the Project Deed);
3. each Facilities Management Side Deed (as defined in the Project Deed);
4. Independent Certifier Deed (as defined in the Project Deed);
5. Financier's Tripartite Deed (as defined in the Project Deed);
6. Labour Services Agreement (as defined in the Project Deed);
7. each Collateral Warranty (as defined in the Project Deed);
8. Project Security (as defined in the Project Deed);
9. Securitisation Agreement (as defined in the Project Deed);
10. Payment Directions Deed (as defined in the Project Deed);
11. Master Licence Agreement (as defined in the Project Deed);
12. Royal North Shore Hospital and Community Health Services Car Park Licence Agreement between the Authority and InfraShore Parking ("**Car Park Licence Agreement**");
13. Car Park Financier's Tripartite Deed (as defined in the Car Park Licence Agreement);
14. Car Park Securitisation Agreement (as defined in the Car Park Licence Agreement);
15. Car Park Payment Directions Deed (as defined in the Car Park Licence Agreement); and
16. Such other documents as are approved in writing from time to time by the Treasurer.

Executed as a deed.

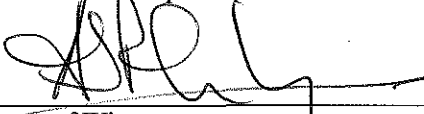
Signed sealed and delivered by
as delegate of the **Health Administration
Corporation** pursuant to section 21 of the
Health Administration Act 1982 (NSW) under
delegation dated 23 October in the presence of:
2008



Signature of Witness

STUART MICHAEL CUGRIFF
Name of Witness in full

Signed sealed and delivered by **The
Honourable John Joseph Della Bosca
MP**, Minister for Health for and on behalf of the
Crown in right of the State of New South Wales
as aforesaid, in the presence of:



Signature of Witness

ANDREW JOHN PLUMBER
Name of Witness in full

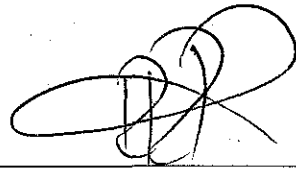
Signed sealed and delivered for and on
behalf of **InfraShore Pty Ltd** by its Attorney
under a Power of Attorney dated _____ and
the Attorney declares that the Attorney has not
received any notice of the revocation of such
Power of Attorney, in the presence of:



Signature of Witness

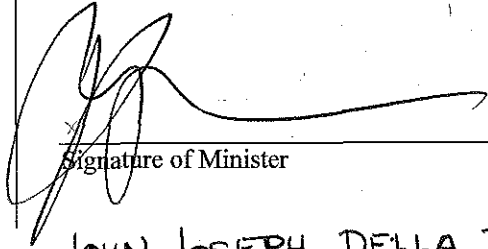
Rebecca Finkelstein

Name of Witness in full



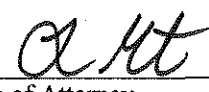
Signature of delegate **Robert Rust**
Chief Executive
Health Infrastructure

Name of delegate in full



Signature of Minister

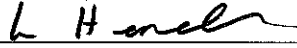
JOHN JOSEPH DELLA BOSCA
Name of Minister in full



Signature of Attorney

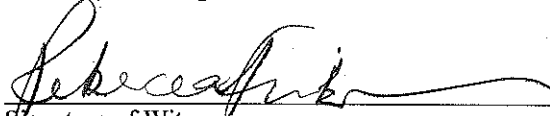
SIMON HUNTER
Name of Attorney in full

Signed sealed and delivered for and on behalf of **BNY Trust (Australia) Registry Limited** as security trustee of the Royal North Shore Hospital PPP Security Trust by its Attorney under a Power of Attorney dated 01/10/08 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:


Signature of Witness

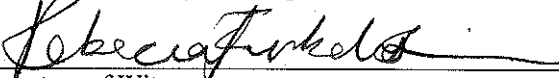
Lisa Handrock
Name of Witness in full

Signed sealed and delivered for and on behalf of **InfraShore Asset Management Pty Limited** as trustee of the ISAM Trust by its Attorney under a Power of Attorney dated 22/10/08 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Rebecca Finkelstein
Name of Witness in full

Signed sealed and delivered for and on behalf of **InfraShore Parking Pty Ltd** by its Attorney under a Power of Attorney dated 22/10/08 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:


Signature of Witness

Rebecca Finkelstein
Name of Witness in full


Signature of Attorney

Marjana Ivanoska
Vice President
Name of Attorney in full


Signature of Attorney

SIMON HUNTER
Name of Attorney in full


Signature of Attorney

SIMON HUNTER
Name of Attorney in full