

CLAYTON UTZ

Royal North Shore Hospital and Community Health Services

Fixed and Floating Charge

InfraShore Pty Ltd

ACN 124 557 008

Chargor

Health Administration Corporation

Chargee

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Fixed and Floating Charge made at *Sydney* on *23 October 2008*

Parties **InfraShore Pty Ltd ACN 124 557 008** of Level 22, ABN AMRO Tower, 88 Phillip Street Sydney 2000

("Chargor")

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

("Chargee")

Background

- A. The Chargor and the Chargee are parties to the Project Deed.
- B. The Chargor enters into this document to secure performance of its obligations under the Project Deed.

Operative provisions

1. Interpretations

1.1 Definitions

The following definitions apply in this document.

"Attorney" means an attorney appointed under clause 7.1.

"Books" has the same meaning as in the Corporations Act.

"Charge" means the charge created by clause 2.

"Charged Property" means all the Chargor's interest in all its assets, undertakings and rights anywhere (real and personal, and present and future) or any part of them including its uncalled capital and its called but unpaid capital for the time being.

"Collateral Security" means a Security Interest or Guarantee (other than the Charge) from any person that secures or otherwise provides for payment of any Secured Money.

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

"Encumbrancee" means a person in favour of whom a Security Interest is granted.

"Fixed Charge Property" means all the Chargor's interest (legal or equitable) both present and future in:

- (a) all real property (freehold and leasehold), all buildings and Fixtures on real property and all proceeds of sale of any of them;
- (b) all plant, machinery equipment vehicles, fittings, furniture, computer software and hardware;
- (c) uncalled or unpaid capital;

- (d) goodwill;
- (e) Consents;
- (f) any marketable securities (as defined in section 9 of the Corporations Act) other than marketable securities that are acquired and disposed of in the course of the ordinary day to day business of the Chargor;
- (g) all benefits, claims and returns of premiums relating to Insurances;
- (h) all rights under documents or agreements of any kind, any Guarantee issued in its favour, Security Interests, all bills of exchange and other negotiable instruments held by it, and any Books concerning the Chargor's business transactions;
- (i) all book and other debts payable to the Chargor, but not the proceeds of those debts; and
- (j) all Intellectual Property Rights.

"Fixtures" means all fixtures and fittings and fixed plant, machinery and equipment on any real property (freehold or leasehold) owned by the Chargor, or leased by the Chargor, where the Chargor has a right to remove such items.

"Floating Charge Property" means all Charged Property that is not Fixed Charge Property.

"Government Agency" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"Guarantee" means a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement, or other undertaking or obligation:

- (a) to provide funds (including by the purchase of property), or otherwise to make property available, in or to enable payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or
- (c) otherwise to be responsible for,
- (d) an obligation (whether or not it involves the payment of money), or otherwise to be responsible for the solvency or financial condition, of any other person.

"Insolvency Provision" means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to avoidance of conveyances in fraud of creditors or preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration or any of the assets of any person.

"Insurances" means all contracts and policies of insurance that are taken out by or on behalf of the Chargor or in which the Chargor has an interest.

"Permitted Encumbrance" means:

- (a) a Security Interest created under a Project Document;
- (b) a lien that arises by operation of Law in the ordinary course of ordinary business, where the amount secured is not overdue or is being diligently contested in good faith; or
- (c) each Finance Security (as defined in the Project Deed).

"Project Deed" means the deed entitled "Royal North Shore Hospital and Community Health Services PPP Project Deed" dated on or about the date of this document between the Chargee and the Chargor.

"Receiver" means a receiver or a receiver and manager appointed by the Chargee under this document and if more than one, then each of them, and also any servant, agent or delegate of them.

"Secured Money" means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Chargor to the Chargee on any account at any time under or in connection with the Project Documents or any transaction contemplated by them, whether:

- (a) present or future, actual or contingent;
- (b) incurred alone, jointly, severally or jointly and severally;
- (c) the Chargor is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which the Chargor is liable;
- (d) due to the Chargee alone or with another person;
- (e) the Chargee is entitled for its own account or the account of another person;
- (f) originally contemplated by the Chargor or the Chargee or not; and
- (g) the Chargee is the original person in whose favour the undertakings in this document or the Project Deed were given or an assignee and, if the Chargee is an assignee:
 - (i) whether or not the Chargor consented to or knew of the assignment;
 - (ii) no matter when the assignment occurred; and
 - (iii) whether or not the entitlements of that original person were assigned with the Charge.

"Secured Obligations" means each of the Chargor's obligations to the Chargee under the Project Deed and any other Project Document.

1.2 Definitions in Project Deed

Subject to clause 1.1, terms used in this document that are defined in the Project Deed have the same meanings in this document.

1.3 General

Clauses 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 41, 42.1, 42.2, 42.3, 42.4, 42.5, 42.6, 42.8, 42.10, 42.11, 42.13 and 42.14 of the Project Deed apply to this document mutatis mutandis.

1.4 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this document howsoever such rights, obligations or liabilities are sought to be enforced.

2. Charge

2.1 Charging provision

The Chargor as beneficial owner charges all the Charged Property in favour of the Chargee to secure the punctual payment of the Secured Money and performance of the Secured Obligations.

2.2 Priority

The Charge is a first ranking charge, except as otherwise provided in the Financiers Tripartite Deed.

2.3 Fixed and floating charge

The Charge operates:

- (a) as a fixed charge over all Fixed Charge Property, with the intention that each item of future property which comes within the description of a Fixed Charge Property will be specifically charged to the Chargee at the time it is acquired by the Chargor; and
- (b) subject to clause 2.5, as a floating charge over all Floating Charge Property.

2.4 Licence to deal with Floating Charge Property

Subject to any contrary provision in any Project Document and to clause 2.5, the Chargee licenses the Chargor to dispose of or otherwise deal with Floating Charge Property in the ordinary course of its ordinary business.

2.5 Crystallisation

The Charge will cease to operate as a floating charge and will operate as a fixed charge, and the licence under clause 2.4 will be withdrawn, automatically and immediately:

- (a) in relation to all Floating Charge Property, if:
 - (i) the Chargor ceases or threatens to cease to carry on its business;
 - (ii) an Insolvency Event occurs in respect of the Chargor; or
 - (iii) this document is enforced; and

-
- (b) in relation to part of the Floating Charge Property, if:
- (i) the Chargor creates or takes any step towards creating any Security Interest over that part of the Floating Charge Property in breach of clause 3;
 - (ii) the Chargor disposes of or deals with or takes any step towards disposing of or dealing with that part of the Floating Charge Property in breach of clause 3;
 - (iii) any step is taken to levy or enforce any distress or other execution on or against that part of the Floating Charge Property or to enforce any Security Interest relating to that part of the Floating Charge Property; or
 - (iv) after a Project Company Termination Event, the Chargee gives notice to the Chargor that the Charge is to crystallise in relation to that part of the Floating Charge Property;
- (c) in relation to any proceeds of any debt or other money included in Floating Charge Property that may be or become payable for any reason to the Chargor, if the Chargee gives notice to the Chargor that the Charge is to crystallise in relation to those proceeds; or
- (d) in relation to any money included in Floating Charge Property that may now or in the future be or become due to or held for the Chargor, or any other part of the Floating Charge Property that any Government Agency may in any way rank for payment of Taxes ahead of a floating charge, when the Chargor fails to pay any Taxes.

2.6 Floating nature of charge restored

If the Charge has become a fixed charge under clause 2.5 in relation to Floating Charge Property, the Chargee may, in its absolute discretion, restore the licence under clause 2.4 by written notice to the Chargor so that the Charge will again operate as a floating charge and not as a fixed charge in relation to that Floating Charge Property.

2.7 Priorities

For the purposes of fixing priorities between the Charge and any subsequent charge registered under the Corporations Act and for no other purposes, the Charge secures a prospective liability up to a maximum amount of \$500,000,000. The Charge may also secure prospective liabilities in excess of this specified maximum amount.

3. Covenants Concerning the Charged Property

3.1 Restrictions on dealing with Charged Property

The Chargor must not:

- (a) create, attempt to create or permit to exist any Security Interest other than a Permitted Encumbrance in relation to the Charged Property (whether ranking ahead of, equally with or after, the Charge); or

- (b) convey, assign, transfer, lease or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Charged Property whilst that part of the Charged Property is subject to the fixed charge created in this document;
 - (c) do or permit any act, omission or thing whereby the Charged Property becomes or could be liable to surrender, forfeiture or cancellation or becomes prejudiced in any manner or the value of this document as a security to the Chargee becomes or could be materially lessened;
 - (d) subject to this document, deal with or attempt to deal with the Charged Property other than in the ordinary course of its ordinary business; or
 - (e) take any step towards doing any of these things,
- without the Chargee's consent.

3.2 Protection of Charged Property

At the request of the Chargee, each Chargor will take or defend all legal proceedings that the Chargee considers necessary or desirable for the preservation, protection or recovery of the Charged Property.

3.3 Chargee assumes no obligations

The Chargee will not be deemed by virtue of this document to have assumed any obligation of any Chargor under any Consent or Legislation.

4. Representations and Warranties

4.1 Representations and warranties regarding Charged Property

The Chargor represents and warrants that:

- (a) it has good right and title to, and full power to charge, the Charged Property in the manner provided in this document; and
- (b) the Charged Property is free from all Security Interests other than Permitted Encumbrances.

4.2 Repetition of representations and warranties

The representations and warranties in this clause 4 are taken to be repeated on each day that there is any Secured Money or Secured Obligations on the basis of the facts and circumstances as at that date.

4.3 Reliance on representations and warranties

The Chargor acknowledges that the Chargee has executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this clause 4.

4.4 No representations by the Chargee

The Chargor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Chargee in deciding to enter into this document or to exercise any right under it.

5. Chargor's Undertakings

5.1 General undertakings

The Chargor must:

- (a) **(obligation to pay and perform)** punctually pay the Secured Money when it becomes payable in accordance with the Project Documents and perform the Secured Obligations in accordance with the Project Documents;
- (b) **(maintain status)** maintain its status as a company limited by shares under the Corporations Act;
- (c) **(comply with law)** comply with all applicable law including by paying when due all Taxes for which it or its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it or the relevant subsidiary has made adequate reserves for them);
- (d) **(no administrator)** not appoint an administrator without notice to the Chargee; and
- (e) **(registration and stamping)** immediately at its own cost:
 - (i) ensure that this document is registered (and not just provisionally) under section 263 of the Corporations Act;
 - (ii) register this document in any other places which the Chargee notifies to the Chargor if the Chargee is reasonably satisfied that registration is necessary or desirable to perfect the Charge or to protect the rights of the Chargee under this document; and
 - (iii) ensure that this document is stamped for the proper amount in each state and territory of Australia in which this document is required to be stamped.

5.2 Negative Pledge

The Chargor must not create or permit to exist any Security Interest over any Charged Property, other than a Permitted Encumbrance.

6. Chargee's Powers

6.1 Chargee may exercise powers without notice

To the full extent permitted by law, the Chargee is not required to give any notice or allow any time to elapse before:

- (a) enforcing a Project Document;

- (b) appointing a Receiver; or
- (c) exercising any power, right, discretion or remedy given to the Chargee by any Law, and the Chargor waives any statutory requirements for notice or lapse of time.

6.2 Chargee's right to make good a default

- (a) If the Chargor breaches this document, the Chargee may, in its absolute discretion, do everything it considers to be necessary or desirable to attempt to remedy the breach to the Chargee's satisfaction.
- (b) Paragraph (a) does not limit any other right the Chargee has under the Project Documents or at Law.

6.3 Powers on enforcement

If this document has become enforceable, the Chargee, or any of its authorised representatives, without notice to the Chargor, may:

- (a) exercise any of the powers that might be exercised by a Receiver even if a Receiver has not been appointed; and
- (b) complete any transfer or instrument of any nature executed by or on behalf of the Chargor in blank and deposited with the Chargee as Collateral Security, in favour of the Chargee or any appointee of the Chargee or any other person.

6.4 Act Jointly

The Chargee or the Receiver may exercise any of its powers, rights or discretions under this document in conjunction with the exercise of similar powers by any other Encumbrancee of the Charged Property or any receiver appointed by that Encumbrancee, and may enter into and give effect to agreements and arrangements with that other Encumbrancee or receiver as the Chargee or Receiver thinks fit.

6.5 WorkCover, workers' compensation, etc

The Chargee may from time to time debit and charge to the Chargor all costs, charges and expenses, legal or otherwise, including premiums for insurance and compensation and other money paid or payable by the Chargee or any Receiver appointed by the Chargee or any attorney of a Chargor appointed under any Legislation relating to Workcare, WorkCover and/or workers compensation.

6.6 Calls

- (a) If this document has become enforceable, the Chargor authorises the Chargee, each of the Chargee's authorised representatives and any Receiver to (and the directors of the Chargor may not):
 - (i) make calls on the members of the Chargor in relation to the Chargor's uncalled capital;
 - (ii) sue (in the name of the Chargor or otherwise) to recover money due in relation to calls; and

- (iii) give valid receipts for that money.
- (b) This authority is not terminated by any change in the Chargor's directors and is assignable.

7. Power of Attorney

7.1 Appointment of Attorneys

The Chargor irrevocably appoints the Chargee and each authorised representative of the Chargee, and, as an independent appointment, appoints any Receiver, severally its attorney to:

- (a) **(all acts necessary)** do anything necessary or desirable in the opinion of the Chargee or the Attorney to:
 - (i) give full effect to this document;
 - (ii) better secure the Charged Property to the Chargee in a manner consistent with this document; or
 - (iii) assist in the execution or exercise of any power,
including execute any transfer (including any transfer in blank) or other document;
- (b) **(recover Charged Property)** demand, sue for, recover and give discharge for Charged Property;
- (c) **(commence actions)** commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Charged Property;
- (d) **(bankruptcy and winding up)** take any necessary proceedings to procure the bankruptcy or the winding up of any debtor of the Chargor in connection with the Charged Property, and attend and vote at meetings of creditors, receive dividends in any bankruptcy or winding up or appoint a proxy for any of these things;
- (e) **(compound debts)** compound, settle or compromise any debt of the Chargor in connection with the Charged Property;
- (f) **(execute deeds)** execute any deed of assignment, composition or release in connection with the Charged Property;
- (g) **(exercise rights)** exercise all or any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
- (h) **(step in)** without limiting the foregoing, exercise all or any powers, rights, discretions and remedies available under or in connection with the Project Documents (including rights available upon exercise of the Step In Rights or the taking of any action under clause 19 or clause 32 of the Project Deed); and
- (i) **(general)** do anything else that the Chargor must or may do, or that the Chargee may do, under this document or by Law,

at the Chargor's cost, provided that such powers may be exercised only where permitted, contemplated or required in connection with the exercise of any of NSW Health's powers, rights and remedies under clauses 19 and 32 of the Project Deed or where NSW Health is entitled to enforce this document in accordance with clause 8.

Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.

7.2 General

- (a) An Attorney may do anything contemplated by this clause 7 even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it.
- (b) An Attorney may do anything contemplated by this clause 7 in its name, in the name of the Chargor or in the name of both of them.
- (c) The Chargor must ratify anything done by an Attorney under this clause 7.
- (d) The Chargor gives the power of attorney in this clause 7:
 - (i) to secure performance by the Chargor of its obligations to the Chargee under the Project Documents and any property interest of the Chargee under this document; and
 - (ii) for valuable consideration, receipt of which is acknowledged by the Chargor.

8. Enforcement

8.1 Circumstances when this document may be enforced

This document will immediately become enforceable (whether or not the Secured Money has become payable), if a Project Company Termination Event occurs, or if the Chargor fails to pay any Secured Money or perform any Secured Obligation in accordance with the Project Documents.

8.2 Enforcement despite earlier performance

This document may be enforced:

- (a) even if the Chargee accepts a payment or performance after any default; and
- (b) without the need for any notice to, or of any consent or agreement of, the Chargor or any other person.

9. Default Interest

9.1 Chargor must pay interest

The Chargor must pay interest on each amount that is not paid when due (unless the Chargor is already required to pay interest on the unpaid amount by the terms of an agreement between the Chargee and the Chargor), from the day after the date on which it falls due up to (and

including) the day on which it is paid in full, at the Prescribed Rate. This interest must be paid on demand.

9.2 Interest after judgment

If a liability of the Chargor becomes merged in a judgment or order, the Chargor, as an independent obligation must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 9.1.

9.3 Accrual and calculation of interest

Interest under this clause 9:

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

10. Appointment of Receiver

10.1 Appointment

If this document has become enforceable (whether or not the Chargee has entered into possession of all or any of the Charged Property) the Chargee or any authorised representative of the Chargee may at any time:

- (a) appoint any person or any 2 or more persons jointly or jointly and severally to be a receiver or receiver and manager (or an additional receiver or receiver and manager) of Charged Property;
- (b) remove the Receiver and in case of the removal, retirement or death of any Receiver appoint another as a replacement; and
- (c) fix the remuneration of the Receiver.

Subject to clause 10.2 and the next sentence, every Receiver appointed under this clause 10.1 will be the Chargor's agent and the Chargor alone will be responsible for its acts and defaults and remuneration. The Chargee may by notice to the Chargor and the Receiver require the Receiver to act as the Chargee's agent.

10.2 Receiver other than as Chargor's agent

The power to appoint a Receiver under this clause 10 may be exercised even though:

- (a) at the time when this document becomes enforceable or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the Chargor; or
- (b) a Receiver appointed in the circumstances specified in the preceding paragraph may not, or may not in some respects, act as the Chargor's agent.

10.3 Powers of Receiver

Without the need for any consent of the Chargor, each Receiver will have all the powers specified in section 420 of the Corporations Act, and in addition to those and any other rights, powers or discretions under this document, will have all of the following powers:

- (a) **(take possession)** take possession or control of, make use of, collect and get in Charged Property and for that purpose to take proceedings (in the name of the Chargor or otherwise);
- (b) **(give up possession)** give up possession of Charged Property;
- (c) **(exercise Chargee's rights)** exercise all or any of the Chargee's powers, rights, discretions and remedies under this document;
- (d) **(comply with directions)** comply with the directions given by the Chargee;
- (e) **(convert to money)** to convert, liquidate and reduce the Charged Property into money;
- (f) **(carry on business):**
 - (i) carry on or agree to carrying on the business of the Chargor in and with Charged Property and to stop doing so; and
 - (ii) effect all repairs, purchases and insurances, and generally to do everything that the Chargor might do in the ordinary conduct of its business to:
 - (iii) protect or improve Charged Property; or
 - (iv) obtain income or returns from Charged Property and to conduct the Chargor's business,without being responsible for any loss;
- (g) **(borrow from Chargee):**
 - (i) borrow from the Chargee any money that may be required for any of the purposes mentioned in paragraph (e); and
 - (ii) (in the name of the Chargor or otherwise) secure any money borrowed by mortgage or charge over Charged Property so that the mortgage or charge may rank in priority to, equally with or after the Charge,without the Chargee being bound to enquire whether the borrowing is necessary or proper or responsible for the misapplication or non application of any money borrowed;
- (h) **(hire out, lease or license)** hire out, lease or license Charged Property (including in the name of the Chargor) for any term at the rent or licence fee and on terms that seem desirable to the Receiver (with or without a purchase option and whether or not the Receiver has taken possession);

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- (i) **(conduct works)** to repair, renew, replace, renovate or clean the Charged Property, to erect any new buildings or make any improvements to any land forming part of the Charged Property, and to demolish, alter, rebuild or extend any existing buildings on the Charged Property;
- (j) **(exercise rights)** exercise all or any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
- (k) **(registration)** do everything necessary to obtain registration of the Charged Property in the Chargee's name or in the name of the Chargee's nominee;
- (l) **(settle disputes):**
- (i) settle, arrange and compromise any accounts, claims, questions or disputes that may arise in connection with the Chargor's business or the Charged Property or in any way relating to this document; and
 - (ii) execute releases or other discharges in relation to the settlement, arrangement, or compromise;
- (m) **(sell)** sell or agree to sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) Charged Property (or agree to do so):
- (i) by public auction, private sale or tender for cash or on credit;
 - (ii) in one lot or in parcels;
 - (iii) with or without special conditions, (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain:
 - A. outstanding on the security of a mortgage over the property sold or over any other property; or
 - B. owing without any security; and
 - (iv) on other terms the Receiver considers desirable,
- without being responsible for any loss;
- (n) **(transfer on sale)** execute transfers and assignments of Charged Property (including in the name of the Chargor), and do everything to complete any sale under paragraph (l) that the Receiver thinks necessary;
- (o) **(insure)** insure Charged Property that is of an insurable nature against risks of destruction, loss or damage for the amounts and on the terms that the Receiver thinks appropriate;
- (p) **(sever fixtures)** sever fixtures belonging to the Chargor and sell them apart from any other part of the Charged Property;
- (q) **(Invest proceeds against contingencies):** if any of the Secured Money is contingent, to invest, deposit or hold the Charged Property in a form or mode of

investment for the time being as the Receiver in its absolute discretion thinks fit, with like power to vary, transpose or re invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;

- (r) **(Enter into contracts):** to enter into any contract or arrangement with any person for any purpose connected with this document or the Charged Property or in furtherance of any of the power, right or discretion under this document, on such terms and conditions as the Receiver in its absolute discretion thinks fit, including granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with the Charged Property;
- (s) **(employees and agents)** engage employees, agents, advisers and contractors (including any person associated with a firm or company in which the Receiver is a member or in which it is interested) for any of the purposes of this clause 10.3 on terms that the Receiver thinks appropriate and the Receiver may act on any advice given by those persons;
- (t) **(give receipts)** give receipts for all money and other property that may come into the hands of the Receiver in exercise of any power given by this document;
- (u) **(enforce contracts)** carry out and enforce or otherwise obtain the benefit of all contracts:
 - (i) entered into or held by the Chargor in connection with the Charged Property; or
 - (ii) entered into in exercise of the powers given by this document,
 - (iii) including to vary or rescind all such contracts.
- (v) **(make debtors bankrupt)** make debtors bankrupt and wind up companies and do everything in connection with any bankruptcy or winding up that the Receiver thinks desirable to recover or protect Charged Property;
- (w) **(perform undertakings)** do everything necessary to perform any undertaking of the Chargor in this document;
- (x) **(receive money)** receive all money or other property payable or deliverable to the Chargor from Charged Property;
- (y) **(desirable or incidental matters):**
 - (i) do or cause to be done everything that the Receiver thinks desirable in the interests of the Chargee; and
 - (ii) do anything incidental to the exercise of any other power;
- (z) **(File):** to file all certificates, registrations and other documents and to take any and all action on behalf of a Chargor which the Chargee or Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of a Chargor and the Chargee in respect of any agreement for sale, and to obtain for the Chargee all of the benefits of this document and any Project Document; and in particular, the placing of a Chargor into liquidation or the

appointment of a Receiver will be deemed to be an event against which the Chargee may protect its rights;

- (aa) **(Operation of bank accounts):** to open or operate any bank account in a Chargor's name (whether alone or jointly) to the exclusion of the Chargor, and to deposit or withdraw any money to the credit of that account, and to sign and endorse or to authorise others to sign and endorse in the name of the Chargor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (bb) **(take legal proceedings)** take proceedings (including in the name of the Chargor) in connection with any of the above;
- (cc) **(delegate)** with the Chargee's consent delegate any of the powers given to the Receiver under this clause 10.3 to any person; and
- (dd) **(Receiver's discretion):** to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers and discretions as the Chargee confers on the Receiver by notice in writing to the Receiver for the purposes referred to in this clause 10.3.

10.4 Indemnity

The Chargee may give any indemnities to the Receiver concerning the performance of the Receiver's duties as are permitted by law. If the Chargee is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

11. Protection of Chargee and Appointees

11.1 Protection of Chargee and Receiver

- (a) The Chargee is not obliged to:
 - (i) notify any debtor or member of the Chargor or any other person of this document; or
 - (ii) enforce payment of any money payable to the Chargor, or take any step or proceeding for any similar purpose,
 but may do so.
- (b) None of the Chargee, any of its authorised representatives or any Receiver is liable for any omission or delay in exercising any power, right, discretion or remedy under this document or for any involuntary loss or irregularity that may occur in relation to the exercise or non exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct.

11.2 Conflict of interests

The Chargee, an authorised representative of the Chargee or other person appointed by the Chargee under this document, an administrator of the Chargor appointed by the Chargee, an Attorney and a Receiver may exercise or agree to exercising a power given by this document or by law even though that person may have a conflict of interest or duty in exercising the power. No contract will be void or voidable by virtue of that conflict of interest or duty, nor

will the Chargee or Receiver be liable to account to the Chargor or any other person for any money or property as a result of that conflict.

11.3 Liability for loss

(a) The Chargee or any Receiver is not liable for any loss that the Chargor suffers as a direct or indirect result of:

- (i) the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this document; and
- (ii) any release or dealing with any other Guarantee or Security Interest (including any prejudice to or loss of the Chargor's rights of subrogation),

except to the extent of its own fraud, gross negligence or wilful misconduct.

(b) If the Chargee or a Receiver enters into possession of Charged Property, none of the Chargee, any of its authorised representatives or any Receiver is liable:

- (i) to account as mortgagee in possession or for anything except actual receipts; or
- (ii) for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable,

except to the extent of its own fraud, gross negligence or wilful misconduct.

11.4 Waiver by Chargor

The Chargor waives in favour of the Chargee:

- (a) all rights against the Chargee and any other person, estate or assets as far as is necessary to give effect to any provision of this document;
- (b) promptness or diligence or the part of the Chargee, and any other requirement that the Chargee take any action or exhaust any right against any other person before enforcing the Charge; and
- (c) all rights inconsistent with the provisions of this Charge, including any rights of contribution or subrogation which a Chargor might otherwise be entitled to claim or enforce.

12. Protection of Third Parties

12.1 Dealings under this document

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this document is not:

- (a) bound to enquire:
 - (i) whether there has been a default;

- (ii) whether a Receiver has been properly appointed;
 - (iii) whether any Secured Money is owing; or
 - (iv) about the propriety or regularity of a sale, disposal or dealing;
- (b) affected by actual or constructive notice that a sale, disposal, transaction, document or other dealing is unnecessary or improper; and
- (c) will not be concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication.

Despite any irregularity or impropriety in the exercise of any right, power or discretion under this document, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this document and valid.

12.2 Receipts

A receipt that the Chargee, one of its authorised representatives or a Receiver gives for any money payable to or receivable by the Chargee or the Receiver because of this document will:

- (a) relieve the person paying or handing over money or other property from all liability:
- (i) for the application (or any loss or misapplication) of the money or other property;
 - (ii) to enquire whether the Secured Money has become payable; and
 - (iii) (where appropriate) as to the propriety or regularity of the appointment of the Receiver; and
- (b) discharge the person paying that money from its liability to pay that money.

13. Application of Money

13.1 Order

- (a) Subject to the terms of clause 9 of the Financiers' Tripartite Deed, money that the Chargee or a Receiver receives under or because of this document is to be applied in the following order:
- (i) **(expenses)** first in payment of all costs, charges, expenses or disbursements that the Chargee or a Receiver incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any Project Document;
 - (ii) **(outgoings)** then in payment of any other outgoings that the Receiver or the Chargee thinks it appropriate to pay;
 - (iii) **(Receiver)** then in payment to the Receiver of any remuneration (whether by way of commission or otherwise);

- (iv) **(indemnities)** then in payment to the Chargee or a Receiver of any amount necessary to give effect to any indemnity contained in this document; and
 - (v) **(Secured Money)** then in payment to the Chargee of the Secured Money.
- (b) Any surplus will belong to the Chargor or other persons entitled to it. The Chargee or Receiver may pay the surplus to the credit of a bank account in the name of the Chargor or other person entitled to it and will then be under no further liability in relation to it. The surplus will not accrue interest.

13.2 Only actual receipts credited

In applying any money towards the Secured Money, the Chargor's account will be credited only with the amount of the money that the Chargee actually receives for that purpose. The credit will date from the time of receipt.

13.3 Application of payments or credits

Each of the Chargee and the Receiver has an absolute discretion to apply any payment or credit received by it under this document in reduction of any part of the Secured Money, whenever and on whatever account it becomes secured, notwithstanding any principle or presumption of law to the contrary or any direction given at the time of receipt, and without the need to communicate this election to any person.

13.4 Compensation

If any compensation becomes payable for Charged Property, the Chargee may:

- (a) apply the sum received on account of any compensation, at the Chargee's option, in or towards repayment of the Secured Money;
- (b) make, enforce, settle or compromise any claims relating to compensation; and
- (c) execute any necessary assurances and releases in the name of the Chargor and the Chargee.

If any compensation comes into the hands of the Chargor before a final irrevocable discharge of this document, the Chargor must immediately pay it to the Chargee.

14. Continuing Security

14.1 Continuity

The Charge:

- (a) is a continuing security, and remains in full force until a final irrevocable discharge of the Charge is given to the Chargor despite any transaction or other thing (including a settlement of account or intervening payment); and
- (b) will apply to the present and future balance of the Secured Money.

14.2 Personal Liability

Notwithstanding any payout figure quoted or other form of account stated by the Chargee, no grant of full or partial satisfaction of or discharge from this document will release the Chargor from personal liability under this document or under any Project Document until all the Secured Money has in fact been received by the Chargee and is not liable to be disgorged, notwithstanding that the quotation or statement of account has arisen from the mistake, negligence, error of law or error of fact of the Chargee, its servants or agents.

14.3 Settlement Conditional

Any settlement or discharge between the Chargor and the Chargee is conditional on any security or payment given or made to the Chargee by the Chargor or any other person in relation to the Secured Obligations not being avoided, repaid or reduced by any Insolvency Provision. If the security or payment is avoided, repaid or reduced, the Chargee will be entitled to recover the value or amount of the security or payment avoided, repaid or reduced from that Chargor subsequently as if that settlement or discharged had not occurred.

14.4 Limitations on Chargor's rights

Until the Secured Money has been irrevocably paid and discharged in full, the Chargor may not:

- (a) share in any Guarantee, Security Interest or money received or receivable by the Chargee in relation to the Secured Money or stand in the place of the Chargee in relation to any Guarantee, Security Interest or right to receive money;
- (b) in reduction of its liability under this document, raise a defence, set off or counterclaim against the Chargee or claim a set off or make a counterclaim against the Chargee; or
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any document or agreement to which the Chargee is a party.

14.5 No marshalling

The Chargee is not under any obligation to marshal or appropriate in favour of the Chargor or to exercise, apply, perfect or recover any Security Interest that the Chargee holds at any time or any funds or property that the Chargee may be entitled to receive or have a claim on.

14.6 Effect of Insolvency Event

- (a) If an Insolvency Event has occurred in relation to the Chargor any amount paid by the Chargor (the **relevant payment**) will only be applied against any Secured Money if:
 - (i) the Chargee forms the opinion in good faith (which will be conclusively binding on the Chargor) that it will not be required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors; or
 - (ii) a final judgment is given by a court of competent jurisdiction in favour of the Chargee that it is not required to pay the relevant payment to any

person under any law relating to bankruptcy, winding up or the protection of creditors.

- (b) If an amount is applied against any Secured Money and the Chargee forms the opinion in good faith that it is obliged to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors:
 - (i) the Chargee's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
 - (ii) the Chargor must immediately do anything (including the signing of documents) required by the Chargee to restore to the Chargee any Guarantee or Security Interest to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (c) Any discharge or release between the Chargee and the Chargor is subject to reinstatement of the Chargee's rights under this clause 14.6.

15. Indemnities

15.1 Indemnity for breach or preservation of rights

The Chargor must indemnify the Chargee against, and must pay the Chargee on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement of any rights under this document.

15.2 Indemnity for exercise of rights or proceedings

To the extent permitted by Law, the Chargor must indemnify each of the Chargee, each authorised representative of the Chargee and each Receiver, Attorney, agent, administrator of the Chargor or other person appointed under this document or the Corporations Act by or on behalf of the Chargee as chargee under this document against, and must pay each of them on demand the amount of all losses, liabilities, expenses and Taxes (other than Excluded Taxes) that they each incur:

- (a) (directly or indirectly) in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this document or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Charged Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

15.3 Recovery from Charged Property

A person who is entitled to be indemnified for a loss, liability, expense or Tax under clause 15.1 or 15.2 may recover the amount to be indemnified direct from the Charged Property.

16. Discharge

The Chargee must at the request and cost of the Chargor reconvey, surrender or release any remaining Charged Property (as appropriate) to the Chargor and the Charged Property will then be discharged from the Charge:

- (a) when the Chargee is satisfied that:
 - (i) all the Secured Money has been irrevocably paid and discharged in full or satisfied in accordance with this document and (without limiting this clause) that clause 14.6 will not later apply;
 - (ii) each of the Secured Obligations has been performed and/or discharged in full; and
 - (iii) no amount remains contingently payable or may become payable on the security of the Charge (including under an indemnity); and
- (b) on payment or retention of all expenses incurred by or payable to the Chargee, its authorised representatives or any Receiver or Attorney.

Any discharge is subject to clause 14.6.

17. Amendment

This document can only be amended, supplemented, replaced or novated by another document signed by the parties.

18. General

18.1 No merger

Nothing in this document merges with any other Security Interest, or any Guarantee, judgment or other right or remedy, that the Chargee may hold at any time.

18.2 Authorised Representative

The Chargee may from time to time appoint in writing one or more natural persons, each of whom:

- (a) may exercise any of its powers, duties, discretions and authorities as are delegated by the Chargee to be exercised by that person as agent for the Chargee; and
- (b) has the full power and authority, subject to the powers of delegation by the Chargee, to act for and on behalf of and to bind the Chargee under this document to the extent of the delegation and in compliance with the delegation.

Executed as a deed.

Signed sealed and delivered for and on behalf of **InfraShore Pty Ltd** by its Attorney under a Power of Attorney dated 22 October 2008, 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 Attorney

Signature of Witness

SIMON HUNTER

Name of Attorney in full

Rebecca Finkelstein

Name of Witness in full

Signed sealed and delivered by the Chief Executive of Health Infrastructure, as delegate of the **Health Administration Corporation** pursuant to section 21 of the Health Administration Act 1982 (NSW) under delegation dated 23 October 2008 and the delegate hereby certifies that it has no notice of the revocation of such delegation:

Signature

Signature of Witness

Robert Rust
Chief Executive
Health Infrastructure

Stuart Michael Cosgriff

Name of Witness in full

Name of delegate