

Confidential

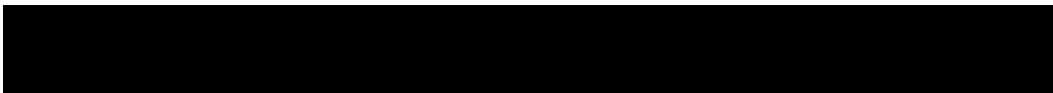
*Social and Affordable Housing Fund –  
Financier's Tripartite Deed*

*Department of Family and Community Services (FACS)*

and

*SGCH Sustainability Limited (ServiceCo)*

and



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# Social and Affordable Housing Fund – Financier's Tripartite Deed

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Date

25 January 2017

Parties

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

SGCH Sustainability Limited (ACN 606 965 799) (**ServiceCo**)



## Background

- A. FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- B. ServiceCo, the Financier and others have entered, or will enter, into the Finance Documents to finance the Service Package.
- C. The parties are entering into this Deed to record the agreement between them in relation to the interaction of their respective rights and obligations under the Service Package Documents and the Financier's Securities.

## Operative provisions

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### 1. Definitions

#### 1.1 Definitions

In this Deed:

**Account Bank** means 

**Account Bank Deed** means the Original Account Bank Deed, as amended by the Account Bank Deed Amendment.

**Account Bank Deed Amendment** means the Deed of Amendment – ADI Account Control Deed dated on or about the date of this deed, between the Financier, the Account Bank and ServiceCo.

**Appointed Representative** means a Representative appointed in accordance with clause 5.5.

**Australian Prudential Regulation Authority** means the statutory body with responsibility for regulation of the Australian financial services industry established pursuant to the *Australian Prudential Regulation Authority Act 1998* (Cth), or any replacement body.

**FACS Intention to Terminate Notice** has the meaning given to that term in clause 4.2.

**FACS Tripartite Rights** has the meaning given to it in clause 7.1(a).

**Finance Default Notice** has the meaning given to it in clause 4.3.

**Finance Event of Default** means an "Event of Default" as defined in the Finance Documents.

**Financier's Subcontract Tripartite** has the meaning given to the expression 'SAHF Subcontract Tripartite Deed' in the Finance Documents.

**Financier's Security** means the security interest granted in favour of the Financier under the Finance Documents, in accordance with clause 42.1(b) (*Assignment, amendments and other dealings by ServiceCo*) of the Services Agreement.

**Financier's Tripartite Rights** has the meaning given to that term in clause 7.1(a).

**Fit and Proper Person** means a person or entity who:

- (a) is solvent and reputable;
- (b) does not have an interest which conflicts in a material way with the interests of FACS or is involved in a business or activity which is incompatible or inappropriate in relation to the Service Package;
- (c) (in the case of a Suitable Substitute notified pursuant to clause 8.1(a)(i)) has or has available to it a sufficient level of financial, managerial and technical capacity to carry out the Service Package Activities under the Service Package Documents; and
- (d) is a Registered CHP with Tier 1 or 2 accreditation,

provided that:

- (e) a novation or transfer of ServiceCo's rights and liabilities under the Service Package Documents to that person; or
- (f) a transfer of the legal or beneficial ownership of the equity or ownership interests in ServiceCo to that person,

would not:

- (g) be against the public interest;
- (h) lead to the occurrence of a Probity Event;
- (i) have a Material Adverse Effect; or
- (j) increase the level of risk or liabilities of FACS or any Associate of FACS.

**General Security Deed** means the General Security Deed dated 19 November 2015 between ServiceCo and the Financier.

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of ServiceCo to comply with its obligations under any Service Package Document;
- (b) FACS' rights under any Service Package Document; or
- (c) the ability of ServiceCo to pay to the Financier the amounts due under, and substantially in accordance with, the Finance Documents.

**Nominated Dwellings** has the meaning given to that term in Schedule 20 of the Services Agreement.

**Nominated Relevant Infrastructure** has the meaning given that term in Schedule 20 of the Services Agreement.

**Novation Date** means the date any novation or change in ownership referred to in clause 8.1(a) becomes effective.

**Original Account Bank Deed** means the ADI Account Control Deed dated 1 December 2015 between the Financier, the Account Bank and ServiceCo.

**Permitted Financier List** means the list of financial institutions set out in the letter provided by ServiceCo to and approved by FACS on or prior to date of this Deed, as updated from time to time by agreement of ServiceCo, the Financier and FACS.

**Permitted Investment Fund List** means the list of investment funds set out in the letter provided by ServiceCo to and approved by FACS on or prior to the date of this Deed, as updated from time to time by agreement of ServiceCo, the Financier and FACS.

**Personal Property Securities Act (PPSA)** means the *Personal Property Securities Act 2009* (Cth).

**Personal Property Securities Register** means the register established under chapter 5 of the PPSA.

**President** has the meaning given to that term in clause 5.6(b).

**Real Property Security Pool** means real properties owned by ServiceCo and subject to real property mortgages in favour of the Financier.

**Related Entity** has the meaning given to that term in the Corporations Act.

**Relevant Property** means:

- (a) where clause 8.4(a) applies, the property referred to in that clause; or
- (b) where clause 8.4(b) applies, each:
  - (i) Nominated Dwelling and any Nominated Relevant Infrastructure corresponding to that Nominated Dwelling subject to the exercise of the Option to Lease by FACS; and
  - (ii) Site lease to be novated to FACS or its nominee in accordance with a Lease Side Deed.

**Remedy** means, with respect to a breach, default or event (an "Event"):

- (a) if the Event is capable of being cured, to cure the Event in accordance with the applicable contract; and
- (b) if the Event is not capable of being cured, to take steps reasonably acceptable to FACS to overcome the effects of the Event and to prevent the recurrence of the Event; or
- (c) otherwise making arrangements satisfactory to FACS (acting in its sole discretion),

and may include the replacement of a defaulting contractor, the assignment or novation of ServiceCo's interests in the Service Package Documents or the payment of reasonable compensation.

**Representative** means each of:

- (a) the Financier; and
- (b) an attorney, agent, manager, receiver, receiver and manager, administrator or analogous person appointed by the Financier under any Financier's Security.

**Revival Date** means, if a FACS Intention to Terminate Notice has been issued by FACS and:

- (a) if no Step-In Notice is issued by the Financier in accordance with clause 5.2, the proposed date of issue of the Termination Notice (as specified in the FACS Intention to Terminate Notice); or
- (b) if a Step-In Notice has been issued by the Financier in accordance with clause 5.2 and:
  - (i) it is withdrawn in accordance with this Deed, the date of the withdrawal; or
  - (ii) a Step-In Period has commenced, the expiry of that Step-In Period.

**Secured Money** has the meaning given to it in the Facility Agreement.

**Service Package Breach** means a breach by ServiceCo of any of its obligations under the Service Package Documents and includes the occurrence of any Major Default or Default Termination Event.

**Services Agreement** means the deed entitled Social and Affordable Housing Fund - Services Agreement dated on or about the date of this Deed between FACS and ServiceCo.

**Statutory Step-In Event** means the appointment of a statutory manager to conduct the affairs and activities of ServiceCo, as described in clause 28 (*Step-In by appointment of statutory manager*) of the Services Agreement.

**Step-In Date** means the date specified in the Step-In Notice issued by the Financier to FACS under clause 5.2 on which a step in is to be effected in accordance with clause 5.5 or such later date as may be agreed between FACS and the Financier.

**Step-In Notice** has the meaning given to that term in clause 5.2.

**Step-In Period** means the period on and from the Step-In Date up to and including the earliest of:

- (a) the date specified in a notice issued in accordance with clause 5.8(a) or 5.9;
- (b) the Novation Date;
- (c) the Expiry Date; and
- (d) the date contained in the Step-In Report as agreed under clause 5.4 and, if applicable, extended under clause 5.10.

**Step-In Report** means the report produced and agreed between FACS and the Financier in accordance with clause 5.4, as updated in accordance with this Deed.

**Suitable Substitute** means a Suitable Substitute Owner or a Suitable Substitute ServiceCo (as applicable).

**Suitable Substitute Owner** means a proposed owner of ServiceCo notified to FACS under clause 8.1(a) as approved by FACS under clause 8.1(b).

**Suitable Substitute ServiceCo** means a proposed contractor notified to FACS under clause 8.1(a) as approved by FACS under clause 8.1(b).

**Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by an Authority, together with any related interest, penalty, fine or other charge.

**Termination Notice** means a notice given by FACS to ServiceCo under clause 32.4 (*Termination for Default Termination Event*) of the Services Agreement.

## 1.2 Definitions in Services Agreement

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

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## 2. General rules of interpretation

### 2.1 Services Agreement provisions incorporated by reference

The parties agree to be bound by clause 2 (*General rules of interpretation*) of the Services Agreement (other than clauses 2.2 (*Composition of this Agreement and order of precedence*) and 2.26 (*Community housing agreement*)) in the form that clause takes as at the date of this Deed, as if set out in its entirety in this clause 2, except that for the purposes of this Deed:

- (a) references in those clauses to 'this Agreement' shall be read as references to 'this Deed'; and
- (b) references in those clauses to ServiceCo shall be read as references to each of ServiceCo and the Financier.

### 2.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this Deed.

### 2.3 Multiple parties

If a party to this Deed is made up of more than one person, or a term is used in this Deed to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

### 2.4 Service Package Documents

The Financier acknowledges that it has received a copy of:

- (a) the Services Agreement; and
- (b) the Side Deeds.



## 2.5 Order of precedence

If there is an ambiguity, discrepancy or inconsistency between this Deed and the Services Agreement, then the provisions of this Deed will take precedence over those of the Services Agreement.

## 2.6 Approvals and consents

- (a) For the avoidance of doubt, all approvals, consents, decisions or exercises of discretion required to be given or made by FACS:
- (i) relating to, or arising under or in connection with this Deed (including in respect of a Step-In Report under clause 5.4); or
  - (ii) sought in relation to or in connection with, or referable to, or determinative of, the occurrence of any Service Package Breach,
- and regardless of whether the requirement of the approval, consent, decision or exercise of discretion is express or implied, FACS has the right to give or make its approval, consent or decision or exercise its discretion conditionally or unconditionally or to withhold its approval, consent, decision or exercise of discretion but in giving or withholding its approval, consent, decision or exercise of discretion, or in imposing any conditions, FACS must act reasonably.
- (b) Without limitation, FACS will not be acting unreasonably merely because, in giving or withholding any approval or consent, or in imposing any conditions, FACS:
- (i) acts in accordance with relevant government policies;
  - (ii) adopts a "whole of government" approach; or
  - (iii) acts to protect its reputation.

## 2.7 Role of Representative

Where in this Deed there is a reference to:

- (a) the Financier doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to the Financier procuring any Representative appointed by the Financier in accordance with any Financiers' Security and this Deed which has been notified to and approved by FACS in accordance with this Deed doing, or refraining from doing, that act, matter or thing;
- (b) FACS doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to the FACS Representative which has been notified to ServiceCo in accordance with the Services Agreement doing, or refraining from doing, that act, matter or thing; or
- (c) ServiceCo doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to ServiceCo procuring any ServiceCo Representative appointed by ServiceCo in accordance with the Services Agreement which has been notified to and approved by FACS in accordance with the Services Agreement doing, or refraining from doing, that act, matter or thing.

## 2.8 Acknowledgments of ServiceCo

ServiceCo acknowledges, consents and agrees to the arrangements set out herein, and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Deed.

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### **3. Acknowledgments and consents**

#### **3.1 Acknowledgments of FACS**

FACS:

- (a) acknowledges and consents to the creation and existence of the Financier's Securities;
- (b) acknowledges and agrees that the Financier is not subject to any duty or obligation under the Service Package Documents as a result of the Financier's Securities, except as specifically set out under this Deed;
- (c) acknowledges and agrees that the creation and existence of the Financier's Securities is not, of itself, a Service Package Breach; and
- (d) acknowledges and agrees that, without limiting the liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Service Package Documents), neither the Financier nor any other Representative will be liable, or taken to have assumed liability, for any obligations of ServiceCo under the Service Package Documents by reason only of the creation or enforcement of any rights under the Financier's Securities, the appointment of the Representative or the exercise by the Representative of any of ServiceCo's rights or powers under the Service Package Documents, other than to the extent confirmed in writing by the Financier or Representative.

#### **3.2 No extension of rights**

- (a) Unless expressly authorised or set out under this Deed, nothing in this Deed or the Finance Documents:
  - (i) authorises the Financier to do anything which ServiceCo may not do under the Services Agreement;
  - (ii) operates to grant the Financier rights greater than the rights of ServiceCo under the Services Agreement; or
  - (iii) authorises the Financier or any Representative to do any act or thing without FACS' consent where, under the Services Agreement, ServiceCo requires FACS' consent to such act or thing.
- (b) To the extent that there is an inconsistency with a right of the Financier or FACS to exercise any power or do anything under the Finance Documents or the Service Package Documents (respectively) and this Deed, the Financier and FACS agree not to exercise that power or do anything under the Finance Documents or the Service Package Documents (respectively) in a manner which is inconsistent with this Deed.

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### **4. Notices and Events of Default**

#### **4.1 FACS notice obligations**

FACS will provide to the Financier a copy of any:

- (a) Major Default Notice; or
- (b) notice (if any) of the occurrence of a Default Termination Event,

in each case on or about the date that such notice is provided to ServiceCo.

## 4.2 FACS restricted from issuing a Termination Notice

FACS shall not issue a Termination Notice without giving to the Financier a prior written notice (**FACS Intention to Terminate Notice**) setting out:

- (a) the proposed date of issue by FACS to ServiceCo of the Termination Notice (which must not be less than ■ Business Days from the date of the FACS Intention to Terminate Notice);
- (b) the proposed date on which the Services Agreement will terminate; and
- (c) details of the Default Termination Event giving rise to the Termination Notice.

## 4.3 Financier notice obligations

- (a) The Financier must, within:
  - (i) ■ Business Days of becoming aware of a Finance Event of Default, give notice (**Finance Default Notice**) to FACS setting out reasonable details of the Finance Event of Default; and
  - (ii) a further ■ Business Days of the date of the Finance Default Notice, notify FACS whether the Financier intends to exercise its rights under the Finance Documents and, if so, the proposed date for, and proposed method of, such exercise.
- (b) If at any time after a Finance Default Notice has been given, the intentions of the Financier change or, as referred to in clause 4.3(a)(ii) above it intends to exercise its rights under the Finance Documents to take action to enforce any Financier's Security, the Financier must promptly give a further notice to FACS setting out the action it proposes to take.
- (c) Subject to the Financier providing the notices under clauses 4.3(a) and (b) and otherwise complying with its obligations under this Deed, nothing in this Deed restricts the rights of the Financier to enforce the Finance Documents in accordance with their terms.

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## 5. Financier's cure rights

### 5.1 FACS acknowledgments regarding the Financier's cure rights

FACS acknowledges and agrees that:

- (a) the Financier will have rights under the Finance Documents and this Deed to take steps to Remedy, or procure the Remedy, of a Service Package Breach, in conjunction with ServiceCo's rights to Remedy Service Package Breaches under the Services Agreement;
- (b) all acts, matters or things done or effected by the Financier which would satisfy (had they been done or effected by ServiceCo) any of the obligations of ServiceCo (including any Remedy of any Service Package Breach or performance of ServiceCo's obligations under a Service Package Document effected by the Financier or an Appointed Representative under the remainder of this clause 5) shall be effective, as between FACS and ServiceCo, to satisfy and discharge the relevant obligations of ServiceCo or to Remedy the relevant Service Package Breach to the same extent as if it had been done or effected by ServiceCo;
- (c) ServiceCo or the Appointed Representative will be taken to have Remedied a Service Package Breach which cannot be remedied, if ServiceCo or Appointed

Representative has implemented a program acceptable to FACS to prevent the recurrence of the Service Package Breach (including in accordance with a Step-In Report), or has taken such other steps or made such other arrangements as are satisfactory to FACS to overcome or mitigate the effects of the Service Package Breach;

- (d) without derogating from any other rights the Financier may have under this Deed or the Financier's Securities, FACS agrees that:
  - (i) if the Financier appoints a Representative under the Financier's Securities; or
  - (ii) if any enforcement action is taken in accordance with the remainder of this clause 5,

that appointment or enforcement action will not, for the duration of the Representative's appointment in accordance with this Deed or the duration of the enforcement action, of itself constitute a Service Package Breach; and

- (e) during a Step-In Period, the Services Agreement shall remain in full force and effect and FACS' and ServiceCo's rights and obligations under the Services Agreement and other Service Package Documents will, subject to this Deed and except as otherwise agreed in the Step-In Report, continue.

## 5.2 Financier may give notice of intention to step-in

At any time during the period:

- (a) in the case of a Default Termination Event, commencing upon receipt by the Financier of a FACS Intention to Terminate Notice and ending one Business Day prior to the proposed date termination of the Services Agreement will take effect as specified in the FACS Intention to Terminate Notice; or
- (b) in the case of a Finance Event of Default, commencing upon receipt by FACS of a Finance Default Notice under clause 4.3(a)(i) or subsequent notice provided under clause 4.3(b) which includes a statement that the Financier intends to exercise its rights under the Finance Documents, and ending one Business Day prior to the proposed date of exercise of rights under the Finance Documents,

the Financier may (but is not obliged to) give notice to FACS (**Step-In Notice**) stating that a Representative intends to step in within 20 Business Days from the date of the Step-In Notice and specifying the date on which a step in is to be effected in accordance with clause 5.5 with such date being no earlier than the date the information set out in clause 5.4(a) has been provided to FACS.

## 5.3 FACS Termination Rights restricted

- (a) FACS must not issue a Termination Notice:
  - (i) in respect of a Default Termination Event (other than Default Termination Events arising solely as a result of a Finance Event of Default), during the period referred to in clause 5.2(a);
  - (ii) in respect of a Default Termination Event arising solely as a result of a Finance Event of Default, during the period referred to in clause 5.2(b) unless FACS has issued or issues during such period a FACS Intention to Terminate Notice and the period referred to in clause 5.2(a) has expired without the Financier having given a Step In Notice;

- (iii) once a Step-In Notice is given by the Financier under clause 5.2 above, at any time prior to the Step-In Date proposed in the Step-In Notice, unless the Step-In Notice is withdrawn;
  - (iv) otherwise than in accordance with clause 5.8, during the Step-In Period; or
  - (v) in respect of any Service Package Breach which has been Remedied by ServiceCo or the Appointed Representative including:
    - A. in accordance with a remedy program provided under clause 31.3 (*ServiceCo to provide remedy program and comply with Major Default Notice*) of the Services Agreement;
    - B. in accordance with a Step-In Report; or
    - C. as otherwise agreed with FACS.
- (b) Subject to the operation of clause 6 and without limiting FACS' rights to terminate the Services Agreement during the Step-In Period under clause 5.8, if a FACS Intention to Terminate Notice has been issued and any Default Termination Event specified in that FACS Intention to Terminate Notice is continuing, FACS will be entitled on and after the Revival Date to:
- (i) exercise any rights available to it in relation to that Default Termination Event, including issuing a Termination Notice; and
  - (ii) pursue any claims and exercise any remedies, in addition to termination, which FACS may have under the Service Package Documents or otherwise against ServiceCo.

#### 5.4 Step-In Report

- (a) Within ■ Business Days of receipt by FACS of a Step-In Notice, the Financier must provide FACS with:
  - (i) a draft proposal for a Step-In Report; and
  - (ii) details of any Representative the Financier proposes to exercise the rights set out in clause 5.5, including any reasonable particulars requested by FACS.
- (b) Within ■ Business Days of receipt by FACS of the information set out in clause 5.4(a), FACS and the Financier must meet to agree the Step-In Report in accordance with this clause.
- (c) FACS and the Financier will jointly develop a report in relation to the Step-In Period, which will include the following details:
  - (i) any obligations which are or will become outstanding by ServiceCo to FACS under the Service Package Documents during the Step-In Period;
  - (ii) a detailed program to Remedy or overcome the effects of any Service Package Breaches and/or prevent the recurrence of Service Package Breaches where the relevant Service Package Breaches are not remediable;
  - (iii) details of the proposal for the performance of obligations which are or will become outstanding by ServiceCo to FACS under the Service Package Documents during the Step-In Period including the extent to

which the Financier or an Appointed Representative will continue to perform the Service Package Activities during the Step-In Period;

- (iv) a program to Remedy any Finance Events of Default;
  - (v) the duration of the Step-In Period, which must be for a period of no less than the period reasonably required by the Financier or an Appointed Representative to Remedy the relevant Service Package Breach and no longer than 180 days after the Step-In Date (or any longer period agreed by FACS (acting reasonably) including in circumstances where clause 5.4(c)(vi) applies), and the actions to be taken by each party during the Step-In Period;
  - (vi) where the Remedy involves the replacement of a Key Subcontractor that holds any necessary accreditation, a detailed program for the replacement contractor to obtain the required accreditation to undertake the applicable Service Package Activities;
  - (vii) details of the proposed insurance arrangements during the Step-In Period; and
  - (viii) the Service Package Documents under which the Appointed Representative will be assuming ServiceCo's rights and obligations.
- (d) FACS and the Financier will use all reasonable efforts for a period of ■ Business Days after the date of the first meeting pursuant to clause 5.4(b) to jointly produce and settle a report in relation to the Step-In Period. If, at the end of that period, FACS and the Financier have not reached agreement on a Step-In Report, either party may refer the matter for dispute resolution on an expedited basis in accordance with clause 5.11.
- (e) FACS may designate an auditor and/or technical adviser to verify any information provided in relation to the Step-In Report. Each party to this Deed must provide access to and make copies of all records, documents, data and accounting and other information relating to the Service Package in its possession which the auditor or technical adviser reasonably requires in order to make such verification or itself determine such information.
- (f) All costs incurred by any party in relation to the production or verification of the Step-In Report will be paid or reimbursed on demand by ServiceCo unless, in relation to the verification of the Step-In Report requested by FACS under clause 5.4(e) above, the auditor and/or technical adviser did not make any adverse findings against the content of the report provided by ServiceCo, in which case FACS will bear the cost of such verification.
- (g) The Financier must give written notice to FACS of any further details, plans and reports regarding the status of the Service Package and the implementation of the Step-In Report (and any consequential changes to the Step-In Report) at least once in each month during the Step-In Period. Upon request by FACS (which may be made no more than once in each month), the Step-In Report will be updated by the Financier and submitted to FACS for approval (not to be unreasonably withheld or delayed) to take into consideration matters raised by the Financier not contemplated in the original Step-In Report.
- (h) Each of ServiceCo and FACS must notify the other and the Financier as soon as it becomes aware of a Service Package Breach which is subsisting at any time during the Step-In Period, but is not identified in the Step-In Report, and the Step-In Report must be updated by the Financier in accordance with this clause 5.4 to take account of such event or circumstance.

## 5.5 Appointed Representative may step-in

- (a) Provided the Financier has complied, and continues to comply, with its obligations under clauses 4 and 5, and without limiting the other actions which the Financier is permitted to take under this Deed, following the occurrence of a Service Package Breach or a Finance Event of Default, a Representative may be appointed by the Financier to step in to possession and control of ServiceCo's rights and obligations under and interest in the Service Package Documents on the Step-In Date (**Appointed Representative**).
- (b) The Financier acknowledges and agrees that it will not appoint a Representative to exercise the rights set out in this clause 5.5 unless the proposed Representative:
  - (i) is a suitable and appropriate person to carry on the Service Package during the Step-In Period; and
  - (ii) will continue to be able to carry out or procure the performance of the obligations of ServiceCo under the Services Agreement during the Step-In Period unless otherwise agreed by FACS (acting reasonably).
- (c) ServiceCo acknowledges that any action taken under this clause 5 will not affect any rights the Appointed Representative, FACS and the Financier may have against ServiceCo.
- (d) The Financier must require that the Appointed Representative:
  - (i) observes ServiceCo's rights and obligations under the Service Package Documents (as if the Appointed Representative was ServiceCo); and
  - (ii) minimises any disruption to the Service Package Activities under the Services Agreement, as a result of it exercising its rights or carrying out its obligations under this Deed (except to the extent expressly contemplated in the Step-In Report).
- (e) The Financier acknowledges and agrees that, except as expressly contemplated by the Step-In Report, neither it nor any Appointed Representative shall in any way knowingly interfere with the performance by each Key Subcontractor of its obligations under its Key Subcontract, including by limiting or otherwise restricting its access to the Site, except to the extent set out in the Step-in Report.
- (f) ServiceCo (and to the extent confirmed in writing by the Financier in accordance with the Step-In Report or otherwise, the Financier) is liable to FACS for the acts and omissions of any Appointed Representative and contractor or person engaged by the Appointed Representative in connection with this Deed and ServiceCo:
  - (i) consents to the Appointed Representative exercising its rights under this clause 5; and
  - (ii) agrees that any act or omission of the Appointed Representative or any contractor or person engaged by the Appointed Representative in exercising the rights and powers of ServiceCo under the Service Package Documents is deemed to be an act or omission of ServiceCo under the Service Package Documents.
- (g) If the Appointed Representative takes any steps to remedy a Service Package Breach, the Financier must require that the Appointed Representative must not, in doing so, do anything which, if it were done by ServiceCo, would be a breach of the terms of any Service Package Document, unless otherwise agreed in the Step-In Report.

## 5.6 FACS may request replacement of Appointed Representative

- (a) If:
- (i) at any time after receiving the information set out in clause 5.4(a), FACS notifies the Financier that it is not satisfied that a Representative meets the criteria contained in clause 5.5(b) (which notice must specify the reasons why FACS has reached that view); or
  - (ii) at any time during the Step-In Period, FACS notifies the Financier that it reasonably considers that the Representative no longer meets the criteria in clause 5.5(b) (which notice must specify the reasons why FACS has reached that view),
- the Financier must nominate a substitute Representative, acceptable to FACS, to replace the Appointed Representative within 10 Business Days.
- (b) If the proposed Representative nominated by the Financier to replace the Appointed Representative pursuant to clause 5.6(a) is not acceptable to FACS, either party may refer the selection of an appropriate Representative to the President for the time being of the Chartered Accountants Australia and New Zealand (the **President**) who must only select an appropriate Representative who, in the opinion of the President meets the criteria contained in clause 5.5(b), and the parties agree that the decision of the President on the identity of the Representative will be final and binding on both parties, provided the decision of the President is based on the criteria set out in clause 5.5(b). The Step-In Period will be extended by the period of time required to find and appoint a substitute Representative acceptable to FACS or appointed by the President for the time being of the Chartered Accountants Australia and New Zealand.
- (c) Subject to FACS' prior written approval (such approval not to be unreasonably withheld or delayed and must be given if details of any such engagement are agreed in the Step-In Report), the Representative may engage additional skilled consultants or contractors to assist it in carrying out the obligations of ServiceCo under the Service Package Documents.

## 5.7 Deemed cure

FACS acknowledges and agrees that if the Financier appoints an Appointed Representative under the Financier's Securities and that Appointed Representative continues to act in accordance with the Step-In Report and this Deed then that appointment will be taken, for the duration of the Appointed Representative's appointment in accordance with this Deed, to Remedy the Default Termination Event constituted by:

- (a) an Insolvency Event in relation to ServiceCo which occurred prior to the appointment or which subsists or occurs during the appointment; or
- (b) a Change in Control (which is not a Permitted Change in Control) occurring in respect of ServiceCo other than in accordance with clause 43 (*Change in Control*) of the Services Agreement.

## 5.8 Termination during Step-In Period

- (a) FACS will be entitled to terminate the Services Agreement during the Step-In Period by written notice to ServiceCo, the Financier and the Appointed Representative only where one or more of the following has occurred:
- (i) the Financier or its Appointed Representative notify FACS in writing that they do not intend to Remedy the breach which gave rise to the FACS



Intention to Terminate Notice or the Step-In Period has been terminated by the Appointed Representative under clause 5.9;

- (ii) prior to FACS and the Financier agreeing a Step-In Report in accordance with clause 5.4:
    - A. the Financier or its Appointed Representative in the reasonable opinion of FACS engage in conduct that indicates that they do not intend to Remedy any Service Package Breach (in respect of which the Financier has received notice under clauses 4.1 or 4.2) that:
      - 1) arose prior to the Step-In Date;
      - 2) is continuing (and capable of Remedy); and
      - 3) would have entitled FACS to terminate the Services Agreement at that time,other than to the extent that the parties are unable to agree what action is required to Remedy a Service Package Breach and the matter has been referred to dispute resolution in accordance with clause 5.11, and until the dispute is resolved FACS will not be entitled to issue a notice or terminate the Services Agreement under this clause 5.8(a)(ii) on the basis that the Financier or its Appointed Representative has engaged in conduct that indicates that they do not intend to Remedy any such Service Package Breach; or
    - B. unless otherwise agreed by FACS, ServiceCo, the Financier or an Appointed Representative is not continuing to perform the Service Package Activities to the extent it is able to do so;
  - (iii) once FACS and the Financier have agreed a Step-In Report in accordance with clause 5.4:
    - A. the Appointed Representative does not use all reasonable endeavours to Remedy any Service Package Breach in accordance with the Step-In Report; or
    - B. the Financier or an Appointed Representative is not continuing to perform the Service Package Activities to the extent agreed in the Step-In Report; or
  - (iv) in relation to a Step-In Period that commenced as a result of a Finance Event of Default, a Default Termination Event occurs during the Step-In Period (other than a Default Termination Event which is already the subject of the Finance Event of Default and is identified in the Step-In Report and which is being remedied or its effects overcome in accordance with the Step-In Report) in which case following the occurrence of that Default Termination Event FACS may issue a FACS Intention to Terminate Notice and follow the procedure contained in this clause 5.
- (b) If an event described in clause 5.8(a) has occurred, FACS may not terminate the Services Agreement under clause 5.8(a)(ii) or 5.8(a)(iii) unless FACS would (but for this Deed) be entitled to terminate the Services Agreement, and:
- (i) FACS has given prior notice to the Financier of its intention to terminate the Services Agreement; and

- (ii) the Financier or Appointed Representative does not:
  - A. commence or resume using all reasonable endeavours to Remedy a Service Package Breach referred to in clause 5.8(a)(ii)A or 5.8(a)(iii)A within 10 Business Days of receipt of such notice and continues to use all reasonable endeavours to Remedy the relevant Service Package Breach; or
  - B. commence or resume and continue to perform the Service Package Activities to the extent it is able to do so, in the case of clause 5.8(a)(ii)B, or to the extent agreed in the Step-In Report in the case of clause 5.8(a)(iii)B.

## 5.9 Step out

- (a) The Financier or its Appointed Representative may, at any time during the Step-In Period, with at least ■ Business Days prior written notice to FACS, terminate the Step-In Period with effect from the date specified in that notice.
- (b) The giving of a notice under clause 5.9(a) by the Appointed Representative will not limit any of the rights (if any) of FACS against the Appointed Representative arising during the Step-In Period.

## 5.10 Extension of Step-In Period

- (a) The Financier may, by written notice to FACS, request that the Step-In Period be extended. If the Financier makes a request, it must provide to FACS an updated Step-In Report containing full details of all steps which the Financier or Appointed Representative is taking, or proposes to take and the status of such steps, during the Step-In Period and any extension of it.
- (b) Following receipt of a notice under clause 5.10(a) above, where the Financier or its Appointed Representative is diligently pursuing the Remedy of any Service Package Breach and the performance of the requirements of the Step-In Report during the Step-In Period (including continuing to perform the Service Package Activities in accordance with the Step-In Report), FACS may extend the Step-In Period for a period that is reasonably required (taking into account the nature of the Service Package Breach and the Remedy necessary) up to 120 days in aggregate by written notice to the Financier and the Appointed Representative.
- (c) FACS must, upon written request by the Financier, grant an extension to any Step-In Period if the Financier or its Appointed Representative is continuing to perform the Service Package Activities in accordance with the agreed Step-In Report) and if:
  - (i) the Financier has been unable to procure or cause the assignment, transfer or other disposal proposed in any notice given to FACS under clause 8.1(a) because FACS has withheld consent in breach of its obligations under clauses 8.1(b) or 8.1(c); or
  - (ii) a Force Majeure Event, Change Compensation Event, Relief Event or Statutory Step-In Event occurs during the Step-In Period which in the reasonable opinion of FACS adversely affects the ability of the Financier or its Appointed Representative to procure a Remedy of the relevant Service Package Breach in accordance with the Step-In Report,

provided that the Step-In Period will only be extended for a period determined by FACS which is reasonably necessary to overcome the delays caused by those events and does not extend further than the relief period granted under the Services Agreement.

- (d) The Financier acknowledges that any extension resulting from a Force Majeure Event does not in any way limit the rights of FACS in connection with the occurrence of the Force Majeure Event under the Service Package Documents.
- (e) If an application for extension has been made in accordance with clause 5.10(a) or clause 5.10(c) and has not been determined by FACS before the Step-In Period expires, then the Step-In Period will be extended until FACS has determined the application for extension.
- (f) Notwithstanding any other clause in this Deed, FACS may, in its absolute discretion, extend the Step-In Period by written notice to the Financier and the Appointed Representative.

## 5.11 Dispute Resolution

The Financier and FACS agree that if there is a dispute in relation to the production or contents of the Step-In Report under clause 5.4 (other than in respect of the appointment of the Appointed Representative), either party may refer that dispute for resolution in accordance with clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement as if those clauses were set out in full in this Deed and:

- (a) each reference to ServiceCo was a reference to the Financier; and
- (b) the reference to the Chief Executive Officers of ServiceCo in the Services Agreement is a reference to senior representatives of the Financier.

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## 6. Statutory step-in rights

- (a) Each of the Financier and ServiceCo recognise and acknowledge:
  - (i) the rights available to the Registrar to appoint a statutory manager to conduct the affairs and activities of ServiceCo as they relate to the community housing assets of ServiceCo under the Community Housing Act (clause 21 of the National Law);
  - (ii) the rights available to the statutory manager to pay monies (including rent) under any Subcontract or Lease and enforce any rights under any such Subcontract or Lease; and
  - (iii) that while a statutory manager is appointed to exercise functions of a Registered CHP, the governing body of the Registered CHP may not exercise any of those functions without the consent of the statutory manager.
- (b) Without limitation, the Financier agrees that:
  - (i) those rights may be exercised even if an Appointed Representative has been appointed or the Financier has otherwise taken enforcement action under a Financier's Security; and
  - (ii) the Financier must ensure that such Appointed Representative does such things as FACS or the Registrar may reasonably require in order to enable or facilitate the effective exercise of such rights.

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## 7. Priority of Tripartite Agreements

### 7.1 Tripartite Priority

- (a) The Financier acknowledges the rights of FACS under each Side Deed (**FACS Tripartite Rights**) and FACS acknowledges the rights of the Financier under each Financier's Subcontract Tripartite (**Financier's Tripartite Rights**).
- (b) FACS and the Financier agree that:
  - (i) the Financier's Tripartite Rights will take precedence over FACS Tripartite Rights for the duration of the period referred to in clause 5.2(a) or 5.2(b);
  - (ii) if the Financier exercises its rights to step in in accordance with clause 5, the Financier's Tripartite Rights will take precedence over FACS Tripartite Rights from the date of the Step-In Notice for the duration of the Step-In Period, provided that FACS' prior written consent will be required to any substitution of, or the termination, assignment or novation of, a Key Subcontract or Significant Subcontract; and
  - (iii) if the Financier does not exercise its rights to step in in accordance with clause 5 or if its Step-In Period ends, FACS Tripartite Rights will take precedence over the Financier's Tripartite Rights.
- (c) The Financier will use its best endeavours to ensure that rights under the Finance Documents are exercised in a way which facilitates the effective exercise by FACS of FACS Tripartite Rights.

### 7.2 Marshalling

Neither the Financier nor FACS are obliged to marshal in favour of the other. If any of the Financier's Securities become enforceable in accordance with their terms, the Financier in its absolute discretion may determine the extent (if any) to which it will have recourse to any of the Financier's Securities.

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## 8. Financier sale and other rights

### 8.1 Suitable Substitute

- (a) At any time during the Step-In Period, the Financier may notify FACS that it wishes to:
  - (i) procure the novation of ServiceCo's rights and liabilities under the Services Agreement and other relevant Service Package Documents; or
  - (ii) cause a direct or indirect transfer in the legal or beneficial ownership of the equity or ownership interests in ServiceCo,to a Suitable Substitute.
- (b) Subject to clause 8.1(c), FACS must notify the Financier as to whether the proposed Suitable Substitute is acceptable on or before the date falling 30 days after the date of receipt of all information reasonably required by FACS to decide whether the proposed Suitable Substitute is acceptable. If FACS notifies the Financier that the subject person is unacceptable:

- (i) the Financier may, within the then current Step-In Period, propose an alternative Suitable Substitute, in which case, the provisions of clauses 8.1(b) and 8.1(c) will apply to that alternative person; and
  - (ii) the parties will agree in good faith any amendments to the Step-In Report and FACS may grant an extension to the Step-In Period for a period that is reasonably required to take into consideration the resulting delay to novation of ServiceCo's rights and liabilities under the Services Agreement and other relevant Service Package Documents, provided that FACS is not required to agree to more than one extension to the Step-In Period.
- (c) A proposed Suitable Substitute will be acceptable to FACS if it is satisfied (acting reasonably) that that person:
- (i) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
  - (ii) in the case of a Suitable Substitute ServiceCo, will assume all of the obligations of ServiceCo under the Service Package Documents.
- (d) At any time after the approval of a proposed Suitable Substitute by FACS in accordance with clauses 8.1(b) and 8.1(c), the Financier may, on ■ Business Days' prior written notice to FACS, procure or cause the assignment, transfer or other disposal proposed in the notice given to FACS under clause 8.1(a).
- (e) FACS acknowledges and agrees that the approval of a proposed Suitable Substitute by FACS in accordance with clauses 8.1(b) and 8.1(c) will constitute the consent of FACS for the purposes of clause 42.1 (*Assignment, amendments and other dealings by ServiceCo*) and 43.3 (*Restrictions on Change in Control*) of the Services Agreement (as applicable).

## 8.2 Effect of Novation or change in ownership

On and from the Novation Date:

- (a) any then subsisting ground for termination of the Services Agreement by FACS shall be deemed to have no effect provided the Suitable Substitute Remedies any Default Termination Event continuing at that time within the time periods specified in the Step-In Report (or such other period as FACS may agree in writing in connection with the novation);
- (b) in the case of a novation of ServiceCo's rights and liabilities under the Services Agreement:
  - (i) the Suitable Substitute ServiceCo will become a party to the Services Agreement in place of ServiceCo and the Suitable Substitute ServiceCo will be treated as if it had originally been named as a party to the Services Agreement in place of ServiceCo;
  - (ii) the Suitable Substitute ServiceCo will assume and enjoy the rights and powers and perform and discharge the obligations and liabilities of ServiceCo under the Services Agreement, whether such obligations and liabilities have arisen before, or will arise after, the Novation Date, and ServiceCo will be released from all such obligations and liabilities;
  - (iii) FACS will owe the obligations and liabilities on the part of FACS under the Services Agreement to the Suitable Substitute ServiceCo in place of (and will be released by) ServiceCo, including any undischarged liability in respect of any loss or damage suffered or incurred by ServiceCo or

adjustment, rebate or other amounts due from FACS to ServiceCo in respect of any period prior to the Novation Date; and

- (iv) the Financier (or new financier if applicable) must enter into a tripartite deed with FACS and the Suitable Substitute ServiceCo on substantially the same terms as this Deed.

### **8.3 Replacement Key Subcontractor**

- (a) During the Step-In Period, the Financier must ensure that no person is engaged by it to replace a Key Subcontractor other than in accordance with a Step-In Report without first:
  - (i) obtaining the prior consent of FACS; and
  - (ii) disclosing to FACS such details of the relevant person and of the proposed terms and conditions of that person's engagement as a Key Subcontractor as may be reasonably necessary in order to enable FACS to determine whether it will so consent.
- (b) If FACS' consent is sought under clause 8.3(a), FACS will not unreasonably withhold or delay giving that consent if:
  - (i) it has received all of the details referred to in clause 8.3(a)(ii);
  - (ii) the same appointment were made by ServiceCo, the appointment and the new Key Subcontractor would comply with the Services Agreement; and
  - (iii) the proposed terms and conditions of that person's engagement include a requirement to perform such of the obligations of the current Key Subcontractor under the relevant subcontract which remain unsatisfied.

### **8.4 Release of and consents under Financier's security**

- (a) Subject to clause 8.4(c), to the extent that ServiceCo is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to FACS or its nominee under the Services Agreement and the Relevant Property is in whole or part the subject of any Security Interest in favour of the Financier (including any Security Interest under the Financier's Securities), the Financier will promptly ensure that the Security Interest is released in respect of the Relevant Property and will do all things (including registering documents and procuring registration of financing change statements on the Personal Property Securities Register) as FACS may reasonably require as may be necessary or desirable to give effect to that release.
- (b) To the extent that:
  - (i) FACS exercises an Option to Lease; or
  - (ii) ServiceCo is required to novate the lease of a Site to FACS or its nominee in accordance with a Lease Side Deed,

and the Relevant Property is in whole or part the subject of any Security Interest in favour of the Financier (including any Security Interest under the Financier's Securities), the Financier will promptly ensure that all necessary consents under the Finance Documents in respect of the Lease or novation (as the case may be) are given and will do all things (including producing the relevant certificate of title or lease to enable FACS or its nominee to register the Lease or the novation and procuring registration of financing change statements on the Personal Property

Securities Register) as FACS may reasonably require as may be necessary or desirable to give effect to the exercise of the Option to Lease or the novation (as the case may be).

- (c) Nothing in clause 8.4(a) requires the Financier to release a Security Interest over the right of ServiceCo to be paid an amount under clause 32.6 (*Payment on termination*) of the Services Agreement or amounts paid under that clause.

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## **9. Undertakings**

### **9.1 Copies of Finance Documents**

ServiceCo agrees to promptly give to FACS a copy of each Finance Document once executed and certified by an authorised officer of ServiceCo to be a true copy.

### **9.2 Financing agreements**

ServiceCo and the Financier undertake and agree that they may not enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of business) other than:

- (a) the Finance Documents;
- (b) to effect a novation, assignment or substitution of the Financier or any of the rights or obligations of the Financier permitted under clause 9.4;
- (c) to effect a novation or assignment permitted under clause 15.2; or
- (d) with the prior written consent of FACS (in its absolute discretion).

### **9.3 Money secured under Financier's Securities**

- (a) ServiceCo and the Financier each warrant to FACS that the only obligations of ServiceCo to the Financier which form part of the Secured Money are the obligations of ServiceCo under the Finance Documents.
- (b) The warranty in clause 9.3(a) will be deemed to be repeated on each anniversary of the date of this Deed.

### **9.4 Financier Assignment**

- (a) Subject to the terms of this Deed and the Finance Documents, the Financier, acknowledges and agrees that neither it nor any Representative may assign, transfer or otherwise dispose of any of the Relevant Secured Property.
- (b) The Financier acknowledges and agrees that it must not assign, transfer or otherwise dispose of all or any part of its rights, benefits or obligations under any of the Finance Documents unless:
  - (i) the assignee, novatee or transferee:
    - A. is:
      - 1) the Commonwealth or an entity where the ultimate legal or beneficial interest is held by the Commonwealth or a Commonwealth Authority; or

- 2) an entity which is a body subject to the Public Governance Performance and Accountability Act 2013 (Cth);
- B. is a financier that, unless FACS consents otherwise, has a credit rating of at least:
- 1) prior to the Service Commencement Date for all Stages, A- (issued by Standard and Poor's Australia) or A3 (issued by Moody's Investor Service); or
  - 2) on or after the Service Commencement Date for all Stages, BBB+ (issued by Standard and Poor's Australia) or Baa1 (issued by Moody's Investor Service),
- or is, in FACS' opinion, suitably guaranteed by an entity which has such an applicable credit rating and:
- 3) is on the Permitted Financier List; or
  - 4) is regulated by the Australian Prudential Regulation Authority;
- C. is an investment fund that:
- 1) is on the Permitted Investment Fund List; and
  - 2) holds or manages total net assets of at least \$500 million and has sufficient available assets to fund the commitments of the Financier under the Finance Documents which are being transferred to it;
- D. is a securitisation or funding vehicle of the Financier where the Financier remains lender of record; or
- E. is a financial institution which has been consented to by FACS (acting reasonably), with such consent being deemed to be given if FACS does not respond within ■ Business Days of the request for consent.
- (c) FACS, in determining whether or not to provide consent under clause 9.4(b)(i)B, will:
- (i) take into account the financial position of the financier (including the ability of that financier to fund the commitments of the Financier which are being transferred to it) and the prudential and regulatory regime applicable to that financier's business; and
  - (ii) have been deemed to have given its consent if it does not respond within ■ Business Days of the request for consent.

## 9.5 Services Agreement notices

FACS acknowledges and agrees that ServiceCo will be required to give the Financier a copy of certain documents issued to it or issued by it under the Services Agreement. FACS consents to ServiceCo giving the Financier copies of those documents.



## 9.6 Finance Document Notices

The Financier must give FACS a copy of any document issued by the Financier under:

- (a) the following clauses of the Facility Agreement:
  - (i) clause 17.37 (*Consequences of an Event of Default*); and
  - (ii) clause 18.3 (*Consequences of a Review Event*);
- (a) the following clauses of the General Security Deed:
  - (i) clause 3.4 (*Conversion to Revolving Assets*);
  - (ii) clause 4.2 (*Deposits into Blocked Accounts*);
  - (iii) clause 9.2.3 (*Consequences*); and
  - (iv) clause 15.2 (*Continuing security*);
- (b) the following clause of the real property mortgages over property in the Real Property Security Pool:
  - (i) clause 5 (*Assignment of rental income*); and
- (c) the following clause of the Account Bank Deed:
  - (i) clause 3.1 (*Control over the Borrower Controlled Accounts*),

within 2 Business Days of the issue of the relevant document. ServiceCo consents to the Financier giving FACS copies of those documents.

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## 10. Insurance proceeds

Notwithstanding the Financier's Security, to the extent the insurance proceeds paid or payable in connection with the Service Package are received by the Financier, the Financier acknowledges and agrees with FACS that:

- (a) the insurance proceeds paid or payable in connection with the Service Package must be applied in accordance with clause 5 (*Application of Insurance proceeds*) of Schedule 10 (*Insurance Schedule*) of the Services Agreement; and
- (b) the Financier will use reasonable endeavours to assist ServiceCo to comply with the relevant provisions of the Services Agreement referred to in clause 10(a) above.

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## 11. Representations and warranties

- (a) FACS represents and warrants that:
  - (i) **(power)** it has the power to execute, deliver and carry out its obligations under this Deed and all necessary action has been taken to authorise that execution, delivery and performance;
  - (ii) **(binding obligations)** this Deed constitutes a valid and legally binding obligation on it in accordance with its terms;
  - (iii) **(no contravention)** the execution, delivery and performance of this Deed does not violate any Law to which FACS is subject;

- (iv) **(Services Agreement)** for the benefit of the Financier only, to FACS' knowledge as at the date of this Deed, FACS has no right, without ServiceCo's consent, which is now exercisable or with the giving of notice or lapse of time will or may become exercisable to:
    - A. terminate, rescind, repudiate or vary the Services Agreement; or
    - B. refuse to perform or observe any of FACS' obligations under the Services Agreement; and
  - (v) **(Service Package Documents)** for the benefit of the Financier only, the FACS Service Package Documents set out all of the terms, conditions and warranties of the agreements, arrangements and understandings between ServiceCo of the one part and FACS of the other part in respect of the subject matter of the Service Package.
- (b) ServiceCo represents and warrants that:
- (i) **(incorporation)** it is duly incorporated in Australia and is existing under Australian Law;
  - (ii) **(power to execute)** it has the capacity and power to execute, deliver and perform its obligations under this Deed and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
  - (iii) **(legality)** the execution, delivery and performance of this Deed does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
  - (iv) **(validity)** this Deed constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms; and
  - (v) **(Finance Documents)** the Finance Documents to which it is a party set out all the terms, conditions and warranties of the agreements, arrangements and understandings between it and the other parties to the Finance Documents in respect of the subject matter of those Finance Documents.
- (c) The Financier represents and warrants that:
- (i) **(power)** it has the power to execute, deliver and carry out its obligations under this Deed and all necessary action has been taken to authorise that execution, delivery and performance; and
  - (ii) **(authority)** all action that is necessary to:
    - A. authorise it entering into this Deed and carrying out the transactions that this Deed contemplates; and
    - B. ensure that this Deed is legal, valid and binding on it and admissible in evidence against it,has been taken.

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## 12. Continuing obligation

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.

- (b) It is not necessary for a party to incur expenses or to make any payment before enforcing a right of indemnity under this Deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Deed.

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## 13. Indemnity

ServiceCo indemnifies FACS against, and must pay FACS 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 Deed subject to clause 29.5 (*Limits on ServiceCo liability to indemnify and release*) and 29.9 (*Exclusion of Consequential or Indirect Loss – ServiceCo*) of the Services Agreement.

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## 14. Taxes

### 14.1 Taxes

ServiceCo:

- (a) must pay all taxes in respect of this Deed, the performance of this Deed and each transaction effected by or made under this Deed;
- (b) indemnifies each other party against liability arising from failure to comply with clause 14.1(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any taxes paid under this clause 14.1.

### 14.2 GST

(a) **(Interpretation)**

- (i) Except where the context suggests otherwise, terms used in this clause 14.2 have the meanings given to those terms by the GST Act (as amended from time to time).
- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.2.
- (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.2.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)** Subject to paragraph (e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14.2), for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with paragraph 14.2(c)(ii).
- (d) **(Variation of GST)**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with paragraphs 14.2(c) and 14.2(e)), varies from the additional amount paid by the Recipient under paragraph 14.2(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph 14.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under paragraph 14.2(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration)**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which paragraph 14.2(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with paragraph 14.2(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with paragraph 14.2(c) (or the time at which such GST Amount would have been payable in accordance with paragraph 14.2(c) but for the operation of paragraph 14.2(e)(i)).
- (f) **(No merger)** This clause 14.2 will not merge on completion or termination of this Deed.

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## 15. Amendment and assignment

### 15.1 Amendment of this Deed

Except as otherwise expressly provided in this Deed, no amendment to this Deed is valid or binding on a party unless made in writing and executed by FACS and all other parties to this Deed.

## 15.2 Assignment

- (a) Subject to any express provisions of this Deed, the Financier and ServiceCo may only dispose of, declare a trust over or otherwise create an interest in its rights under this Deed with the consent of FACS.
- (b) FACS may dispose of, declare a trust over or otherwise create an interest in its rights under this Deed without the consent of any other party provided it complies with the terms of clause 42.3 (*Assignment by FACS*) of the Services Agreement and the person to or for whom FACS transfers, disposes, declares a trust over or otherwise creates an interest in its rights under this Deed is the same person as the transferee of FACS' rights under and in accordance with the Services Agreement.
- (c) Subject to any express provision of this Deed, the parties may not, without the prior written consent of the others, assign, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest under this Deed, provided always that an assignment by FACS of its interest to a FACS Nominee will not require ServiceCo's or the Financier's prior written consent.
- (d) The provisions of clauses 15.2(a) and 15.2(c) do not apply to the granting of Security Interests in accordance with the Finance Documents or Service Package Documents.

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## 16. Disclosure, confidentiality and publicity

### 16.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 16.1(b), FACS or any Authority may disclose any information in connection with the Service Package, including Information Documents.
- (b) FACS may only disclose the Commercially Sensitive Information:
  - (i) in accordance with:
    - A. Laws or for the enforcement of any criminal law;
    - B. clause 16.5 of this Deed;
  - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
  - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
  - (iv) to satisfy the requirements of Parliamentary accountability;
  - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintaining the confidentiality of any Confidential Information;
  - (vi) in annual reports of FACS or the NSW Government;
  - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
  - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or

- (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Agreement.

## 16.2 Confidential Information and disclosure by the Financier

- (a) Subject to clauses 16.2(b) and 16.3, the Financier must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS make public or disclose to any person any Confidential Information.
- (b) Without limiting the Financier's obligation under clause 16.2(a) and subject to clause 16.2(c), the Financier may disclose Confidential Information:
  - (i) to its Associates and to any Representative or its Associates, in each case to the extent necessary for the purpose of undertaking the Service Package or exercising its rights and obligations under the Finance Documents;
  - (ii) to any prospective financier or equity investor of the Service Package, subject to FACS having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that FACS considers necessary; or
  - (iii) in accordance with clause 16.4.
- (c) Before disclosing any Confidential Information, the Financier must ensure that the person to whom the information is disclosed enters into a confidentiality deed to keep the Confidential Information confidential in accordance with this clause 16.
- (d) The Financier may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 16.2(a) or 16.3(a) where the disclosure announcement or statement is:
  - (i) required by Law, provided that it:
    - A. notifies FACS of the requirement to make that disclosure; and
    - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
  - (ii) required to obtain legal advice or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
  - (iii) required to be made to a court in the course of proceedings to which the Financier is a party; or
  - (iv) required by a relevant stock exchange, subject to:
    - A. the disclosure, announcement, or statement does not refer to FACS' or any of its Associates' involvement in the Service Package; and
    - B. the Financier having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

### **16.3 Public announcements by Financier**

Subject to clause 16.2(d), the Financier must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 16.3 or for which FACS' consent or approval was not required in accordance with clause 16.4.

### **16.4 Information public or known**

Notwithstanding anything in this clause 16 any party may disclose information in connection with this Deed (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 16; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

### **16.5 Disclosure by FACS under GIPA Act**

- (a) Notwithstanding the other provisions of this clause 16.5, the parties acknowledge that:
  - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
  - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
  - (i) FACS will notify the Financier of any proposed disclosure of Commercially Sensitive Information in relation to the Financier by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
  - (ii) following notification by FACS in accordance with clause 16.5(b)(i), FACS will take reasonable steps to consult with the Financier before disclosing such Commercially Sensitive Information, including under the GIPA Act;
  - (iii) if, following:
    - A. notification by FACS in accordance with clause 16.5(b)(i); or

B. consultation between FACS and the Financier in accordance with clause 16.5(b)(ii),

the Financier objects to disclosure of some or all of the relevant Commercially Sensitive Information, the Financier must provide details of any such objection within five Business Days after the date the Financier received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Financier pursuant to clause 16.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Financier should be disclosed; and
- (v) nothing in this clause 16.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

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## 17. Notices

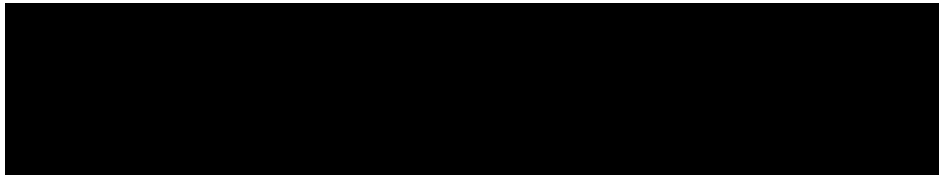
### FACS

Attention: Eleri Morgan-Thomas  
Address: 2 Cavill Avenue, Ashfield, NSW  
Telephone: (02) 9716 2917  
Email: eleri.morgan-thomas@facs.nsw.gov.au

### ServiceCo

Attention: Scott Langford  
Address: Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220  
Telephone: (02) 9001 4400  
Email: scott.langford@sgch.com.au

### Financier



All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as specified above, or as otherwise notified by that party to each other party from time to time;
- (c) must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out above; and
- (e) are taken to be received by the addressee at the address set out above:
  - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case



that communication is taken to be received at 9.00 am on the next Business Day;

- (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
- (iii) in the case of email, the first to occur of:
  - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
  - B. the time that the communication enters an information system which is under the control of the addressee; or
  - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

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## 18. Governing law

- (a) This deed is governed by the Law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

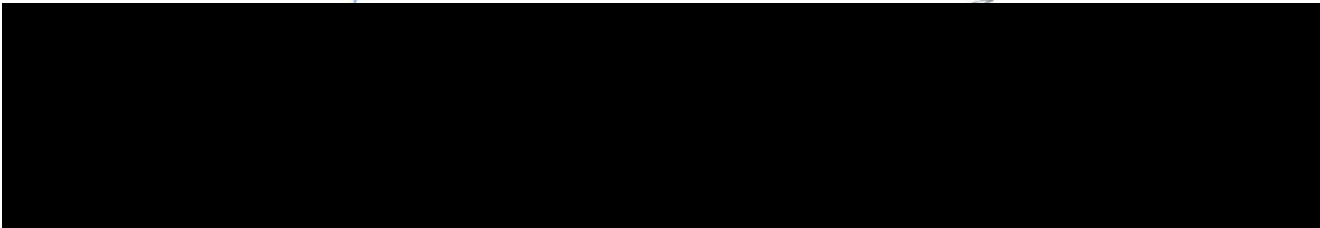
Executed as a deed.

**ServiceCo**

Signed sealed and delivered for and on behalf of  
**SGCH Sustainability Limited**  
ACN 606 965 799

by its attorney, under the Power of Attorney  
dated **9 DECEMBER 2016**

who states, by executing this deed, has received  
no notice of revocation of the Power of Attorney,  
in the presence of:



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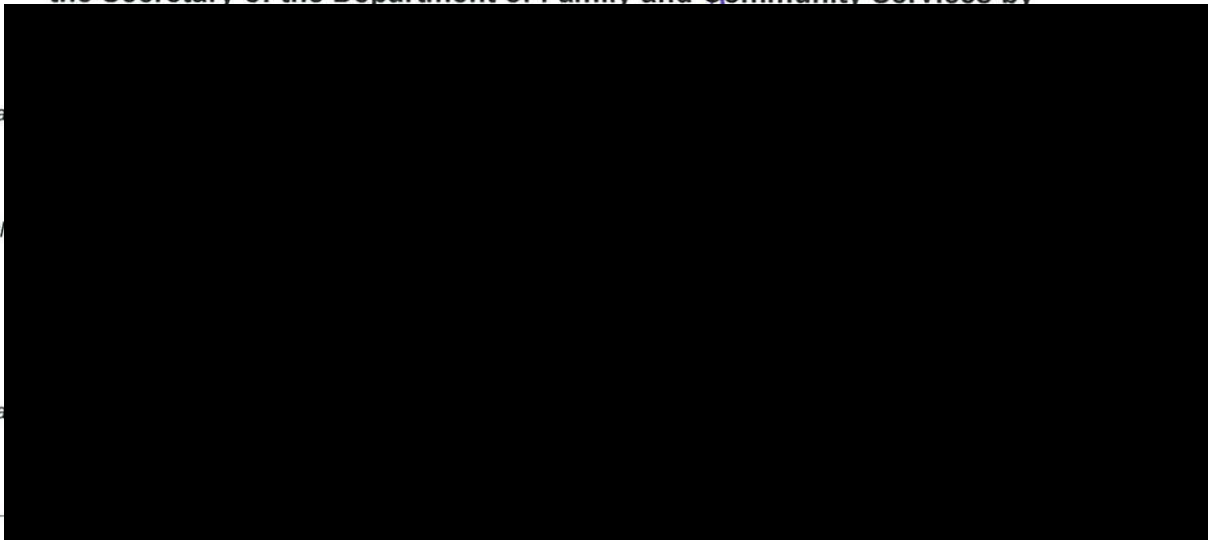
**FACS**

Signed sealed and delivered by  
**the Secretary of the Department of Family and Community Services by**

*print na*

*print titl*

*print na*



**Financier**

*sign he*

*print na*

*sign he*

*print na*

*Social and Affordable Housing Fund -  
Dispute Avoidance Board Agreement*

*Department of Family and Community Services (FACS)*

*SGCH Sustainability Limited (ServiceCo)*

ABN 21 606 965 799

*Members of the Dispute Avoidance Board*

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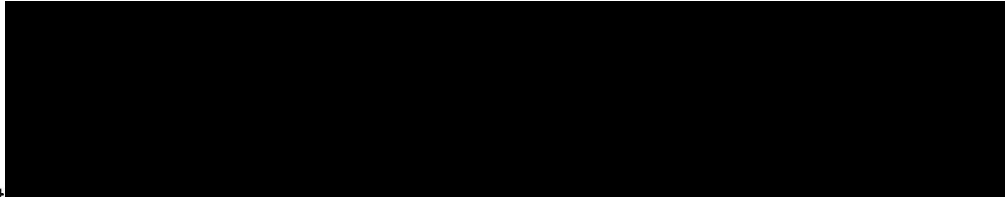
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# Dispute Avoidance Board Agreement made on 13 February 2017

**Parties** The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

SGCH Sustainability Limited of Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220 (**ServiceCo**)

Members of the Dispute Avoidance Board, namely:



(collectively, **Members**)

## Recitals

- A. The background to the Service Package is set out in the Services Agreement.
- B. Clause 36 (*Dispute Avoidance Board*) of the Services Agreement provides for the operation of a Dispute Avoidance Board to assist in resolving Disputes under the Services Agreement.
- C. This Agreement sets out the rights, obligations and duties of the Members, FACS and ServiceCo in relation to the Dispute Avoidance Board and any Disputes.

## Operative provisions

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### 1. Definitions

#### 1.1 Services Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Services Agreement.

#### 1.2 Definitions

**Agreement** means this agreement and includes all schedules, exhibits, attachments and annexures to it.

**Members** means the 3 individuals appointed to the Dispute Avoidance Board in accordance with this Agreement.

**Services Agreement** means the document entitled "Social and Affordable Housing Fund – Services Agreement" between FACS and ServiceCo dated on or around the date of this Agreement.

**Schedule of Fees and Disbursements** the fees and disbursements of each Member as set out in Schedule 3.

## 1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
  - (c) **(Agreement and Schedule references)**: a reference to:
    - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
    - (ii) a section is a reference to a section of a Schedule;
  - (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
  - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
  - (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
  - (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (j) **(“includes”)**: “includes” and “including” will be read as if followed by the phrase “(without limitation)”;
  - (k) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
  - (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
  - (m) **(“\$”)**: a reference to “\$”, AUD or dollar is to Australian currency;

- (n) **(Business Day)**: if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(obligations and Liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) **(‘may’)**: except to the extent that FACS is expressly required to act reasonably in exercising a power, right or remedy, the term “may”, when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion and FACS has no obligation to do so;
- (t) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
  - (i) is reconstituted, renamed or replaced, or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or
  - (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (u) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

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## 2. Agreement to prevail

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Services Agreement the terms of this Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 36.4 (*Termination of Dispute Avoidance Board*) of the Services Agreement.

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## 3. Formation of the Dispute Avoidance Board

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Members; and

- (c) must perform its obligations and functions under the Services Agreement and this Agreement.

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#### 4. Establishment of procedures

- (a) During the first meeting, the Dispute Avoidance Board will establish procedures for the conduct of any site visits and other matters (excluding the rules governing the Dispute Avoidance Board giving its opinion on a Dispute referred to it pursuant to clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement) in accordance with the procedures included in Schedule 1 (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the rules for the Dispute Avoidance Board process set out in Schedule 2 in respect of any Dispute referred to the Dispute Avoidance Board pursuant to clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement.

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#### 5. Members' obligations

- (a) (**Impartiality**): Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Avoidance Board.
- (b) (**Independence**): Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 4(b).
- (c) (**Keep informed**): For the purposes of enabling it to fulfil its functions, each Member will keep itself informed as to the performance of the Services and any issues affecting the Service Package Activities.
- (d) (**General duties**): Each Member agrees to carry out his or her obligations as a Member:
  - (i) with due care and diligence;
  - (ii) in compliance with the Services Agreement and this Agreement; and
  - (iii) in compliance with all applicable Laws.

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#### 6. Costs and fees

- (a) FACS and ServiceCo are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3.
- (b) FACS and ServiceCo agree as between themselves that:
  - (i) they will each pay one half of:
    - A. the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
    - B. any third party costs incurred in holding the conference referred to in section 2 of Schedule 2, including any booking fee, room hire and transcript costs; and



- (ii) they will each bear their own costs of, and incidental to, the preparation of this Agreement and their participation in any advisory process of the Dispute Avoidance Board.

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## **7. FACS' commitment and responsibilities**

FACS acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the Services Agreement and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with the Services Agreement or this Agreement.

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## **8. ServiceCo's commitment and responsibilities**

ServiceCo acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board;
- (c) at FACS' request, procure the attendance of representatives of any Key Subcontractor or the Financiers at meetings with the Dispute Avoidance Board as observers;
- (d) obtain FACS' prior consent if it wishes to have a representative of any Key Subcontractor or the Financiers at meetings with the Dispute Avoidance Board as an observer; and
- (e) except for its participation in the Dispute Avoidance Board's activities as provided in the Services Agreement and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with the Services Agreement or this Agreement.

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## **9. Confidentiality**

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time, each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

---

## **10. Conflict of interest**

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform FACS, ServiceCo and the other Members.
- (b) The other Members will within 5 Business Days of notification under clause 10(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

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## **11. Liability**

### **11.1 Liability**

Each Member is not liable to either FACS or ServiceCo for any act or omission done in good faith and with due care and diligence.

### **11.2 Due care and diligence**

For the purpose of clause 11.1, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

---

## **12. Indemnity**

### **12.1 Indemnity**

FACS and ServiceCo each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in good faith and with due care and diligence.

### **12.2 Due care and diligence**

For the purpose of clause 12.1, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

---

## **13. Termination of Agreement**

- (a) This Agreement will terminate in accordance with clause 36.4 (*Termination of Dispute Avoidance Board*) of the Services Agreement.
- (b) If clause 14.3 applies, this Agreement will remain in force until a replacement to this Agreement has been fully executed.

---

## **14. Members' termination**

### **14.1 Resignation**

A Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to the other Members, FACS and ServiceCo.

## 14.2 Termination

A Member's appointment may be terminated at any time if FACS and ServiceCo agree to do so.

## 14.3 Re-appointment

The parties acknowledge and agree that if:

- (a) a Member resigns under clauses 10(b) or 14.1; or
- (b) the appointment of a Member is terminated by FACS and ServiceCo under the Services Agreement;

then:

- (c) a replacement Member may be appointed in accordance with clause 36.3 (*Replacement of Dispute Avoidance Board member*) of the Services Agreement; and
- (d) ServiceCo, FACS, the remaining Members and any new Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment under the terms of the Service Agreement.

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## 15. Governing law

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

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## 16. Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between FACS, ServiceCo and the Members as that of partners, joint venturers or any other fiduciary relationship.

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## 17. Notices

- (a) Any notices contemplated by this Agreement must be in writing and:

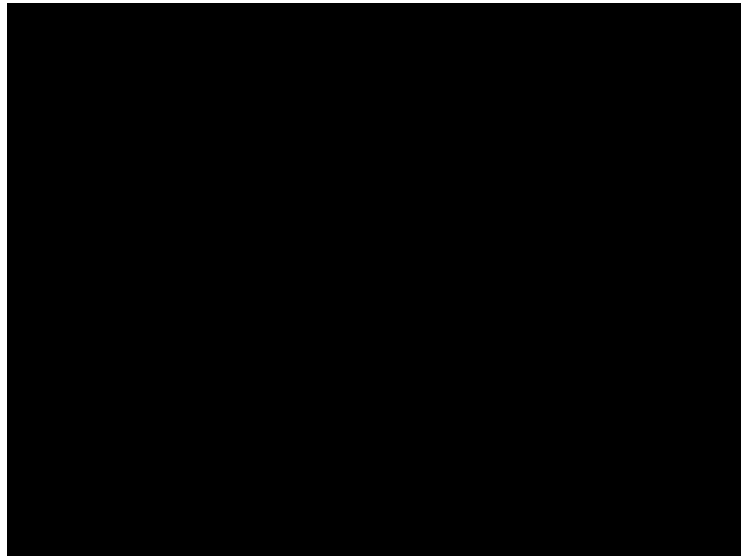
- (i) delivered to the relevant address;
- (ii) sent to the facsimile number; or
- (iii) sent in electronic form (such as email) to an address,

as set out below (or to any new address, facsimile number or address that a party notifies to the others):

to FACS:                    Eleri Morgan-Thomas  
                                  2 Cavill Avenue, Ashfield, NSW, 2131  
                                  eler.morgan-thomas@facs.nsw.gov.au

to ServiceCo: Scott Langford  
Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220  
scott.langford@sgch.com.au

to the Members:



- (b) A notice sent by post will be taken to have been received:
  - (i) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
  - (ii) (in the case of international post) 7 Business Days after the date of posting; and
  - (iii) (in the case of delivery by hand) on delivery.
- (c) A notice sent by facsimile will be taken to have been received on the next Business Day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 17(a).
- (d) A notice sent by way of electronic transmission will be taken to have been received when the sender receives confirmation on its server that the message has been transmitted:
  - (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
  - (ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

---

## 18. Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

---

## 19. Survival of terms

The parties agree that clauses 6, 9, 11 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

---

## **20. Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

---

## **21. Operation of this Agreement**

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a party may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

---

## **22. Amendment**

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

---

## **23. Counterparts**

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

---

## **24. Attorneys**

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

## Schedule 1 - Dispute Avoidance Board General Operating Procedures

---

### 1. General

- (a) The role of the Dispute Avoidance Board is to assist the parties to the Services Agreement in:
  - (i) attempting to prevent; and
  - (ii) if unable to prevent, in resolving Disputes, in a timely manner.
- (b) Except when participating in the Dispute Avoidance Board's activities as contemplated by the Services Agreement and this Agreement, the parties to the Services Agreement shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- (c) ServiceCo will furnish to each of the Members those documents necessary for the Dispute Avoidance Board to perform its functions, such as copies of all Services Agreement documents plus periodic reports provided under the Services Agreement and any other documents that would be helpful in informing the Members of Disputes and other related matters.
- (d) The individual Members are not the representative of the party that appointed that representative. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- (e) There must be no communication between Members and employees of the parties to the Services Agreement during the life of the Dispute Avoidance Board without the Members informing the parties to the Services Agreement. The parties to the Services Agreement must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- (f) The Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- (g) Communications between the parties and the Dispute Avoidance Board for the purpose of attempting to prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the Services Agreement.

---

### 2. Frequency of meetings and site visits

- (a) The scheduling of meetings and, if required, site visits necessary to keep the Dispute Avoidance Board properly informed of the Service Package Activities will generally be agreed between the Dispute Avoidance Board and the parties to the Services Agreement.
- (b) The frequency of meetings of the Dispute Avoidance Board should generally be once every 3 months but this may be influenced by work progress, unusual events and the number and complexity of potential Disputes. FACS and

ServiceCo may, by agreement, request to meet with the Dispute Avoidance Board more or less frequently than contemplated by this section 2(b).

- (c) Subject to sections 1(b) and 1(e) of this Schedule 1, FACS or ServiceCo may request a meeting of the Dispute Avoidance Board other than a scheduled meeting, which request shall be accommodated by the Dispute Avoidance Board as early as practicable.
- (d) The first Dispute Avoidance Board meeting should be held within 1 month of the date of this Agreement.

---

### **3. Agenda for and location of meetings**

- (a) The chairperson will develop an agenda for each meeting.
- (b) Dispute Avoidance Board meetings held for the purposes of briefing and updating the Members on performance and progress of the work under the Services Agreement and issues or potential issues between the parties shall be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- (c) Meetings will be held at a location or locations agreed by FACS, ServiceCo and the Members from time to time and Members are required to attend in person. Where a Member or a representative referred to in section 6 below is unable to attend a meeting in person at the location agreed and on the date and at the time scheduled for that meeting, that person may participate by telephone or video link.
- (d) For meetings held relating to the Delivery Phase Activities, at the conclusion of the meeting, the Dispute Avoidance Board may inspect the relevant Site(s) in the company of representatives of both parties to the Services Agreement.

---

### **4. Minutes of meetings**

- (a) FACS will prepare minutes of the regular meetings of the Dispute Avoidance Board and these draft minutes will be circulated to the Members for comments, additions and corrections.
- (b) In accordance with section 3(b) of this Schedule 1 above, the minutes of Dispute Avoidance Board meetings held shall be marked "in-confidence, without prejudice".
- (c) Minutes as amended will be adopted by the Members at the next meeting.

---

### **5. Communications**

All communications by the parties to the Dispute Avoidance Board outside the Dispute Avoidance Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to the parties should be addressed to the persons named in clause 17(a).

---

### **6. Representation**

The parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least two senior personnel involved in the Service Package. The parties shall inform the chairperson of the names and roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

## Schedule 2 – Rules for DAB opinion

---

### 1. Written submissions

- (a) Within 7 Business Days after the referral of a Dispute to the Dispute Avoidance Board under clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, the parties must, in addition to any particulars provided by the Executive Representatives in the relevant Notice of Referral, give each party and the Dispute Avoidance Board a written statement of the Dispute referred to the Dispute Avoidance Board, any agreed statement of facts and a written submission (which may include relevant contract communications) on the Dispute.
- (b) If the Dispute Avoidance Board considers it appropriate, each party may reply in writing to the written statement in section 1(a) of this Schedule 2 within the time allowed by the Dispute Avoidance Board.
- (c) If the Dispute Avoidance Board decides further information or documentation is required for it to provide an opinion on the Dispute, the Dispute Avoidance Board may direct one or more parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
- (d) The Dispute Avoidance Board must disclose to both parties all submissions, further submissions, information and documents received.
- (e) Any failure by a party to make a written submission will not terminate or discontinue the process.

---

### 2. Conference

- (a) Either party may:
  - (i) in writing; and
  - (ii) at any time prior to a notice of dispute being issued in accordance with clause 35(a) (*Notification*) of the Services Agreement, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- (b) Section 2(a) will not apply in relation to a Dispute the subject of a notice of dispute under clause 35(a) (*Notification*) of the Services Agreement.
- (c) If neither party requests the Dispute Avoidance Board to call a conference, the chairperson of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.
- (d) The parties will agree the location of any conference.
- (e) At least 5 Business Days before the conference, the Dispute Avoidance Board must inform the parties in writing of the date, venue and agenda for the conference.
- (f) The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of



which that party had been notified under section 2(e), the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the advisory process.

- (g) The parties may be accompanied at a conference by:
  - (i) legal or other advisers; or
  - (ii) any parties permitted to attend under the Services Agreement.
- (h) The conference must be held in private.
- (i) If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the parties.

---

### **3. The opinion**

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 Business Days after referral of a Dispute to the Dispute Avoidance Board under clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement (or such other period as the parties may agree in writing), the Dispute Avoidance Board must provide its opinion on the Dispute between the parties, to the parties.
- (b) The opinion of the Dispute Avoidance Board must:
  - (i) be in writing stating the Dispute Avoidance Board's opinion on the Dispute and giving reasons; and
  - (ii) be given on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Avoidance Board's own expertise.
- (c) If the Dispute Avoidance Board's opinion contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the opinion.

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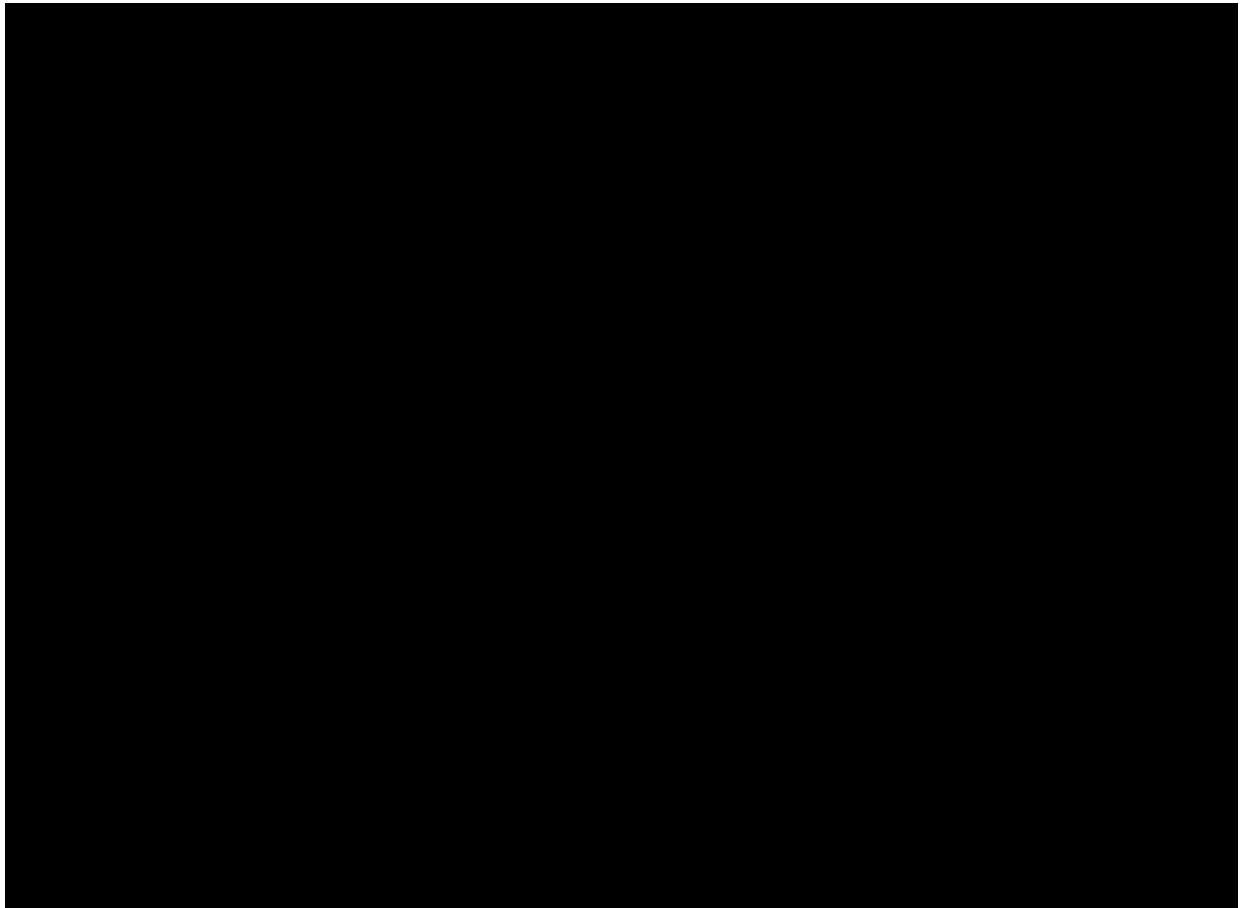
### **4. Modification**

These rules may be modified only by agreement of FACS and ServiceCo.

### Schedule 3 - Schedule of Fees and Disbursements

**Dispute Avoidance Board Member    Fees and disbursements**

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SIGNED as an agreement

**FACS**

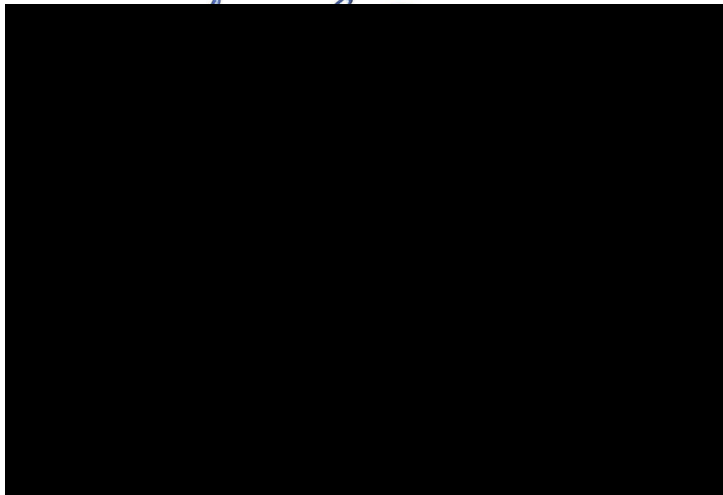
Signed by  
the Secretary of the Department of Family and Community Services by

*print name* MICHAEL COUTTS TROTTER  
Delegate

*print title* SECRETARY  
Title

In the presence of:

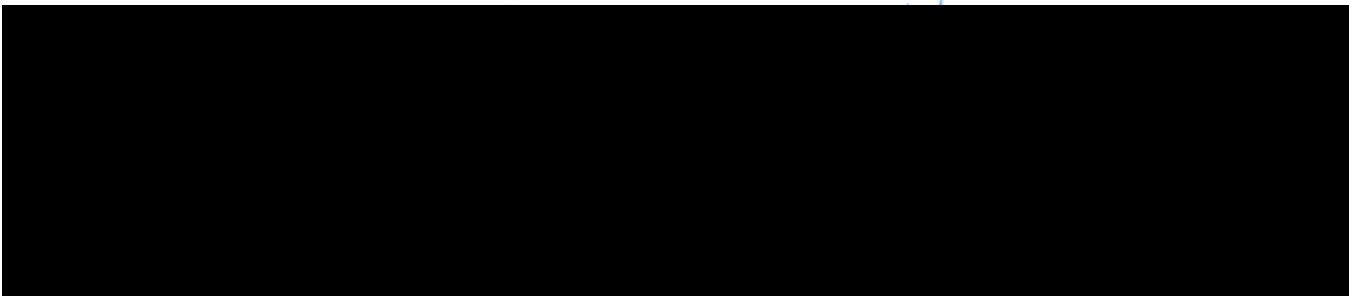
*print name* NICHOLAS CARNEY  
Witness



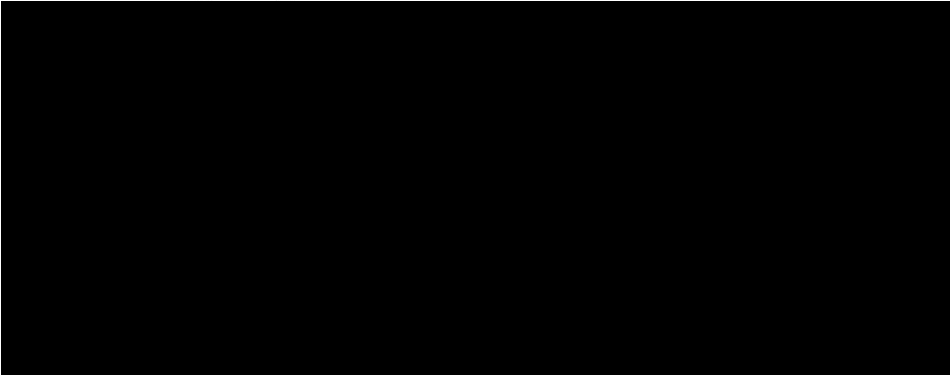
**ServiceCo**

Signed by  
**SGCH Sustainability Limited**  
ACN 606 965 799  
by its attorney, under the Power of Attorney  
dated 9 DECEMBER 2016

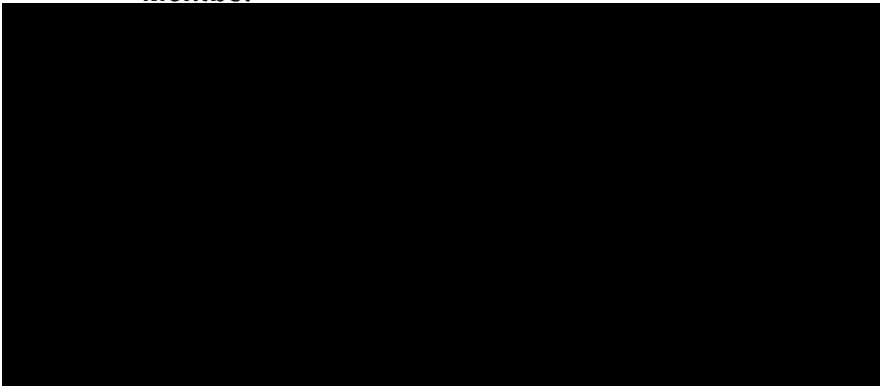
who states, by executing this deed, has received  
no notice of revocation of the Power of Attorney,  
in the presence of:



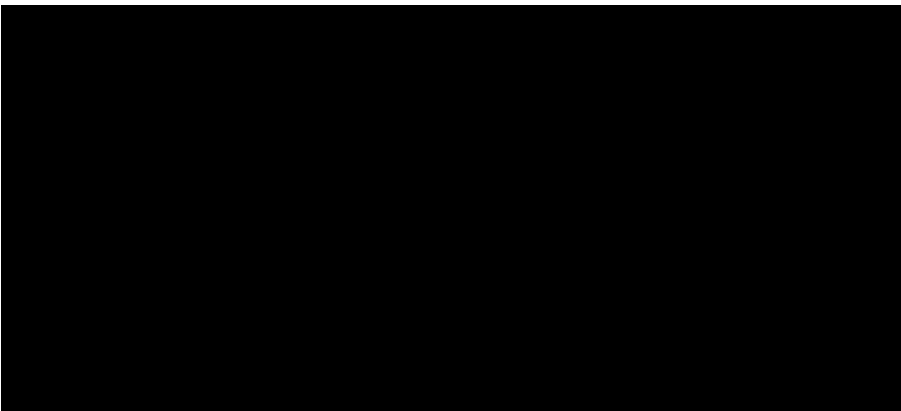
**Member**



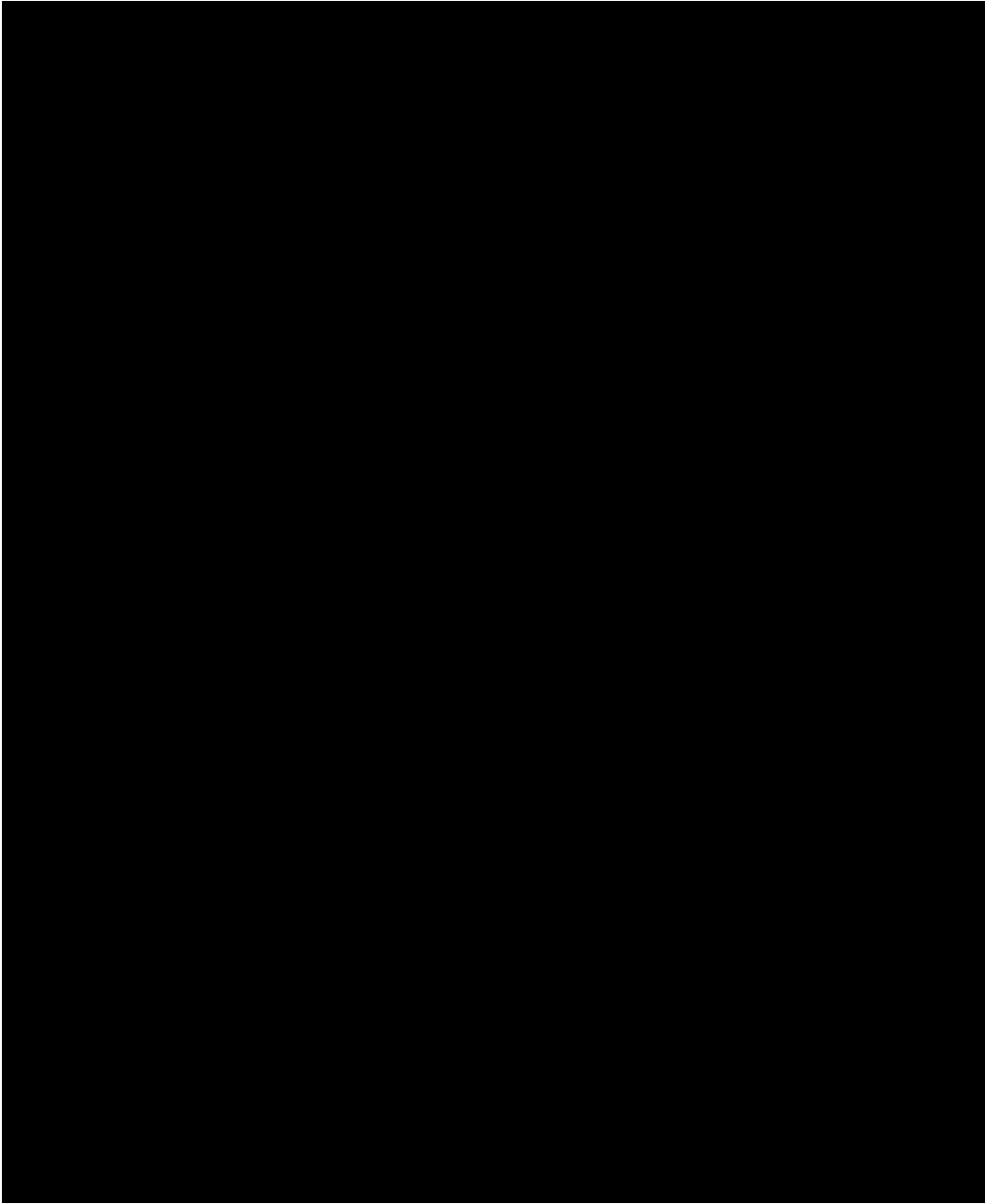
**Member**



**Member**



**Member**



*Social and Affordable Housing Fund -  
Subcontract Side Deed*

*St George Community Housing Limited (Subcontractor)*  
ACN 133 729 503

*SGCH Sustainability Limited (ServiceCo)*  
ACN 606 965 799

*Department of Family and Community Services (FACS)*

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THIS DEED is made on *25 January* 2017

**BETWEEN:**

**The Secretary of the Department of Family and Community Services** as Housing Agency pursuant to section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

St George Community Housing Limited ACN 133 729 503 whose registered office is at Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220 (**Subcontractor**).

SGCH Sustainability Limited ACN 606 965 799 whose registered office is at Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220 (**ServiceCo**).

**RECITALS:**

- (A) FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- (B) ServiceCo has subcontracted its obligations to provide certain services under the Services Agreement to the Subcontractor pursuant to the Subcontract.
- (C) The Subcontractor has agreed to grant to FACS certain rights in relation to the Subcontract.

**THE PARTIES AGREE AS FOLLOWS:**

---

**1. Definitions and interpretation**

**1.1 Services Agreement definitions**

Definitions in the Services Agreement apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

**1.2 Definitions**

In this Deed:

**Approved Nominee** means a person nominated by FACS and approved by the Subcontractor in accordance with clause 4.8 as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of ServiceCo under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of ServiceCo under the Subcontract.

**Default Event** means:

- (a) any default (howsoever described) by ServiceCo under the Subcontract; or

(b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

**Default Event Notice** has the meaning given in clause 3.2(a).

**Effective Date** means the date specified in the Novation Notice.

**FACS Cure Notice** has the meaning given in clause 3.2(c).

**GST Amount** has the meaning given in clause 9(c)(ii).

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Subcontractor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (c) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

**Novation Notice** has the meaning given in clause 4.1.

**Receiver** means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

**Recipient** has the meaning given in clause 9(c)(ii).

**Services Agreement** means the document entitled "Social and Affordable Housing Fund - Services Agreement" dated on or about the date of this Deed between FACS and ServiceCo.

**Subcontract** means the contract titled 'Social and Affordable Housing Fund – Services Subcontract' dated on or about the date of this Deed between ServiceCo and the Subcontractor.

**Supplier** has the meaning given in clause 9(c).

### 1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
  - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

- (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:
  - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **(‘includes’)**: ‘includes’ and ‘including’ will be read as if followed by the phrase ‘(without limitation)’;
- (k) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to ‘Business Days’, day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **(‘may’)**: unless FACS is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term ‘may’, when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to ServiceCo) and FACS has no obligation to do so;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
  - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) **(Delivery Phase Program)**: a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with the Review Procedures.

#### 1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Subcontract, this Deed will prevail over the Subcontract.

#### 1.5 Services Agreement and Financier’s Tripartite Deed

The Subcontractor acknowledges that it has received a copy of the Services Agreement and the Financier’s Tripartite Deed.

#### 1.6 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 Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

#### 1.7 FACS’ executive rights, duties and functions

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS’ executive rights, duties and functions*) of the Service Agreement in relation to this Deed.

- (b) **(No Claim):** Subject to clause 1.7(c), ServiceCo and the Subcontractor will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Subcontractor under any Service Package Documents as a result of a breach by FACS of a term of any Service Package Document but for these clauses.

---

## **2. Subcontractor's warranty and FACS' rights and liability**

### **2.1 Subcontractor's warranty**

- (a) The Subcontractor warrants to FACS that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Services, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those services in relation to a project of a similar size and scope to the Services. In particular and without limiting the generality of the foregoing, the Subcontractor covenants with FACS that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Services in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2.1 upon:
  - (i) the termination of the Services Agreement or ServiceCo's engagement under the Services Agreement; or
  - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Agreement and/or the Monthly Service Payment regime no longer applying.
- (c) Despite any other provision of this Deed or the Subcontract, the maximum aggregate liability of the Subcontractor under this clause 2.1 and the Subcontract is no greater than the maximum liability of the Subcontractor under the Subcontract.
- (d) FACS agrees that it is not permitted to recover, and the Subcontractor will not be liable to FACS for, any loss under this clause 2.1 that is not permitted to be recovered against the Subcontractor under the Subcontract.
- (e) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Agreement.

### **2.2 FACS' rights under Services Agreement**

- (a) The Subcontractor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Agreement, including under the following clauses of the Services Agreement:
  - (i) clause 9.1 (*Audits for compliance with the FACS Service Package Documents*);
  - (ii) clause 18.2 (*Work health and safety*);

- (iii) clause 22 (*Expiry obligations*);
  - (iv) clause 31 (*Major Default*);
  - (v) clause 32 (*Termination*); and
  - (vi) clause 46 (*Intellectual Property Rights*).
- (b) The Subcontractor must:
- (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
  - (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).
- (c) During the period in which FACS is exercising a right referred to in clause 2.2(a), FACS may, in accordance with the Services Agreement and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor must (without limiting its rights under clause 3) comply with this requirement and with all reasonable directions of FACS in relation to the performance of the Subcontract by the Subcontractor during such period.
- (d) The requirement of FACS that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by FACS does not constitute an assumption by FACS of any obligations of the Subcontractor under the Subcontract.

## 2.3 Subcontracting and Probity Investigations

- (a) The Subcontractor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Agreement:
- (i) clause 10 (*Subcontracting and third party arrangements*);
  - (ii) the clauses listed in clause 10.3 (*Requirements for Subcontracting*); and
  - (iii) clause 48 (*Probity Events and Probity Investigations*).
- (b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that ServiceCo has obtained the prior consent of FACS to that subcontract, where FACS' consent is required in accordance with clause 10 (*Subcontracting and third party arrangements*) of the Services Agreement.
- (c) Without limiting clauses 2.3(a) or 2.3(b), the Subcontractor acknowledges and agrees that:
- (i) in accordance with clauses 10 (*Subcontracting and third party arrangements*) and 48 (*Probity Events and Probity Investigations*) of the Services Agreement, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Subcontractor and Relevant Persons in respect of the Subcontractor (excluding the ServiceCo Representative), or other persons to whom

the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;

- (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and
- (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Agreement).

## **2.4 No liability for information**

The Subcontractor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
  - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
  - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Subcontractor or any of their Associates, nor will the Subcontractor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
  - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.4(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor, or any of their respective Associates or any person on any of their behalf;
  - (ii) any reference to FACS in the Subcontract; or
  - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by FACS.

## **2.5 Subcontract not to affect FACS' rights**

Each of ServiceCo and the Subcontractor acknowledges and agrees that:

- (a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Agreement or an equivalent or similar right of ServiceCo:
  - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Agreement to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and

- (ii) ServiceCo's rights, and FACS' Liability, under the Services Agreement will be determined solely in accordance with the terms of the Services Agreement;
- (b) as between FACS (on the one hand) and ServiceCo and the Subcontractor (on the other hand), ServiceCo and the Subcontractor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
- (c) notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
  - (i) expressly provided to the contrary in the Services Agreement or this Deed; or
  - (ii) FACS consents in writing.

### 3. FACS' right to cure Default Events

#### 3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Subcontractor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Subcontract are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

#### 3.2 Restriction on right to terminate or suspend

The Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract unless each of the following conditions has been satisfied:

- (a) the Subcontractor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
  - (i) the cure or remedy period available to the Financier in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or



- (ii) the Financier has notified the Subcontractor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Subcontractor has given notice to FACS confirming that, either:
  - (i) the requirements of clause 3.2(b) are satisfied; or
  - (ii) the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Subcontract is not subject to any right of the Financier's to cure or remedy the Default Event,

**(FACS Cure Notice), and**

- (d) any one of the following has occurred:
  - (i) the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Subcontract or agreed to by the Subcontractor), and that Default Event has not been cured or remedied within the relevant period;
  - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
  - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Subcontractor:
    - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved; or
    - B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
    - C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Subcontract within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
    - D. FACS notifies the Subcontractor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

### **3.3 Statements concerning Default Event**

- (a) As part of any Default Event Notice, the Subcontractor must submit to FACS statements of:

- (i) where the Default Event is a monetary default:
    - A. the provisions of the Subcontract alleged to have been breached or not fulfilled; and
    - B. the amount which must be paid to the Subcontractor to remedy the Default Event;
  - (ii) where the Default Event is of a non-monetary nature:
    - A. the provisions of the Subcontract alleged to have been breached or not fulfilled;
    - B. sufficient information to enable FACS to identify the material facts;
    - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled, if reasonably capable of cure or remedy; and
    - D. the time within which the specified steps can reasonably be expected to be taken; and
  - (iii) any rights available to the Financier, pursuant to any Finance Document to which the Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract.
- (b) If the Subcontractor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Subcontractor must update the matters referred to in clause 3.3(a).

### **3.4 Warranty of accuracy**

- (a) The Subcontractor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Subcontractor considers itself entitled.
- (b) The Subcontractor waives and abandons all claims then known or which ought reasonably to have been known to the Subcontractor arising out of or in connection with the Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

### **3.5 Disputes as to statements**

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and

- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

### **3.6 Verification**

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Subcontractor, and the Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Subcontractor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

### **3.7 No Liability**

ServiceCo and the Subcontractor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Subcontract by reason only of FACS performing ServiceCo's obligations in accordance with the Subcontract. ServiceCo and the Subcontractor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of FACS.

### **3.8 ServiceCo to compensate FACS**

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

### **3.9 No limitation on other rights**

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under FACS Service Package Documents or otherwise according to Law.

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## **4. Novation of Subcontract**

### **4.1 Option**

FACS may require a novation of the Subcontract in accordance with this clause 4 upon the termination of the Services Agreement by giving a notice to the Subcontractor (**Novation Notice**).

### **4.2 Novation of Subcontract**

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that FACS (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to ServiceCo shall be read as a reference to FACS (or, if applicable, the Approved Nominee).

### **4.3 Rights and obligations of FACS and the Subcontractor under the Subcontract**

If FACS gives a Novation Notice then, subject to clause 4.6, with effect from the Effective Date:

- (a) FACS (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, ServiceCo would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, ServiceCo would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, ServiceCo would have been bound at and after the Effective Date; and
- (b) the Subcontractor:
  - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if FACS (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of ServiceCo.

### **4.4 Release by Subcontractor**

With effect from the Effective Date, the Subcontractor releases ServiceCo from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

### **4.5 Release by ServiceCo**

With effect from the Effective Date, ServiceCo releases the Subcontractor from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

### **4.6 Obligations and liability prior to the Effective Date**

Nothing in this Deed releases ServiceCo or the Subcontractor from any obligation or liability under the Subcontract arising or accruing before the Effective Date and FACS (or, if applicable, the Approved Nominee) does not assume any such obligation or Liability under this Deed.

## 4.7 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Services Agreement is at an end, and that the Subcontract must operate independently of the Services Agreement, on the basis that:
- (i) the rights and obligations that FACS (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that ServiceCo would have had under the Subcontract had the Services Agreement not been terminated;
  - (ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the Subcontractor would have had under the Subcontract had the Services Agreement not been terminated;
  - (iii) any provisions of the Services Agreement incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
  - (iv) without affecting the generality of this clause 4.7(a), paragraph (g) of the definition of Service Package Documents will be deleted and replaced with "not used";
- (b) If at or after the Effective Date, there is a dispute between FACS (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 4.7(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 8.

## 4.8 Approved Nominee

- (a) FACS' nominee may be named as a party to the Subcontract in substitution for ServiceCo if FACS' nominee is an Approved Nominee.
- (b) The Subcontractor must:
- (i) notify FACS as to whether FACS' nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision on whether FACS' nominee is an Approved Nominee; and
  - (iii) enter into a side deed with FACS and the Approved Nominee on substantially the same terms as this Deed.

## 4.9 Insurances

- (a) If the Subcontractor is required under the Subcontract to take out or maintain or take out and maintain any insurance required under clause 30 (*Insurance*) of the Services Agreement to be taken out and maintained by ServiceCo (each such insurance, a **Subcontract Insurance**), then the Subcontractor undertakes to FACS to:
- (i) take out or maintain or take out and maintain the Subcontract Insurances, as applicable; and

- (ii) comply with clause 30 (*Insurance*) and Schedule 10 (*Insurance Schedule*) of the Services Agreement with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).
- (b) The Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with section 5 (*Application of Insurance proceeds*) of Schedule 10 (*Insurance Schedule*) of the Services Agreement.

#### 4.10 [Not used]

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## 5. Representations and warranties

### 5.1 Representations and warranties by Subcontractor

- (a) The Subcontractor represents and warrants for the benefit of FACS that:
  - (i) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
  - (ii) (**legality**): the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
  - (iii) (**validity**): this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
  - (iv) (**registration**): it is duly registered, properly constituted and remains in existence;
  - (v) (**no trust relationship**): except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
  - (vi) (**information true and correct**): all information provided by it to FACS is as at the date on which it is provided true and correct and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
  - (vii) (**litigation**): no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;
  - (viii) (**Insolvency Event**): no Insolvency Event has occurred in respect of it;
  - (ix) (**accounts**):

- A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
  - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
  - C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default):**
- A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
  - B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;
- (b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (c) **(own investigations):** in entering into this Deed, the Subcontract and any other Service Package Document to which it is a party, it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

## 5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

## 5.3 Reliance on representations and warranties

The Subcontractor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

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## 6. Undertakings by Subcontractor

The Subcontractor undertakes to FACS as follows:

- (a) **(notification of Default Event):** in the case of the Subcontractor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with the Subcontract;

- (b) **(documents in relation to Default Event)**: in the case of the Subcontractor, it will promptly give FACS a copy of all documents issued by the Subcontractor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of FACS:
- (i) make or permit any amendment or replacement of or addition to;
  - (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
  - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financier's Tripartite Deed; or
  - (iv) allow any express waiver of its material rights and obligations under,
 

a Subcontract, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Agreement;
- (d) **(disposals)**: it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Subcontract without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor;
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by FACS):
- (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
  - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
    - A. in the case of the Subcontractor, full access to:
      - 1) the Site; and
      - 2) any other place where any Services are being provided,

to the extent provided in the Services Agreement; and
    - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Subcontract or any information required by FACS to comply with requests from the New South Wales Auditor-General; and
  - (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package



in accordance with the terms of the Subcontract, to the extent provided in the Services Agreement; and

- (f) **(access to records):** in the case of the Subcontractor, at the request of FACS, the Subcontractor will:
  - (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the Service Package; and
  - (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

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## 7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

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## 8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Agreement are resolved. Accordingly, the provisions of clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement are incorporated into this Deed but as if:

- (a) the only persons party to the Services Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

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## 9. GST

- (a) **(Interpretation):**
  - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 9(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 9) for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)), varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (**the Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).
- (f) **(No merger):** This clause 9 will not merge on completion or termination of this Deed.

- (g) **(Application of Services Agreement):** If clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement would apply in connection with a Taxable Supply to which this clause 9 also applies, then clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

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## 10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### FACS

Attention: Eleri Morgan-Thomas  
Address: 2 Cavill Avenue, Ashfield, NSW  
Telephone: (02) 9716 2917  
Email: eleri.morgan-thomas@facs.nsw.gov.au

### ServiceCo

Name: SGCH Sustainability Limited  
Address: Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220  
Email: scott.langford@sgch.com.au  
For the attention of: Scott Langford

### Subcontractor

Name: St George Community Housing Limited  
Address: Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220  
Email: rebecca.pierro@sgch.com.au  
For the attention of: Rebecca Pierro

- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery):** must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee set out in clause 10(b);
- (e) **(taken to be received):** are taken to be received by the addressee at the address set out in clause 10(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
- (ii) subject to clause 10(f), in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;

- (iii) in the case of email, the first to occur of:
  - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
  - B. the time that the communication enters an information system which is under the control of the addressee; or
  - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

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## 11. Confidential Information and disclosure

### 11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
  - (i) in accordance with Laws or for the enforcement of any criminal law;
  - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
  - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
  - (iv) to satisfy the requirements of Parliamentary accountability;
  - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
  - (vi) in annual reports of FACS;
  - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
  - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
  - (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose

of conducting any tender process required by the terms of the Services Agreement.

## 11.2 Confidential Information and disclosure by Subcontractor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4(b), the Subcontractor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Subcontractor may disclose Confidential Information:
  - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
  - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Subcontractor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
  - (i) required by Law, provided that it:
    - A. notifies FACS of the requirement to make that disclosure; and
    - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
  - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
  - (iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party; or
  - (iv) required by a relevant recognised stock exchange, subject to:
    - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
    - B. the Subcontractor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

### **11.3 Public announcements by Subcontractor**

Subject to clause 11.2(d), the Subcontractor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

### **11.4 Information public or known**

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

### **11.5 Disclosure by FACS under GIPA Act**

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
  - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
  - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
  - (i) FACS will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
  - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
  - (iii) if, following:
    - A. notification by FACS in accordance with clause 11.5(b)(i); or

B. consultation between FACS and the Subcontractor in accordance with clause 11.5(b)(ii),

the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Subcontractor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

## 11.6 Personal Information

The Subcontractor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

## 11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Subcontractor agrees to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Service Package contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Subcontractor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

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## 12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract or novation of Subcontract):** This Deed will terminate automatically without any requirement for any notice from any party:
  - (i) upon the performance and satisfaction of all of the obligations under the Subcontract; or
  - (ii) upon the novation of the Subcontract to FACS.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
  - (i) FACS' rights to set-off and recover money;
  - (ii) confidentiality or privacy;
  - (iii) Intellectual Property Rights;
  - (iv) any obligation to make any records available to FACS;
  - (v) any indemnity or financial security given in accordance with this Deed;
  - (vi) any limitation or exclusion of liability; and
  - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

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## 13. Governing law and jurisdiction

### 13.1 Governing law

This Deed is governed by and must be construed according to the Laws of New South Wales, Australia.

### 13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts,



with respect to any proceedings which may be brought in connection with this Deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

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## 14. Miscellaneous

### 14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

### 14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

### 14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### 14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

### 14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

### 14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 14.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

## 14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

## 14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

## 14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

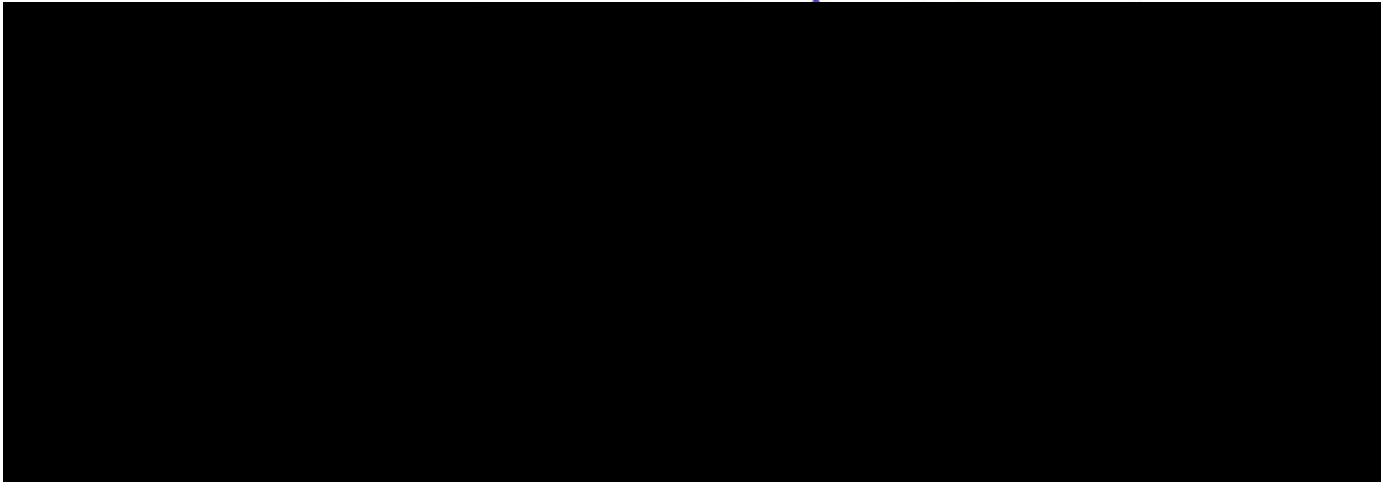
- (a) increase or improve any of ServiceCo's or the Subcontractor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

**FACS**

Signed sealed and delivered by  
the **Secretary of the Department of Family and Community Services** by



**ServiceCo**

Signed sealed and delivered by  
**SGCH Sustainability Limited**  
ACN 606 965 799

by its attorney, under the Power of Attorney  
dated *9 DECEMBER 2016*

who states, by executing this deed, has received  
no notice of revocation of the Power of Attorney,  
in the presence of:



**Subcontractor**

Signed sealed and delivered by  
**St George Community Housing Limited**  
ACN 133 729 503

by its attorney, under the Power of Attorney  
dated

9 DECEMBER 2016

who states, by executing this deed, has received  
no notice of revocation of the Power of Attorney,  
in the presence of:



8 Chifley  
8-12 Chifley Square Sydney NSW 2000  
GPO Box 9925 Sydney NSW 2001  
Tel +61 2 9210 6500  
Fax +61 2 9210 6611  
[www.corrs.com.au](http://www.corrs.com.au)

**CORRS  
CHAMBERS  
WESTGARTH**  
lawyers

Sydney  
Melbourne  
Brisbane  
Perth

I certify that this is a true,  
complete and up to date  
copy of the original document  
sighted by me at 4:15PM  
this 10th day of February 2017

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SGCH Sustainability Lim

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St George Community Housing Limited

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# SAHF Intercompany Loan Agreement

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Date 20 January 2017

## Parties

**SGCH Sustainability Limited** ABN 21 606 965 799 of 38 Humphreys Lane, Hurstville, New South Wales (**Borrower**)

**St George Community Housing Limited** ABN 32 565 549 842 of 38 Humphreys Lane, Hurstville, New South Wales (**Lender**)

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## Background

This agreement records the terms on which the Lender has agreed to make one or more loans to the Borrower in connection with the Project.

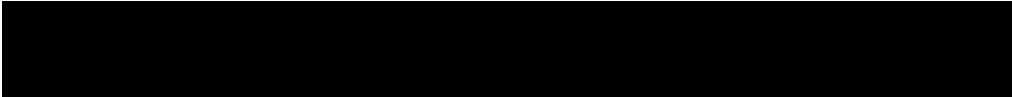
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## Agreed terms

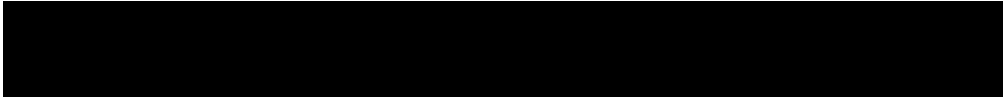
### 1 Definitions

In this document these terms have the following meanings:

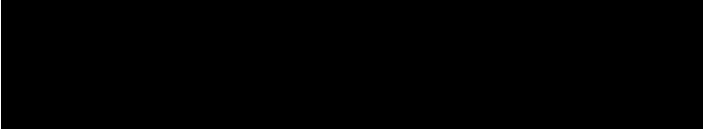
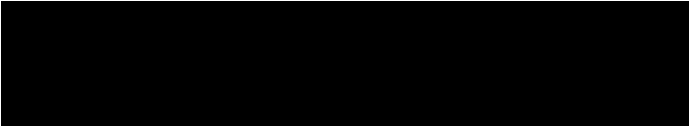
|                            |  |
|----------------------------|--|
| <b>Availability Period</b> | The availability period specified in <b>schedule 1</b> .   |
| <b>Business Day</b>        | A day (other than a Saturday or Sunday) on which banks are open for general business in Sydney, New South Wales. |



|                           |   |
|---------------------------|---|
| <b>Designation Notice</b> | A notice substantially in the form of <b>schedule 3</b> or a notice otherwise acceptable to the Lender.                   |
| <b>Drawdown Date</b>      | The date on which a Loan is first made (being, in the case of a Transfer Loan Amount, the date of the relevant transfer). |
| <b>Drawdown Request</b>   | A notice substantially in the form of <b>schedule 2</b> or a notice otherwise acceptable to the Lender.                   |
| <b>Facility</b>           | The loan facility made available under <b>clause 4</b> .  |








|                                |  |
|--------------------------------|--|
|                                |    |
| <b>Facility Limit</b>          | The facility limit specified in <b>schedule 1</b> .  |
| <b>Loan</b>                    | A loan made or to be made under the Facility (including each Transfer Loan Amount) or the principal amount outstanding for the time being of that loan.  |
| <b>Maturity Date</b>           | The maturity date specified in <b>schedule 1</b> .   |
| <b>Outstanding Principal</b>   | At any time, the aggregate amount of any Loans made under this document, which have not been repaid.   |
| <b>Project</b>                 | The Borrower's participation in phase 1 of the Social and Affordable Housing Fund of the NSW Government.   |
| <b>Subordination Agreement</b> |    |
| <b>Tax</b>                     | A tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of the Lender) and any interest, penalty, fine or expense relating to any of them. |
| <b>Transfer Loan Amount</b>    | Has the meaning given in <b>clause 3(c)</b> .  |

## 2 Subordination Agreement

The parties acknowledge and agree that:

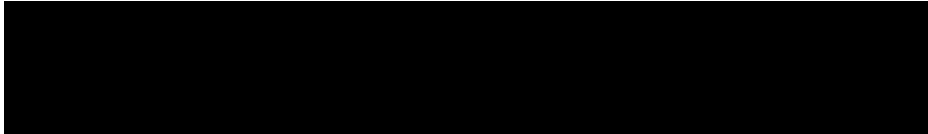
- (a) they will sign and deliver a Designation Notice to the   
 on or before any Loan is made available to the Borrower; and
- (b) upon  signing the Designation Notice, this document will be subject to the terms of the Subordination Agreement.

To the extent of any inconsistency between the terms of the Subordination Agreement and the terms of this document, the terms of the Subordination Agreement prevail.

### 3 Conditions precedent

The Borrower may only request a Loan and the Lender is only obliged to provide a Loan to the Borrower if:

- (a) the Borrower has entered into the document entitled *Social and Affordable Housing Fund – Services Agreement* between the Borrower and the Department of Family and Community Services; and
- (b) the Lender has received a duly completed Drawdown Request in respect of that Loan not later than 4.00 pm on the Business Day before the proposed Drawdown Date. The Drawdown Request must specify:
  - (i) the proposed Drawdown Date, which must be a Business Day during the Availability Period;
  - (ii) the amount of the proposed Loan, which must not, when aggregated with all previous Loans, exceed the Facility Limit; and
  - (iii) payment instructions; or
- (c) in respect of a transfer of an asset or property by the Lender to the Borrower, the Lender and the Borrower have agreed:
  - (i) the amount of the consideration in Australian dollars for that transfer; and
  - (ii) that such amount (**Transfer Loan Amount**) will on and from the date of that transfer be deemed to be a Loan under this agreement,



### 4 Facility

- (a) The Lender agrees to make available the Facility to the Borrower on the terms of this document by means of making one or more cash advances or Transfer Loan Amounts available in an aggregate principal amount not exceeding the Facility Limit.
- (b) The Borrower shall apply all cash advances borrowed by it under the Facility to fund its working capital and other business requirements.

### 5 Interest

- (a) Interest accrues on the daily balance of the Outstanding Principal at the rate of [REDACTED] per annum.
- (b) Subject to the terms of the Subordination Deed, the Borrower must pay accrued interest to the Lender on the last Business Day of each month.

- (c) If, under the terms of the Subordination Deed, the Borrower is not permitted to pay all or any part of the accrued interest to the Lender, that interest will be capitalised and form part of the Outstanding Principal on the last day of the month. Interest accrues in accordance with this document on capitalised interest.
- (d) Subject to the terms of the Subordination Deed, the Borrower must pay capitalised interest to the Lender on the last Business Day of each month.

## 6 Repayment

- (a) Subject to **clause 2**, the Borrower must repay to the Lender all Outstanding Principal together with all other amounts accrued or outstanding in full on the Maturity Date.
- (b) The Borrower may, if it gives the Lender not less than three Business Days' (or such shorter period as the Lender may agree) prior notice and subject to **clause 2**, prepay the whole or any part of a Loan. Any amounts prepaid under this **clause 6(b)** may not be re-borrowed.

## 7 Payments

### 7.1 Place, manner and time of payment

The Borrower must make payments to the Lender under this document:

- (a) at a place and in a manner reasonably required by the Lender;
- (b) by 11.00 am local time in the place where payment is required to be made; and
- (c) in immediately available funds and without set-off, counter claim, condition or, unless required by law, deduction or withholding.

### 7.2 Gross-up

If the Borrower is required by law to deduct or withhold Taxes from any payment it must:

- (a) make the required deduction and withholding;
- (b) pay the full amount deducted or withheld in accordance with the relevant law;
- (c) deliver to the Lender the original receipt for each payment; and
- (d) pay an additional amount with such payment so that, after all applicable deductions or withholdings, the Lender actually receives for its own benefit the full amount which would have been payable to the Lender if no deduction or withholding had been required.

### **7.3 Appropriation**

The Lender may appropriate any payment towards the satisfaction of any money due for payment by the Borrower in relation to this document in any way that the Lender thinks fit and despite any purported appropriation by the Borrower.

## **8 Costs and expenses**

### **8.1 Reimbursement of costs and expenses**

The Borrower must on demand pay and if paid by the Lender reimburse to the Lender:

- (a) the Lender's reasonable costs and expenses (including legal costs and expenses) in relation to the negotiation, preparation, execution and stamping of this document and any variation, replacement or discharge of this document;
- (b) the Lender's costs and expenses (including legal costs and expenses on a full indemnity basis) in relation to the exercise or attempted exercise or the preservation of any rights of the Lender under this document; and
- (c) any Taxes and registration or other fees (including fines and penalties relating to the Taxes and fees) which are payable in relation to this document or any transaction contemplated by it.

### **8.2 Taxable supply**

- (a) If GST is payable by the Lender on any supply made under this document the Borrower must pay to the Lender an amount equal to the GST payable on the supply.
- (b) That amount must be paid at the same time that the consideration for the supply is to be provided under this document and must be paid in addition to the consideration expressed elsewhere in this document.
- (c) On receiving that amount from the Borrower, the Lender must provide the Borrower with a tax invoice for the supply.

### **8.3 Adjustment events**

If an adjustment event arises in respect of any supply made by the Lender under this document, a corresponding adjustment must be made between the Lender and the Borrower in respect of any amount paid to the Lender by the Borrower under **clause 8.2** and payments to give effect to the adjustment must be made.

### **8.4 Payments**

If the Borrower is required under this document to pay for or reimburse an expense or outgoing of the Lender or is required to make a payment under an indemnity in respect of an expense or outgoing of the Lender, the amount to be paid by the Borrower is the sum of:

- (a) the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing that the Lender is entitled to; and
- (b) if the Lender's recovery from the Borrower is in respect of a taxable supply, an amount equal to the GST payable by the Lender in respect of that recovery.

## **8.5 GST terminology**

The terms 'adjustment event', 'consideration', 'GST', 'input tax credit', 'supply', 'taxable supply' and 'tax invoice' each has the meaning which it is defined to have in the *A New Tax System (Goods and Services Tax) Act 1999*.

# **9 Indemnities**

## **9.1 Nature**

The Borrower indemnifies the Lender on demand against any liability, loss, cost or expense (including any costs incurred by the Lender in liquidating or redeploying deposits or in terminating or reversing any hedge or swap arrangements) caused or contributed to by:

- (a) any failure by the Borrower to comply with any obligation under this document; or
- (b) the exercise or attempted exercise of any right by the Lender under this document.

## **9.2 Independence and survival**

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Borrower and survives the termination of this document.

# **10 General**

## **10.1 Set-off**

Subject to **clause 2**, the Lender may set off any money due for payment by the Lender to the Borrower whatsoever, including any money in any currency held by the Lender for the account of the Borrower in any place, against any money due for payment by the Borrower to the Lender under this document.

## **10.2 Lender's certificate**

A certificate by the Lender relating to amounts owing under this document is, in the absence of manifest error, conclusive evidence against the Borrower of the matters certified.

## **10.3 Supervening legislation**

Any present or future legislation which operates to lessen or vary in favour of the Borrower any of its obligations in connection with this document or to

postpone, stay, suspend or curtail any rights of the Lender under this document is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### **10.4 Business Days**

If the day on which anything is to be done by the Borrower under this document is not a Business Day, that thing must be done on the preceding Business Day.

#### **10.5 Amendment**

This document may only be varied or replaced by a document executed by the parties.

#### **10.6 Waiver and exercise of rights**

- (a) A right in favour of the Lender under this document, or a breach of an obligation of the Borrower under this document can only be waived by an instrument duly executed by the Lender. No other act, omission or delay of the Lender will constitute a waiver, binding, or estoppel against, the Lender.
- (b) A single or partial exercise or waiver by the Lender of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.

#### **10.7 Approval and consent**

The Lender may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

#### **10.8 Assignment**

- (a) The Borrower must not assign or otherwise dispose of any right under this document without the written consent of the Lender.
- (b) Subject to **clause 2**, the Lender's rights under this document are assignable.

#### **10.9 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

#### **10.10 Governing law and jurisdiction**

This document is governed by and will be construed in accordance with the laws applicable in New South Wales and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in that place.

#### **10.11 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;

- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings; and
- (d) a reference to:
  - (i) a document includes that document as amended or amended and restated from time to time;
  - (ii) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority; and
  - (iii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation.

## 11 Notices

### 11.1 How to give a communication

In addition to any other lawful means, a communication relating to this document may be given by being:

- (a) personally delivered;
- (b) left at, or sent to, the party's current address for notices; or
- (c) sent by fax to the party's current fax number for notices, and it will be deemed received:
  - (d) if posted, three Business Days after posting; and
  - (e) if sent by fax when the sender's fax machine produces a report that the fax was sent in full to the addressee, or, if sent after 5.00 pm in the place of receipt or on a day which is not a Business Day, at 9.00 am on the next Business Day.

### 11.2 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

**Borrower:**

Address: Level 5, 38 Humphreys Lane  
Hurstville, NSW 2220

Fax: (02) 9585 1564

Attention: Chief Executive Officer

**Lender:**

Address: Level 5, 38 Humphreys Lane  
Hurstville, NSW 2220

Fax: (02) 9585 1564

Attention: Chief Financial Officer

- (b) Each party may change its particulars for delivery of notices by notice to each other party.



# Schedule 1

## Facility Details

| Facility Details    |  |
|---------------------|--|
| Facility Limit      | <ul style="list-style-type: none"><li>• [REDACTED] or such other greater amount as agreed between the Lender and the Borrower in writing;</li></ul> plus <ul style="list-style-type: none"><li>• the Transfer Loan Amount for the Cartwright Property, or such other asset or property as agreed between the Lender and the Borrower in writing.</li></ul>   |
| Availability Period | The period commencing on the date the condition precedent in <b>clause 3(a)</b> has been satisfied and ending on 6 months after that date, or such later date as the Lender may agree in writing.  |
| Maturity Date       | 1 month after the Final Expiry Date (as defined in the Services Agreement) for the last Stage (as defined in the Services Agreement), or such later date as agreed between the Lender and the Borrower in writing. In this paragraph, Services Agreement means the <i>Services Agreement</i> to be entered into between the Borrower and the Department of Family and Community Services in relation to the Project. |

## Schedule 2

### Drawdown Request

From: SGCH Sustainability Limited (ABN 21 606 965 799)

To: St George Community Housing Limited (ABN 32 565 549 842)

Date: [●]

Dear Sirs

**Drawdown Request – SAHF Intercompany Loan Agreement dated [●] (the Agreement)**

1 We refer to the Agreement. This is a Drawdown Request. Terms defined in the Agreement have the same meaning in this Drawdown.

2 We wish to borrow the following amount under the Facility:

Proposed Drawdown Date: [●] (or, if that is not a Business Day, the next Business Day)

Amount: \$[ ]

The Loan is to be paid to the following account: Account name: [SGCH Sustainability Limited]

BSB: [Insert details]

Account No.: [Insert details]

3 This Drawdown Request is irrevocable.

Yours faithfully,

.....  
Authorised signatory for  
**SGCH Sustainability Limited**

# Schedule 3

## Designation Notice

From: SGCH Sustainability Limited (ABN 21 606 965 799); and  
St George Community Housing Limited (ABN 32 565 549 842)

To: [REDACTED]

Date: [●]

Dear Sirs

**Designation Notice – SAHF Intercompany Loan Agreement dated [●] (the Agreement)**

- 1 We refer to the Agreement.
- 2 We irrevocably designate the Agreement as a 'Junior Loan Document' for the purposes of the *Subordination Deed* dated 19 November 2015 between SGCH Sustainability Limited, St George Community Housing Limited and the [REDACTED] [REDACTED] as amended from time to time (**Subordination Deed**).
- 3 We acknowledge that the "Senior Loan Agreement" (as defined in the Subordination Deed) has been amended on or about the date of this notice pursuant to a Deed of Amendment and Restatement, and that any reference to the "Senior Loan Agreement" in the Subordination Deed is a reference to that document as amended.
- 4 Each of us repeats each of the representations and warranties given to you under the Subordination Deed for your benefit with reference to the facts and circumstances subsisting as at the date of this notice.
- 5 We agree and acknowledge that all of our respective liabilities and obligations under the Subordination Deed continue in full force and effect.
- 6 Please confirm your agreement to the Agreement being designated as a Junior Loan Document as described above by signing and returning a copy of this notice to us.

Yours faithfully,

.....  
**SGCH Sustainability Limited**

.....  
**St George Community Housing Limited**

**Acknowledged and agreed**



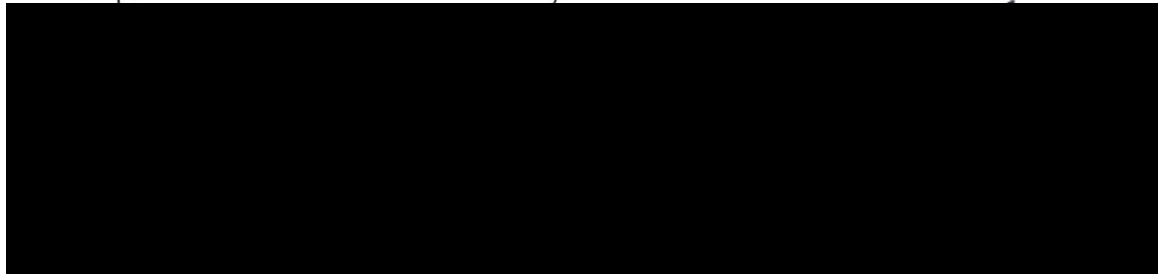
## Execution

**Executed** as an agreement.

**Executed by SGCH Sustainability** )  
**Limited** by its attorney under power of )  
attorney dated 9 December 2016 who )  
states that no notice of revocation has )  
been received )  
in the presence of: )



**Executed by St George Community** )  
**Housing Limited** by its attorney under )  
power of attorney dated 9 December )  
2016 who states that no notice of )  
revocation has been received )  
in the presence of: )



Confidential

I certify that this is a true,  
complete and up to date copy  
of the original document  
sighted by me at 3:40 PM  
this 10<sup>th</sup> day of February 2017



*Social and Affordable Housing Fund - Services  
Subcontract*

*SGCH Sustainability Limited (ServiceCo)*

ABN 21 606 965 799

and

*St George Community Housing Limited (SGCH)*

ACN 133 729 503

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## **SCHEDULES**

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**ANNEXURES**

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**A1 Not used**

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**Annexure B – Bid Services Deliverables**

**B1 Initial Service Delivery Phase Plans**

**Annexure C – Not used**

**Annexure D – Not used**

# Social and Affordable Housing Fund - Services Subcontract

Date 20 JANUARY 2017

Parties SGCH Sustainability Limited ACN 606 965 799 (ServiceCo)

St George Community Housing Limited ACN 133 729 503 (SGCH)

## Background

- A. FACS has conducted a public tender process and selected ServiceCo as a preferred tenderer for the Service Package.
- B. The Services Agreement between FACS and ServiceCo sets out the terms on which:
- (a) ServiceCo agrees to deliver the Services;
  - (b) FACS agrees to pay the Services MSP to ServiceCo; and
  - (c) the risks associated with the Service Package are allocated as between FACS and ServiceCo.
- C. This Services Subcontract sets out the terms on which:
- A. SGCH agrees to deliver the Services;
  - B. ServiceCo agrees to pay the Services MSPs to SGCH;
  - C. SGCH agrees to carry out the Planned Maintenance Works and the Responsive Maintenance Works; and
  - D. the risks associated with the Service Package are allocated as between ServiceCo and SGCH.
- D. ServiceCo intends for the Service Package to be delivered within the National Regulatory System.

## Operative provisions

### Part A - Interpretation and project parameters

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#### 1. Definitions

In this deed, unless the context otherwise requires:

**Abatement** means an amount in dollars deducted in accordance with the Payment Schedule from a Services MSP, in respect of a Service Failure.

**Accommodation Services** means the services described in section 2 of the Services Specification as set out in the Responsibility Allocation Matrix, as varied or supplemented in accordance with any Modification.

**Accounts and Records** has the meaning given in clause 45.1.

**Adjustment Note** has the meaning given in the GST Law.

**Adverse Rights** means all (if any) interests, rights, affectations, encumbrances, Easements, covenants (including any rights, and other affectations or encumbrances in respect of conduits) and other restrictions on use (excluding rights of light and air):

- (a) affecting or impacting the Site as set out in the Information Documents; or
- (b) of which ServiceCo or SGCH has actual knowledge, as at the date of this Agreement.

**Affordable Housing** means the Dwellings which are made available to Affordable Housing Tenants.

**Affordable Housing Tenant** means a household which meets the affordable housing eligibility criteria outlined in the NSW Affordable Housing Guidelines, and has a right to occupy a Dwelling under a Residential Tenancy Agreement, and where the context requires, any such household which has been allocated a Dwelling in accordance with the Services Specification.

**Agreement** has the meaning given in clause 2.2(a).

**Allocation Zone** means each area of Social Housing described as an 'allocation zone' for the purposes of allocating Social Housing from the NSW Housing Register (or any replacement term used by FACS to denote an area for this purpose).

**API** means New South Wales Division of the Australian Property Institute.

**Applicant** means an individual who:

- (a) applied to FACS for Social Housing;
- (b) was assessed by FACS or a Registered CHP as eligible for Social Housing; and
- (c) is on the NSW Housing Register.

**Appropriate Applicant** means an Applicant that is on the NSW Housing Register to whom a 'Reasonable Offer' could be made by SGCH in accordance with the Housing Pathways Policies. For the purposes of this definition, 'Reasonable Offer' has the meaning given to it in the document entitled 'Matching and Offering a Property to a Client Policy' dated February 2016 issued by FACS, as amended or replaced from time to time, and at the date of this Agreement means an offer of tenancy in a Dwelling that is consistent with:

- (a) the number of bedrooms the household requires;
- (b) the Allocation Zone requested by the Applicant; and
- (c) any other features of a property required after an assessment of the Applicant.

**Approval** means:



- (a) each Key Planning Approval; and
- (b) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like which must be obtained or satisfied (as the case may be) in connection with the Service Package.

**Artefacts** means any places, fossils, bones, artefacts, coins, articles of value or antiquity, structures, natural features or remains or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or aboriginal heritage or archaeological interest.

**Asset Management Services** means the services described in section 3 of the Services Specification, as varied or supplemented in accordance with any Modification.

**Associate** or **Associates** means, in relation to a person, subject to paragraphs (a) and (b), any Related Body Corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and:

- (a) in the case of SGCH, includes:
  - (i) the SGCH Representative;
  - (ii) not used;
  - (iii) not used; and
  - (iv) any person on or at a Site at the express or implied invitation of SGCH or a Subcontractor in connection with the performance of the Service Package Activities,

but does not include ServiceCo, any of its Associates or any Tenants; and

- (b) in the case of ServiceCo, includes:
  - (i) officers, agents, advisers, consultants, contractors, authorised officers and employees of ServiceCo each acting in connection with the Service Package;
  - (ii) the ServiceCo Representative and any other person responsible for the administration or management or implementation of the Service Package, or any aspect of the Service Package, for and on behalf of ServiceCo; and
  - (iii) any other person to whom ServiceCo delegates a right, power, function or duty under this Agreement,

but does not include SGCH, or any of its Associates or any Tenants.

**Authority** means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and

- (b) any other person having jurisdiction over, or ownership of, any Utilities or Utility Infrastructure.

**Bank Bill** means a bill of exchange (as defined in the *Bills of Exchange Act 1909 (Cth)*) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

**Bank Bill Rate**, for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in Months which is closest to that period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10:30am, then the Bank Bill Rate will be the rate reasonably determined by ServiceCo, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

**Base Case Financial Model** has the meaning given in the Services Agreement.

**Best Services Practices** means the practices required for the provision of services similar to the Services, which are performed:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Services;
- (b) in a manner that is client focused and safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe operation of the Relevant Infrastructure;
- (d) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) with adequate levels of resources, including personnel, materials and supplies;
- (f) using suitable, high quality finishes and materials which are free from defects; and
- (g) with a commitment to continually providing innovation and meeting advancements in improving the standards and quality of the Services,

provided that this requirement in and of itself does not require SGCH to upgrade any Dwelling after the Date of Service Readiness unless SGCH is expressly required to do so.

**Bid Services Deliverables** means Annexure B.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales.

**Business Hours** means between 9:00 am and 5:00 pm on a Business Day.

CCU has the meaning given in clause 12.2(b).

**Change Compensation Event** has the meaning given in the Change Compensation Principles.

**Change Compensation Principles** means Schedule 5.

**Change in Control** means:

- (a) where, at any time, any person or Entity alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of an Entity;
- (b) not used; or
- (c) a change in a member of a company limited by guarantee, where that member ceases to or commences to, directly or indirectly, have Control of that company.

For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).

**Change in Law** means:

- (a) the coming into effect of, or a change to, or the repeal of, Legislation; or
- (b) any judgement or decision of a court of law which changes the way a Law is applied or interpreted,

after the date of this Agreement, but does not include:

- (c) a change in the way a Law is applied or interpreted due to:
  - (i) the failure of SGCH or any of its Associates to comply with a Law, Standard or Approval; or
  - (ii) a SGCH Act or Omission;
- (d) any new Law or change in existing Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the GST Law or the *Payroll Tax Act 2007* (NSW);
- (e) any new local government Law or change in any local government existing Law; or
- (f) any new Law or change in or repeal of any existing Law which was not in force at the date of this Agreement but which:
  - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Agreement;
  - (ii) is listed or referred to in the Services Specification, the Proposal, Information Documents or any Service Package Document;

- (iii) a party exercising Best Services Practices would have reasonably foreseen or anticipated prior to the date of this Agreement;
- (iv) is substantially the same as a Law in force prior to the date of this Agreement; or
- (v) is substantially the same as any other requirement with which SGCH was required to comply under any ServiceCo Service Package Document as at the date of this Agreement.

**Change in Management** means a change in:

- (a) any Entity which provides management functions to SGCH;
- (b) the senior employees of any Entity which provides management functions to SGCH; or
- (c) the senior management of SGCH,

as applicable.

**Change in Mandatory Requirements** means a Project-Specific Change in Law or a Change in Policy that occurs after the date of this Agreement and that will have an effect on the cost of carrying out the Service Package Activities.

**Change in Policy** means any one or more of the following that occurs after the date of this Agreement:

- (a) the introduction of a new Standard; or
- (b) a change in a Standard;

but does not include the introduction of a new Standard or a change in Standard:

- (c) of which ServiceCo has expressly notified SGCH prior to the date of this Agreement;
- (d) which is contained or referred to in the Services Specification, the Proposal, any Service Package Document or Information Documents or any other material provided by ServiceCo to SGCH or any of its Associates in connection with the Service Package prior to the date of this Agreement;
- (e) which a party that provides services similar to the Service Package Activities in accordance with Best Services Practices would have reasonably foreseen or anticipated prior to the date of this Agreement;
- (f) which is substantially the same as a Standard in force prior to the date of this Agreement;
- (g) which is substantially the same as any other requirement with which SGCH was required to comply with under the Service Package Documents prior to the date of this Agreement;
- (h) that results from or is in response to any SGCH Act or Omission;

- (i) where the Standard is an Approval (including any conditions or requirements under it); or
- (j) where the Standard is a standard, code, specification, policy or requirement of any Authority other than FACS.

**Change Notice** has the meaning given in the Change Compensation Principles.

**Change Response** has the meaning given in the Change Compensation Principles.

**CHIMES** means the Community Housing Information Management System maintained by FACS.

**Claim** means any claim, action, demand, suit, proceeding, penalty or fine (including by way of contribution or indemnity) made:

- (a) in connection with the Service Package Documents, any Relevant Infrastructure, any Site or the Service Package; or
- (b) at Law or for specific performance, restitution or payment of money (including damages).

**Commercial Close** means the date on which the last Condition Precedent to be satisfied, has been satisfied (or waived in accordance with clause 3.3) as set out in a notice given by ServiceCo to SGCH in accordance with clause 3.2(c).

**Commercial Close Adjustment Protocol** means the protocol to:

- (a) update the Base Case Financial Model; and
- (b) amend this Agreement,

to be applied at Commercial Close, in accordance with clause 3.5 and set out in Annexure D.

**Commercial Close Financial Model** means the Base Case Financial Model as updated and audited in accordance with the Commercial Close Adjustment Protocol.

**Commercially Sensitive Information** means the information referred to in the Commercially Sensitive Information Schedule.

**Commonwealth** means the Commonwealth of Australia.

**Commercially Sensitive Information Schedule** means Schedule 11.

**Community Housing Act** means the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW).

**Compensable Intervening Event** means any of the following events occurring during the Service Delivery Phase:

- (a) **(ServiceCo breach)**: a breach by ServiceCo of any ServiceCo Service Package Document;

- (b) **(fraudulent act or omission):** a fraudulent, reckless, unlawful or malicious act or omission of ServiceCo or any of its Associates in connection with the Service Package.

**Compensation Date** has the meaning given in the Termination Payment Schedule.

**Condition Precedent** means each condition precedent in the Conditions Precedent Schedule.

**Condition Precedent Deadline** means the date so specified in the Contract Particulars.

**Conditions Precedent Schedule** means Schedule 2.

**Confidential Information** means:

- (a) the Service Package Documents;
- (b) the Information Documents;
- (c) any Commercially Sensitive Information;
- (d) information provided by:
  - (i) ServiceCo or any of its Associates to SGCH or any of its Associates; or
  - (ii) SGCH or any of its Associates to ServiceCo or any of its Associates,in connection with this Agreement or the Service Package, whether provided prior to or after the date of this Agreement;
- (e) SGCH Material; and
- (f) Personal Information,

but does not include any report prepared by or on behalf of ServiceCo in relation to the performance or non-performance of SGCH or its Associates of its obligations pursuant to this Agreement.

**Consequential or Indirect Loss** means any:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or
- (b) to the extent not prohibited by Law, any penalties payable under agreements other than ServiceCo Service Package Documents.

**Construction Project** has the meaning given in the WHS Regulation.

**Consumer Price Index** or **CPI** has the meaning given in the Indexes Schedule.

**Contract Particulars** means Schedule 1.

**Control** means:

- (a) 'Control' as defined in the Corporations Act;

- (b) the ability to control, directly or indirectly, the composition of the board or partnership committee (or if the Entity is a trust, the appointment of a trustee of that trust);
- (c) being in a position to cast, or control the casting of, more than 25% of the maximum number of votes that may be cast at a general meeting or similar (or if the Entity is a trust, a meeting of unit holders); or
- (d) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in this Agreement) in more than 25% of the Securities,

of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

**Controlling Entity** means, in relation to a Change in Control, the person or Entity to whom Control will pass.

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

**Counterparty Details** means, in connection with each person (other than ServiceCo) who is a party to a ServiceCo Service Package Document:

- (a) a certified copy of its constitution (or other constituent documents);
- (b) in the case of a trustee who enters into the ServiceCo Service Package Documents on behalf of a trust, a certified copy of the relevant trust agreement;
- (c) a certified copy of any powers of attorney under which the person executed each ServiceCo Service Package Document; and
- (d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each ServiceCo Service Package Document to which it is a party.

**Date for Service Readiness** has the meaning given in the Services Agreement.

**Date of Service Readiness** has the meaning given in the Services Agreement.

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

- (a) **(abandonment)**: SGCH wholly or substantially abandons the Service Package or any material part of the Service Package Activities or a Stage;
- (b) **(SGCH Insolvency Event)**: an Insolvency Event occurs in relation to SGCH;
- (c) **(SGCH fraud)**: SGCH engages in fraud, collusion or dishonest conduct in performing its obligations under any Service Package Document;
- (d) **(assignment, transfer or disposal)**: SGCH assigns, transfers or otherwise disposes of any of its rights, title and interest in or under any Service Package Document, the whole or any part of a Site or the Relevant Infrastructure in breach of clause 42;

- (e) **(Change in Control)**: a Change in Control occurs in respect of SGCH other than in accordance with clause 43;
- (f) **(unremedied Major Default)**: a Major Default is capable, or is deemed to be capable of remedy and SGCH fails to remedy the Major Default within the period set out in the Major Default Notice (as extended, if at all, in accordance with clause 31.4(b));
- (g) **(Liability Cap)**: at any time the aggregate liability of SGCH to ServiceCo or its Associates is equal to or exceeds █████ of the Liability Cap and SGCH does not elect to refresh the Liability Cap to be not less than █████ of the Liability Cap for that Operating Year (excluding any accrued liabilities) within 5 Business Days of receiving written notice from ServiceCo that the aggregate liability of SGCH to ServiceCo or its Associates is equal to or exceeds █████ of the Liability Cap, provided that SGCH will only be entitled to refresh the Liability Cap on one occasion without ServiceCo's prior written consent (which may be withheld in its sole discretion);
- (h) **(Major Default not capable of remedy)**: a Major Default is not capable of remedy and SGCH fails to diligently comply with any reasonable requirements of ServiceCo to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as extended, if at all, under clause 31.4(b));
- (i) **(Illegality Event)**: an Illegality Event occurs;
- (j) **(Probity Event)**: SGCH fails to comply with clause 48.1(d), in relation to a Probity Event;
- (k) **(loss of registration)**: SGCH's registration as a Registered CHP is cancelled or SGCH otherwise ceases to be a Registered CHP;
- (l) not used; or
- (m) **(deemed Default Termination Event)**: any other event which is deemed to be a Default Termination Event under clause 31.2(e) or clause 31.6(c).

**Default Termination Event (ServiceCo)** means the occurrence of any of the following events:

- (a) **(failure to pay)**: SGCH is entitled to suspend the performance of the Services and ServiceCo's failure to pay has not been remedied within 20 Business Days after receiving notice in writing of non-payment; or
- (b) **(ServiceCo insolvency)**: an Insolvency Event occurs in relation to ServiceCo.

**Default Termination Payment** means the payment calculated in accordance with section 4.5 of the Termination Payment Schedule.

**Defect** means:

- (a) any defect, shrinkage, expansion fault or omission in any Relevant Infrastructure (excluding any normal shrinkage or expansion of materials accommodated in accordance with Best Services Practices); or
- (b) any other aspect of any Relevant Infrastructure which is not in accordance with the requirements of this Agreement.



**Dispute** has the meaning given in clause 34.1(a).

**Dwelling** means a room or suite of rooms occupied, used, constructed or adapted so as to be capable of being occupied or used as a separate, self-contained and lockable domicile that:

- (a) may be occupied by one or more households; and
- (b) must have its own cooking, bathing and toilet facilities and be accessible without passing through another Dwelling.

**Dwellings Schedule** means Schedule 25.

**Early Service Readiness Date** has the meaning given in clause 20A.1 (d).

**Easements** means all easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges, in each case as are granted on or prior to the date of this Agreement.

**Employee Checks** means the checks of employees and volunteers set out in the Contract Particulars.

**Employee Requirements** means the employee requirements set out in the Contract Particulars.

**Entitlement** means any rights, remedies, benefits, compensation, recovery or other relief.

**Entity** has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).

**Environment** means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social factor of aesthetics.

**Excluded Contract** has the meaning given in the Services Agreement.

**Expert Determination Agreement** means an expert determination agreement to be entered into between SGCH, ServiceCo and an independent expert substantially in the form set out in Schedule 19.

**Expiry Date** has the meaning given in clause 4.2.

**FACS** means the Department of Family and Community Services.

**FACS Nominee** has the meaning given in clause 42.3 of the Services Agreement.

**FACS Service Package Documents** has the meaning given in the Services Agreement.

**Federal Rent Assistance Legislation** means legislation of the Commonwealth pursuant to which the Commonwealth provides rent assistance to persons who are also Tenants or Household Members.

**Final Expiry Date** means, in respect of a Stage, the date which is the 25<sup>th</sup> anniversary of the earlier of the:

- (a) Date for Service Readiness in respect of the Stage; and

(b) Date of Service Readiness in respect of the Stage.

**Finance Documents** has the meaning given in the Services Agreement.

**Financial Model** has the meaning given in the Services Agreement.

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

**Financier** has the meaning given in the Services Agreement.

**Financiers' Side Deed** means the side deed to be entered into on or about the date of this Agreement between [REDACTED] ServiceCo and SGCH.

**Fit for Purpose** means the Relevant Infrastructure:

- (a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from clauses 1 to 49 of the Services Agreement, the Services Requirements and the Payment Schedule;
- (b) otherwise meets the requirements for the Dwellings set out in or which can be reasonably ascertained from:
  - (i) the Design Requirements and the Services Requirements; and
  - (ii) all other requirements of this Agreement; and
- (c) is fit for the performance of the Services in accordance with the Services Requirements and so as to facilitate and not impair the achievement of the Service Package Objectives.

**Force Majeure Event** means, in respect of a Stage, any of the following events occurring:

- (a) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- (b) nuclear or biological contamination;
- (c) ionising radiation or contamination by radioactivity;
- (d) any act of terrorism occurring at the Site for that Stage, except to the extent coverage is provided for a declared terrorist incident under the *Terrorism Insurance Act 2003* (Cth);
- (e) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;
- (f) a flood which might at the date of this Agreement be expected to occur no more frequently than once in 100 years;
- (g) fire or explosion caused by events referred to in paragraphs (a) or (f); and
- (h) during the Service Delivery Phase only, for a Stage, Utility Interruption due to an interruption that occurs upstream from the point at which that Utility provider's Utility

Infrastructure connects specifically to the Site for that Stage or the Relevant Infrastructure;

and which:

- (i) in relation to paragraphs (a) to (d), except to the extent the event is caused or contributed to by a SGCH Act or Omission or a failure by SGCH or its Associates to perform the Services in accordance with this Agreement;
- (j) save in relation to paragraph (h), occurs at or directly in the vicinity of [the Site] for that Stage;
- (k) in:
  - (i) not used; or
  - (ii) all other circumstances in respect of a Site for a Stage, prevents SGCH from carrying out all or substantially all of the Accommodation Services at the Site for the Stage;
- (l) was not caused by SGCH or its Associates, or ServiceCo or its Associates;
- (m) was beyond the reasonable control of SGCH or its Associates; and
- (n) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent operator of facilities similar to the Relevant Infrastructure and providing services similar to the Services would have taken using Best Services Practices (including the expenditure of reasonable sums of money).

**Force Majeure Termination Event for a Stage means:**

- (a) either party has been prevented from carrying out all or substantially all of the Service Package Activities for that Stage for a continuous period exceeding [REDACTED] days as a result of a Force Majeure Event; and
- (b) at least [REDACTED] days has elapsed since SGCH gave notice to Service Co in accordance with clause 24.1(d) of the Force Majeure Event,

or any other event expressly deemed to be a Force Majeure Termination Event in this Agreement.

**GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).

**GST** means:

- (a) the same as in the GST Act; and
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Amount** has the meaning given in clause 21.8(c)(ii).

**GST Law** has the meaning given in the GST Act.

**Household Member** means an individual:

- (a) listed as an additional person to be housed at the time of application to the NSW Housing Register;
- (b) approved to be housed at the beginning of a Tenancy; or
- (c) who is otherwise an approved additional occupant of the Dwelling.

**Housing Pathways** means the common Social Housing application and assessment system, maintained under a partnership between FACS and community housing providers.

**Housing Pathways Policies** means the policies identified as such in Appendix A of the Services Specification.

**Illegality Event** means SGCH:

- (a) ceases to hold an Approval; or
- (b) breaches applicable Legislation,

and ServiceCo forms the view (acting reasonably) that such failure or breach is material to the performance of SGCH's obligations under this Agreement and such failure or breach is not remedied within 24 days after the earlier of:

- (c) the date on which ServiceCo notifies SGCH of the failure or breach; or
- (d) the date on which SGCH becomes aware of the failure or breach.

**Indemnified Person** has the meaning in clause 29.1.

**Index** means each index set out in the Indexes Schedule.

**Indexed** means the relevant amount as indexed in accordance with the Indexes Schedule.

**Indexes Schedule** means Schedule 4.

**Information Documents** means all Material provided or made available by or on behalf of FACS or its Associates to ServiceCo or SGCH or its Associates in connection with the Service Package (which is not incorporated into this Agreement).

**Initial Offer** has the meaning given in clause 20.3(b).

**Initial Service Delivery Phase Plans** means the version of the Service Delivery Phase Plans current at the date of this Agreement attached as Annexure B1.

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 24 Business Days;

- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by ServiceCo before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by ServiceCo before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager, trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
- (e) a party or any other person appoints an administrator to the party, or takes any step to do so;
- (f) a party:
  - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
  - (ii) ceases or threatens to cease to carry on all or a material part of its business;
  - (iii) is or states that it is unable to pay its debts; or
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F of the Corporations Act;
- (g) a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of ServiceCo, except for the purposes of a solvent reconstruction or amalgamation permitted by this Agreement; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

**Insurances** means the insurances required to be effected and maintained in accordance with this Agreement and as set out in the Insurance Schedule.

**Insurance Schedule** means Schedule 10.

**Intellectual Property Rights** includes:

- (a) all copyright and analogous rights;
- (b) all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and knowhow), circuit

layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and

- (c) all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing, whether created or in existence before, on or after the date of this Agreement and whether existing in Australia or otherwise.

**Intervening Event** means any of the following occurring during the Service Delivery Phase:

- (a) **(Compensable Intervening Event):** a Compensable Intervening Event;
- (b) **(ServiceCo Act or Omission):** any act or omission of:
  - (i) ServiceCo; or
  - (ii) any Associate of ServiceCo,in connection with the Service Package other than any such act or omission which is authorised or permitted under a ServiceCo Service Package Document, Standard or Law; or
- (c) **(Force Majeure Event):** a Force Majeure Event.

**Key Planning Approval** means each of those approvals identified as such in the Contract Particulars.

**LAHC** means the New South Wales Land and Housing Corporation.

**Land Tax** means land tax payable in accordance with the provisions of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

**Law** means:

- (a) those principles of common law and equity established by decisions of courts; and
- (b) Legislation.

**Lease** means a lease agreement between ServiceCo and a Lessor.

**Legislation** means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State of NSW or an Authority.

**Lessor** means a person who enters into a Lease with ServiceCo.

**Liability** means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Agreement, any other Service Package Documents or arising at Law.

**Linked Claim** means a Claim or potential Claim by, or entitlement or potential entitlement of, SGCH against ServiceCo where the Claim or potential Claim, Entitlement or potential Entitlement:

- (a) is in respect of the same or equivalent circumstances, actions or omissions as a claim or potential claim by, or entitlement or potential entitlement of, ServiceCo against an Upstream Party arising out of or in connection with the Project or an Upstream Document;
- (b) is a Linked Dispute; or
- (c) arises out of or in connection with an Upstream Decision.

**Linked Dispute** means a dispute:

- (d) to which SGCH is a party;
- (e) which arises out of this Agreement; and;
- (f) which is concerned with matters which arise in respect of the respective rights or obligations of ServiceCo and an Upstream Party under an Upstream Document.

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

- (a) not used;
- (b) not used;
- (c) **(fraud)**: an Associate of SGCH engages in fraud, collusion or dishonest conduct in performing their obligations under the Service Package Documents;
- (d) **(representations and warranties)**: a representation or warranty given by SGCH under a ServiceCo Service Package Document is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by SGCH in respect of any financial statements or invoices or other books or records of SGCH;
- (e) **(subcontracting)**: SGCH breaches an obligation in clauses 10.2 or 10.3;
- (f) **(breach of ServiceCo Service Package Document)**: any breach of a ServiceCo Service Package Document by SGCH (other than any Service Failure, Major Default or Default Termination Event) which is not cured within 16 Business Days (or such longer period as ServiceCo (acting reasonably) determines) of SGCH receiving a notice of that breach from ServiceCo;
- (g) **(Change in Management)**: as a result of a Change in Management, SGCH no longer has the same or better management skills available to it as it had prior to the Change in Management;
- (h) **(Change in Control)**: a Change in Control occurs in respect of SGCH without the consent of ServiceCo in accordance with clause 43.3;
- (i) **(Probity Event)**: SGCH fails to remedy a Probity Event in accordance with clause 48;

- (j) **(loss of registration):** SGCH's registration as a Registered CHP in carrying out the Asset Management Services and Tenancy Management Services, is cancelled or SGCH otherwise ceases to be a Registered CHP;
- (k) **(breach of other Service Package Document):** SGCH:
  - (i) breaches any of its obligations under a Service Package Document other than a ServiceCo Service Package Document (other than where such breach is any other Major Default, a Default Termination Event or a Service Failure);
  - (ii) the breach has or will have a material adverse effect on SGCH's ability to deliver the Service Package; and
  - (iii) is not diligently pursuing the remedy of the breach;
- (l) **(Major Default Service Failure):** a Major Default Service Failure occurs;
- (m) not used;
- (n) **(Insurances):** a breach by SGCH of any of its obligations under section 2 (*Notification and Making of Claims*) of the Insurance Schedule;
- (o) not used;
- (p) **(Registrar enforcement powers):** a Registrar exercises any power under sections 20 or 21 of the National Law in respect of SGCH;
- (q) **(failure to comply with National Regulatory Code):** SGCH fails to comply with any condition of its registration as a Registered CHP or any other performance requirement under the National Regulatory Code and receives a notice to that effect; or
- (r) not used.

**Major Default Notice** has the meaning given in clause 31.2(b).

**Major Default Service Failure** has the meaning given in the Payment Schedule.

**MAE Change in Law** means a Change in Law by reason of:

- (a) a change in Federal Rent Assistance Legislation existing at the date of this Agreement;
- (b) the enactment or making of new Federal Rent Assistance Legislation after the date of this Agreement; or
- (c) a change in the way Federal Rent Assistance Legislation is applied, or in the interpretation of a Federal Rent Assistance Legislation, after the date of this Agreement,

which results in:

- (d) rent assistance no longer being payable by the Commonwealth to a material proportion of persons who receive such assistance at the date of this Agreement;



- (e) a material decrease in the average amount of rent assistance payable by the Commonwealth to a person; or
- (f) a material proportion of persons receiving rent assistance at the date of this Agreement being otherwise unable to receive rent assistance from the Commonwealth,

after taking into account any other NSW Government or Commonwealth assistance, support or transitional arrangements with respect to the Social Housing.

**Material** means tangible and intangible information, documents (including any document within the meaning of the *Evidence Act 1995* (NSW)), reports, software (including source and object code), inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever.

**Material Adverse Effect** has the meaning given in the Services Agreement.

**Model Output Schedule** has the meaning given in the Services Agreement.

**Modification** means:

- (a) not used; and
- (b) after the date of this Agreement, in respect of the Services, a change to the Services Requirements or the Services including any addition, increase, decrease, omission, deletion, or removal of any part of the Services,

but excluding:

- (c) any change of the type referred to in paragraph (b) which is required to ensure that the Services are otherwise in accordance with this Agreement;
- (d) the updating of the Dwellings Schedule in accordance with clause 15.9 of the Services Agreement;
- (e) substitution of a Dwelling identified in the Dwellings Schedule with a new dwelling in accordance with clause 19; and
- (f) the coming into effect of, or a change to or repeal of, a Standard.

**Modification Order** means a Change Response entitled 'Modification Order' issued in accordance with clause 26.5 and the Change Compensation Principles, requiring SGCH to proceed with the relevant Modification or comply with the Change in Mandatory Requirements (as applicable).

**Modification Request** has the meaning given in clause 26.1.

**Month** means a calendar month.

**National Law** means the Appendix to the Community Housing Act.

**National Regulatory Code** means Schedule 1 to the National Law.

**National Regulatory System** means the National Regulatory System for Community Housing.

**Negotiated Offer** has the meaning given in clause 20.3(d).

**NSW Affordable Housing Guidelines** means the document entitled 'NSW Affordable Housing Ministerial Guidelines' dated June 2015 issued by FACS, as amended or replaced from time to time.

**NSW Code** has the meaning given in clause 12.2(a).

**NSW Government** means the Crown in right of the State of New South Wales and its agencies, other than FACS.

**NSW Guidelines** has the meaning given in clause 12.1.

**NSW Housing Register** means the single list of Applicants waiting for Social Housing that is operated and maintained by FACS in partnership with community housing providers.

**Omitted Service Package Activities** has the meaning given in clause 26.1(b).

**Operating Month** means:

- (a) for the first Operating Month, the period commencing on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the final day of that Month;
- (b) each subsequent Month during the Service Delivery Phase; and
- (c) for the final Operating Month, the period from the end of the last full Operating Month (as defined in paragraph (b)) to the Expiry Date for the last Stage to achieve Service Readiness.

**Operating Year** means:

- (a) for the first Operating Year, the period commencing on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the next 30 June;
- (b) subject to paragraph (c), each subsequent 12 Month period during the Service Delivery Phase commencing on 1 July and ending on 30 June; and
- (c) for the final Operating Year, the period from the end of the last full Operating Year (as defined in paragraph (b)) to the Expiry Date.

**Option Condition** has the meaning given in the Services Agreement.

**Option Notice Service Date** has the meaning given in the Services Agreement.

**Option Period** has the meaning given in the Services Agreement.

**Option to Lease** has the meaning given in the Services Agreement

**Original Date for Service Readiness** has the meaning given in the Services Agreement.

**Original Reviewable Services Schedule** means the component so named in the Model Output Schedule, which contains the information required under clause 20.1(b).

**Overdue Rate** means [REDACTED] per annum above the Bank Bill Rate.

**Outcomes Based Contracting** means the linking of a component of the Services MSP to the achievement of outcomes focused requirements pursuant to clause 20.

**Partial Termination** has the meaning given in clause 33.1(a).

**Payment Schedule** means Schedule 3.

**Performance and Data Reporting** means the services described in section 6 of the Services Specification as varied or supplemented in accordance with any Modification.

**Performance Regime** means the regime for Abatement described in the Payment Schedule and Appendix 3 of the Services Specification.

**Personal Information** means any personal information, within the meaning given in the Privacy Act 1988 (Cth), about any Tenant.

**Planned Maintenance Works** means those regular, recurring and cyclical repairs, renewals and upkeep of components and finishes both internal and external to the Dwellings (including the yard space), and which is not of a reactive nature. The Planned Maintenance Works include:

- (a) **(Life cycle works)**: repainting, re-carpeting, replacing fittings such as lights, hotplates, ovens, hot water systems and replacing components such as kitchen cupboards and bathtubs;
- (b) **(Lawns grounds and cleaning)**: regular tasks of cleaning common areas and the upkeep of common area lawns and grounds;
- (c) **(Fire program repairs)**: regular inspection and upkeep of systems and services dealing with fire-fighting equipment (including hoses and hydrants), and the checking and repairing of alarms and smoke detectors located throughout a building including exterior common areas to ensure compliance with an annual fire safety statement (as required under relevant Legislation);
- (d) **(Smoke Alarm Servicing)**: regular inspection and replacement of faulty or outdated smoke alarms to all Class 1 buildings to ensure compliance with the relevant Legislation; and
- (e) **(Preventative Maintenance Servicing)**: the planned regular servicing of mechanical services and equipment to reduce future maintenance liabilities, including the servicing of lifts, stormwater pits and pumps, rainwater tanks and pumps.

**Planned Maintenance Works Fee** has the meaning given in clause 18.5(b).

**Pre-Service Readiness Services** has the meaning given in clause 15.1(b).

**Principal Contractor** has the meaning given in the WHS Regulation.

**Prior Occupancy** has the meaning given in clause 15.8(a).

**Privacy Legislation** means the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth), and any other applicable Commonwealth or NSW Government Legislation or guidelines relating to privacy.

**Private Housing** means those dwellings on a Site that are not Social Housing or Affordable Housing including those dwellings that are indicated as such in the Dwellings Schedule.

**Prior Occupancy Services** means, in respect of a Stage, if Prior Occupancy occurs, the Services to be provided by SGCH for that Stage prior to the Service Commencement Date.

**Probity Event** includes any event or thing which occurs before or after the date of this Agreement which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of SGCH or a Relevant Person;
- (b) relates to SGCH or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Service Package; or
- (c) involves a material failure of SGCH or any Subcontractor to achieve or maintain:
  - (i) reasonable standards of ethical behaviour;
  - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of SGCH or any Subcontractor to carry out and observe its obligations in connection with the Service Package; or
  - (iii) other standards of conduct that would otherwise be expected of a party involved in a FACS or NSW Government project.

**Probity Investigation** means any probity, criminal or security investigation to report on or check the character, integrity, experience or honesty of a person or Entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

**Programming Requirements** means the requirements set out in Schedule 15.

**Project-Specific Change in Law** means a Change in Law which, by express reference, applies to:

- (a) the Service Package;
- (b) ServiceCo; or
- (c) a Site,

and not to other projects, Entities or sites.

**Prolongation Costs** has the meaning given in the Change Compensation Principles.

**Proposal** means the proposal submitted by ServiceCo in response to the Request for Proposal.

**Proposed Early Service Readiness Date** means, in respect of each Stage, the date (if any) nominated and updated (where applicable) by ServiceCo, by which ServiceCo proposes to achieve Service Readiness in respect of that Stage, being a date that is prior to the relevant Date for Service Readiness.

**Proposed Early Service Readiness Notice** means a notice provided by ServiceCo to FACS in accordance with clause 16.

**Qualifying Offset Stage** has the meaning given in clause 20A.1(d).

**Quarter** means each three Month period commencing on a Quarterly Date, save that:

- (a) not used;
- (b) not used;
- (c) the first Quarter of the Service Delivery Phase will be the period from the Date of Service Readiness in respect of the first Stage to achieve Service Readiness until the day before the first Quarterly Date during the Service Delivery Phase; and
- (d) the last Quarter of the Service Delivery Phase will be the period from the last Quarterly Date during the Service Delivery Phase to the Expiry Date.

**Quarterly Date** means every 1 January, 1 April, 1 July and 1 October.

**Quarterly Report** has the meaning given in the Services Agreement.

**RCTI** has the meaning given to "recipient created tax invoice" in the GST Law.

**Rates** means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site or the Relevant Infrastructure.

**Recipient** has the meaning given in clause 21.8(c)(ii).

**Recipient Supply** has the meaning given in clause 21.8(e)(i).

**Rectification Costs** means an amount equal to the aggregate of the reasonable and proper costs incurred by ServiceCo (including costs incurred by FACS as contemplated by the definition of 'Rectification Costs' under the Services Agreement) in:

- (a) curing, rectifying or remedying SGCH's defaults; and
- (b) procuring alternative performance of the Service Package but only to the extent such costs exceed the cost components of the Services MSP relating to the performance of the Service Package Activities and the insurance, deducted as part of the Transition Services Payment.

**Registered CHP** means an Entity registered under the Community Housing Act as a community housing provider.

**Registrar** means the person appointed as 'Registrar' under section 10 of the Community Housing Act or the Registrar for a jurisdiction other than New South Wales that is participating in the National Regulatory System.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Infrastructure**, in respect of a Site, means the whole of the area inside the boundaries of the Site, the physical works, infrastructure and grounds contained within those boundaries, and all equipment owned, leased, licensed or controlled by SGCH, which it uses to provide the Services in accordance with this Agreement, including any Supporting Infrastructure, any Modifications and any rectification of Defects.

**Relevant Person** means:

- (a) not used;
- (b) not used; or
- (c) an officer, agent, employee or consultant of SGCH who:
  - (i) has the ability to exercise influence or control over the decisions or actions of SGCH in relation to the Service Package other than solely through the exercise of voting rights at a meeting of shareholders or directors of SGCH;
  - (ii) works on, or at, a Site during the Service Delivery Phase; or
  - (iii) has access to Personal Information and any other Confidential Information which compromises the security of the Relevant Infrastructure.

**Relief Event** means any Intervening Event, Change Compensation Event or other event which entitles SGCH to:

- (a) relief or suspension from performance of its obligations, or to an extension of time, under a ServiceCo Service Package Document;
- (b) compensation from ServiceCo; or
- (c) bring any other Claim against ServiceCo,

in connection with the Service Package.

**Removal Date** has the meaning given in clause 22.4(b).

**Removed Dwellings** has the meaning given in clause 22.4(b).

**Representatives** has the meaning given in clause 35(a).

**Request for Proposal** means the Request for Proposal for the Service Package issued by FACS on 6 May 2016.

**Residential Tenancy Agreement** has the meaning given in section 13 of the *Residential Tenancies Act 2010* (NSW).

**Responsibility Allocation Matrix** means the responsibility allocation matrix set out in Schedule 28.

**Responsible Entity** has the meaning given in the Corporations Act.

**Responsive Maintenance Works** means the repairs and maintenance required as necessary to deal with matters of disrepair that occur on a day to day basis that are usually reported by Tenants due to damage, accidents or otherwise, to the whole or part of a Dwelling and common areas inside and outside the Dwellings, and which are by nature, responsive and not predictable or planned.

**Responsive Maintenance Works Fee** has the meaning given in clause 18.5(b).

**Retained Social Housing Tenant** means a Social Housing Tenant who has subsequently been assessed as ineligible for Social Housing rent subsidy in accordance with section 4.7 of the Services Specification and has been classified as such in accordance with that section.

**Review Period** has the meaning given in the Review Procedures.

**Review Procedures** means Schedule 9.

**Reviewable Services** means:

- (a) Tailored Support Coordination Services; and
- (b) Performance and Data Reporting,

and **Reviewable Service** means one of them.

**Reviewable Services Date** means:

- (a) the third anniversary of the Service Commencement Date with respect to the final Stage; and
- (b) thereafter every 3 years or part thereof until the Final Expiry Date.

**Reviewable Services Tender Expiry Date** means 1 Month after the expiry of the then current Reviewable Services Term.

**Reviewable Services Schedule** means the Original Reviewable Services Schedule updated under clause 20.1(c).

**Reviewable Services Term** means each of the following periods:

- (a) the period commencing on the Service Commencement Date of the final Stage and ending on the day prior to the third anniversary of that date; and
- (b) the period or part thereof which occurs every 3 years thereafter until the Final Expiry Date,

unless otherwise changed by agreement between the parties and in each case subject to Partial Termination of a Stage.

**SAHF Intercompany Loan Agreement** means the intercompany loan agreement entered into on or about the date of this Agreement between ServiceCo and SGCH.

**Savings** has the meaning given in the Change Compensation Principles.

**Securities** means shares, units, interests in a partnership, and any other interests, which would constitute 'securities' as defined under the Corporations Act.

**Security Interest** means any mortgage, pledge, lien, encumbrance, assignment, charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a 'security interest' as defined in section 12 of the *Personal Property Securities Act 2009* (Cth);
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

**Service Commencement Date** means, subject to clauses 15.8 and 16, the day after the Date of Service Readiness.

**Service Delivery Phase** means, in respect of each Stage, the period beginning on the relevant Service Commencement Date and ending on the date which is the Final Expiry Date for that Stage.

**Service Delivery Phase Plans** means each of the plans described in the Service Delivery Phase Plans Schedule.

**Service Delivery Phase Plans Schedule** means Schedule 17.

**Service Failure** has the meaning given in the Payment Schedule.

**Service Package** means:

- (a) the performance of the Service Package Activities including:
  - (i) not used; and
  - (ii) performing the Services; and
- (b) the performance of all other obligations,

in accordance with, or as contemplated by, any Service Package Document, or incidental to any Service Package Document.

**Service Package Activities** means all works, things and tasks that SGCH is, or may be, required to do to comply with its obligations in connection with the ServiceCo Service Package Documents, including the Services.

**Service Package Documents** means:

- (a) this Agreement;
- (b) the Financiers' Side Deed;
- (c) not used;



- (d) not used;
- (e) the Side Deed;
- (f) not used;
- (g) the SAHF Intercompany Loan Agreement; and
- (h) any other document the parties agree is a Service Package Document.

**Service Package Objectives** means the objectives of the Service Package included in the Contract Particulars.

**Service Provision Performance Incident** has the meaning given in the Payment Schedule.

**Service Readiness** has the meaning given in the Services Agreement.

**Service Readiness Outstanding Item** has the meaning given in the Services Agreement.

**ServiceCo Representative** means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clause 8.2.

**ServiceCo Service Package Documents** means those Service Package Documents to which ServiceCo is a party.

**Services** means:

- (a) the services referred to in the Services Specification to be undertaken by SGCH during the Service Delivery Phase including:
  - (i) Accommodation Services;
  - (ii) Asset Management Services;
  - (iii) Performance and Data Reporting;
  - (iv) Tailored Support Coordination Services; and
  - (v) Tenancy Management Services; and
- (b) all other things SGCH is required to provide or undertake during the Service Delivery Phase as set out in the Services Specifications or ServiceCo Service Package Documents,

in each case as modified in accordance with this Agreement.

**Services Agreement** means the agreement titled "Social and Affordable Housing Fund – Services Agreement" between FACS and ServiceCo dated on or about the date of this Agreement.

**Services MSP** means a monthly service payment payable to SGCH calculated in accordance with the Payment Schedule.

**Services Requirements** means the requirements for the provision of the Services as set out in:

- (a) the Services Specification;
- (b) the Bid Services Deliverables; and
- (c) the remainder of this Agreement.

**Services Specification** means Schedule 18, as may be amended from time to time in accordance with this Agreement.

**SGCH Act or Omission** means:

- (a) a breach of this Agreement by SGCH; or
- (b) any other act or omission of SGCH or its Associates other than an act or omission undertaken in accordance with the Service Package Documents and not undertaken fraudulently, recklessly, unlawfully, negligently or maliciously.

**SGCH Material** means:

- (a) not used;
- (b) the Service Delivery Phase Plans; and
- (c) all other Material which SGCH or any of its Associates (other than any Lessors) prepares, uses and provides to ServiceCo or any of its Associates in connection with the Service Package whether before or after the date of this Agreement.

**SGCH Representative** means the person identified in the Contract Particulars subject to replacement, termination or delegation in accordance with clause 8.3.

**Side Deed** means the document so entitled dated on or about the date of this Agreement between FACS, ServiceCo and SGCH substantially in the form set out in Schedule 21.

**Site** means the land on which the Relevant Infrastructure is or is to be located and in respect of which the Services are undertaken, as identified in the Dwellings Schedule and varied from time to time in accordance with clause 19.

**Site Conditions** means any physical conditions on, under, or over the surface, or in the vicinity of a Site, including:

- (a) **(water and gas)**: ground gases, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any de-watering;
- (b) **(physical structures)**: physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;
- (c) **(vegetation)**: pastures, grasses or other vegetation on the Site;
- (d) **(topography)**: topography, ground surface and sub-surface conditions and geology including rock or other materials;

- (e) **(climate)**: climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (f) **(contamination)**: any contamination;
- (g) **(pollution)**: any pollution;
- (h) **(physical conditions)**: all other physical conditions and characteristics of, or in the vicinity of the Site, on or below the surface which may affect SGCH's ability to carry out its obligations in accordance with this Agreement; and
- (i) **(Adverse Rights)**: all Adverse Rights over or in connection with the Site.

**Social Housing** means those Dwellings which are made available to Social Housing Tenants.

**Social Housing Tenant** means a household which meets the social housing eligibility criteria outlined in the FACS Eligibility for Social Housing Policy or a Retained Social Housing Tenant, and has the right to occupy a Dwelling under a Residential Tenancy Agreement and where the context requires, any such household which has been allocated a Dwelling in accordance with the Services Specification.

**Solvent** has the meaning given in the Corporations Act.

**Stage** means each stage set out in the Dwellings Schedule.

**Standards** means all standards, codes, specifications, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement including:

- (a) the standards, codes, specifications, policies and requirements set out in, or otherwise expressly referred to in, the Services Specification;
- (b) all Approvals (including any conditions or requirements under them);
- (c) all requirements and standards of Authorities; and
- (d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Service Package:
  - (i) which is notified to SGCH;
  - (ii) which is publicly available or otherwise available to SGCH; or
  - (iii) with which SGCH is expressly required by the terms of this Agreement, by Law or by direction of ServiceCo to comply,

unless ServiceCo gives notice to SGCH that any Approval, standard, code, specification, policy or requirement does not constitute a Standard for the purposes of this Agreement.

**Subcontract** means an agreement which:

- (a) not used; or
- (b) SGCH enters into with another Subcontractor,

in connection with the Service Package Activities.

**Subcontractor** means:

- (a) any person who enters into a contract in connection with the Service Package Activities with SGCH; or
- (b) for the purposes of the definition of Relevant Person and Probity Event and clauses 10.1(d), 10.3(a) and 10.3(b), only, any person whose Subcontract is in connection with the Service Package Activities and is in a chain of contracts where the ultimate contract is with SGCH.

**Suitable Substitution Accommodation** has the meaning given in the Services Agreement.

**Supplier** has the meaning given in clause 21.8(c).

**Supporting Infrastructure** means, in respect of a Stage, the amenities and supporting infrastructure that:

- (a) ServiceCo owns or controls or will own or control and will make available to Tenants in connection with the Service Package; and
- (b) is external but is to be provided to a Site by ServiceCo or its Associates and which is used in common with other users, including roads, footpaths, transport facilities and any Utility Infrastructure external to a Site,

including as specified in the Dwellings Schedule.

**Tailored Support Coordination Services** means the services described in section 5 of the Services Specification, as varied or supplemented in accordance with any Modification.

**Tax** or **Taxes** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, the NSW Government or the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.

**Tax Invoice** has the meaning given in the GST Law.

**Taxable Supply** has the meaning given in the GST Law, excluding section 84-5 of the GST Act.

**Tenancy** means the occupation of a Dwelling under a Residential Tenancy Agreement.

**Tenancy Management Services** means the services described in section 4 of the Services Specification, as varied or supplemented in accordance with any Modification.

**Tenant** means any:

- (a) Social Housing Tenant; and
- (b) Affordable Housing Tenant.

**Term** means the term of this Agreement:

- (a) commencing in accordance with clause 4.1; and

(b) ending on the Expiry Date.

**Termination Payment** means a termination payment calculated in accordance with the Termination Payment Schedule.

**Termination Payment Date** means the date determined in accordance with section 3.1 of the Termination Payment Schedule.

**Termination Payment Schedule** means Schedule 6.

**Total Available Early Offset** has the meaning given in clause 20A.2(a).

**Total Mitigatable Services MSP Loss** has the meaning given in clause 20A.2(b).

**Transition Services Payment** means, in respect of a Dwelling, for the whole or any part of an Operating Month or Operating Months during the period set out in clause 32.4(d), an amount equal to the Services MSP which would have been payable but for the operation of 32.3(d)(iii), less an amount equal to the aggregate of (without double counting):

- (a) all cost components of the Services MSP relating to the performance of the Service Package Activities that are not being provided; and
- (b) any Rectification Costs incurred by ServiceCo during the Operating Month (or part thereof) to which the Transition Service Payment relates.

**Upstream Decision** means a decision of an Upstream Party or a person or body authorised or empowered to make a decision under an Upstream Document, which is concerned with matters which arise in respect of the respective rights and obligations of ServiceCo and the SGCH under this Agreement.

**Upstream Document** means:

- (a) the Services Agreement; and
- (b) any expert determination agreement between ServiceCo, FACS and the expert entered into in accordance with clause 37 of the Services Agreement.

**Upstream Party** means a party to an Upstream Document other than ServiceCo.

**Utility** means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, facsimile and internet access).

**Utility Infrastructure** means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the Relevant Infrastructure.

**Utility Interruption** means any one or more Utilities not being available for use at a Site (at all or in the necessary quantity).

**Voluntary Termination** means the termination of the Services Agreement pursuant to clause 32.2 of the Services Agreement

**Voluntary Termination Payment** means the payment calculated in accordance with section 5 of the Termination Payment Schedule.

**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Legislation** means Legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the WHS Regulation.

**WHS Regulation** means the *Work Health and Safety Regulation 2011* (NSW).

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## 2. General rules of interpretation

### 2.1 Interpretation

In this deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
  - (i) a party, clause, Schedule, Exhibit or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
  - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:

- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Agreement have the same meaning throughout this Agreement (including the Schedules and Annexures to it);
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) (**'or'**): the meaning of 'or' will be that of the Inclusive, being one, some or all of a number of possibilities;
- (l) (**(information)**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**('\$')**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**(Business Day)**): if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**(day)**): except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**(time)**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**(rights)**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**(function)**): a function includes a power, authority or duty;
- (s) (**(obligations and Liabilities)**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**('may')**): except to the extent that ServiceCo is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by ServiceCo, means that ServiceCo can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to SGCH) and ServiceCo has no obligation to do so;
- (u) (**(construction)**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or

- (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) **(acting reasonably)**: where ServiceCo is required to act reasonably or in good faith under this Agreement, ServiceCo or ServiceCo's Representative (as the case may be) will be considered to have acted reasonably or in good faith where it acts in the same manner as FACS has acted, and is entitled to act, under the Services Agreement provided nothing in this Agreement prevents SGCH from requiring ServiceCo to dispute the reasonableness or good faith of FACS' actions under the Services Agreement.

## 2.2 Composition of this Agreement and order of precedence

- (a) **(Agreement composition)**: This deed comprises:
  - (i) clauses 1 to 49;
  - (ii) Schedule 1 to Schedule 29; and
  - (iii) Annexures A to D,
 (the Agreement).
- (b) **(Annexures)**: SGCH agrees that to the extent that an Annexure seeks to impose any obligations on ServiceCo, ServiceCo will not be entitled to make any Claim against ServiceCo in respect of that obligation (unless that same obligation is expressly imposed on ServiceCo in a clause or Schedule).
- (c) **(Notification of ambiguity)**: If either party identifies an inconsistency, ambiguity or discrepancy within this Agreement, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (d) **(Resolution of ambiguity)**: Within the Review Period, ServiceCo will direct SGCH as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under clause 2.2(c) as follows:
  - (i) **(order of precedence)**: if the relevant inconsistency, ambiguity or discrepancy is within a document forming part of this Agreement, and there is a process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document then in accordance with that process; or



- (ii) **(higher standard)**: if the inconsistency, ambiguity or discrepancy is between documents forming part of this Agreement or is within a document that forms part of this Agreement but does not have a process for resolving the inconsistency, ambiguity or discrepancy then ServiceCo will direct SGCH to adopt the option ServiceCo requires SGCH to proceed with, which may be the greater, more onerous to SGCH or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by ServiceCo.
- (e) **(Inconsistency between ServiceCo Service Package Documents)**: If there is an ambiguity, discrepancy or inconsistency between this Agreement and any other ServiceCo Service Package Document, then the following order of precedence will apply:
  - (i) Financier's Side Deed;
  - (ii) this Agreement; and
  - (iii) the remaining ServiceCo Service Package Documents.

### **2.3 Plans, reports and procedures**

A reference to any Service Delivery Phase Plan or Service Delivery Phase Report is a reference to that Service Delivery Phase Plan or Service Delivery Phase Report as amended or updated from time to time under this Agreement.

### **2.4 Version of documents with which SGCH must comply**

Where SGCH is required to comply with a document, and that document or any update of that document is required to be submitted for review in accordance with the Review Procedures, SGCH must comply with the version of the document that has been submitted, reviewed and amended (if applicable) in accordance with the Review Procedures.

### **2.5 Approvals, directions and notices in writing**

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

### **2.6 Prior approval or consent**

Where SGCH is required by this Agreement to obtain ServiceCo's or the ServiceCo Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the action, document or thing occurring or coming into effect.

### **2.7 Action without delay**

Unless there is a provision in this Agreement, which specifies a period of time in which the parties must do something, all things must be done without undue delay.

## 2.8 Provisions limiting or excluding Liability, rights or obligations

- (a) **(Other rights not excluded):** A right or obligation of ServiceCo or SGCH under this Agreement will not limit or exclude any other right or obligation of ServiceCo or SGCH under this Agreement unless expressly stated.
- (b) **(Liability only excluded to the extent permitted by Law):** Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

## 2.9 Relationship of the parties

Nothing in this Agreement or any other Service Package Document:

- (a) **(no additional relationship):** creates a partnership, joint venture or fiduciary, employment or agency relationship between ServiceCo and:
  - (i) SGCH; or
  - (ii) any of SGCH's Associates; or
- (b) **(no good faith):** imposes any duty of good faith on ServiceCo (unless otherwise expressly provided).

## 2.10 FACS' executive rights, duties and functions

- (a) **(FACS' own interests):** SGCH acknowledges and agrees that unless otherwise expressly provided in the FACS Service Package Documents, nothing in the FACS Service Package Documents gives rise to any duty on the part of FACS to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the FACS Service Package Documents.
- (b) **(FACS' rights):** SGCH acknowledges and agrees that notwithstanding anything expressly provided or implied in the FACS Service Package Documents to the contrary:
  - (i) FACS and its Associates are not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights or duties; and
  - (ii) nothing expressly provided or implied in the FACS Service Package Documents has the effect of constraining FACS or any of its Associates or placing any fetter on FACS' or any of its Associates' discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim):** SGCH acknowledges and agrees that subject to clause 2.10(d), SGCH will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS or any of its Associates to exercise any of its executive or statutory rights or duties.
- (d) **(Liability for breach):** SGCH acknowledges and agrees that clauses 2.10(a) to 2.10(c) (inclusive) do not limit any Liability which FACS would have had to

ServiceCo under any FACS Service Package Document as a result of a breach by FACS of a term of any FACS Service Package Document but for those clauses.

## 2.11 Reasonable endeavours and obligations to act in good faith

Any statement in a ServiceCo Service Package Document providing that ServiceCo will use or exercise 'reasonable endeavours', 'act reasonably' or 'act in good faith' in relation to an outcome, means that ServiceCo:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: does not guarantee the relevant outcome will be brought about; and
- (c) **(no obligation)**: is not required to:
  - (i) exercise a right of any government party, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
  - (ii) exercise a power or discretion or otherwise act in a manner that ServiceCo regards as not in the public interest;
  - (iii) develop or implement new policy or a change in policy;
  - (iv) procure any new Legislation or a change in Legislation; or
  - (v) act in any way that ServiceCo regards as not in the public interest.

The parties agree that clause 2.11(a) does not apply to any statement in a ServiceCo Service Package Document providing that ServiceCo will 'act in good faith' in relation to an outcome.

## 2.12 No ServiceCo Liability for review

- (a) **(No obligation)**: ServiceCo does not owe any duty of care to SGCH (or any duty of care to SGCH to procure that any of the Associates of ServiceCo) to:
  - (i) review SGCH Material submitted by SGCH (including where submitted in accordance with the Review Procedures); or
  - (ii) inspect or review the Service Package Activities or the Relevant Infrastructure,for Defects, other errors or omissions or for compliance with the ServiceCo Service Package Documents or any Laws or Standards.
- (b) **(No relief)**: No:
  - (i) review of, comments upon, acceptance, approval or certification of any SGCH Material by ServiceCo or its Associates;
  - (ii) inspection or review of the Service Package Activities or Relevant Infrastructure by ServiceCo; or

- (iii) failure by (or on behalf of) ServiceCo or its Associates, to detect any non-compliance by SGCH with its obligations in accordance with the ServiceCo Service Package Documents or any Laws or Standards;
- will:
- (iv) relieve SGCH from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the ServiceCo Service Package Documents or otherwise according to Law;
  - (v) evidence or constitute the grant of an extension of time, or a request or direction to accelerate, disrupt, prolong or vary any or all of the Service Package Activities;
  - (vi) prejudice ServiceCo's rights against SGCH whether under the ServiceCo Service Package Documents or otherwise according to Law; or
  - (vii) constitute an approval by ServiceCo of SGCH's performance of its obligations in accordance with the ServiceCo Service Package Documents.

### 2.13 Indexation

- (a) **(Indexed amounts):** All amounts required to be adjusted under this Agreement by an Index will be Indexed in accordance with the Indexes Schedule.
- (b) **(Changes to indexes):** Any changes to Indexes will be calculated in accordance with the Indexes Schedule.

### 2.14 Cost of carrying out obligations

Each party must carry out its obligations under this Agreement at its own cost, unless expressly provided otherwise.

### 2.15 Exclusion of Civil Liability Act 2002 (NSW)

- (a) **(Excluded operation of Civil Liability Act):** 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 Agreement, howsoever those rights, obligations or Liabilities are sought to be enforced.
- (b) **(Subcontracts must exclude operation of Civil Liability Act):** SGCH must procure that each Subcontract includes provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or Liabilities arising under or in relation to that Subcontract howsoever such rights, obligations or Liabilities are sought to be enforced.

### 2.16 Final and binding

Where a determination, decision, opinion or direction is said in this Agreement on any basis to be 'final and binding', neither party is entitled to challenge that decision, opinion or direction.

## 2.17 Governing Law

This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.

## 2.18 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement and the other ServiceCo Service Package Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

## 2.19 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

## 2.20 SGCH and its Associates

Any obligation of SGCH under a ServiceCo Service Package Document is deemed to include an obligation on SGCH to ensure that each of its Associates assumes and complies with the corresponding obligation to the extent that the obligation is applicable to that Associate of SGCH under any Law or a Service Package Document to which that Associate is a party.

## 2.21 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
  - (i) ServiceCo's rights to set-off and recover money;
  - (ii) confidentiality or privacy;
  - (iii) any obligation to make any Accounts and Records available to ServiceCo;
  - (iv) any indemnity or financial security given in accordance with this Agreement;
  - (v) any limitation or exclusion of Liability; and
  - (vi) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation)**: No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.

- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Agreement. All rights and obligations under this Agreement survive the execution and delivery of any transfer or other document, which implements any transaction under this Agreement.

## 2.22 Waiver

- (a) **(Writing):** A waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## 2.23 Severance

If, at any time, a provision of this Agreement or any other ServiceCo Service Package Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant ServiceCo Service Package Document; or
- (b) that provision under the Law of any other jurisdiction.

## 2.24 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

## 2.25 Moratorium legislation

A provision of any Law which comes into effect after the date of this Agreement and operates to:

- (a) increase or improve any of SGCH's rights, powers or remedies under this Agreement or otherwise; or
- (b) prejudicially affect the exercise by ServiceCo of any right, power or remedy under this Agreement or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by SGCH to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original positions under this Agreement.

## **2.26 Community housing agreement**

- (a) The parties agree that this Agreement is a 'community housing agreement' under and for the purposes of section 16 of the Community Housing Act.
- (b) The parties agree that under and for the purposes of section 18(1)(c) of the Community Housing Act, that section 18 of the Community Housing Act does not apply to any Site.

## **Part B – Service Package commencement**

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### **3. Conditions Precedent**

#### **3.1 Commencement**

This Agreement will only come into force and effect (but will do so automatically on the date):

- (a) when the Services Agreement is unconditionally operative and binding on all parties to it, as promptly notified to ServiceCo and SGCH; and
- (b) when the last of the Conditions Precedent to be satisfied, has been satisfied, (or waived in accordance with clause 3.3) except for the provisions contained in:
  - (c) clause 1 (Definitions);
  - (d) clause 2.1 (Interpretation);
  - (e) clause 2.9 (Relationship of the parties);
  - (f) not used;
  - (g) clause 2.11 (Reasonable endeavours of ServiceCo);
  - (h) clause 2.12 (No ServiceCo Liability for review and obligations to act in good faith);
  - (i) this clause 3 (Conditions Precedent);
  - (j) clause 4 (Term);
  - (k) clause 5.3 (All risks);
  - (l) clause 7.1 (No representations from ServiceCo);
  - (m) clauses 8.2 and 8.3 (Parties' representatives);
  - (n) clause 25 (Reduction in ServiceCo Liability for Relief Events);
  - (o) clause 29 (Indemnities and Consequential or Indirect Loss);
  - (p) clauses 34 to 38 (Dispute resolution);
  - (q) clause 39 (Representations and warranties);

- (r) clause 42 (Assignment and amendments);
- (s) clause 43 (Change in Control);
- (t) not used;
- (u) clause 46 (Intellectual Property Rights);
- (v) clause 47 (Confidential Information and disclosure);
- (w) clause 48 (Probity Events and Probity Investigations); and
- (x) clause 49 (Notices and bar to Claims),

which will commence on the date of this Agreement.

### 3.2 Satisfaction of Conditions Precedent

- (a) **(Conditions Precedent Schedule)** The Conditions Precedent Schedule sets out each Condition Precedent that SGCH must satisfy.
- (b) **(SGCH to satisfy):** SGCH must satisfy each Condition Precedent in the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline and must notify ServiceCo promptly as each Condition Precedent is satisfied.
- (c) **(Notice at Commercial Close):** When the last Condition Precedent to be satisfied has been satisfied or waived, ServiceCo must confirm by notice to SGCH that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived.

### 3.3 Waiver of Conditions Precedent

A Condition Precedent is only waived if ServiceCo gives notice of the waiver of the Condition Precedent to SGCH.

### 3.4 Failure to satisfy by the Condition Precedent Deadline

If any Condition Precedent is not satisfied (or waived in accordance with clause 3.3) by the Condition Precedent Deadline, then:

- (a) **(Option to terminate):** ServiceCo may terminate this Agreement upon giving not less than 5 Business Days' notice to SGCH;
- (b) **(Service Package Documents terminated):** if ServiceCo terminates this Agreement in accordance with clause 3.4(a), each of the Service Package Documents will be taken to have been terminated at the time this Agreement is terminated and will be of no further force or effect; and
- (c) **(No claim):** neither party will have any Claim against the other party arising out of or in connection with the Service Package or the Service Package Documents, including due to the failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3.1.



**3.5 Not used**

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**4. Term**

**4.1 Commencement date**

Subject to clause 3.1, this Agreement commences on the date of this Agreement.

**4.2 Expiry Date**

This Agreement will terminate, in respect of each Stage, on the Final Expiry Date for that Stage unless terminated earlier, in which case this Agreement will expire in respect of that Stage on the date of such earlier termination (in each case an **Expiry Date**).

**Part C – General obligations**

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**5. Overarching obligations**

**5.1 SGCH's primary obligations**

- (a) **(Deliver the Service Package):** SGCH must:
  - (i) carry out the Service Package Activities in accordance with:
    - A. the Service Package Documents;
    - B. all applicable Laws and Standards;
    - C. the Service Delivery Phase Plans;
    - D. Best Services Practices; and
    - E. all Development Consents; and
  - (ii) ensure that neither SGCH nor any of its Associates cause ServiceCo or any Associates of ServiceCo to breach any Law.
- (b) **(Comply with directions):** SGCH must comply with:
  - (i) all directions given by ServiceCo or the ServiceCo Representative to comply with the terms of the ServiceCo Service Package Documents;
  - (ii) all agreements made by the parties in accordance with this Agreement;
  - (iii) all Modification Orders and Change Responses issued by ServiceCo in accordance with this Agreement; and
  - (iv) all directions or determinations given by ServiceCo or the ServiceCo Representative in accordance with the ServiceCo Service Package Documents,

whether or not SGCH disputes that such direction is a direction or asserts that the direction is or determination is a Modification under this clause, except as required by Law.

- (c) **(SGCH not to act):** Except as otherwise required by Law, SGCH must not accept or act upon directions in connection with the Service Package Activities from an employee or agent of ServiceCo other than the ServiceCo Representative or a ServiceCo delegate appointed in accordance with clause 8.2.

## 5.2 Disputed Directions

- (a) **(Comply with direction):** Subject to clause 26, where SGCH disputes that any direction given or determination made has been given or made in accordance with clause 5.1(b) or 5.1(c), SGCH must, save where the direction would cause it to breach any Law, comply with the direction or determination, but at the same time may refer the Dispute for determination in accordance with clause 34.
- (b) **(Determination of Dispute):** An expert, arbitrator, court or tribunal with power to determine a Dispute under this Agreement will have the power to open up and review the direction purported to be given or determination purported to be made under this Agreement.

## 5.3 All risks

- (a) **(All risks and no claim):** Except as otherwise expressly provided in the ServiceCo Service Package Documents, as between ServiceCo and SGCH:
  - (i) SGCH accepts all risks (and the cost of such risks) in connection with the Service Package; and
  - (ii) SGCH is not entitled to make any Claim against ServiceCo or any of its Associates in connection with any Site or Site Conditions, the Relevant Infrastructure, the Service Package or the Service Package Documents, including any Claim for breach of contract, misrepresentation or negligence (other than a Claim for breach of contract where ServiceCo fails to make any payment properly due to SGCH under this Agreement).
- (b) **(SGCH assumes risk):** Except as otherwise provided in the ServiceCo Service Package Documents, SGCH assumes the risk (and the cost of such risks) in connection with:
  - (i) the existence, location, condition and availability of Utility Infrastructure in connection with the Service Package Activities;
  - (ii) the Site Conditions, title to any Site or adequacy of or access to any Site and its surroundings for the Service Package; and
  - (iii) loss or damage to Relevant Infrastructure during the Term.
- (c) **(Liability exceptions):** Clause 5.3(a) does not:
  - (i) limit SGCH's right to raise any defence in relation to a Claim made by ServiceCo against SGCH;

- (ii) exclude or limit any Liability ServiceCo or any of its Associates may have to SGCH or any of its Associates under this Agreement or at Law in respect of SGCH's Liability to a third party in respect of death, personal injury or damage to property to the extent that the Liability of SGCH or its Associates is a consequence of:
  - A. a breach by ServiceCo of a ServiceCo Service Package Document; or
  - B. a fraudulent, reckless, unlawful, negligent or malicious act or omission of ServiceCo or a ServiceCo Associate; or
- (iii) subject to and without limiting clause 5.3(d), exclude or limit any Liability ServiceCo may have to SGCH under the Service Package Documents or at Law in respect of Liability incurred by SGCH as a result of a breach by ServiceCo of any Service Package Document.
- (d) **(SGCH acknowledgement):** SGCH acknowledges and agrees that its sole financial entitlement and ServiceCo's sole financial Liability:
  - (i) for delay, disruption or disturbance to the progress of any part of the Service Package or a Stage, including by reason of a Change in Mandatory Requirements or a Modification, is limited to the amount payable by ServiceCo to SGCH in accordance with clause 26.10 and the Change Compensation Principles; and
  - (ii) for prevention, hindrance or disruption to the performance of the Services arising out of or in connection with an Intervening Event, including any Compensable Intervening Event, is limited to the amount payable by ServiceCo to SGCH in accordance with clause 24.5 and the Change Compensation Principles.

#### **5.4 Minimum requirements not sufficient**

SGCH acknowledges and agrees that to the extent that the Design Requirements or Services Requirements specify or prescribe a minimum requirement, compliance with those minimum requirements may not of itself be sufficient for SGCH to discharge its obligations pursuant to this Agreement.

#### **5.5 ServiceCo's obligations under the Services Agreement**

- (a) SGCH acknowledges and agrees that it is fully aware of the terms and conditions of the Services Agreement and in particular, the obligations of ServiceCo under the Services Agreement.
- (b) SGCH will not do anything that is inconsistent with the obligations of ServiceCo under the Services Agreement or do anything that will or is likely to cause ServiceCo to be in breach of its obligations under the Services Agreement.
- (c) SGCH will perform the Services and provide all administrative support, staffing and assistance so as to enable ServiceCo to perform the Services (as defined in the Services Agreement) under the Services Agreement.

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## 6. Approvals and consents

SGCH must:

- (a) obtain, maintain and comply with;
- (b) ensure that the Relevant Infrastructure satisfies and complies with; and
- (c) pay all fees and contributions in relation to,

all Approvals (including Key Planning Approvals to the extent applicable to the performance of the Services and any modifications to any Approvals) necessary for the Service Package, including all conditions and requirements of those Approvals.

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## 7. Information Documents

### 7.1 No representations from ServiceCo

SGCH acknowledges and agrees that ServiceCo, its Associates and the author of any report provided in the Information Documents have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of:

- (a) **(Information Documents)**: the accuracy, suitability, adequacy or completeness of, or any omissions from, the Information Documents; or
- (b) **(Proposal)**: the feasibility or fitness for purpose of the Proposal (or any part of it).

### 7.2 Information Documents representations and warranties by SGCH

Without limiting clause 7.1, SGCH acknowledges and agrees that:

- (a) **(entry into Agreement)**: it enters into this Agreement based on its own investigations, interpretations, deductions, information and determination;
- (b) **(Information Documents)**: the Information Documents were provided by ServiceCo and its Associates for the information only of SGCH;
- (c) **(adequacy of Services Specification etc)**: it has satisfied itself that there is nothing in the Design Requirements or the Services Requirements which would prevent:
  - (i) the Relevant Infrastructure from being Fit for Purpose; or
  - (ii) the Services being carried out in accordance with this Agreement;
- (d) **(no reliance)**: it did not rely upon any Information Documents or the accuracy, adequacy, suitability or completeness of the Information Documents for the purposes of entering into this Agreement or delivering the Service Package; and
- (e) **(ServiceCo entry into Agreement)**: ServiceCo has entered into this Agreement relying upon the warranties, acknowledgements, representations and agreements of SGCH as set out in this Agreement.

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## 8. Parties, personnel and community

### 8.1 Authorities

SGCH acknowledges and agrees that:

- (a) **(jurisdiction)**: there are Authorities with jurisdiction over aspects of the Service Package Activities and the Site;
- (b) **(Authorities)**: those Authorities may, from time to time and at any time, exercise their statutory functions and powers in a way which disrupts, interferes with or otherwise affects the Service Package Activities; and
- (c) **(co-operation)**: it will co-operate with and co-ordinate its Service Package Activities with those Authorities as is required by them.

### 8.2 ServiceCo Representative

- (a) **(Natural person)**: ServiceCo will ensure that at all times throughout the Term there is a natural person appointed by it as the ServiceCo Representative for the Service Package.
- (b) **(Identity)**: As at the date of this Agreement, the ServiceCo Representative is the party nominated as such in the Contract Particulars.
- (c) **(Agent of ServiceCo)**: The ServiceCo Representative will administer this Agreement on behalf of ServiceCo and will exercise all rights, powers, authority and functions of ServiceCo under this Agreement as ServiceCo' agent.
- (d) **(Oral directions)**: The ServiceCo Representative may give a direction orally but will as soon as practicable confirm that direction in writing.
- (e) **(Replacement)**: ServiceCo may at any time replace the ServiceCo Representative, in which event ServiceCo will appoint another person as the ServiceCo Representative and notify SGCH of that appointment.
- (f) **(Delegation)**: ServiceCo may at any time delegate the exercise of any power or authority of the ServiceCo Representative to a person other than the then appointed ServiceCo Representative and may terminate or vary that delegation.
- (g) **(Notification of delegation)**: ServiceCo will promptly notify SGCH of the identity of each delegate, and the powers and authority delegated (including any conditions applying to the delegated power).
- (h) **(Vary or terminate delegation)**: ServiceCo may vary or terminate any delegated power or authority of the ServiceCo Representative but must promptly notify SGCH of any such variation or termination.

### 8.3 SGCH Representative

- (a) **(Natural person)**: SGCH must ensure that at all times throughout the Term there is a natural person appointed by it as the SGCH Representative in respect of the Service Package.

- (b) **(Identity):** As at the date of this Agreement, the SGCH Representative is the party nominated as such in the Contract Particulars.
- (c) **(Employee):** The SGCH Representative must be an officer or employee of SGCH or a Related Body Corporate of SGCH and must be employed full time on the Service Package.
- (d) **(Replacement):** The SGCH Representative can only be replaced in accordance with clause 8.4.
- (e) **(Contact):** The SGCH Representative must act as the principal point of contact between SGCH and ServiceCo in respect of the administration of this Agreement, and be available to ServiceCo as and when required.
- (f) **(Directions):** A direction is given to SGCH if it is given to the SGCH Representative.
- (g) **(Authority and skills):** SGCH must ensure that at all times during his or her appointment, the SGCH Representative has:
  - (i) the authority to perform its role and duties and discharge its obligations under this Agreement; and
  - (ii) a detailed knowledge of the Service Package and sufficient experience and skills to undertake the role of SGCH Representative.
- (h) **(Duties during the Term):** The SGCH Representative must perform the duties of the SGCH Representative under this Agreement, including to:
  - (i) **(spokesperson):** act as the spokesperson for SGCH;
  - (ii) **(partnership):** ensure the ongoing implementation of a partnership with ServiceCo;
  - (iii) **(liaison):** liaise and generally deal with stakeholders;
  - (iv) **(manage):** represent the views of SGCH and manage and co-ordinate issues with any SGCH Associate prior to presentation to ServiceCo;
  - (v) **(presence):** ensure a strong presence and consistent project management role for SGCH in the implementation of the Service Package;
  - (vi) **(appoint temporary replacement):** appoint a person with the equivalent qualification, experience, ability and expertise to temporarily act as the SGCH Representative before taking any annual or other leave;
  - (vii) **(co-ordinate Subcontractors):** co-ordinate and liaise with the Subcontractors and oversee the performance by the Subcontractors of their Subcontracts during the term;
  - (viii) **(meetings with ServiceCo):** convene and attend co-ordination meetings with ServiceCo when requested by ServiceCo; and
  - (ix) **(co-ordinate transition):** co-ordinate the delivery of the Services.

## 8.4 Replacement of SGCH Representative

SGCH must, if the SGCH Representative dies, becomes seriously ill or resigns from the employment of SGCH or any of its Associates or receives a promotion, replace the SGCH Representative with a person approved by ServiceCo (such approval not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.

## 8.5 Communications and community relations

SGCH must manage and participate in all community relations programs and activities as reasonably requested by ServiceCo from time to time and must not, and procure that its Associates do not, communicate with the media or communicate any information publicly with regard to the Service Package without the prior written consent of the ServiceCo Representative.

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# 9. Quality assurance

## 9.1 Audits for compliance with the FACS Service Package Documents

- (a) **(FACS may procure Associates):** SGCH acknowledges that under clause 9.1 of the Services Agreement, FACS may undertake or procure an Associate to undertake at any time up to 6 Months after the last day of the Term, an audit to verify ServiceCo's compliance with the FACS Service Package Documents, and SGCH must provide all reasonable assistance to ServiceCo to the extent required if such an audit is undertaken by FACS.
- (b) **(Notice of audit):** Where it is reasonably able to do so, ServiceCo will provide SGCH with no less than 8 Business Days' notice of any audit under this clause 9.
- (c) **(Minimisation of disruption):** Where FACS carries out or procures the carrying out of an audit under this clause 9, ServiceCo will use reasonable endeavours to minimise any disruption caused to the Service Package Activities.
- (d) **(Audit obligations):** SGCH must:
  - (i) provide all SGCH Material requested by FACS or ServiceCo or any Associates of FACS undertaking the audit that is relevant to the conduct of the audit; and
  - (ii) arrange for those undertaking the audit on behalf of FACS to:
    - A. subject to those undertaking the audit complying with SGCH's reasonable access requirements (including any site access and interface protocols), have access to any Site and any Relevant Infrastructure; and
    - B. meet with any of SGCH's Associates (other than Lessors) and have access to users of the Site and the Relevant Infrastructure.
- (e) **(Audit scope):** An audit may include examination of:
  - (i) any part of the Relevant Infrastructure;

- (ii) the carrying out of any Service Package Activities;
  - (iii) the Accounts and Records;
  - (iv) SGCH Material; and
  - (v) SGCH's and its Associates' (other than the Lessors') processes and methodologies.
- (f) **(FACS may provide report and request meeting):** SGCH acknowledges that FACS may provide a copy of any report prepared as a consequence of the audit to ServiceCo and its Associates (such report to be provided to SGCH) and may require ServiceCo, its Associates and SGCH (other than any Lessors) to attend a meeting to discuss the audit report.
- (g) **(Discussion of audit):** SGCH must discuss the contents of any audit when required by FACS and seek to agree:
- (i) any action ServiceCo or SGCH must undertake to ensure that it addresses any failure by SGCH to comply with the requirements of the ServiceCo Service Package Documents; and
  - (ii) the time in which any such action must be undertaken.
- (h) **(Implementation of actions):** To the extent that:
- (i) the parties reach agreement in accordance with clause 9.1(g) SGCH must, at its own cost, implement the actions as agreed between the parties; or
  - (ii) the parties are unable to reach an agreement in accordance with clause 9.1(g) FACS may (acting reasonably but without limiting FACS' rights under the Services Agreement) direct SGCH as to:
    - A. any action SGCH must undertake to meet the requirements referred to in clause 9.1(g)(i); and
    - B. the time in which any such action must be undertaken by SGCH,

and SGCH must, at its own cost, implement such actions.
- (i) **(Liability for cost of audit):** SGCH will not be liable for any costs incurred by FACS or ServiceCo in performing audits under this clause 9.1, unless an audit establishes that SGCH is in material breach of a ServiceCo Service Package Document, or has acted negligently or fraudulently in the carrying out of the works or the performance of any of the Services under this Agreement, in which case FACS' reasonable costs of performing the audit are to be paid by SGCH as a debt due and payable by SGCH to ServiceCo.
- (j) **(Expert determination of Dispute):** Any Dispute by SGCH as to the accuracy of any audit report may be referred by either party for expert determination in accordance with clause 37.



- (k) **(Auditor-General not limited):** Without limiting this clause 9.1, the parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary:
- (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW) (or any substituted legislation) are not limited or affected by the terms of this Agreement and each party submits to those powers and responsibilities;
  - (ii) FACS, ServiceCo or SGCH may be the subject of an audit by the Auditor-General pursuant to the *Public Finance and Audit Act 1983* (NSW); and
  - (iii) without limiting clause 9.1(k)(ii), SGCH undertakes to ServiceCo that it will, at its own cost, cooperate and fully comply with the directions of the Auditor-General and FACS in relation to any audit referred to in clause 9.1(k)(ii).

## 9.2 Call-in

- (a) If:
- (i) ServiceCo is dissatisfied with SGCH's performance of the Service Package Activities (acting reasonably); and
  - (ii) SGCH is in breach of an obligation under this Agreement or, in ServiceCo's reasonable view, SGCH will be in breach of an obligation if its current performance continues unchanged,
- ServiceCo may issue a notice to SGCH outlining the nature of ServiceCo's dissatisfaction.
- (b) If required by ServiceCo in the notice under clause 9.2(a), SGCH must:
- (i) provide information in relation to the areas of concern identified by ServiceCo;
  - (ii) attend meetings with ServiceCo (including with FACS);
  - (iii) prepare and implement remedial plans to improve performance in the areas identified by ServiceCo in order to comply with the ServiceCo Service Package Documents; and
  - (iv) allow ServiceCo access to any Site on which the Service Package Activities are being undertaken, and SGCH agrees to provide full and unrestricted access to any such Sites provided that ServiceCo agrees to comply with any reasonable Site safety and security requirements of SGCH and coordinate Subcontractors to minimise any disruption to the Services or Tenants.

9.3 Not used

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10. Subcontracting and third party arrangements

10.1 Subcontracting

SGCH:

- (a) **(notification)**: must notify ServiceCo of all Subcontractors it intends to engage to undertake the Service Package Activities;
- (b) **(Service Package Activities)**: must not subcontract the performance of the Service Package Activities or any part of them except in accordance with this clause 10;
- (c) **(ServiceCo Service Package Documents)**: is not relieved from any or all of its obligations or Liabilities under the ServiceCo Service Package Documents as a result of subcontracting any of those obligations or Liabilities;
- (d) **(responsible for subcontractors)**: will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Service Package Activities as if such acts or omissions were SGCH Acts or Omissions; and
- (e) **(provide copies of subcontracts)**: must, on request from ServiceCo, promptly provide to ServiceCo a copy of:
  - (i) not used; and
  - (ii) any other Subcontract,

entered into or proposed to be entered into involving any of the Service Package Activities (regardless of whether SGCH is a party to that contract) and, where requested, all plans, specifications and drawings related to those Subcontracts.

10.2 Not used

10.3 Requirements for subcontracting

- (a) **(Engagement of Subcontractors)**: SGCH must not engage any Subcontractor, or allow any Subcontractor to be engaged, in connection with the Service Package, unless:
  - (i) if FACS requires Probity Investigations to be carried out in respect of that Subcontractor, FACS' probity requirements as described in clause 48 are satisfied;
  - (ii) the proposed Subcontractor has the financial capacity, applicable registrations and certifications, experience and capability to perform the subcontracted obligations to at least the standards required by this Agreement; and
  - (iii) not used.
- (b) **(Occurrence of Probity Event)**: If, following a Probity Investigation in respect of a proposed Subcontractor, FACS:

- (i) determines that a Probity Event has occurred in respect of a Subcontractor or a Relevant Person engaged by that Subcontractor; and
- (ii) is of the opinion that it is consequently not desirable for that Relevant Person to take part in the management or performance of the Subcontract, or for the Subcontractor to be engaged in connection with the Service Package,

FACS may (as the case may be):

- (iii) direct SGCH that the Subcontractor must not be engaged in connection with the Service Package; or
- (iv) approve the Subcontract on the condition that the Relevant Person:
  - A. not take part in the management or performance of the Subcontract; or
  - B. on such other conditions as FACS considers necessary to quarantine that Relevant Person from the Service Package,

and on conditions that the Subcontractor provides its written undertaking to the FACS Representative to comply with such conditions.

- (c) **(Compliance with Subcontractor obligations):** SGCH must, and must procure that all Subcontractors, comply with their respective obligations under each Subcontract they enter into.

**10.4 Not used**

**10.5 Industrial issues**

SGCH:

- (a) **(solely responsible):** has sole responsibility for, and must manage, all aspects of industrial relations in connection with the Service Package; and
- (b) **(to inform ServiceCo):** must keep ServiceCo fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Service Package Activities and what action or measures (including settlements) SGCH has taken or proposes to take to overcome the effects of such industrial relations issues or action.

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**11. Employee Requirements**

- (a) **(Requirements and checks):** SGCH must ensure that each employee of SGCH and each Subcontractor engaged to provide any Service Package Activities:
  - (i) meets the Employee Requirements for those particular types of employee; and
  - (ii) prior to being engaged to provide the Service Package Activities, and at the frequencies specified in the Contract Particulars, passes the relevant Employee Checks.

- (b) **(Availability of results):** SGCH must promptly, on request, make the results of:
- (i) any Employee Checks; or
  - (ii) any Probity Investigation that SGCH is required to undertake in accordance with clause 48.2,
- available to ServiceCo.
- (c) **(Denial of employment):** Without prejudice to clause 48.2(d), ServiceCo may require SGCH to deny or procure that the Subcontractors deny employment to a prospective employee and refuse to engage any person or discontinue the employment or engagement of any person involved in the Service Package Activities if:
- (i) the Probity Investigation reveals information indicating that that person does not comply with the requirements of this Agreement;
  - (ii) the Employee Requirements are not met at all times by that person;
  - (iii) the employee fails an Employee Check; or
  - (iv) ServiceCo considers that that person is unsuitable or unqualified to provide the Service Package Activities assigned to that person.

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## 12. NSW Code and Guidelines

### 12.1 Reference

In addition to terms defined in this Agreement, terms used in this clause 12 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury in July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 12.2 Primary obligation

- (a) **(NSW Code):** In carrying out the Service Package Activities, SGCH must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- (b) **(Notification of Construction Compliance Unit):** SGCH must notify the Construction Compliance Unit (CCU), ServiceCo and FACS of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) **(Subcontractors bound by NSW Code):** Where SGCH engages a subcontractor or consultant, SGCH must ensure that subcontract or consultancy contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 12 (under the heading 'NSW Code and NSW Guidelines'), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

- (d) **(Engagement of other parties):** SGCH must not appoint or engage another party in relation to the Service Package where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

### 12.3 Access and information

- (a) **(Maintenance of records):** SGCH must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, consultants and related Entities.
- (b) **(Facilitation of authorised personnel):** SGCH must allow, and take reasonable steps to facilitate, authorised personnel (including authorised personnel of the CCU) to:
  - (i) enter and have access to sites and premises (or part thereof) controlled by SGCH, including but not limited to a Site and the Relevant Infrastructure;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by SGCH, its subcontractors, consultants, and related Entities.
- (c) **(Production of documents):** SGCH, and its related Entities, must agree to, and comply with, a request from authorised personnel (including authorised personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

### 12.4 Sanctions

- (a) **(SGCH not subject to a sanction):** SGCH warrants that at the time of entering into this Agreement, neither it, nor any of its related Entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) **(Sanctions may be imposed):** If SGCH does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) **(Disclosure of sanctions):** Where a sanction is imposed on SGCH or its Associates:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and

- (ii) the NSW Government (through its agencies, ministers and the CCU) is entitled to:
  - A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
  - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by SGCH, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

## 12.5 Compliance

- (a) **(Cost of compliance):** SGCH bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. SGCH is not entitled to make any Claim against ServiceCo, FACS or the NSW Government for such costs.
- (b) **(Responsibility to perform):** Compliance with the NSW Code and the NSW Guidelines does not relieve SGCH from responsibility to perform the Service Package Activities and any other obligation under this Agreement, or from Liability for any Defect in the Services or from any other legal Liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) **(Proposed Modification):** Where a Modification is proposed, and that Modification may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, SGCH must immediately notify ServiceCo and FACS of the Modification:
  - (i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Modification; and
  - (ii) what steps SGCH proposes to take to mitigate any adverse impact of the Modification,

and FACS or ServiceCo will direct SGCH as to the course it must adopt within 10 Business Days of receiving notice.

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## 13. Not used

### Part D – Not used

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## 14. Not used

## 15. Service Readiness

### 15.1 Requirement

- (a) SGCH acknowledges and agrees that under the Services Agreement, ServiceCo must achieve Service Readiness for a Stage by the relevant Date for Service Readiness for that Stage.

- (b) SGCH must cooperate with ServiceCo and perform those works or services to assist ServiceCo achieve Service Readiness for a Stage by the relevant Date for Service excluding the Services or the works the subject of the Excluded Contracts (which may include assistance to prepare the Quarterly Reports) (**Pre-Service Readiness Services**).

**15.2 Not used**

**15.3 Not used**

**15.4 Not used**

**15.5 Not used**

**15.6 Not used**

**15.7 Service Readiness Outstanding Items**

- (a) (**Outstanding Items**): SGCH acknowledges and agrees that under the Services Agreement, FACS may issue a certificate of Service Readiness with a list of Service Readiness Outstanding Items and the time within which they must be rectified.
- (b) (**Time period**): SGCH acknowledges and agrees that under the Services Agreement, FACS must act reasonably in determining the time within which a Service Readiness Outstanding Item will be rectified.
- (c) (**Program for completion to be submitted**): SGCH acknowledges and agrees that under the Services Agreement, within 5 Business Days after the issue of a certificate of Service Readiness, ServiceCo must submit to FACS (for review in accordance with the Review Procedures) a program for the completion of the Service Readiness Outstanding Items, which complies with clause 15.7(b).
- (d) (**Complete within timeframe**): SGCH acknowledges and agrees that under the Services Agreement, ServiceCo must complete or remedy each Service Readiness Outstanding Item in the relevant timeframe determined in accordance with clause 15.7(a) to the satisfaction of FACS (acting reasonably), and SGCH must cooperate with ServiceCo and use reasonable endeavours to assist ServiceCo remedy each Service Readiness Outstanding Item in the relevant timeframe.

**15.8 Prior Occupancy**

- (a) SGCH acknowledges and agrees that under the Services Agreement, ServiceCo must not enter into any Residential Tenancy Agreements or otherwise permit Tenants to occupy any Social Housing or Affordable Housing for a Stage prior to the Service Commencement Date for that Stage, unless ServiceCo:
  - (i) has achieved Service Readiness in accordance with clause 15.5 to 15.7 of the Services Agreement; and
  - (ii) notified FACS (in the notice provided pursuant to clause 15.5 of the Services Agreement) that it intends to permit Prior Occupancy once Service Readiness is achieved,(**Prior Occupancy**).

- (b) SGCH acknowledges and agrees that if Prior Occupancy occurs:
  - (i) the Service Commencement Date for the relevant Stage will be the day after the Date for Service Readiness for that Stage;
  - (ii) ServiceCo will not commence the Services MSPs for that Stage until the Service Commencement Date; and
  - (iii) any services provided to Tenants in connection with the Prior Occupancy do not form part of the Services under this Agreement, and SGCH will be required to perform the Prior Occupancy Services.

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## 16. Early Service Readiness

- (a) The parties acknowledge and agree that without limiting clause 15.8 or 20A.1, ServiceCo may only provide a notice to FACS under clause 15.5 of the Services Agreement prior to the Date for Service Readiness if:
  - (i) ServiceCo has provided FACS with at least 6 Months' written notice (or another period as agreed by the parties) that ServiceCo anticipates it will achieve Service Readiness in respect of a Stage on a specified date that is earlier than the relevant Date for Service Readiness; and
  - (ii) FACS has consented in writing to ServiceCo achieving Service Readiness for that Stage on the Proposed Early Service Readiness Date.
- (b) The parties acknowledge and agree that if FACS consents to ServiceCo achieving Service Readiness for a Stage on a Proposed Early Service Readiness Date pursuant to clause 16(a)(ii), then the Date for Service Readiness for that Stage is deemed to be the Proposed Early Service Readiness Date (subject to any subsequent adjustment in accordance with this Agreement).
- (c) The parties acknowledge and agree that FACS may decide whether to grant its consent to a Proposed Early Service Readiness Notice in its absolute discretion.
- (d) The parties acknowledge and agree that to the extent FACS unilaterally extends the Date for Service Readiness, ServiceCo will not be prevented from seeking early Service Readiness under this clause 16.

## Part E – Service Delivery Phase obligations

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## 17. Service Delivery Phase Plans

- (a) **(Initial Service Delivery Phase Plans):** The parties acknowledge that the Initial Service Delivery Phase Plans are included as Annexure B1.
- (b) **(Submission and update):** SGCH must:
  - (i) prepare and update the Service Delivery Phase Plans:
    - A. in accordance with the relevant requirements of the Service Delivery Phase Plans Schedule; and



- B. to ensure they contain complete and accurate information in respect of the relevant aspects of the Service Package;
- (ii) update all Service Delivery Phase Plans as necessary to reflect any changes to the nature, understanding or status of the Services; and
- (iii) submit to ServiceCo all Service Delivery Phase Plans, when prepared and updated, for review in accordance with the Review Procedures.
- (c) **(Performance):** Unless otherwise agreed by ServiceCo, SGCH must perform the Services in accordance with the Service Delivery Phase Plans.
- (d) **(Authority Approval):** If a Service Delivery Phase Plan is required to be approved by an Authority, SGCH must ensure that it has obtained that Approval prior to submitting the relevant Service Delivery Phase Plan to ServiceCo for review.
- (e) **(Additional information):** SGCH must promptly provide to ServiceCo any additional information that ServiceCo requests in connection with the Service Delivery Phase Plans.
- (f) **(Warranty):** SGCH warrants that each Service Delivery Phase Plan and Service Delivery Phase Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to ServiceCo.

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## 18. Obligation to perform the Services

### 18.1 Performance of the Services

In addition to the obligations set out in clause 5, during the Service Delivery Phase, SGCH must continuously perform the Services in accordance with the Services Requirements.

### 18.2 Work health and safety

- (a) SGCH must:
  - (i) in carrying out the Services:
    - A. ensure that it complies with the WHS Legislation and all requirements of this Agreement in respect of work health and safety; and
    - B. require that all Subcontractors comply with the WHS Legislation and their obligations referred to in this Agreement in respect of work health and safety;
  - (ii) notify ServiceCo immediately of all work health and safety matters in connection with the performance of the Services that are required to be notified under the WHS Legislation;
  - (iii) provide ServiceCo with all information and documents requested by ServiceCo in relation to any work health and safety issues arising from or in connection with the Services;

- (iv) consult, cooperate and coordinate with ServiceCo and any other person with obligations under the WHS Legislation in relation to the same matters as SGCH (if any); and
  - (v) refrain from doing anything that may impede ServiceCo in discharging its obligations.
- (b) SGCH acknowledges and agrees that ServiceCo engages SGCH as Principal Contractor for any Construction Project undertaken in connection with this Agreement or forming part of the Services.
- (c) SGCH acknowledges and agrees that in the event FACS is determined by an Authority to be a person who commissions any Construction Project undertaken in connection with the Services Agreement or forming part of the Services, ServiceCo may, by written notice, appoint SGCH as Principal Contractor in respect of that Construction Project. On receipt of that written notice from ServiceCo, SGCH agrees to:
- (i) immediately accept the appointment as Principal Contractor for that Construction Project;
  - (ii) comply with the obligations of a Principal Contractor under WHS Legislation; and
  - (iii) discharge and perform the responsibilities and functions of a Principal Contractor for that Construction Project.

### 18.3 Registration

- (a) SGCH must ensure that, at all times during the Service Delivery Phase, in providing the Tenancy Management Services and the Asset Management Services, it:
- (i) is a Registered CHP;
  - (ii) maintains or improves the tier of registration set out in the Contract Particulars;
  - (iii) complies with all terms and conditions attaching to or contained in the CHP registration conditions, including (without limitation) the conditions of registration set out in section 15 of the National Law; and
  - (iv) on request, provides to ServiceCo full and certified copies of proof of registration as a Registered CHP.
- (b) If SGCH subcontracts the performance of the facilities maintenance services, the facilities maintenance provider is not required to be a Registered CHP with respect to the facilities maintenance services.
- (c) Without limiting any provisions of this Agreement, the parties acknowledge and agree that the Registrar has various enforcement powers under the National Law and that the Registrar may take such action if the Registrar reasonably believes that the provider is not complying with the community housing legislation of a participating jurisdiction.

## 18.4 Supporting Infrastructure

SGCH must make the Supporting Infrastructure in relation to a Stage or Site available to the Social Housing Tenants and Affordable Housing Tenants in respect of that Stage or Site.

## 18.5 Planned and Responsive Maintenance Works

- (a) During the Service Delivery Phase, SGCH must perform:
  - (i) the Planned Maintenance Works; and
  - (ii) the Responsive Maintenance Works.
- (b) In addition to the Services MSPs payable to SGCH under clause 21, ServiceCo must pay to SGCH:
  - (i) in respect of the Planned Maintenance Works, the actual costs incurred by SGCH in performing the Planned Maintenance Works (the **Planned Maintenance Works Fee**); and
  - (ii) in respect of the Responsive Maintenance Works, the fixed monthly fee (Indexed) set out in Annexure A of Schedule 3 (the **Responsive Maintenance Works Fee**).
- (c) In respect of the Planned Maintenance Works, ServiceCo will, before directing SGCH to perform the Planned Maintenance Works, require SGCH to use reasonable endeavours to assist in the planning and annual budgeting of the Planning Maintenance Works for an Operating Year.

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## 19. Substitution of Dwellings

- (a) SGCH acknowledges and agrees that under the Services Agreement, without limiting ServiceCo's obligations:
  - (i) at Law; or
  - (ii) under any Residential Tenancy Agreement which ServiceCo or a Key Subcontractor (as defined in the Services Agreement) has entered into with a Tenant,

if ServiceCo wishes to provide Accommodation Services using Dwellings that are not identified as such in section 2 of the Dwellings Schedule (including any Dwellings in relation to Sites that are identified as 'unsecured Sites' in the Dwellings Schedule), ServiceCo must request FACS' consent in accordance with clause 19(b) of the Services Agreement.
- (b) SGCH acknowledges and agrees that any notice given by ServiceCo pursuant to clause 19(a) of the Services Agreement seeking the consent of FACS to the use of new Dwellings must:
  - (i) identify:
    - A. the proposed new Dwellings and the Sites on which they are (or will be) located; and

- B. the Dwellings that will not be, or no longer be, used to provide the Accommodation Services;
  - (ii) demonstrate that the Dwellings are (or will be) Suitable Substitution Accommodation;
  - (iii) confirm whether the proposed new Dwellings will be owned or leased by ServiceCo, and if leased, specify the duration and terms of any such Lease; and
  - (iv) provide FACS with:
    - A. a proposed new Dwellings Schedule in which it has removed from section 2 of the schedule the Dwellings and Sites which it no longer proposes to use and replaced them with the Sites and Dwellings described in clause 19(b)(i) of the Services Agreement; and
    - B. not used.
- (c) SGCH acknowledges and agrees that where ServiceCo is replacing Dwellings that were previously owned, or to be owned by ServiceCo or a Group Member (as defined in the Services Agreement) with Dwellings which are to be leased by ServiceCo or a Group Member (as defined in the Services Agreement) FACS may request additional information from ServiceCo demonstrating that ServiceCo is able to manage delivery of the Service Package through leasehold arrangements for the duration of the Term.
- (d) SGCH acknowledges and agrees that in determining its consent under clause 19(a) of the Services Agreement, FACS will consider (acting reasonably) whether:
  - (i) ServiceCo provided all of the information required under clause 19(b) of the Services Agreement;
  - (ii) the information provided demonstrates to the satisfaction of FACS that the Dwellings are Suitable Substitution Accommodation;
  - (iii) not used; and
  - (iv) if clause 19(c) applies, the information provided demonstrates to the satisfaction of FACS that ServiceCo is able to manage delivery of the Service Package through leasehold properties for the duration of the Term.

It will be unreasonable for FACS to withhold its consent if ServiceCo provided all of the information required under clause 19(d) of the Services Agreement and FACS is satisfied of the matters in clauses 19(b)(ii) and 19(b)(iii) under the Services Agreement (as applicable).
- (e) If FACS consents to the new Dwellings pursuant to clause 19(d) of the Services Agreement:
  - (i) the Dwellings Schedule will be deemed to be replaced with the proposed new Dwellings Schedule provided to FACS under clause 19(b)(iv)A of the Services Agreement;

- (ii) the new Dwellings will be deemed to form part of the same Stage as the Dwellings that have been replaced; and
- (iii) not used.

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## 20A Offset for early commencement of Services

### 20A.1 Early commencement of Services

- (a) SGCH acknowledges and agrees that notwithstanding clause 16(a), if ServiceCo wishes for SGCH to commence Services early for the purposes of this clause 20A.1, ServiceCo must provide:
  - (i) a notice to that effect which specifies a proposed date for the commencement of Services, such date to be at least 2 months from the date of the notice; and
  - (ii) not used,to FACS.
- (b) SGCH acknowledges and agrees that ServiceCo cannot give FACS a notice:
  - (i) under clause 20A.1(a)(i) of the Services Agreement:
    - A. more than once; or
    - B. if it has given FACS notice under clause 16(a) of the Services Agreement,for that Stage; or
  - (ii) under clause 16(a) of the Services Agreement if it has provided FACS with a notice under clause 20A.1(a)(i) of the Services Agreement in relation to that Stage.
- (c) SGCH acknowledges and agrees that if ServiceCo provides a notice to FACS under clause 20A.1(a)(i) of the Services Agreement:
  - (i) FACS will determine Service Readiness in accordance with clauses 15.3 and 15.6 of the Services Agreement, and clauses 15.4 and 15.7 of the Services Agreement will apply to that determination; and
  - (ii) if FACS determines that Service Readiness has not been achieved, clause 15.6(b) of the Services Agreement will apply.
- (d) SGCH acknowledges and agrees that if FACS determines that Service Readiness has been achieved for a Stage following the process under clauses 20A.1(a) to (c) of the Services Agreement:
  - (i) that Stage will be a **Qualifying Offset Stage**;
  - (ii) the day after the date FACS determines that Service Readiness was achieved will be the **Early Service Readiness Date** for the Stage;

- (iii) for the purposes of this Agreement, the Date of Service Readiness for the relevant Stage will be the same date as the Date for Service Readiness for that Stage;
- (iv) the Service Commencement Date for the relevant Stage will be the day after the Date of Service Readiness for that Stage;
- (v) SGCH must perform the Services required during the Service Delivery Phase in respect of that Stage under this Agreement, on and from the Early Service Readiness Date; and
- (vi) notwithstanding paragraph (v), ServiceCo will not commence the Services MSP for that Stage until the Service Commencement Date.

## 20A.2 Reconciliation of offset amount

On the Date of Service Readiness for the final Stage to achieve Service Readiness ServiceCo will:

- (a) for each Qualifying Offset Stage, calculate the amount that is:
  - (i) the Services MSP as at the Date for Service Readiness for that Stage, multiplied by;
  - (ii) the number of complete calendar months between the relevant Early Service Readiness Date and the Date of Service Readiness for that Stage,

less any Abatements for Service Failures during that period. The aggregate of these amounts is the **Total Available Early Offset**; and
- (b) for each Stage where ServiceCo does not achieve Service Readiness by the Date for Services Readiness and:
  - (i) the delay to that Date for Service Readiness was outside the control of ServiceCo; and
  - (ii) ServiceCo has not otherwise been compensated for that delay under this Agreement,

ServiceCo will calculate the amount that is:

- (iii) the Services MSP as at the Date for Service Readiness for that Stage multiplied by;
- (iv) the number of complete calendar months between the date for Service Readiness for that Stage and the earlier of:
  - A. the date that is 6 months from the Date for Service Readiness; and
  - B. the Date of Service Readiness for that Stage.

The aggregate of these amounts will be the **Total Mitigatable Services MSP Loss**.

### 20A.3 Payment of offset amount

- (a) To the extent there is a Total Available Early Offset and a Total Mitigatable Services MSP Loss, ServiceCo will pay to SGCH the lesser of the Total Available Early Offset and the Total Mitigatable MSP Loss within 35 Business Days of the last Date of Service Readiness.
- (b) Notwithstanding anything else in this Agreement, the amount paid under clause 20A.3(a) cannot cause the aggregate amount paid to SGCH up until the time of that payment to exceed the aggregate of the Services MSP that would have been payable by ServiceCo during that period had all Stages reached Service Commencement on their respective Dates For Service Readiness.

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## 20. Reviewable Services

### 20.1 Reviewable Services Schedule

- (a) **(Original Reviewable Services Schedule):** SGCH acknowledges that for the purposes of the Proposal and to assist in the repricing of the Reviewable Services, ServiceCo has prepared the Original Reviewable Services Schedule under the Services Agreement.
- (b) **(Status and content of Original Reviewable Services Schedule):** The Original Reviewable Services Schedule sets out the basis on which ServiceCo has priced the Reviewable Services for the first Reviewable Services Term, including:
  - (i) details of relevant margins;
  - (ii) details in respect of the allocation of responsibilities and risks between ServiceCo and SGCH in respect of the performance of the Reviewable Services; and
  - (iii) the staffing profiles and shift patterns in respect of the performance of the Reviewable Services, including details of the number of full time equivalent positions involved in performing the Services, including those involved in 'Management and Administration', consistent with the Financial Model.
- (c) **(Reviewable Services Schedule updated):** The Original Reviewable Services Schedule (in the case of the second Reviewable Services Term), and then, in the case of each subsequent Reviewable Services Term, the then current Reviewable Services Schedule:
  - (i) will be updated by SGCH at the commencement of the subsequent Reviewable Services Term to reflect:
    - A. the terms and prices agreed or determined under this clause 20 for that subsequent Reviewable Services Term; and
    - B. the information required under clause 20.1(b) for that subsequent Reviewable Services Term; and

- (ii) as updated in accordance with clause 20.1(c)(i), will be used for the purposes of pricing the Reviewable Services for the following Reviewable Services Term.
- (d) **(Overarching principles for repricing Reviewable Services):** Unless otherwise agreed in writing by ServiceCo, SGCH must price the provision of each Reviewable Service for the next Reviewable Services Term in accordance with the following pricing principles and otherwise in accordance with this clause 20:
- (i) SGCH must include all efficiencies, innovations and continuing improvements so as to reduce, or minimise the increase in, the cost of delivering the Reviewable Services for the next Reviewable Services Term in its offer under clause 20.3;
  - (ii) there must be no new margins and no increase to any margins, from those margins identified in the Original Reviewable Services Schedule;
  - (iii) there must be no net increase to the Services MSP from the previous Reviewable Services Term as a result of any reallocation of poor performance risk as between SGCH and any Subcontractors following the pricing of each Reviewable Service for an ensuing Reviewable Services Term; and
  - (iv) unless otherwise agreed by ServiceCo (acting reasonably), there must be no increase in the aggregate number of full time equivalent positions involved in performing the relevant Reviewable Services, from the Original Reviewable Services Schedule including those involved in 'Management and Administration' other than where necessary due to:
    - A. any changes under clause 20.2(a);
    - B. any Modification implemented under this Agreement; or
    - C. where SGCH can demonstrate to the satisfaction of ServiceCo (acting reasonably) that such changes in the aggregate number of full time equivalent positions are required to meet the requirements of this Agreement for the next Reviewable Services Term.

## 20.2 Preparation for repricing

Not later than 11 Months and 2 weeks before each Reviewable Services Date, ServiceCo will consult with and notify SGCH of:

- (a) changes to be made to the Services or Services Requirements and any terms of this Agreement for the Reviewable Services for the purposes of the next Reviewable Services Term which may include a change to the Services or the Services Requirements to support Outcomes Based Contracting principles;
- (b) a timetable for the repricing of the Reviewable Services; and
- (c) any bundling of the Reviewable Services for repricing.



## 20.3 Request for offer to reprice

- (a) **(Request for offer):** ServiceCo may request SGCH to submit an offer for the provision of each Reviewable Service or a bundle of the Reviewable Services (as notified by ServiceCo under clause 20.2) for the next Reviewable Services Term.
- (b) **(SGCH offer):** Whether or not ServiceCo has made a request in accordance with clause 20.3(a), not later than 10 Months before the Reviewable Services Date, SGCH may (and if ServiceCo has made a request in accordance with clause 20.3(a), SGCH must) submit an offer for the provision of the Reviewable Services for the next Reviewable Services Term on the terms notified by ServiceCo under clause 20.2 (**Initial Offer**).
- (c) **(Offer detail):** SGCH's Initial Offer must:
  - (i) contain an overarching explanation and details of any proposed changes to the price of the Reviewable Services;
  - (ii) be priced in accordance with the pricing principles set out in clause 20.1(d);
  - (iii) break down the price for each of the Reviewable Services for the next Reviewable Services Term;
  - (iv) include the staffing profiles and shift patterns in respect of the performance of the Reviewable Services for the next Reviewable Services Term, including the number of full time equivalent positions involved in 'Management and Administration' compared with the then current Reviewable Services Schedule;
  - (v) detail all of the relevant factors and inputs into the proposed price including proposals in connection with labour and materials required to perform the Services;
  - (vi) clearly identify the allocation of responsibility for the performance of obligations where such obligations may be provided pursuant to two or more Services (including Services which do not constitute Reviewable Services); and
  - (vii) provide details of any changes that may have been made to its subcontracting arrangements for the Reviewable Services during the previous Reviewable Services Term.
- (d) **(Offer submitted):** If SGCH submits an Initial Offer, then:
  - (i) for a period of 4 Months after the Initial Offer is submitted (or such longer period agreed between the parties), ServiceCo agrees to negotiate exclusively with SGCH for the provision of the relevant Reviewable Services during the next Reviewable Services Term; and
  - (ii) SGCH acknowledges that after SGCH submits its Initial Offer, ServiceCo may:
    - A. benchmark the pricing for the Reviewable Services against other Social Housing and Affordable Housing in New South

Wales for any purpose, including to inform its decision whether to accept SGCH's Initial Offer or Negotiated Offer;

- B. provide SGCH with information obtained by ServiceCo arising out of the benchmarking of the Reviewable Services undertaken by ServiceCo; and
- C. request that SGCH:
  - 1) meet with ServiceCo to discuss the outcome of any benchmarking undertaken by ServiceCo and SGCH must attend such meetings; and
  - 2) procure the attendance of a representative of any Subcontractor at such meetings.

(iii) ServiceCo will, by a date not later than 1 Month after the expiration of that 4 Month period, advise SGCH whether:

- A. SGCH's Initial Offer or SGCH's final negotiated offer (**Negotiated Offer**) is acceptable to ServiceCo for the provision of each Reviewable Service;
- B. ServiceCo intends to conduct a competitive tender process in respect of that Reviewable Service, in which case SGCH must:
  - 1) cooperate with ServiceCo in respect of that competitive tender process;
  - 2) comply with all reasonable requests of ServiceCo to assist with that competitive tender process; and
  - 3) refrain from doing anything that may impede ServiceCo in conducting that competitive tender process; or
- C. ServiceCo requires SGCH to conduct a competitive tender under clauses 20.5 to 20.7 (inclusive) in respect of that Reviewable Service.

(e) (**Offer remains open**): Notwithstanding that ServiceCo may require SGCH to conduct a competitive tender, SGCH's Initial Offer and Negotiated Offer (if any) must remain open for subsequent acceptance by ServiceCo until 12 Business Days after the Reviewable Services Tender Expiry Date.

## 20.4 No offer made

If SGCH does not submit an offer under clause 20.3(b), then ServiceCo may or FACS may under the Services Agreement:

- (a) conduct a competitive tender process in respect of that Reviewable Service, in which case SGCH must:

- (i) cooperate with ServiceCo or FACS (as the case may be) in respect of that competitive tender process;
  - (ii) comply with all reasonable requests of ServiceCo or FACS (as the case may be) to assist with that competitive tender process; and
  - (iii) refrain from doing anything that may impede ServiceCo or FACS (as the case may be) in conducting that competitive tender process;
- (b) require SGCH to continue to provide those Reviewable Services on the then current terms and pricing for the next Reviewable Services Term; or
  - (c) require SGCH to conduct a competitive tender to be conducted in accordance with clauses 20.5 to 20.7 (inclusive).

## 20.5 Competitive tender

- (a) **(SGCH to conduct tender process):** If ServiceCo requires SGCH to conduct a competitive tender pursuant to clause 20.3(d)(ii)C or 20.4(c), SGCH must conduct a competitive tender in accordance with this clause 20.5.
- (b) **(No delegation):** SGCH may not subcontract or otherwise delegate any aspect of a competitive tender conducted under this clause 20.5 without the prior consent of ServiceCo.
- (c) **(Initial meeting):** Within 1 Month of ServiceCo' request under clauses 20.3(d)(ii) or 20.4(c) for a competitive tender to be conducted under this clause 20.5, SGCH must commence the competitive tender process by convening an initial meeting with ServiceCo and the probity officer (if applicable).
- (d) **(Consultation):** At the initial meeting convened under clause 20.5(c) (and any subsequent meetings agreed between them), SGCH, ServiceCo and the probity officer (if applicable) will seek to agree on:
  - (i) the appropriate timetable for conducting the tender by SGCH for the relevant Reviewable Services, including the proposed date for releasing the tender to the market;
  - (ii) the appropriate manner of advertising the tender for the relevant Reviewable Services and the means of identifying prospective tenderers;
  - (iii) evaluation criteria, which will include those set out in clause 20.5(g); and
  - (iv) the draft tender documentation which must:
    - A. provide such information concerning the Service Package, the relevant Reviewable Services and the Service Package Documents as ServiceCo reasonably requires to ensure the tenderers are fully informed of the opportunity tendered (including details of the evaluation criteria set out in clause 20.5(d)(iii));
    - B. impose a duty of confidentiality on tenderers;

- C. require tenders to be conforming, and irrevocable until one Month after the relevant current Reviewable Services Term;
  - D. require tenderers to comply with the subcontracting requirements set out in clause 10.3 including providing consents to the conduct of any Probity Investigations which may be required by ServiceCo;
  - E. attach a draft Subcontract:
    - 1) substantially on the same terms (other than price and term and any amendments required in accordance with clause 20.2) as the current Subcontract for the provision of those tendered Reviewable Services; and
    - 2) which provides for the review of those Reviewable Services in accordance with the terms of this clause 20;
  - F. require tenderers to accept the terms of the draft Subcontract; and
  - G. enable SGCH to prepare a proposed updated Reviewable Services Schedule in accordance with the pricing principles set out in clause 20.1(d).
- (e) **(Review of request for tender):** Not later than 24 Business Days prior to the proposed date for releasing the tender to the market, SGCH must provide to ServiceCo:
- (i) the final request for tender prepared by SGCH which is proposed to be issued to prospective tenderers; and
  - (ii) the list of proposed tenderers,
- for each of the Reviewable Services for review in accordance with the Review Procedures.
- (f) **(Offers):** SGCH must seek offers by competitive tender, on the basis of the tender approved by ServiceCo in accordance with clause 20.5(e), from at least three experienced and capable service providers for the relevant component of the Reviewable Services which must not include (without the consent of ServiceCo) offers from:
- (i) SGCH or any Associate of SGCH;
  - (ii) any more than one Related Body Corporate of any Associate of SGCH; or
  - (iii) any service provider that has not received the prior approval of ServiceCo (which must not be unreasonably withheld).
- (g) **(Content of offers):** SGCH must procure that each offer obtained under clause 20.5(f) addresses the following criteria:

- (i) details of the contract price;
- (ii) current capacity and capability to carry out the Reviewable Services over the Reviewable Services Term, including current workload and resources plans, key people, subcontractors and consultants;
- (iii) previous performance of services similar to the relevant Reviewable Services together with referees;
- (iv) financial capacity to provide the Reviewable Services;
- (v) demonstration that SGCH will be able to continue to meet the performance standards in the Services Specification relevant to the Reviewable Services; and
- (vi) value for money delivered to ServiceCo.

## 20.6 Outcome of competitive tender process

- (a) **(Third party offers):** SGCH must, within 5 Months after the notice from ServiceCo under clause 20.3(d)(iii)C or 20.4(c), provide to ServiceCo:
  - (i) copies of all offers SGCH has procured which meet the requirements set out in clauses 20.5(f) and 20.5(g);
  - (ii) SGCH's evaluation report in connection with each offer;
  - (iii) SGCH's recommendation as to the preferred tenderer for each Reviewable Service; and
  - (iv) any further details as ServiceCo reasonably requires in relation to the tender and the offers.

## 20.7 Consultation

- (a) During the period of 1 Month following provision of the information under clause 20.6, SGCH must consult with ServiceCo concerning those offers which comply with clauses 20.5(f) and 20.5(g), to attempt to reach agreement on the appointment of one of the tenderers to provide each of the Reviewable Services for the next Reviewable Services Term having regard to:
  - (i) the experience and capability of each tenderer;
  - (ii) the extent to which each offer provides value for money to ServiceCo when compared with each of the other offers; and
  - (iii) the ability of SGCH to continue to meet the section of the Services Specification specified by ServiceCo in its notice under clause 20.3(a), and otherwise comply with this Agreement on subcontracting the relevant Reviewable Service to any of the tenderers.
- (b) SGCH must not enter into any contract with any tenderer for the provision of the Reviewable Services without the prior agreement of ServiceCo.

- (c) SGCH must ensure that each of the tenderers for the Reviewable Services, and any persons likely to be associated with the provision of the Reviewable Services, provide their consent to the carrying out of any Probity Investigations required by ServiceCo.
- (d) If, despite SGCH's request, ServiceCo does not allow a Subcontractor who submitted an offer as part of the Initial Offer submitted by SGCH to submit an offer as part of the competitive tender in accordance with clause 20.5(f), SGCH and ServiceCo agree that the Initial Offer and the offers received as part of the competitive tender process will be evaluated in accordance with the same evaluation criteria.

## **20.8 Appointment and payment**

- (a) If an offer made by a tenderer is acceptable to FACS or ServiceCo (whether or not the tender process was conducted by ServiceCo or SGCH), SGCH must subcontract the provision of the relevant Reviewable Services for the next Reviewable Services Term to the successful tenderer, pursuant to a Subcontract which complies with clause 20.5(d)(iv)E.
- (b) A Subcontract entered into in accordance with this clause 20.8 will be deemed to be approved by FACS or ServiceCo (as the case may be) for the purposes of clause 10.2.
- (c) The parties must adjust the Services MSP (and the Financial Model) for the balance of the Service Delivery Phase to reflect:
  - (i) SGCH's offer accepted by FACS or ServiceCo; or
  - (ii) the Subcontract entered into in accordance with clause 20.8(a),
 (as applicable), unless clause 20.9(a) or 20.9(b) applies, in which case the parties must adjust the Services MSP (and the Financial Model) for the balance of the Service Delivery Phase to reflect the circumstances described in clause 20.9(a) or 20.9(b) (as applicable).

## **20.9 Failure to agree**

If none of the offers made by the tenderers are acceptable to FACS or ServiceCo (whether or not the tender process was conducted by ServiceCo or SGCH), FACS or ServiceCo may:

- (a) accept SGCH's Initial Offer or Negotiated Offer (if any);
- (b) require SGCH to proceed to provide the Reviewable Services under the current terms and pricing in accordance with clause 20.10; or
- (c) omit the Reviewable Services from the Services by way of a Modification and carry out the Reviewable Services itself or procure a third party to carry out the Reviewable Services (in which case the Services MSP will be adjusted and this Agreement amended as necessary in accordance with the Change Compensation Principles for the omission of those Reviewable Services).

## 20.10 Continued provision of Reviewable Services

- (a) Subject to clause 20.10(b), without limiting ServiceCo's rights under this Agreement, if a Subcontractor is intended by ServiceCo to be appointed to carry out the Reviewable Services in the next Reviewable Services Term but has not yet been appointed under clause 20.8 by the date of commencement of the next Reviewable Services Term, SGCH must continue to provide the relevant Reviewable Services on the terms and pricing for the immediately prior Reviewable Services Term and in accordance with the Services Specification, until such time as a Subcontractor is appointed under clause 20.8 and commences provision of those Reviewable Services.
- (b) If the period for provision of the Reviewable Services by SGCH under clause 20.10(a) extends beyond the Reviewable Services Tender Expiry Date, ServiceCo will pay the price offered by SGCH (if any) in SGCH's Initial Offer for the continued provision of the Reviewable Services backdated to the Reviewable Services Tender Expiry Date.

## 20.11 Probity of process

FACS may, at any time, under the Services Agreement, appoint a probity officer to, or have the FACS Representative, oversee the whole or any part of the process referred to in this clause 20 and SGCH must:

- (a) provide all assistance and information required by; and
- (b) comply with all directions of,

the probity officer or the FACS Representative, in connection with that process.

## Part F - Payment provisions

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## 21. Payments, adjustments & Taxes

### 21.1 ServiceCo's payment obligations

- (a) **(Payment obligations):** In consideration of SGCH providing the Services, the Pre-Service Readiness Services and the Prior Occupancy Services, ServiceCo will pay SGCH the Services MSP:
  - (i) calculated in accordance with the Payment Schedule; and
  - (ii) in arrears,during the Service Delivery Phase from the end of the first Month of the Service Delivery Phase.
- (b) **(Other payments):** Other than the Services MSP ServiceCo will pay any payment (including the Planned Maintenance Works Fee and the Responsive Maintenance Works Fee) that is due and payable to SGCH, and SGCH must pay any payment that is due and payable to ServiceCo:
  - (i) at the time specified in this Agreement or the relevant ServiceCo Service Package Document for the particular payment; or

- (ii) if no time is specified for the payment of the relevant amount, the payment will be made:
  - A. by ServiceCo, in the case of a payment to SGCH during the Service Delivery Phase, at the same time as the next Services MSP is made by ServiceCo to SGCH after the relevant amount becomes due and payable and a written demand is made for payment of the amount; and
  - B. by SGCH in the case of a payment to ServiceCo, within 16 Business Days after a written demand being made by ServiceCo for payment of the relevant amount.

## 21.2 Services MSPs

- (a) **(Updated information):** Within 3 Business Days after the end of each Month during the Service Delivery Phase, SGCH must ensure that it has updated the information in CHIMES relating to:
  - (i) not used; and
  - (ii) Dwelling details (including any changes to the details of Dwellings that have been substituted pursuant to clause 19) and first occupation dates.
- (b) **(Timing of Payment and RCTI):** After the end of each Month during the Service Delivery Phase:
  - (i) SGCH will on the 4<sup>th</sup> Business Day, calculate the Services MSP for that Month; and
  - (ii) ServiceCo will by the 11<sup>th</sup> Business Day, make the Services MSP and issue the RCTI.
- (c) **(Registered):** Each of ServiceCo and SGCH acknowledges that it (or in the case of ServiceCo, an Entity on behalf of ServiceCo) is registered for GST when it enters into this Agreement and that each party will notify the other party if it (or the relevant Entity) ceases to be registered.
- (d) **(Payment not evidence of proper performance):** Neither payment of Services MSPs by ServiceCo to SGCH nor the issuing of any RCTI is:
  - (i) evidence that the Service Package Activities have been carried out by SGCH in accordance with the ServiceCo Service Package Documents; or
  - (ii) an admission of Liability,
 and is only to be taken as payment on account.
- (e) **(Correction of previous RCTI):** ServiceCo may, in any RCTI, correct any error in any previous RCTI issued by ServiceCo.
- (f) **(Adjustment Notice):** By the 20<sup>th</sup> day of the Month, SGCH may notify ServiceCo that it believes the RCTI issued in that Month is incorrect and submit to ServiceCo a



request for adjustment of the Services MSP in respect of that RCTI (**Adjustment Notice**) including the basis on which the adjustment has been requested.

- (g) **(Additional information):** ServiceCo must consider the Adjustment Notice and may require SGCH to provide additional information.
- (h) **(Adjustment Notice payment):** To the extent ServiceCo agrees that an adjustment is required to the RCTI, ServiceCo will adjust the Services MSP for the next Month in the Service Delivery Phase accordingly.

### **21.3 Payment adjustments under the Performance Regime and Payment Schedule**

- (a) **(Performance Regime applies):** The Services MSPs will be adjusted to the extent and in the manner described in the Performance Regime and the Payment Schedule to reflect the agreed principle that ServiceCo will only pay for the quantum and quality of the Services actually provided.
- (b) **(Payments):** To the extent that SGCH must pay ServiceCo for any Liabilities contemplated by the exclusions in clause 21.3(e) and those Liabilities are in excess of the Services MSPs, then in addition to any other remedies of ServiceCo or its Associates under this Agreement or at Law, the future Services MSPs will be reduced to the extent necessary for ServiceCo or its Associates to be compensated for those Liabilities in full. To the extent that ServiceCo and its Associates are unable to recover such compensation by the reduction of future Services MSPs, any shortfall in such compensation will be a debt due and payable by SGCH to ServiceCo.
- (c) **(SGCH acknowledgements):** SGCH acknowledges and agrees that if clause 21.3(a), or any adjustment under the Performance Regime or Payment Schedule pursuant to that clause, is held to be void or unenforceable other than a challenge to the Performance Regime or Payment Schedule initiated by ServiceCo or its Associates, clause 21.3(a) and the Performance Regime and the Payment Schedule will not limit SGCH's Liability to ServiceCo under this Agreement or otherwise at Law for any Liability suffered by ServiceCo up to an amount equal to the amount that would have been applied as a consequence of the Service Failure had it not been held to be void or unenforceable.
- (d) **(Sole remedy):** Subject to clauses 21.3(b) and 21.3(e), adjustment of the Services MSPs by application of the Performance Regime or Payment Schedule under clause 21.3(a), will be the only monetary consequence for SGCH for any Service Failure to which the Performance Regime or Payment Schedule applies.
- (e) **(Exclusions to sole remedy):** Clause 21.3(d) does not limit or affect:
  - (i) any other right or remedy under this Agreement or at Law (other than, subject to this clause 21.3(e), for monetary compensation for a Service Failure to which the Performance Regime or Payment Schedule applies);
  - (ii) ServiceCo' rights under this Agreement or any other ServiceCo Service Package Document in respect of the event that caused or contributed to the Service Failure under clause 29 (other than clause 29.1) to the extent that ServiceCo has not been fully compensated for that loss or damage;

- (iii) any payment on termination of this Agreement (including a Termination Payment); or
- (iv) any Liability of SGCH to ServiceCo or an Associate of ServiceCo suffered or incurred by ServiceCo or any Associate of ServiceCo as a result of any:
  - A. fraudulent, unlawful or criminal act or omission; or
  - B. any wilful breach of a Service Package Document,
 by SGCH or any of its Associates where ServiceCo has not been completely compensated for that Liability by the adjustment in accordance with clause 21.3.

#### 21.4 Refund

If:

- (a) **(payment):** ServiceCo pays SGCH, or SGCH pays ServiceCo any amount under clause 21.1 or otherwise; and
- (b) **(entitlement):** it is subsequently agreed or otherwise determined under this Agreement for any reason that the recipient was not entitled to that payment under this Agreement,

the recipient will immediately refund to the party which made the payment, that payment plus interest at the Overdue Rate from the day the payment was paid to (and including) the date of repayment under this clause 21.4.

#### 21.5 Interest

- (a) **(Interest):** Subject to clause 21.6, and other than where section 3.2 of the Termination Payment Schedule applies in relation to a Termination Payment, if a party fails to pay any amount due and payable by that party to the other party within the time required under this Agreement, then it must pay interest on that amount:
  - (i) from the date on which payment was due and payable until the date on which payment is made;
  - (ii) calculated on daily balances at the Overdue Rate; and
  - (iii) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this clause 21.5 will be a party's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

#### 21.6 Set-off

- (a) **(ServiceCo's payments):** Without limiting ServiceCo's rights at Law, ServiceCo may deduct from any moneys due and payable to SGCH under the ServiceCo Service Package Documents or otherwise at Law:

- (i) any moneys due and payable by SGCH to ServiceCo in respect of the Service Package Documents;
  - (ii) any Liabilities contemplated by the exclusions in clause 21.3(e); and
  - (iii) the amount of any Claim that ServiceCo may make in good faith against SGCH in respect of the Service Package Documents.
- (b) **(Details of set-off):** ServiceCo must provide SGCH with reasonable details of the basis on which it is setting off any amount pursuant to clause 21.6(a).
- (c) **(SGCH's payments):** SGCH must make all payments to ServiceCo free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless SGCH is compelled by Law to make such a deduction or withholding.
- (d) **(Deduction or withholding):** If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:
- (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
  - (ii) provide to the other party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

## 21.7 Liability for Taxes

- (a) **(SGCH to indemnify):** Subject to clause 21.8, SGCH must indemnify ServiceCo against, and must pay ServiceCo on demand the amount of, all Taxes (excluding Rates or Land Tax, and any penalty, fine, charge or interest in respect of any Rates or Land Tax) incurred in connection with:
- (i) the negotiation, preparation, execution and registration of this Agreement or any other Service Package Document;
  - (ii) the transactions that this Agreement or any other Service Package Document contemplates; and
  - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Agreement or any other Service Package Document.
- (b) **(Rates and Land Tax):** SGCH:
- (i) bears the cost of all Rates and Land Tax, if any, in respect of; and
  - (ii) must indemnify ServiceCo against, and must pay ServiceCo on demand, the amount of, all Rates and Land Tax and any penalty, fine, charge or interest in respect of any Rates or Land Tax incurred in connection with,
- each Site until the end of the Term.

- (c) **(GST):** SGCH must indemnify ServiceCo against, and must pay ServiceCo on demand, the amount of any GST liability or denied input tax credits of ServiceCo that arise directly or indirectly from any change to SGCH's GST registration status or any change to the GST treatment of supplies or acquisitions made by SGCH (where the GST treatment arises from any action or inaction of SGCH), where that change differs from that set out in the Financial Model.

## 21.8 GST

- (a) **(Interpretation):**
  - (i) Except where the context suggests otherwise, terms used in this clause 21.8 have the meanings given to those terms by the GST Act (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 21.8.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 21.8.
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 21.8(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Agreement:
  - (i) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 21.8), for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply or, in the case of a supply in relation to which an RCTI is to be issued, the Recipient must provide an RCTI to the Supplier for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 21.8(c)(ii).

- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 21.8(c) and clause 21.8(e)), varies from the additional amount paid by the Recipient under clause 21.8(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 21.8(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 21.8(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 21.8(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the parties agree to set off their GST liabilities in respect of the supplies and consideration referred to in clause 21.8(c)(ii). For the avoidance of doubt, clause 21.8(c) also applies to the Recipient in its capacity as the supplier of the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 21.8(c).
- (f) **(No merger):** This clause 21.8 will not merge on completion or termination of this Agreement.

## Part G - Expiry obligations

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### 22. Expiry obligations

#### 22.1 Transition arrangements

The parties must:

- (a) no later than 5 years prior to the Final Expiry Date in respect of a Stage; and
- (b) where SGCH is given less than or equal to 12 Months' notice of an Expiry Date in respect of a Stage, as soon as reasonably practicable after the relevant notice period commences,

commence meetings regularly to discuss:

- (c) the assistance that SGCH must provide under clause 22.2;
- (d) any arrangements (subject to the agreement of both parties) for delivery of the service after the Expiry Date, including:

- (i) where and the terms on which SGCH would continue to provide one or more services comprising the Services; or
  - (ii) any arrangement of alternative housing for Tenants on the expiry of their Residential Tenancy Agreements which ServiceCo in its absolute discretion may effect,
- (or any combination).

## 22.2 Assistance in relation to transition

Unless otherwise agreed between the parties in respect of each Stage:

- (a) subject to clause 22.2(b), SGCH must:
    - (i) in respect of the obligations set out in clauses 22.2(a)(iii) and 22.2(a)(iv), in the period commencing 5 years prior to the Final Expiry Date; and
    - (ii) otherwise, not less than:
      - A. 6 Months before the Final Expiry Date; or
      - B. where SGCH is given less than or equal to 12 Months' notice of an Expiry Date, the relevant notice period,
- do all things reasonably required by ServiceCo to ensure the smooth and orderly transfer of responsibility for delivering the Service Package to ServiceCo or its nominee including:
- (iii) meeting with ServiceCo and such other persons notified by ServiceCo to discuss the orderly transfer of Tenants to alternative accommodation on the expiry of their Residential Tenancy Agreements on reasonable notice by ServiceCo;
  - (iv) if required, preparing a draft plan in cooperation with ServiceCo for the transfer of Tenants to alternative accommodation on the expiry of their Residential Tenancy Agreements (**Transfer Plan**);
  - (v) providing sufficient resources, including personnel, for the time required to facilitate the transfer of Tenants to alternative accommodation on expiry of their Residential Tenancy Agreements;
  - (vi) procuring the assignment of ServiceCo's rights to FACS or its nominee of:
    - A. this Agreement and such Subcontracts as FACS may nominate;
    - B. not used; and
    - C. any warranties (provided in respect of the Service Package that are capable of assignment); and
  - (vii) facilitating communications with the Tenants;

- (b) where the Expiry Date is prior to the Final Expiry Date, SGCH must meet the requirements under clause 22.2(a) unless ServiceCo, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period SGCH has received of the Expiry Date, in which case, SGCH must meet such requirements as soon as practicable after the Expiry Date; and
- (c) without limiting clause 22.2(a)(vii), SGCH acknowledges the right of FACS or ServiceCo to enter the Site to assist Tenants to move to alternative accommodation.

### 22.3 Vacant possession

SGCH acknowledges and agrees that under the Services Agreement, where:

- (a) transition arrangements are required pursuant to clause 22.1(a); or
- (b) FACS has served a notice of Voluntary Termination under clause 32.2(a) of the Services Agreement; or
- (c) ServiceCo has served a notice of termination following an unresolved Material Adverse Effect under 27.3 of the Services Agreement; and
- (d) ServiceCo has not otherwise provided written notice to FACS promptly after the occurrence of any of the events in this clause 22.3 that ServiceCo wishes to continue to house Tenants in any Dwellings after the Expiry Date,

FACS and ServiceCo will work together in good faith to ensure that all relevant Dwellings are vacated by the Expiry Date and otherwise agree to comply with their respective obligations under this clause 22, and SGCH must use reasonable endeavours to assist ServiceCo in working together with FACS under this clause.

### 22.4 Removal of Dwellings

- (a) SGCH acknowledges and agrees that where:
  - (i) transition arrangements have been implemented pursuant to clause 22.1(a), then for the period of two years prior to the Expiry Date;
  - (ii) FACS has served a notice of Voluntary Termination under clause 32.2(a) of the Services Agreement, then for the period between receipt of that notice and the Expiry Date; or
  - (iii) either FACS or ServiceCo has served a notice of termination for a Force Majeure Termination Event under clause 32.3(a), then for the period between receipt of that notice and the Expiry Date,

ServiceCo may remove vacant Dwellings from the Service Package in accordance with this clause 22.3, unless the FACS and ServiceCo have agreed otherwise pursuant to clause 22.1(d).

- (b) SGCH acknowledges and agrees that where a Tenant's Residential Tenancy Agreement will expire or a Tenant proposes to vacate a Dwelling (for whatever reason) within the relevant period referred to in clause 22.4(a)(i) to 22.4(a)(iii), ServiceCo may omit that Dwelling from the Service Package (**Removed Dwelling**)

on and from the date the Dwelling becomes vacant (**Removal Date**) without having to submit a Change Notice pursuant to clause 26.8(a).

- (c) The parties acknowledge and agree that on and from the Removal Date:
- (i) for the purposes of section 4.2 (*Service Provision Abatement*) of the Payment Schedule, a Removed Dwelling will be deemed to be vacant;
  - (ii) for the purpose of section 2 (*Tenant Mix Abatement*) of the Payment Schedule, the Removed Dwellings will be deemed to be:
    - A. occupied by a Social Housing Tenant, where the immediate previous Tenant was a Social Housing Tenant; or
    - B. occupied by an Affordable Housing Tenant, where the immediate previous Tenant was an Affordable Housing Tenant;
  - (iii) SGCH's inability to perform any Services in respect of that Removed Dwelling will not be a breach of this Agreement by SGCH, a SGCH Act or Omission, a Service Failure, a Major Default or a Default Termination Event; and
  - (iv) the parties deem that a Removed Dwelling is not a Dwelling for the purposes of any Option to Lease.

## **22.5 SGCH transition representative**

Without limiting its obligations under clause 22 in respect of a Stage for:

- (a) (**expiry of Service Package**): not less than 24 Months before the expiry of the Stage; or
- (b) (**Notice period**): where the Expiry Date for the Stage is prior to the Final Expiry Date and SGCH is given less than or equal to 12 Months' notice of the Expiry Date, the relevant notice period,

SGCH must, if reasonably necessary, provide a dedicated person with appropriate expertise and experience to manage the transition out and handover of the Service Package.

## **Part H - Change in circumstances**

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### **23. Not used**

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## **24. Service Delivery Phase – Intervening Events**

### **24.1 Intervening Events entitling Claim**

- (a) (**Notification**): If SGCH becomes aware of an Intervening Event or any other matter which has prevented or will prevent SGCH from performing any of the Services in accordance with this Agreement, SGCH must promptly notify ServiceCo of that Intervening Event, its then current effect, and any likely further effect.



- (b) **(Prevent):** In this clause 24, 'prevent' or 'prevented' does not mean that SGCH is permanently prevented from performing its obligations.
- (c) **(Relief):** If, during the Service Delivery Phase, an Intervening Event prevents SGCH from meeting any of the Services Requirements in accordance with this Agreement, SGCH will be entitled to claim relief from performance in accordance with this clause 24.
- (d) **(Claim for relief):** In order to claim relief from performance under this clause, SGCH must submit an initial Change Notice to ServiceCo for that Intervening Event within 16 Business Days after the date upon which it became aware of the first occurrence of the Intervening Event.
- (e) **(Updates):** Where:
  - (i) the period for which SGCH is prevented from performing any of the Services in accordance with this Agreement extends beyond the period of time specified in the Change Notice submitted in accordance with clause 24.1(d); and
  - (ii) SGCH wants to claim relief from performance in respect of that further period,

SGCH must notify ServiceCo and, once the consequences of the Intervening Event have ceased, promptly (and in any event, within 8 Business Days), submit an updated Change Notice.

## 24.2 Conditions precedent to relief

It is a condition precedent to ServiceCo granting any relief or SGCH having any entitlement in connection with an Intervening Event that:

- (a) **(Change Notice):** SGCH submits to ServiceCo:
  - (i) its initial Change Notice in accordance with clause 24.1(d); and
  - (ii) any updated Change Notice in accordance with clause 24.1(e); and
- (b) **(actual prevention):** SGCH's performance of all or any part of the Services under this Agreement is actually prevented by the relevant Intervening Event.

## 24.3 Services suspended and no breach

To the extent that:

- (a) an Intervening Event prevents SGCH from meeting any of the Services Requirements in accordance with this Agreement; and
  - (b) the conditions precedent in clause 24.2 have been satisfied,
- then:
- (c) the relevant obligation of SGCH will be suspended;

- (d) the failure to perform the affected Services will not be a breach of this Agreement by SGCH, a SGCH Act or Omission, a Service Failure, a Major Default or a Default Termination Event,

but only until the earlier of:

- (e) the date the Intervening Event and its consequences cease to prevent performance of the relevant Services; and
- (f) the date on which the Intervening Event and its consequences would have ceased to prevent performance, had SGCH or any of its Associates not failed to do any of the things contemplated by clause 25(b)(ii).

#### **24.4 Continue to provide Services**

- (a) If an Intervening Event prevents SGCH from meeting any of the Services Requirements in accordance with this Agreement, then SGCH:
  - (i) **(perform obligations)**: must, subject to clause 24.3 and unless it is actually or practically impossible to do so with respect to the Relevant Infrastructure given the nature of the Intervening Event, continue to provide the Services and otherwise perform its obligations under this Agreement; and
  - (ii) **(Replacement Services)**: to the extent it is actually or practically impossible to provide any of the Services with respect to the Relevant Infrastructure and otherwise perform its obligations under this Agreement given the nature of the Intervening Event:
    - A. ServiceCo may direct SGCH to deliver replacement Services by an alternative method or 'work around' from that contemplated in the then current Service Delivery Phase Plans and the Services Specification to the reasonable satisfaction of ServiceCo (including by providing alternative accommodation whilst the Intervening Event subsists) to the extent that it is reasonably possible for SGCH to do so **(Replacement Services)**; and
    - B. SGCH must comply with any such directions.
- (b) SGCH must use reasonable endeavours to procure Replacement Services by way of temporary accommodation if directed by ServiceCo under clause 24.4(a)(ii), that is suitable for the affected Tenants having regard to all of the circumstances, including availability of accommodation, time and cost.
- (c) ServiceCo acknowledges and agrees that provided SGCH used reasonable endeavours under clauses 24.4(a)(ii) and 24.4(b), any accommodation provided as part of the Replacement Services does not have to strictly meet all the requirements for Accommodation Services and the Services Requirements under this Agreement.

#### **24.5 Payment**

- (a) **(Payment of Services MSP)**: ServiceCo must continue to pay the Services MSP in respect of the Relevant Infrastructure affected by the Intervening Event to the extent that SGCH performs the Services or Replacement Services (or both, as applicable)

in respect of that Relevant Infrastructure in accordance with clauses 24.4(a)(i) to 24.4(b).

- (b) **(Compensation for costs):** If:
- (i) SGCH's obligation to perform the Services is suspended in accordance with clause 24.3 because of a Compensable Intervening Event or an event described in paragraph (b) of the definition of Intervening Event (which will be deemed to be a Compensable Intervening Event for the purposes of this clause only), then ServiceCo will to the extent clause 24.5(a) applies, in addition to the amounts referred to in clause 24.5(a) pay SGCH an amount calculated in accordance with the Change Compensation Principles; or
  - (ii) if:
    - A. the Intervening Event is a Force Majeure Event; and
    - B. ServiceCo exercises its right of suspension under clause 32.3(d),  
  
(which will be deemed to be a Compensable Intervening Event from the date of suspension for the purposes of this clause), then ServiceCo will from the date of the relevant suspension notice, to the extent clause 24.5(a) applies, in addition to the amounts referred to in clause 24.5(a) pay SGCH an amount calculated in accordance with the Change Compensation Principles.

## 24.6 Alternative arrangements

- (a) If SGCH:
- (i) is not able to provide any of the Services as a result of an Intervening Event; and
  - (ii) does not provide Replacement Services in accordance with clauses 24.4(a)(ii) to 24.4(c) within a reasonable period of time after ServiceCo directs it to do so under clause 24.4(a)(ii),
- then:
- (iii) ServiceCo may make alternative arrangements for the performance of those Services;
  - (iv) subject to clause 24.6(b) and 24.6(d), to the extent that the costs incurred by ServiceCo in making those alternative arrangements exceeds the Services MSPs that would otherwise be payable to SGCH for the period of the Replacement Services had the Intervening Event not occurred SGCH must reimburse ServiceCo the amount of the excess; and
  - (v) ServiceCo has no obligation to continue paying the Services MSP to SGCH under clause 24.5(a) in respect of the Services that are not being provided.

- (b) If the Intervening Event is a Compensable Intervening Event, or an event described in paragraph (b) of the definition of Intervening Event, SGCH will not be required to reimburse ServiceCo under clause 24.6(a)(iv).
- (c) If:
  - (i) the Intervening Event is a Force Majeure Event;
  - (ii) ServiceCo makes alternative arrangements under clause 24.6(a)(iii); and
  - (iii) ServiceCo exercises its right of suspension under clause 32.3(d),
 SGCH will not be required to reimburse ServiceCo under clause 24.6(a)(iv) for any costs incurred after the date of the relevant suspension notice.
- (d) ServiceCo shall not incur any Liability to SGCH in respect of alternative arrangements it makes under this clause 24.5(b).

#### 24.7 Cessation of Intervening Event

SGCH must:

- (a) **(notification)**: notify ServiceCo; and
- (b) **(performance of Services)**: recommence performing all Services suspended as a result of the Intervening Event,

immediately after it ceases to be prevented from performing those Services as a result of the relevant Intervening Event or its consequences.

#### 24.8 Sole remedy

Subject to clause 5.3(b) and 5.3(c)(ii):

- (a) **(Intervening Event)**: if SGCH is prevented from performing the Services in accordance with this Agreement as a consequence of an Intervening Event, SGCH's sole remedy during the Service Delivery Phase is as set out in this clause 24; and
- (b) **(Relief and compensation)**: SGCH will not be entitled to make any Claim, and ServiceCo will have no Liability for, any Claim made by SGCH (including for damages for breach) for SGCH being prevented from providing the Services in accordance with this Agreement other than for the relief and compensation in accordance with this clause 24.

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### 25. Reduction in ServiceCo's Liability for Relief Events

ServiceCo's Liability and SGCH's entitlements in connection with any Relief Event will be reduced:

- (a) **(caused by SGCH)**: to the extent that the Relief Event is:
  - (i) within the reasonable control of SGCH and its Associates;

- (ii) caused or contributed to by any breach of another Service Package Document by SGCH or any of its Associates who is a counterparty to the Service Package Document; or
  - (iii) caused or contributed to by a SGCH Act or Omission;
- (b) **(failure to mitigate):** to the extent SGCH, or any of its Associates, fails to:
- (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event (including by putting in place temporary measures reasonably required by ServiceCo); or
  - (ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of SGCH or the relevant Associate of SGCH would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event; and
- (c) **(insurance proceeds):** by any insurance proceeds:
- (i) payable to SGCH, or any of its Associates, in respect of any Insurances; or
  - (ii) which would have been payable to SGCH or any of its Associates in accordance with any Insurances but for a failure by SGCH to comply with this Agreement or a failure by SGCH or any of its Associates to comply with any Service Package Documents, or with the terms of those Insurances.

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## 26. Modifications

### 26.1 Modification Request by ServiceCo

- (a) ServiceCo may at any time issue to SGCH a notice entitled 'Modification Request' which must include details of:
- (i) **(proposed Modification):** the proposed Modification which ServiceCo is considering;
  - (ii) **(preferred financing):** ServiceCo's preferred financing for the proposed Modification in accordance with the Change Compensation Principles (where the Modification will result in an increase to the cost of the Relevant Infrastructure or the Services); and
  - (iii) **(specific information):** any specific information that ServiceCo requires SGCH to include in its Change Notice or that may be relevant to the preparation of the Change Notice,
- (Modification Request).**
- (b) **(Omitted Service Package Activities):** Subject to clause 26.1(c), ServiceCo may only decrease, omit, delete or remove any part of the Service Package Activities through a Modification Request where those Services Package Activities do not relate to the Dwellings or any Services impacting on the development, maintenance, upkeep or repair of those Dwellings (**Omitted Service Package Activities**).

- (c) **(No Applicants):** ServiceCo may issue a Modification Request to omit a Dwelling (and all Service Package Activities in connection with that Dwelling) from the Service Package Activities if a Dwelling is vacant because there are no Appropriate Applicants for that Dwelling.

## **26.2 Estimate of cost of Change Notice**

If SGCH needs to engage a third party to provide services to assist in the preparation of the Change Notice for a proposed Modification requested under clause 26.1, SGCH must provide ServiceCo with a capped price for those costs within 8 Business Days after receiving the Modification Request.

## **26.3 Modification Proposal**

Unless ServiceCo withdraws the Modification Request, SGCH must submit a Change Notice entitled 'Modification Proposal' in accordance with the Change Compensation Principles:

- (a) within 16 Business Days after the receipt of the Modification Request; or
- (b) at such later time as agreed by ServiceCo (acting reasonably, taking into account the size and complexity of the proposed Modification and the information to be included in a Modification Proposal).

## **26.4 Payment for Change Notice prepared by SGCH**

If:

- (a) SGCH prepares a Modification Proposal in accordance with clause 26.3; and
- (b) ServiceCo does not issue a Modification Order in respect of the proposed Modification,

then ServiceCo must reimburse the reasonable third party costs of the type described in clause 26.2 incurred by SGCH in preparing the Modification Proposal, capped at the price provided by SGCH for the Modification Proposal under clause 26.2.

## **26.5 Change Response**

- (a) ServiceCo must issue a Change Response to a Modification Proposal in accordance with the Change Compensation Principles and the Change Compensation Principles will apply.
- (b) Subject to clauses 26.4 and 26.10(c)(iii), SGCH must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a Modification unless a Change Response entitled 'Modification Order' requiring SGCH to proceed with the Modification has been issued by ServiceCo.
- (c) Subject to clause 26.10, ServiceCo may withdraw a Modification Request at any time prior to issuing a Modification Order, in which case SGCH must not proceed with the Modification.

## **26.6 Omission by ServiceCo**

- (a) **(Omitted Service Package Activities):** The parties acknowledge and agree that if ServiceCo has issued a Change Response entitled "Modification Order" in

accordance with the Change Compensation Principles in respect of Omitted Service Package Activities which is omitted by FACS under clause 26.6 of the Services Agreement, FACS may itself or may engage an Associate of FACS to undertake any Omitted Service Package Activities.

- (b) **(Coordination with Service Package Activities):** SGCH must:
- (i) permit FACS or any of FACS' Associates to carry out any Omitted Service Package Activities;
  - (ii) co-operate with FACS and any of FACS' Associates in carrying out any Omitted Service Package Activities (as applicable); and
  - (iii) co-ordinate the Service Package Activities with the work carried out or to be carried out by FACS or any of FACS' Associates in connection with any Omitted Service Package Activities (as applicable).

## 26.7 Instruction to proceed

- (a) **(Instruction):** Whether or not:
- (i) ServiceCo has issued a Modification Request under clause 26.1; or
  - (ii) SGCH has issued a Modification Proposal under clause 26.3,
- ServiceCo may at any time instruct SGCH to implement a Modification by issuing a Change Response entitled 'Modification Order' in accordance with the Change Compensation Principles.
- (b) **(Implementation):** If ServiceCo issues a Change Response entitled 'Modification Order' under clause 26.7(a), SGCH must implement the Modification on the terms set out in that Modification Order.

## 26.8 Modifications proposed by SGCH

- (a) **(SGCH may propose a Modification):** SGCH may request ServiceCo to direct a Modification by submitting a Change Notice entitled 'Modification Proposal' to ServiceCo in accordance with the Change Compensation Principles (**Modification Proposal**).
- (b) **(ServiceCo may approve or reject):** Upon receipt of a Modification Proposal, the Change Compensation Principles will apply save that ServiceCo will be under no obligation to issue a Modification Order requiring SGCH to proceed with the Modification proposed by SGCH under clause 26.8(a).
- (c) **(SGCH to bear risks of costs):** Unless otherwise agreed in writing by ServiceCo, SGCH will:
- (i) bear all risks and costs associated with a Modification proposed by SGCH; and
  - (ii) not be entitled to make any Claim against ServiceCo arising out of, or in any way in connection with, a Modification proposed by SGCH,

including where ServiceCo issues a Modification Order requiring SGCH to implement the Modification in accordance with the Modification Proposal.

- (d) **(Sharing of Savings):** If ServiceCo issues a Modification Order in respect of a Modification proposed by SGCH under clause 26.8(a) and the Modification will give rise to a Saving under a corresponding Modification under the Services Agreement, ServiceCo and SGCH will share any Saving received by ServiceCo under the Services Agreement for that Modification between the parties as determined in accordance with the Change Compensation Principles.

## 26.9 Directions

- (a) **(ServiceCo direction):** If SGCH considers that a direction by ServiceCo constitutes or involves a Modification and ServiceCo has not given that direction expressly by way of a Modification Order, and SGCH intends to make a Claim that the direction is a Modification, SGCH must:
  - (i) within 8 Business Days after receiving the direction and before commencing any work the subject matter of the direction, give written notice to ServiceCo that it considers the direction constitutes or involves a Modification; and
  - (ii) within 8 Business Days after giving the notice under clause 26.9(a)(i) and before commencing any work the subject matter of the direction, give ServiceCo a Change Notice in respect of the alleged Modification.
- (b) **(Confirmation):** Within 22 Business Days of ServiceCo receiving a Change Notice under clause 26.9(a) ServiceCo must issue a Change Response:
  - (i) confirming that the direction is in fact a Modification, in which case ServiceCo will issue a Modification Request in respect of the relevant direction in accordance with this clause 26 and the Change Compensation Principles;
  - (ii) withdrawing the direction, in which case SGCH must not comply with the direction; or
  - (iii) informing SGCH that, in ServiceCo's view, the direction does not constitute or involve a Modification in which case SGCH must, subject to clause 5.2(a), comply with the direction but may refer the matter to dispute resolution in accordance with clause 34.
- (c) **(Conditions for SGCH Claim):** SGCH is not entitled to make any Claim in respect of a direction that gives rise to a Modification of the type described in clause 26.9(a) unless it has given a notice under clause 26.9(a).

## 26.10 Change in Mandatory Requirements

- (a) **(Change in Mandatory Requirements):** SGCH must provide to ServiceCo a notice within 8 Business Days after becoming aware of any Change in Mandatory Requirements.
- (b) **(SGCH action):** If a Change in Mandatory Requirements occurs, SGCH must provide to ServiceCo:



- (i) within 8 Business Days after becoming aware of such Change in Mandatory Requirements, where necessary, an estimate of third party costs of the type described in clause 26.2 to be incurred for preparing a Change Notice in response to a Change in Mandatory Requirements; and
  - (ii) within 16 Business Days after becoming aware of that Change in Mandatory Requirements, or at such later time as agreed by ServiceCo (acting reasonably), a Change Notice in respect of the relevant Change in Mandatory Requirements in accordance with the Change Compensation Principles.
- (c) **(ServiceCo action):** ServiceCo must:
- (i) direct SGCH as to whether or not it requires SGCH to comply with the relevant Change in Mandatory Requirements, provided that ServiceCo must direct SGCH to comply with the relevant Change in Mandatory Requirements if a failure to comply with that Change in Mandatory Requirements would result in SGCH being in breach of Legislation or any Approval;
  - (ii) if ServiceCo directs that it requires SGCH to comply with the relevant Change in Mandatory Requirement under clause 26.10(c)(i), issue a Change Response entitled 'Modification Order' in accordance with the Change Compensation Principles; and
  - (iii) if ServiceCo directs SGCH not to comply with the relevant Change in Mandatory Requirement under clause 26.10(c)(i), reimburse SGCH the reasonable third party costs of the type described in clause 26.2 incurred by SGCH in preparing the Change Notice, capped at the amount of any estimate provided by SGCH for the Change Notice under clause 26.2 (or such higher amount as ServiceCo may approve).
- (d) **(Conditions for SGCH claim):** SGCH is not entitled to make any Claim in respect of a Change in Mandatory Requirements unless it has given a notice in accordance with clause 26.10(a) and 26.10(b)(ii).

**26.11 Not used**

**26.12 Implementation**

If ServiceCo issues a Modification Order in accordance with this clause 26 SGCH must implement the Modification in accordance with the terms of the Modification Order.

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## **27. Material Adverse Effect**

**27.1 Notice of Material Adverse Effect**

- (a) SGCH acknowledges and agrees that under the Services Agreement, if a MAE Change in Law occurs which ServiceCo reasonably believes has had or has started to have a Material Adverse Effect, ServiceCo must:
  - (i) notify FACS of the Material Adverse Effect and provide evidence to support its assertion that a Material Adverse Effect has occurred

(including the calculation set out in the definition of 'Material Adverse Effect'); and

- (ii) use all reasonable endeavours to mitigate the adverse consequences of the event it believes is a Material Adverse Effect,

and SGCH must provide all reasonable assistance to ServiceCo to the extent required for ServiceCo to fulfil these obligations.

- (b) SGCH acknowledges and agrees that FACS will determine, acting reasonably, whether it is satisfied a Material Adverse Effect has occurred and notify ServiceCo within 10 Business Days of its determination, and ServiceCo will notify SGCH of such determination.
- (c) SGCH acknowledges and agrees that a notice given under clause 27.1(a) will only be valid if it is given within 60 Business Days after the MAE Change in Law had or has started to have a Material Adverse Effect.

## **27.2 Good faith negotiations**

- (a) SGCH acknowledges and agrees that under the Services Agreement, as soon as practicable but no later than 20 Business Days after notice is given under clause 27.1(b), ServiceCo and FACS must enter into negotiations and negotiate in good faith the MAE Variations (as defined and contemplated by clause 27.2(a) of the Services Agreement), and SGCH must provide all reasonable assistance to ServiceCo to the extent required for such negotiations (including attendance by SGCH at such negotiations).
- (b) SGCH acknowledges and agrees that in any negotiations the parties to the negotiation will take a flexible approach, including giving consideration to:
  - (i) varying the Term;
  - (ii) re-specifying the Services, including reducing the proportion of Tenants required to be Social Housing Tenants pursuant to the Services Specification;
  - (iii) varying the financial or other contributions of the parties; and
  - (iv) other variations as may be appropriate.
- (c) SGCH acknowledges and agrees that notwithstanding any other provision of the Services Agreement, negotiations conducted in accordance with this clause 27.2 of the Services Agreement (or any disputes arising in connection with those negotiations) cannot be referred to dispute resolution under clauses 34 to 38 of the Services Agreement.

## **27.3 Termination as a last resort**

SGCH acknowledges and agrees that under the Services Agreement, if ServiceCo and FACS cannot agree the MAE Variations within 3 Months of the commencement of negotiations, ServiceCo may terminate this Agreement upon 12 months' notice to the other party, in which case:

- (a) no Termination Payment will be payable by either party; and

- (b) clause 22.3 will apply.

## **27.4 Termination of the Services Agreement**

Where the Services Agreement is terminated as contemplated by clause 27.3 and such termination has been validly and lawfully terminated in accordance with the terms of the Services Agreement, ServiceCo may terminate this Agreement, and:

- (a) no Termination Payment will be payable by either party; and
- (b) clause 22.3 will apply.

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## **28. Step-in by appointment of statutory manager**

The parties acknowledge and agree that, in respect of the Social Housing provided by SGCH under this Agreement:

- (a) the Registrar is entitled to appoint a statutory manager to conduct the affairs and activities of ServiceCo or SGCH as they relate to the community housing assets of ServiceCo under the Community Housing Act (clause 21 of the National Law);
- (b) the statutory manager's functions will include the right to pay monies (including rent) under this Agreement and enforce any rights under this Agreement; and
- (c) if a statutory manager is appointed to exercise functions of ServiceCo or SGCH, the governing body of ServiceCo or SGCH may not exercise any of those functions without the consent of the statutory manager.

## **Part I - Risk, indemnity and Insurance**

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## **29. Indemnities and Consequential or Indirect Loss**

### **29.1 Indemnity for SGCH breach**

Subject to clause 21.3(d), SGCH indemnifies ServiceCo, ServiceCo's employees (each an **Indemnified Person**) from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(breach of Deed)**: any breach by SGCH of this Agreement; or
- (b) **(breach of ServiceCo Service Package Document)**: any breach by SGCH or any of its Associates of any ServiceCo Service Package Document.

### **29.2 General indemnity**

SGCH indemnifies the Indemnified Persons from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(loss or damage)**: any loss of, or damage or destruction to, property;
- (b) **(injury or death)**: any injury to, illness or death of, any person; or

- (c) **(third parties):** to the extent not covered under clauses 29.2(a) or 29.2(b), any third party actions brought against the Indemnified Persons,

to the extent caused or contributed to by SGCH or any of its Associates in connection with the Service Package or the Service Package Activities.

### **29.3 Information Documents**

SGCH:

- (a) **(indemnity):** indemnifies ServiceCo and any of its Associates against any Claim or Liability suffered or incurred by ServiceCo or any of its Associates, and releases and must procure that its Associates or any other person to whom an Information Document is disclosed by SGCH, an Associate of SGCH or any person on ServiceCo's or its Associate's behalf, release ServiceCo and any of ServiceCo's Associates from any Claim, arising in connection with the provision of, or the purported reliance upon, or use of, the Information Documents by SGCH, an Associate of SGCH or any other person to whom an Information Document is disclosed by SGCH, an Associate of SGCH or any person on SGCH's or its Associate's behalf to the extent only that a Claim is made against ServiceCo or any of its Associates by SGCH, an Associate of SGCH or any other person to whom an Information Document is disclosed by SGCH, an Associate of SGCH or any person on SGCH or its Associate's behalf; and
- (b) **(release):** releases and must procure that its Associates release ServiceCo and any of ServiceCo's Associates from any Claim in respect of any failure by ServiceCo to make available to SGCH any information, data or material relating to the Service Package.

### **29.4 Privacy indemnity**

SGCH must release, indemnify and must keep indemnified on demand, ServiceCo and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which ServiceCo or any of its Associates suffer or incur resulting from any act done or practice engaged in by SGCH or any Associate of SGCH in connection with the Service Package, which would, had that act or practice been done or engaged in by ServiceCo, have contravened any of the Privacy Legislation.

### **29.5 Release**

SGCH releases, and must procure that each of its Associates releases, each of the Indemnified Persons and the Indemnified Persons (as defined in the Services Agreement and contemplated by clause 29.5 of the Services Agreement) from any Claim or Liability for damage, destruction, loss, death, illness or injury to the extent caused by SGCH or any of its Associates in connection with the Service Package or the Service Package Activities.

### **29.6 Limits on SGCH Liability to indemnify and release**

SGCH's Liability to indemnify and release the Indemnified Persons or any Associate of ServiceCo in accordance with this Agreement will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) **(breach):** any breach by ServiceCo of any ServiceCo Service Package Document;

- (b) **(fraud):** any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Indemnified Persons or the Associate of ServiceCo (as the case may be); or
- (c) **(events):** a Relief Event, but only to the extent that the reduction in SGCH's Liability to indemnify or release is agreed by the parties in accordance with the Change Compensation Principles (if at all),

other than to the extent that SGCH is entitled to recover under any of the Insurances (or would have been entitled to recover but for this clause 29.6 or any breach by SGCH or any of its Associates of this Agreement or the relevant insurance policy).

## 29.7 Third party claim under indemnity

- (a) **(Management of Claims):** Subject to clause 29.7(b) and 29.7(c), if a Claim is made against an Indemnified Person, in respect of which SGCH is required to indemnify the relevant Indemnified Person in accordance with this Agreement, to the extent that ServiceCo's insurers in connection with such a Claim agree, ServiceCo must:
  - (i) as soon as is reasonably practicable after it becomes aware of the Claim:
    - A. notify SGCH of the alleged Claim;
    - B. give SGCH the option to defend the Claim; and
    - C. provide SGCH (at SGCH's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
  - (ii) not settle or compromise the Claim without the prior written consent of SGCH (which cannot be unreasonably withheld or delayed), and SGCH will be deemed to be acting reasonably if SGCH refuses to provide its consent as a result of restrictions or obligations under any Insurance policy to which that Claim relates.
- (b) **(Urgent proceedings):** If interlocutory proceedings are commenced against ServiceCo on an urgent basis, ServiceCo may initially defend such proceedings, but as soon as practicable after commencement of the proceedings, ServiceCo must give SGCH the option to conduct the defence of such proceedings.
- (c) **(Other matters):** Clauses 29.7(a)(i)B and 29.7(a)(i)C do not apply to any Claim which:
  - (i) ServiceCo (acting reasonably) considers should be conducted by ServiceCo for public policy reasons; or
  - (ii) would prevent the continued development or operation of the Service Package or continued conduct of the Service Package Activities,

and ServiceCo, to the extent reasonably practicable, must consult in good faith with SGCH with respect to such Claim.
- (d) **(Management of Claims by ServiceCo):** If ServiceCo is managing a Claim for which SGCH is required to indemnify an Indemnified Person, ServiceCo must:

- (i) give SGCH prior notice before agreeing to any compromise or settlement of that Claim; and
  - (ii) use reasonable endeavours to consult in good faith with SGCH prior to agreeing to any such compromise or settlement.
- (e) **(Management of Claims by SGCH):** If SGCH is managing a Claim in accordance with clause 29.7(a)(i)B, SGCH must:
- (i) give ServiceCo prior notice before agreeing to any compromise or settlement of that Claim; and
  - (ii) use reasonable endeavours to consult in good faith with ServiceCo prior to agreeing to any such compromise or settlement.

## 29.8 Continuing obligation

- (a) **(Indemnities):** Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Enforcement):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Agreement.
- (c) **(Payment):** A party must pay on demand any amount it must pay under an indemnity in this Agreement.

## 29.9 Exclusion of Consequential or Indirect Loss – SGCH

- (a) **(No Liability of SGCH):** Subject to clause 29.9(b), neither SGCH nor any of its Associates has any Liability to ServiceCo or any of its Associates for any Consequential or Indirect Loss incurred or sustained by ServiceCo or any of its Associates:
  - (i) as a result of any act or omission of SGCH or any of its Associates; or
  - (ii) due to any breach of a ServiceCo Service Package Document by SGCH or any of its Associates.
- (b) **(Exceptions to no SGCH Liability):** The exclusion of Liability of SGCH and its Associates under clause 29.9(a) does not apply to:
  - (i) Liability for which SGCH or its Associates are insured under any Insurances that have been effected and maintained as required by this Agreement or Liability for which SGCH or its Associates would have been insured under such Insurances if:
    - A. this clause 29.9 did not exist; and
    - B. SGCH and its Associates had:
      - 1) effected and maintained the relevant Insurances as required by this Agreement;
      - 2) complied with the relevant Insurances;

- 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
  - 4) taken reasonable steps to pursue the claim;
- (ii) Liability for which SGCH recovers pursuant to an indemnity under any Service Package Documents;
  - (iii) Liability arising from any criminal act or fraud on the part of SGCH or any of its Associates;
  - (iv) Liability arising from any wilful misconduct on the part of SGCH or any of its Associates;
  - (v) Liability arising from any loss of or damage to property or injury to, illness or death of any person;
  - (vi) Liability in respect of a deductible or excess under any Insurance;
  - (vii) Liability in respect of any reduction of any Services MSP as a consequence of the application of the Performance Regime or the Payment Schedule in accordance with this Agreement;
  - (viii) Liability expressly imposed on SGCH or any of its Associates under any of the Service Package Documents to pay ServiceCo any of the following amounts:
    - A. any interest under clause 21.5;
    - B. any amounts payable under clause 21.4 or clause 43.9;
    - C. any amounts expressly stated to be payable as a debt due and payable under the ServiceCo Service Package Documents;
    - D. without limiting clause 29.9(b)(v), any amounts payable by SGCH to ServiceCo or an Indemnified Person under clause 29.2(c);
    - E. any amounts payable under and calculated in accordance with the Performance Regime or the Payment Schedule;
    - F. any amounts payable under and calculated in accordance with the Change Compensation Principles; or
    - G. any amounts payable under and calculated in accordance with the Termination Payment Schedule;
  - (ix) Liability imposed on SGCH under clause 26.8(d) to pay or allow to ServiceCo any share of Savings;
  - (x) Liability in respect of any statutory fine or civil penalty arising from any breach of Law by SGCH or any of its Associates;

- (xi) Liability arising from abandonment of the whole or a substantial part of the Services by SGCH or any of its Associates;
- (xii) Liability arising from the Services Agreement from ServiceCo to FACS and FACS' Associates under the FACS Service Package Documents (as defined in the Services Agreement) to the extent such liability is caused by a breach of this Agreement by SGCH; and
- (xiii) any decrease in the value of the Dwellings due to a breach of this Agreement by, or a negligent act or omission of, SGCH or its Associates.

## 29.10 Exclusion of Consequential or Indirect Loss – ServiceCo

- (a) **(No Liability of ServiceCo):** Subject to clause 29.10(b), neither ServiceCo nor any of its Associates has any Liability to SGCH or any of its Associates (whether in contract, tort or otherwise), in respect of Consequential or Indirect Loss incurred or sustained by SGCH, its Associates:
  - (i) as a result of any act or omission of ServiceCo or any of its Associates; or
  - (ii) due to any breach of a ServiceCo Service Package Document by ServiceCo or any of its Associates.
- (b) **(Exceptions to the no ServiceCo Liability):** The exclusion of Liability of ServiceCo and its Associates in clause 29.10(a) does not apply to:
  - (i) Liability arising from any criminal act or fraud on the part of ServiceCo or its Associates;
  - (ii) Liability arising from any wilful misconduct under any ServiceCo Service Package Document on the part of ServiceCo or its Associates;
  - (iii) Liability arising from any loss of or damage to property or any injury to, illness or death of, any person caused or contributed to by ServiceCo or its Associates;
  - (iv) Liability expressly imposed on ServiceCo under any of the ServiceCo Service Package Documents to pay to SGCH any of the following amounts:
    - A. any Services MSP;
    - B. any interest under clause 21.5;
    - C. any amounts payable under and calculated in accordance with the Change Compensation Principles (including any Prolongation Costs); or
    - D. any amounts payable in accordance with the Termination Payment Schedule;
  - (v) Liability imposed on ServiceCo under clause 26.8(d) to pay or allow SGCH any share of Savings; or



- (vi) payment of any excess or deductible payable by ServiceCo under the Insurance Schedule.

## 29.11 Limitation of Liability

- (a) **(Liability Cap)** Subject to clause 29.11(b), the maximum aggregate liability of SGCH to ServiceCo or its Associate in any Operating Year, under or in connection with this Agreement and any other Service Package Document (including any Claim made by, ServiceCo or any Associate of ServiceCo) in contract, in tort (including negligence), under any statute, or otherwise at Law, and irrespective of how it arises, in respect of or in connection with the Service Package Activities, is limited to an amount calculated by multiplying the average Services MSP for the Operating Year in which that maximum aggregate liability is accrued, by 48 months (**Liability Cap**). For the purposes of clause 29.11(a), a reference to the Services MSP will be based on the gross Services MSP which will not include any Abatements and in the event of any partial termination, the Liability Cap shall be reduced to reflect the reduced Services MSP in respect of the remaining Stages.
- (b) **(Exceptions)** The Liability Cap does not apply to Liability:
  - (i) which is an insured Liability in accordance with the insurances which SGCH must effect and maintain under the Insurance Schedule (**SGCH Insurances**) in respect of an amount equal to any insurance proceeds paid;
  - (ii) which would have been an insured liability in accordance with the SGCH Insurances, but for:
    - A. SGCH's breach of this Agreement or the terms of SGCH's Insurances; or
    - B. an act of omission of SGCH and its Associates,in respect of an amount equal to any insurance proceeds which would have been recovered under any such SGCH Insurance (but for such breach, act or omission);
  - (iii) arising out of SGCH's abandonment of the Service Package Activities;
  - (iv) arising out of breach of clause 46 by SGCH in relation to Intellectual Property;
  - (v) arising out of breach of clause 47 by SGCH in relation to Confidential Information;
  - (vi) arising from any criminal act or fraud on the part of SGCH or its Associates;
  - (vii) arising from any wilful misconduct under any Service Package Document on the part of SGCH or its Associates;
  - (viii) which cannot be limited at Law; or
  - (ix) in relation to Abatements.

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## 30. Insurance

SGCH agrees to comply with its obligations set out in the Insurance Schedule with respect to insurance.

## Part J - Default, Termination and Disputes

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## 31. Major Default

### 31.1 Meaning of remedy or cure

- (a) **(Meaning of remedy or cure):** Where the word 'remedy' or 'cure' or any other grammatical form of those words is used in this clause 31, it means to cure or redress the relevant breach or Major Default or overcome its consequences so that:
- (i) there ceases to be any continuing detrimental effect of that breach or Major Default;
  - (ii) any prior detrimental effect is rectified; and
  - (iii) ServiceCo and its Associates are in the position they would have been in had the relevant breach or Major Default not taken place.
- (b) **(Major Default deemed to be capable of remedy or cure):** The parties acknowledge and agree that the events identified in paragraph (a) of the definition of Major Default will, for the purposes of this clause 31, be deemed to be capable of cure, notwithstanding that the relevant Major Default may not, as a matter of fact, be capable of cure.

### 31.2 Notice of Major Default

- (a) **(SGCH's obligations):** SGCH must:
- (i) promptly notify ServiceCo upon the occurrence of a Major Default; and
  - (ii) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default.
- (b) **(Major Default Notice):** If:
- (i) SGCH notifies ServiceCo of a Major Default under clause 31.2(a); or
  - (ii) ServiceCo considers that a Major Default has occurred,
- ServiceCo may give SGCH a notice in writing **(Major Default Notice):**
- (iii) stating that a Major Default has occurred;
  - (iv) identifying and providing details of the Major Default; and
  - (v) if the Major Default:

- A. is capable of remedy, stating a date by which SGCH must remedy the Major Default (which must allow for a reasonable period of time to remedy the Major Default in the circumstances);
  - B. is not capable of remedy, stating any reasonable requirements of ServiceCo in connection with that Major Default and a date by which SGCH must comply with those requirements (which must allow for a reasonable period of time to comply with ServiceCo's requirements in the circumstances); or
  - C. is not capable of remedy and ServiceCo has formed the view (acting reasonably and in a manner consistent with FACS' view made under the corresponding provision of the Services Agreement) that there are no reasonable requirements that can be met by SGCH to overcome the consequences of, or compensate ServiceCo for, the Major Default, a statement to that effect along with its reasons for forming that view.
- (c) **(Unreasonable requirements):** If SGCH (acting in good faith) does not agree with a Major Default Notice, or any part of it, it must:
- (i) promptly notify ServiceCo, including the reasons why; and
  - (ii) if SGCH does not agree with the period of time stated in the Major Default Notice, specify the period of time which it believes is reasonable.
- (d) **(ServiceCo to act in good faith):** ServiceCo must in good faith consider SGCH's notice under clause 31.2(c) and (acting reasonably and in a manner consistent with FACS' actions under the corresponding provision of the Services Agreement):
- (i) make any changes to the Major Default Notice that it considers reasonable as a consequence of SGCH's notice; and
  - (ii) notify SGCH of those changes (if any).
- (e) **(Major Default not capable of remedy or cure):** If after considering SGCH's notice under clause 31.2(c), ServiceCo maintains the view (acting reasonably and in a manner consistent with FACS' view made under the corresponding provision of the Services Agreement) that there are no reasonable requirements that can be met by ServiceCo to overcome the consequences of, or compensate ServiceCo for, the Major Default, ServiceCo must notify SGCH of this determination and the Major Default will be deemed to be a Default Termination Event.
- (f) **(SGCH not satisfied):** If SGCH is not satisfied with:
- (i) the changes (if any) made by ServiceCo under clause 31.2(d); or
  - (ii) ServiceCo' determination under clause 31.2(e),
- then:
- (iii) SGCH may refer the matter to expert determination in accordance with clause 37; and

- (iv) if clause 31.2(e) applies, the Major Default will not be deemed to be a Default Termination Event unless and until determined by expert determination in accordance with clause 37,

and SGCH must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 37.

### **31.3 SGCH to provide remedy program and comply with Major Default Notice**

- (a) **(Remedy program):** If ServiceCo gives a Major Default Notice to SGCH, then notwithstanding its rights under clause 31.2(c) to 31.2(f), SGCH must within 8 Business Days:
  - (i) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money which must be remedied immediately, give ServiceCo a program to remedy the Major Default in accordance with the terms of the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default); and
  - (ii) where the Major Default is not capable of remedy, give ServiceCo a program to prevent the Major Default from recurring and comply with any reasonable requirements of ServiceCo set out in the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default),for review by ServiceCo in accordance with the Review Procedures.
- (b) **(Content of remedy program):** Any program provided to ServiceCo under clause 31.3(a) must include:
  - (i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied in respect of clause 31.3(a)(i), to remedy or cure the Major Default or in respect of 31.3(a)(ii), prevent the Major Default from recurring; and
  - (ii) any temporary measures that will be undertaken while the Major Default is being cured in order to ameliorate the impact of the Major Default.
- (c) **(Comply):** Notwithstanding the fact that it may have exercised its rights under clause 31.2(c) to 31.2(f), SGCH must comply with any program provided under clause 31.3(a) in the form approved by ServiceCo in accordance with the Review Procedures.

### **31.4 Extension of remedy program**

- (a) **(Impact of Relief Event):** If SGCH is prevented from carrying out its obligations in accordance with clause 31.3(c) as a direct result of a Relief Event for which SGCH is entitled to an extension of time or relief (as applicable) in accordance with this Agreement, then the program to remedy or comply (including the time to remedy the Major Default or comply with ServiceCo's requirements), and the time set out in the Major Default Notice, must be extended:
  - (i) to reflect the period SGCH is prevented from carrying out its obligations in accordance with the remedy program by that Relief Event; or

- (ii) without limiting clause 29, in respect of loss or damage caused by that Relief Event, for the period from the commencement of that loss or damage until the earlier of the date that the necessary repairs or rebuilding have been completed, or ought reasonably to have been completed,

provided that:

- (iii) the period of extension granted under this clause 31.4(a) must not exceed:
  - A. not used; or
  - B. during the Service Delivery Phase, the period of relief granted under clause 24.3 or the Change Compensation Principles, (as applicable) for that Relief Event; and
- (iv) SGCH demonstrates to ServiceCo's satisfaction (acting reasonably) that SGCH has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the program agreed or determined under clause 31.3.

(b) **(Extension of Major Default Notice):** Subject to clause 31.4(d), if SGCH:

- (i) is not able to, where the Major Default is capable of remedy, remedy the Major Default or, where the Major Default is not capable of remedy, comply with the reasonable requirements of ServiceCo in respect of the Major Default within the timeframe stated in the Major Default Notice; and
- (ii) SGCH has been diligently pursuing the remedy of that Major Default or compliance with any reasonable requirements of ServiceCo (as the case may be),

SGCH may request that ServiceCo extend the time stated in the Major Default Notice and ServiceCo will grant an extension for such period as ServiceCo determines is required (acting reasonably) to either enable SGCH to remedy the Major Default or comply with any reasonable requirements of ServiceCo.

- (c) **(Request for further information)** ServiceCo may request, and SGCH must provide, any further information reasonably required by ServiceCo to enable ServiceCo to determine an extension under clause 31.4(b).
- (d) **(Limitation):** SGCH is only entitled to one extension in accordance with clause 31.4(b) in connection with the same Major Default.

### 31.5 Effect of curing

If a Major Default occurs and is cured by any person, any rights in respect of that Major Default which have not been exercised prior to it being cured, may not thereafter be exercised.

## 31.6 Major Default regarding a Reviewable Service

- (a) SGCH acknowledges that without limiting the terms of this clause 31 (including the provision of any remedy program under clause 31.3), if an event identified in paragraph (f) of the definition of Major Default occurs in connection with a Reviewable Service:
- (i) to the extent:
    - A. the Reviewable Service is delivered by SGCH, FACS may direct ServiceCo to terminate or procure the termination of this Agreement with SGCH causing the Major Default in relation to that Reviewable Service and retender the performance of the Reviewable Service; and
    - B. not used,within 90 days (or such longer period agreed between the parties) after receipt of a notice from FACS directing ServiceCo to do so; and
  - (ii) SGCH will bear the risk of the price of the retendered services being higher (if any).
- (b) SGCH acknowledges that if, following the conduct of a tender process directed by FACS under clause 31.6(a)(i), FACS is not reasonably satisfied with the tenders received, it may:
- (i) direct ServiceCo:
    - A. not used; or
    - B. to procure that the relevant tenderer for performing the Reviewable Service does not accept,any tender offer, and:
  - (ii) omit the Reviewable Service from the Services and carry out the Reviewable Service itself or procure a third party to carry out the Reviewable Service (in which case the Services MSP will be adjusted and this Agreement amended as necessary in accordance with the Change Compensation Principles for the omission of that Reviewable Service).
- (c) If SGCH fails to comply with its obligations under clause 31.6(a) within the timeframe determined in accordance with that clause, this will be deemed to be a Default Termination Event.

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## 32. Termination

### 32.1 Sole basis

- (a) **(Sole basis):** Clause 3.4, this clause 32 and clause 33 set out the sole basis at Law or otherwise upon which ServiceCo is entitled to terminate, rescind or accept a repudiation of this Agreement.

- (b) **(No limitation):** Subject only to clause 32.1(a):
  - (i) nothing in clause 3.4 or this clause 32 in any way prejudices or limits any other rights or remedies of ServiceCo, whether under this Agreement or any other ServiceCo Service Package Document or otherwise at Law, and whether against SGCH or otherwise, in relation to any Default Termination Event, Major Default or breach of any ServiceCo Service Package Document; and
  - (ii) the termination of this Agreement on any basis, and any payment of the relevant Termination Payment, will not in any way prejudice or limit either party's Liability to the other in respect of the events giving rise to the termination.
- (c) **(No right to terminate):** Subject to clause 32.3 but notwithstanding any other provision of this Agreement or any rights SGCH has at Law or otherwise but for this clause 32.1(c), SGCH acknowledges that it has no right under this Agreement, at Law, or otherwise, to terminate this Agreement.

## 32.2 Termination if the Services Agreement is terminated

- (a) **(Termination notice):** Where FACS has given a notice under clause 32.2 of the Services Agreement, ServiceCo may terminate this Agreement by giving SGCH notice upon SGCH receiving a notice from FACS under clause 32.2 of the Service Agreement if:
  - (i) the Services Agreement has been validly and lawfully terminated in accordance with its terms; or
  - (ii) FACS is entitled under the Services Agreement to, and does, direct ServiceCo to terminate this Agreement (provided that, where reasonably requested by SGCH, ServiceCo must dispute under the Services Agreement the direction to terminate this Agreement).
- (b) **(Date of termination):** Termination of this Agreement for an event described in clause 32.2(a) will take effect upon the date specified in the notice given in accordance with clause 32.2(a)

## 32.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clauses 32.3(c), 32.3(d) and 33, if a Force Majeure Termination Event occurs (or is deemed to occur), then either party may terminate this Agreement in full or in respect of the affected Stages by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Agreement for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 32.3(a).
- (c) **(Restriction on termination):** SGCH is not entitled to terminate this Agreement under clause 32.3(a) during the period ServiceCo is able to recover (or, but for any breach by SGCH or any of its Associates of a ServiceCo Service Package Document or the relevant Insurances, would have been able to recover) under the advance loss of profits Insurance (applicable to the Relevant Infrastructure) or the consequential loss cover section of the industrial special risks Insurance or other

business interruption Insurance (in respect of the Service Delivery Phase) for the relevant Force Majeure Termination Event.

- (d) **(Suspension of SGCH's right to terminate):**
- (i) If SGCH gives a termination notice in accordance with clause 32.3(a) during the Service Delivery Phase, ServiceCo may, subject to clause 32.3(d)(ii), suspend SGCH's right to terminate by giving a suspension notice within 16 Business Days after receipt of SGCH's termination notice.
  - (ii) ServiceCo may suspend SGCH's right to terminate in accordance with clause 32.3(d)(i) for up to a maximum period of 12 Months.
  - (iii) If ServiceCo gives SGCH a suspension notice under clause 32.3(d)(i):
    - A. clause 24.4 and 24.5 will continue to apply; and
    - B. this Agreement will not terminate until expiry of written notice (of at least 32 Business Days) from ServiceCo to SGCH that it is ending the suspension of SGCH's right to terminate.
  - (iv) If SGCH becomes able to recommence performing the relevant obligations after ServiceCo gives SGCH a suspension notice:
    - A. SGCH must promptly recommence performance of those obligations; and
    - B. SGCH's termination notice under clause 32.3(a) will cease to have any effect.

## 32.4 Default Termination Event

- (a) **(Rights):** Subject to clause 33, if a Default Termination Event occurs, ServiceCo may, without limiting any rights or remedies it has under this Agreement or at Law (other than rights of termination), elect to terminate this Agreement in full or in part by giving notice to SGCH that it is terminating this Agreement in accordance with this clause 32.4 and 33.2 (if applicable).
- (b) Not used
- (c) Not used
- (d) **(Transition):** From the date a notice under clause 32.4(a) is served until the date of termination, SGCH must continue to provide the Services subject to the following provisions:
  - (i) SGCH:
    - A. must comply with any reasonable direction from ServiceCo, including any direction to cease providing some or all of the Services; and
    - B. must not:



- i) place new Tenants into any Dwellings; or
- ii) communicate with Tenants,

without the consent of ServiceCo (which will not be unreasonably withheld);

- (ii) to the extent that the requirement in clause 32.4(d)(i) prevents SGCH from meeting any of the Services Requirements under this Agreement, the failure to perform the affected Services will not be a Service Provision Performance Incident; and
- (iii) ServiceCo:
  - A. will cease to pay the Services MSP to SGCH; and
  - B. must pay the Transition Services Payment to SGCH.
- (e) **(Notice for Termination for Default Termination Event (ServiceCo)):** Subject to the Side Deed and the Financier's Side Deed, if a Default Termination Event (ServiceCo) occurs, SGCH may give notice in writing to ServiceCo of such Default Termination Event (ServiceCo).
- (f) **(Failure to remedy or cure Default Termination Event (ServiceCo)):** If the Default Termination Event (ServiceCo) the subject of the notice contemplated by clause 32.4(e) is not remedied within 20 Business Days of receipt by ServiceCo of such notice, SGCH may terminate this Agreement by giving notice in writing to ServiceCo.
- (g) **(Date of termination):** Termination of this Agreement for a Default Termination Event (ServiceCo) will take effect upon the date specified in the notice given in accordance with 32.4(e).

## 32.5 Assistance

SGCH will use its best endeavours to assist ServiceCo in the exercise of ServiceCo's rights in accordance with this clause 32.

## 32.6 Payment on termination

- (a) **(Payment):** Subject to clause 32.6(c), if ServiceCo has terminated this Agreement in full or in part in accordance with:
  - (i) for termination of this Agreement in accordance with clause 32.232.2(a) as a result of Voluntary Termination of the Services Agreement under clause 32.2 of the Services Agreement, the Voluntary Termination Payment;
  - (ii) clauses 32.4 and 33.1 for termination for a Default Termination Event:
    - A. to the extent the Default Termination Payment is positive, SGCH must pay it to ServiceCo; and
    - B. to the extent the Default Termination Payment is negative, ServiceCo must pay it to SGCH,

- (iii) no later than the Termination Payment Date, as a debt due and payable, in accordance with the Termination Payment Schedule.
- (b) **(Force Majeure Termination Event or Material Adverse Effect):** In the event there is a Force Majeure Termination Event or termination following an unresolved Material Adverse Effect under clause 27.3, no Termination Payment will be payable by either party but any amounts owing by one party to the other party must be paid within 20 Business Days of the date on which this Agreement is terminated by reason of that Force Majeure Termination Event or unresolved Material Adverse Effect (as applicable).
- (c) **(ServiceCo' rights):** If ServiceCo is not satisfied that SGCH has satisfied its obligations in clause 22, SGCH will be liable to ServiceCo for the amount that is reasonably necessary to cover the expected costs of performing those obligations (including reasonable contingencies) in addition to any Termination Payment payable by SGCH in accordance with this clause 32.6 and the Termination Payment Schedule.
- (d) **(Payment obligations cease):** Upon termination under this clause 32, ServiceCo's future obligations under the ServiceCo Service Package Documents to pay the Services MSP will cease.
- (e) **(Default Termination Event (ServiceCo)):** For termination of this Agreement for a Default Termination Event (ServiceCo) in accordance with clause 32.4(e), ServiceCo must pay to SGCH the Termination Payment calculated in accordance with the Termination Payment Schedule.

### 32.7 Waiver

If this Agreement or, in the event of a Partial Termination, part of this Agreement is terminated in accordance with this Agreement, then:

- (a) **(Liability):** subject to clause 32.7(b):
  - (i) SGCH waives any right it might otherwise have to make any Claim against ServiceCo or any of its Associates; and
  - (ii) ServiceCo and each of its Associates will have no further Liability to SGCH or any of its Associates,

by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise arising out of or in connection with the ServiceCo Service Package Documents, the Sites, the Service Package Activities or the Service Package more generally; and
- (b) **(exclusive entitlement):** SGCH's sole and exclusive entitlement to make a Claim against ServiceCo following termination of this Agreement will be in connection with its rights to a Termination Payment.

### 32.8 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Agreement are set out in clauses 22 and 33.

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### **33. Partial Termination**

#### **33.1 Partial Termination**

(a) Where a Default Termination Event or a Force Majeure Termination Event affects one or more but not all of the Stages, ServiceCo (or in respect of a Force Majeure Termination Event, SGCH) will have the sole and unfettered right to elect whether to terminate:

(i) subject to clause 33.1(b), this Agreement in full; or

(ii) subject to clause 33.1(c), only in relation to particular Stages (**Partial Termination**),

in each case pursuant to clause 32.3(a) or clause 32.4(a) (as applicable).

(b) Where:

(i) a Force Majeure Termination Event occurs; or

(ii) a Default Termination Event occurs:

A. within paragraph (l) of that definition; or

B. due to a failure by SGCH to achieve Service Readiness in respect of a Stage by the applicable Sunset Date,

then provided at least [REDACTED] Dwellings are unaffected by these events within the Service Package, ServiceCo (or in respect of a Force Majeure Termination Event, SGCH) may only effect a Partial Termination in respect of the Stages affected by the relevant event and may not terminate this Agreement in full.

(c) ServiceCo may only effect a Partial Termination in relation to (up to and including) four Stages.

(d) A reference to Partial Termination in this Agreement means that the requirement for any Services or any other requirements of this Agreement relating to the Stages that are the subject of the Partial Termination are terminated, including, subject to clause 33.2, ServiceCo's obligation to make any payment to SGCH in respect of the relevant Stage(s).

(e) Following a Partial Termination, all references in this Agreement and any Service Package Document to the relevant Service Package Activities will be read by reference to the remaining Stages for the purposes of the continued performance of this Agreement by both parties in relation to those remaining Stages.

#### **33.2 Consequences of Partial Termination**

Where ServiceCo effects a Partial Termination pursuant to clause 33.1(a):

(a) ServiceCo's notice of Partial Termination is a Modification Order and the provisions of clause 26 will be followed accordingly except that:

- (i) ServiceCo will, acting reasonably, determine the effect (if any) of the Partial Termination on:
    - A. this Agreement;
    - B. not used;
    - C. the requirements under this Agreement for Service Readiness;
    - D. the Service Requirements; and
    - E. the Services MSPs; and
  - (ii) SGCH must, within 8 Business Days of the date of ServiceCo's notice of Partial Termination and any subsequent notice requesting such information, provide the ServiceCo Representative with any information in respect of the impact of the Partial Termination reasonably requested by the ServiceCo Representative in that notice;
- (b) SGCH is not entitled to any compensation and will have no Claim against ServiceCo by virtue of or arising from the Partial Termination;
  - (c) ServiceCo is entitled to the compensation (if any) and other rights and remedies set out in the Termination Payment Schedule but only with respect to the Stages or the Service Package Activities that are the subject of the Partial Termination;
  - (d) ServiceCo may have recourse to and apply any security provided by SGCH under or in connection with this Agreement in respect of any Liability it may suffer or Claim which ServiceCo may have against SGCH whether for amounts due, or damages arising out of or in relation to the relevant Stages arising from the Partial Termination or otherwise;
  - (e) the rights and obligations of the parties in relation to the Stages that are the subject of the Partial Termination will otherwise cease except for:
    - (i) any accrued rights and obligations under this Agreement in respect of the relevant Stages, including those arising out of the Partial Termination; and
    - (ii) any rights and obligations which are expressed to continue after termination, including those referred to in clause 2.21; and
  - (f) subject to clause 2.21, each of the Service Package Documents to which SGCH is a party will be deemed not to apply to the Stages affected by the Partial Termination and those documents will be of no further force or effect in relation to the relevant Stages.

### **33.3 Waiver and no Claim**

On Partial Termination, in respect of the relevant Stage:

- (a) SGCH waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit; and

- (b) SGCH will not be entitled to make a Claim against ServiceCo or ServiceCo's Associates for any amount other than for payment of the relevant Termination Payment.

### 33.4 Facilitation

SGCH must:

- (a) to the extent directed by the ServiceCo Representative, comply with its obligations, and permit ServiceCo to exercise all its rights, under clause 22 in relation to the Stages that are the subject of the Partial Termination; and
- (b) do all other things reasonably requested by ServiceCo to minimise any disruption to the remaining Stages and to facilitate the effective transfer of the relevant Services and licence of the SGCH Materials (other than Excluded Materials).

### 33.5 Continuity following Partial Termination

On Partial Termination, SGCH must continue to comply with its remaining obligations under the Service Package Documents, and must ensure that its Subcontractors continue to comply with their obligations under the Service Package Documents and all relevant Subcontracts in respect of the Service Package Activities to the extent they are not the subject of the Partial Termination.

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## 34. Dispute resolution procedure

### 34.1 Procedure

- (a) **(Resolution procedure):** Subject to clauses 50 and 51, unless a ServiceCo Service Package Document provides otherwise, any Dispute between ServiceCo and SGCH arising in connection with any ServiceCo Service Package Document or the Service Package Activities (including questions concerning this Agreement's existence, meaning, validity or termination) (a **Dispute**) must be resolved in accordance with this clause 34 and clauses 35 to 38.
- (b) Not used
- (c) **(Procedure):** Subject to clause 34.2, the procedure that is to be followed to resolve a Dispute is as follows:
  - (i) first, the Dispute must be the subject of negotiation as required by clause 35;
  - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 35(c)(i), within 10 Business Days (or such longer period as the Representatives have agreed in writing) after the expiration of that period:
    - A. the parties may agree that the Dispute will be referred to an expert for determination under clause 37;
    - B. where the Dispute is expressed in this Agreement to be a Dispute which may be referred to an expert under clause 37,

either party may refer the Dispute to an expert for determination under clause 37; or

C. otherwise either party may refer the Dispute to arbitration under clause 38; and

(iii) thirdly, if:

A. the Dispute has been referred to expert determination in accordance with clause 37 and a determination is not made by the expert within 20 Business Days after the expert's acceptance of appointment (or such longer period as the parties and the expert may agree in the relevant Expert Determination Agreement); or

B. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 37.4(a),

then the Dispute must be referred to arbitration under clause 38.

## 34.2 Selection of resolution process

Where this Agreement provides that either party 'may' refer a Dispute to expert determination in accordance with clause 37:

- (a) **(negotiations)**: the parties must first follow the process set out in clause 35 before either party refers the matter for expert determination in accordance with clause 37;
- (b) **(expert determination)**: the use of the term 'may' means that if the parties have failed to resolve the Dispute in accordance with clause 35 or determined the way in which the Dispute will be resolved and a party elects to further pursue the resolution of the Dispute, it must do so in accordance with clause 37; and
- (c) **(arbitration)**: subject to clause 37.4, if a party has referred a Dispute for expert determination in accordance with clause 37, neither party may refer the Dispute to arbitration (other than in accordance with clause 37.4) or take any steps to enjoin or otherwise restrain the referral of the Dispute to an expert.

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## 35. Senior Negotiations

- (a) **(Notification)**: If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the ServiceCo Representative and the SGCH Representative (the **Representatives**).
- (b) **(Contents of Notice)**: A notice under clause 35(a) must:
  - (i) state that it is a notice under clause 35(a); and
  - (ii) include or be accompanied by particulars of the matters the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 35(a), then:

- (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 35(a) is received (or such later date as the parties may agree); and
- (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

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**36. Not used**

**37. Expert determination**

**37.1 Expert determination**

If:

- (a) **(Dispute unresolved by the Representatives):** a Dispute which has been referred to the Representatives for negotiation in accordance with clause 35(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 35(c)(i); and
- (b) **(referral to expert):** within 10 Business Days after the expiration of the period for negotiation referred to in clause 35(c)(i) either:
  - (i) the parties agree that the Dispute be referred to an expert for determination in accordance with this clause 37; or
  - (ii) where the Dispute is expressed in this Agreement to be a Dispute which may be referred to an expert under clause 37, either party refers the Dispute to an expert for determination under clause 37,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under this clause 37.

**37.2 Selection of expert**

- (a) **(Exchange of lists of three preferred experts):** Within 10 Business Days after the date on which a Dispute is referred to an expert for determination under clause 37.1, if ServiceCo and SGCH are unable to agree on an expert to determine the Dispute, ServiceCo and SGCH must exchange lists of three persons (in order of preference) who, if appointed, would satisfy the requirements of clause 37.2(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 37.2(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 35(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 35(a) must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those

persons proposed by the parties under clause 37.2(a) within 10 Business Days of the exchange of lists under clause 37.2(a).

- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 37.2 on the basis that the expert does not satisfy the requirements of clause 37.2(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (g) **(Agreement):** Within 10 Business Days of the expert being agreed, deemed or nominated, ServiceCo and SGCH must enter into an agreement with the expert on substantially the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

### 37.3 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, in accordance with the terms of the Expert Determination Agreement.

### 37.4 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on ServiceCo and SGCH unless:
  - (i) the expert determination includes:
    - A. payment of compensation and the amount claimed, or subsequently determined by the expert, to be payable is equal to or greater than [REDACTED] (Indexed); or
    - B. not used; and
  - (ii) within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 38.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
  - (i) a clerical mistake;
  - (ii) an error from an accidental slip or omission;
  - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (iv) a defect in form.



### 37.5 Liability of expert

- (a) **(Liability of expert):** The parties agree:
  - (i) that the expert will have no Liability in connection with the expert determination, except in the case of fraud on the part of the expert; and
  - (ii) to indemnify the expert against any Claim or Liability in connection with the determination, (except in the case of fraud on the part of the expert) in which case a Claim may be made against the expert by any party to the Dispute.
- (b) **(Engagement):** ServiceCo and SGCH will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

### 37.6 Costs

ServiceCo and SGCH must:

- (a) **(proceedings):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(cost apportionment):** pay an equal portion of the costs of the expert.

### 37.7 Proportional Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportional Liability Legislation which might, in the absence of this clause 37.7, have applied to any Dispute referred to expert determination in accordance with this clause 37.

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## 38. Arbitration

### 38.1 Reference to arbitration

- (a) **(Dispute):** If:
  - (i) a Dispute:
    - A. which has been referred to the Representatives for negotiation in accordance with clause 35 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 35(c)(i); and
    - B. is not a Dispute which the parties have agreed to refer to or must be referred to an expert for determination in accordance with clause 37; or
  - (ii) in the case of a Dispute which is or must be referred to an expert for determination in accordance with clause 37:
    - A. a determination is not made within 30 Business Days after the expert's acceptance of the appointment; or

B. a notice of dissatisfaction is given in accordance with clause 37.4,

then ServiceCo or SGCH may notify the other that it requires the Dispute to be referred to arbitration.

(b) **(Referral):** Upon receipt by the other party of a notice under clause 38.1(a), the Dispute will be referred to arbitration.

### 38.2 Arbitration

(a) **(ACICA Rules):** Arbitration in accordance with this clause 38 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) subject to this clause 38.

(b) **(Seat):** The seat of the arbitration will be Sydney, New South Wales.

(c) **(Language):** The language of the arbitration will be English.

### 38.3 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 38.1(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration upon the request of either party.

### 38.4 General principles for conduct of arbitration

(a) **(Conduct of arbitration):** The parties agree that:

(i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) any arbitration conducted in accordance with this clause 38 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

(iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 38.4(a)(i) and 38.4(a)(ii).

(b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

(c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.

(d) **(Oral hearing):** The oral hearing must be conducted as follows:

(i) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;

- (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 38.4(a) when determining the duration of the oral hearing;
  - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
  - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
  - (v) not less than 28 days prior to the date fixed for the oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination;
  - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 38.4(d)(ii);
  - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and
  - (viii) each party is expected to put its case on significant issues in cross-examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

### 38.5 Civil Liability Act 2002 (NSW)

- (a) **(Part 4):** The powers conferred, and restrictions imposed, on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitrator appointed in accordance with this clause 38.
- (b) **(Determination):** The arbitrator tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitrator.

### 38.6 Proportional Liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional Liability Legislation which might, in the absence of this clause 38.6, have applied to any Dispute referred to arbitration in accordance with this clause 38.

### **38.7 Continue to perform**

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations in accordance with the ServiceCo Service Package Documents.

### **38.8 Governing law of arbitration agreement**

The Law governing this arbitration agreement is the Law of New South Wales, Australia.

### **38.9 Interlocutory relief**

This clause 38 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

### **38.10 Jurisdiction of courts**

Without limiting clauses 34 to 38, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

## **Part K - Corporate obligations**

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### **39. Representations and warranties**

#### **39.1 Not Used**

#### **39.2 Representations and warranties**

Each of the parties represent and warrant for the benefit of the other party that:

- (a) **(incorporation):** it is duly incorporated in Australia and is existing under Australian Law;
- (b) **(power to execute):** it has the capacity and power to execute, deliver and perform its obligations under the Service Package Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (c) **(legality):** the execution, delivery and performance of each Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) **(validity):** each of the Service Package Documents to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
- (e) **(no trust relationship):** except as stated in this Agreement, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed, by any trust;
- (f) not used;
- (g) not used;

- (h) not used;
- (i) not used;
- (j) **(residency)**: it is a resident in Australia and has not transferred any of its business outside of Australia;
- (k) **(transaction permitted)**: the execution, delivery and performance by it of the Service Package Documents will not breach, or result in a contravention of:
  - (i) any Law, regulation or Authorisation;
  - (ii) its constitution or other constituent documents; or
  - (iii) any Security Interest or agreement which is binding it,
 and will not result in the acceleration of the date for payment of any obligation under any agreement which is binding on it;
- (l) **(information true and correct)**: all information that has been provided to the other party in connection with the Service Package Documents is true, accurate and correct in all material respects and it is not aware of any material facts or circumstances that have not been disclosed to the other party and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement;
- (m) not used;
- (n) **(no immunity)**: it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (o) **(no default)**: it is not in default of its material obligations under any Service Package Document to which it is expressed to be a party;
- (p) **(no knowledge of other proposals)**: prior to the date of this Agreement, it had no knowledge of any part of the proposal by any other proponent for the Service Package and has not directly or indirectly communicated any part of its proposal for the Service Package to any other proponent;
- (q) **(no arrangement)**: prior to the date of this Agreement, it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Service Package to the effect that it will pay money to or confer any benefit upon any other proponent as a result of entering into this Agreement or providing its proposal for the Service Package; and
- (r) not used.

### 39.3 Repetition of representation and warranties

Each representation and warranty given by the parties under this Agreement:

- (a) **(date of Agreement)**: is made on the date of this Agreement; and

- (b) **(repetition)**: other than those set out in clauses 39.2(p) and 39.2(q), will be deemed to be repeated each day during the period from the date of this Agreement to the Expiry Date for the last Stage to terminate or expire,

with reference to the facts and circumstances then subsisting.

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#### **40. Benefits held on trust for its Associates**

- (a) **(Benefit of indemnities)**: ServiceCo holds on trust for each of its Associates, each right in this Agreement to the extent that such right is expressly stated to be for the benefit of ServiceCo's Associates.
- (b) **(SGCH acknowledgement)**: SGCH acknowledges the existence of such trusts, and consents to:
- (i) ServiceCo exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the relevant parties; and
  - (ii) the relevant parties exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Agreement.

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#### **41. SGCH's general undertakings**

- (a) SGCH must:
- (i) **(dispute proceedings)**: immediately upon becoming aware that any litigation, arbitration, administration, adjudication or mediation proceedings, which may adversely affect the Service Package or SGCH's ability to perform its obligations under the Service Package Documents, have been commenced or threatened, give ServiceCo written notice of such litigation, arbitration, administrative, adjudication or mediation proceedings; and
  - (ii) **(restrictions)**: not:
    - A. not used;
    - B. cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia;
    - C. not used; or
    - D. not used,without ServiceCo's prior consent.
- (b) **(ServiceCo consent)**: ServiceCo must not unreasonably withhold its consent under clause 41(a)(ii) if the relevant transaction is on arm's length commercial terms.

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## 42. Assignment and amendments

### 42.1 Assignment, amendments and other dealings by SGCH

- (a) **(Restrictions on ServiceCo):** Except as expressly permitted by the Service Package Documents, SGCH must not:
- (i) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of carrying out the Service Package) in relation to the Service Package Documents other than the document entitled 'SAHF Intercompany Loan Agreement' between ServiceCo and SGCH dated on or about the date of this Agreement and the 'Intercompany Loan Agreement' dated 19 November 2015 between ServiceCo and SGCH, and any amendment, novation, supplement, variation or replacement of any of those documents;
  - (ii) assign, novate, mortgage, charge, create or allow to exist any Security Interest over, make or permit any material amendment to or, waive, terminate, surrender, rescind or accept repudiation of any Service Package Document or enter into any agreement or arrangement which affects the operation or interpretation of any Service Package Document; or
  - (iii) lease, license, transfer, sell, dispose of, part with possession of, mortgage, charge or otherwise deal with the whole or any part of the Site or the Relevant Infrastructure if that dealing would prejudice the ability of SGCH to perform its obligations under the Service Package Documents, without ServiceCo's prior consent (acting reasonably) (each an **Amendment** for the purposes of this clause 42).
- (b) Not used.
- (c) Not used.
- (d) **(Notice of intended Amendment):** If SGCH requires an Amendment, it must submit to ServiceCo a written request seeking its consent. Such a request must set out:
- (i) the proposed Amendment and the reasons for it;
  - (ii) the response or anticipated response of any other party to the Service Package Documents regarding the proposed Amendment;
  - (iii) the response or anticipated response of any assignee or incoming party of the Service Package Documents to the proposed Amendment; and
  - (iv) copies of any documents relevant to SGCH's request.
- (e) **(ServiceCo to advise):** Subject to clause 42.1(g), ServiceCo must advise SGCH, within:

- (i) 17 Business Days of receiving its request under clause 42.1(d) if it requires further information from SGCH regarding the proposed Amendment, in which case SGCH must provide the additional information sought by ServiceCo within a further period of 8 Business Days after receiving ServiceCo's request for further information; and
- (ii) 12 Business Days of receiving its request under clause 42.1(d) or the additional information requested by ServiceCo under clause 42.1(e)(i), whether:
  - A. it consents to the proposed Amendment; or
  - B. the proposed Amendment is unacceptable to it and the reasons why the proposed Amendment is unacceptable.
- (f) **(Failure to respond):** If ServiceCo fails to respond for any reason within the relevant period specified under clause 42.1(e) in relation to a proposed Amendment in respect of a Service Package Document, which is not a ServiceCo Service Package Document, SGCH:
  - (i) may send a reminder notice; and
  - (ii) if ServiceCo fails to respond to the reminder notice within 12 Business Days, ServiceCo will be deemed to have not consented to the requested Amendment.
- (g) **(ServiceCo consent):** ServiceCo will not withhold its consent to a requested Amendment where the requested Amendment will not have a material adverse effect on:
  - (i) the ability of SGCH to perform, and observe its respective obligations under any Service Package Document to which it is a party; or
  - (ii) the rights or Liability of ServiceCo under any ServiceCo Service Package Document, or the ability or capacity of ServiceCo to exercise its rights or perform its obligations under a ServiceCo Service Package Document.

## 42.2 Amendment of ServiceCo Service Package Document

Except as otherwise expressly provided in the ServiceCo Service Package Documents, no amendment to any ServiceCo Service Package Document is valid or binding on a party unless made in writing and executed by ServiceCo and all other parties to the relevant ServiceCo Service Package Document.

## 42.3 Assignment by ServiceCo

- (a) **(SGCH consent required):** ServiceCo may not sell, transfer or assign or otherwise dispose of all or any part of its interest in the ServiceCo Service Package Documents without the prior consent of SGCH.
- (b) Not used.
- (c) **(ServiceCo sale, transfer, assignment or disposal):** If ServiceCo elects to sell, transfer or assign or otherwise dispose of all or any part of its interest in the



ServiceCo Service Package Documents in a manner permitted under clause 42.3(a) and SGCH consents to that sale, transfer, assignment or disposal:

- (i) SGCH must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to ServiceCo) to give effect to that sale, transfer, assignment or disposal, and ServiceCo will reimburse the reasonable costs incurred by SGCH in undertaking such acts; and
- (ii) Not used.

#### **42.4 Assignments and Amendments under the Services Agreement**

SGCH recognises and permits the exercise by FACS of its rights under clause 42 of the Services Agreement, and where FACS sells, transfers or assigns or otherwise disposes of all or any part of its interest in the FACS Service Package Documents in a manner permitted under clause 42.3 of the Services Agreement, all references to 'FACS' under the Services Agreement will be deemed to include reference to the FACS Nominee in place of FACS.

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### **43. Change in Control**

**43.1 Not used**

**43.2 Not used**

#### **43.3 Restrictions on Changes in Control**

SGCH must not at any time, permit or suffer any Change in Control without FACS' prior consent which must be requested by notice from ServiceCo to FACS.

#### **43.4 Notice to FACS**

Any notice under clause 43.3 seeking the consent of FACS to a Change in Control must include:

- (a) **(Notice of Proposed Changes):** the extent and nature of the proposed Change in Control, including the identity and address of each person proposed to acquire Control; and
- (b) **(Necessary information):** all other information necessary for FACS to determine:
  - (i) whether to consent to the Change in Control; or
  - (ii) the probity or other investigations (if any) FACS wants to undertake in respect of the persons to whom clause 43.4(a) refers.

#### **43.5 FACS' right to withhold consent**

FACS may only refuse to consent to a proposed Change in Control if FACS is of the opinion (acting reasonably) that:

- (a) **(grounds for FACS refusal):** the proposed Change in Control:
  - (i) is against the public interest;

- (ii) would adversely affect the ability or capability of ServiceCo or SGCH to carry out its obligations in accordance with any Service Package Document;
  - (iii) would result in a Probity Event;
  - (iv) would result in SGCH being Controlled by an Entity that:
    - A. is not a reputable Entity or person to properly carry out the obligations of SGCH under the relevant Service Package Documents;
    - B. is an unsuitable Entity or person, having regard to the activities or business of that Entity or person, and their compatibility with the obligations of SGCH under the Service Package Documents;
    - C. has an interest or duty which conflicts or may conflict in a material way with the interests of FACS;
    - D. does not have a sufficient level of financial, managerial or technical expertise or capacity to deliver the Service Package; or
    - E. would have a material adverse effect on the Service Package;
  - (v) without limiting clause 43.5(a)(iv), would result in SGCH no longer:
    - A. having sufficient expertise and ability; or
    - B. being of sufficiently high financial and commercial standing, to properly carry out the obligations of SGCH under the relevant Service Package Documents;
  - (vi) would increase the Liability of, or risks accepted by FACS under the FACS Service Package Documents or in any other way in connection with the Service Package; or
  - (vii) would result in a new Controlling Entity that is not Solvent and reputable; or
- (b) not used.

#### 43.6 Consent to a Change in Control

FACS must advise ServiceCo who will advise SGCH, within 17 Business Days (or such longer period as FACS reasonably requests given the nature of the proposed Change in Control) of receiving ServiceCo's request for consent in accordance with clause 43.3, whether:

- (a) **(consent):** it consents to the Change in Control;
- (b) **(unacceptable):** it does not consent to the Change in Control in which case it must provide reasons for doing so in accordance with clause 43.5; or

- (c) **(further information):** it requires further information from ServiceCo or SGCH regarding the Change in Control, in which case SGCH must provide ServiceCo to provide the additional information sought by FACS within a further period of 10 Business Days, after which FACS must respond in terms of clause 43.5 or clause 43.6 within 10 Business Days after FACS receives that additional information.

**43.7 Not used**

**43.8 Not used**

**43.9 Costs relating to a Change in Control**

SGCH must pay ServiceCo who must pay FACS its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

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**44. Financier's Side Deed**

SGCH must enter into the Financier's Side Deed on or before the date of this Agreement.

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**45. Records and Accounts**

**45.1 Accounting records**

- (a) **(Proper books of account):** SGCH must keep proper books of account, records and documents, financial and all other accounts and records it has relating to the Service Package (**Accounts and Records**) at its offices.
- (b) **(Annual audit):** SGCH must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that SGCH is part of a consolidated Entity, within the meaning of the Corporations Act).

**45.2 Financial statements**

- (a) **(Audited financial statements):** As soon as practicable (and in any event not later than 170 days) after the close of each Financial Year, SGCH must give to ServiceCo certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for SGCH if requested by ServiceCo.
- (b) **(Cashflow and profit and loss statements):** Not later than 24 days after the end of each Quarter, SGCH must give to ServiceCo copies of cashflow and profit and loss statements.

**45.3 Other information**

SGCH must give to ServiceCo the following information:

- (a) **(copies):** copies of all documents or information given or received from the Australian Securities & Investments Commission promptly after the information is first given or received;

- (b) **(counterparty changes)**: details of any changes to the Counterparty Details within 16 Business Days after the change;
- (c) **(material changes)**: details of any material change in the financial condition of SGCH (since its incorporation or establishment) (since the date of their last audited accounts) which would prejudice the ability of SGCH to perform its obligations under the Service Package Documents; and
- (d) **(other information)**:
  - (i) reports or documents relating to the Service Package, including those prepared by Subcontractors; and
  - (ii) such other information relating to the Service Package as FACS may reasonably require from time to time, including any information reasonably requested by FACS to enable FACS to comply with applicable Legislation (including the *State Records Act 1998* (NSW)).

#### 45.4 SGCH Material

SGCH must maintain a document management system for all SGCH Material and Information Documents that:

- (a) **(safe and secure)**: is safe and secure and compatible with ServiceCo's document management systems as advised by ServiceCo;
- (b) **(access)**: enables ServiceCo and its Associates (including any nominee) to quickly and easily retrieve, review and utilise SGCH Material; and
- (c) **(distribution)**: tracks the distribution of all SGCH Material.

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## 46. Intellectual Property Rights

- (a) Any Intellectual Property Rights and title to, or in relation to, the SGCH Materials will vest, upon creation, in SGCH.
- (b) SGCH grants, and will ensure third parties grant, to ServiceCo a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, modify and exploit the SGCH Materials (other than any Excluded Material).

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## 47. Confidential Information and disclosure

### 47.1 Confidential Information and disclosure by FACS

- (a) **(Disclosure)**: SGCH acknowledges and agrees that subject to clause 47.1(b), FACS and any Authority may disclose any information in connection with the Service Package, including Information Documents.
- (b) **(Requirements)**: FACS may only disclose the Commercially Sensitive Information:
  - (i) in accordance with Laws or for the enforcement of any criminal law;
  - (ii) in accordance with clause 47.6;

- (iii) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
- (iv) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
- (v) to satisfy the requirements of Parliamentary accountability;
- (vi) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
- (vii) in annual reports of FACS or the NSW Government; or
- (viii) in accordance with policies of FACS or the NSW Government or any Authority;
- (ix) for any tender process required to be conducted under the Termination Payment Schedule; or
- (x) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of this Agreement.

## 47.2 Confidential Information and disclosure by SGCH

- (a) **(Confidentiality obligation):** Subject to clauses 47.2(b) and clause 47.4(b), SGCH must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting SGCH's obligation under clause 47.2(a) and subject to clause 47.2(c), SGCH may disclose Confidential Information:
  - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package;
  - (ii) to any prospective financier or equity investor of the Service Package, subject to FACS having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that FACS considers necessary; or
  - (iii) in accordance with clause 47.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, SGCH must ensure that the person to whom the information is disclosed enters into a confidentiality deed with SGCH to keep the Confidential Information, confidential in accordance with this clause 47.
- (d) **(Permitted disclosure):** SGCH may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 47.2(a) or 47.3(a) where the disclosure announcement or statement is:

- (i) required by Law, provided that it:
  - A. notifies FACS of the requirement to make that disclosure; and
  - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
- (iii) required to be made to a court in the course of proceedings to which SGCH is a party; or
- (iv) required by a relevant recognised stock exchange, subject to:
  - A. the disclosure, announcement or statement does not refer to FACS' or any of its Associates' involvement in the Service Package; and
  - B. SGCH having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

### 47.3 Public announcements by SGCH

Subject to clause 47.2(d), SGCH must:

- (a) **(FACS' prior consent)**: not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) **(terms and conditions)**: comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) **(copies to be provided)**: as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 47.3 or for which FACS' consent or approval was not required in accordance with clause 47.4.

### 47.4 Information public or known

Notwithstanding anything in this clause 47, either party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) **(already available)**: the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 47; or

- (b) (already in possession): the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

#### 47.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 47, the parties acknowledge that:
  - (i) (documents to be published): the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
  - (ii) Not used.
- (b) The parties acknowledge that:
  - (i) (notification): FACS will notify ServiceCo who must notify SGCH of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
  - (ii) (consultation): following notification by FACS in accordance with clause 47.5(b)(i), FACS will take reasonable steps to consult with ServiceCo who must consult with SGCH before disclosing Commercially Sensitive Information, including under the GIPA Act;
  - (iii) (objectives): if, following:
    - A. notification by FACS in accordance with clause 47.5(b)(i); or
    - B. consultation between FACS and ServiceCo (and Service Co and SGCH) in accordance with clause 47.5(b)(ii),SGCH objects to disclosure of some or all of the Commercially Sensitive Information, SGCH must provide details of any such objection within 3 Business Days after the date SGCH received notification from ServiceCo or the date on which the consultation process concluded (as relevant);
  - (iv) (disclosure): FACS may take into account any objection received from ServiceCo (who received such objection from SGCH) pursuant to clause 47.5(b)(iii) in determining whether the Commercially Sensitive Information identified by SGCH should be disclosed; and
  - (v) (FACS' obligations): nothing in this clause 47.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

#### 47.6 Personal Information

SGCH must:

- (a) (collection): not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;

- (b) **(disclosure):** not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) **(retention):** keep, and make available to FACS on request, records detailing the recipient of any Personal Information that SGCH has disclosed, the date of disclosure and the Personal Information that has been disclosed.

#### 47.7 Privacy

Without limiting any obligations in respect of privacy set out in the Services Requirements SGCH agrees to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Agreement, in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.

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### 48. Probity Events and Probity Investigations

#### 48.1 Probity Event

- (a) **(Notice):** SGCH must give notice to ServiceCo who must give notice to FACS immediately upon becoming aware that a Probity Event has occurred or is likely to occur.
- (b) **(Contents of notice):** The notice under clause 48.1(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
- (c) **(Meeting):** Promptly, and in any case no later than 5 Business Days after FACS:
  - (i) receives a notice under clause 48.1(a); or
  - (ii) becomes aware of a Probity Event,

FACS and ServiceCo (and SGCH, if requested) must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.

- (d) **(Compliance):** SGCH must comply with any agreement made in accordance with clause 48.1(c) in the agreed timeframe.
- (e) **(Failure to agree):** If FACS and ServiceCo (and SGCH, if applicable) fail to agree to a course of action in accordance with clause 48.1(c) including where SGCH fails to meet with FACS in accordance with clause 48.1(c), SGCH must, at its cost, take any action required by FACS to remedy the Probity Event in accordance with any timeframe determined by FACS.

#### 48.2 Probity Investigation

- (a) **(Requirement for Probity Investigation):** SGCH agrees that FACS may, or may require ServiceCo at any time to, conduct a Probity Investigation in respect of SGCH.



- (b) **(Promptly)**: SGCH acknowledges and agrees that where FACS requires ServiceCo to conduct a Probity Investigation in accordance with clause 48.2(a), ServiceCo must conduct the Probity Investigation promptly.
- (c) **(Consents required for Probity Investigation)**: SGCH must procure all consents necessary to enable ServiceCo or FACS to conduct any Probity Investigation.
- (d) **(No appointment without consent)**: SGCH must not appoint a person to the position of Relevant Person unless FACS has given approval following any Probity Investigation that it elects to conduct or any other investigation FACS reasonably requires.

### 48.3 FACS costs of Probity Events and Probity Investigation

- (a) **(FACS costs)**: Subject to clause 48.3(b), SGCH must bear all costs incurred by FACS in connection with a Probity Event or Probity Investigation that led to a Probity Event.
- (b) **(SGCH not liable)**: SGCH will not be liable for FACS' costs of any further Probity Investigation required by FACS in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

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## 49. Notices and bar to Claims

### 49.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as specified in the Contract Particulars (as the case may be), or as otherwise notified by that party to each other party from time to time;
- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in the Contract Particulars;
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in the Contract Particulars:
  - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
  - (ii) subject to clause 49.1(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and

on the seventh Business Day after the date of posting by airmail to an address outside Australia;

- (iii) in the case of email, the first to occur of:
- A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
  - B. the time that the communication enters an information system which is under the control of the addressee; or
  - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) (notices sent by post): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

## 49.2 Notices of Claims

- (a) (Liability): Subject to clause 49.2(b):
- (i) ServiceCo and its Associates will not be liable upon any Claim that SGCH is entitled to make against ServiceCo or its Associates; and
  - (ii) SGCH is absolutely barred from making any Claim against ServiceCo or any of its Associates,

under any ServiceCo Service Package Document or otherwise arising in connection with the Service Package Documents, the Relevant Infrastructure or the Service Package unless SGCH gives ServiceCo the notices required by clause 49.3 and, if applicable, clause 49.4.

- (b) (Notice requirements): Where any provision of this Agreement contains specific notice requirements (including a requirement to submit or update a Change Notice):
- (i) ServiceCo and its Associates will not be liable upon any Claim that SGCH is entitled to make against ServiceCo or its Associates; and
  - (ii) SGCH is absolutely barred from making any Claim against ServiceCo or any of its Associates,

arising out of, or in connection with, the event or circumstance to which the relevant provisions of this Agreement, or any other Service Package Document, entitling SGCH to make a Claim against ServiceCo or its Associates apply, unless SGCH has complied with the specific notice requirements (including any requirement to update a Change Notice) set out in those relevant provisions.

### 49.3 Prescribed notices

The required notices referred to in clause 49.2(a) are:

- (a) **(intention to submit Claim):** a written notice from SGCH in which SGCH:
  - (i) states that it intends to submit a Claim; and
  - (ii) identifies the event on which the Claim will be based,which notice must be given to ServiceCo within 16 Business Days of the earlier of:
  - (iii) the date on which SGCH first became aware; and
  - (iv) the date on which SGCH ought reasonably to have become aware,of the event on which the Claim is based; and
- (b) **(Claim):** a formal written notice from SGCH to ServiceCo setting out the Claim, including:
  - (i) detailed particulars concerning the event on which the Claim is based;
  - (ii) the legal basis for the Claim, whether based on a term of ServiceCo Service Package Documents or otherwise, and if based on a term of the ServiceCo Service Package Documents, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated,which notice must be given to ServiceCo within 16 Business Days of giving the notice under clause 49.3(a).

### 49.4 Continuing events

If the event upon which the Claim under clause 49.3(b) is based, or the consequences of that event, are continuing, SGCH must continue to give the information required by clause 49.3(b) every 16 Business Days after the notice under clause 49.3(b) was submitted, until after the event or consequences of the event have ceased.

### 49.5 Not used

### 49.6 Power of attorney

SGCH irrevocably:

- (a) **(appointment):** appoints ServiceCo, and ServiceCo's nominees from time to time, jointly and severally, as its attorneys with full power and authority:
  - (i) with effect from the end of the Service Delivery Phase, to execute any assignment or novation contemplated by clause 22.2(a); and

- (ii) to exercise ServiceCo's rights in accordance with clause 28; and
- (b) **(ratification of action):** agrees to ratify and confirm whatever action is taken by the attorney appointed by SGCH under clause 49.6(a).

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## 50. Linked Claims

- (a) Where any party becomes aware of a Linked Claim, that party must by notice in writing notify the other party of the Linked Claim, including identifying the Upstream Document and Upstream Party applicable to the Linked Claim.
- (b) Without limiting clause 50(c), if SGCH fails to comply with this clause 50 or other provisions of this Agreement which impose more specific obligations on SGCH and as a consequence ServiceCo's Entitlements under the Upstream Document are reduced or extinguished, SGCH's Entitlement in respect of its Linked Claim shall be reduced or extinguished to the same extent.
- (c) Where ServiceCo receives a Claim which is a Linked Claim, ServiceCo must:
  - (i) notify the applicable Upstream Party of the Linked Claim within the time required by the Upstream Document, or where no time is specified, promptly;
  - (ii) diligently and expeditiously pursue such Entitlements as may be claimable in relation to the related claim under the Upstream Document (including by passing to the Upstream Party submissions to the extent required by SGCH and employing the dispute resolution procedures in the relevant Upstream Document) in a manner that does not prejudice the successful pursuit of those Entitlements;
  - (iii) not settle, waive or compromise or make any admission in relation to the related claim under the Upstream Document (to the extent it is for the benefit of SGCH) without the prior written consent of SGCH, which consent must not be unreasonably withheld or delayed; and
  - (iv) promptly notify SGCH upon, and provide details in relation to, the resolution of the related claim under the Upstream Document.
- (d) If SGCH submits a Claim to ServiceCo which is a Linked Claim and ServiceCo notifies SGCH that it is a Linked Claim, SGCH must:
  - (i) co-operate with, and take all proper and reasonable steps to assist, ServiceCo's pursuit of the related claim under the Upstream Document; and
  - (ii) except to the extent that ServiceCo fails to comply with clause 50(c), promptly pay to ServiceCo any reasonable third party costs incurred by ServiceCo (including adverse cost orders, awards and judgments) in submitting and pursuing the related claim under the Upstream Document in accordance with this clause 50(d) to the extent to which the related claim under the Upstream Document is a Linked Claim or is the subject of a Notice of Linked Claim.

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## 51. Linked Disputes

- (a) The parties acknowledge and agree that:
  - (i) disputes between an Upstream Party and ServiceCo under an Upstream Document relating to Linked Disputes shall be conclusively resolved under and in accordance with the relevant Upstream Document;
  - (ii) subject to clause 51(a), to the extent a dispute is a Linked Dispute, the Linked Dispute will not be progressed while the dispute under the relevant Upstream Document is in progress, and the running of time under, the parties' obligations to comply with clauses 34, 35, 36, 37 and 38 of this Agreement will be suspended; and
  - (iii) subject to clause 51(c) and ServiceCo's compliance with this clause 51, SGCH and ServiceCo are bound by the resolution of the dispute under the relevant Upstream Document to the extent of the Linked Dispute.
- (b) Where ServiceCo receives a notice of Dispute under this Agreement and ServiceCo considers that the Dispute is a Linked Dispute, ServiceCo must by notice in writing notify SGCH of the Linked Dispute, including identifying the relevant Upstream Document and Upstream Party applicable to the Linked Dispute.
- (c) Where ServiceCo receives a notice of Dispute which is a Linked Dispute, ServiceCo must:
  - (i) notify the applicable Upstream Party of the Linked Dispute within the time required by the Upstream Document, or where no time is specified, promptly;
  - (ii) diligently and expeditiously pursue such Entitlements as may be claimable in relation to the related claim under the Upstream Document (including by passing to the Upstream Party submissions to the extent required by SGCH and employing the dispute resolution procedures in the relevant Upstream Document);
  - (iii) not settle, waive or compromise or make any admission in relation to the related claim under the Upstream Document (to the extent it is for the benefit of SGCH) without the prior written consent of SGCH, which consent must not be unreasonably withheld or delayed;
  - (iv) promptly notify SGCH upon, and provide details in relation to, the resolution of the related dispute under the Upstream Document; and
  - (v) exercise any right to appeal against the resolution of the relevant dispute under the relevant Upstream Document if SGCH requests ServiceCo in writing to do so.
- (d) If ServiceCo gives written notice to SGCH of a Linked Dispute in accordance with clause 51(b), SGCH must except to the extent that ServiceCo fails to comply with clause 51(c), promptly pay to ServiceCo any reasonable third party costs incurred by ServiceCo (including adverse cost orders, awards and judgments but not including management or administration costs incurred in the ordinary course of

ServiceCo's business) in submitting and pursuing the related dispute under the Upstream Document in accordance with this clause 51(d) to the extent to which the related dispute under the Upstream Document is a Linked Dispute or is the subject of a notice in writing notifying SGCH of the Linked Dispute.

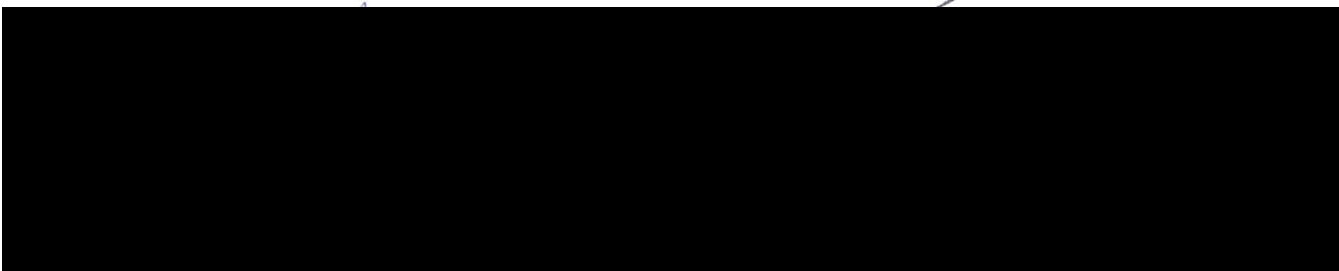
Executed as a deed

**ServiceCo**

Signed sealed and delivered for and on behalf of  
**SGCH Sustainability Limited**  
ACN 606 965 799

by its attorney, under the Power of Attorney  
dated 9 DECEMBER 2016

who states, by executing this deed, has received  
no notice of revocation of the Power of Attorney,  
in the presence of:

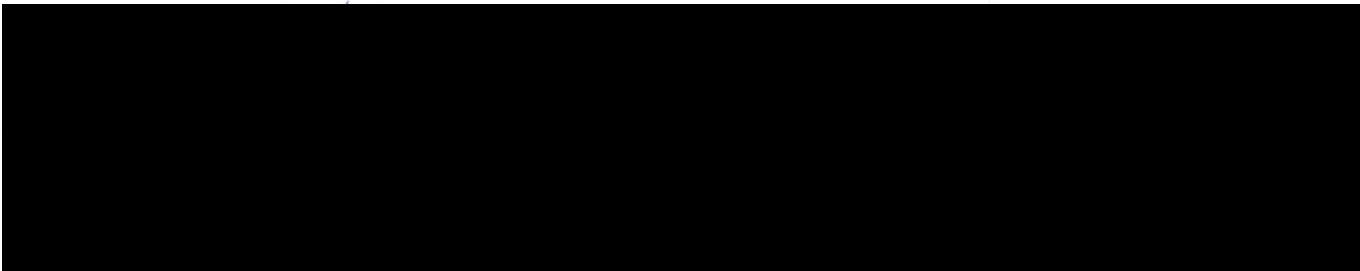


**SGCH**

Signed sealed and delivered for and on behalf of  
**St George Community Housing Limited**  
ACN 133 729 503

by its attorney, under the Power of Attorney  
dated 9 DECEMBER 2016

who states, by executing this deed, has received  
no notice of revocation of the Power of Attorney,  
in the presence of:



## Schedule 1 – Contract Particulars

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### 1. ServiceCo Representative

The ServiceCo Representative for the purpose of clause 1 (*Definitions*) of this Agreement is:

ServiceCo Representative [REDACTED]

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Address Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220

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Email [REDACTED]

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Telephone (02) 9001 4400

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### 2. SGCH Representative

The SGCH Representative for the purpose of clause 1 (*Definitions*) of this Agreement is:

SGCH Representative [REDACTED]

---

Address Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220

---

Email [REDACTED]

---

Telephone (02) 9001 4471

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### 3. Employee Checks

| Employee Check   | Employees and volunteers of SGCH and Subcontractors to whom it applies   | Frequency of update  |
|--|--|--|
| A 'national police check' conducted through the NSW Police.  | Those who are reasonably likely to have access to Tenants or Household Members, whether supervised or unsupervised, and are not exempt.                                  | At a minimum: <ul style="list-style-type: none"> <li>• prior to the Service Commencement Date in accordance with the Service Readiness Schedule; and</li> <li>• every four years after the last check (or every three years for individuals involved in aged care work in accordance with the <i>Aged Care Act 1997</i> (Cth)).</li> </ul> |
| A 'working with children check' conducted through the NSW Office of the Children's Guardian in accordance with the <i>Child Protection (Working with Children) Act 2012</i> (NSW). | Those who are conducting child-related work and are not exempt under Part 4, regulation 20 of the <i>Child Protection (Working with Children) Regulation 2013</i> (NSW). | At a minimum: <ul style="list-style-type: none"> <li>• prior to the Service Commencement Date in accordance with the Service Readiness Schedule; and</li> <li>• every five years after the last check.</li> </ul>  |

### 4. Employee Requirements

| Employee Requirements   | Employees of SGCH and Subcontractors to whom it applies              |
|---|--|
| Appropriate qualifications or appropriate experience for the Tailored Support Coordination Services role. | Those who deliver any of the Tailored Support Coordination Services. |

### 5. Other Service Package details

|                            |   |
|----------------------------|---|
| Service Package Objectives | <ul style="list-style-type: none"> <li>• Innovation through partnerships: The Service Package will, through a cooperative and partnered approach between SGCH and ServiceCo, deliver innovative Services that build on the</li> </ul> |
|----------------------------|---|

strengths of each Consortium Member.

- **Quality Services:** The Service Package will deliver quality Accommodation Services, Asset Management Services and Tenancy Management Services that meet or exceed ServiceCo's' specifications, coupled with Tailored Support Coordination Services for Tenants.
- **Drive social outcomes:** The Service Package will be provided in a manner which best contributes to the achievement of the Target Outcomes.
- **Delivery and value for money:** The Service Package will seek to achieve its objectives within the value for money parameters, appropriate risk profile and timeframe set by ServiceCo.
- **Unlock contributions:** The Service Package will unlock non-government land and in-kind contributions.
- **Evidence building and continued reform:** The Service Package will support evidence building and data collection to help drive continued reform and an investment approach to service delivery in the sector.
- **Strategic alignment:** The Service Package will align with and contribute to the NSW Government's ten year strategy for social housing reforms.

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|                               |  |
|-------------------------------|--|
| Conditions Precedent Deadline | 2pm on the date that is 20 Business Days after the date of this Agreement. |
|-------------------------------|--|

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|                          |   |
|--------------------------|---|
| Tier or CHP Registration | <ul style="list-style-type: none"><li>• In respect of SGCH, Tier 1.</li></ul> |
|--------------------------|---|

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## 6. Details for notices

The notice details for the purpose of clause 1 (*Definitions*) of this Agreement are as follows:

### ServiceCo

Attention



Address

Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220

Telephone

(02) 9001 4400

Email



### SGCH

Attention



**Address** Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220

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**Telephone** (02) 9001 4471

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**Email**

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## Schedule 2 – Conditions Precedent Schedule

| Item | Condition Precedent   |
|------|---|
| 1.   | <p><b>ServiceCo Service Package Documents</b></p> <p>The valid execution, delivery and provision to ServiceCo of each of the ServiceCo Service Package Documents, each in form and substance satisfactory to ServiceCo and at least one original counterpart of each of those documents has been provided to ServiceCo.</p>   |
| 2.   | <p><b>Other Service Package Documents</b></p> <p>The valid execution, delivery and provision to ServiceCo of a certified copy of each other Service Package Document, each in form and substance satisfactory to ServiceCo, together with evidence that all conditions precedent to such Service Package Documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Agreement).</p>   |
| 3.   | <p><b>Authorised officers</b></p> <p>ServiceCo receiving names and specimen signatures of the authorised officers of SGCH, including the SGCH Representative and any other person authorised to take action or give notices for or on behalf of SGCH under the ServiceCo Service Package Documents.</p>   |
| 4.   | <p><b>Insurances</b></p> <p>SGCH delivering to ServiceCo in respect of the Insurances referred to in, and required to be taken out prior to Commercial Close and maintained as detailed in, clause 30 (<i>Insurance</i>) and the Insurance Schedule:</p> <ul style="list-style-type: none"><li>(a) certified copies of the fully subscribed and executed policies relating to such Insurances in form and substance satisfactory to ServiceCo; and</li><li>(b) certificates from an insurance broker as to the currency of all such Insurances and confirming that FACS or its Associates or ServiceCo or its Associates are insureds under the policy (to the extent this is required under this Agreement).</li></ul> |
| 5.   | <p><b>Other Requirements</b></p> <p>SGCH delivery to ServiceCo any other opinion, certificate or other document that ServiceCo reasonably requests.</p>   |

## Schedule 3 – Payment Schedule

### 1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

**Abatement** means any or all of the following:

- (a) Service Compliance Abatement;
- (b) Service Provision Abatement;
- (c) Tenant Mix Abatement; and
- (d) Service Quality Abatement.

**Annual Reporting Compliance Failures** means the occurrence of a 'Performance Incident' in respect of KPI 402, 404 or 405.

**Annual Service Activity Compliance Failures** means the occurrence of a 'Performance Incident' in respect of KPI 301, 302, 306, 307 or 308.

**CPI-Indexed Non-Reviewable Services Payment per Dwelling** means, in respect of an Operating Month, the amount set out in Table 3 in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

**CRA** means the rent assistance payable by the Commonwealth pursuant to the *Social Security Act 1991* (Cth) and the *A New Tax System (Family Assistance) Act 1999* (Cth).

**Excess Subsidy Rebate** means the rebate calculated in accordance with section 7.

**Interim Survey** has the meaning given in section 8.

**Key Performance Indicator** and **KPI** means the Key Performance Indicators in Appendix C of the Services Specification.

**Major Default Service Failure** means the occurrence of:

- (a) subject to Section 8(d) and (e), in [two] consecutive Operating Years any [two] or more Service Quality Performance Incidents in each Operating Year;
- (b) in [two] consecutive Operating Years:
  - (i) any Quarterly Reporting Compliance Failures in [three] consecutive Operating Quarters; and
  - (ii) the same Annual Reporting Compliance Failure on [two] occasions; or
  - (iii) the same Annual Service Activity Compliance Failure on [two] occasions; or
  - (iv) the same Quarterly Service Activity Compliance Failure on [three] occasions; or

- (c) a Service Reporting Compliance Failure occurs in respect of KPI 403 (Quarterly Data Report) in respect of [three] consecutive Operating Quarters.

**Market Rent** has the meaning given in the Services Specification.

**Maximum Turnaround Times** has the meaning given in the Services Specification.

**Non-Reviewable Services** means any Services other than the Reviewable Services.

**Operating Quarter** means each Quarter during the Service Delivery Phase.

**Quality Areas** means the categories identified as such in Table 1 in section 4.3.

**Quarterly Reporting Compliance Failures** means the occurrence of a Performance Incident in respect of KPI 401 or 403.

**Quarterly Service Activity Compliance Failures** means the occurrence of a Performance Incident in respect of KPI 303, 304, 305 or 309.

**Service Activity Compliance KPIs** means the KPIs so described in Appendix C of the Services Specification.

**Service Activity Performance Incident** has the meaning given to 'Performance Incident' in Appendix C of the Services Specification in respect of Service Activity Compliance KPIs.

**Service Compliance Abatement** means, in respect of an Operating Month, the Abatement calculated in accordance with section 5.

**Service Compliance Performance Incident** means:

- (a) Service Activity Performance Incident; and
- (b) Service Reporting Performance Incident.

**Service Failure** means:

- (a) Service Compliance Performance Incident;
- (b) Service Provision Performance Incident; and
- (c) Service Quality Performance Incident.

**Service Provision Abatement** means an Abatement calculated in accordance with section 4.2.

**Service Provision Performance Incident** has the meaning given in Appendix C of the Services Specification in respect of KPI 101.

**Service Quality Abatement** means an Abatement calculated in accordance with section 4.3.

**Service Quality KPIs** means the KPIs so described in Appendix C of the Services Specification.

**Service Quality Performance Incident** has the meaning given to 'Performance Incident' in Appendix C of the Service Specification in respect of Service Quality KPIs.

**Service Reporting Compliance KPIs** means the KPIs so described in Appendix C of the Services Specification.

**Service Reporting Performance Incident** has the meaning given to 'Performance Incident' in Appendix C of the Services Specification in respect of Service Reporting Compliance KPIs.

**Tenancy Policy Supplement** has the meaning given in the Services Specification.

**Tenant Mix Abatement** means an Abatement made to the total Services MSP amount calculated in accordance with section 6.

**Tenant Mix Performance Incident** means a failure by SGCH to provide services in respect of the agreed proportion of Social Housing Tenants.

**Tenant Satisfaction Survey** has the meaning given in the Services Specification.

**Tenant Survey** has the meaning given in the Services Specification.

**Tenantable** has the meaning given in the Services Specification.

**Untenantable** has the meaning given in the Services Specification.

**WPI-Indexed Non-Reviewable Services Payment per Dwelling** means, in respect of an Operating Month, the amount set out in Table 3 in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

**WPI-Indexed Reviewable Services Payment per Dwelling** means, in respect of an Operating Month, the amount set out in Table 3 in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

---

## 2. Monthly Services Payment

- (a) The Services MSP in respect of an Operating Month will be calculated as follows:

$$\text{MSP} = \left( \frac{((\text{DMSP} \times \text{NOP}) \times (1 - \text{ServiceKPI}_{\text{stage}})) - \text{SurveyKPI} - \sum \text{COMKPI}_i}{\text{TMA} - \text{EXA}} \right)$$

where:

$\text{ServiceKPI}_{\text{stage}}$  = the Service Provision Abatement calculated based on the previous 3 Operating Month's Service Provision Failures for Stage  $\text{stage}$

$\text{SurveyKPI}$  = the Service Quality Abatement based on the results of the most recent Tenant Satisfaction Survey

$\text{COMKPI}_i$  = the Service Compliance Abatement

$\text{DMSP}$  = the monthly service payment per Dwelling =  $\text{DICSP} + \text{DIRSP}$

$\text{DICSP}$  = the aggregate of the CPI-Indexed Non-Reviewable Services Payment per Dwelling and the WPI-Indexed Non-Reviewable Services Payment per Dwelling

$\text{DIRSP}$  = the WPI-Indexed Reviewable Services Payment per Dwelling

$\text{NOP}$  = Number of Dwellings during the Operating Month

$\text{TMA}$  = Tenant Mix Abatement applying during the Operating Month

EXA = Excess Subsidy Rebate applying during the Operating Month

- (b) Payments that are subject to indexation will be adjusted each calendar quarter. The relevant indices will be defined in the Indexation Schedule and the base value set at financial close.

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### **3. Not Used**

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## **4. Performance Regime**

### **4.1 Services MSP Abatement**

- (a) If at any time during the Service Delivery Phase, a Service Failure occurs, ServiceCo may make Abatements from any Services MSP, in respect of:
  - (i) that Service Provision Performance Incident, in accordance with section 4.2;
  - (ii) that Service Quality Performance Incident, in accordance with section 4.3;
  - (iii) that Service Compliance Performance Incident, in accordance with section 5; and
  - (iv) that Tenant Mix Performance Incident, in accordance with section 6.
- (b) No reduction in Abatements shall be permitted where the same event causes more than one type of Service Failure.
- (c) Abatements will be applied at the time ServiceCo becomes aware of a Service Failure and ServiceCo will be entitled to apply Abatements retroactively.
- (d) SGCH may submit additional information which ServiceCo may take into consideration when determining whether to apply the relevant Abatement.
- (e) A Tenant Mix Abatement under section 6 will not be applied by ServiceCo prior to the Date of Service Readiness of the final Stage where SGCH can demonstrate that it has made reasonable endeavours to comply with the social and affordable tenant mix by Stage as set out in the SAHF Pro forma Schedules.

### **4.2 Service Provision Abatement**

- (a) In respect of each Dwelling used to provide the Accommodation Services for a given Operating Quarter, SGCH will report the following information to ServiceCo on a quarterly basis:
  - (i) the number of vacancies that the Dwelling experienced;



- (ii) the number of consecutive days the Dwelling was vacant for during each vacancy; and
- (iii) for each vacancy, whether the Dwelling was considered to be Tenantable or Untenantable.

(b) The Service Provision Abatement will be calculated as follows:

- (i) If the current Operating Month immediately succeeds the submission of the Quarterly Performance Report then, the Service Provision Abatement is calculated as:

$$\text{ServiceKPI}_{\text{stage}} = (\text{SPF}_t + \text{SPF}_u) / (\text{NOD}_q * \text{NOP}_{\text{stage}})$$

where:

$\text{NOD}_q$  = Number of days in the last Operating Quarter

$\text{NOP}_{\text{stage}}$  = Number of Dwellings in Stage  $_{\text{stage}}$

$\text{SPF}_t$  = the Service Provision Performance Incident in respect of Tenantable Dwellings, where,

$\text{SPF}_t = \sum (\max(\text{DV}_{\text{upn}} - \text{DV}_{\text{th}}), 0)$  where:

$\text{DV}_{\text{upn}}$  is the number of days Dwelling  $P$  was vacant for in respect of vacancy  $n$ . There may be more than one period of vacancy in a quarter

$\text{DV}_{\text{th}}$  is the Maximum Turnaround Time for Tenantable Dwellings

$\text{SPF}_u$  = the Service Provision Performance Incident in respect of Untenantable Dwellings, where,

$\text{SPF}_u = \sum \max((\text{DV}_{\text{upn}} - \text{DV}_{\text{uth}}), 0)$  where:

$\text{DV}_{\text{upn}}$  is the number of days Dwelling  $P$  was vacant for in respect of vacancy  $n$ . There may be more than one period of vacancy in a quarter

$\text{DV}_{\text{uth}}$  is the Maximum Turnaround Time for Untenantable Dwellings

- (c) If the current Operating Month is not the Operating Month immediately succeeding the submission of a Quarterly Performance Report, then, the Service Provision Abatement is calculated as:

**ServiceKPI<sub>stage</sub> = the ServiceKPI<sub>stage</sub> applied in the previous Operating Month**

- (d) The maximum aggregate Abatement that can be made in respect of Service Provision Performance Incidents is the total Services MSP amount in respect of the services not provided.

### 4.3 Service Quality Abatement

- (a) The Service Quality Abatement is calculated, in respect of an Operating Month and the 'Service Quality Compliance KPIs' in Appendix C of the Services Specification, having regard to Table 1 below.

Table 1: Service Quality Failures

| Quality Area  | Satisfaction %   | \$ Abatement applied (p.a.) | Offset for High Performance allowed |
|---|--|-----------------------------|-------------------------------------|
| Maintenance Services (in accordance with the survey metrics)        | ≥ AMT <sub>1</sub><br>AMT <sub>2</sub><br>AMT <sub>3</sub> |                             | Yes                                 |
| Condition of Dwelling (in accordance with the survey metrics)       | ≥ AMT <sub>1</sub><br>AMT <sub>2</sub><br>AMT <sub>3</sub> |                             | Yes                                 |
| Tenancy Management Services (in accordance with the survey metrics) | ≥ TMT <sub>1</sub><br>TMT <sub>2</sub><br>TMT <sub>3</sub> |                             | Yes                                 |
| Tailored Support Coordination Services                              | ≥ 75%<br>74%-50%<br><50%                                   |                             | No                                  |

where:

AMT<sub>1</sub> = the threshold set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (green traffic light)

AMT<sub>2</sub> = the first tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (amber traffic light)

AMT<sub>3</sub> = the second tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (red traffic light)

TMT<sub>1</sub> = the threshold set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (green traffic light)

TMT<sub>2</sub> = the first tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (amber traffic light)

TMT<sub>3</sub> = the second tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (red traffic light)

- (b) Where a Quality Area has 'Yes' in the column titled 'Offset for High Performance allowed', SGCH will be permitted to allocate % points above the AMT<sub>1</sub> threshold

in one Quality Area to Quality Areas with performance below the threshold. For example if:

- (i) the  $AMT_1$  for Maintenance Services was 75% and SGCH's survey result was 80%, and
- (ii) the  $AMT_2$  for Condition for Dwelling was 65 - 74% and SGCH's survey result was 74%

then SGCH would be able to allocate 1% of the Maintenance Services Satisfaction %, raising it above the Abatement threshold.

- (c) The non-submission of valid results for any Quality Area will result in a satisfaction score of zero being applied to the relevant Quality Area.
- (d) The Abatements applied for a failure in any individual Quality Area are cumulative based on the lowest Satisfaction % achieved.
- (e) The Service Quality Abatement for the succeeding 12 Operating Months will be calculated as follows:

$$\text{SurveyKPI} = (\text{MS} + \text{PC} + \text{TMS} + \text{TSC}) / 12$$

where:

MS = The annual abatement for Maintenance Services Service Quality Abatement is calculated based on SGCH's 'Satisfaction' results in respect of Maintenance Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

PC = The annual abatement for Property Conditions Service Quality Abatement is calculated based on SGCH's 'Satisfaction' results in respect of Condition of Dwelling in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

TMS = The annual abatement for Tenancy Management Services Service Quality Abatement is calculated based on SGCH's 'Satisfaction' results in respect of Tenancy Management Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

TSC = The annual abatement for Tailored Support Coordination Service Quality Abatement is calculated based on SGCH's 'Satisfaction' results in respect of Tailored Support Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

---

## 5. Service Compliance Abatement

- (a) The Service Compliance Abatement is calculated, in respect of an Operating Month in accordance with the 'Service Activity Compliance KPIs' and 'Service Reporting Compliance KPIs' in Appendix C of the Services Specification.
- (b) The next Services MSP will be abated by the sum of all individual dollar Abatements accrued (defined as  $COMKPI_i$  in section 2).

---

## 6. Tenant Mix Abatement

- (a) ServiceCo will assess the level of SGCH's performance in respect of its obligations to provide the Service Package to the Social Housing Tenant percentage set out in the Services Specification by reviewing the "Assistance Type" data provided in accordance with Appendix D of the Services Specification and the Quarterly Data Report.
- (b) ServiceCo will calculate the Tenant Mix Abatement as follows:
- (i) TMA = 1 if the current Quarter is the first quarter since the Service Commencement Date;
  - (ii) TMA = 1 if the current Quarter is within a 12 month period after a Partial Termination has occurred; or
  - (iii) Otherwise  $TMA = 1 - (0.75 \times (1 - \text{Min}(CSP/BSP, 1)))$ ,

where:

TMA = Tenant Mix Abatement

CSP is the calculated Social Housing Tenant percentage and equals  $100 \times \text{NAS}/\text{TD}$  where:

NAS = is the sum over all Dwellings of  $\text{NDW}_h$

where:

$\text{NDW}_h$  is the number of days Dwelling P would have the "Assistance Type" equal to "General" in the previous two quarters

$\text{TD} = \text{NOD}_h * \text{NOP}$

where:

$\text{NOD}_h$  = Number of days in the previous two quarters

$\text{NOP}$  = Number of Dwellings

BSP is the bid minimum Social Housing percentage set out in section 2.3 of the Services Specification.

---

## 7. Excess Subsidy Rebate

- (a) ServiceCo will assess the level of rentals charged to a Retained Social Housing Tenant. The maximum Social Housing income eligibility limit and weekly income allowances for Tenants and Household Members must be determined in accordance with the Tenancy Policy Supplement. SGCH will be required to repay to ServiceCo a percentage of the rental charged to a Retained Social Housing Tenant calculated in accordance with section 7(b).
- (b) ServiceCo will calculate the Excess Subsidy Rebate as follows:

$$EXA = (\text{NOD}_m / \text{NOD}_{qc}) \times EXA_{pq}$$

NODm = number of days in the current Operating Month

NODqc = number of days in the current Operating Quarter

EXA<sub>pq</sub> = the Excess Subsidy Rebate calculated at the end of the previous Operating Quarter as follows:

$$EXA_{pq} = \sum ERPC_n \times \text{Max} ((RSet_p - RUpper - CCRA_p), 0) \times NODqc/7$$

where:

ERPC<sub>n</sub> is the percentage Rebate applied based on Table 2 below.

RSet<sub>p</sub> is the weekly rent charged to the Tenant for Dwelling P set by SGCH for the last week of the reporting period.

RUpper is the weekly rent that would be charged to the Tenant for Dwelling P had Tenant P household's assessable income been equal to the household's income eligibility limit for the last week of the reporting period. RUpper must be equal to 25% of Tenant P household's income eligibility limit.

RMarket<sub>p</sub> is the weekly Market Rent for Dwelling P.

CCRA<sub>p</sub> is the change in Tenant P's weekly household CRA entitlement and equal to

$$CCRAB_p - CCRAC_p$$

where:

CCRAB<sub>p</sub> is Tenant P's weekly household CRA entitlement that would have applied to Tenant P at the residential tenancy agreement commencement date (CCRAB<sub>p</sub> can be zero) if the thresholds and rates for the payments of CRA applicable at the date of this Agreement were applied adjusted for any then applicable indexation.

CCRAC<sub>p</sub> is Tenant P's weekly household CRA entitlement that would have applied to Tenant P on the week end immediately preceding the most recent rent and income review (CCRAC<sub>p</sub> can be zero) on the assumption that the thresholds and rates for the payments of CRA applicable at the date of this Agreement were applied adjusted for any then applicable indexation.

**Table 2: Percentage Rebate Levels**

| Rebate<br>(ERPC <sub>n</sub> ) | Applicable Threshold Range<br>(RMarket <sub>p</sub> - RSet <sub>p</sub> ) / RMarket <sub>p</sub> |
|--------------------------------|--|
|                                |  |
|                                |  |
|                                |  |
|                                |  |

---

## 8. Interim Survey

- (a) If a Service Quality Performance Incident occurs in respect of a Tenant Satisfaction Survey or a Tenant Survey, SGCH may undertake another survey during the following Operating Year in accordance with this section 8 (Interim Survey).
- (b) SGCH must conduct the Interim Survey in accordance with the following requirements in the Services Specification, as if the Interim Survey were a Tenant Satisfaction Survey or a Tenant Survey (as applicable):
- (i) sections 4.13(a)(ii), 4.13(a)(iii) and 4.13(b) (for the Quality Areas relating to 'Maintenance Services', 'Condition of Dwelling' and 'Tenancy Management Services'); and
  - (ii) sections 5.7(a)(i), 5.7(b)(ii), 5.7(c) and 5.7(d) (for the Quality Area relating to 'Tailored Support Coordination Services'),
- and report the results to the ServiceCo Representative by the third quarter of that Operating Year in accordance with section 6.3 of the Services Specification.
- (c) If, in respect of a Quality Area:
- (i) SGCH achieves a satisfaction % in the Interim Survey that is equal to or exceeds the relevant satisfaction threshold set out in Table 1; and
  - (ii) a Service Quality Performance Incident occurred in relation to that Quality Area in the preceding Tenant Satisfaction Survey or Tenant Survey (as applicable),
- then the Interim Survey is deemed to be successful (**Successful Interim Survey**).
- (d) If a Successful Interim Survey is conducted in accordance with this section 8, the Service Quality Performance Incidents in the initial Operating Year will be deemed to be zero for the purpose of determining whether a Major Default Service Failure has occurred.
- (e) A failure by SGCH to achieve a satisfaction threshold set out in Table 1 in an Interim Survey will not constitute a second Service Quality Performance Incident for the purposes of paragraph (a) of the definition of Major Default Service Failure.

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## 9. Removed Dwellings and adjustments

The parties acknowledge and agree that this Schedule is subject to:

- (a) clause 22.4 (*Removal of Dwellings*) of the Services Agreement in respect of any Removed Dwellings; and
- (b) section 4.7(f) and 4.7(g) of the Services Specification in respect of any Appropriate Applicants.

**Confidential**

Annexure A

Table 3: Services Payments

|                        |  | CPI-Indexed Non-Reviewable Services Payment per Dwelling |
|------------------------|--|--|
|                        |  |  |
| Responsive maintenance |  |  |
| <b>Total</b>           |  |  |

|  |                        | WPI-Indexed Non-Reviewable Services Payment per Dwelling |
|--|------------------------|--|
|  | (\$ / dwelling / year) | (\$ / dwelling / month)                                  |
| Responsive maintenance                       |                        |  |
| Property management fees and rental expenses |                        |  |
| Employee expenses (incl. employee benefits)  |                        |  |
| Salaries and wages                           |                        |  |
| <b>Total</b>                                 |                        |  |

|                                |                        | WPI-Indexed Reviewable Services Payment per Dwelling |
|--------------------------------|------------------------|--|
|                                | (\$ / dwelling / year) | (\$ / dwelling / month)                              |
| Tailored Support Coordination  |                        |  |
| Performance and Data reporting |                        |  |
| <b>Total</b>                   |                        |  |



**Confidential**

## Schedule 4 – Indexes Schedule

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### 1. Submission and review

#### 1.1 Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

**Consumer Price Index or CPI** means the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) (ABS Cat No. 6401.0 Series ID A2325846C) published quarterly by the Australian Bureau of Statistics or, if section 1.3 applies, the index determined in accordance with that section.

**CPI Multiplier Annual** at any time means:

- (a) at the end of the relevant Quarter, the most recently published CPI for a Quarter ending 30 September; divided by
- (b) the published CPI for the Quarter ended 30 September 2016.

**Wage Price Index or WPI** means the Wage Price Index (NSW, All Industries, Private) (ABS Cat No. 6345.0 Series ID A2599049K) published quarterly by the Australian Bureau of Statistics or, if section 1.3 applies, the index determined in accordance with that section.

**WPI Multiplier Annual** at any time means:

- (a) at the end of the relevant Quarter, the most recently published WPI for a Quarter ending 30 September; divided by
- (b) the published WPI for the Quarter ended 30 September 2016.

#### 1.2 Indexation

- (a) All amounts to be “Indexed” under this Agreement are indexed by multiplying the relevant number by:
  - (i) in respect of amounts in the Payment Schedule specified as WPI-Indexed, the WPI multiplier; and
  - (ii) in respect of any other amounts, the CPI multiplier.
- (b) For the purpose of section 1.2(a):
  - (i) the relevant CPI multiplier will be the CPI Multiplier Annual; and
  - (ii) the relevant WPI multiplier will be the WPI Multiplier Annual.

### 1.3 Changes to indexes

The following rules apply to all terms identified in section 1.2 as being referable to an index published by the Australian Bureau of Statistics:

- (a) if there is a change in the coverage of the index from that applying at the date of this Agreement and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and there is a change in its:
  - (i) coverage and it is not linked to another index; or
  - (ii) periodicity,the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine:
  - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
  - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined terms used in this Agreement,and that determination is final and binding on the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this Agreement and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Agreement, in terms of the new reference base. Where possible, the conversion factor should be applied to item (b) in the definitions in section 1.1 so that going forward both items (a) and (b) are expressed in the terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this Agreement and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined terms used in this Agreement, and that calculation is final and binding on the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
  - (i) a replacement of that index; and
  - (ii) linked to the index,the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined terms used in this Agreement, and that calculation is final and binding on the parties;
- (g) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index in place of the index, the parties must request the

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President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binding on the parties; and

- (h) if a Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined by an independent expert in accordance with clause 37 (*Expert Determination*) of this Agreement.

## Schedule 5 – Change Compensation Principles

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### 1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

**Agreed Margin** means the Service Delivery Margin and the SGCH Margin.

**Base Costs** means the Service Delivery Costs and SGCH Costs in each case that are directly attributable to the relevant Change Compensation Event, but excluding all Agreed Margin.

**Change Compensation Event** means each event described in Table 1 in section 2.1.

**Change Notice** means the notice referred to in section 8, including any updated Change Notice.

**Change Notice Event** has the meaning given in section 8.1(b).

**Change Notice Request** has the meaning given in section 8.2(a).

**Change Response** has the meaning given in section 9.1(a)(ii).

**Costs** means:

- (a) all actual direct capital costs, preliminaries, operation and maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred and in each case to the extent that they exceed the relevant amounts (if any) assumed in the then current Financial Model; or
- (b) in respect of any "Saving", all direct costs saved or which will be saved or ought reasonably to have been saved.

**Notification Period** means:

- (a) within the time specified in this Agreement; or
- (b) if no time is specified in this Agreement, within 16 Business Days,

or such longer period as is agreed to by ServiceCo having regard to the extent and the nature of the relevant event or circumstance and its effects and the information required to be included in the Change Notice.

**Margin** means an amount on account of:

- (a) off-site overheads and administrative, corporate and other like costs and profit; and
- (b) on-site overheads, including cost of project management services.

**Prolongation Costs** means actual additional net incremental Costs incurred, or which will be incurred, by ServiceCo or a Subcontractor that are directly attributable to a delay to the achievement of Service Readiness caused by a Compensable Extension Event (as defined in the Services Agreement) or a Modification or Change in Mandatory Requirements the subject of a Modification Order, but excluding all Base Costs, Agreed Margin, and any other Margin and Costs that are attributable to delay caused by any other Extension Event (as defined in the Services Agreement).

**Service Delivery Costs** means the net incremental Costs SGCH incurs in performing the Services that are directly attributable to implementing the recurrent elements of the relevant Change Compensation Event during the Service Delivery Phase, but excluding all Agreed Margin, Prolongation Costs and SGCH Costs.

**Service Delivery Margin** means the percentage that SGCH may charge in accordance with Table 3 in section 3.1 on its Service Delivery Costs , as Margin.

**SGCH Costs** means the net incremental Costs incurred by SGCH that are directly attributable to implementing the relevant Change Compensation Event, but excluding all Agreed Margin, Prolongation Costs, costs of project management services provided by SGCH, and Service Delivery Costs.

**SGCH Margin** means the percentage that SGCH may charge in accordance with Table 3 in section 3.1 , as Margin.

**Savings** means the amount of any Costs of SGCH or a Subcontractor, together with the relevant Agreed Margin and Margin avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event.

## 2. Change Compensation Events

### 2.1 Change Compensation Events

Table 1 sets out:

- (a) the Change Compensation Events for which either party may be entitled to compensation in accordance with this Schedule; and
- (b) the relevant sections of this Schedule that are to be used in calculating that compensation.

**Table 1 Change Compensation Events and entitlements**

| Change Compensation Event        | Clause  | Agreed Margin entitlement         | Relevant clauses or sections for calculating compensation                               |
|----------------------------------|---|-----------------------------------|---|
| Change in Mandatory Requirements | Clause 26.10<br>( <i>Change in Mandatory Requirements</i> ) | No Agreed Margins are applicable. | Section 3.1 (for cost in modifying the works, Relevant Infrastructure or the Services). |

| Change Compensation Event                                  | Clause                                       | Agreed Margin entitlement  | Relevant clauses or sections for calculating compensation  |
|--|--|--|--|
| Compensable Intervening Event                              | Clause 24.5 ( <i>Payment</i> )               | Agreed Margins are applicable.                                   | Section 3.1 (for works or services costs other than repair or rebuilding the Relevant Infrastructure).                   |
| Modification (excluding any Modification proposed by SGCH) | Clause 26 ( <i>Modifications</i> )           | Agreed Margins are applicable.                                   | Section 3.1 (for works or services costs or savings (as applicable)).  |
| SGCH initiated Modification sharing of Saving              | Clause 26.8(d) ( <i>Sharing of Savings</i> ) | Agreed Margins are applicable when calculating share of Savings. | Section 3.1 (for works or services costs or savings (as applicable)).<br>Section 3.3 (for determining share of Savings). |

### 3. Methodology for calculating compensation

#### 3.1 Compensation for Change Compensation Events

Subject to the specific requirements and restrictions otherwise set out in this Agreement, the entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

$$P = C - D - I$$

where:

- P = the amount payable to SGCH, where this is a positive amount, or the amount payable to ServiceCo, where this is a negative amount;
- 
- C = the amount of any Base Costs plus applicable Agreed Margin payable to SGCH in accordance with this Schedule;
- 
- D = the amount of any Savings including (in order to increase the amounts of the Savings) the applicable Agreed Margins on the Costs saved; and
- 
- I = proceeds from any Insurance policies which respond to the Change Compensation Event or any other insurance proceeds or compensation received by, or that would have been received by, SGCH or any of its Associates in respect of the relevant Change Compensation Event but for any failure by SGCH

or any of its Associates to effect and maintain any Insurance in accordance with clause 30 (*Insurance*) of this Agreement and the Insurance Schedule, or to make or pursue a claim under any Insurance or to comply with any Service Package Documents or Insurance policy.

---

**Table 2      Not used**

- (a) (**Recurrent works or services**): To the extent that Change Compensation Events involve recurrent works or services, the amount of item "C" in the formula in section 3.1 will be calculated as follows:

$$C = A + B$$

where:

C = the amount of any Base Costs plus applicable Agreed Margin payable;

---

A = the Service Delivery Costs;

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B = the applicable Service Delivery Margin multiplied by "A";

---

**Table 3      Agreed Margins for recurrent works or services**

| Component | Agreed Margin |
|-----------|---------------|
|-----------|---------------|

---

|                         |  |
|-------------------------|--|
| Service Delivery Margin |  |
|-------------------------|--|

---

1. *The above dollar thresholds are as at Commercial Close and will be Indexed thereafter.*
- 

**3.2      Not used**

**3.3      Savings**

For the purposes of section 3.1, the amount of any Saving payable to ServiceCo in respect of clause 26.8(d) (*Sharing of Savings*) of this Agreement will be as agreed between the parties at the time, or if the parties are unable to agree within 16 Business Days of SGCH



issuing the relevant Modification Proposal pursuant to clause 26.8(d) (*Sharing of Savings*) of this Agreement, the amount of Savings payable to ServiceCo will be [REDACTED]

### 3.4 Change in Mandatory Requirements

To the extent that:

- (a) a Change in Mandatory Requirements occurs for which SGCH is entitled to relief in accordance with this Agreement; and
- (b) the Change in Mandatory Requirements affects a Reviewable Service,

(**Changed Reviewable Service**) then, the amount payable to SGCH pursuant to section 3.1 in respect of the Changed Reviewable Service will be those Base Costs and Margin incurred, or to be incurred, until the commencement of the next Reviewable Services Term.

---

## 4. Tender process during Service Delivery Phase

- (a) ServiceCo may require SGCH to carry out a tender process in respect of a Change Compensation Event in accordance with this section 4 if, during the Service Delivery Phase ServiceCo notifies SGCH that it does not accept or rejects a Change Notice issued by SGCH and that it requires SGCH to carry out a tender process in respect of the relevant Change Compensation Event.
- (b) If a tender process is required to be carried out in accordance with section 4(a):
  - (i) (**tender process**): SGCH must obtain a minimum of three separate quotes from experienced, independent and capable contractors reasonably acceptable to ServiceCo to carry out any work or services in respect of the Change Compensation Event;
  - (ii) (**tender process material**): SGCH must permit ServiceCo to review all materials that are issued and submitted in the tender process and provide any other information that ServiceCo reasonably requires including such written consents as are required (including by Law) to carry out any Probity Investigations;
  - (iii) (**selection criteria**): SGCH must ensure, and if requested by ServiceCo, demonstrate to the reasonable satisfaction of ServiceCo, that the Subcontractor it intends to select and engage is the best choice having regard to the:
    - A. price quoted;
    - B. experience and capability of that Subcontractor; and
    - C. ability of the Subcontractor to carry out the work or the services in the manner required by this Agreement;
  - (iv) (**subcontracting requirements**): the Subcontractor must meet the requirements in respect of Subcontractors set out in this Agreement; and
  - (v) (**ServiceCo not satisfied**): if, following the conduct of the tender process, ServiceCo is not reasonably satisfied with the tenders, it may:
    - A. direct SGCH not to accept any tender offer;

- B. except where expressly stated otherwise in this Agreement, direct SGCH not to proceed with the relevant Change Compensation Event; or
- C. instruct SGCH to proceed with the work or the services, but on another basis under this Schedule.

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## 5. General principles for calculating compensation

The extent (if any) to which compensation will be payable by ServiceCo, for a Change Compensation Event, will be determined as follows (but without affecting any express limitations on or exclusions from the calculation of such compensation as set out in this Agreement):

- (a) **(overriding considerations):** the overriding considerations will be that:
  - (i) ServiceCo is receiving value for money; and
  - (ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent and reflects commercial arm's length arrangements;
- (b) **(incremental costs):** changes in Base Costs are to be determined on an incremental basis where:
  - (i) in the case of an increase in Base Costs, only costs that would not be incurred but for the Change Compensation Event are to be taken into account;
  - (ii) in the case of a reduction in Base Costs, only savings that would not have accrued but for the Change Compensation Event are to be taken into account; and
  - (iii) Base Costs will be calculated net of any insurance proceeds, damages or compensation which SGCH receives or are entitled to receive as a result of the Change Compensation Event;
- (c) **(mitigation):** calculation of Costs will:
  - (i) exclude any incremental Costs which would not have been incurred; and
  - (ii) include any Savings which would have been derived,

to the extent SGCH and its Associates fail to use all reasonable endeavours to mitigate the effects of any Change Compensation Event (including by putting in place temporary measures reasonably acceptable to the ServiceCo Representative);
- (d) **(time value of money):**
  - (i) appropriate regard must be given to the time value of money and timing of cash flows by discounting or inflating them to reflect when they occur (if applicable);
- (e) **(Open Book Basis):**
  - (i) SGCH must and must procure that its Associates:

- A. provide all information referred to in this Schedule on an Open Book Basis (as defined below);
  - B. make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
  - C. allow ServiceCo to review and undertake audits,
- in order to enable ServiceCo to verify compliance with this Agreement and make an accurate assessment of Costs and Savings; and
- (ii) Open Book Basis will include SGCH providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other Costs and Margins of SGCH and its Associates in a clear and transparent manner and other information reasonably requested by ServiceCo including reasonably available source documents required to verify such calculation;
- (f) **(no double counting)**: no amounts will be double counted and no costs will be payable more than once; and
  - (g) **(Margins)**: except where SGCH is expressly entitled to be paid an Agreed Margin, ServiceCo will not pay or otherwise compensate SGCH for any Margin (or loss of Margin) in respect of a Change Compensation Event.

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## 6. Form and timing of compensation

- (a) **(Change Compensation Event)**: If a Change Compensation Event:
  - (i) results in an amount owing from SGCH to ServiceCo, ServiceCo will deduct such amount from the Services MSPs payable to SGCH after the relevant Change Compensation Event, or if there are insufficient subsequent Services MSPs payable to SGCH to cover the amount of the Change Compensation Event;
  - (ii) results in an amount owing from ServiceCo to SGCH that is not financed by SGCH in accordance with section [REDACTED] ServiceCo will pay such amount to SGCH, subject to paragraph 6(a)(iii), in accordance with the payment arrangements set out in the approved Change Notice which could include a lump sum payment, monthly in arrears, a series of milestone payments or an adjustment to the Services MSP (or a combination of these methods); or
  - (iii) results in an amount owing from ServiceCo to SGCH that is financed by SGCH in accordance with section [REDACTED] ServiceCo will pay such amount to SGCH by way of an increase in the Services MSP.

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## 7. Annual review of ongoing compensation

- (a) **(Annual review)**: If compensation for a Change Compensation Event has been made by an increase in the Services MSP, the amount of the compensation (other than SGCH's costs of financing the Change Compensation Event) will be subject to annual review at the end of each Operating Year in accordance with this section 7 to reflect actual Base Costs incurred for the relevant Change Compensation Event for that Operating Year.

- (b) **(Adjustment to Services MSP):** To the extent that the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differs from the then existing compensation made through the Services MSP, the Services MSP will be adjusted accordingly over the balance of the Term.
- (c) **(Time of review):** Within one month prior to the end of each Operating Year, SGCH must undertake and provide to ServiceCo a review of the amount of ongoing net Costs or net Savings arising as a consequence of the Change Compensation Event incurred, paid or accrued for which compensation has been made through the Services MSP over the Term.
- (d) **(ServiceCo review and Disputes):** ServiceCo must, within 24 Business Days of receipt of a review undertaken in accordance with section 7(c), notify SGCH of any matter within that review with which ServiceCo does not agree, and any Dispute on the extent of any adjustment of compensation may be referred by either party for resolution in accordance with clause 34 (*Dispute resolution procedure*) of this Agreement.

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## 8. Change Notice

### 8.1 Change Notice and ServiceCo response

- (a) Each Change Notice must be prepared in accordance with and comply with this Schedule.
- (b) If:
  - (i) an event or circumstance is expressed in this Agreement to be a Change Compensation Event;
  - (ii) SGCH is entitled or required to submit a Change Notice to ServiceCo in accordance with this Agreement in respect of an event or circumstance; or
  - (iii) an amount is to be calculated in accordance with this Schedule,
 (each a **Change Notice Event**),  
 then, as a condition precedent to making a Claim in respect of such an event or circumstance, SGCH must prepare and submit to the ServiceCo Representative, a Change Notice which complies with section 10 within the initial Notification Period.
- (c) Where the Change Notice Event continues beyond the issue of the initial Change Notice, SGCH must prepare and submit to ServiceCo an updated Change Notice within each further Notification Period following the initial Change Notice to the extent expressly set out in this Agreement.

### 8.2 ServiceCo may request a Change Notice

- (a) Where:
  - (i) ServiceCo believes that a Change Compensation Event or any other event or circumstance for which SGCH is entitled or required to submit a Change Notice has occurred; and
  - (ii) SGCH has not submitted a Change Notice,

ServiceCo may in a notice entitled "Change Notice Request", request that SGCH prepare and submit a Change Notice in respect of the particular event (a **Change Notice Request**).

- (b) SGCH must prepare and submit a Change Notice within the Notification Period following receipt of the Change Notice Request.

### **8.3 Instruction to proceed**

- (a) If ServiceCo issues a Modification Order under clause 26.7(a) (*Instruction to proceed*) of this Agreement:
  - (i) ServiceCo will:
    - A. determine (acting reasonably) all matters required to enable the Modification to be implemented including:
      - 1) the cost effect of the Modification;
      - 2) any relief which is required from SGCH's obligations under this Agreement; and
    - B. assume that funding for the Modification will be provided by ServiceCo unless the parties otherwise agree; and
  - (ii) SGCH must proceed with the Modification in accordance with the Modification Order.
- (b) Any Dispute in relation to a Modification Order issued by ServiceCo under clause 26.7(a) (*Instruction to proceed*) of this Agreement may be referred by SGCH to expert determination in accordance with clause 37 (*Expert determination*) of this Agreement.

---

## **9. Change Response**

### **9.1 ServiceCo to issue a Change Response**

- (a) Unless otherwise expressly stated in this Agreement, within 24 Business Days after receipt of a Change Notice (or such longer period as ServiceCo, or any other person to whom the Change Notice is required to be given under this Agreement, reasonably requires having regard to the nature of the Change Notice Event, the information required to be included in the Change Response, the content and quality of the Change Notice and whether ServiceCo requires an expert to verify an amount calculated by SGCH in the Change Notice), ServiceCo:
  - (i) may request from SGCH any further information that ServiceCo reasonably requires in order to assess the Change Notice in accordance with this Schedule, in which case ServiceCo will not be required to issue a Change Response until 24 Business Days after receipt from SGCH of all such further information reasonably requested;
  - (ii) must advise SGCH, in a notice entitled "Change Response", that ServiceCo:
    - A. accepts the Change Notice (and in the case of a Modification the subject of a Modification Proposal submitted under clauses 23.3 (*Change Notice*), 26.8

(*Modifications proposed by SGCH*) or 26.9 (*Directions*) of this Agreement, the Change Response must be entitled "Modification Order", in which case SGCH will, subject to SGCH complying with the other requirements of this Agreement (including this Schedule), be entitled to:

- 1) compensation (if any) to the extent provided under and in accordance with section 5;
- 2) relief (if any); and
- 3) an extension of time (if any) to the extent provided in accordance with clauses 24 (*Service Delivery Phase – Intervening Events*), or 26.10 (*Change in Mandatory Requirements*) (as applicable) of this Agreement,

on the terms set out in the relevant Change Notice;

- B. does not accept or rejects the Change Notice or a part of the Change Notice (and the reasons for this) and advise its determination of SGCH's entitlement to any extension of time, relief and/or compensation in accordance with this Schedule; or
- C. in the case of a Change Notice in response to a Modification Request, does not wish to proceed with the proposed Modification and confirms that the Modification Request is withdrawn,

(each a **Change Response**).

- (b) A Change Response provided by ServiceCo has the effect of varying this Agreement to the extent the Change Notice is accepted in the relevant Change Response, with effect from the date of receipt by SGCH of that Change Response, or such other date specified in that Change Response.
- (c) Whether or not SGCH has issued a Change Notice in respect of a Change Notice Event, ServiceCo may at any time in its absolute discretion, issue a Change Response in accordance with this Schedule in respect of a Change Notice Event.
- (d) Nothing in this Agreement requires ServiceCo to review a Change Notice in accordance with the Review Procedures.
- (e) ServiceCo (including within any time period specified in this Agreement) will entitle SGCH to the relief and/or compensation set out in the Change Notice or put any time at large or, deprive ServiceCo to grant the relief and/or compensation sought or such other relief as appropriate (including the power to extend time).

## 9.2 ServiceCo's options

Where ServiceCo does not accept the Change Notice, or a part of it, ServiceCo may:

- (a) require SGCH to:
- (i) have any amount that is not an Agreed Margin determined by expert determination in accordance with clause 37 (*Expert determination*) of this Agreement; or

- (ii) conduct a tender process for any part of the work the subject of the Change Compensation Event that will not be carried out by SGCH in accordance with section 4;
- (b) amend any aspect of the Change Notice in the Change Response to reflect SGCH's actual entitlement; or
- (c) reject the Change Notice on the basis that the event which is the subject of the Change Notice is not an event for which SGCH is entitled to submit a Change Notice under the Service Package Documents.

### **9.3 SGCH's options where the Change Notice is not accepted or is rejected**

If ServiceCo does not accept or rejects a Change Notice or a part of it:

- (a) SGCH must proceed with the Service Package Activities in accordance with this Agreement and the Change Response; and
- (b) SGCH must as a condition precedent to pursuing its Claim in respect of the Change Compensation Event (or the relevant part of it, as applicable) refer any Dispute in relation to all or any part of the Change Response to expert determination in accordance with clause 37 (*Expert determination*) of this Agreement within 16 Business Days (or such other period as agreed with ServiceCo) after SGCH's receipt of the Change Response.

### **9.4 Dispute resolution**

- (a) If ServiceCo does not accept or rejects an amount as calculated by SGCH in any Change Notice (such amount not being a fixed or specified amount under this Schedule), ServiceCo may have the amounts verified by an expert appointed in accordance with clause 37 (*Expert determination*) of this Agreement, in which case:
  - (i) the Base Costs calculated in item "C" in the formula in section 3.1 will be the lower of:
    - A. the amount claimed by SGCH in accordance with this Schedule; and
    - B. the amount verified by the expert; and
  - (ii) the Savings calculated in item "D" in the formula in section 3.1 will be the higher of:
    - A. the amount claimed by SGCH in accordance with this Schedule; and
    - B. the amount verified by the expert,

and ServiceCo will update any Change Response provided under section 9.1 promptly following the expert's verification.

---

## **10. Contents of Change Notice**

### **10.1 General**

Each Change Notice must:

- (a) contain:
  - (i) the information required by this Schedule; and
  - (ii) any additional information required under this Agreement in respect of a particular Change Notice Event or required by ServiceCo;
- (b) be signed by the SGCH Representative;
- (c) attach copies of any required changes to the Service Delivery Phase Plans;
- (d) set out detailed particulars of the nature, occurrence and impact of the relevant Change Notice Event;
- (e) comply with sections 10.2 to 10.4;
- (f) if the Change Compensation Event occurs prior to the Date of Service Readiness and results in an amount owing from SGCH to ServiceCo, details of the form and timing of compensation SGCH proposes, including by:
  - (i) a debt due and payable by SGCH to ServiceCo; or
  - (ii) by a reduced or resculpted Services MSP profile, with such reduction or resculpting being at least equivalent in value to the corresponding amount if the form and timing of the relevant compensation was a debt due and payable by SGCH to ServiceCo; and
- (g) in respect of a Relief Event, describe the reduction in SGCH's liability to indemnify or release ServiceCo and its Associates in accordance with this Agreement.

## **10.2 Mitigating factors**

In each Change Notice, SGCH must describe the actions SGCH and its Associates have taken (and any further action SGCH proposes to take in the future) to:

- (a) mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change Notice Event (including by putting in place temporary measures reasonably required by ServiceCo); and
- (b) take advantage of any positive or beneficial effects of the Change Notice Event and maximise any reduction in Costs arising from the Change Notice Event.

## **10.3 Effects**

In each Change Notice, SGCH must provide details, where applicable, and to the extent known or able to be predicted, of:

- (a) the effects of the Change Notice Event on:
  - (i) the workmanship, quality, appearance or durability of any part of the Relevant Infrastructure;
  - (ii) the delivery of the Relevant Infrastructure;
  - (iii) the management and maintenance of the Relevant Infrastructure;



- (iv) the carrying out of the Service Package Activities and SGCH's ability to carry out the Services in accordance with the Services Requirements;
  - (v) the Relevant Infrastructure being Fit for Purpose;
  - (vi) the warranties given by SGCH in this Agreement;
  - (vii) any other relevant part of this Agreement (including Schedules and Annexures) or any other ServiceCo Service Package Document, including any amendments required; and
  - (viii) any existing Approvals or the requirement for any new Approvals;
- (b) any damage caused by the Change Notice Event;
  - (c) the time consequences of a Change Notice Event, including:
    - (i) an estimate of the time (if any) during which SGCH will be prevented from carrying out or delayed in carrying out the Service Package Activities due to the Change Notice Event; and
    - (ii) in the case of a Change Notice Event which is a Modification, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Date for Service Readiness)
  - (d) where SGCH claims as a consequence of a Change Notice Event relief from any other of its other obligations under this Agreement, the basis on which that SGCH has formed the opinion that such relief is required together with all necessary supporting evidence; and
  - (e) the cost consequences of, and the compensation claimed in respect of, the Change Notice Event, together with any information reasonably required by ServiceCo to demonstrate that SGCH has satisfied the conditions relevant to its compensation claim as referred to in clause 24.2(b) (*Conditions precedent to relief*) of this Agreement
  - (f) the material effect (if any) which a Modification proposed by FACS under the Services Agreement has on the residual value of a Dwelling, capped at the reasonable cost of rectifying the Modification at the end of the Term.

#### **10.4 Warranty by SGCH**

All Change Notices must:

- (a) where the Change Notice is in respect of a Modification the subject of a Modification Order, contain a warranty by SGCH in respect of the Change Compensation Event that:
  - (i) the relevant Change Notice has been prepared so as to avoid or minimise any adverse safety impacts of the Change Compensation Event on people;
  - (ii) the Modification when implemented will:
    - A. enable the Relevant Infrastructure to deliver the Services in accordance with the Services Specification and otherwise meet the requirements of this Agreement,

except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

B. enable SGCH at all times during the Service Delivery Phase to carry out the Service Package Activities in accordance with the Services Requirements and to comply with the terms of this Agreement, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

(iii) in each case, without limiting the warranties given by SGCH in other clauses of this Agreement, except to the extent that it is agreed between the parties or determined in accordance with this Agreement that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

(b) contain a warranty by SGCH that it is satisfied that the Claim the subject of the Change Notice is bona fide, true and correct to the best of its knowledge and the relief sought is an accurate reflection of SGCH's entitlement under this Agreement to the extent it is able to be known at the time.

## Schedule 6 – Termination Payments

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### 1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

**Actual Proceeds** has the meaning given to it in section 3.3(b).

**Additional Amount** has the meaning given to it in section 3.3(a).

**Government Debt Rate** means the NSW Treasury Corporation (TCorp) long term 90 day reversion rate.

**Provisional Proceeds** has the meaning given to it in section 3.3(a).

**SGCH Additional Amount** has the meaning given to it in section 3.3(c)(i).

**Termination Date** means in respect of each stage that is terminated, the date of termination of that stage in accordance with clause 32 (*Termination*) of this Agreement.

---

### 2. Interpretation

To the extent a termination occurs in respect of some but not all Stages, the provisions of this Schedule will be construed to apply for only those Stages which have been terminated.

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### 3. Payment of Termination Payment

#### 3.1 Timing of payment

If this Agreement is terminated under clause 32 (*Termination*) of this Agreement, the party obliged to pay the Termination Payment under clause 32.6 of this Services Agreement must pay the Termination Payment as a lump sum on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 32.4 (*Termination for Default Termination Event*) of this Agreement).

#### 3.2 Payment of interest

In respect of Termination Payments calculated under this Schedule only, interest shall accrue on any unpaid element of the Termination Payment:

- (a) in respect of a Termination Payment calculated under section 4, from the 31st day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest shall accrue on that Termination Payment at the Overdue Rate. Interest is payable on the date on which the Termination Payment is paid; and
- (b) in respect of any Termination Payment calculated under section [REDACTED] from and including the Termination Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Termination Payment shall accrue at the Government Debt Rate from and including the day after the Termination Date to and including the 90th day after the Termination Date and thereafter on the whole of that Termination Payment

at the Overdue Rate. Interest is payable on the date on which the Termination Payment is paid.

### 3.3 Treatment of insurance proceeds

- (a) Notwithstanding any term of this Agreement, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by SGCH, then receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment and instead the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that SGCH is reasonably likely to recover assuming that SGCH has complied with its insurance obligations under clause 30 (*Insurance*) of this Agreement and the Insurance Schedule (**Provisional Proceeds**) taking into account all information that is then available to the parties.
- (b) If, following the calculation of the Termination Payment, the insurance proceeds that SGCH actually recovers (**Actual Proceeds**) are less than the Provisional Proceeds, ServiceCo shall, immediately on notification of the Actual Proceeds by SGCH, pay to SGCH an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). For the avoidance of doubt, ServiceCo will not be required to pay any interest on this Additional Amount.
- (c) If, following the calculation of the Termination Payment, the Actual Proceeds are more than the Provisional Proceeds, ServiceCo may, in its sole discretion:
  - (i) direct SGCH to immediately on receipt of the Actual Proceeds, pay to ServiceCo an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**SGCH Additional Amount**); or
  - (ii) if ServiceCo has not paid the Termination Payment in full at that time, reduce the outstanding Termination Payment by the SGCH Additional Amount,and SGCH will not be required to pay any interest on any SGCH Additional Amount.
- (d) References to insurance proceeds in sections 3.3(b) to 3.3(c) (inclusive) are to insurance proceeds that SGCH is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations under this Agreement.

### 3.4 General obligations

- (a) Each Party must use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.
- (b) Any Termination Payment payable by or to SGCH must be calculated in accordance with this Schedule without any double counting.

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## 4. Termination for Default Termination Event

### 4.1 Termination for Default Termination Event

Subject to clause 29.11, if this Agreement is terminated pursuant to clause 32.4 (*Termination for Default Termination Event*) of this Agreement, the Termination Payment shall be calculated as follows:

**Termination Payment** or **TP** means any liability that the defaulting party has to the non-defaulting party at law as a result of the termination of this Agreement.

- (a) If the Termination Payment is a positive number, SGCH shall pay that amount to ServiceCo.
- (b) If the Termination Payment is a negative number, ServiceCo shall pay that amount to SGCH.

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## 5. Termination if the Services Agreement is Terminated

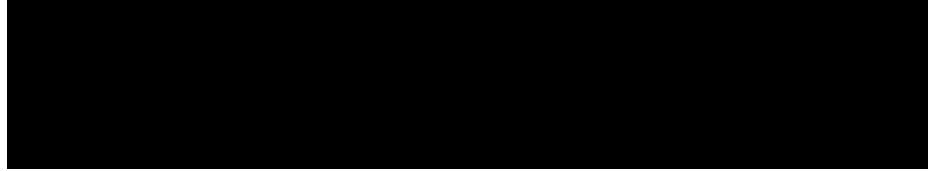
If this Agreement is terminated pursuant to clause 32.2 (*Termination if the Services Agreement is Terminated*) of this Agreement, the Termination Payment shall be calculated as follows:

**Termination Payment** or **TP** means:

TP = A + B + C where:

A = an amount equal to the reasonable SGCH costs incurred in assisting ServiceCo to assist FACS under the Services Agreement decant existing Tenants (if requested);

B = an amount equal to the reasonable costs incurred by SGCH as a result of such termination up to a maximum of the lesser of:



C = any amounts owing by ServiceCo to SGCH under the ServiceCo Service Package Documents for Services performed by SGCH prior to the Termination Date.

**Confidential**

**Schedule 7 – Not used**

**Confidential**

**Schedule 8 – Not used**

## Schedule 9 – Review Procedures

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### 1. Submission and review

#### 1.1 Submission

- (a) SGCH must submit all Service Delivery Phase Plans and all documents, data or other information for review in accordance with the Review Procedures where this is required in accordance with the ServiceCo Service Package Documents (**Submitted Documents**).
- (b) The Submitted Documents must be submitted to ServiceCo or the ServiceCo Representative (as applicable) for review or approval in accordance with this Schedule.
- (c) With each Submitted Document, SGCH must provide:
  - (i) details of the Submitted Document, its nature and the relevant clause or Schedule of the ServiceCo Service Package Document in accordance with which it is submitted for review; and
  - (ii) any other information required in accordance with the ServiceCo Service Package Document or otherwise reasonably required by ServiceCo for the review of the Submitted Document in accordance with this Schedule.

#### 1.2 Review

- (a) ServiceCo must review each Submitted Document submitted in accordance with section 1.1 and provide any "comments" or "conditions" in writing to SGCH in accordance with this Schedule within the Review Period.
- (b) **Review Period** means 22 Business Days.
- (c) Subject to section 1.2(a), ServiceCo and SGCH must meet on the next Business Day after the expiry of the relevant Review Period to discuss and confer on ServiceCo's "comments" or "conditions" in response to a Submitted Document.

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### 2. Further information

SGCH must as soon as possible upon request by ServiceCo:

- (a) submit any further information, data or documents;
- (b) make available appropriately qualified personnel; and
- (c) provide access to SGCH's books, records and systems,

that ServiceCo reasonably requires in order to review the Submitted Document and respond in accordance with this Schedule.



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### **3. Document management**

#### **3.1 Copies of Submitted Documents**

- (a) Unless otherwise stated in the ServiceCo Service Package Documents, SGCH must provide:
  - (i) one electronic version in PDF format; and
  - (ii) if requested by ServiceCo, one electronic version in original format (in accordance with section 3.1(a)),of each Submitted Document to ServiceCo for review in accordance with this Schedule.
- (b) An electronic copy of a Submitted Document must be an electronic copy of that document in the format of the software in which the document was originally created which has been configured to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as could the original creator of that document.

#### **3.2 Register of Submitted Documents**

SGCH must maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:

- (a) each Submitted Document to which it receives a response or comment from ServiceCo, including a copy of that response or comment; and
- (b) each Submitted Document to which it receives no response or comment or in respect of which it is deemed not to have received any response or comment in accordance with sections 5.1 or 5.2.

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### **4. Review in stages**

- (a) If Submitted Documents are to be reviewed in stages, each stage must be submitted for review and the review completed in accordance with this Schedule before any subsequent stage may be submitted for review.
- (b) If, for any reason, any stage is reviewed out of sequence as a consequence of any SGCH Act or Omission, ServiceCo will be entitled to further review or complete a new review of those stages of the Submitted Documents that have already been reviewed in accordance with this Schedule.

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### **5. Comments on Submitted Document**

#### **5.1 Response to Submitted Document**

- (a) ServiceCo may:
  - (i) provide "comments" or "no comments" in respect of a Submitted Document; or
  - (ii) provide "conditions" in respect of a Submitted Document.
- (b) If ServiceCo provides "no comments" in respect of a Submitted Document or is deemed to provide no comments in respect of a Submitted Document in accordance with section 5.2, SGCH can proceed in accordance with the Submitted Document.

- (c) Subject to section 1.2(c), if ServiceCo provides "comments" in respect of the Submitted Document in accordance with section 7, SGCH may not proceed with the Submitted Document unless it has addressed the "comments" in accordance with this section 5.
- (d) Subject to section 1.2(c), if ServiceCo provides "conditions" in respect of the Submitted Document in accordance with section 7, SGCH may proceed on the basis of the Submitted Document but must also address the conditions provided in respect of the Submitted Document accordingly.

## **5.2 No comments on Submitted Document**

- (a) If ServiceCo has no comments on a Submitted Document, ServiceCo may respond with a statement, "no comment".
- (b) If ServiceCo fails to respond to any Submitted Document within the Review Period in accordance with this Schedule, then ServiceCo will be deemed to have returned the Submitted Document to SGCH with "no comment".

## **5.3 Comments on Submitted Document**

- (a) If ServiceCo has comments on a Submitted Document it must indicate that its response is in the form of "comments".
- (b) Subject to section 8, if ServiceCo "comments" on a Submitted Document in accordance with section 7, SGCH must, subject to section 1.2(c):
  - (i) amend the Submitted Document in accordance with the comments of ServiceCo to the extent necessary to ensure that:
    - A. the Submitted Document meets the requirements of the ServiceCo Service Package Document; and
    - B. the issues identified in accordance with section 7 are addressed; and
  - (ii) resubmit the revised Submitted Document to ServiceCo, and subject to section 5.3(c), the provisions of sections 1 to 5 will reapply to the amended Submitted Document until such time as the Submitted Document is returned to SGCH without any comment or is deemed to have been returned with "no comment" or ServiceCo only provides conditions in respect of the Submitted Document.
- (c) Where the Submitted Document is a remedy program, referred to in clause 31.3 (*SGCH to provide remedy program and comply with Major Default Notice*) of this Agreement, ServiceCo may in reviewing the remedy program, determine that it does not satisfactorily address the requirements set out in clause 31.3 (*SGCH to provide remedy program and comply with Major Default Notice*) of this Agreement or its concerns, in which case this will constitute a Major Default.

## **5.4 Submitted Document with conditions**

- (a) If ServiceCo considers that SGCH may proceed to undertake the Service Package Activities in accordance with the Submitted Document but that certain conditions must be satisfied, ServiceCo must indicate that its response to the Submitted Document is in the form of "conditions".
- (b) If ServiceCo specifies that certain "conditions" must be satisfied in respect of the Submitted Document in accordance with section 7, SGCH may, subject to section 1.2(c), proceed with the Service Package Activities in accordance with

the Submitted Document but must otherwise satisfy the conditions within the time specified by ServiceCo (acting reasonably) or if no time is specified, promptly.

## **5.5 Substantiate comments or conditions**

If ServiceCo provides SGCH with comments or conditions in connection with the Submitted Document in accordance with section 7, ServiceCo must provide sufficient detail to SGCH to substantiate those comments or conditions.

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## **6. Right to proceed**

- (a) SGCH may not proceed with those Service Package Activities relevant to a Submitted Document unless:
  - (i) the Submitted Document is returned with "no comments" or is deemed to be returned with "no comment"; or
  - (ii) the Submitted Document includes "conditions" and is not the subject of comments and those conditions state that SGCH may proceed with the Submitted Document.
- (b) If SGCH is entitled to proceed with a Submitted Document, SGCH must deliver the Service Package in accordance with the Submitted Document and any conditions in respect of the Submitted Document, unless it is necessary to depart from the Submitted Document to comply with a ServiceCo Service Package Document, in which case SGCH must update the Submitted Document accordingly and the provisions of sections 1 to 5 shall apply to such re-submission.

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## **7. Grounds on which ServiceCo may comment on or provide conditions to a Submitted Document**

### **7.1 General**

ServiceCo may provide comments on, or conditions to, a Submitted Document if:

- (a) the Submitted Document:
  - (i) is incomplete, inaccurate, of poor quality, ambiguous, unclear or otherwise is not in a condition to allow FACS or ServiceCo, in its reasonable opinion, to adequately review it;
  - (ii) does not comply with the relevant Laws or Approvals; or
  - (iii) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the FACS Service Package Documents or the ServiceCo Service Package Documents; or
- (b) ServiceCo is of the view, acting reasonably, that implementing or proceeding on the basis of the Submitted Document would:
  - (i) adversely affect any of FACS' rights or ServiceCo's rights under a FACS Service Package Document, or ServiceCo's rights under a ServiceCo Service Package Document, FACS' or ServiceCo's ability to enforce any such rights, any of its statutory functions, or its ability to perform its obligations under a FACS Service Package Document or a ServiceCo Service Package Document (as the case may be);

- (ii) not enable ServiceCo to comply with its obligations under the FACS Service Package Documents or the ServiceCo Service Package Documents, or SGCH to comply with its obligations under the ServiceCo Service Package Documents; or
- (iii) likely result in an increase to FACS' Liabilities or ServiceCo's Liabilities under a FACS Service Package Document, or ServiceCo's Liabilities under a ServiceCo Service Package Document.

## 7.2 Not used

## 7.3 Remediation plan

If the Submitted Document is a remedy program under clause 31.3 (*SGCH to provide remedy program and comply with Major Default Notice*) of this Agreement, in addition to its rights under section 7.1 and section 5.3(c), ServiceCo may provide comments or reject a remedy program where it does not satisfy its concerns.

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## 8. Disputed amendments

- (a) If SGCH does not agree with any comments or conditions of ServiceCo in respect of a Submitted Document, SGCH and ServiceCo must meet to try to resolve the difference of opinion in good faith.
- (b) If, following good faith negotiations, SGCH still disputes that any amendments are required to the Submitted Document, either party may refer the matter to expert determination in accordance with clause 37 (*Expert determination*) of this Agreement.

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## 9. No limitation on obligations

- (a) ServiceCo does not owe any duty of care to SGCH to review at all, or in reviewing, commenting or failing to comment on, accepting, approving, endorsing, providing conditions for rejecting a Submitted Document, to detect defects, errors, omissions or non-compliances with the ServiceCo Service Package Documents, any Law or any Approval.
- (b) Notwithstanding this Schedule, where in this Agreement the words "review", "comment", "accept", "endorse", "approve", "consent", "condition" or "reject" (or other grammatical forms of those words) are used in relation to documents of any kind, including Submitted Documents, or where such words are used by ServiceCo, then those words, their use and the acts or omissions associated with them (including pursuant to this Schedule) do not in any way:
  - (i) relieve SGCH from, or alter, affect or reduce, the obligations and Liabilities of SGCH in accordance with the ServiceCo Service Package Documents or at Law;
  - (ii) constitute any representation that any Submitted Document complies with the ServiceCo Service Package Documents;
  - (iii) prejudice ServiceCo's rights against SGCH, whether under the ServiceCo Service Package Documents or otherwise at Law; or
  - (iv) affect the time for performance of ServiceCo's obligations in accordance with the ServiceCo Service Package Documents.
- (c) The review, acceptance, endorsement or approval of, comment or failure to comment on, provision of conditions or consent to, any Submitted Document

will not be evidence that any Services have been or will be undertaken or performed in accordance with the ServiceCo Service Package Documents.

- (d) SGCH agrees that:
  - (i) SGCH will not be entitled to make any Claim against ServiceCo, whether under the Agreement or at Law, for any Liabilities incurred by SGCH in connection with any review, comment or failure to comment on, provision of conditions to, or acceptance, approval, endorsement or rejection of, a Submitted Document; and
  - (ii) without limiting section 9(d)(i), SGCH will not be entitled to make any Claim against ServiceCo in connection with any delay in the review of a Submitted Document.

## Schedule 10 – Insurance

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### 1. General insurance requirements

SGCH must:

- (a) **(reputable insurers)**: effect all Insurances with an insurance company having the Required Rating;
- (b) **(premiums)**: punctually pay all premiums and other amounts payable in connection with the Insurances, and give ServiceCo copies of receipts for payment of premiums (or other evidence of such payment) if and when requested by ServiceCo;
- (c) **(no alteration)**: not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Agreement, without the prior approval of ServiceCo;
- (d) **(not prejudice)**: not do or permit, or omit to do, anything which prejudices any Insurance;
- (e) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any Insurance;
- (f) **(fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;
- (g) **(comply)**: comply at all times with the terms of each Insurance; and
- (h) **(do everything to enable FACS recovery)**: do everything reasonably required by FACS or any of its Associates or ServiceCo or any of its Associates to whom the benefit of any Insurance extends, to enable FACS or its Associates or ServiceCo or any of its Associates (as the case may be) to claim, and to collect or recover, money due under that Insurance.

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### 2. Notification and making of claims

SGCH must:

- (a) **(notification)**: promptly notify ServiceCo of any occurrence that may give rise to a material claim in connection with the Service Package under any Insurances, except where an insured's right of indemnity under the relevant Insurances would be prejudiced by giving such notice;
- (b) **(subsequent developments)**: keep ServiceCo informed of subsequent developments concerning the occurrence under section 2(a); and
- (c) **(pursue claims)**: diligently pursue any Claim which it has under any Insurance which has arisen in connection with the Service Package.

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### 3. Evidence of Insurances

Whenever reasonably requested by ServiceCo, SGCH must give ServiceCo evidence satisfactory to ServiceCo that the Insurances have been procured and continue to be maintained in accordance with this Agreement, to enable ServiceCo to satisfy itself that all of the insurance requirements of the Service Package under this Agreement are being complied with.

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### 4. Deductibles

SGCH must pay or bear all amounts by way of deductibles or excesses which apply to a Claim made under any Insurances.

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### 5. Application of Insurance proceeds

All proceeds of any Insurances (except business interruption policies) must be applied:

- (a) towards replacement or repair of the Relevant Infrastructure (including Dwellings) or the relevant Site, the subject of the Insurance under which a Claim has been made; or
- (b) to discharge a Liability or Claim, or make good the Liability the subject of the Insurance under which a Claim has been made.

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### 6. Not used

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### 7. Insurances during the Service Delivery Phase

SGCH must procure, or cause to be procured, and thereafter maintained, each of the Insurances with respect to any Site or Service Package which would be procured and maintained by SGCH during the Service Delivery Phase if SGCH was using Best Services Practices, including, at a minimum:

| Insurance                       | Sum insured        |
|---------------------------------|--------------------|
| Workers' compensation Insurance | As required by Law |

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### Schedule 11 – Commercially Sensitive Information

| Item | Clause reference      | Commercially Sensitive Information  |
|------|-----------------------|---|
| 1.   | This Agreement        | <ul style="list-style-type: none"><li>Any of the terms set out in Schedule 11 of the Services Agreement (except Item 13) or the nearest equivalent set out in this Agreement.</li></ul> |
| 2.   | Financier's Side Deed | <ul style="list-style-type: none"><li>All</li></ul>   |



**Confidential**

**Schedule 12 – Not used**

**Confidential**

**Schedule 13 – Not used**

**Confidential**

**Schedule 14 – Not used**

**Confidential**

**Schedule 15 – Not used**

Confidential

**Schedule 16 – Not used**

## Schedule 17 – Service Delivery Phase Plans

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### 1. Definitions

For the purposes of this Schedule, terms not defined in clause 1 (*Definitions*) of this Agreement are defined in section 1 (*Definitions*) of the Services Specification.

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### 2. Purpose and background

- (a) The purpose of this Schedule is to set out in detail SGCH's obligations in respect of the Service Delivery Phase Plans.
  - (b) In this Schedule, each individual plan, program, protocol, policy, procedure, strategy report or notification forming part of the Service Delivery Phase Plans is referred to as a "Plan".
- 

### 3. General obligations

#### 3.1 SGCH to provide Plans

SGCH must provide or update each Plan during the Service Delivery Phase:

- (a) so that it is in a form that is consistent with and builds upon Annexure B (Bid Services Deliverables) for those Service Delivery Phase Plans that relate to the delivery of a Service Package component;
- (b) so that it contains the content specified in the second column of the relevant table in this Schedule;
- (c) within the time period specified in the third column of the relevant table in this Schedule; and
- (d) using the delivery method specified by the ServiceCo Representative from time to time by written notice to SGCH.

#### 3.2 Quarterly Plans

Each Plan that is required to be provided on a quarterly basis must:

- (a) include the required information for that Quarter and on a cumulative basis in respect of the then current Financial Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Quarter or subsequently up to the date of that Plan.

#### 3.3 Annual Plans

Each Plan that is required to be provided on an annual basis must:

- (a) include the required information for that Operating Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Operating Year or Financial Year (as relevant) or subsequently up to the date of that Plan.

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## 4. Other reporting obligations

### 4.1 SGCH's other reporting obligations not affected

SGCH acknowledges that:

- (a) it is required by other parts of this Agreement to provide certain plans, programs, protocols, policies, procedures, strategies, reports or notifications to ServiceCo (including the Performance and Data Reporting Services);
- (b) it may also have obligations to ServiceCo in respect of performance reporting, performance reviews and audits under a funding deed or other funding arrangement that it has entered into with ServiceCo; and
- (c) failure to refer to any plan, program, protocol, policy, procedure, strategy, report, review, audit or notification within this Schedule does not affect those obligations.

### 4.2 Information submitted to Registrar

SGCH must provide to ServiceCo a copy of all documents or any other information submitted by SGCH to a Registrar (including any Registrar not located in NSW) or LAHC within 5 Business Days of submitting that information to the extent the documents or other information relate to the Service Package or this Agreement.

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## 5. Plans

**Table 1 Service Delivery Phase Plans**

| Plan                               | Content of Plan   | Time for provision   |
|------------------------------------|---|--|
| Affordable Housing Allocation Plan | <p>As a minimum, the Affordable Housing Allocation Plan should set out SGCH's proposed approach to allocating Affordable Housing to Tenants to meet ServiceCo's objective of facilitating the transition of Social Housing Tenants to available Affordable Housing, where appropriate. The Affordable Housing Allocation Plan should include, at a minimum, the approach to:</p> <ol style="list-style-type: none"> <li>1. identifying, prioritising and allocating Social Housing Tenants who are eligible for Affordable Housing in accordance with the NSW Affordable Housing Guidelines; and</li> <li>2. when Affordable Housing vacancies arise:               <ol style="list-style-type: none"> <li>(i) allocation priority given to those Social Housing Tenants (known to SGCH) who are able to transition. The Social Housing Tenants can be from within</li> </ol> </li> </ol> | <p>As required in accordance with this Agreement or by the ServiceCo Representative during the Service Delivery Phase.</p> |

| Plan | Content of Plan | Time for provision |
|------|-----------------|--------------------|
|------|-----------------|--------------------|

- the Program or external to the Program; and
- (ii) where no Social Housing Tenants are able to transition, filling Affordable Housing vacancies from elsewhere in a way that complies with current Best Services Practice.

|   |  |  |
|---|--|--|
| Tailored Support Coordination Engagement Strategy | <p>As a minimum, the Tailored Support Coordination Engagement Strategy should include the following information:</p> <ol style="list-style-type: none"> <li>1. the activities or protocols for engaging with Tenants and Household Members who are reluctant or refuse to participate in all or part of the activities undertaken as part of the Tailored Support Coordination Services; and</li> <li>2. the approach to responding to situations whereby the refusal of Tenants and Household Members to engage will significantly impact on the undertaking of the core activities of the Tailored Support Coordination Services, including timely reporting of any refusal to ServiceCo.</li> </ol> | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |
|---|--|--|

|                                     |   |  |
|-------------------------------------|---|--|
| Performance and Data Reporting Plan | <p>As a minimum, the Performance and Data Reporting Plan should incorporate the following information:</p> <ol style="list-style-type: none"> <li>1. an overview of the information management systems in respect of housing asset and client data that SGCH will use to comply with the Performance and Data Reporting requirements and whether these are compatible with the existing data systems within ServiceCo (including CHIMES);</li> <li>2. the proposed process for collecting, recording and maintaining all information required to comply with the Performance and Data Reporting requirements, including records on the Dwellings, Tenants and Household Members, Tenancies, outcomes and the general provision of the Services;</li> <li>3. the process for transmitting the required data to ServiceCo in accordance with the specified reporting requirements; and</li> <li>4. how SGCH will address the requirements under the Privacy Legislation and Best Services Practices, where relevant.</li> </ol> | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |
|-------------------------------------|---|--|



| Plan   | Content of Plan  | Time for provision   |
|--|--|--|
| Site and Community Integration Management Plan | <p>The Community Integration Management Plan should set out SGCH's proposed approach to managing Social Housing and Affordable Housing in an integrated community.</p> <p>As a minimum this should include:</p> <ol style="list-style-type: none"> <li>1. approach to managing shared access to common areas and Supporting Infrastructure shared between Private, Social and Affordable Tenancies on a Site by Site basis;</li> <li>2. where applicable, its proposed approach to delivering Asset Management Services and Tenancy Management Services with respect to mixed tenure developments and the management of Tenant interactions, including a description of the key risks associated with such developments and appropriate strategies to manage these risks;</li> <li>3. approach to managing tenancies in a manner that promotes community integration; and</li> <li>4. in any proposed locations where there is an existing level of social disadvantage and/or social housing concentration, either at a Site level, or at a precinct or suburb level, the approach to managing Social Housing Tenancies so as to: <ol style="list-style-type: none"> <li>(i) not exacerbate the existing level of social disadvantage; and</li> <li>(ii) best facilitate achievement of the Target Outcomes.</li> </ol> </li> </ol> | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |

## **Schedule 18 – Services Specification**

Subject to Schedule 28:

- (a) as per Schedule 18 (Services Specification) to the Services Agreement; and
- (b) a reference to 'ServiceCo' in that Schedule 18 is to be read as if to 'SGCH'.

**Confidential**

**Schedule 19 – Expert Determination Agreement**

*Social and Affordable Housing Fund - Expert  
Determination Agreement (Subcontract)*

*SGCH Sustainability Limited (ServiceCo)* ABN 21 606 965 799

and

*St George Community Housing Limited (SGCH)*  
ACN 133 729 503

and

*[Insert]* (Expert)

---

# Expert Determination Agreement made on *[insert]*

Parties SGCH Sustainability Limited ABN 21 606 965 799 (ServiceCo)

St George Community Housing Limited ACN 133 729 503 (SGCH)

*[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 37.2 (Selection of expert) of the Services Agreement or the equivalent clause in each Relevant Agreement] (Expert)*

## Recitals

- A. The background to the Service Package is set out in the Services Subcontract.
- B. On *[insert]*, *[the Parties agreed / (insert party name) chose]* that the matter described in Schedule 1 be determined by an Expert appointed under clause *[insert relevant clause reference]* of the Relevant Agreement.
- C. In accordance with clause *[insert relevant clause reference]* of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the Services Subcontract.

## Operative provisions

---

### 1. Definitions

#### 1.1 Services Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Services Subcontract.

#### 1.2 Definitions

**Agreement** means this agreement and includes all schedules, exhibits, attachments and annexures to it.

**Code of Conduct** means the code of conduct set out in section 2 of Schedule 2.

**Matter** means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause *[insert relevant clause reference]* of the Relevant Agreement.

**Party** means *[insert party names]*.

**Services Subcontract** means the document entitled "Social and Affordable Housing Fund – Services Subcontract" between ServiceCo and SGCH dated *[insert date]*.

**Relevant Agreement** means *[insert the relevant Service Package Document under which the Matter arose]*.

**Rules** means the "Rules for Expert Determination Process" set out in Schedule 2.

**Schedule of Fees and Disbursements** means the fees and disbursements contained in Schedule 3.

#### 1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
  - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
  - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a party includes that Party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **("includes")**: "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (k) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

- (r) (**obligations and Liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) ("**may**"): except to the extent that ServiceCo is expressly required to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by ServiceCo, means that ServiceCo can exercise that power, right or remedy in its absolute and unfettered discretion and ServiceCo has no obligation to do so;
- (t) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
  - (i) is reconstituted, renamed or replaced, or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or
  - (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (u) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (v) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

---

## 2. Appointment of Expert

- (a) (**Parties to appoint Expert**): The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) (**Agreement of conditions**): The Parties agree that:
  - (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the determination; and
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.
- (c) (**Independence and bias**): If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

---

## 3. Confidentiality

- (a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.

- (b) No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person except:
  - (i) with the prior written consent of both Parties;
  - (ii) as may be required by Law;
  - (iii) for the purpose of subsequent arbitration; or
  - (iv) to the extent necessary to enforce the Expert's determination.

---

#### 4. Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, subject to the terms of the Relevant Agreement, as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

---

#### 5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liabilities in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

---

#### 6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

---

#### 7. Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.
- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.



**Schedule 1 - Matter**

*[Insert description of matter]*

## Schedule 2 - Rules for Expert Determination Process

---

### 1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules, including the Code of Conduct.

---

### 2. Code of Conduct

- (a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement, the Services Agreement and this Agreement, including these Rules and the Code of Conduct.
  - (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
  - (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
  - (d) The Expert must disclose to both Parties all information and documents received.
  - (e) If a Party fails to make a written submission, the Expert may continue with the process.
  - (f) Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.
- 

### 3. Written submissions

- (a) Within 5 Business Days after the date this expert determination process begins, the Party who gave notice under clause 37.1 (*Expert determination*) of the Services Agreement or the equivalent clause of the Relevant Agreement (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
  - (b) Within 5 Business Days after the statement in section 3(a) served, the other Party must give Party A and the Expert a written response to Party A's submissions.
  - (c) If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in section 3(b) within the time allowed by the Expert.
  - (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
- 

### 4. Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney, Australia.

- (b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) The Parties:
  - (i) may be accompanied at a conference by legal or other advisers; and
  - (ii) subject to the terms of this Agreement and the Relevant Agreement, will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

---

## 5. General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.
- (b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) Without limiting clause 2(c) of this Agreement, the Expert must:
  - (i) inform the Parties of:
    - A. any relationship or interest with the Parties or their respective Associates;
    - B. any interest the Expert has in the matters in dispute; and
    - C. any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstance; and
  - (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

---

## 6. The determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
  - (i) determine the Matter between the Parties; and
  - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must:
  - (i) be in writing, stating the Expert's determination and giving reasons;

- (ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and
  - (iii) meet the requirements of the Relevant Agreement.
- (c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties, unless a notice of dissatisfaction is given in accordance with clause 37.4(a) (*Notification*) of the Services Agreement.

---

## **7. Costs**

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

---

## **8. Modification**

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

---

## **9. Proportionate liability**

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to Expert determination.

**Schedule 3 - Schedule of Fees and Disbursements**

*[Insert Expert's fees and disbursements]*

**SIGNED** as an agreement

*[Insert execution blocks]*

**Confidential**

**Schedule 20 – Not used**

**Confidential**

## **Schedule 21 – Subcontract Side Deed**



*Social and Affordable Housing Fund -  
Subcontract Side Deed*

*[Insert name of Subcontractor]*

*[insert ABN/ACN/ARBN]*

*SGCH Sustainability Limited (ServiceCo)*

*ACN 606 965 799*

*Department of Family and Community Services (FACS)*

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THIS DEED is made on

2016

**BETWEEN:**

**The Secretary of the Department of Family and Community Services** as Housing Agency pursuant to section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

*[Insert]* ABN/ACN *[insert]* whose registered office is at *[Insert]* (**Subcontractor**).

SGCH Sustainability Limited ACN 606 965 799 whose registered office is at Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220 (**ServiceCo**).

**RECITALS:**

- (A) FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- (B) ServiceCo has subcontracted its obligations to *[insert purpose of Subcontract]* to the Subcontractor pursuant to the Subcontract.
- (C) The Subcontractor has agreed to grant to FACS certain rights in relation to the Subcontract.

**THE PARTIES AGREE AS FOLLOWS:**

---

**1. Definitions and interpretation**

**1.1 Services Agreement definitions**

Definitions in the Services Agreement apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

**1.2 Definitions**

In this Deed:

**Approved Nominee** means a person nominated by FACS and approved by the Subcontractor in accordance with clause 4.8 as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of ServiceCo under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of ServiceCo under the Subcontract.

**Default Event** means:

- (a) any default (howsoever described) by ServiceCo under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

**Default Event Notice** has the meaning given in clause 3.2(a).

**Effective Date** means the date specified in the Novation Notice.

**FACS Cure Notice** has the meaning given in clause 3.2(c).

**GST Amount** has the meaning given in clause 9(c)(ii).

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Subcontractor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (c) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

**Novation Notice** has the meaning given in clause 4.1.

**Receiver** means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

**Recipient** has the meaning given in clause 9(c)(ii).

**Services Agreement** means the document entitled "Social and Affordable Housing Fund - Services Agreement" dated on or about the date of this Deed between FACS and ServiceCo.

**Subcontract** means the contract titled [*insert*] dated on or about the date of this Deed between ServiceCo and the Subcontractor.

**Supplier** has the meaning given in clause 9(c).

### 1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
  - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
  - (ii) a section is a reference to a section of a Schedule;

- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:
  - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **('includes')**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) **('or')**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **('€')**: a reference to '€', AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;

- (s) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **(‘may’)**: unless FACS is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term ‘may’, when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to ServiceCo) and FACS has no obligation to do so;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
  - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) **(Delivery Phase Program)**: a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with the Review Procedures.

#### 1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Subcontract, this Deed will prevail over the Subcontract.

#### 1.5 Services Agreement and Financier’s Tripartite Deed

The Subcontractor acknowledges that it has received a copy of the Services Agreement and the Financier’s Tripartite Deed.

#### 1.6 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 Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

#### 1.7 FACS’ executive rights, duties and functions

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS’ executive rights, duties and functions*) of the Service Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.7(c), ServiceCo and the Subcontractor will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS to exercise its executive or statutory rights or duties.

- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Subcontractor under any Service Package Documents as a result of a breach by FACS of a term of any Service Package Document but for these clauses.

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## **2. Subcontractor's warranty and FACS' rights and liability**

### **2.1 Subcontractor's warranty**

- (a) The Subcontractor warrants to FACS that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Services, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those services in relation to a project of a similar size and scope to the Services. In particular and without limiting the generality of the foregoing, the Subcontractor covenants with FACS that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Services in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2.1 upon:
- (i) the termination of the Services Agreement or ServiceCo's engagement under the Services Agreement; or
  - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Agreement and/or the Monthly Service Payment regime no longer applying.
- (c) Despite any other provision of this Deed or the Subcontract, the maximum aggregate liability of the Subcontractor under this clause 2.1 and the Subcontract is no greater than the maximum liability of the Subcontractor under the Subcontract.
- (d) FACS agrees that it is not permitted to recover, and the Subcontractor will not be liable to FACS for, any loss under this clause 2.1 that is not permitted to be recovered against the Subcontractor under the Subcontract.
- (e) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Agreement.

### **2.2 FACS' rights under Services Agreement**

- (a) The Subcontractor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Agreement, including under the following clauses of the Services Agreement:
- (i) clause 9.1 (*Audits for compliance with the FACS Service Package Documents*);
  - (ii) clause 18.2 (*Work health and safety*);
  - (iii) clause 22 (*Expiry obligations*);
  - (iv) clause 31 (*Major Default*);



- (v) clause 32 (*Termination*); and
  - (vi) clause 46 (*Intellectual Property Rights*).
- (b) The Subcontractor must:
- (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
  - (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).
- (c) During the period in which FACS is exercising a right referred to in clause 2.2(a), FACS may, in accordance with the Services Agreement and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor must (without limiting its rights under clause 3) comply with this requirement and with all reasonable directions of FACS in relation to the performance of the Subcontract by the Subcontractor during such period.
- (d) The requirement of FACS that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by FACS does not constitute an assumption by FACS of any obligations of the Subcontractor under the Subcontract.

### **2.3 Subcontracting and Probity Investigations**

- (a) The Subcontractor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Agreement:
- (i) clause 10 (*Subcontracting and third party arrangements*);
  - (ii) the clauses listed in clause 10.3 (*Requirements for Subcontracting*); and
  - (iii) clause 48 (*Probity Events and Probity Investigations*).
- (b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that ServiceCo has obtained the prior consent of FACS to that subcontract, where FACS' consent is required in accordance with clause 10 (*Subcontracting and third party arrangements*) of the Services Agreement.
- (c) Without limiting clauses 2.3(a) or 2.3(b), the Subcontractor acknowledges and agrees that:
- (i) in accordance with clauses 10 (*Subcontracting and third party arrangements*) and 48 (*Probity Events and Probity Investigations*) of the Services Agreement, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Subcontractor and Relevant Persons in respect of the Subcontractor (excluding the ServiceCo Representative), or other persons to whom the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
  - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and

- (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Agreement).

## **2.4 No liability for information**

The Subcontractor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
  - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
  - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Subcontractor or any of their Associates, nor will the Subcontractor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
  - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in 2.4(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor, or any of their respective Associates or any person on any of their behalf;
  - (ii) any reference to FACS in the Subcontract; or
  - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by FACS.

## **2.5 Subcontract not to affect FACS' rights**

Each of ServiceCo and the Subcontractor acknowledges and agrees that:

- (a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Agreement or an equivalent or similar right of ServiceCo:
  - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Agreement to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
  - (ii) ServiceCo's rights, and FACS' Liability, under the Services Agreement will be determined solely in accordance with the terms of the Services Agreement;
- (b) as between FACS (on the one hand) and ServiceCo and the Subcontractor (on the other hand), ServiceCo and the Subcontractor accept and will bear the risk

of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and

- (c) notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
  - (i) expressly provided to the contrary in the Services Agreement or this Deed; or
  - (ii) FACS consents in writing.

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### **3. FACS' right to cure Default Events**

#### **3.1 FACS' cure rights**

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Subcontractor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Subcontract are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

#### **3.2 Restriction on right to terminate or suspend**

The Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract unless each of the following conditions has been satisfied:

- (a) the Subcontractor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
  - (i) the cure or remedy period available to the Financier in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
  - (ii) the Financier has notified the Subcontractor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Subcontractor has given notice to FACS confirming that, either:

- (i) the requirements of clause 3.2(b) are satisfied; or
  - (ii) the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Subcontract is not subject to any right of the Financier to cure or remedy the Default Event,
- (FACS Cure Notice), and**
- (d) any one of the following has occurred:
    - (i) the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Subcontract or agreed to by the Subcontractor), and that Default Event has not been cured or remedied within the relevant period;
    - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
    - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Subcontractor:
      - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved; or
      - B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
      - C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Subcontract within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
      - D. FACS notifies the Subcontractor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

### **3.3 Statements concerning Default Event**

- (a) As part of any Default Event Notice, the Subcontractor must submit to FACS statements of:
  - (i) where the Default Event is a monetary default:
    - A. the provisions of the Subcontract alleged to have been breached or not fulfilled; and

- B. the amount which must be paid to the Subcontractor to remedy the Default Event;
- (ii) where the Default Event is of a non-monetary nature:
- A. the provisions of the Subcontract alleged to have been breached or not fulfilled;
  - B. sufficient information to enable FACS to identify the material facts;
  - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled, if reasonably capable of cure or remedy; and
  - D. the time within which the specified steps can reasonably be expected to be taken; and
- (iii) any rights available to the Financier, pursuant to any Finance Document to which the Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract.
- (b) If the Subcontractor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Subcontractor must update the matters referred to in clause 3.3(a).

### **3.4 Warranty of accuracy**

- (a) The Subcontractor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Subcontractor considers itself entitled.
- (b) The Subcontractor waives and abandons all claims then known or which ought reasonably to have been known to the Subcontractor arising out of or in connection with the Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

### **3.5 Disputes as to statements**

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

### **3.6 Verification**

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Subcontractor, and the Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Subcontractor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

### **3.7 No Liability**

ServiceCo and the Subcontractor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Subcontract by reason only of FACS performing ServiceCo's obligations in accordance with the Subcontract. ServiceCo and the Subcontractor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of FACS.

### **3.8 ServiceCo to compensate FACS**

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

### **3.9 No limitation on other rights**

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under FACS Service Package Documents or otherwise according to Law.

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## **4. Novation of Subcontract**

### **4.1 Option**

FACS may require a novation of the Subcontract in accordance with this clause 4 upon the termination of the Services Agreement by giving a notice to the Subcontractor (**Novation Notice**).

### **4.2 Novation of Subcontract**

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that FACS (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to ServiceCo shall be read as a reference to FACS (or, if applicable, the Approved Nominee).

#### **4.3 Rights and obligations of FACS and the Subcontractor under the Subcontract**

If FACS gives a Novation Notice then, subject to clause 4.6, with effect from the Effective Date:

- (a) FACS (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, ServiceCo would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, ServiceCo would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, ServiceCo would have been bound at and after the Effective Date; and
- (b) the Subcontractor:
  - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if FACS (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of ServiceCo.

#### **4.4 Release by Subcontractor**

With effect from the Effective Date, the Subcontractor releases ServiceCo from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

#### **4.5 Release by ServiceCo**

With effect from the Effective Date, ServiceCo releases the Subcontractor from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

#### **4.6 Obligations and liability prior to the Effective Date**

Nothing in this Deed releases ServiceCo or the Subcontractor from any obligation or liability under the Subcontract arising or accruing before the Effective Date and FACS (or, if applicable, the Approved Nominee) does not assume any such obligation or Liability under this Deed.

#### 4.7 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Services Agreement is at an end, and that the Subcontract must operate independently of the Services Agreement, on the basis that:
- (i) the rights and obligations that FACS (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that ServiceCo would have had under the Subcontract had the Services Agreement not been terminated;
  - (ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the Subcontractor would have had under the Subcontract had the Services Agreement not been terminated;
  - (iii) any provisions of the Services Agreement incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
  - (iv) without affecting the generality of this clause 4.7(a), clauses [*insert relevant clauses of the Subcontract*] of the Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between FACS (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 4.7(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 8.

#### 4.8 Approved Nominee

- (a) FACS' nominee may be named as a party to the Subcontract in substitution for ServiceCo if FACS' nominee is an Approved Nominee.
- (b) The Subcontractor must:
- (i) notify FACS as to whether FACS' nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision on whether FACS' nominee is an Approved Nominee; and
  - (iii) enter into a side deed with FACS and the Approved Nominee on substantially the same terms as this Deed.

#### 4.9 Insurances

- (a) If the Subcontractor is required under the Subcontract to take out or maintain or take out and maintain any insurance required under clause 30 (*Insurance*) of the Services Agreement to be taken out and maintained by ServiceCo (each such insurance, a **Subcontract Insurance**), then the Subcontractor undertakes to FACS to:
- (i) take out or maintain or take out and maintain the Subcontract Insurances, as applicable; and



- (ii) comply with clause 30 (*Insurance*) and Schedule 10 (*Insurance Schedule*) of the Services Agreement with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).
- (b) The Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with section 5 (*Application of Insurance proceeds*) of Schedule 10 (*Insurance Schedule*) of the Services Agreement.

#### 4.10 Other documents under the Subcontract

If FACS gives a Novation Notice then, as from the Effective Date, ServiceCo must procure the novation or assignment to FACS (or, if applicable, the Approved Nominee) of:

- (a) [*Insert list of documents to be novated/assigned (e.g collateral warranty deeds)*].

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## 5. Representations and warranties

### 5.1 Representations and warranties by Subcontractor

- (a) The Subcontractor represents and warrants for the benefit of FACS that:
  - (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
  - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
  - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
  - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
  - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
  - (vi) **(information true and correct)**: all information provided by it to FACS is as at the date on which it is provided true and correct and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
  - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;

- (viii) **(Insolvency Event):** no Insolvency Event has occurred in respect of it;
- (ix) **(accounts):**
  - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
  - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
  - C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default):**
  - A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
  - B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;
- (b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (c) **(own investigations):** in entering into this Deed, the Subcontract and any other Service Package Document to which it is a party, it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

## 5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

## 5.3 Reliance on representations and warranties

The Subcontractor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

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## 6. Undertakings by Subcontractor

The Subcontractor undertakes to FACS as follows:

- (a) **(notification of Default Event):** in the case of the Subcontractor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause [insert] (*Notice of ServiceCo Event of Default*) of the Subcontract;
- (b) **(documents in relation to Default Event):** in the case of the Subcontractor, it will promptly give FACS a copy of all documents issued by the Subcontractor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent):** it will not, without first obtaining the consent of FACS:
  - (i) make or permit any amendment or replacement of or addition to;
  - (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
  - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financier's Tripartite Deed; or
  - (iv) allow any express waiver of its material rights and obligations under,
 

a Subcontract, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Agreement;
- (d) **(disposals):** it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Subcontract without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor;
- (e) **(attend meetings and inspections):** it will (when reasonably requested by FACS):
  - (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
  - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
    - A. in the case of the Subcontractor, full access to:
      - 1) the Site; and
      - 2) any other place where any Services are being provided,

to the extent provided in the Services Agreement; and
    - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Subcontract or any information required by FACS to

comply with requests from the New South Wales Auditor-General; and

- (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Subcontract, to the extent provided in the Services Agreement; and
- (f) **(access to records)**: in the case of the Subcontractor, at the request of FACS, the Subcontractor will:
  - (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the Service Package; and
  - (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

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## 7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

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## 8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Agreement are resolved. Accordingly, the provisions of clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement are incorporated into this Deed but as if:

- (a) the only persons party to the Services Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

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## 9. GST

- (a) **(Interpretation)**:
  - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.

- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 9(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
  - (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 9) for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
  - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)), varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
  - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).

- (f) **(No merger)**: This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Agreement)**: If clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement would apply in connection with a Taxable Supply to which this clause 9 also applies, then clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

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## 10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### FACS

Attention: Eleri Morgan-Thomas  
Address: 2 Cavill Avenue, Ashfield, NSW  
Telephone: (02) 9716 2917  
Email: eleri.morgan-thomas@facs.nsw.gov.au

### ServiceCo

Name: SGCH Sustainability Limited  
Address: Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220  
Email: scott.langford@sgch.com.au  
For the attention of: Scott Langford

### Subcontractor

Name: [insert]  
Address: [insert]  
Email: [insert]  
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee set out in clause 10(b);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
- (ii) subject to clause 10(f), in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia

and on the fifth Business Day after the date of posting by airmail to an address outside Australia;

- (iii) in the case of email, the first to occur of:
  - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
  - B. the time that the communication enters an information system which is under the control of the addressee; or
  - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

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## 11. Confidential Information and disclosure

### 11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
  - (i) in accordance with Laws or for the enforcement of any criminal law;
  - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
  - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
  - (iv) to satisfy the requirements of Parliamentary accountability;
  - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
  - (vi) in annual reports of FACS;
  - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
  - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or

- (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Agreement.

## 11.2 Confidential Information and disclosure by Subcontractor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4(b), the Subcontractor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Subcontractor may disclose Confidential Information:
  - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
  - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Subcontractor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
  - (i) required by Law, provided that it:
    - A. notifies FACS of the requirement to make that disclosure; and
    - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
  - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
  - (iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party; or
  - (iv) required by a relevant recognised stock exchange, subject to:
    - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
    - B. the Subcontractor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.



### **11.3 Public announcements by Subcontractor**

Subject to clause 11.2(d), the Subcontractor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

### **11.4 Information public or known**

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

### **11.5 Disclosure by FACS under GIPA Act**

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
  - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
  - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
  - (i) FACS will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
  - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
  - (iii) if, following:
    - A. notification by FACS in accordance with clause 11.5(b)(i);
    - or

- B. consultation between FACS and the Subcontractor in accordance with clause 11.5(b)(ii),

the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Subcontractor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

## 11.6 Personal Information

The Subcontractor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

## 11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Subcontractor agrees to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Service Package contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Subcontractor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

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## 12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract or novation of Subcontract):** This Deed will terminate automatically without any requirement for any notice from any party:
- (i) upon the performance and satisfaction of all of the obligations under the Subcontract; or
  - (ii) upon the novation of the Subcontract to FACS.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) FACS' rights to set-off and recover money;
  - (ii) confidentiality or privacy;
  - (iii) Intellectual Property Rights;
  - (iv) any obligation to make any records available to FACS;
  - (v) any indemnity or financial security given in accordance with this Deed;
  - (vi) any limitation or exclusion of liability; and
  - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

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## 13. Governing law and jurisdiction

### 13.1 Governing law

This Deed is governed by and must be construed according to the Laws of New South Wales, Australia.

### 13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts,

with respect to any proceedings which may be brought in connection with this Deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

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## 14. Miscellaneous

### 14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

### 14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

### 14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### 14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

### 14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

### 14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

#### **14.7 Severance**

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

#### **14.8 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

#### **14.9 Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

#### **14.10 Moratorium legislation**

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Subcontractor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

**Executed as a deed.**

***[Insert execution blocks]***

**Confidential**

**Schedule 22 – Not used**

**Confidential**

**Schedule 23 – Not used**



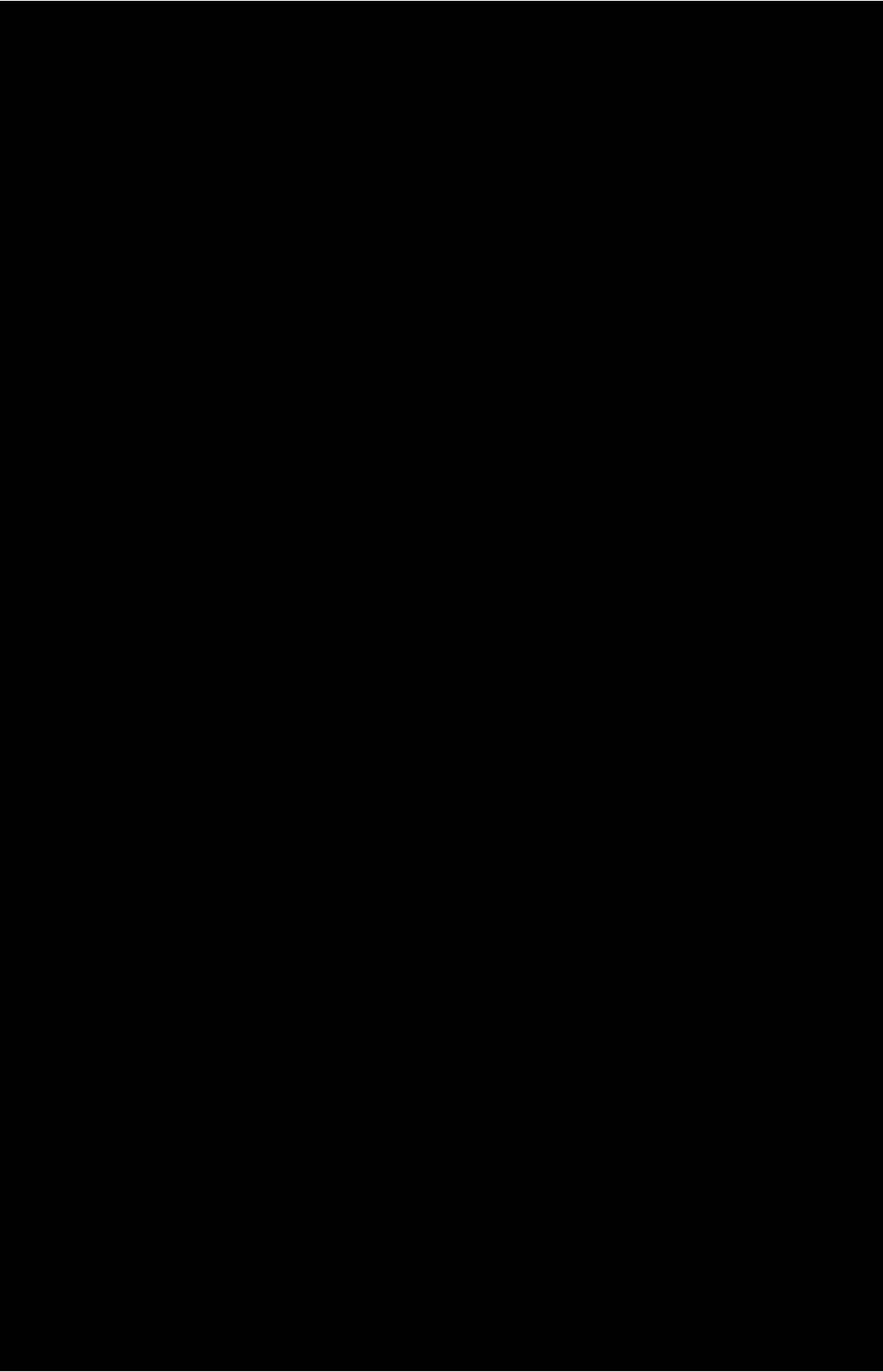
**Confidential**

**Schedule 24 – Not used**

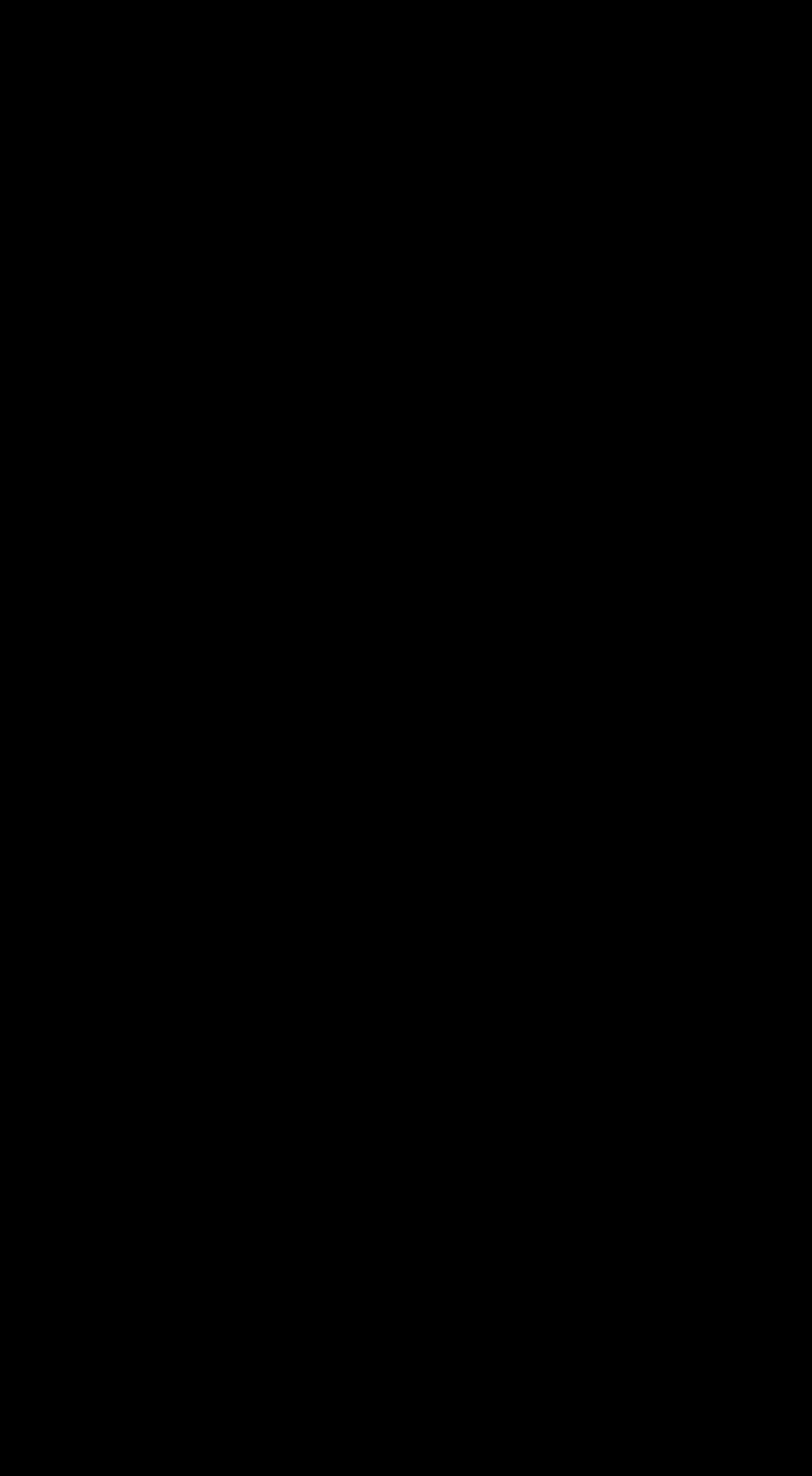
**Confidential**

**Schedule 25 – Dwellings Schedule**

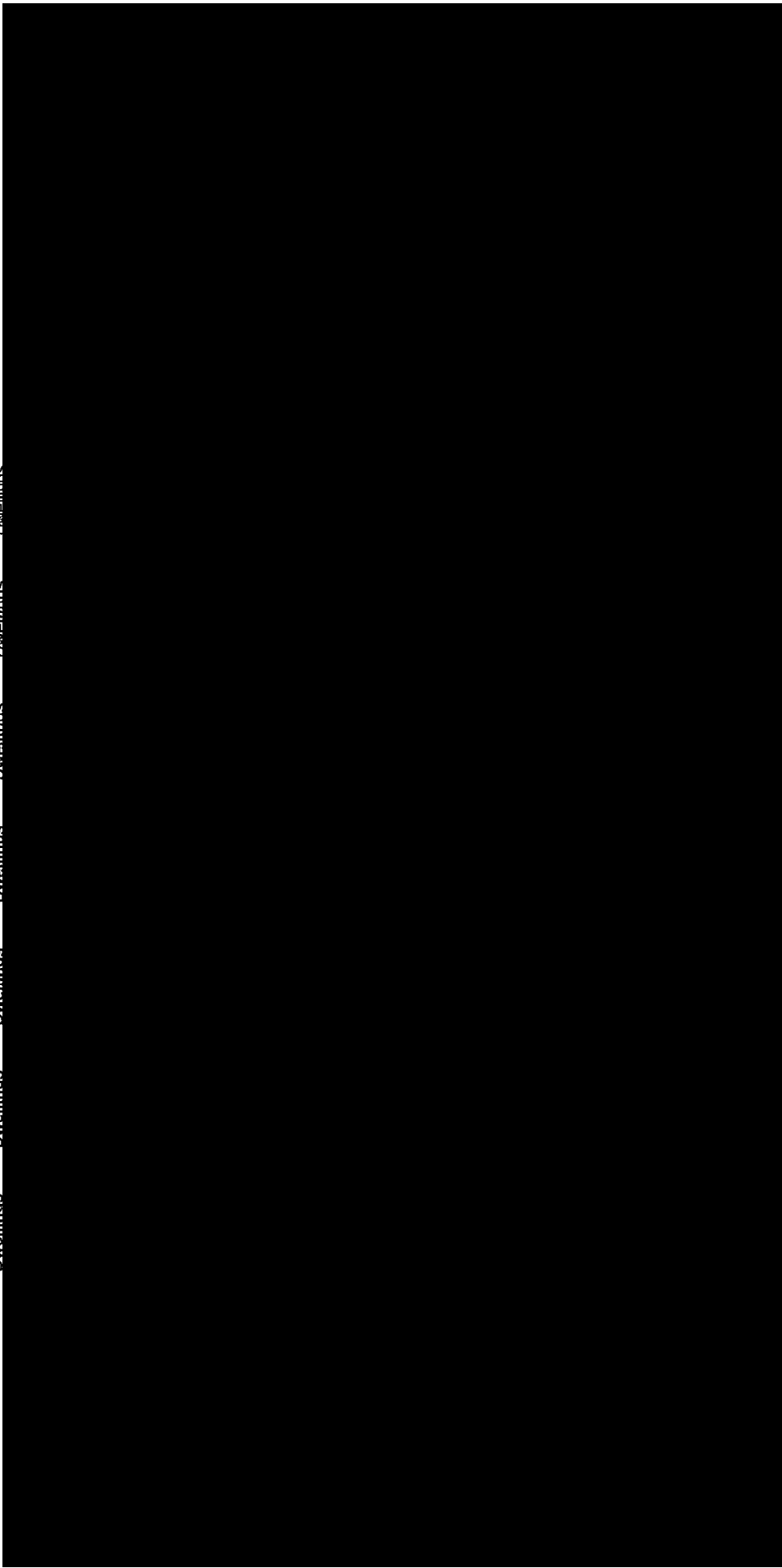
3458-7799-2707v1



Stage Sites (deposited) Social and Affordable Housing Private Supporting Infrastructure



| Stage | Sites (deposited plan information and addresses of Dwellings) | Social and Affordable Housing | Private Housing     | Supporting Infrastructure |                     |                     |                 |                |
|-------|---|-------------------------------|---------------------|---------------------------|---------------------|---------------------|-----------------|----------------|
|       |   | 1 bedroom Dwellings           | 2 bedroom Dwellings | 3 bedroom Dwellings       | 4 bedroom Dwellings | 5 bedroom Dwellings | Total Dwellings | % of Dwellings |



Confidential

**Schedule 26 – Not used**

**Confidential**

**Schedule 27 – Not used**

## Schedule 28 – Responsibility Allocation Matrix

| Item | Section reference of Services Specification | Responsible Party  |
|------|---|--|
| 1.   | Section 2.1(a)                              | <ul style="list-style-type: none"> <li>ServiceCo</li> </ul>  |
| 2.   | Section 2.1(b)-(d)                          | <ul style="list-style-type: none"> <li>SGCH (except to the extent that where Modifications to the Dwellings are required for SGCH to fulfil its obligations under this Section 2.1(b)-(d), ServiceCo must give its consent to SGCH to do so).</li> <li>ServiceCo is responsible for paying the Planned Maintenance Works Fee and the Responsive Maintenance Works Fee to allow SGCH to carry out the Planned Maintenance Works and the Responsive Maintenance Works Fee to meet its obligations under this Section 2.1(b)-(d).</li> </ul>  |
| 3.   | Section 2.2                                 | <ul style="list-style-type: none"> <li>ServiceCo</li> </ul>  |
| 4.   | Section 2.3                                 | <ul style="list-style-type: none"> <li>SGCH</li> </ul>   |
| 5.   | Section 2.4                                 | <ul style="list-style-type: none"> <li>SGCH</li> </ul>   |
| 6.   | Section 2.5                                 | <ul style="list-style-type: none"> <li>SGCH</li> </ul>   |
| 7.   | Section 2.6                                 | <ul style="list-style-type: none"> <li>SGCH (except to the extent that where Modifications to the Dwellings are required for SGCH to fulfil its obligations under this Section 2.6, ServiceCo must give its consent, and provided that the Dwellings when delivered on the relevant Date of Service Readiness are Fit for Purpose).</li> <li>ServiceCo is responsible for paying the Planned Maintenance Works Fee and the Responsive Maintenance Works Fee to allow SGCH to carry out the Planned Maintenance Works and the Responsive Maintenance Works Fee to meet its obligations under this Section 2.6.</li> </ul> |
| 8.   | Section 2.7                                 | <ul style="list-style-type: none"> <li>ServiceCo</li> </ul>  |



**Confidential**

**Schedule 29 – Not used**

## **Annexure B – Service Delivery Phase Plans**

### **Affordable Housing Allocation Plan**

#### **Purpose**

The purpose of the Affordable Housing Allocation Plan is to set out the approach to allocating eligible households to Affordable Housing delivered by SGCH Sustainability under the Social and Affordable Housing Fund (SAHF) Program.

St George Community Housing (SGCH) as the Service Provider will allocate vacant SAHF Affordable Housing Dwellings in accordance with this plan.

#### **SGCH operational context**

SGCH manages Affordable Housing in accordance with the following policy frameworks and legislation:

- NSW Affordable Housing Guidelines
- *Residential Tenancy Act 2010*
- SGCH Affordable Housing Policy
- SGCH Affordable Housing Management Handbook

#### **1. Target Outcomes**

We will manage allocations for Affordable Housing to meet the outcomes of the Service Package:

- stable housing for low income individuals and families in need
- improved health and well being through access to good quality housing and links to appropriate services
- greater social and economic independence to support community connections and participation
- sustainable transitions out of Social Housing and Affordable Housing to other tenure types.

#### **2. Approach to allocating Affordable Housing**

##### **Principles for allocation**

To meet the Target Outcomes we will make allocations based on the following principles:

- supporting the development of integrated communities through a mix of household and income groups
- providing a customer centred housing experience to allow for access to support and opportunities, choice and flexibility in housing products
- identifying and supporting households with the capacity to transition through a housing continuum to independence.

### Target Tenant Cohorts

|   |  |
|---|--|
| <b>Social Housing Tenants</b>                 | Households transitioning from Social Housing Dwellings able to afford a discount to Market Rent<br>Households paying Market Rent, 70% or more of Market Rent or receiving a reduced rent subsidy |
| <b>Households on the NSW Housing Register</b> | Social Housing eligible households who are able to afford a rent charged at a discount to Market Rent  |
| <b>Low income working households</b>          | Low and moderate income working households in housing need who are unable to resolve this need in the medium to long term without assistance.  |

### Identification of Applicants

We will source Applicants through a range of channels including:

- identifying Applicants with the capacity to transition to Affordable Housing
- identifying eligible Applicants from the NSW Housing Register in line with the *FACS Rules for identifying and contacting potential Affordable Housing* through NSW Housing Pathways
- liaising with support partners to identify and refer potential existing Social Housing Tenants or eligible Applicants
- advertising vacancies for eligible low income households.

### Transitioning Social Housing Tenants

We will allocate Affordable Housing tenancies to Social Housing Tenants who at the end of their fixed term lease have been assessed as 'transition ready' and are able to sustain an Affordable Housing tenancy.

### Market Rent paying Social Housing Tenants

Throughout SGCH Social Housing portfolio, there are a number of Tenants paying Market Rent, or close to Market Rent who may be interested in transitioning to an Affordable Housing tenancy if eligible.

The Tenants will be identified through *Rent Review Process*. When there is a change in income for a Social Housing household which results in rent being paid equivalent to 70% of Market Rent or Market Rent it will trigger a Tenant Needs Reassessment to determine the household's capacity to transition to Affordable Housing.

All new Tenants will be offered a range of Support Services and Housing Plus products to help them to sustain their tenancy and potentially move to the private market. For example, linkages to training, employment, budgeting or other support services.

### Housing Pathways Applicants

Interested Applicants identified from the NSW Housing Register will be considered for Affordable Housing that are able to afford a discount to Market Rent.

Using the NSW Housing Register, we will identify Applicants with the capacity to sustain an Affordable Housing tenancy by:

- identifying and matching Applicant needs to Dwelling attributes
- using relevant filters within the Housing Pathways database to locate Applicants with the means to afford and sustain an Affordable Housing rent
- making contact with all suitable Applicants in line with the FACS rules for identifying and contacting potential Applicants

### **Promoting Affordable Housing to low and moderate income households**

We will promote Affordable Housing through the following means:

- one on one visits to local community agencies
- Applicant information campaigns aimed at health, teaching, hospitality, essential services and retail industry workers
- fact sheets, brochures, Q&A material
- *industry websites* - Using established and known real estate websites, for example, [www.domain.com.au](http://www.domain.com.au), we will advertise all upcoming properties if there aren't already suitable Applicants to fill the vacant Dwellings
- *Affordable Housing Expression of Interest (EOI)* - SGCH online Affordable Housing EOI form (<http://www.sgch.com.au/applications/affordable-housing/>) which takes a prospective Applicants through a series of pre-eligibility self assessment questions. Based on the information supplied, the tool is able to validate potential eligibility for Affordable Housing in line with the NSW Affordable Housing Guidelines. If the prospective Applicant meets the eligibility criteria, their details are saved to a list and they are followed up in person to complete the application process. The tool also helps to identify Applicants that are Social Housing eligible and/or are on the NSW Housing Pathways register
- *Existing partners* - We will work closely with current support partners to actively promote Affordable Housing. Clients in transitional housing, with the capacity to move through a pathway to independence will be encouraged to apply for Affordable Housing

### **Prioritising Applicants**

In line with the NSW Affordable Housing Guidelines, we will give preference to households:

- living in Social Housing, including those exiting Social Housing
- spending more than 30% of the gross household income towards rent and whose housing need cannot be met in the short to medium term
- have the potential to transition into home ownership in the medium term
- are on the NSW Housing Pathways register seeking another choice of housing which may be more suited to their needs

### **Allocating Dwellings**

In circumstances where a vacancy arises and there are no identified Social Housing Tenants to be allocated the tenancy, we will update and monitor our existing Affordable Housing waiting list to fill vacant Dwellings.

We will regularly review the Affordable Housing waiting list to identify Applicants:

- whose needs align to the property type
- with the highest priority status
- who has been on the list for the longest time

Once identified, the Applicant will be contacted and a pre-offer discussion will take place. As part of the discussion we will determine whether the household is still interested in Affordable Housing and whether their circumstances have changed. If the Applicant has been on the waitlist for longer than three months, they will be required to update their income details and a new eligibility assessment will be conducted.

If the Applicant is no longer eligible or interested in Affordable Housing, we will write to the Applicant confirming that they have been removed from the Affordable Housing waitlist. If the Applicant is eligible to proceed, we will arrange for the Applicant to view the property as soon as possible.

In the event that the Applicant waitlist has been exhausted, we will advertise the property and arrange an 'open home' viewing schedule. Prior to attending a viewing, Applicants will be encouraged to complete the SGCH Affordable Housing EOI online form to determine eligibility. Once an Applicant inspects and accepts a property they will complete a formal application and provide all supporting documentation for assessment. If they are deemed eligible, a formal property offer will be made. If accepted, a Residential Tenancy Agreement will be signed within three days.

Should an Applicant decline the offer, the database will be updated and the allocation process will recommence or an offer will be made to the next eligible Applicant on the waiting list.

## **Annexure B – Service Delivery Phase Plans**

### **Tailored Support Coordination Engagement Strategy**

#### **1. Purpose**

The purpose of the Tailored Support Coordination Engagement Strategy is to set out a strategic approach for engaging with the Tenants and Household Members who will be offered Tailored Support Coordination Services under the Social and Affordable Housing Fund (SAHF) Program.

We recognise the importance of the Tenant and Household Member:

- being given a voice
- being heard
- having opportunities for participation and decision making in the services we offer.

Our model for engagement under the Tailored Support Coordination Engagement Strategy and our key activities aim to achieve the following outcomes:

- stable housing for low income individuals and families in need
- improved health and well being through access to good quality housing and links to appropriate services
- greater social and economic independence to support community connections and participation
- sustainable transitions out of Social and Affordable Housing to other tenure types

#### **2. Context**

The Strategy has been developed as part of Tailored Support Coordination Services that SGCH will offer under the SAHF. These services will be delivered using a sustainable tenancies approach to assessing Tenant and Household Member support needs. Tenant and Household Members are at the centre of decision making about the type of support they access and the goals they set for health, wellbeing, education, training and employment.

We will provide Tailored Support Coordination Services using a customer centred approach to ensure services meet Tenant needs and are provided in a framework that empowers Tenant and Household Members to achieve improved social and economic independence.

The Strategy outlines how we will work with each Tenant and Household Member to support them to build capacity to achieve their goals.

#### **3. Objectives**

The Strategy is underpinned by the following four channels of engagement

| <b>To Inform</b>   | <b>To Consult</b>   | <b>To Involve</b>  | <b>To Collaborate</b>  |
|--|---|--|--|
| Tenant and Household Members of their rights and responsibilities and provide information on services available to | Tenant and Household Members to understand their preferences when delivering our services and to gain feedback on | Tenant and Household Members so that their ideas, concerns and aspirations are directly reflected in options and | with Tenant and Household Members by welcoming their input to and ownership of support plans and |

|                       |  |           |                            |
|-----------------------|--|-----------|----------------------------|
| support their tenancy | ideas, alternatives or proposals to inform our decision making | decisions | the broader program design |
|-----------------------|--|-----------|----------------------------|

#### 4. Tenant Engagement Approach

Our engagement approach is designed to obtain valuable feedback from a diverse range of Tenant and Household Members across the SAHF portfolio. A full summary of our mechanisms of engagement is located in Appendix 1 – Mechanisms of Engagement. We will implement these mechanisms in alignment with our principles of engagement - Honest, Inclusive, Targeted, Transparent and Respectful:

|             |   |
|-------------|---|
| Honest      | We will engage with open purpose, acknowledging expectations and constraints  |
| Inclusive   | We will seek to provide opportunities for people with disabilities and engage with Aboriginal people and people from Culturally and Linguistically Diverse backgrounds in culturally appropriate ways |
| Targeted    | We will use a variety of engagement approaches suitable to a full range of Tenant and household cohorts (e.g. young people, seniors)  |
| Transparent | We will seek to engage with people in a manner that fosters trust, open dialogue and mutual respect   |
| Respectful  | We will provide clear, accessible and comprehensive information and we will listen to feedback and respond where possible   |

#### 5. Right to decline participation

While we respect the right of the Tenant or Household Member to decline Tailored Support Coordination Services, we will continue to positively engage with each Tenant or Household Members by:

- constructively engaging with each Tenant and Household Member to get their input in advance of making decisions on operations that may affect them
- using clear, open and honest communication regarding the potential benefits of the services offered at all points of contact
- seeking to identify and clarify any underlying issues that may be impeding participation and work toward a mutual resolution of issues
- offering an open dialogue or one-on-one contact with our Support Coordinators to discuss any concerns and work collaboratively to find a solution
- working with support partner services to explain and promote the benefits of participation
- identifying and offering incentives that may promote or encourage participation
- making contact at regular intervals with Tenant and Household Members to see if they have changed their mind about participating
- providing an avenue for Tenant and Household Members to escalate disputes for resolution through a conciliation process
- ensuring protocols are in place to enable Tenants or Household Members to re-engage with Tailored Support Coordination Services at any time.

#### 7. Responding to Risk

Despite our best efforts, we recognise that there will be times when some Tenants or Household Members will not want to participate in Tailored Support Coordination Services and that this may significantly impact on the undertaking of core activities.

In these situations we will implement a range of strategies to minimise the impact on the performance and the timeliness of reporting to FACS. We will:

- undertake an assessment of risk at the earliest possible time to identify the operational impact of potential non-compliance
- implement an early intervention approach to mitigate the risk to Tailored Support Coordination Services
- undertake regular 'health checks' to identify where there are potential non-compliance issues
- provide monthly internal reports on non-compliance with oversight by senior management
- routinely report any non-compliance issues or risks to FACS
- continue to work positively with Tenant and Household Members to re-engage with Tailored Support Coordination Services throughout their tenure.

#### **8. Tenant Engagement Protocol**

We have developed a protocol for how we will engage with Tenant and Household Members under the SAHF. This protocol includes how we will engage with those who are offered Tailored Support Coordination Services, (Appendix 2 – Tenant Engagement Protocol).



## Appendix 1

### Mechanisms for Engagement

SGCH has developed a range of participation mechanisms to encourage, foster and support engagement which is targeted at the full range of Tenant and household cohorts:

| <b>Mechanism</b>                    | <b>Description</b>  | <b>Potential Target Group</b>  |
|-------------------------------------|---|--|
| <b>Communications and Promotion</b> | We will provide comprehensive information through a range of mediums and promote Tailored Support Coordination Services integrated with SGCH housing and <i>Housing Plus</i> products and services  | All Tenant and Household Members   |
| <b>Forums</b>                       | We will promote the SAHF model through specifically tailored forums (including for people of CALD backgrounds) targeted at prospective Tenants; new Tenants and Tenants who are yet to engage with the Tailored Support Coordination model  | Prospective Tenant and Household Members<br>New Tenant and Household Members<br>Existing Tenant and Household Members who are yet to agree to participate. |
| <b>Written Communication</b>        | We will make available a range of written materials about Tailored Support Coordination Services through media releases, displays, exhibits and fact sheets in both hard copy and on-line   | All Tenant and Household Members   |
| <b>On line Communication</b>        | We will offer information about our Tailored Support Coordination Services via the SGCH website and email<br>We will use digital platforms such as Google Ads, Facebook and Twitter to promote our services<br>We will make information available in a range of open formats to allow the user to choose the delivery method they prefer including information in audio and video formats as needed | All Tenant and Household Members   |

| <b>Mechanism</b>                               | <b>Description</b>   | <b>Potential Target Group</b>   |
|--|--|---|
| <b>Focus Groups</b>                            | We will hold at least two focus groups each year on how we are tracking in implementing our Tailored Support Coordination Services. We will use these platforms to inform our learning and service improvement   | All Tenant and Household Members  |
| <b>Face to Face Support</b>                    | We will provide an opportunity for Tenant and Household Members to influence and guide the way in which we offer Tailored Support Coordination Services through direct consultation with specialist Support Coordinators and via a dedicated email address and information and feedback hotline  | All Tenant and Household Members  |
| <b>Targeted Early Intervention and Support</b> | We will apply SGCH's system for identifying vulnerable Tenants and implement early intervention and support strategies through a dedicated team of Support Coordinators  | All Tenant and Household Members  |
| <b>Face to Face Vocational Planning</b>        | We will provide an opportunity for Tenant and Household Members who are interested in training and employment options to develop a vocational plan through consultations with our Employment and Opportunities Manager   | Tenant and Household Members identified as having potential to gain and maintain employment |
| <b>Action Research</b>                         | We will collaboratively explore any concerns experienced by Tenant and Household Members on the type of Tailored Support Coordination Services we offer and we will work to identify, test and resolve these issues together   | All Tenant and Household Members  |
| <b>Tenant Advisory Group</b>                   | We will provide a platform for Tenant and Household Members to raise issues in relation to housing policy, operations and service delivery through participation in SGCH's Tenant Advisory Group (TAG)<br>We will ensure information is shared through the TAG about our Tailored Support Coordination Services and we will report on the outcomes we are achieving through the TAG meetings | All Tenant and Household Members  |

| Mechanism                         | Description   | Potential Target Group  |
|-----------------------------------|---|---|
| <b>CALD TAG Groups</b>            | <p>We will provide a platform for CALD Tenant and Household Members to raise issues in relation to housing policy, operations and service delivery through participation in one of SGCH's six Tenant Advisory Groups (TAG), one of which is for Chinese Mandarin and Cantonese speaking Tenants</p>               | CALD Tenant and Household Members   |
| <b>Newsletters and Factsheets</b> | <p>We will develop a factsheet on Tailored Support Coordination Services in consultation with our Tenant and Household Members and TAG</p> <p>We will provide regular communications on Tailored Support Coordination Services through our quarterly Tenant Newsletter and invite feedback through this media</p> | All Tenant and Household Members  |
| <b>Satisfaction Surveys</b>       | <p>We will conduct satisfaction surveys, including exit surveys where applicable, to monitor and evaluate the process for providing Tailored Support Coordination Services and overall satisfaction with service delivery and use this feedback to inform continuous improvement</p>                              | All Tenant and Household Members<br>SGCH<br>FACS  |
| <b>Employment Seminars</b>        | <p>We will conduct tailored information sessions to promote our social procurement program</p> <p>We will link identified Tenants with jobs training and employment services and opportunities</p>  | Young people<br>Tenant and Household Members identified as having potential to gain and maintain employment |
| <b>Youth Councils</b>             | <p>We will engage with and consult our existing Youth Council and conduct tailored information sessions to promote our social procurement program and other available training and employment opportunities</p>   | Young people  |
| <b>Aboriginal Reference Group</b> | <p>We will engage with and consult SGCH's Aboriginal Reference Group on issues pertaining to Tailored Support Coordination Services to ensure equitable access to culturally appropriate training and employment services opportunities</p>   | Tenant and Household Members Aboriginal and Torres Strait Islander people                                   |

| <b>Mechanism</b>                | <b>Description</b> | <b>Potential Target Group</b> |
|---------------------------------|--------------------|-------------------------------|
| <b>Disability Action Groups</b> | Use assisted tools | Tenant and Household Members  |

## Appendix 2

### Tenant Engagement Protocol

This Tenant Engagement Protocol (the Protocol) sets out the business rules for how we will engage with Tenant and Household Members when providing services under the SAHF. This Protocol aligns with our four channels of engagement to:

- Inform
- Consult
- Involve
- Collaborate

#### 1. Inform

When providing information to our Tenant and Household Members we will:

- present all information simply and clearly
- ensure written material is available in multi-lingual formats and/or use translation services for clarity of delivery and understanding of communications
- always provide a detailed information on the suite of service available to them and as much as possible, in writing and in a familiar language
- follow up critical communiqués with a phone call or face to face meeting.

#### 2. Consult

When consulting with our Tenant and Household Members we will:

- ensure meeting places are culturally appropriate for Aboriginal people and accessible for people with disabilities
- use translation services and/or Auslan interpreters, as required
- use assistance technology where possible or appropriate
- allow sufficient time for responses and actively listen to what people say
- provide feedback on the results of consultations within reasonable timeframes
- make sure people know how to make a complaint if they want to
- keep confidential any information provided by Tenant and Household Members in accordance with relevant Privacy Legislation
- demonstrate that the views of those consulted are taken into account in the outcome
- ensure adequate resources are allocated to the process, including ensuring Tenant and Household Members are reasonably assisted to attend consultation events.

#### 3. Involve

When involving our Tenant and Household Members in consultation processes we will:

- agree on the expected levels of participation and commitment and ensure these are matched with the expectations of all involved before commencing a consultation process
- be accountable for issues we are responsible for and hold others accountable by keeping minutes of any meetings noting actions and responsibilities
- ensure clarity about roles and responsibilities by putting them in writing.

#### 4. Collaborate:

When collaborating with our Tenant and Household Members we will:

- develop a shared understanding of what we are trying to achieve, prior to a consultation process
- provide written feedback on how input has influenced decisions, if appropriate

- agree a process of review where disputed decisions are resolved by working together, where possible.

## **Annexure B – Service Delivery Phase Plans**

### **Performance and Data Reporting Plan**

#### **Purpose**

The purpose of the Performance and Data Reporting Plan is to set out the approach for collecting, storing and reporting Tenant household, Dwelling, service and outcomes data for the Service Package delivered by SGCH Sustainability under the Social and Affordable Housing Fund (SAHF) Program.

St George Community Housing Limited (SGCH), as the Performance and Data Reporting Provider, will undertake all data and reporting services for the Service Package.

The Performance and Data Reporting Plan sets out:

- an overview of the information management system for collecting and reporting data
- process for collecting, recording and maintaining all information required to comply with the Services Specification
- process for transmitting the required data to FACS in accordance with the specified reporting requirements
- approach to meeting requirements under Privacy Legislation and Best Services Practices.

#### **Reporting Requirements**

In particular the Performance and Data Reporting Plan outlines how the reporting requirements for each of the following plans required under the Services Specifications will be met:

- Quarterly Performance Report
- Annual Performance Report
- Quarterly Data Report
- Annual Data Report
- Annual Outcomes Report.

#### **Outcomes and principles for Performance and Data Reporting**

The Performance and Data Reporting Plan aims to meet the Services Specification outcomes in relation to Performance and Data Reporting, covering:

- accurate and timely reporting of performance monitoring and data collection requirements
- Tenants' privacy and confidentiality have been maintained and preserved.

To ensure our service delivery approach meets the key outcomes for Performance and Data Reporting as identified in the Services Specifications we will deliver our services based on the following principles:

- performance data is tracked and reported against Key Performance Indicators (KPIs) at required intervals to ensure effective and cost efficient service delivery across all areas of the business

- data integrity is paramount with processes and practices to ensure and maintain data integrity are rigorously adhered to
- bespoke data capture modules will build an evidence base from which outcomes can be measured over time
- privacy and confidentiality of Tenant and Household Member information is rigorously protected and governed through appropriate policies and systems.

#### **Overview of information management system**

All information to meet the data and reporting requirements for the Service Package will be collected and stored in SGCH's information and communications technology system, OneHousing, developed by TechOne.

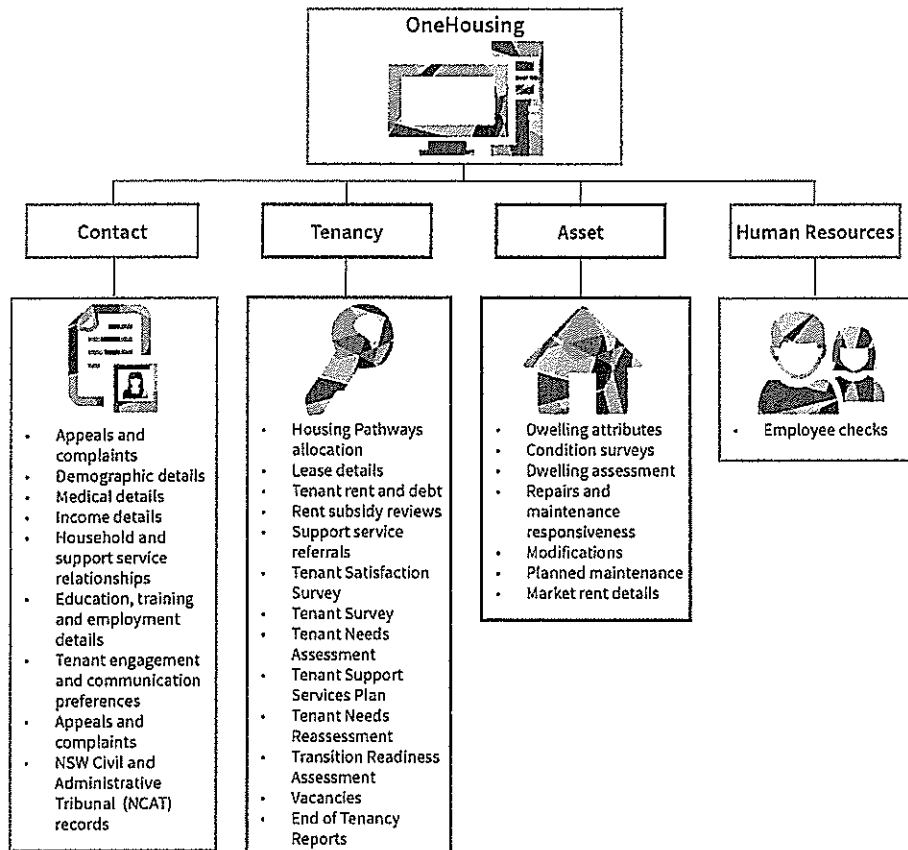
OneHousing will collect all the data requirements for reporting to FACS and store all information related to the provision of services including the Tenant Needs Assessment and Tenant Support Services Plans.

The system integrates all of SGCH's business operations across:

- Social Housing and Affordable Housing applications and allocations
- Tenancy management
- Asset management
- Property acquisition and development
- Training and development
- Finance and payroll
- Human resource management
- Work place health and safety.

The diagram below provides an overview of the relevant information modules within OneHousing, and the data that will be collected under each module to meet the performance and data reporting requirements for the Service Package.





**Contact Information Module**

The Contact Information Module for OneHousing will capture the personal information of each individual within a household under the Service Package. This will include income details, medical details, and education, employment and training details. It will also capture information on appeals and complaints.

**Tenancy Information Module**

The Tenancy Information Module will collect data at the point of entry for each Tenant and Household Member. It also records data on rent levels, rent subsidy reviews, support service referrals and end of tenancy information.

To meet the specific needs of the Service Package, the Tenancy Information Module will be used to store information related to Tenant Satisfaction Surveys and Tenant Surveys, Tenant Needs Assessment/Reassessments and Transition Readiness Assessments.

**Asset Information Module**

The Asset Information Module will capture asset information regarding the Dwelling and building attributes and repairs and maintenance data. It will also encompass all modification requests, planned maintenance data and Market Rent information.

**Human Resource Module**

The Human Resource Module records all staff information including Employee, police and working with children checks.

### **System amendments to meet reporting requirements**

Amendments will be made to OneHousing to ensure the required data inputs are captured to meet the reporting and data requirements.

### **Compatibility with CHIMES reporting portal**

OneHousing is fully compatible with the reporting requirements of the FACS Community Housing Information Management 'E' System (CHIMES).

### **Process for collecting, recording and maintaining information**

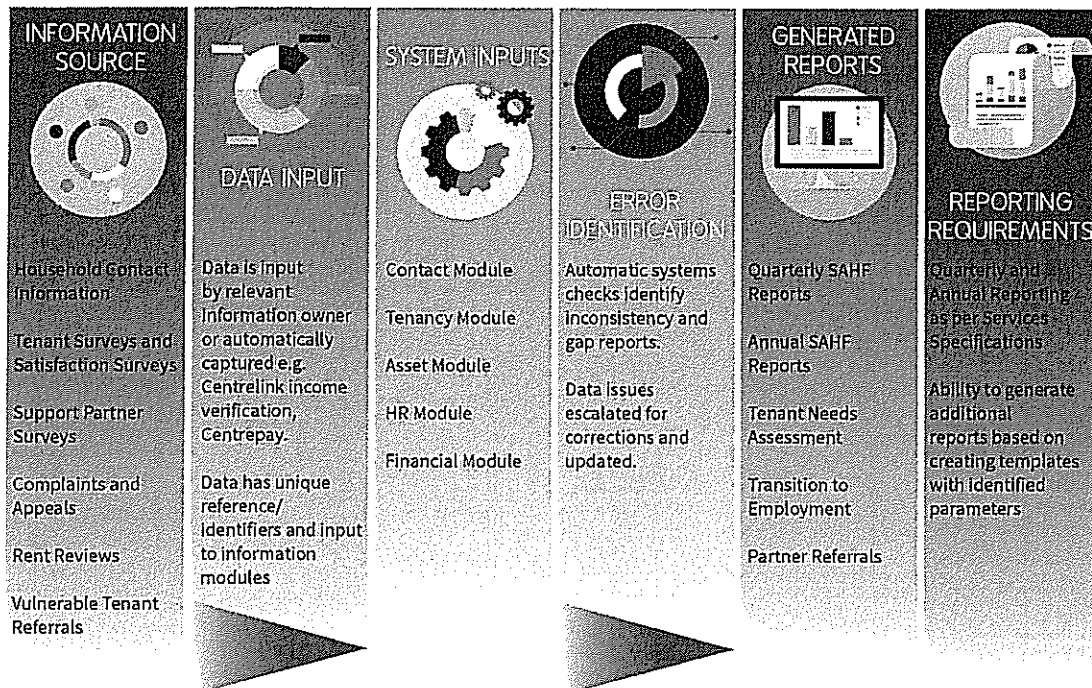
Information is collected and recorded into OneHousing across data modules described in the previous section. Data pertaining to housing assistance applications, assessments and allocations are recorded and maintained on the NSW Housing Register through a module of the FACS HOMES system.

Data inputs to OneHousing include:

- auto-transmission of data: through a formal agreement with Centrelink and with a Tenants' consent, rent which will be electronically verified for rent review assessments Tenants' Centrelink income confirmed electronically and Tenants' rent automatically paid by electronic transfer from Centrelink. Data transmissions will be monitored by Tenancy Managers, the Income Recovery Team and the Rent Review Team.
- manual input: data manually entering into Onehousing including Asset and Tenancy Management Services information, HR and financial transactions and administration data.

To ensure data quality and integrity, exception reports will be run every month and a structured procedure to rectify is implemented.

The diagram below describes our information management approach.



**Process for collecting, recording and maintaining information**

The tables set out in Appendix 1 – Performance and Data Collection Approach map out the Performance and Data Reporting requirements for the Service Package and the approach to data collection and reporting to meet the Services Specification.

**Transmitting the data to FACS**

**Quantitative data**

The quantitative data required for the following plans will be submitted in electronic format(s) as specified by the FACS Representative for;

- Quarterly Performance Report
- Annual Performance Report
- Quarterly Data Report
- Annual Data Report.

The following process will be followed:

- export report files from OneHousing
- Internal data integrity check
- Approval of submission, SGCH General Manager
- Submit to FACS

**Qualitative data**

The Annual Outcomes Report will be submitted in electronic format(s) as specified by the FACS Representative.

**Maintaining Tenants privacy and confidentiality**

SGCH will adhere to the requirements set out on Section 47 of the Services Agreement, Confidential Information and Disclosures, Privacy Legislation, Best Services Practices and SGCH's internal Privacy Policy located [www.sgch.com.au](http://www.sgch.com.au).

**Plan review**

Performance and Data Reporting Plan will be reviewed as required in accordance with the Services Agreement or as required by the FACS Representative.

### Appendix 1: Performance and Data Reporting Collection Approach

The tables below map out the Performance and Data Reporting requirements for the Service Package and the approach to data collection by identifying the source of the data, responsibility for data input to OneHousing and the reporting method to FACS to meet the Service Specification requirements.

**Table 1. SAHF Key Performance Indicators (KPI) – Data source, collection and reporting method**

| KPI No. | Sch 18 Ref | Key Performance Indicator (KPI)  | Data source   | Input responsibility into OneHousing | Reporting period | Submission to FACS |
|---------|------------|--|---|--------------------------------------|------------------|--------------------|
| 101     | 2.5        | Accommodation provided by ServiceCo is available to Tenants in accordance with the Target Turnaround Times | <ul style="list-style-type: none"> <li>Dwelling details</li> <li>End of Tenancy details</li> <li>System generated data triggered by a particular event</li> </ul> | Tenancy Manager                      | Quarterly        | CHIMES             |
| 201     | 4.13       | Tenant satisfaction with the maintenance services  | Tenant Satisfaction Survey  | Data and Reporting Coordinator       | Annual           | CHIMES             |
| 202     | 4.13       | Tenant satisfaction with the condition of the Dwelling   | Tenant Satisfaction Survey  | Data and Reporting Coordinator       | Annual           | CHIMES             |
| 203     | 4.13       | Tenant satisfaction with the overall quality of the Tenancy Management Services                            | Tenant Satisfaction Survey  | Data and Reporting Coordinator       | Annual           | CHIMES             |
| 204     | 5.7        | Tenant satisfaction with the overall quality of the Tailored Support Coordination Services                 | Tenant Survey   | Data and Reporting Coordinator       | Annual           | CHIMES             |
| 301     | 4.7        | An annual Tenant Transition Readiness Assessment has been conducted for each Tenant                        | Transition Readiness Assessment   | Support Coordinator                  | Annual           | CHIMES             |
| 302     | 4.8        | An annual Tenant rent and income review has been conducted for each Tenant as a minimum                    | Income and rent review  | Income and Rent Review Team          | Annual           | CHIMES             |

| KPI No. | Sch 18 Ref | Key Performance Indicator (KPI)   | Data source   | Input responsibility into OneHousing                           | Reporting period | Submission to FACS |
|---------|------------|---|---|--|------------------|--------------------|
| 303     | 5.2        | ServiceCo conducts a Tenant Needs Assessment for each Tenant and related Household Member on time   | Tenant Needs Assessment   | Support Coordinator  | Quarterly        | CHIMES             |
| 304     | 5.4        | ServiceCo develops a Tenant Support Services Plan for each Tenant and related Household Member on time  | <ul style="list-style-type: none"> <li>Tenant Needs Assessment</li> <li>Tenant Support Services Plan</li> </ul> | Support Coordinator  | Quarterly        | CHIMES             |
| 305     | 5.3        | ServiceCo conducts a Tenant Needs Reassessment for each Tenant and related Household Member at least once a year  | Tenant Needs Reassessment   | Support Coordinator  | Quarterly        | CHIMES             |
| 306     | SA Cl 11   | Employee Checks are conducted for all employees and contractors (who are not exempt) providing Tailored Support Coordination Services prior to being engaged          | Employee check forms  | HR Team  | Annual           | CHIMES             |
| 307     | SA Cl 11   | All Tailored Support Coordination Services employees and contractors (who are not exempt) have had a Working With Children Check that is not more than five years old | Working with Children Check documents and confirmation  | HR Team  | Annual           | CHIMES             |
| 308     | SA Cl 11   | All Tailored Support Coordination Services employees and contractors (who are not exempt) have had a National Police Check that is not more than four years old.      | National Police Check forms and documents   | HR Team  | Annual           | CHIMES             |
| 309     | 5.8        | ServiceCo conducts an End of Tenancy Report for each Tenant and related Household Member on time  | <ul style="list-style-type: none"> <li>Tenant Needs Re/Assessment</li> <li>End of Tenancy Report</li> </ul>     | Tenancy manager  | Quarterly        | CHIMES             |
| 401     | 6.3        | ServiceCo provides an accurately completed Quarterly Performance Report on time   | OneHousing Report   | System generated/checked by the Data and Reporting Coordinator | Quarterly        | CHIMES             |

| KPI No. | Sch 18 Ref  | Key Performance Indicator (KPI)  | Data source  | Input responsibility into OneHousing                               | Reporting period | Submission to FACS |
|---------|-------------|--|--|--|------------------|--------------------|
| 402     | 6.4         | ServiceCo provides an accurately completed Annual Performance Report on time | OneHousing Report  | System generated/<br>checked by the Data and Reporting Coordinator | Annual           | CHIMES             |
| 403     | 6.5 (b)(i)  | ServiceCo provides an accurately completed Quarterly Data Report on time     | OneHousing Report  | System generated/<br>checked by the Data and Reporting Coordinator | Quarterly        | CHIMES             |
| 404     | 6.5(b) (ii) | ServiceCo provides an accurately completed Annual Data Report on time        | OneHousing Report  | System generated/<br>checked by the Data and Reporting Coordinator | Annual           | CHIMES             |
| 405     | 6.6         | ServiceCo provides an accurately completed Annual Outcomes Report on time    | <ul style="list-style-type: none"> <li>• OneHousing Report</li> <li>• Analysis of outcomes data</li> </ul> | Report drafted by Service Improvement Unit                         | Annual           | CHIMES             |

Table 2. SAHF Outcomes Measurement and Reporting Requirements – Data source, collection and reporting method

| Ref | Reporting Requirement | Data Requirement  | Data source  | Data input responsibility    | Unit Record Level             | Reporting period | Submission method |
|-----|-----------------------|---|--|------------------------------|-------------------------------|------------------|-------------------|
| 1   | Assistance Type       | (a) ServiceCo must report the type of assistance provided for each Dwelling: Affordable Housing, general housing (Social Housing) or other  | <ul style="list-style-type: none"> <li>Application for Housing Assistance (Housing Pathways)</li> <li>Transition Readiness Assessment</li> </ul> | Tenancy Manager              | Dwellings                     | Quarterly        | CHIMES            |
| 2   | CALD Status           | (b) ServiceCo must report if the Tenant or Household Members born overseas and has a first language other than English or if one of their parents has those characteristics.  | Application for Housing Assistance (Housing Pathways)  | Allocations Officer          | Tenants and Household Members | Quarterly        | CHIMES            |
| 3   | Complaints            | (c) ServiceCo must report the number and nature of complaints received related to neighbourhood disturbances, anti-social behaviour, domestic and family disputes/violence and similar alleged offences at Sites or involving Tenants.<br>(d) ServiceCo must report the number and nature of complaints made against ServiceCo. | OneHousing – data will be retrieved from the Appeals and Complaints engagement   | Customer Service Coordinator | SAHF Portfolio                | Quarterly        | CHIMES            |



| Ref | Reporting Requirement           | Data Requirement  | Data source  | Data input responsibility | Unit Record Level             | Reporting period | Submission method |
|-----|---------------------------------|---|--|---------------------------|-------------------------------|------------------|-------------------|
| 4   | <b>Disability Modifications</b> | <p>(e) ServiceCo must report whether the Dwelling has been modified for use by Tenants with a disability and if so, the extent to which the Dwellings have been modified.</p> <p>(f) ServiceCo must report the number of requests from Tenants or Household Members to have the Dwelling modified for use by Tenants with a disability and if so, the extent to which the Dwelling has been modified.</p> | <ul style="list-style-type: none"> <li>• Allocations Assessment</li> <li>• Tenant Needs Assessment</li> <li>• Tenant Needs Reassessment</li> </ul>                                   | Tenancy Manager           | Dwellings                     | Quarterly        | CHIMES            |
| 5   | <b>Disability Status</b>        | (g) ServiceCo must report whether each Tenant or Household Members has a physical/diverse, sensory/speech, intellectual/learning or psychiatric impairment.   | <ul style="list-style-type: none"> <li>• Application for Housing Assistance (Housing Pathways)</li> <li>• Tenant Needs Assessment</li> <li>• Tenant Support Services Plan</li> </ul> | Tenancy Manager           | Tenants and Household Members | Quarterly        | CHIMES            |
| 6   | <b>Dwelling Configuration</b>   | (h) ServiceCo must report the number of bedrooms in the Dwelling.   | Property elements  | Asset Officer             | Dwellings                     | Quarterly        | CHIMES            |

| Ref | Reporting Requirement               | Data Requirement  | Data source   | Data input responsibility            | Unit Record Level             | Reporting period | Submission method |
|-----|-------------------------------------|---|---|--------------------------------------|-------------------------------|------------------|-------------------|
| 7   | <b>Dwelling Details</b>             | (i) ServiceCo must report the unique identifier, unit number, street number, suburb, postcode and LGA for each Dwelling.<br>(j) ServiceCo must report the unique identifier for any Dwelling not condition surveyed.<br>(k) ServiceCo must report the unique identifier for any Dwelling that was surveyed and did not meet the Asset Performance Standards for Existing Dwellings. | Condition Survey  | Asset Officer                        | Dwellings                     | Quarterly        | CHIMES            |
| 8   | <b>End of Tenancy Report</b>        | (l) For all Tenancies that end, ServiceCo must report the Tenancy Termination Reason and Where Next Housed recorded (including any additional sub reasons used).  | End of Tenancy Report   | Tenancy Manager                      | Tenancy                       | Quarterly        | CHIMES            |
| 9   | <b>Former Tenant</b>                | (m) ServiceCo must report any Tenants or Household Members that were previously Social Housing or Affordable Housing Tenants and are Applicants to or have re-entered a Dwelling (when possible).   | <ul style="list-style-type: none"> <li>Application for Housing Assistance (Housing Pathways)</li> <li>Allocations assessment</li> </ul> | Tenancy Manager                      | Tenants and Household Members | Quarterly        | CHIMES            |
| 10  | <b>Housing Status at allocation</b> | (n) ServiceCo must report whether the Tenant or Household Members were homeless (had no housing) or were residing in temporary or emergency accommodation at the time of allocation.  | <ul style="list-style-type: none"> <li>Application for Housing Assistance (Housing Pathways)</li> <li>Allocations assessment</li> </ul> | Tenancy Manager/ Support Coordinator | Household                     | Quarterly        | CHIMES            |

| Ref | Reporting Requirement    | Data Requirement  | Data source  | Data input responsibility   | Unit Record Level | Reporting period | Submission method |
|-----|--------------------------|---|--|-----------------------------|-------------------|------------------|-------------------|
| 11  | <b>Income at Signing</b> | <p>(o) Assessable income: ServiceCo must report the <b>value</b> of weekly income from all sources (excluding CRA) for all Tenants and Household Members for the first week of the Tenancy. The income used to establish eligibility of a household for receipt of housing assistance.</p> <p>(p) Household income: ServiceCo must report the main <b>income source</b> of the household (wages, Centrelink payments, other or unknown) for the first week of the Tenancy.</p>  | Income assessment at the point of Tenancy sign-up  | Income and Rent Review Team | Household         | Quarterly        | CHIMES            |
| 12  | <b>Income</b>            | <p>(q) Household income – ServiceCo must report the main <b>income source</b> of the household (wages, Centrelink payments, other or unknown) (with the most up to date information for the reporting period).</p> <p>(r) Assessable income – ServiceCo must report the <b>value</b> of weekly income from all sources (excluding CRA) for all Tenants and Household Members for the last week of the reporting period as specified and used by the agency to establish eligibility of a household for receipt of housing assistance.</p> <p>(s) <b>CRA income</b> – ServiceCo must report the weekly amount of CRA each household and Tenant is entitled to receive in the fortnight prior to data extraction.</p> | <ul style="list-style-type: none"> <li>• Income and Rent Review</li> <li>• Eligibility Assessment</li> </ul> | Income and Rent Review Team | Household         | Quarterly        | CHIMES            |

| Ref | Reporting Requirement    | Data Requirement  | Data source   | Data input responsibility | Unit Record Level             | Reporting period | Submission method |
|-----|--------------------------|---|---|---------------------------|-------------------------------|------------------|-------------------|
| 13  | Indigenous Status        | (t) ServiceCo must report if a Tenant or Household Member identifies themselves as Indigenous, Aboriginal or Torres Strait Islander   | Application for Housing Assistance (Housing Pathways)   | Allocations               | Tenants                       | Quarterly        | CHIMES            |
| 14  | Likelihood Of Transition | (u) ServiceCo must report the likelihood of the Tenant and Household Members successfully transitioning out of Social Housing or Affordable Housing in the short-term and/or long-term, as recorded in the Tenant Needs Assessment or Tenant Needs Reassessment (whichever is most recent). | <ul style="list-style-type: none"> <li>• Tenant Needs Assessment</li> <li>• Tenant Needs Reassessment</li> <li>• Income and Rent Review</li> <li>• Transition Readiness Assessment</li> </ul> | Support Coordinator       | Tenants and Household Members | Quarterly        | CHIMES            |
| 15  | Market Rent              | (v) ServiceCo must report the value of the weekly Market Rent for the dwelling<br>(w) ServiceCo must report the method for determining Market Rent  | Market Rent Review  | Asset Officer             | Dwellings                     | Quarterly        | CHIMES            |
| 16  | Tenant Details           | (x) ServiceCo must report the date of birth and gender of each Tenant and Household Member.   | <ul style="list-style-type: none"> <li>• Application for Housing Assistance (Housing Pathways)</li> <li>• Allocations assessment</li> </ul>   | Tenancy Manager           | Tenants and Household Members | Quarterly        | CHIMES            |

| Ref | Reporting Requirement          | Data Requirement  | Data source  | Data input responsibility      | Unit Record Level             | Reporting period | Submission method |
|-----|--------------------------------|---|--|--------------------------------|-------------------------------|------------------|-------------------|
| 17  | <b>Rent Charged</b>            | (y) ServiceCo must report the weekly rent charged to the Tenant for the last week of the reporting period (excluding CRA and charges for utilities, meals, cleaning, laundry or other facility costs). The rent charged is the amount of money the Tenant has been asked to pay. It may differ from Market Rent and may not have been received. | Income and Rent Review   | Income and Rent Review Team    | Dwellings                     | Quarterly        | CHIMES            |
| 18  | <b>Rental Arrears</b>          | (z) ServiceCo must report the value of any rental and non-rental arrears a Tenant accrues with ServiceCo.   | <ul style="list-style-type: none"> <li>Income and Rent Review</li> <li>Arrears and Debt Reports</li> </ul> | Income and Rent Review Team    | Tenancy                       | Quarterly        | CHIMES            |
| 19  | <b>Targeted Assistance</b>     | (aa) ServiceCo must report whether the letting of the Dwelling is targeted to any specific cohort of the community and specify that cohort.   | N/A  | N/A                            | Dwellings                     | Quarterly        | CHIMES            |
| 20  | <b>Tenancy Details</b>         | (bb) ServiceCo must report a unique Tenancy identifier, Dwelling identifier, household identifier, start date and end date for each Tenancy.  | Dwelling details<br>Tenancy details  | System report                  | Tenancy                       | Quarterly        | CHIMES            |
| 21  | <b>Tenant Needs Assessment</b> | (cc) ServiceCo must report on the number of Tenants Needs Assessments that were not conducted or were conducted outside of the required timeframe and the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe.   | <ul style="list-style-type: none"> <li>Tenant Needs Assessment Report</li> <li>Audit</li> </ul>            | Data and Reporting Coordinator | Tenants and Household Members | Quarterly        | CHIMES            |

| Ref | Reporting Requirement        | Data Requirement   | Data source  | Data input responsibility      | Unit Record Level             | Reporting period | Submission method |
|-----|------------------------------|--|--|--------------------------------|-------------------------------|------------------|-------------------|
| 22  | Tenant Support Services Plan | (dd)ServiceCo must report on the number of Tenant Support Services Plans that were <b>not</b> conducted or were completed outside of the required timeframes and the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | <ul style="list-style-type: none"> <li>• Tenant Support Services Plan Report</li> <li>• Audit</li> </ul>     | Data and Reporting Coordinator | Tenants and Household Members | Quarterly        | CHIMES            |
| 23  | Tenant Needs Reassessment    | (ee)ServiceCo must report on the number of Tenants Needs Reassessments that were <b>not</b> conducted or were conducted outside of the required timeframe and the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe.    | <ul style="list-style-type: none"> <li>• Tenant Needs Reassessment Report</li> <li>• Audit Report</li> </ul> | Data and Reporting Coordinator | Tenants and Household Members | Quarterly        | CHIMES            |

| Ref | Reporting Requirement | Data Requirement   | Data source   | Data input responsibility      | Unit Record Level             | Reporting period | Submission method |
|-----|-----------------------|--|---|--------------------------------|-------------------------------|------------------|-------------------|
| 24  | Tenant Survey         | <p>(ff) ServiceCo must provide valid results for the required Tenant Survey and Tenant Satisfaction Survey.</p> <p>(gg) ServiceCo must provide details of the surveys sample representativeness, including any differences between the demographic characteristics of respondents and the demographic profile of all Tenants housed by ServiceCo.</p> <p>(hh) ServiceCo must provide the date of last survey, number of surveys distributed, how many surveys were sent / Tenants phoned / invitations to interview attempted, numbers of surveys returned, the number of completed surveys received and if interviews were carried out.</p> | <ul style="list-style-type: none"> <li>• Tenant Survey</li> <li>• Tenant Satisfaction Survey</li> </ul>   | Data and Reporting Coordinator | SAHF Portfolio                | Annual           | CHIMES            |
| 25  | Tenant Status         | (ii) ServiceCo must report the employment, education, level of educational attainment, safety and risk status of Tenants and Household Members following the completion of the Tenant Needs Assessment, Tenant Needs Reassessment and End of Tenancy Report.   | <ul style="list-style-type: none"> <li>• Tenant Needs Assessment</li> <li>• Tenant Needs Reassessment</li> <li>• End of Tenancy Report</li> </ul> | Support Coordinator            | Tenants and Household Members | Quarterly        | CHIMES            |

| Ref | Reporting Requirement   | Data Requirement   | Data source   | Data input responsibility | Unit Record Level             | Reporting period | Submission method |
|-----|-------------------------|--|---|---------------------------|-------------------------------|------------------|-------------------|
| 26  | <b>Transfer</b>         | <p>(jj) ServiceCo must report whether each Tenancy is a transfer from public housing or another Community Housing Provider.</p> <p>(kk) ServiceCo must report whether a Tenancy is an internal transfer (where a household has moved from one dwelling to another Dwelling that the same ServiceCo manages during the reporting period).</p> | <ul style="list-style-type: none"> <li>• Transfer Application</li> <li>• Tenancy details</li> <li>• Application for Housing Assistance (Housing Pathways &amp; TRIM)</li> </ul> | Tenancy Manager           | Tenants and Household Members | Quarterly        | CHIMES            |
| 27  | <b>Transfer Details</b> | (ll) ServiceCo must report the number of transfer requests, the number of requests that were successful and the primary reasons for transfer as articulated by the Tenant or Household Members.  | Transfer Report   | Tenancy Manager           | Tenants Household Members     | Quarterly        | CHIMES            |



**Table 3. SAHF Outcomes Measurement and Reporting Framework/Outcomes Report – Data source and reporting method**

|              | Outcomes   | Outcomes Indicators  | Data source   | Reporting period | Submission method      |
|--------------|--|--|---|------------------|------------------------|
| <b>1.1.1</b> | Individuals exit housing positively  | Number of Positive Exits, Negative Exits and total exits (Indeterminate Exit, Non-Exit, Neutral Exit, and Non-Tenancy)   | End of Tenancy Report   | Annual           | Outcome Report to FACS |
| <b>1.1.2</b> | Individuals exit into housing stability  | Number of individuals who return for housing assistance as Applicants after previously exiting   | Tenant details, Housing Pathways  | Annual           | Outcome Report to FACS |
| <b>1.1.3</b> | Individuals are supported to sustain stable housing that is affordable, safe and secure  | Length of tenancies in the same Dwelling<br>Most frequent response (mode) to Tenant Survey question 8, 9 and 14 and distance travelled during a Tenancy                    | Dwelling details, Tenancy details and Tenant Survey, SGCH Evaluation                        | Annual           | Outcome Report to FACS |
| <b>1.1.4</b> | Stable housing for individuals who were homeless or at risk of homelessness  | Number of individuals who were homeless or at risk of homelessness (at allocation) located in the same Dwelling 12 months after signing the Residential Tenancy Agreement  | Tenant Needs Assessment, Dwelling details, Tenancy details and housing status at allocation | Annual           | Outcome Report to FACS |
| <b>1.1.5</b> | Individuals are satisfied with the appropriateness and location of their Dwelling  | Level of satisfaction individuals have with the appropriateness and location of their Dwelling   | Tenant Survey, Dwelling details   | Annual           | Outcome Report to FACS |
| <b>1.1.6</b> | Individuals are satisfied with the adequacy of Dwelling modifications and the response to any disability modification requests made to ServiceCo | Percentage of individuals who report satisfaction with the adequacy of disability modifications and the response to any disability modification requests made to ServiceCo | Tenant Survey, Dwelling details   | Annual           | Outcome Report to FACS |
| <b>1.1.7</b> | Individuals do not negatively exit or request transfers as a result of dissatisfaction with Dwelling features, location or Support Services      | Number of Negative Exits or Tenant requested transfers where the primary reason given is dissatisfaction with Dwelling features, location or Support Services              | Dwelling details, Tenancy details, End of Tenancy Report and transfer documentation         | Annual           | Outcome Report to FACS |

|       | Outcomes  | Outcomes Indicators  | Data source  | Reporting period | Submission method      |
|-------|---|--|--|------------------|------------------------|
| 1.1.8 | Individuals are relocated or transferred to a new Dwelling located in the same LGA or school catchment as the previous Dwelling                           | Percentage of transfers or relocations where the new Dwelling is located in the same LGA or school catchment as the previous Dwelling  | End of Tenancy Report and transfer documentation                             | Annual           | Outcome Report to FACS |
| 1.1.9 | Avoidance of Under-Occupancy and Overcrowding   | Number of Dwellings assessed as Under-Occupancy, Overcrowded or Severely Overcrowded   | Dwelling details, Tenancy details, Dwelling configuration and Tenant details | Annual           | Outcome Report to FACS |
| 1.2.1 | Individuals report that the Support Services they currently access meet their needs   | Number of individuals who report that the Support Services they currently access meet their needs  | Tenant Survey  | Annual           | Outcome Report to FACS |
| 1.2.2 | Individuals are satisfied with ServiceCo's performance facilitating access to Support Services  | Level of satisfaction of individuals have with ServiceCo's performance facilitating access Support Services  | Tenant Survey  | Annual           | Outcome Report to FACS |
| 1.3.1 | Individuals have strong support networks  | Most frequent response (mode) to Tenant Survey question 6 and distance travelled during a Tenancy  | Tenant Survey, Wellbeing Index, SGCH Evaluation                              | Annual           | Outcome Report to FACS |
| 1.3.2 | Individuals participate in community activities   | Most frequent response (mode) to Tenant Survey question 7 and distance travelled during a Tenancy  | Tenant Survey, Wellbeing Index, SGCH Evaluation                              | Annual           | Outcome Report to FACS |
| 1.4.1 | Individuals feel safe and secure in their home and in the community   | Most frequent response (mode) to Tenant Survey question 8 and 9 and distance travelled during a Tenancy  | Tenant Survey, Wellbeing Index   | Annual           | Outcome Report to FACS |
| 1.4.2 | Individuals do not experience violence and anti-social behaviour (especially school aged children or young people who may be at risk of significant harm) | Number of reported violent/anti-social incidents, Number of End of Tenancies triggered by Tenant requested transfers due to the Tenant or Household Members being at risk, harassed or equivalent, and the number of End of Tenancies triggered by Breaches where the reason given was eviction or | Tenant Needs Reassessment, End of Tenancy Report and complaints records      | Annual           | Outcome Report to FACS |

|              | Outcomes   | Outcomes Indicators  | Data source  | Reporting period | Submission method      |
|--------------|--|--|--|------------------|------------------------|
|              |  | termination as a result of anti-social behaviour   |  |                  |                        |
| <b>2.1.1</b> | Individuals in, or seeking employment, have a higher median weekly income  | Median weekly income for employed individuals (excluding CRA)  | Tenant Needs Assessment, Tenant Needs Reassessment, Transition Readiness Assessment    | Annual           | Outcome Report to FACS |
| <b>2.1.2</b> | Unemployed or underemployed individuals achieve a Partial or Pathway Employment Outcome or Full Employment Outcome (where relevant)                | Number of individuals who progress to achieve a Partial, Pathway or Full Employment Outcome for a 4, 12, 13 or 26 week period (where relevant)   | Tenant Needs Assessment, Tenant Needs Reassessment, End of Tenancy Report              | Annual           | Outcome Report to FACS |
| <b>2.1.3</b> | Unemployed or underemployed individuals are Actively Seeking Work and meet any employment services Mutual Obligation Requirements (where relevant) | Number of individuals Actively Seeking Work and/or have registered with an employment Performance and Data Reporting Provider and meet their Mutual Obligation Requirements (where relevant)   | Tenant Needs Assessment, Reassessment, Transition Readiness Assessment, End of Tenancy | Annual           | Outcome Report to FACS |
| <b>2.1.4</b> | Individuals are able to manage their finances in a way that avoids rental arrears  | Number of tenancies with a rental arrears balance above zero<br>Number of tenancies with rental arrears in excess of the 'metric rent outstanding' threshold set in the National Regulatory System for Community Housing Registration Return Guide                             | Tenancy charges or rent monitoring, Tenant Needs Reassessment                          | Annual           | Outcome Report to FACS |
| <b>2.2.1</b> | Improved education outcomes of school aged children and young people   | Comparative literacy and numeracy (NAPLAN) scores for school aged children and young people and the Index of Community Socio-educational Advantage<br>Weighted average literacy and numeracy (NAPLAN) scores for the schools attended by school aged children and young people | Tenant Needs Assessment, Tenant Needs Reassessment, SGCH Qualitative Evaluation        | Annual           | Outcome Report to FACS |

|       | Outcomes  | Outcomes Indicators  | Data source   | Reporting period | Submission method      |
|-------|---|--|---|------------------|------------------------|
| 2.2.2 | School aged children and young people are enrolled in and satisfactorily attend school  | Proportion of school aged children and young people who are enrolled in and satisfactorily attend school   | Tenant Needs Assessment, Tenant Needs Reassessment, SGCH Qualitative Evaluation | Annual           | Outcome Report to FACS |
| 2.2.3 | School aged children and young people complete Year 10 and go on to complete Year 12  | Proportion of school aged children and young people who complete Year 10 and go on to complete Year 12   | Tenant Needs Assessment, Tenant Needs Reassessment, SGCH Qualitative Evaluation | Annual           | Outcome Report to FACS |
| 2.2.4 | Individuals enrol in further education or training (includes university, TAFE, vocational training or equivalents) (where relevant) | Number of individuals who enrol in further education or registered training (includes education activities as part of employment services)           | Tenant Needs Assessment, Tenant Needs Reassessment, SGCH Qualitative Evaluation | Annual           | Outcome Report to FACS |
| 2.2.5 | Individuals complete further education or training (includes university, TAFE, vocational training or equivalents)                  | Number of individuals who complete further education or registered training (includes education activities completed as part of employment services) | Tenant Needs Assessment, Tenant Needs Reassessment, SGCH Qualitative Evaluation | Annual           | Outcome Report to FACS |
| 2.3.1 | Individuals progress towards a positive outlook on life   | Most frequent response (mode) to Tenant Survey question 3 and distance travelled during a Tenancy  | Tenant Survey, Wellbeing Index, SGCH Qualitative Evaluation                     | Annual           | Outcome Report to FACS |
| 2.3.2 | Individuals progress towards choosing how they live their lives   | Most frequent response (mode) to Tenant Survey question 4 and distance travelled during a Tenancy  | Tenant Survey, Wellbeing Index, SGCH Qualitative Evaluation                     | Annual           | Outcome Report to FACS |

|       | <b>Outcomes</b>  | <b>Outcomes Indicators</b>  | <b>Data source</b>  | <b>Reporting period</b> | <b>Submission method</b> |
|-------|--|---|---|-------------------------|--------------------------|
| 2.3.3 | Individuals progress towards having comfort about the balance between what they do for themselves and what they rely on others for | Most frequent response (mode) to Tenant Survey question 5 and distance travelled during a Tenancy | Tenant Survey, Wellbeing Index, SGCH Qualitative Evaluation | Annual                  | Outcome Report to FACS   |

## **Annexure B – Service Delivery Phase Plans**

### **Site and Community Integration Management Plan**

#### **1. Purpose**

The purpose of the Site and Community Integration Plan is to set out the approach to delivering and managing Social and Affordable Housing provided by SGCH Sustainability under Phase 1 of the Social and Affordable Housing Fund (SAHF) Program to support the creation of integrated communities.

St George Community Housing Limited (SGCH), as the Service Provider, will deliver the Service Package in accordance with the Site and Community Integration Plan.

The Site and Community Integration Plan sets out:

- the design features that will support the integration of Social and Affordable Housing on each SAHF site and within the surrounding neighbourhood
- operational approach to managing Social and Affordable Housing tenancies to build diverse, mixed communities
- service delivery initiatives to promote community integration.

#### **2. Site & Building Design Features**

Site locations and design features will provide opportunities for community integration within the building and the broader community, including:

- sites located in areas that provide opportunities for community connectedness close to local services and public transport
- infill development sites between 20 to 70 Dwellings per site surrounded by private market housing and commercial uses
- shared open space designed to create spaces for Tenants to meet, interact and create a sense of community within each building such as rooftop gardens or BBQ areas
- incorporating multiple building cores, where appropriate, in larger developments (50 Dwellings or above) to reduce general foot traffic flow in foyer areas and potential for large groups to congregate in entrance areas
- inclusion of office space in larger developments to provide an area for onsite tenancy and asset management presence
- inclusion of appropriate ground floor commercial uses where planning requirements have required the inclusion of commercial space such as health or community facilities
- building designed to respond to surrounding area and integrate with the street frontage and adjacent buildings
- application of crime prevention through environmental design principles to optimise safety and security by promoting passive surveillance, access and space management.

### 3. Operational approach

#### Allocations to Social and Affordable Housing

A local allocation strategy will be developed for each site to guide the allocation of new tenancies to promote a diverse and mixed community.

The following principles will be applied in each local allocation strategy:

- make the best use of the housing stock available e.g. bedrooms, design, modifications and adaptable Dwellings
- include a mix of Social and Affordable Housing on each site
- create an appropriate social mix that balances the priority needs of Applicants with sensitive allocations that promote cohesive communities
- assess the appropriateness of medium density housing for the Tenant household

Central to the allocation assessment will be promoting client choice by considering the needs of individuals and households through an assessment of the following information:

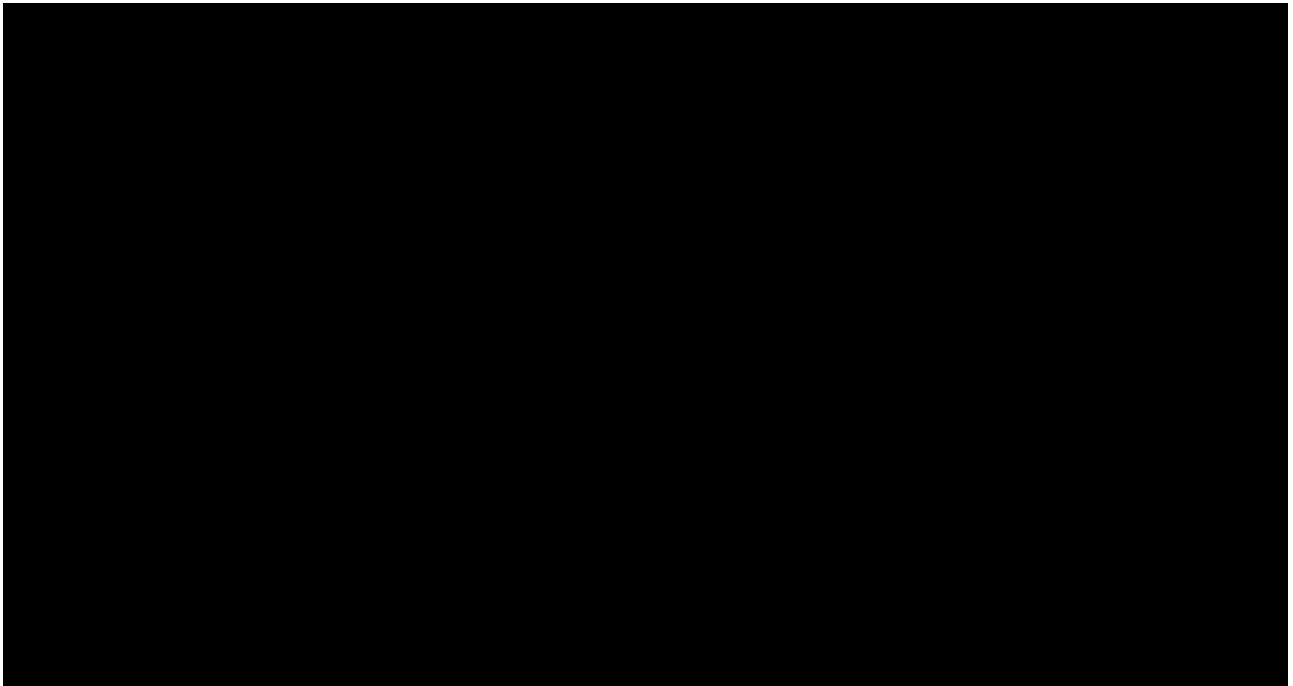
- required Dwelling specifications
- needs and preferences as stated on their application
- further information obtained in pre offer interviews

#### Social and Affordable Housing Tenant mix

Each site will contain a mix of Social and Affordable Housing Dwellings. The overall mix for the Service Package comprises [REDACTED] Social Housing and [REDACTED] Affordable Housing. However, the ratio will vary for each site to accommodate specific local characteristics and integration strategies.

In larger developments a high proportion of Affordable Housing is included to support a greater diversity. The mix also considers the existing concentration of Social Housing in the area for each site to avoid the promotion of the over concentration of social disadvantage.

The table below identified the proposed mix for each sites in the Service Package:



## **Social and Affordable Housing Dwelling mix**

Social and Affordable Housing Dwellings will be salt and peppered throughout each building unless there are specific requirements such as ground floor, adaptable or modified Dwellings that required a targeted allocation approach for a specific group.

### **4. Service delivery initiatives**

#### **Service delivery approach**

Our service delivery approach will focus on early intervention and prevention of issues that may impact the Tenant household capacity to sustain their tenancy, or impact on their health or wellbeing.

To promote sustainable tenancies we will:

- provide services that are responsive to the needs of Tenant and Household Members
- proactively manage conflicts within the building community and/or surrounding area, appropriate to seriousness of the issue
- assist Tenant and Household Members to access the services they need through responsive Tailored Support Coordination Services

#### **Place making and community building**

Place Coordinators and community building initiatives support integrated, mixed developments and manage relationship with the broader community.

The Place Coordinator will:

- work with government, non-government, community groups and residents at a local level to facilitate development and delivery of initiatives, Programs and services that respond to need and enhance quality of life for Tenant and Household Members
- build on the strengths inherent in the local community and collaborate with residents and local service systems to intervene where necessary to mitigate negative trends and positively impact on individual and community quality of life
- work with local communities in mixed tenure developments to manage issues and mitigate risks to:
  - build a sense of pride to mitigate stigmatisation
  - implement the Pride of Place property maintenance scheme that rewards Tenants for maintaining their properties in conjunction with SGCH responsive and planned maintenance Program
  - advise on local allocation strategies to achieve the most sustainable mix of young people, families, seniors to achieve an integrated community, facilitate connectiveness and increase residents feeling of safety and value in the community
- involve all residents of the community, not just SGCH Tenant and Household Members, through delivery of events, Programs and services to foster a sense of community and cohesion, reducing isolation and promoting community integration
- work to build communities and places that work for everyone and create opportunities for Tenants to develop skills for education, employment and social connection
- facilitate a range of the ways for Tenants and community members to be involved through: fitness Programs, community gardens, language classes, Programs with local schools (free breakfasts, writing projects), assisting local networks such as youth councils, neighbourhood groups and



running information sessions with local service networks through councils, police, and community centres.

### **Regular onsite presence**

For development sites in excess of 50 Dwellings an onsite Tenancy and Asset Management Services will be maintained comprising a small office where tenancy, Asset Management and Tailored Support Coordination staff can meet with Tenant and Household Members.

The office will be open at set times with the level of services determined by the size of the development and the location of other SGCH properties in the locality. SGCH staff will be available to:

- provide advice on tenancy and maintenance issues
- received feedback on our services
- provide advice or referral to specialist services.

### **Good neighbour policy**

The SGCH Good Neighbour Policy will be actively promoted to Tenant and Household Members to provide information on the roles and the responsibilities of being a Tenant and more broadly to support behaviour that facilitates integrated communities.

The Policy aims to manage potential conflict by:

- providing guidance on expected use of Dwellings including common areas
- identifying expected behaviours for Tenants, Household Members and their visitors
- clarifying Tenant roles and responsibilities
- highlighting actions that would breach their tenancy agreements.

The Policy will be provided to all Tenant and Household Members at the commencement of their tenancy.

## **5. Managing sites in areas of Social Housing concentration**

In locations where the concentration of Social Housing in the surrounding area is above 30 percent, we will apply site specific strategies to manage potential issues if the need arises. This will include a combination of a targeted allocations approach or specific place making initiatives for the site.

## CERTIFICATE ON CONDITIONS PRECEDENT

SGCH SUSTAINABILITY LIMITED  
ABN 21 606 965 799  
(ServiceCo)

To: The Secretary of the Department of Family and Community Services (FACS)

### 1. Background

- 1.1 We refer to the 'Social and Affordable Housing Fund - Services Agreement' between (1) ServiceCo and (2) FACS dated 25 January 2017 (**Services Agreement**).
- 1.2 Definitions in the Services Agreement apply in this certificate.
- 1.3 We are directors or a director and a secretary of ServiceCo.

### 2. Certified documents

- 2.1 The insurance policies and certificates of currency attached to this certificate are complete and up to date copies of those documents.

### 3. Certification

We certify that:

- 3.1 **Key Subcontract:** all conditions precedent under the 'Social and Affordable Housing Fund – Services Subcontract' dated 20 January 2017 between ServiceCo and St George Community Housing' have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to the Services Agreement);
- 3.2 **Equity Document:** all conditions precedent under the 'SAHF Intercompany Loan Agreement' dated 20 January 2017 between ServiceCo and SGCH Community Housing have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to the Services Agreement); and
- 3.3 **corporate structure:** the corporate structure and any equity and / or subordinated debt arrangements between ServiceCo and St George Community Housing are in accordance with the Ownership Schedule, the Equity Document and the 'Intercompany Loan Agreement' dated 19 November 2015 between ServiceCo and St George Community Housing.

### 4. Authorised Officers

- 4.1 The persons named in Schedule 1 are ServiceCo's authorised officers and [REDACTED] is the ServiceCo Representative and the signature appearing beside the name of each such authorised officer and ServiceCo Representative is the true signature, or a copy of the true signature, of that person.



Dated:

17 February 2017

Signed by (signature):

Name:

Director

**SGCH SUSTAINABILITY LIMITED**  
**ABN 21 606 965 799**

Signed by (signature):

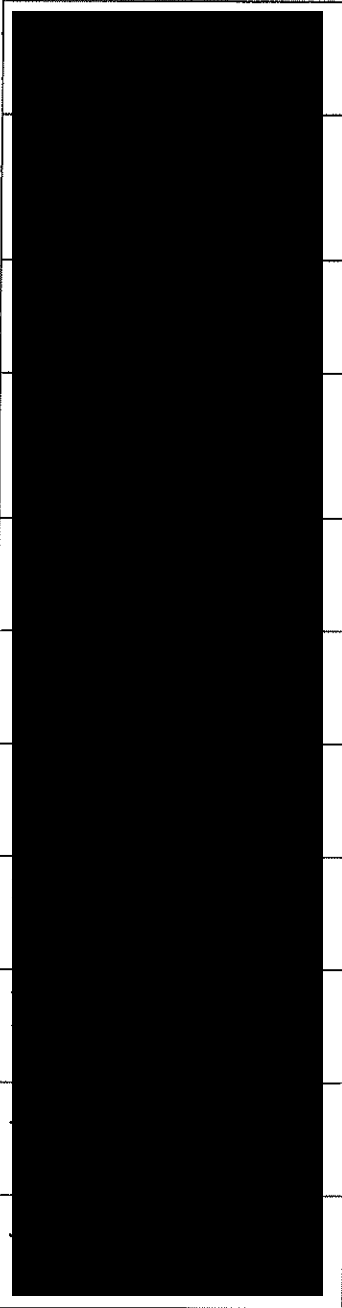
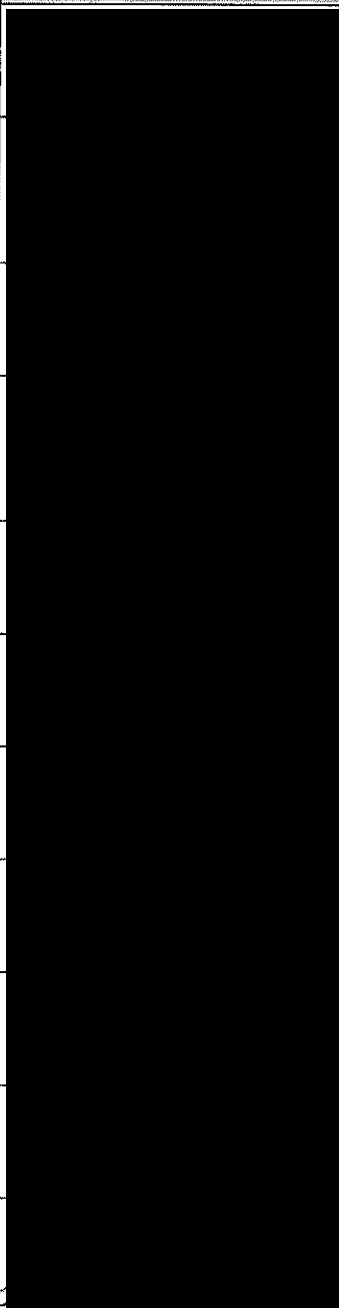
Name:

Director / Secretary

**SGCH SUSTAINABILITY LIMITED**  
**ABN 21 606 965 799**

# Schedule 1

## Authorised Officers

| Name   | Position   | Signature  |
|--|--|--|
|  | Group Chief Executive Officer                      |  |
|  | General Manager, Development and Property Services |  |
|  | Group Chief Financial Officer                      |  |
|  | Head of Governance, Company Secretary              |  |
|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
| Project Director   |  |  |

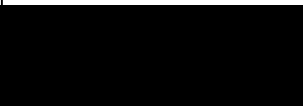
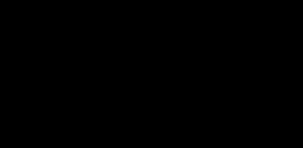
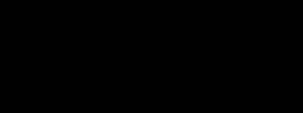
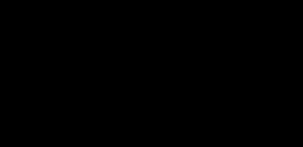
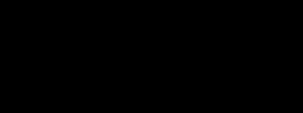

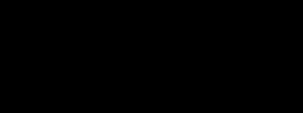

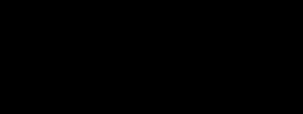
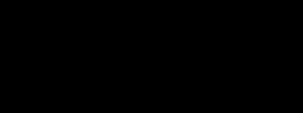
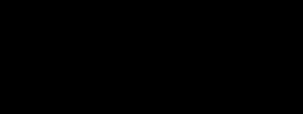
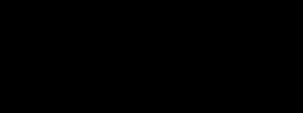

# Schedule 1

## Authorised Officers

| Name       | Position   | Signature  |
|------------|--|------------|
| [REDACTED] | Group Chief Executive Officer                      |            |
| [REDACTED] | General Manager, Development and Property Services |            |
| [REDACTED] | Group Chief Financial Officer                      | [REDACTED] |
| [REDACTED] | Head of Governance, Company Secretary              | [REDACTED] |
| [REDACTED] | Director   |            |
| [REDACTED] | Director   |            |
| [REDACTED] | Director   |            |
| [REDACTED] | Director   |            |
| [REDACTED] | Director   |            |
| [REDACTED] | Director   |            |
| [REDACTED] | Project Director                                   |            |

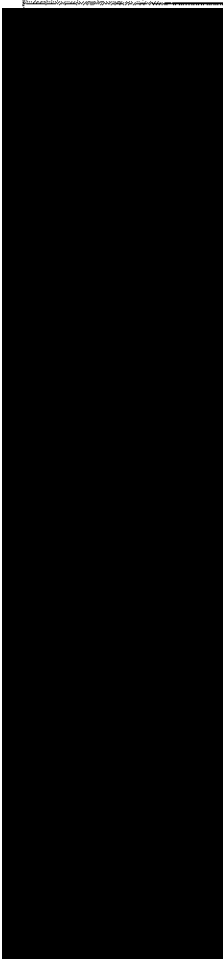
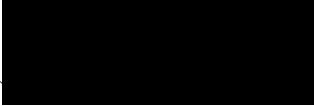
# Schedule 1

## Authorised Officers

| Name  | Position   | Signature   |
|---|--|---|
|    | Group Chief Executive Officer                      |   |
|    | General Manager, Development and Property Services |   |
|    | Group Chief Financial Officer                      |   |
|   | Head of Governance, Company Secretary              |   |
|  | Director   |  |
|  | Director   |  |
|  | Director   |   |
|  | Director   |   |
|  | Director   |   |
|  | Director   |   |
|  | Project Director                                   |   |

# Schedule 1


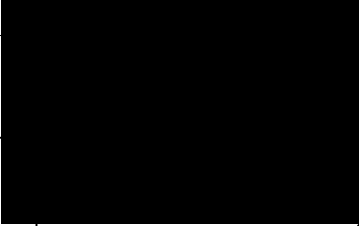
## Authorised Officers

| Name   | Position   | Signature  |
|--|--|--|
|  | Group Chief Executive Officer                      |  |
|  | General Manager, Development and Property Services |  |
|  | Group Chief Financial Officer                      |  |
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|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
| Project Director   |  |  |



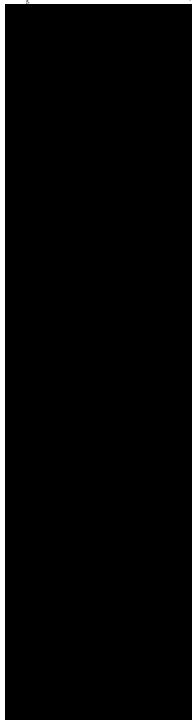
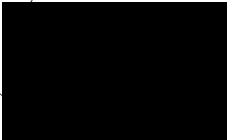
# Schedule 1

## Authorised Officers


| Name   | Position   | Signature  |
|--|--|--|
|  | Group Chief Executive Officer                      |  |
|  | General Manager, Development and Property Services |  |
|  | Group Chief Financial Officer                      |  |
|  | Head of Governance, Company Secretary              |  |
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|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
|  | Director   |  |
|  | Project Director                                   |  |

Schedule 1

Authorised Officers

| Name   | Position   | Signature  |
|--|--|--|
|  | Group Chief Executive Officer                      |  |
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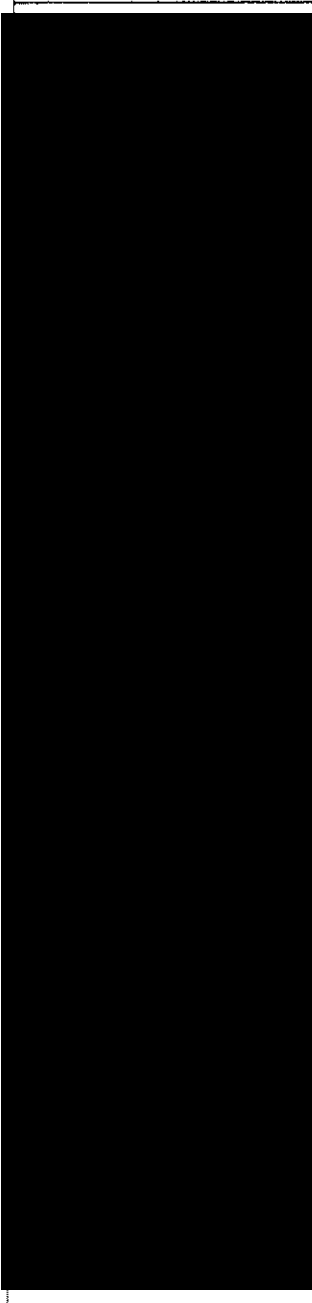
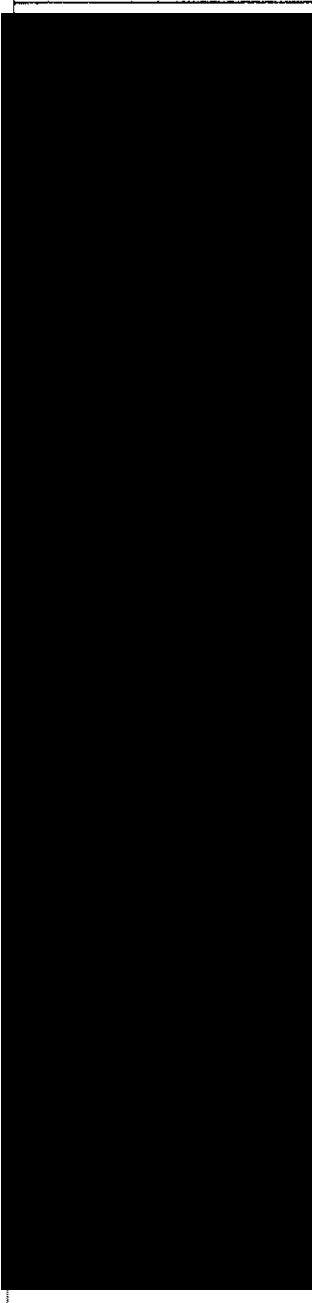
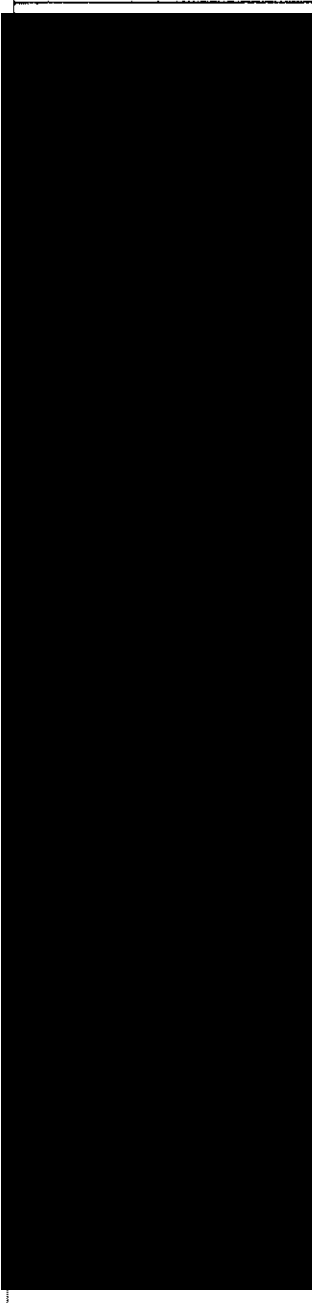
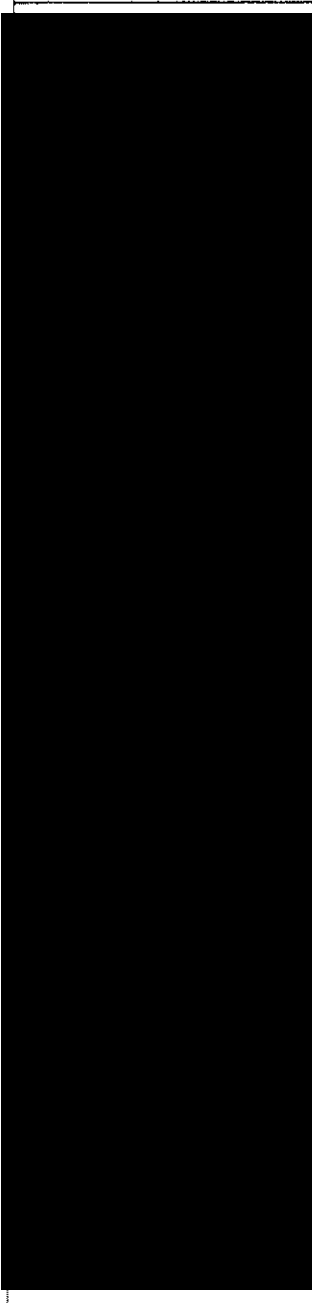
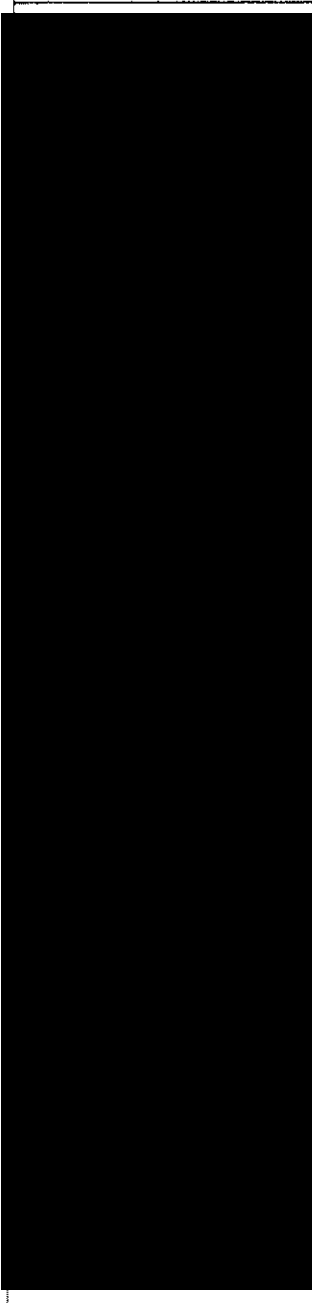
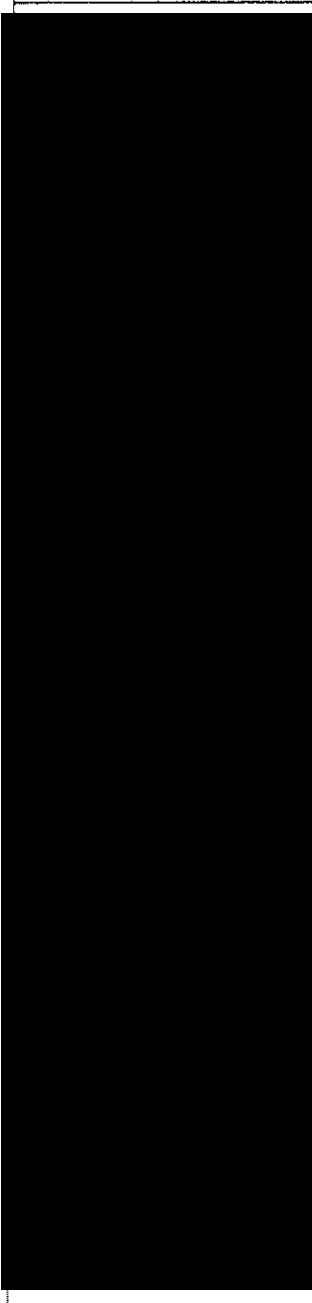
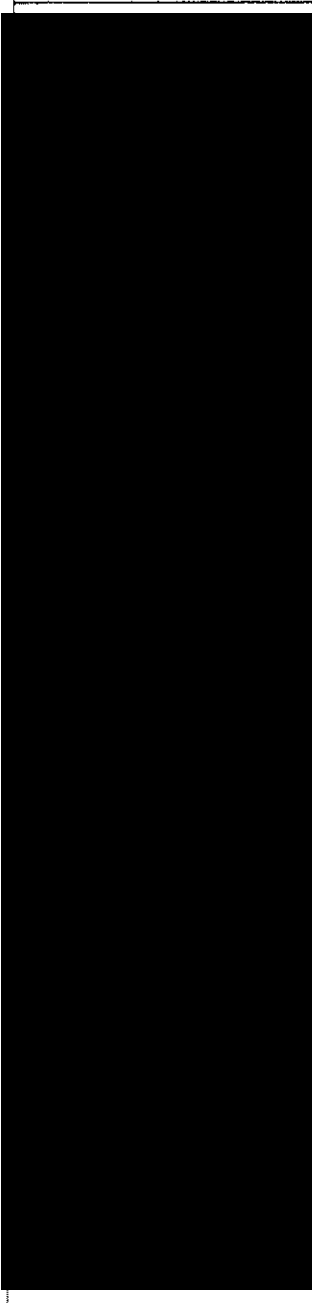
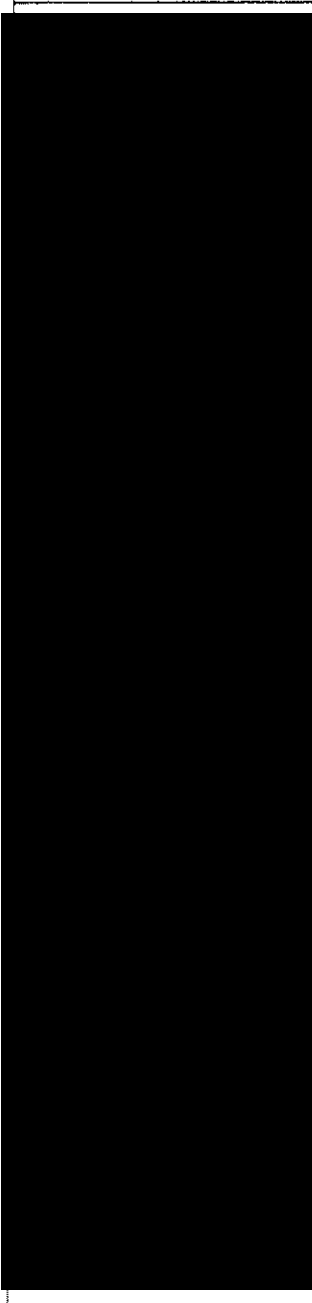
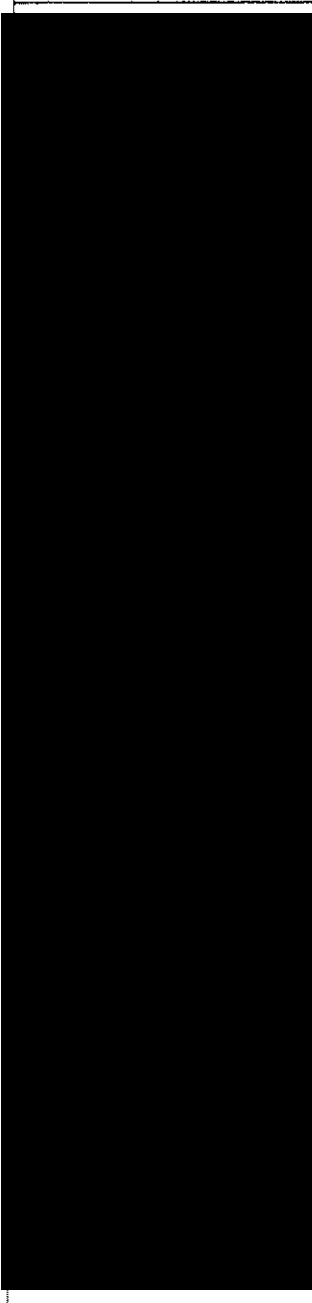
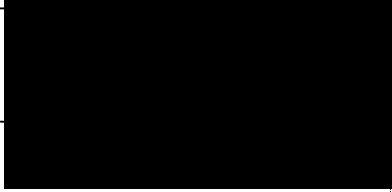
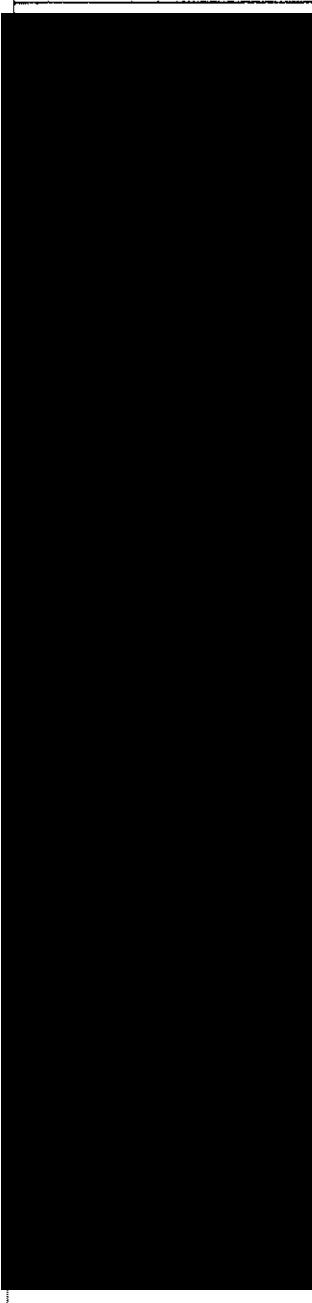
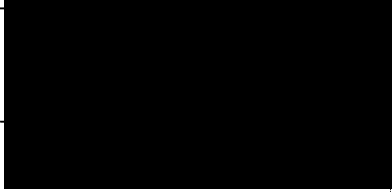
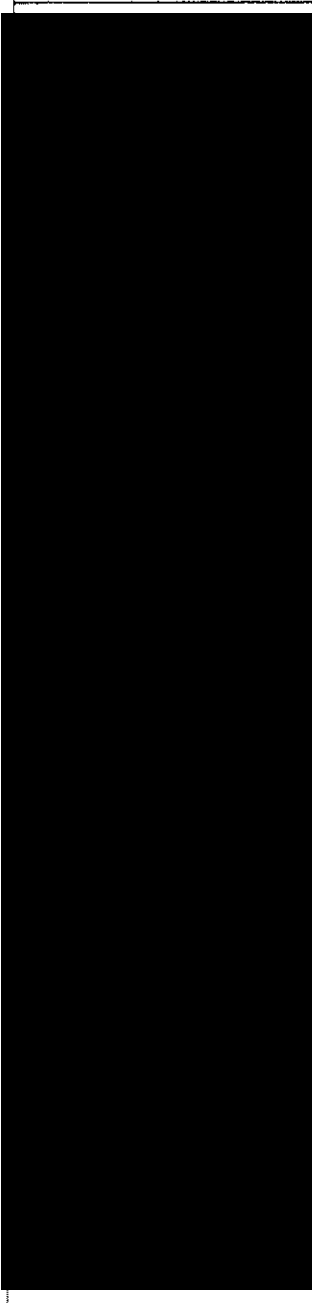
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On 15 Feb 2017, at 10:58 am, 

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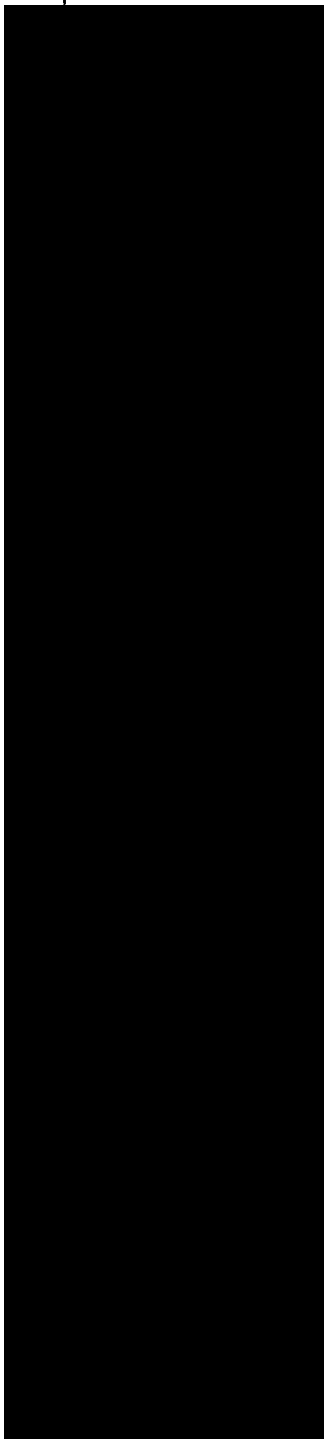
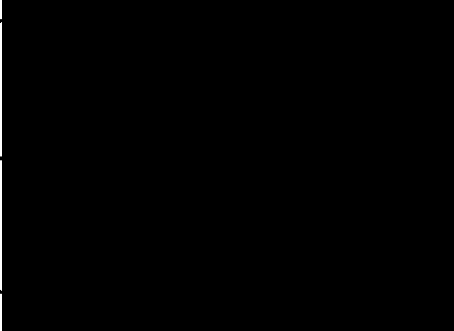
# Schedule 1

## Authorised Officers

| Name   | Position   | Signature   |
|--|--|---|
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|  | Director   |  |
|  | Project Director                                   |   |

# Schedule 1

## Authorised Officers

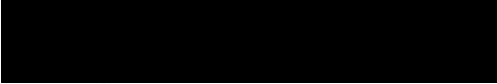
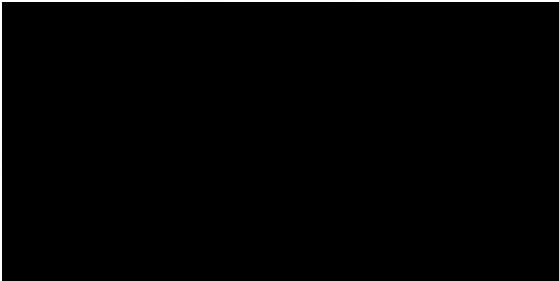
| Name  | Position   | Signature  |
|---|--|--|
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|   | Head of Governance, Company Secretary              |  |
|   | Director   |  |
|   | Director   |  |
|   | Director   |  |
|   | Director   |  |
|   | Director   |  |
|   | Director   |  |
| Project Director  |  |  |

I certify that this is a true, complete and up to date copy of the original document sighted by me at 3:40 PM this 10<sup>th</sup> day of February 20



Execution version

# Deed of Amendment and Restatement



(Financier)

SGCH Sustainability Limited (**Borrower**)

Level 40 Governor Macquarie Tower 1 Farrer Place  
Sydney NSW 2000 Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
minterellison.com

MinterEllison

# Deed of Amendment and Restatement

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|   |          |
|---|----------|
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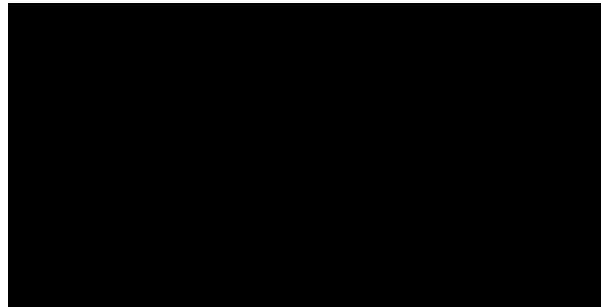
# Details

Date 20 January 2017

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## Parties

Name  
ABN  
Short form name  
Notice details



---

|                 |  |
|-----------------|--|
| Name            | <b>SGCH Sustainability Limited</b>   |
| ABN             | 21 606 965 799   |
| Short form name | <b>Borrower</b>  |
| Notice details  | Level 5, 38 Humphreys Lane, Hurstville NSW 2220<br>Facsimile: +61 2 9585 1564<br>Email: office@sgch.com.au<br>Attention: Chief Executive Officer |

---

## Background

This document amends and restates the Facility Agreement at the request of the Borrower.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Facility Agreement defined terms

In this document, unless the contrary intention appears, terms that are capitalised and not otherwise defined in this document have the meaning provided in the Restated Facility Agreement.

### 1.2 Defined terms

In this document:

**Amendment** has the meaning given in clause 2.

**Facility Agreement** means the agreement titled "*Facility Agreement relating to a cash advance facility up to [REDACTED]*" between the Financier and the Borrower dated 19 November 2015.

**Restated Facility Agreement** means the Facility Agreement as amended and restated by the Amendment.

### 1.3 Interpretation

Clause 1.2 of the Restated Facility Agreement is incorporated in, and applies to, this document as if set out in full with any necessary amendments.

## 2. Amendment

On and from the date of this document:

- (a) the Facility Agreement is amended and restated in the form set out in Annexure A (**Amendment**); and
- (b) each party agrees to be bound by the Restated Facility Agreement.

## 3. Representations and acknowledgments

### 3.1 Representations and warranties

The Borrower makes its representations and warranties contained in each Finance Document to which it is a party (including where applicable, as if those representations and warranties related to this document) for the Financier's benefit with reference to facts and circumstances subsisting as at the date of this document.

### 3.2 Acknowledgment and agreement

The Borrower acknowledges and agrees that:

- (a) each Security Document provided by it is in full force and effect to secure all of its liabilities and obligations under the Finance Documents (including liabilities and obligations as amended by the Amendment);
- (b) any reference in any Finance Document to the original Facility Agreement is taken to refer to the Restated Facility Agreement;
- (c) its respective liabilities and obligations under each Finance Document to which it is a party are not released, reduced or diminished as a result of the Amendment;
- (d) except as expressly set out in this document or the Amendment, nothing in this document:
  - (i) prejudices or otherwise adversely affects any Power of the Financier or any obligation or liability of the Borrower to the Financier, with respect to anything done or effected or otherwise arising before the date of this document; or



- (ii) is evidence that the Borrower's obligations under the Finance Documents have been observed or may be deemed as a waiver of any existing breach of the Borrower's obligations under the Finance Documents;
- (e) the Financier is relying on this document (and on the representations and warranties in clause 3.1) in continuing to provide financial accommodation to the Borrower and in agreeing to the Amendment; and
- (f) its representations and warranties in clause 3.1 survive execution and delivery of this document.

### **3.3 LHC Tranche – Principal Outstanding**

The parties agree and acknowledge that as at the date of this document, the Principal Outstanding under the LHC Tranche is [REDACTED]

### **3.4 Finance Document**

This document is a 'Finance Document' for the purposes of the Restated Facility Agreement and each other Finance Document.

### **3.5 Entire agreement**

This document and the Finance Documents:

- (a) contain all the terms on which financial accommodation under the Restated Facility Agreement is or will be provided and remains or will remain outstanding; and
- (b) supersede all prior communications between the parties about the subject matter of the Facility Agreement and the Amendment.

## **4. Costs and Taxes**

Clauses 19 and 23 of the Restated Facility Agreement are incorporated in, and apply to, this document as if set out in full with any necessary amendments.

## **5. General provisions**

### **5.1 Consideration**

Each party acknowledges to the other party that it enters into this document and incurs obligations and gives rights under it for valuable consideration provided by the other party.

### **5.2 Further action**

The Borrower must do all things necessary or desirable to give full effect to the Amendment and this document, including without limitation execution and lodgement of any relevant forms as the Financier may reasonably require.

### **5.3 Severability**

Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of the document will not be affected by the severing of the provisions. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **5.4 Governing law and jurisdiction**

This document is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

**5.5 Counterparts**

This document may be signed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this document.

# Signing page

**EXECUTED** as a deed.

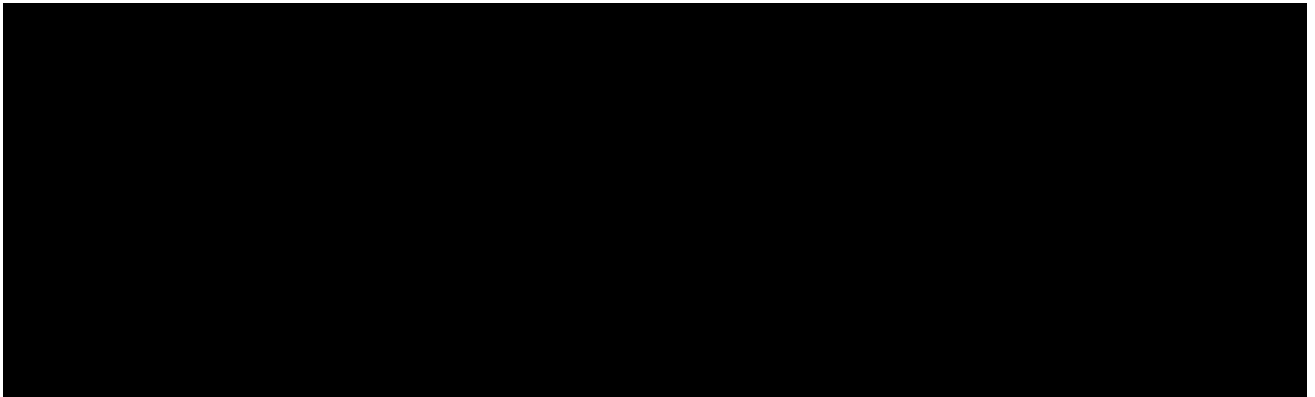
Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

**Financier**



**Borrower**

Signed by **SGCH Sustainability Limited** ABN 21 606 965 799 by its attorney duly appointed by power of attorney dated 9 December 2016 and who has received no notice of the revocation of the power, in the presence of:





# Annexure A


Restated Facility Agreement

DATED  
19 NOVEMBER 2015 AND AS AMENDED AND  
RESTATED ON THE RESTATEMENT DATE

  
AS FINANCIER

- and -

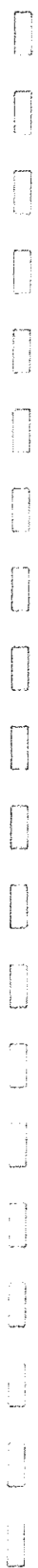
(2) SGCH Sustainability Limited  
AS BORROWER

**FACILITY AGREEMENT**  
relating to  
cash advance facilities up to 

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THIS AGREEMENT was originally made on 19 November 2015 and is amended and restated on the Restatement Date.

**BETWEEN:**

- (1) [REDACTED] ("Financier")  
(2) SGCH SUSTAINABILITY LIMITED ABN 21 606 965 799 ("Borrower")

**BACKGROUND:**

- A The Borrower has asked the Financier to provide Advances up to the Commitment.  
B The Financier has agreed to provide Advances on the terms of this agreement.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 In this agreement the following definitions apply:

"Account" means each Construction Account, the Debt Service Reserve Account, the Tenancy Sustainability Account, each Mandatory Prepayment Account, each Proceeds Account, the Maintenance Reserve Account and the Active Portfolio Management Account;

"Account Bank" means Commonwealth Bank of Australia;

"Account Bank Deed" means the Original Account Bank Deed, as amended by the Account Bank Deed Amendment;

"Account Bank Deed Amendment" means the Deed of Amendment – ADI Account Control Deed dated on or about the Restatement Date, between the Financier, the Account Bank and the Borrower;

"Accounting Principles" means generally accepted accounting principles in Australia;

"Acquisition Price" means, in respect of each Turnkey Project, the price the Borrower has agreed to pay for the acquisition of the completed Turnkey Project which must not:

- (a) in the case of a Turnkey Project to be purchased from the Parent or a Related Body Corporate of the Parent only, include any Reimbursable Tenancy Sustainability Contribution to the extent such amounts have been reimbursed to the Parent or that Related Body Corporate (as the case may be); and  
(b) exceed the amount reflected in the Base Case Financial Model for that Turnkey Project, except as approved by the Financier acting reasonably;

"Active Portfolio Management Account" means the account designated as such under clause 13.1 and includes any replacement of that account;

"Active Portfolio Management Plan" means the asset management methodology developed, and updated annually in accordance with clause 11.13.8, by the Borrower with

regard to its ownership and maintenance (including potential disposals) of Property, the purpose of which is to minimise maintenance expenses and major life cycle capital expenditure and reduce the potential volatility of the Borrower's cashflows, and which must be in respect of the period from the date on which it is developed or updated (as the case may be) until the last Notional Repayment Date and in form and substance acceptable to the Financier;

"**Advance**" means:

- (a) in respect of a CA Facility, the principal amount drawn or proposed to be drawn by the Borrower pursuant to a Funding Notice in relation to that Facility; and
- (b) in respect of a Term Facility, the principal amount made available under that Facility on the relevant Conversion Date;

"**Affordable Housing**" means housing that is below market rental for people with very low to moderate income that is managed in accordance with the NSW Affordable Housing Guidelines;

"**AIP Agency**" means the Department of Industry of the Commonwealth Government or such other Commonwealth Governmental Agency from time to time responsible for managing the AIP Plan in Commonwealth Government procurement;

"**AIP Plan**" means the Australian Industry Participation Plan prepared by the Borrower that meets the requirements of the Australian Industry Participation Plan in Commonwealth Government procurement published by the AIP Agency;

"**Allocation**" means an "allocation" as defined in the NRAS Act, which has been made pursuant to NRAS Regulation 14(1)(a) in respect of an Approved Rental Dwelling;

"**AML/CTF Laws**" means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), any regulations or rules made thereunder, and any other anti-money laundering, counter-terrorism financing or sanctions laws or regulations applicable in Australia or any other relevant country from time to time including any laws or regulations imposing 'know your customer' or other identification checks or procedures;

"**Approved Participant**" has the meaning given to 'approved participant' pursuant to the NRAS Regulations;

"**Approved Rental Dwelling**" means an "approved rental dwelling" as defined in the NRAS Regulations;

"**APS Agreement**" has the meaning given in the Management Services Agreement;

"**Architect**" means, in respect of each D&C Project, the architect appointed by or on behalf of the Borrower or the Contractor in respect of that D&C Project in accordance with this agreement, the Management Services Agreement and the relevant Building Contract;

"**Authorisation**" means any accreditation, approval, authorisation, consent, exemption, filing, licence, notarisisation, registration or waiver, however described, from a Governmental Agency and any renewal of or variation to any of them;

"**Authorised Officer**" means:

- (a) in respect of the Borrower, any director, or any person from time to time nominated as an Authorised Officer by the Borrower by notice to the Financier accompanied by certified copies of signatures of all new persons so appointed and where applicable the identity of that person has been verified to the Financier's satisfaction in order to ensure compliance with the Financier's obligations under the AML/CTF Laws and in respect of which the Financier has not received notice of revocation of the appointment; and
- (b) in respect of the Financier, any person whose title or acting title includes the word Chief;

**"Availability Period"** means:

- (a) for the LHC Tranche, the LHC Tranche Availability Period; and
- (b) for the SAHF Tranche, the SAHF Tranche Availability Period;

**"Base Case Financial Model"** means the financial model for the business of the Borrower, including as it relates to the Properties and the Projects, provided by the Borrower as a condition precedent to each Financial Close, in each case approved by the Financier, audited and used to apply the relevant Debt Sizing Criteria, and as updated from time to time in accordance with this agreement and in respect of any such update, in form and substance approved by the Financier;

**"Base Rate"** means:

- (a) for the LHC Tranche, the 10 year "ASK Yield" AS swap rate as published by ICAP on Bloomberg page "GDCO 1385 1" at or about 10:30am on the day that is one business day prior to the date of this agreement; and
- (b) for the SAHF Tranche, the 12 year "ASK Yield" AS swap rate as published by ICAP on Bloomberg page "GDCO 1385 1" at or about 10:30am on the day that is one business day prior to the Restatement Date;

**"Budgeted Costs"** means, in respect of a D&C Project, the itemised budgeted costs and expenses and funding relating to the acquisition, refinancing, building construction and/or development (as applicable) of that D&C Project, including the development and project management fees, design fees, Contingency, statutory fees, contributions under section 94 of the *Environmental Planning and Assessment Act 1979* (NSW), authority fees and any amount charged by the Parent to the Borrower in respect of that D&C Project under the Management Services Agreement for that D&C Project as set out in the updated Base Case Financial Model delivered and acceptable to the Financier under paragraph 3.1 of Part 3 of Schedule 1;

**"Building Contract"** means a trade or building contract entered into or to be entered into between the Borrower and a Contractor in respect of a D&C Project and includes the Specifications for that D&C Project;

**"Building Work"** has the meaning it has for the purposes of section 5 of the *Fair Work (Building Industry) Act 2012* (Cth);

**"Business Plan"** means the annual business plan including:

- (a) revenue forecasts, budgets for capital expenditure and detailed operating expenditure;
- (b) the Active Portfolio Management Plan;
- (c) details of the implementation of Housing Sustainability Criteria;
- (d) details of proposed Tenancy Sustainability Initiatives (including actual and forecast Reimbursable Tenancy Sustainability Contributions) from the date on which the relevant plan is produced until the SAHF Tranche Term Facility Maturity Date; and
- (e) details of each principal assumption underlying each forecast included in that plan,

in form and substance satisfactory to the Financier prior to SAHF Financial Close. The Business Plan will be updated annually in accordance with clause 11.13.8 and must be in form and substance approved by the Financier;

**"BW Costs"** means, in respect of a D&C Project, the costs (excluding GST) payable by the Borrower to the relevant Contractor for Building Work on that D&C Project as notified by the Borrower to the Financier and approved by the Financier;

**"Calculation Date"** means 31 March, 30 June, 30 September and 31 December in each calendar year;

**"Calculation Period"** means, in respect of Calculation Date, a period of 12 months ending on that Calculation Date, provided that in respect of testing DSCR, LHC Tranche Interest Cover Ratio, LHC Tranche DSCR or SAHF Tranche DSCR on a Calculation Date that is less than 12 months after a Conversion Date it means the period from that Conversion Date ending on that Calculation Date;

**"Cashflow Available for Debt Service"** or **"CFADS"** means for any relevant period, an amount equal to the aggregate of:

- (a) revenue of the Borrower determined on a cash basis for that period; less
- (b) the aggregate of:
  - (i) operating expenditures (being all amounts paid by the Borrower in respect of operating the Projects and maintaining each Property in the ordinary course of business, including taxes); and
  - (ii) capital expenditures, including capital expenditure to be applied to scheduled or unscheduled major maintenance (other than funds utilised from the Maintenance Reserve Account) and funds to be deposited into the Maintenance Reserve Account (without double counting) but excluding amounts funded by insurance proceeds for loss which are to be applied to reinstatement, one-off items agreed between the Borrower and the Financier and amounts funded from the Facilities or any Equity Contribution Amount,

determined on a cash basis for that period;

"**Centrelink**" means the Governmental Agency charged with the provision of, inter alia, social security payments and benefits and rent assistance and any replacement agency from time to time;

"**Centrelink Registration**" means the registration of the Borrower with Centrelink in connection with the collection and payment of rent payable by tenants of Property directly into a Proceeds Account;

"**Certificate of Practical Completion**" means, in respect of a D&C Project, a certificate of practical completion issued in accordance with the Building Contract for that D&C Project;

"**Change of Control**" means, in relation to a body corporate or company, any person who controls any of the following:

- (a) the composition of the board of directors of the body corporate or company;
- (b) more than one half of the voting rights attaching to shares in the body corporate or company;
- (c) the outcome of decisions about the management of the affairs of the body corporate or company; or
- (d) more than one half of the issued share capital of the body corporate or company, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

as at the date of this agreement, ceases to have that control, or any other person commences to have that control and, in relation to the Borrower, includes:

- (e) a change to the members of the Borrower;
- (f) the Parent ceasing to be the sole member of the Borrower; or
- (g) the Borrower ceasing to be a public company limited by guarantee;

"**Commercial Unit**" means, in respect of a Project, commercial premises constructed on the relevant Property for the purposes of complying with the Development Consent for the Project;

"**Commitment**" means each of:

- (a) the LHC Tranche Commitment; and
- (b) the SAHF Tranche Commitment;

"**Community Housing**" means subsidised accommodation for people on a very low, low or moderate income or people with additional needs managed by not-for-profit organisations within the State of New South Wales, including accommodation managed in accordance with the NSW Affordable Housing Guidelines;

"**Community Housing Provider**" means a person registered under the Housing Act as a tier 1 community housing provider;

**"Community Housing Registration"** means any Authorisation required for the Borrower to be a Community Housing Provider;

**"Compensation Prepayment Proceeds"** means:

- (a) the proceeds of all compensation and damages for the compulsory purchase of, or any blight or disturbance affecting, the assets of the Borrower;
- (b) any amount paid to the Borrower in respect of a breach or termination of a Material Document; and
- (c) any liquidated damages payments received by the Borrower under or in respect of a Material Document;

**"Construction Account"** means:

- (a) for the LHC Tranche, the LHC Tranche Construction Account; and
- (b) for the SAHF Tranche, the SAHF Tranche Construction Account;

**"Construction and Acquisition Facility"** or **"CA Facility"** means each of:

- (a) the LHC Tranche CA Facility; and
- (b) the SAHF Tranche CA Facility;

**"Construction Certificate"** means a construction certificate(s) issued by the relevant Governmental Agency in relation to a D&C Project;

**"Construction Costs"** means all costs, charges, expenses, fees and other amounts payable by the Borrower under a Project Document in connection with a D&C Project, including GST;

**"Construction Shortfall Amount"** has the meaning given to it in clause 13.17;

**"Contaminant"** means anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that presents or could present a risk of harm to human health or the Environment;

**"Contingency"** means, in respect of a D&C Project, the amount provided for contingency in the Budgeted Costs in respect of that D&C Project as determined by the Borrower from time to time;

**"Contractor"** means each contactor, approved by the Financier (acting reasonably), engaged by or on behalf of the Borrower in respect of a D&C Project;

**"Contractor Tripartite Deed"** means, in respect of any D&C Project, any tripartite deed entered into between the Contractor, the Borrower and the Financier in respect of that D&C Project;

**"Control"** has the meaning given to it in section 50AA of the *Corporations Act 2001* (Cth);

**"Conversion"** means:

- (a) for the LHC Tranche, the conversion of the Principal Outstanding under the LHC Tranche CA Facility to Principal Outstanding under the LHC Tranche Term Facility by the deemed repayment of the LHC Tranche CA Facility with proceeds of the LHC Tranche Term Facility on the LHC Tranche Conversion Date; and
- (b) for the SAHF Tranche, the conversion of the Principal Outstanding under the SAHF Tranche CA Facility to Principal Outstanding under the SAHF Tranche Term Facility by the deemed repayment of the SAHF Tranche CA Facility with proceeds of the SAHF Tranche Term Facility on the SAHF Tranche Conversion Date;

**"Conversion Date"** means:

- (a) for the LHC Tranche, the LHC Tranche Conversion Date; and
- (b) for the SAHF Tranche, the SAHF Tranche Conversion Date;

**"D&C Project"** means the acquisition (if not already owned by the Borrower) of a Property site, obtaining of necessary Development Consents, if necessary the demolition of the existing buildings on the Property and/or the clearance of the Property and the construction and/or refurbishment on the Property of residential dwellings for the purposes of Community Housing (or a mixture of Community Housing and housing for other purposes as approved by the Financier) and Commercial Units completed or to be completed on a design and construct basis, as described in the relevant Specifications, and in the case of D&C Project which is a SAHF Project, on a fixed price basis;

**"Date of Service Readiness"** has the meaning given in the SAHF Services Agreement;

**"Debt Service"** means, for a period, the aggregate of all interest, fees and mandatory principal amortisation repayments as scheduled to be paid under the Finance Documents or in respect of any other Permitted Financial Indebtedness (other than Financial Indebtedness which is subordinated to amounts owing under the Facilities on terms acceptable to the Financier), but not including amounts payable in respect of voluntary or mandatory prepayments;

**"Debt Service Cover Ratio" or "DSCR"** means, as at a Calculation Date, the ratio of A:B, where:

A = CFADS during the Calculation Period ending on that Calculation Date; and

B = Debt Service during the Calculation Period ending on that Calculation Date;

**"Debt Service Reserve Account" or "DSRA"** means the account designated as such under clause 13.1 and includes any replacement of that account;

**"Debt Sizing Criteria"** means for the LHC Tranche, the criteria set out under clause 2.2 and for SAHF Tranche, the criteria set out under clause 2.3;

**"Default"** means an Event of Default or any event or circumstance which would (with the expiry of any grace period, the giving of notice or the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default;

**"Default Rate"** means, at any time, and in respect of any outstanding amount, the rate per annum which is the sum of the following:

(a) in the case of an outstanding amount in respect of the LHC Tranche, the Interest Rate for the LHC Tranche at that time and [REDACTED] per annum; and

(b) in the case of an outstanding amount in respect of the SAHF Tranche, the Interest Rate for the SAHF Tranche at that time and [REDACTED] per annum;

**"Delegate"** means any delegate, agent or attorney appointed by the Financier;

**"Designation Notice"** means the Designation Notice (in respect of the Original Subordination Deed), dated on or about the Restatement Date, between the Parent, the Borrower and the Financier;

**"Development Consent"** means any Authorisation (including any planning permission, building permit, approval of all reserved matters that must be approved prior to commencement of development and confirmation of satisfaction of all conditions precedent to the commencement of development) required under any law or regulation in connection with a D&C Project;

**"Director-General"** means the 'director-general' as defined in the Housing Act and includes any replacement or substitute fulfilling that role;

**"Disposal Proceeds"** means the consideration received by the Borrower for any disposal of a Unit after deducting:

(a) any reasonable third party expenses incurred by the Borrower with respect to the sale of that Unit, other than expenses payable to the Parent for its own account; and

(b) any Tax incurred and required to be paid by the Borrower in connection with that sale;

**"Disruption Event"** means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with a Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with the other Party in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted;

**"Distribution"** has the meaning given to it in clause 14.5.4;



**"Drawdown Schedule "** means the drawdown schedule in respect of a CA Facility set out in the Base Case Financial Model, as amended as agreed by the Parties;

**"Environment"** means components of the earth (and how those components interact with each other), including any of the following:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human made or modified structures and areas;

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**"Environmental Law"** means any statute or other law or regulation, or any requirements or orders of any Governmental Agency, relating to the protection of the Environment or the use, storage or disposal of hazardous substances;

**"Environmental Permits"** means any permit or Authorisation and the filing of any notification, report or assessment required under any Environmental Law or regulations, for the operation of the business of the Borrower or in connection with the ownership and maintenance of the Property;

**"Equity Contribution Amount"** means each of:

- (a) the LHC Tranche Equity Contribution Amount; and
- (b) the SAHF Tranche Equity Contribution Amount;

**"Event of Default"** means any of the events or circumstances described in clause 17;

**"Facilities"** means the CA Facilities and the Term Facilities;

**"Facility Restatement Deed"** means the Deed of Amendment and Restatement to Facility Agreement between the Financier and the Borrower dated on or about 20 January 2017;

**"FACS"** means the Department of Family and Community Services as Housing Agency under section 16 of the National Housing Law;

**"FATCA"** means:

- (a) sections 1471 to 1474 of the FATCA Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service,

the US government or any governmental or taxation authority in any other jurisdiction;

**"FATCA Code"** means the US Internal Revenue Code of 1986;

**"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA;

**"Federal Safety Commissioner"** means the accrediting authority for the WHS Accreditation Scheme under the *Fair Work (Building Industry) Act 2012* (Cth);

**"Finance Document"** means each of the following documents:

- (a) this agreement;
- (b) the Facility Restatement Deed;
- (c) each Security Document;
- (d) each Tripartite Deed;
- (e) the Subordination Deed;
- (f) the Original Account Bank Deed and the Account Bank Deed Amendment;
- (g) the Parent Guarantee;
- (h) any document which the Financier and the Borrower so designate in writing;
- (i) any document contemplated by or required in connection with any of the above or the transactions which they contemplate; and
- (j) any document entered into for the purpose of amending, novating, restating or replacing any of the above;

**"Financial Close"** means each of LHC Financial Close and SAHF Financial Close;

**"Financial Indebtedness"** means any of the following:

- (a) money borrowed and any debit balance at any financial institution other than in the ordinary course of business;
- (b) any money raised under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;
- (c) any amount raised under any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting practice, be treated as a finance or capital lease;
- (e) receivables sold or discounted on a recourse basis (other than any receivables to the extent they are sold on a non-recourse basis);

- (f) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (i) any counter-indemnity obligation in respect of a Guarantee, issued by a bank or financial institution; and
- (j) the amount of any liability under any Guarantee in respect of any of the items referred to above;

**"Funding Date"** means the date on which an Advance is, or is proposed to be, provided to the Borrower;

**"Funding Notice"** means a notice substantially in the form of Schedule 4;

**"General Security Deed"** means the General Security Deed dated 19 November 2015 between the Borrower and the Financier;

**"Governmental Agency"** means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange;

**"Group"** means the Parent and each of its Subsidiaries;

**"Group Structure Diagram"** means the group structure diagram delivered to the Financier and acceptable to the Financier under paragraph 10 of Part 1 of Schedule 1 or any replacement group structure diagram provided in accordance with clause 11.13.14;

**"Guarantee"** includes any guarantee, suretyship, letter of credit, letter of comfort or any other obligation to pay (or to indemnify against non-payment of) any actual or contingent debts or monetary liability or obligation (whether or not it involves the payment of money) by another person, and the incurring of an obligation of that type;

**"Housing Act"** means the *Housing Act 2001* (NSW);

**"Housing Authorisations"** means the Centrelink Registration and the Community Housing Registration;

**"Housing Sustainability Criteria"** means the following criteria (as applicable):

- (a) in respect of each Project, a minimum NatHERS rating of 6 stars; and
- (b) either:

(i) in respect of the Borrower's portfolio of Projects in New South Wales, the greater of:

(A) a weighted average NatHERS rating of at least 7 stars; and

(B) a weighted average NatHERS rating that is at least 1 star higher than the weighted average of the minimum NatHERS rating applicable in New South Wales at the time the development approval for the applicable D&C Project was submitted to the relevant Council or the development approval was obtained for the applicable Turnkey Project,

in each case, as determined across all Projects; or

(ii) in respect of a Project which is an apartment building, a Green Building Council of Australia's 4 green star rating (based on its "Design & As Built" methodology in respect of the design and construction of any apartment building) with reasonable endeavours to reach and maintain its 4 green star rating based on its "Performance" methodology in respect of the operational performance of apartment buildings; and

(c) in respect of any other Property, other energy efficiency requirements as agreed between the Financier and the Borrower, having regard to recommendations from sustainability experts.

For the purposes of paragraph (b) of this definition weighted average means a weighted average across the relevant Projects by reference to the number of residential dwellings in such Projects. By way of example, if Project A has 10 residential dwellings, each of which has an 8 star NatHERS rating, and Project B has 20 residential dwellings, each of which has a 6 star NatHERS rating, then for the purposes of paragraph (b) the weighted average NatHERS rating across Project A and Project B would be 6.67 stars;

**"Incentive"** means an "Incentive" as defined in the NRAS Act, in respect of an Approved Rental Dwelling;

**"Increased Costs"** means any of the following that is incurred or suffered by the Financier or any related body corporate of the Financier:

(a) a reduction in the Financier's rate of return from a Facility or from the Financier's (or its related body corporate's) overall capital (including a reduction in the rate of return due to more capital required to be allocated pursuant to any change in a law or regulation regarding capital adequacy or prudential limits);

(b) an additional or increased cost to the Financier or any related body corporate of the Financier in connection with a Facility; or

(c) a reduction of any amount due and payable to the Financier or any related body corporate of the Financier under any Finance Document;

**"Insurances"** means any contract of insurance required under clause 16.21;

**"Insurance Prepayment Proceeds"** means any proceeds of Insurances other than:

- (a) proceeds or amounts received in respect of loss of rent, consequential loss and third party or public liability Insurances; and
- (b) proceeds which are applied towards repair, replacement or reinstatement of the asset, building or fixture on a Property damaged or destroyed provided that, where all or a material part of the buildings and fixtures on a Property are damaged or destroyed, the Financier is satisfied that the Borrower has available to it sufficient committed funding (including insurance proceeds and damages) to:
  - (i) fund the repair, replacement or reinstatement within a period of time which is acceptable to the Financier; and
  - (ii) complete any ongoing D&C Project; and
- (c) proceeds which are required under the terms of the Services Agreement to be applied towards repair, replacement or reinstatement of any asset, building or fixture on a Property or to discharge a liability or claim or make good the liability the subject of any claim;

**"Intercompany Loan Agreement"** means each of:

- (a) the LHC Tranche Intercompany Loan Agreement; and
- (b) the SAHF Tranche Intercompany Loan Agreement;

**"Interest Payment Date"** means the last day of each Interest Period;

**"Interest Period"** means, for an Advance, a period determined in accordance with clause 4;

**"Interest Rate"** means, for an Interest Period and an Advance, the rate which is the sum of:

- (a) the Base Rate for that Advance; and
- (b) the Margin for that Advance;

**"Joint Venture"** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership;

**"Lease Document"** means:

- (a) in respect of a Property, any lease or licence or other right of occupation or use to which a Property is subject which is:
  - (i) on substantially the same terms as the applicable Proforma Lease Document; or
  - (ii) in form and substance satisfactory to the Financier; or
- (b) any other document designated as such by the Financier and the Borrower;

**"LHC"** means the New South Wales Land and Housing Corporation ABN 24 960 729 253;

"LHC Financial Close" means the first date on which all the conditions precedent listed in Part 1 of Schedule 1 in respect of the LHC Tranche have been satisfied or waived by the Financier as contemplated by clause 3.1, being 1 April 2016;

"LHC Land" means each of the properties at [REDACTED]

"LHC Project" means a Project that is not a SAHF Project;

"LHC Property" means;

- (a) the LHC Land;
- (b) the LHC Vested Properties; and
- (c) any other land or dwelling acquired by the Borrower (whether for development or otherwise) with the consent of the Financier for the purposes of the LHC Projects,

and, where the context so requires, in each case includes the buildings and fixtures on that land;

"LHC Tranche" means the tranche of facilities provided or to be provided by the Financier to the Borrower under this agreement comprising the LHC Tranche CA Facility and the LHC Tranche Term Facility, up to the LHC Tranche Commitment;

"LHC Tranche Availability Period" means:

- (a) in respect of the LHC Tranche CA Facility, the period commencing on the date of this agreement up to and including the earlier of the LHC Tranche Conversion Date and the LHC Tranche Sunset Date; and
- (b) in respect of the LHC Tranche Term Facility, the LHC Tranche Conversion Date;

"LHC Tranche CA Facility" means the cash advance facility provided under the LHC Tranche;

"LHC Tranche Cashflow Available for Debt Service" or "LHC Tranche CFADS" means for any relevant period, an amount equal to the aggregate of:

- (a) revenue of the Borrower attributable to the LHC Property determined on a cash basis for that period; less
- (b) the aggregate of:
  - (i) operating expenditures attributable to the LHC Property (being all amounts paid by the Borrower in respect of operating the LHC Projects and maintaining the LHC Property in the ordinary course of business, including taxes); and
  - (ii) capital expenditures attributable to the LHC Property, including capital expenditure to be applied to scheduled or unscheduled major maintenance (other than funds utilised from the Maintenance Reserve Account) and funds to be deposited into the Maintenance Reserve Account (without double counting) but excluding amounts funded by

insurance proceeds for loss which are to be applied to reinstatement, one-off items agreed between the Borrower and the Financier and amounts funded from the Facilities or any Equity Contribution Amount,

determined on a cash basis for that period;

**"LHC Tranche Commitment"** means [REDACTED] as, increased, reduced or cancelled under this agreement. As at the Restatement Date, the LHC Tranche Commitment is [REDACTED]

**"LHC Tranche Construction Account"** means the account designated as such under clause 13.1 and includes any replacement of that account;

**"LHC Tranche Conversion Date"** means the date the Financier notifies the Borrower that it has received all the documents and evidence set out in clause 3.8 in respect of the LHC Tranche in form and substance satisfactory to the Financier and/or waived receipt of those documents and other evidence;

**"LHC Tranche DSCR"** means, as at a Calculation Date, the ratio of A:B, where:

A = the LHC Tranche CFADS during the Calculation Period ending on that Calculation Date; and

B = Debt Service on the LHC Tranche Term Facility during the Calculation Period ending on that Calculation Date;

**"LHC Tranche Equity Contribution Amount"** means the aggregate of:

- (a) an amount that is at least equal to [REDACTED] and which comprises:
  - (i) a contribution in kind equivalent to the cost of construction incurred by the Parent in respect of any LHC Land or LHC Vested Property which has been transferred by the Parent to the Borrower prior to LHC Financial Close (satisfactory evidence of such costs to be provided to the Financier); and
  - (ii) cash which must not be less than [REDACTED] and
- (b) any net proceeds received from the sale of any LHC Vested Property prior to LHC Financial Close,

with such amount to be increased as necessary to ensure compliance with the relevant Debt Sizing Criteria and to be provided in accordance with the LHC Tranche Intercompany Loan Agreement. As at the Restatement Date, the LHC Tranche Equity Contribution Amount provided by the Parent was [REDACTED]

**"LHC Tranche Intercompany Loan Agreement"** means the Intercompany Loan Agreement between the Parent and the Borrower dated 19 November 2015, being a subordinated loan agreement under which the Parent:

- (a) provided the LHC Tranche Equity Contribution Amount; and

- (b) from time to time may provide to the Borrower loans in respect of amounts incurred or to be incurred by the Borrower in connection with the LHC Tranche in respect of Tenancy Sustainability Initiatives;

**"LHC Tranche Interest Cover Ratio"** means, as at a Calculation Date, the ratio of A:B, where:

A = the LHC Tranche CFADS during the Calculation Period ending on that Calculation Date; and

B = the aggregate amount of all interest and periodic fees to be paid to the Financier under this agreement in respect of any Financial Indebtedness under the LHC Tranche during the Calculation Period ending on that Calculation Date;

**"LHC Tranche LVR"** means, at any time, the ratio (expressed as a percentage) of:

- (a) the Principal Outstanding under the LHC Tranche at that time less:
- (i) the balance standing to the credit of the Debt Service Reserve Account; and
  - (ii) the amount standing to the credit of the LHC Tranche Proceeds Account,

to:

- (b) the aggregate of:
- (i) value of the LHC Properties, as established by the most recent Valuation; and
  - (ii) the balance standing to the credit of the Active Portfolio Management Account.

**"LHC Tranche Mandatory Prepayment Account"** means the account designated as such under clause 13.1 and includes any replacement of that account;

**"LHC Tranche Margin"** means [REDACTED] per annum less, in respect of any Interest Period during which the LHC Tranche Tenancy Sustainability Conditions are satisfied, [REDACTED] per annum;

**"LHC Tranche Material Document"** means each Material Document dated on or before the date of this agreement, including the Management Services Agreement, other than any Lease Document;

**"LHC Tranche Notional Repayment Date"** means the date that is 28 years from LHC Financial Close;

**"LHC Tranche PLCR"** means, as at any Calculation Date, the ratio of A:B, where:

A = the net present value of all projected LHC Tranche CFADS for each calendar quarter for the period from that Calculation Date to the LHC Tranche Notional Repayment Date, discounted at the Interest Rate then applicable to the LHC Tranche Term Facility; and



**B** = the actual (or where appropriate projected) Principal Outstanding under the LHC Tranche Term Facility as at that Calculation Date less the actual (or where appropriate projected) balance of the Debt Service Reserve Account as at that Calculation Date apportioned to the LHC Tranche Term Facility (in the same proportion as the Principal Outstanding under the LHC Tranche as at that Calculation Date bears to the total Principal Outstanding as at that Calculation Date).

All projections are to be based on the Base Case Financial Model current as at the date the LHC Tranche PLCR is calculated;

**"LHC Tranche Proceeds Account"** means the account designated as such under clause 13.1 and includes any replacement of that account;

**"LHC Tranche Resized Amount"** has the meaning given in clause 2.2;

**"LHC Tranche Sunset Date"** means the date that is 36 months after LHC Financial Close or such later date as is agreed by the Parties;

**"LHC Tranche Tenancy Sustainability Conditions"** means each of the following conditions:

- (a) the required LHC Tranche Tenancy Sustainability Contribution is deposited into and at all times prior to an investment in accordance with this provision stands to the credit of the LHC Tranche Tenancy Sustainability Account; and
- (b) if any amount deposited into the LHC Tranche Tenancy Sustainability Account is not invested in accordance with this provision, the Borrower must transfer that amount to the LHC Tranche Mandatory Prepayment Account on or before the date which is 3 business days after the last date on which it may be invested in accordance with this provision,

where *'an investment in accordance with this provision'* and *'invested in accordance with this provision'* means that the relevant amount deposited into the LHC Tranche Tenancy Sustainability Account is:

- (i) invested in Tenancy Sustainability Initiatives on or before the date which is 12 months after the Next Calculation Date; or
- (ii) contracted to be invested in Tenancy Sustainability Initiatives on or before the date which is 12 months after the Next Calculation Date and invested in Tenancy Sustainability Initiatives on or before the date which is 24 months after the Next Calculation Date,

and provided that:

- (iii) any such investment or contract to invest does not have a negative impact on the Borrower's financial condition; and
- (iv) no Event of Default is continuing at the time of such investment or entry into such contract;

**"LHC Tranche Tenancy Sustainability Contribution"** means the following amounts to be deposited into the LHC Tranche Tenancy Sustainability Account by the Borrower on or

before the dates set out below or, in the case of paragraph (c) and (d), as and when required by the Borrower for the relevant Tenancy Sustainability Initiative:

- (a) [REDACTED] of the initial the LHC Tranche Commitment, paid on LHC Financial Close and funded from the LHC Tranche Equity Contribution Amount;
- (b) within 5 Business Days of each Calculation Date after the first Calculation Date following LHC Financial Close, X% of the amount of Principal Outstanding under the LHC Tranche during the period since the previous Calculation Date (where "X" is equal to [REDACTED] per annum minus the Margin applicable to that Principal Outstanding), to be funded from the LHC Tranche Proceeds Account to the extent that funds are available for that purpose in accordance with clause 13.6.1.8;
- (c) amounts made, or to be made, available to the Borrower by the Parent in respect of Tenancy Sustainability Initiatives under the LHC Tranche Intercompany Loan Agreement; and
- (d) amounts funded from the LHC Tranche Proceeds Account for Tenancy Sustainability Initiatives with the written consent of the Financier;

**"LHC Tranche Term Facility"** means the term loan facility provided under the LHC Tranche;

**"LHC Tranche Term Facility Committed Amount"** means the outstanding amount of the LHC Tranche CA Facility immediately prior to Conversion;

**"LHC Tranche Term Facility Maturity Date"** means 10 years from the date of LHC Financial Close;

**"LHC Tripartite Deed"** means the Tripartite Deed dated 26 February 2016 between LHC, the Borrower and the Financier;

**"LHC Vested Property"** means each of the dwellings on the [REDACTED] certificates of title transferred from the Parent to the Borrower on or prior to the date of LHC Financial Close as described in Schedule 2 to this agreement (provided that if any such properties are sold by the Borrower or Parent prior to LHC Financial Close, the net proceeds of such sales must be provided as part of the LHC Tranche Equity Contribution Amount in the form of cash);

**"LHC Vesting Agreement"** means each vesting agreement in relation to the LHC Property;

**"Loan to Value Ratio" or "LVR"** means, at any time, the ratio (expressed as a percentage) of:

- (a) the Principal Outstanding at that time less:
  - (i) the balance standing to the credit of the Debt Service Reserve Account; and
  - (ii) the amount standing to the credit of each Proceeds Account,

to:

- (b) the aggregate of:

- (i) value of the Properties, as established by the most recent Valuation; and
- (ii) the balance standing to the credit of the Active Portfolio Management Account.

**"Maintenance Costs"** means operating and maintenance costs and expenses incurred in respect of each Property.

**"Maintenance Reserve Account"** means the account designated as such under clause 13.1 and includes any replacement of that account;

**"Management Services Agreement"** means the Original Management Services Agreement, as amended by the MSA Amendment Deed;

**"Mandatory Prepayment Account"** means:

- (a) for the LHC Tranche, the LHC Tranche Mandatory Prepayment Account; and
- (b) for the SAHF Tranche, the SAHF Tranche Mandatory Prepayment Account;

**"Margin"** means:

- (a) for the LHC Tranche, the LHC Tranche Margin; and
- (b) for the SAHF Tranche, the SAHF Tranche Margin;

**"Material Adverse Effect"** means, an effect which has or results in:

- (a) a materially adverse effect on the business, assets, operations, Material Documents (taken as a whole) or condition, financial or otherwise, of the Borrower and its subsidiaries;
- (b) material impairment of the ability of the Borrower to perform any of its obligations under the Finance Documents;
- (c) material impairment of the rights of or benefits available to the Financier under the Facility; or
- (d) a material adverse effect on the validity or enforceability of the Finance Documents;

**"Material Document"** means each of the following:

- (a) each Project Document;
- (b) each Lease Document;
- (c) each Sale Contract;
- (d) each LHC Vesting Agreement;
- (e) the SAHF Services Agreement and each other SAHF Service Package Document;

- (f) the SAHF Services Subcontract and each other SAHF Subcontract Service Package Document;
- (g) the Original Management Services Agreement and the MSA Amendment Deed;
- (h) any document which the Financier and the Borrower so designate in writing;
- (i) any document contemplated by or required in connection with any of the above or the transactions which they contemplate; or
- (j) any document entered into for the purpose of amending, novating, restating or replacing any of the above;

**"MSA Amendment Deed"** means the MSA Amendment and Restatement Deed between the Borrower and the Parent dated on or about the Restatement Date;

**"MSA Tripartite Deed"** means the Tripartite Deed dated on or about the Restatement Date between the Borrower, the Parent and the Financier in relation to the Management Services Agreement;

**"NatHERS"** means the Nationwide House Energy Rating Scheme, which is a national framework for the purpose of regulating how Australian homes are rated for their thermal performance;

**"National Housing Law"** means the Community Housing Providers (Adoption of National Law) Act 2012 (NSW);

**"Next Calculation Date"** in respect of a disposal or deposit means the next Calculation Date following the date of the disposal or deposit (as the case may be);

**"Notional Repayment Date"** means each of the LHC Tranche Notional Repayment Date and the SAHF Tranche Notional Repayment Date.

**"NSW Affordable Housing Guidelines"** means the guidelines provided by the department of Family and Community Services, published July 2013 and each subsequent amendment;

**"NRAS"** means the National Rental Affordability Scheme established by the NRAS Act and NRAS Regulations and in effect as at the date of this agreement;

**"NRAS Act"** means the National Rental Affordability Scheme Act 2008 (Cth);

**"NRAS End Date"** means the earlier of:

- (a) the date on which NRAS is terminated, repealed or otherwise concluded;
- (b) the date on which State Government Contributions are no longer available and/or payable to the Borrower; and
- (c) the date on which Incentives and/or Allocations are no longer available and/or payable under NRAS to the Borrower;

**"NRAS Regulations"** means the *National Rental Affordability Scheme Regulations 2008* (Cth) made under the NRAS Act;

**"Original Account Bank Deed"** means the ADI Account Control Deed dated 1 December 2015 between the Financier, the Account Bank and the Borrower;

**"Original Financial Statements"** means the audited financial statements of the Parent for the financial year ended 30 June 2015 in form and substance satisfactory to the Financier;

**"Original Management Services Agreement"** means the Management Services Agreement dated 19 November 2015 between the Borrower and the Parent;

**"Original Subordination Deed"** means the Subordination Deed dated 19 November 2015 between the Parent, the Borrower and the Financier;

**"Parent"** means St George Community Housing Limited ACN 133 729 503;

**"Parent Guarantee"** means the Guarantee and Indemnity dated on or about the Restatement Date between the Parent and the Financier;

**"Party"** means a party to this agreement;

**"Permitted Disposal"** means any sale, lease, transfer or other disposal:

- (a) arising on entry into of a Lease Document;
- (b) due to the existence of a Permitted Security Interest;
- (c) of an obsolete asset which is no longer required for its business and which is disposed of in accordance with the Active Portfolio Management Plan;
- (d) of a Unit pursuant to a Sale Contract in accordance with the Active Portfolio Management Plan;
- (e) of a Property in accordance with the Active Portfolio Management Plan; or
- (f) made with the prior written consent of the Financier;

**"Permitted Financial Indebtedness"** means Financial Indebtedness:

- (a) arising under a Finance Document;
- (b) arising under the Subordinated Debt; or
- (c) expressly permitted by the Financier in writing;

**"Permitted Interest Period"** means the following:

- (a) 3 months; or
- (b) any other period agreed by the Borrower and the Financier;

**"Permitted Security Interest"** means the following:

- (a) a Security Interest created or permitted by a Finance Document;
- (b) a Security Interest envisaged by the Housing Act;

- (c) any rights of FACS under clause 13.1 of the SAHF Services Agreement in respect of any "Retention Amounts" (as defined in the SAHF Services Agreement);
- (d) a Security Interest arising by operation of law, if the Borrower takes all reasonable steps to discharge it as soon as possible; or
- (e) expressly permitted by the Financier in writing;

**"Permitted Variation"** means any variation of a Building Contract with the prior consent of the Financier;

**"Personal Information"** means information or an opinion about an identified individual or an individual who is reasonably identifiable;

**"Personal Property Securities Register"** means the register established under s147 of the PPSA;

**"Plan of Subdivision"** means any plan of subdivision or consolidation, strata or stratum plan relating to the Property, to be approved by the Financier prior to lodgement with a Governmental Agency for registration;

**"Power"** means any right, power, discretion or remedy of the Financier, a Receiver or a Delegate under any Finance Document or applicable law;

**"PPSA"** means the Personal Property Securities Act 2009 (Cth);

**"Practical Completion"** means, in respect of a D&C Project, the date on which:

- (a) the Financier is satisfied that any Construction Costs incurred by the Borrower in connection with that D&C Project to achieve the issue of a Certificate of Practical Completion in respect of that D&C Project have been paid in full;
- (b) a Certificate of Practical Completion has been issued in accordance with the Building Contract and the Quantity Surveyor has confirmed to the Financier that such Certificate of Practical Completion is in order; and
- (c) the Financier has received a statement from a NSW Environment Protection Authority accredited person confirming that the Property the subject of that D&C Project is suitable for the intended purpose.

**"Principal Outstanding"** means, at any time, the aggregate amount of Advances outstanding at that time;

**"Privacy Statement"** means the current version of a notice of the matters referred to in subclause 5.1(a) of the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth) as provided to the Borrower by the Financier from time to time;

**"Proceeds Account"** means:

- (a) for the LHC Tranche, the LHC Tranche Proceeds Account; and
- (b) for the SAHF Tranche, the SAHF Tranche Proceeds Account;

**"Proforma Lease Document"** means:

- (a) in respect of a residential dwelling, the proforma document to be used for a lease, licence or other right of occupation or use of that dwelling in each case for residential purposes and in the form agreed with the Financier prior to LHC Financial Close; and
- (b) in respect of a Commercial Unit, the proforma document to be used for a lease, licence or other right of occupation or use of a Commercial Unit in each case for commercial purposes and in the form agreed with the Financier prior to the first lease of a Commercial Unit,

in either case, as amended from time to time with the consent of the Financier;

**"Proforma Sale Contract"** means the proforma contract for sale to be used for the sale of a Property or any part of a Property (including any Unit comprising that Property) by the Borrower (as vendor) and a third party purchaser in the form agreed with the Financier as a condition precedent to the first Advance in respect of the D&C Project or the Advance in respect of the Acquisition Price for a Turnkey Project, which includes a Unit, as amended from time to time with the consent of the Financier;

**"Project"** means each of:

- (a) a D&C Project; and
- (b) from the date of acquisition by the Borrower, a Turnkey Project;

**"Project Costs"** means, in respect of a D&C Project at any time:

- (a) the latest estimate by the Quantity Surveyor of the aggregate amount of each of the items of costs and expenses and funding specified in the relevant Budgeted Costs incurred and to be incurred in connection with that D&C Project but excluding any costs funded out of the Tenancy Sustainability Account and excluding any amounts referred to in paragraph (b); and
- (b) any amount paid or payable by the Borrower to the Parent under the Management Services Agreement;

**"Project Document"** means, in respect of a D&C Project:

- (a) a Building Contract;
- (b) the QS Appointment;
- (c) each Project Security;
- (d) a Construction Certificate; or
- (e) any other document designated as such by the Financier and the Borrower;

**"Project Life Cover Ratio"** or **"PLCR"** means, as at any Calculation Date, the ratio of A:B, where:

A = the net present value of all projected CFADS for each calendar quarter for the period from that Calculation Date to the date which is 23 years from the first

Date of Service Readiness, discounted on a quarterly basis at a weighted average of the Interest Rates then applicable to the Facilities; and

**B** = the actual (or where appropriate projected) Principal Outstanding under the Facilities as at that Calculation Date less the actual (or where appropriate projected) balance of the Debt Service Reserve Account as at that Calculation Date less the net present value of the projected Principal Outstanding (as set out in the Base Case Financial Model) as at the date which is 23 years from the first Date of Service Readiness, discounted on a quarterly basis at a weighted average of the Interest Rates then applicable to the Facilities.

All projections are to be based on the Base Case Financial Model current as at the Calculation Date;

**"Project Security"** means, in respect of a D&C Project, any bank guarantee, performance bond or other security payment given to the Borrower in respect of that D&C Project;

**"Property"** means each of:

- (a) the LHC Property; and
- (b) the SAHF Property;

**"QS Appointment"** means, in respect of a D&C Project, an agreement for the appointment of a Quantity Surveyor for that D&C Project;

**"Qualifying Transferee"** means:

- (a) in relation to the Clean Energy Finance Corporation:
  - (i) the Commonwealth or an entity where the ultimate legal or beneficial interest is held by the Commonwealth or a Commonwealth Governmental Agency; or
  - (ii) an entity which is a body subject to the *Public Governance Performance and Accountability Act 2013* (Cth); or
- (b) a bank that is Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited or Westpac Banking Corporation and which has a credit rating of at least:
  - (i) up to and including the Conversion Date, A- (Standard & Poor's) or A3 (Moody's); and
  - (ii) after the Conversion Date, BBB+ (Standard & Poor's) or Baa1 (Moody's);

**"Quantity Surveyor"** means, in respect of a D&C Project, the independent quantity surveyor approved by the Financier, and appointed by or on behalf of the Borrower and the Financier in accordance with this agreement, the Management Services Agreement and the relevant Building Contract (and the QS Appointment);

**"Real Property Mortgage"** means each real property mortgage in respect of Property granted by the Borrower in favour of the Financier;



"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Secured Property;

"Registrar" has the meaning given to 'registrar' pursuant to the Housing Act;

"Reimbursable Tenancy Sustainability Contribution" means, in respect of Tenancy Sustainability Initiatives funded by the Parent or a Related Body Corporate of the Parent (other than the Borrower) on or after 12 August 2015, that part of the amount funded which is not otherwise funded or reimbursed to the Parent or the relevant Related Body Corporate by any third party;

"Related Body Corporate" has the meaning given to it in the *Corporations Act 2001* (Cth), but an entity will also be taken to be a Related Body Corporate of an entity (the **First Entity**) if that entity is:

- (a) a Subsidiary of the First Entity;
- (b) an entity of which the First Entity is a Subsidiary; or
- (c) a Subsidiary of another entity of which the First Entity is also a Subsidiary;

"Rental Income" means the aggregate of all amounts paid or payable, now or in the future, to or for the account of the Borrower under or in respect of a Lease Document including Tenant Contributions, rent payments collected through Centrelink and Incentives and Allocations paid or payable under NRAS to the Borrower;

"Repayment Schedule" means, in respect of a Term Facility, the repayment schedule in respect of that Term Facility set out in the Base Case Financial Model, as amended as agreed by the Parties;

"Repeating Representations" means each representation and warranty set out in clauses 10.1 to 10.27 (inclusive) other than the representations and warranties in clauses 10.1.7, 10.1.10, 10.1.17, 10.1.20, 10.1.22 and 10.20;

"Required Completion Date" means in respect of a D&C Project, the date by which Practical Completion in respect of that D&C Project must occur, as agreed between the Borrower and the Financier prior to the date of the Building Contract in respect of that D&C Project, as extended in accordance with the Contractor Tripartite Deed, or a later date agreed to by the Financier;

"Required DSRA Balance" means on any date, [REDACTED]

"Restatement Date" means the date of the Facility Restatement Deed;

"Review Event" has the meaning given in clause 18.1;

"SAHF Financial Close" means the first date on which all the conditions precedent listed in Part 2 of Schedule 1 have been satisfied or waived by the Financier as contemplated by clause 3.1;

"SAHF Land" means each of the following:

- (a) [REDACTED]

(b) [REDACTED]

**"SAHF Project"** means a Project that is undertaken or proposed to be undertaken by the Borrower in relation to SAHF Property for the purposes or of in connection with the SAHF Services Agreement;

**"SAHF Property "** means;

- (a) the SAHF Land; and
- (b) any other land or dwelling acquired, or leased, by the Borrower (whether for development or otherwise) in accordance with the SAHF Services Agreement, Business Plan or with the consent of the Financier for the purposes of the SAHF Projects,

and, where the context so requires, in each case includes the buildings and fixtures on that land;

**"SAHF Service Package Documents"** means each "Service Package Document" (as defined in the SAHF Services Agreement);

**"SAHF Services Agreement"** means each of the Social and Affordable Housing Fund – Services Agreement entered into, or to be entered into on or about the Restatement Date between the Borrower and FACS (including all schedules to such agreement);

**"SAHF Services Subcontract"** means the Social and Affordable Housing Fund – Services Subcontract entered into, or to be entered into on or about the Restatement Date between the Borrower and the Parent (including all schedules to such agreement);

**"SAHF Subcontract Service Package Documents"** means each "Service Package Document" (as defined in the SAHF Services Subcontract);

**"SAHF Subcontract Tripartite Deed"** means the SGCHL Tripartite Deed dated on or around the Restatement Date and made between the Borrower, the Parent and the Financier in relation to the SAHF Services Subcontract;

**"SAHF Tranche"** means the tranche of facilities provided or to be provided by the Financier to the Borrower under this agreement comprising the SAHF Tranche CA Facility and the SAHF Tranche Term Facility, up to the SAHF Tranche Commitment;

**"SAHF Tranche Account"** means each of the SAHF Tranche Construction Account, the SAHF Tranche Mandatory Prepayment Account and the SAHF Tranche Proceeds Account;

**"SAHF Tranche Availability Period"** means:

- (a) in respect of the SAHF Tranche CA Facility, the period commencing on the Restatement Date up to and including the earlier of the SAHF Tranche Conversion Date and the SAHF Tranche Sunset Date; and
- (b) in respect of the SAHF Tranche Term Facility, the SAHF Tranche Conversion Date;

"SAHF Tranche CA Facility" means the cash advance facility provided under the SAHF Tranche;

"SAHF Tranche Cashflow Available for Debt Service" or "SAHF Tranche CFADS" means for any relevant period, an amount equal to the aggregate of:

- (a) revenue of the Borrower attributable to the SAHF Property determined on a cash basis for that period; less
- (b) the aggregate of:
  - (i) operating expenditures attributable to the SAHF Property (being all amounts paid by the Borrower in respect of operating the SAHF Projects and maintaining the SAHF Property in the ordinary course of business, including taxes); and
  - (ii) capital expenditures attributable to the SAHF Property, including capital expenditure to be applied to scheduled or unscheduled major maintenance (other than funds utilised from the Maintenance Reserve Account) and funds to be deposited into the Maintenance Reserve Account (without double counting) but excluding amounts funded by insurance proceeds for loss which are to be applied to reinstatement, one-off items agreed between the Borrower and the Financier and amounts funded from the Facilities or an Equity Contribution Amount,

determined on a cash basis for that period;

"SAHF Tranche Commitment" means [REDACTED] as, increased, reduced or cancelled under this agreement;

"SAHF Tranche Construction Account" means the account designated as such under clause 13.1 and includes any replacement of that account;

"SAHF Tranche Conversion Date" means the date the Financier notifies the Borrower that it has received all the documents and evidence set out in clause 3.8 in respect of the SAHF Tranche in form and substance satisfactory to the Financier and/or waived receipt of those documents and other evidence;

"SAHF Tranche DSCR" means, as at a Calculation Date, the ratio of A:B, where:

A = the SAHF Tranche CFADS during the Calculation Period ending on that Calculation Date; and

B = Debt Service on the SAHF Tranche Term Facility during the Calculation Period ending on that Calculation Date;

"SAHF Tranche Equity Contribution Amount" means the aggregate of:

- (a) cash which must not be less than [REDACTED]
- (b) a contribution of land located at [REDACTED] with a value of up to [REDACTED] which must be transferred by the Parent to the Borrower prior to SAHF Financial Close;

- (c) a reallocation of the Borrower's existing land located at [REDACTED] with a value of up to [REDACTED] from being LHC Land to being SAHF Land, on or about the Restatement Date;
- (d) an amount not less than [REDACTED] from proceeds received from the sale of certain existing properties owned by the Borrower (to be credited to the Active Portfolio Management Account and to be transferred as soon as practical to the SAHF Tranche Construction Account to fund Project Costs), such sales to be undertaken in accordance with the timeframe set out in the Base Case Financial Model provided under paragraph 13 of Part 2 of Schedule 1 prior to SAHF Financial Close; and
- (e) an amount not less than [REDACTED] from additional proceeds received from the sale of certain existing properties owned by the Borrower (to be credited to the Active Portfolio Management Account and to be transferred as soon as practical to the SAHF Tranche Construction Account to fund Project Costs in respect of D&C Projects during the SAHF Tranche Availability Period), such sales to be undertaken in accordance with the timeframe set out in the Base Case Financial Model provided under paragraph 13 of Part 2 of Schedule 1 prior to SAHF Financial Close,

with such amount to be increased as necessary to ensure compliance with the relevant Debt Sizing Criteria and to be provided in accordance with the SAHF Tranche Intercompany Loan Agreement;

**"SAHF Tranche Finance Document"** means the Facility Restatement Deed, each Real Property Mortgage in respect of any SAHF Property which is not already subject to a Real Property Mortgage, the SAHF Tripartite Deed, the SAHF Subcontract Tripartite Deed, the Designation Notice, the Account Bank Deed Amendment and the Parent Guarantee;

**"SAHF Tranche Intercompany Loan Agreement"** means the Intercompany Loan Agreement between the Parent and the Borrower dated on or about the Restatement Date, being a subordinated loan agreement pursuant to which the Parent:

- (a) commits to provide to the Borrower the amounts and the property described in paragraphs (a) and (b) of the definition of "SAHF Tranche Equity Contribution Amount"; and
- (b) from time to time may provide to the Borrower loans in respect of amounts incurred or to be incurred by the Borrower in connection with the SAHF Tranche in respect of Tenancy Sustainability Initiatives;

**"SAHF Tranche Mandatory Prepayment Account"** means the account designated as such under clause 13.1 and includes any replacement of that account;

**"SAHF Tranche Margin"** means [REDACTED] per annum less, in respect of any Interest Period during which the SAHF Tranche Tenancy Sustainability Conditions are satisfied, [REDACTED] per annum;

**"SAHF Tranche Material Documents"** means the SAHF Services Agreement and each other SAHF Service Package Document, the SAHF Services Subcontract and each other SAHF Subcontract Service Package Document and each Project Document relating to a SAHF Project;

"SAHF Tranche Notional Repayment Date" means date that is 25 years from the first Date of Service Readiness;

"SAHF Tranche Proceeds Account" means the account designated as such under clause 13.1 and includes any replacement of that account;

"SAHF Tranche Project Life Cover Ratio" or "SAHF Tranche PLCR" means, as at any Calculation Date, the ratio of A:B, where:

A = the net present value of all projected SAHF Tranche CFADS for each calendar quarter for the period from that Calculation Date to the date which is 23 years from the first Date of Service Readiness, discounted at the Interest Rate then applicable to the SAHF Tranche Term Facility; and

B = the actual (or where appropriate projected) Principal Outstanding under the SAHF Tranche Term Facility as at that Calculation Date less the actual (or where appropriate projected) balance of the Debt Service Reserve Account as at that Calculation Date apportioned to the SAHF Tranche Term Facility (in the same proportion as the Principal Outstanding under the SAHF Tranche as at that Calculation Date bears to the total Principal Outstanding as at that Calculation Date) less the net present value of the Principal Outstanding under the SAHF Tranche (as set out in the Base Case Financial Model) as at the date which is 23 years from the first Date of Service Readiness, discounted on a quarterly basis at the Interest Rate then applicable to the SAHF Tranche Term Facility.

All projections are to be based on the Base Case Financial Model current as at the date SAHF Tranche PLCR is calculated;

"SAHF Tranche Resized Amount " has the meaning given in clause 2.3;

"SAHF Tranche Sunset Date" means the earlier of:

- (a) the date that is 4 years after the Restatement Date; and
- (b) the "Service Commencement Date" for the last "Stage" (each as defined in the SAHF Services Agreement);

"SAHF Tranche Tenancy Sustainability Conditions" means each of the following conditions:

- (a) the required SAHF Tranche Tenancy Sustainability Contribution is deposited into and at all times prior to an investment in accordance with this provision stands to the credit of the SAHF Tranche Tenancy Sustainability Account; and
- (b) if any amount deposited into the SAHF Tranche Tenancy Sustainability Account is not invested in accordance with this provision, the Borrower must transfer that amount to the SAHF Tranche Mandatory Prepayment Account on or before the date which is 3 business days after the last date on which it may be invested in accordance with this provision,

where '*an investment in accordance with this provision*' and '*invested in accordance with this provision*' means that the relevant amount deposited into the SAHF Tranche Tenancy Sustainability Account is:

- (i) invested in Tenancy Sustainability Initiatives on or before the date which is 12 months after the Next Calculation Date; or
- (ii) contracted to be invested in Tenancy Sustainability Initiatives on or before the date which is 12 months after the Next Calculation Date and invested in Tenancy Sustainability Initiatives on or before the date which is 24 months after the Next Calculation Date,

and provided that:

- (iii) any such investment or contract to invest does not have a negative impact on the Borrower's financial condition; and
- (iv) no Event of Default is continuing at the time of such investment or entry into such contract;

**"SAHF Tranche Tenancy Sustainability Contribution"** means the following amounts to be deposited into the SAHF Tranche Tenancy Sustainability Account by the Borrower on or before the dates set out below or, in the case of paragraph (c) and (d), as and when required by the Borrower for the relevant Tenancy Sustainability Initiative:

- (a) 0.50% of the initial SAHF Tranche Commitment, payable on SAHF Financial Close and funded from the SAHF Tranche Equity Contribution Amount;
- (b) within 5 Business Days of each Calculation Date after the first Calculation Date following SAHF Financial Close, X% of the amount of Principal Outstanding under the SAHF Tranche during the period since the previous Calculation Date (where "X" is equal to [REDACTED] per annum minus the Margin applicable to that Principal Outstanding), to be funded from the SAHF Tranche Proceeds Account to the extent that funds are available for that purpose in accordance with clause 13.6.2.5;
- (c) amounts made, or to be made, available to the Borrower by the Parent in respect of Tenancy Sustainability Initiatives under the SAHF Tranche Intercompany Loan Agreement; and
- (d) amounts funded from the SAHF Tranche Proceeds Account for Tenancy Sustainability Initiatives with the written consent of the Financier;

**"SAHF Tranche Term Facility"** means the term loan facility provided under the SAHF Tranche;

**"SAHF Tranche Term Facility Committed Amount"** means the outstanding amount of the SAHF Tranche CA Facility immediately prior to Conversion;

**"SAHF Tranche Term Facility Maturity Date"** means 10 years from the SAHF Tranche Conversion Date;

**"SAHF Tripartite Deed"** means the Social and Affordable Housing Fund – Financier's Tripartite Deed dated on or around the Restatement Date between FACS, the Borrower and the Financier;

**"Sale Contract"** means in respect of a Property or any part of a Property (including any Unit comprising that Property):

- (a) each contract for sale between the Borrower as vendor and a third party purchaser which is:
  - (i) on substantially the same terms as the Proforma Sale Contract; or
  - (ii) in form and substance satisfactory to the Financier; or
- (b) any other document designated as such by the Financier and the Borrower;

"Secretary" has the meaning given to "Secretary" pursuant to the NRAS Act;

"Secured Money" means all of the following in each case to the extent they arise in relation to, in connection with or under a Finance Document:

- (a) money owed by the Borrower to a Secured Party (including advances and future advances);
- (b) claims for damages (liquidated or unliquidated) by a Secured Party against the Borrower; and
- (c) expenses incurred in relation to enforcement of any Transaction Security, whether considered reasonable or otherwise,

and includes all present and future, actual and contingent amounts owing in relation to, in connection with or under a Finance Document, irrespective of the following:

- (d) the circumstances in which the Secured Party comes to be owed such money, including any assignment of any Secured Money (whether or not the Borrower consented to such assignment); or
- (e) the capacity which the Borrower comes to owe that money or damages;

"Secured Obligations" means all the present and future, actual and contingent obligations of the Borrower to a Secured Party under or in relation to the Finance Documents except for any obligation to pay Secured Money;

"Secured Party" means the Financier, a Receiver or any Delegate;

"Secured Property" means any property at any time subject to a Security Interest securing any Secured Money or Secured Obligations;

"Security Document" means each of the following:

- (a) the General Security Deed;
- (b) each Real Property Mortgage; and
- (c) any other document evidencing or creating, or purporting to evidence or create, a Security Interest over any asset to secure any obligation of the Borrower to a Secured Party under the Finance Documents; and
- (d) any other document designated as such by the Financier and the Borrower;

"**Security Interest**" means any mortgage, pledge, lien or charge and any other agreement, right or interest having a similar effect, other than a security interest as defined in s12(3) of the PPSA which does not secure payment or performance of an obligation;

"**Service Charge Part B**" means the "Service Charge" (as defined in the Management Services Agreement) described in Schedule 8 of the Management Services Agreement as Service Charge Part B;

"**Social Housing**" means subsidised rental accommodation for people on a very low or low income that meet the required eligibility criteria;

"**Special Conditions**" has the meaning given to 'special conditions' pursuant to the NRAS Regulations;

"**Specifications**" means the drawings, plans and specifications for a D&C Project which have been supplied to, and approved by, the Financier as a condition precedent in accordance with clause 3.5, as they may be amended in accordance with this agreement;

"**Statement of Compliance**" means a Statement of Compliance prepared and lodged in accordance with section 17 of the NRAS Regulations;

"**State Government Contribution**" means direct financial support or in-kind contributions (or both) made by a State or Territory of the Commonwealth of Australia to the Borrower in connection with NRAS;

"**Subordinated Debt**" has the meaning given to Junior Debt in the Subordination Deed;

"**Subordination Deed**" means the Original Subordination Deed together with the Designation Notice;

"**Subsidiary**" has the meaning given to it in the *Corporations Act 2001* (Cth), but an entity will also be taken to be a Subsidiary of an entity if it is Controlled by that entity and:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation;

"**Sunset Date**" means:

- (a) for the LHC Tranche, the LHC Tranche Sunset Date; and
- (b) for the SAHF Tranche, the SAHF Tranche Sunset Date;

"**Sustainability Consultant**" means a sustainability consultant acceptable to the Financier;

"**Tax**" means any tax, levy, impost, deduction, charge, duty, compulsory loan or withholding and any related interest, penalty, fine or expense imposed by any Governmental Agency;

"**Tax Act**" means the Income Tax Assessment Act 1936 (*Cth*) or the Income Tax Assessment Act 1997 (*Cth*), as the context requires;



"**Tax Consolidated Group**" has the meaning given to the term 'consolidated group' in the Tax Act;

"**Tenancy Sustainability Account**" means the account designated as such under clause 13.1 and includes any replacement of that account;

"**Tenancy Sustainability Contribution**" means each of the LHC Tranche Tenancy Sustainability Contribution and the SAHF Tranche Tenancy Sustainability Contribution;

"**Tenancy Sustainability Initiatives**" means the following energy efficiency and other sustainability measures for the benefit of tenants:

- (a) installation of smart electricity meters;
- (b) installation of smart water meters;
- (c) installation of appropriate insulation;
- (d) replacement of hot water systems with heat pump units;
- (e) re-lamp light fittings with LED lamps;
- (f) installation of solar shading devices;
- (g) installation of double glazing and/or thermal e-glass;
- (h) installation of solar voltaic panels where appropriate; or
- (i) any other measure approved by the Financier,

for:

- (j) a Property acquired or otherwise used for a Project which, prior to implementation of any Tenancy Sustainability Initiative, has or will satisfy the requirements of the Housing Sustainability Criteria, but only to the extent that the costs incurred in respect of the implementation of the above energy efficiency and other sustainability measures do not exceed an amount equal to the aggregate amount set out in paragraph (a) of the definition of the relevant LHC Tenancy Sustainability Contribution and SAHF Tranche Sustainability Contribution; or
- (k) any property owned, leased or managed by the Borrower, the Parent or a Related Body Corporate of the Parent (other than a Property acquired or otherwise used for a Project),

as set out in, and in accordance with, the most recent Business Plan;

"**Tenant Contributions**" means any amount paid or payable to the Borrower by any tenant under a Lease Document or any other occupier of a Property, by way of:

- (a) contribution to:
  - (i) insurance premiums;
  - (ii) the cost of an insurance valuation;

- (iii) a service or other charge in respect of the Borrower's costs in connection with any management, repair, maintenance or similar obligation or in providing services to a tenant of, or with respect to, a Property, including the cost of water or water service charges used by a tenant; or
- (iv) a reserve or sinking fund; or

(b) GST;

**"Term Facility"** means each of:

- (a) the LHC Tranche Term Facility; and
- (b) the SAHF Tranche Term Facility;

**"Term Facility Committed Amount"** means:

- (a) for the LHC Tranche, the LHC Tranche Term Facility Committed Amount; and
- (b) for the SAHF Tranche, the SAHF Tranche Term Facility Committed Amount;

**"Term Facility Maturity Date"** means:

- (a) for the LHC Tranche, the LHC Tranche Term Facility Maturity Date; and
- (b) for the SAHF Tranche, the SAHF Tranche Term Facility Maturity Date;

**"Tranche"** means each of:

- (a) the LHC Tranche; and
- (b) the SAHF Tranche;

**"Transaction Document"** means each of the Finance Documents and Material Documents;

**"Transaction Security"** means each Security Interest created or expressed to be created in favour of the Financier pursuant to the Security Documents;

**"Tripartite Deed"** means:

- (a) each Contractor Tripartite Deed;
- (b) the LHC Tripartite Deed;
- (c) the SAHF Tripartite Deed;
- (d) the SAHF Subcontract Tripartite Deed; and
- (e) the MSA Tripartite Deed;

**"Turnkey Project"** means the construction or refurbishment by or on behalf of the Parent, a Related Body Corporate of the Parent (other than the Borrower) or a developer of residential dwellings for the purposes of Community Housing (or a mixture of Community

Housing and housing for other purposes) and, if applicable, Commercial Units on a turnkey basis;

"Unit" means, in respect of a Project:

- (a) each residential unit constructed on the Property which is not, or is not constructed for the purposes of, Community Housing; or
- (b) each Commercial Unit;

"Unpaid Amount" means an amount which is not paid on the date on which it is due and payable under this agreement;

"Unused Commitment" means, at any time for a Tranche and a Facility under the Tranche, the Commitment for that Tranche and Facility less the aggregate amount of outstanding Advances under that Tranche and Facility;

"Valuation" means a valuation of a Property that is prepared by a Valuer, addressed to, and if requested by the Financier (acting in its sole discretion) capable of being relied upon by, the Financier (and its assignees and transferees), and prepared on the basis of the market value on an 'as is' basis (and taking into account the usage of the surrounding properties, including for Community Housing and housing for other purposes) and an 'as if completed' basis in respect of a Project;

"Valuer" means any surveyor or valuer appointed by the Financier;

"WHS Scheme" means the scheme established under the *Fair Work (Building Industry) Act 2012* (Cth).

### Interpretation

- 1.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:
  - 1.2.1 headings are inserted for convenience only and do not affect the interpretation of this agreement;
  - 1.2.2 a reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney and in Brisbane;
  - 1.2.3 if the day on which any act matter or thing is to be done under this agreement is not a business day, the act matter or thing must be done on the next business day;
  - 1.2.4 a reference in this agreement to 'dollars' or '\$' means Australian dollars and all amounts payable under this agreement are payable in Australian dollars;
  - 1.2.5 subject to 1.2.6 and 1.2.7, a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - 1.2.6 subject to 1.2.7, a reference in this agreement to the Housing Act is a reference to the Housing Act and the National Housing Law, as applicable;

- 1.2.7 a reference in this agreement to a provision of the Housing Act that has been repealed by the National Housing Law (**Repealed Provision**):
- 1.2.7.1 if and while the Repealed Provision continues to have effect pursuant to transitional or similar provisions of the National Housing Law - is a reference to the Repealed Provision as it continues to have effect pursuant to those provisions of the National Housing Law; and
- 1.2.7.2 once the Repealed Provision ceases to have effect under any transitional or similar provisions of the National Housing Law - is a reference to any provision of the National Housing Law that is equivalent in substance to the Repealed Provision;
- 1.2.8 a reference in this agreement to any deed, document or agreement is to that deed, document or agreement as amended, novated, supplemented or replaced;
- 1.2.9 a reference to a clause, part, paragraph, schedule or attachment is a reference to a clause, part, paragraph schedule or attachment of or to this agreement;
- 1.2.10 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- 1.2.11 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 1.2.12 a word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender also indicates the other genders;
- 1.2.13 a reference to the word "include" or "including" is to be interpreted without limitation;
- 1.2.14 a reference to "deal with" includes selling, leasing, transferring, parting with possession of, otherwise disposing of and conferring a right or interest on someone else and agreeing to do any of those things, and 'dealing' and 'dealing with' have equivalent meanings;
- 1.2.15 a reference to "owing" means actually or contingently owing, and 'owe' and "owed" have an equivalent meaning;
- 1.2.16 any schedules and attachments form part of this agreement;
- 1.2.17 a reference in this agreement to a day, month or quarter means a calendar day, calendar month or calendar quarter;
- 1.2.18 a reference to "immediately available funds" means a bank cheque or any immediately available funds received during normal banking hours;
- 1.2.19 a reference to a "law or regulation" includes any law or regulation regarding capital adequacy, prudential limits, liquidity, reserve assets or Tax;
- 1.2.20 a reference to a "subsidiary" or to a "related body corporate" has the meaning that applies in the *Corporations Act 2001* (Cth);
- 1.2.21 a reference to a "holding company" means, in relation to a person, any other person in respect of which it is a subsidiary;
- 1.2.22 a Default is **continuing** if it has not been remedied to the satisfaction of the Financier or waived in writing; and

1.2.23 where an act is required to be performed **promptly**, it shall be performed within as short a period as reasonably possible from the moment when the act could reasonably be performed, taking into account all of the circumstances.

## 2. FACILITIES

### Availability

2.1 The Financier will make the Facilities available to the Borrower on the terms of this agreement.

2.2 Prior to LHC Financial Close, the Financier will calculate the resized amount under the LHC Tranche CA Facility by reference to the Base Case Financial Model (**LHC Tranche Resized Amount**) to determine the maximum LHC Tranche Commitment (not to exceed [REDACTED] that satisfies each of the following criteria:

2.2.1 minimum forecast LHC Tranche Interest Cover Ratio of 1.30:1 for each Calculation Date during the first 5 years following LHC Financial Close but only from the LHC Conversion Date as contemplated by the Base Case Financial Model, and 1.50:1 thereafter;

2.2.2 minimum forecast LHC Tranche DSCR of 1.20:1 for each Calculation Date during the term of the LHC Tranche Term Facility (as contemplated by the Base Case Financial Model), with a scheduled amortisation profile reflecting that [REDACTED] of the principal under the LHC Tranche Term Facility is repaid by the LHC Tranche Term Facility Maturity Date and repayment in full by the LHC Tranche Notional Repayment Date;

2.2.3 minimum forecast LHC Tranche PLCR of 1.25:1 for each Calculation Date during the term of the LHC Tranche Term Facility (as contemplated by the Base Case Financial Model) with a scheduled amortisation profile reflecting that [REDACTED] of the principal under the LHC Tranche Term Facility is repaid by the LHC Tranche Term Facility Maturity Date and the balance by the LHC Tranche Notional Repayment Date;

2.2.4 maximum forecast LHC Tranche LVR of [REDACTED] during the first six years following the date of LHC Financial Close, and [REDACTED] thereafter; and

2.2.5 maximum forecast Principal Outstanding under the LHC Tranche Term Facility at the LHC Tranche Term Facility Maturity Date does not exceed [REDACTED] of the forecast LHC Tranche Term Facility Committed Amount (as contemplated by the Base Case Financial Model), taking into account both scheduled amortisation and forecast mandatory prepayments described in clause 7.6,

and promptly notify the Borrower of the LHC Tranche Resized Amount, which will be the Commitment under the LHC Tranche CA Facility as at LHC Financial Close.

2.3 Prior to SAHF Financial Close, the Financier will calculate the resized amount under the SAHF Tranche CA Facility (**SAHF Tranche Resized Amount**) by reference to the Base Case Financial Model provided under paragraph 13.1 of Part 2 of Schedule 1 prior to SAHF Financial Close to determine the maximum SAHF Tranche Commitment (not to exceed [REDACTED] that satisfies each of the following criteria:

2.3.1 minimum forecast SAHF Tranche DSCR for each Calculation Date during the term of the SAHF Tranche Term Facility (as contemplated by the Base Case Financial Model), of 1.30:1 with a scheduled amortisation profile reflecting that [REDACTED] of the principal under the SAHF Tranche Term Facility is repaid by the

SAHF Tranche Term Facility Maturity Date (including from the cash sweep under clause 7.7) and [REDACTED] of the principal under the SAHF Tranche Term Facility is repaid by the SAHF Tranche Notional Repayment Date;

2.3.2 minimum forecast SAHF Tranche PLCR of 1.30:1 for each Calculation Date during the term of the SAHF Tranche Term Facility (as contemplated by the Base Case Financial Model) with a scheduled amortisation profile reflecting that [REDACTED] of the principal under the SAHF Tranche Term Facility is repaid by the SAHF Tranche Term Facility Maturity Date (including from the cash sweep under clause 7.7) and [REDACTED] of the principal under the SAHF Tranche Term Facility is repaid by the SAHF Tranche Notional Repayment Date;

2.3.3 maximum forecast LVR of [REDACTED] and

2.3.4 maximum forecast Principal Outstanding under the SAHF Tranche Term Facility at the SAHF Tranche Term Facility Maturity Date (as contemplated by the Base Case Financial Model) does not exceed [REDACTED] of the forecast SAHF Tranche Term Facility Committed Amount (as contemplated by the Base Case Financial Model), taking into account forecast mandatory prepayments described in clause 7.6,

and promptly notify the Borrower of the SAHF Tranche Resized Amount, which will be the SAHF Tranche Commitment under the SAHF Tranche CA Facility as at SAHF Financial Close.

#### **Right to draw an Advance under a CA Facility**

2.4 The Borrower may draw an Advance under a CA Facility by giving a Funding Notice to the Financier in accordance with clause 3. The Borrower is not obliged to do so.

#### **Purpose**

2.5 In respect of a CA Facility, all Advances must be applied by the Borrower towards any of the following:

2.5.1 funding Project Costs in respect of each D&C Project;

2.5.2 funding the Acquisition Price in respect of each Turnkey Project;

2.5.3 paying interest and fees in respect of that CA Facility;

2.5.4 in respect of the SAHF Tranche only, paying (or reimbursing the Parent for the payment of) any costs in respect of the SAHF Property or SAHF Projects in accordance with the Base Case Financial Model;

2.5.5 paying any amount to the Parent pursuant to the Management Services Agreement in accordance with the Base Case Financial Model;

2.5.6 reimbursement of the Active Portfolio Management Account to the extent permitted under clause 13.28; and

2.5.7 any other purpose agreed in advance by the Financier.

2.6 In respect of the Term Facility for each Tranche, proceeds may only be used to notionally repay the Principal Outstanding under the relevant CA Facility for that Tranche on the relevant Conversion Date for that Tranche, in accordance with this agreement.

**3. CONDITIONS PRECEDENT**

**Conditions precedent to first Funding Notice under the LHC Tranche**

- 3.1 The Borrower may not give the first Funding Notice in respect of the LHC Tranche until the Financier has either received or waived its requirement to receive each item listed in Part 1 of Schedule 1 in form and substance satisfactory to the Financier.

**Backstop Date –LHC Tranche**

- 3.2 If LHC Financial Close has not occurred in accordance with this agreement on or before 1 April 2016 or such later date agreed by the Financier, all the LHC Tranche Commitments will be automatically cancelled at 5.00 pm on 1 April 2016.

**Conditions precedent to first Funding Notice under the SAHF Tranche**

- 3.3 The Borrower may not give the first Funding Notice in respect of the SAHF Tranche until the Financier has either received or waived its requirement to receive each item listed in Part 2 of Schedule 1 in form and substance satisfactory to the Financier.

**Backstop Date – the SAHF Tranche**

- 3.4 If SAHF Financial Close has not occurred in accordance with this agreement on or before the date that is six months from the Restatement Date or such later date agreed by the Financier, all the SAHF Tranche Commitments will be automatically cancelled at 5.00pm on that date.

**Conditions precedent to each D&C Project**

- 3.5 In addition to the items required to be provided under clause 3.1, the Financier will only be obliged to provide the first Advance in respect of a D&C Project, if:

3.5.1 the Financier has either received or waived its requirement to receive each item listed in Part 3 of Schedule 1 in respect of that D&C Project in form and substance satisfactory to the Financier; and

3.5.2 the Required Completion Date in respect of that D&C Project has been agreed between the Borrower and the Financier and which must be a business day 3 months prior to the end of the Availability Period in respect of the relevant CA Facility.

**Conditions precedent to each Advance under a CA Facility**

- 3.6 Unless the Financier agrees otherwise in writing, the Financier is only obliged to make an Advance under a CA Facility if:

3.6.1 the Borrower has complied with clause 3.1 or 3.3 (as applicable), and, if applicable, clause 3.5;

3.6.2 the Financier has received a Funding Notice no later than 5 business days before the proposed Funding Date;

3.6.3 the Funding Date specified in the Funding Notice is a business day in the relevant Availability Period;

3.6.4 the advance is not less than [REDACTED]

- 3.6.5 the Principal Outstanding will not exceed the Commitment under the relevant CA Facility immediately after the Advance is made;
- 3.6.6 the Financier is satisfied that the statements made in the Funding Notice are correct at the Funding Date;
- 3.6.7 the Financier is satisfied that no Default has occurred and is continuing and that the provision of the Advance will not result in the occurrence of a Default;
- 3.6.8 it has received all information and evidence in respect of that Advance required pursuant to the relevant part of Schedule 1;
- 3.6.9 in respect of any Advance in respect of a D&C Project, together with the Funding Notice for that Advance:
  - 3.6.9.1 the Borrower provides evidence (in form and substance satisfactory to the Financier) of the purpose of the Advance comprising either:
    - (a) an invoice (receipted if the Advance is to reimburse the relevant amount) submitted by the Contractor under the Building Contract relating to that D&C Project; or
    - (b) any other evidence of the cost or expense (receipted if the Advance is to reimburse the relevant amount) where the Advance is to finance or reimburse a cost or expense relating to that D&C Project but not incurred under the Building Contract;
  - 3.6.9.2 the Quantity Surveyor for that D&C Project provides a report in form and substance satisfactory to the Financier:
    - (a) which attaches a certificate or otherwise includes a certification or confirmation from that Quantity Surveyor confirming that the cost or expense to be financed or reimbursed by the Advance:
      - (i) has been or will be expended in compliance with the Budgeted Costs for that D&C Project; and
      - (ii) has not been the subject of a previous certificate under this clause;
    - (b) confirming the estimated cost to achieve practical completion (as defined in the relevant Building Contract) after payment of the claim from the Advance;
    - (c) confirming the estimated date of Practical Completion, which must be a business day prior to the end of the relevant Availability Period in respect of the relevant CA Facility;
    - (d) confirming that the works to date in respect of the D&C Project have been undertaken substantially in accordance with the Building Contract (including Specifications) in



the form provided to the Financier pursuant to clause 3.5.1;

- (e) confirming that all claims and invoices for which previous Advances have been made have been paid;
- (f) confirming that the Contractor for that D&C Project has confirmed to the Quantity Surveyor for that D&C Project (to its satisfaction) that all workers engaged under the Building Contract have been paid or will be paid from the Advance, and all moneys for materials or work provided by subcontractors or suppliers in connection with the Project have been paid for or will be paid for from the Advance; and
- (g) confirming the cost to complete the D&C Project (as advised by the Quantity Surveyor for that D&C Project), together with any additional costs and estimated capitalised interest and interest and fees payable on the Advances until the relevant Sunset Date, will not exceed the Unused Commitment under the relevant CA Facility after the Advance is made (after taking into account any parts of such Unused Commitment already allocated to, but not yet expended on, another D&C Project or Turnkey Project (as applicable) it has committed to purchase);

3.6.9.3 the Advance is in accordance with the relevant Drawdown Schedule for that D&C Project or is otherwise agreed with Financier;

3.6.9.4 in respect of the relevant Tranche, the Equity Contribution Amount with respect to that Tranche allocated to that D&C Project in the Base Case Financial Model has been fully spent on Project Costs for that D&C Project in accordance with the Base Case Financial Model; and

3.6.9.5 in the case of a D&C Project, where the Contractor for that D&C Project is not an accredited Contractor under the WHS Scheme, the aggregate of all Advances, after the Advance is made, utilised for BW Costs in respect of that D&C Project (as certified by the Quantity Surveyor for that D&C Project) does not exceed [REDACTED]

3.6.10 in respect of any Advance to fund the Acquisition Price for a Turnkey Project, at least 14 days prior to the Funding Date for that Advance, the Financier has either received or waived its requirement to receive (each in form and substance satisfactory to the Financier) each item listed in Part 4 of Schedule 1; and

3.6.11 the Financier is satisfied that the Repeating Representations are true, correct and not misleading.

### Receipt of Funding Notice

- 3.7 A Funding Notice is effective upon receipt by the Financier and, once effective, is irrevocable.

### Conditions precedent to Conversion

- 3.8 Conversion will occur in respect of a Tranche on the earlier of the relevant Sunset Date and the first date on which:

- 3.8.1 the Borrower notifies the Financier that, in the opinion of the Borrower, each of the following conditions are satisfied:

3.8.1.1 Practical Completion has occurred in respect of each D&C Project that has been funded in whole or part using any Advance under that Tranche;

3.8.1.2 no Default is continuing and Conversion will not result in the occurrence of a Default;

3.8.1.3 the Repeating Representations are true, correct and not misleading;

3.8.1.4 the Financier has received from the Borrower:

(a) evidence that the insurance cover required to be effected and maintained under the Transaction Documents as at the relevant Conversion Date is in full force and effect and all premiums due and payable have been paid, or arrangements for payment of those premiums have been made satisfactory to the Financier;

(b) an updated Base Case Financial Model, including, in respect of the LHC Tranche only, an updated Repayment Schedule for that Tranche reflecting in respect of the relevant Term Facility Committed Amount [REDACTED] principal amortisation by the relevant Term Facility Maturity Date and amortisation in full by the LHC Tranche Notional Repayment Date;

(c) evidence that all Authorisations which are necessary for the Borrower to operate and earn revenue from the Projects under that Tranche in all material respects have been obtained; and

(d) in respect of the SAHF Tranche only, receipt of the certificate of "Service Readiness" issued by FACS in respect of the last "Stage" (each as defined in the SAHF Services Agreement); and

3.8.1.5 the Required DSRA Balance stands to the credit of the Debt Service Reserve Account; and

- 3.8.2 the Financier is satisfied that each of the conditions set out in clauses 3.8.1.1 to 3.8.1.5 are satisfied or waived.

3.9 The Financier must notify the Borrower of each Conversion Date as soon as practicable after it occurs.

#### 4. INTEREST PERIODS

##### Selection of Interest Period

4.1 The Borrower must select an Interest Period for an Advance in the Funding Notice for that Advance. The Interest Period must be a Permitted Interest Period and must align with the end of a calendar quarter, with the relevant initial and final Interest Periods to be calculated based on a stub period, if applicable.

##### Restriction on selections

4.2 The following restrictions apply to Interest Periods:

4.2.1 **Business days:** An Interest Period which would end on a day which is not a business day ends on the preceding business day.

4.2.2 An Interest Period which would end after:

4.2.2.1 in respect of a CA Facility, the Conversion Date ends on the Conversion Date; and

4.2.2.2 in respect of a Term Facility, the Term Facility Maturity Date ends on the Term Facility Maturity Date or, if the Term Facility Maturity Date is not a business day, on the last business day before the Term Facility Maturity Date.

4.3 The Financier may vary an Interest Period for an Advance to ensure the Interest Period complies with clause 4.1 or 4.2. The Financier must notify the Borrower if any change is made to an Interest Period in accordance with this clause.

#### 5. INTEREST

##### Interest on Advances

5.1 Interest accrues on each Advance at the applicable Interest Rate.

5.2 In respect of each Facility, the Borrower must pay interest accrued on an Advance in arrears on the Interest Payment Date for the Advance.

##### Interest on Unpaid Amounts

5.3 Interest accrues on each Unpaid Amount at the relevant Default Rate.

5.4 The Borrower must pay interest accrued on an Unpaid Amount in arrears on the date the Unpaid Amount is paid in full.

5.5 Interest accrued on an Unpaid Amount capitalises to the extent not paid at the end of each 30 day period. Interest that capitalises forms part of, and will increase, the Unpaid Amount outstanding.

**Interest on judgment amounts**

- 5.6 The following will apply if a liability under a Finance Document becomes merged in a judgment or order or exists after any winding up of the Borrower:
- 5.6.1 interest will accrue on that liability at the higher of the rate payable under the judgment, order or winding up and the Default Rate;
  - 5.6.2 the Borrower must pay accrued interest in arrears on the date the liability is paid in full;
  - 5.6.3 interest accrued on the liability capitalises to the extent not paid at the end of each 30 day period (and interest that capitalises forms part of, and will increase, the liability outstanding); and
  - 5.6.4 the liability payable by the Borrower and the Borrower's obligation to pay interest will be an independent obligation separate from any other liability or obligation under this agreement.

**Accrual of interest**

- 5.7 Any interest under this clause 5:
- 5.7.1 accrues daily; and
  - 5.7.2 is calculated on the actual number of days on which interest has accrued and in respect of a 365 day year.

**Obligation to pay unaffected**

- 5.8 Nothing in this clause affects the Borrower's obligation to pay each amount which is due and payable under the Finance Documents on the date on which it falls due for payment.

**6. FEES**

**Establishment fee**

- 6.1 The Borrower must pay the Financier an establishment fee of:
- 6.1.1 [REDACTED] of the Commitment of the LHC Tranche CA Facility, within 40 business days following the date of this agreement; and
  - 6.1.2 [REDACTED] of the Commitment of the SAHF Tranche CA Facility, within 10 business days following the Restatement Date.

**Commitment fee**

- 6.2 The Borrower must pay the Financier a Commitment fee equal to [REDACTED] of the applicable Margin per annum of the Unused Commitment in respect of each CA Facility from time to time from:
- 6.2.1 in respect of the LHC Tranche, the date of this agreement up to and including the last day of the Availability Period in respect of the LHC Tranche CA Facility; and
  - 6.2.2 in respect of the SAHF Tranche, the Restatement Date up to and including the last day of the Availability Period in respect of the SAHF Tranche CA Facility.
- 6.3 This fee:

- 6.3.1 accrues daily;
- 6.3.2 is calculated on the actual number of days elapsed and in respect of a 365 day year; and
- 6.3.3 must be paid by the Borrower to the Financier quarterly, in arrears, commencing, in respect of Tranche, with a payment on the last day of the first calendar quarter that ends after the relevant Financial Close for that Tranche, and on the relevant Conversion Date for that Tranche, or, if earlier, the day on which the Commitment in respect of that Tranche is cancelled (in part or in full) or reduced to zero.

6.4 No commitment fee is payable in respect of any Term Facility.

## 7. REPAYMENT

### Repayment of the LHC Tranche

- 7.1 On the LHC Tranche Conversion Date, the Principal Outstanding under the LHC Tranche CA Facility will be deemed to have been repaid by conversion of the Principal Outstanding under the LHC Tranche CA Facility into an Advance under the LHC Tranche Term Facility.
- 7.2 The Borrower must repay the Principal Outstanding under the LHC Tranche Term Facility in quarterly payments amortising from the LHC Tranche Conversion Date to the LHC Tranche Term Facility Maturity Date in accordance with the Repayment Schedule for the LHC Tranche Term Facility included in the updated Base Case Financial Model delivered under clause 3.8.1.4(b).

### Repayment of the SAHF Tranche

- 7.3 On the SAHF Tranche Conversion Date, the Principal Outstanding under the SAHF Tranche CA Facility will be deemed to have been repaid by conversion of the Principal Outstanding under the SAHF Tranche CA Facility into an Advance under the SAHF Tranche Term Facility.
- 7.4 The Borrower must repay the Principal Outstanding under the SAHF Tranche Term Facility in full on the SAHF Tranche Term Facility Maturity Date.

### Voluntary prepayment

- 7.5 The Borrower may prepay an Advance in whole or in part by giving notice to the Financier, subject to clause 7.11.
  - 7.5.1 Any notice given in accordance with this clause:
    - 7.5.1.1 must be signed by an Authorised Officer of the Borrower;
    - 7.5.1.2 must be received by the Financier no later than 5 business days before the date on which the prepayment is to be made;
    - 7.5.1.3 must identify the relevant Advance and the amount to be prepaid; and
    - 7.5.1.4 will be effective upon receipt by the Financier and, once effective, is irrevocable.

7.5.2 The Borrower must pay to the Financier, on the date specified in a notice given in accordance with this clause, all of the following:

7.5.2.1 the amount specified in the notice;

7.5.2.2 all interest and fees accrued but unpaid under clauses 5 and 6, in respect of the amount to be prepaid; and

7.5.2.3 a prepayment fee of:

(a) in respect of any prepayment of an Advance under the LHC Tranche, [REDACTED] of the amount to be prepaid; and

(b) in respect of any prepayment of an Advance under the SAHF Tranche, [REDACTED] of the amount to be prepaid.

#### **Mandatory prepayment**

7.6 On each Interest Payment Date for an Advance under a Tranche, the balance standing to the credit of the Mandatory Prepayment Account for that Tranche will be applied in prepayment of Advances under that Tranche in accordance with clauses 13.37 and 13.38.

#### **Cash Sweep**

7.7 On and from the Conversion Date for:

7.7.1 the LHC Tranche, the Borrower must apply all amounts standing to the credit of the LHC Tranche Proceeds Account after payment of the amounts set out in clauses 13.6.1.1 – 13.6.1.10 (inclusive), towards prepayment of the LHC Tranche Term Facility, subject to leaving a minimum cash balance in the LHC Tranche Proceeds Account of [REDACTED] and

7.7.2 the SAHF Tranche, the Borrower must apply the "Relevant Proportion" (as defined below) of all amounts standing to the credit of the SAHF Tranche Proceeds Account after payment of the amounts set out in clauses 13.6.2.1 – 13.6.2.6 (inclusive), towards prepayment of the SAHF Tranche Term Facility, subject to leaving a minimum cash balance in the SAHF Tranche Proceeds Account of [REDACTED]. In this clause, "Relevant Proportion" means:

7.7.2.1 100%, where:

(a) the LVR is greater than or equal to [REDACTED]

(b) the LVR on the previous Calculation Date is higher than as forecasted in the Base Case Financial Model as at SAHF Financial Close;

(c) the actual or forecast DSCR is below 1.20:1 for any Calculation Period as forecast in the Base Case Financial Model; or

(d) the Borrower receives any payment from FACS following termination of the SAHF Services Agreement (whether in full or in part, and for whatever reason),

7.7.2.2 otherwise, [REDACTED] but subject to increase on the third and sixth anniversary of the SAHF Tranche Conversion Date to the extent necessary to ensure that the maximum amount owing under the SAHF Tranche Term Facility at the SAHF Tranche Term Facility Maturity Date does not exceed [REDACTED] of the SAHF Tranche Term Facility Committed Amount, taking in to account (forecast) mandatory prepayments.

**Excess in DSRA on SAHF Tranche Conversion Date**

7.8 On the SAHF Tranche Conversion Date, all amounts standing to credit of the DSRA in excess of [REDACTED] must be applied towards prepayment of the SAHF Tranche Term Facility.

**Minimum prepayment**

7.9 The Borrower may only prepay part of an Advance under clause 7.5 if that part reduces the Advance by:

7.9.1 in respect of an Advance under the LHC Tranche, a minimum of [REDACTED] and in multiples of [REDACTED] and

7.9.2 in respect of an Advance under the SAHF Tranche, a minimum of [REDACTED] and in multiples of [REDACTED]

**Redraw**

7.10 Amounts prepaid may not be redrawn.

**Limit on prepayments**

7.11 Prior to the Conversion Date of a Tranche, the Borrower may not exercise a voluntary right of prepayment in respect of that Tranche without confirmation from the Financier that the Financier is satisfied that the Borrower will have sufficient funding to complete any ongoing D&C Project that is being funded from Advances under that Tranche or to purchase any Turnkey Project it has committed to purchase at that time using Advances under that Tranche.

7.12 The Borrower may not repay the Principal Outstanding other than in accordance with this agreement.

**8. PAYMENTS GENERALLY**

**Manner of payment**

8.1 The Borrower must pay money owing under the Finance Documents in the following manner:

8.1.1 no later than 3.00pm (Sydney time) on the due date for payment; and

8.1.2 to the account the Financier specifies by notice to the Borrower from time to time.

**Payment without deduction or set-off**

- 8.2 The Borrower must pay money owing under the Finance Documents in immediately available funds without any deduction, set off or counterclaim. The Borrower irrevocably and unconditionally waives any right of set-off or counterclaim it may have in relation to money owing by it under the Finance Documents.

**Payments actually received**

- 8.3 When applying money towards payment of the Secured Money, the Financier will credit the Borrower only for money actually received by the Financier in immediately available funds.

**No delay**

- 8.4 The Borrower must not delay payment required under a Finance Document because any negotiable instrument relating to Secured Money has not matured.

**No merger**

- 8.5 The Financier's right to receive payment of the Secured Money under any other document does not merge with the Borrower's obligation to pay Secured Money under this agreement.
- 8.6 This agreement does not merge with or affect any other security or agreement or any judgment or order held at any time by the Financier.

**Application of proceeds**

- 8.7 All money received by the Financier under or by virtue of a Finance Document may be applied towards reduction or satisfaction of that part of the Secured Money which the Financier elects.
- 8.8 The Borrower irrevocably waives its right to determine the appropriation of any money paid to the Financier.
- 8.9 If any Secured Money is contingently owing, payment of Secured Money may be credited by the Financier to a suspense account and must be appropriated to Secured Money once the Secured Money becomes due and payable.

**9. COMMITMENT**

**Cancellation of Commitment**

- 9.1 The Borrower may cancel a Commitment at any time by giving notice to the Financier, provided that, prior to the relevant Conversion Date for a Tranche, the Borrower may not reduce the Commitment for that Tranche unless the Financier confirms that it is satisfied that the Borrower will have sufficient funding to complete any ongoing D&C Project that is being funded from Advances under that Tranche or to acquire any Turnkey Project, as the case may be, it has committed to purchase using Advances under that Tranche. A notice will not be required for an automatic cancellation under clause 9.4.
- 9.2 Any notice given in accordance with this clause:
- 9.2.1 must be signed by an Authorised Officer of the Borrower;



- 9.2.2 must be received by the Financier no later than 5 business days before the date on which the reduction is to take effect;
  - 9.2.3 must specify the relevant Commitment and the amount by which that Commitment is to be reduced;
  - 9.2.4 must specify the date on which the reduction is to take effect; and
  - 9.2.5 will be effective upon receipt by the Financier and, once effective, is irrevocable.
- 9.3 Any amount by which a Commitment is to be reduced must be an amount which satisfies the following:
- 9.3.1 is equal to or greater than:
    - 9.3.1.1 in respect of the LHC Tranche, [REDACTED] (and in multiples of [REDACTED] or reduces the LHC Tranche Commitment to zero; and
    - 9.3.1.2 in respect of the SAHF Tranche, [REDACTED] (and in multiples of [REDACTED] or reduces the SAHF Tranche Commitment to zero; and
  - 9.3.2 is not greater than the Unused Commitment in respect of the relevant Tranche on the date on which the reduction is to take effect.
- 9.4 Any amount of Unused Commitment of a Tranche on the day after the Conversion Date for that Tranche will be automatically cancelled.
- 9.5 Upon any cancellation of a CA Facility, the commitments under the relevant Term Facility will be reduced by an amount equal to the amount cancelled under that CA Facility.
- 9.6 The Borrower must pay to the Financier, on the date a cancellation takes effect (other than a cancellation under clause 9.4), a cancellation fee of:
- 9.6.1 in respect of a cancellation under the LHC Tranche, [REDACTED] of the Financier's cancelled commitment amount; and
  - 9.6.2 in respect of a cancellation under the SAHF Tranche, [REDACTED] of the Financier's cancelled commitment amount.

## 10. REPRESENTATIONS AND WARRANTIES

### General representations

- 10.1 The Borrower represents and warrants to the Financier that, except as previously notified to and accepted by the Financier in writing, each of the following is true:
- 10.1.1 **Status:** It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
  - 10.1.2 **Power:** It has the power to do each of the following:
    - 10.1.2.1 to own its property and carry on its business as it is being conducted; and
    - 10.1.2.2 to enter into, perform and deliver the Transaction Documents to which it is a party and the transactions contemplated by those documents.

- 10.1.3 **Binding obligations:** The obligations expressed to be assumed by it in each Transaction Document are legal, valid, binding and enforceable.
- 10.1.4 **No conflict:** The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not and will not conflict with any of the following:
- 10.1.4.1 any law or regulation applicable to it;
  - 10.1.4.2 its constitutional documents; or
  - 10.1.4.3 any material obligation under any agreement or instrument binding on it or any of its property.
- 10.1.5 **Authorisations:** It has taken all corporate actions and obtained or effected all required Authorisations, including the Housing Authorisations, each of which is in full force and effect:
- 10.1.5.1 to enable it lawfully to enter into, deliver, exercise its rights and perform its obligations under the Transaction Documents to which it is a party and the transactions contemplated by those documents;
  - 10.1.5.2 to make the Transaction Documents to which it is a party valid, binding, enforceable and admissible in evidence in its jurisdiction of incorporation; and
  - 10.1.5.3 which is material to it carrying on its business.
- 10.1.6 **No breach of law:** It is not materially in default of any law or regulation (including all Environmental Law, the Housing Act and the National Housing Law) which is binding on it or any of its property.
- 10.1.7 **Deduction of tax:** As at the date of this agreement and the Restatement Date, it is not required under any Tax Law to make any deduction for or on account of Tax from any payment it is required to make under any Finance Document.
- 10.1.8 **No filing or stamp taxes:** Under the law of its jurisdiction of incorporation it is not necessary that any Transaction Document to which it is a party be filed, recorded or enrolled with any court or other Governmental Agency in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to any Transaction Document or the transactions contemplated by the Transaction Documents, other than:
- 10.1.8.1 the registration of a Security Interest in favour of the Financier on the Personal Properties Securities Register; and
  - 10.1.8.2 the registration of each Real Property Mortgage and any power of attorney under which it executes a Real Property Mortgage with Land and Property Information, a division of the Department of Finance and Services, New South Wales.
- 10.1.9 **Tax Consolidated Group:** It is not a member of a Tax Consolidated Group.
- 10.1.10 **No Default:** No Default has occurred and is continuing or might reasonably be expected to result from its entering into and performing its obligations under the Transaction Documents.

- 10.1.11 **No Event of Default:** No Event of Default has occurred and is continuing or might reasonably be expected to result from its entering into and performing its obligations under the Transaction Documents.
- 10.1.12 **No other default:** No dispute is subsisting and no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its property is subject which has or might have a Material Adverse Effect.
- 10.1.13 **Solvent:** It is solvent and able to pay its debts as they fall due.
- 10.1.14 **No proceedings:** No proceedings have (to the best of its knowledge and belief) been started or threatened against it which, if adversely determined, have or might reasonably be expected to have a Material Adverse Effect. In this clause "proceedings" means litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or Governmental Agency.
- 10.1.15 **Not a trustee:** It does not enter any Transaction Document as a trustee or hold any property as an express trustee.
- 10.1.16 **No misleading information:** Any written information (excluding any written information under clause 10.1.20) provided by it for the purposes of any Transaction Document was true and accurate in all material respects and not misleading (by omission or otherwise) in any material respect as at the date it was provided or as at the date (if any) at which it is stated.
- 10.1.17 **No additional information:** There is no information about its affairs which, if disclosed to the Financier, might adversely affect the Financier's decision to enter into or rely on the Finance Documents.
- 10.1.18 **Ranking of obligations:** Its payment obligations under the Finance Documents rank in right and priority of payment and point of security ahead of all its other obligations (actual or contingent, present or future), except for obligations mandatorily preferred by law applying to companies generally.
- 10.1.19 **Financial statements:** The Original Financial Statements and all other accounts, financial statements and related reports which it delivers to the Financier under this agreement:
- 10.1.19.1 have been prepared in accordance with the laws of Australia and (except where inconsistent with those laws) the Accounting Principles consistently applied; and
- 10.1.19.2 give a true and fair view of the financial condition of it as at the date to which they were made up.
- 10.1.20 **Other information:** All written information and reports (if any) which it has provided to the Financier in connection with the negotiation and preparation of the Finance Documents:
- 10.1.20.1 was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise, in any material respect; and
- 10.1.20.2 contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed.

- 10.1.21 **Base Case Financial Model:** The Base Case Financial Model has been prepared in accordance with the Accounting Principles, and the financial projections contained in the Base Case Financial Model were, at the date they were prepared, prepared in good faith and on the basis of assumptions which the Borrower reasonably believed to be fair and reasonable at that time.
- 10.1.22 **Material Documents:** There is no subsisting default, alleged breach, breach or purported rescission occurring in respect of or under a Material Document (other than a Lease Document).
- 10.1.23 **Tax:** It has paid all Taxes due and payable by it, other than where the payment of those Taxes is in dispute and it has made an appropriate provision for payment of those amounts in its accounts, and it is diligently pursuing a resolution to the dispute.

**Representations relating to Secured Property generally**

- 10.2 The Borrower represents and warrants to the Financier that, except as previously disclosed to and accepted by the Financier in writing, each of the following is true:
  - 10.2.1 **Title:** The Borrower is, or will become, the only owner of the Secured Property and has, or will have, good right and title to, and full power to create a Security Interest over, the Secured Property.
  - 10.2.2 **Security Interests:** No Security Interest exists in respect of any of the Secured Property, other than a Permitted Security Interest.

**Representations relating to the LHC Property**

- 10.3 **Title to the LHC Property:** The Borrower will, from the first Funding Date under the LHC Tranche:
  - 10.3.1 be the legal and beneficial owner of the LHC Property; and
  - 10.3.2 have good title to the LHC Property,
 in each case free from Security Interests (other than Transaction Security and any Permitted Security Interests) and restrictions and onerous covenants which have a material adverse impact on the value, saleability or use of any LHC Property (other than any caveat registered by the State government).
- 10.4 **Title documents relating to the LHC Property:** All deeds and documents necessary to show good and marketable title to the Borrower's interests in the LHC Property will from the first Funding Date under the LHC Tranche be:
  - 10.4.1 in possession of the Financier;
  - 10.4.2 held to the order of the Financier; or
  - 10.4.3 held to the order of the Financier by a firm of solicitors approved by the Financier for that purpose.
- 10.5 **LHC Property generally:** From the first Funding Date under the LHC Tranche:
  - 10.5.1 it has not breached any law, regulation or covenant binding upon it which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of any LHC Property;

- 10.5.2 there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever which has a material adverse impact on the value, saleability or use of any LHC Property (other than any caveat registered by the State government);
- 10.5.3 all facilities necessary for the enjoyment and use of the LHC Property (including those necessary for the carrying on of its business at any LHC Property) are enjoyed by the LHC Property;
- 10.5.4 none of the facilities referred to in clause 10.5.3 are enjoyed on terms:
  - 10.5.4.1 entitling any person to terminate or curtail its use of any LHC Property; or
  - 10.5.4.2 which conflict with or restrict its use of any LHC Property;
- 10.5.5 the Borrower has not received any notice of any adverse claim by any person in respect of the ownership of any LHC Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of any LHC Property;
- 10.5.6 the LHC Property is held by the Borrower free from any lease or licence (other than those permitted by this agreement or another Finance Document); and
- 10.5.7 except as disclosed to the Financier in writing, the LHC Vested Property (having regard to the age of that Property) is in a reasonable state of repair and in reasonable order and condition, fair wear and tear excepted.

**Representations relating to the SAHF Property**

- 10.6 **Title to the SAHF Property:** The Borrower will, from the first Funding Date under the SAHF Tranche:
  - 10.6.1 be the legal and beneficial owner of the SAHF Property; and
  - 10.6.2 have good title to the SAHF Property,
 in each case free from Security Interests (other than Transaction Security and any Permitted Security Interests) and restrictions and onerous covenants which have a material adverse impact on the value, saleability or use of any the SAHF Property (other than any caveat registered by the State government).
- 10.7 **Title documents relating to SAHF Property:** All deeds and documents necessary to show good and marketable title to the Borrower's interests in the SAHF Property will from the first Funding Date under the SAHF Tranche be:
  - 10.7.1 in possession of the Financier;
  - 10.7.2 held to the order of the Financier; or
  - 10.7.3 held to the order of the Financier by a firm of solicitors approved by the Financier for that purpose.
- 10.8 **SAHF Property generally:** From the first Funding Date under the SAHF Tranche:
  - 10.8.1 it has not breached any law, regulation or covenant binding upon it which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of any the SAHF Property;

- 10.8.2 there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever which has a material adverse impact on the value, saleability or use of any the SAHF Property (other than any caveat registered by the State government);
- 10.8.3 all facilities necessary for the enjoyment and use of the SAHF Property (including those necessary for the carrying on of its business at the SAHF Property) are enjoyed by the SAHF Property;
- 10.8.4 none of the facilities referred to in clause 10.8.3 are enjoyed on terms:
  - 10.8.4.1 entitling any person to terminate or curtail its use of the relevant SAHF Property; or
  - 10.8.4.2 which conflict with or restrict its use of the relevant SAHF Property;
- 10.8.5 the Borrower has not received any notice of any adverse claim by any person in respect of the ownership of any SAHF Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of any SAHF Property; and
- 10.8.6 the SAHF Property is held by the Borrower free from any lease or licence (other than those permitted by this agreement, another Finance Document or for the purposes of clause 19 of the SAHF Services Agreement).

**Representations relating to Property generally**

- 10.9 **Lease Documents:** Each Property that has been leased or in respect of which a licence or other right of occupation or use has been granted (other than a licence or right of occupation granted to any Contractor):
  - 10.9.1 is a Commercial Unit or has been leased or licensed for the purposes of Community Housing; and
  - 10.9.2 has been leased or licensed under the terms of a Lease Document and a notice has been given to each tenant under each Lease Document in respect of each LHC Vested Property, in form and substance satisfactory to the Financier, that:
    - 10.9.2.1 the landlord under that Lease Document is the Borrower; and
    - 10.9.2.2 all rent to be paid under that Lease Document is to be paid to the Proceeds Account.
- 10.10 **Heritage and native title claims:** To the best of its knowledge, no Property is affected by:
  - 10.10.1 any heritage claim or restriction; or
  - 10.10.2 any easement, restriction, right, interest or claim derived under the *Native Title Act 1993* (Cth),
 which has or might have a Material Adverse Effect.

### **Valuation**

- 10.11 All written information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- 10.12 Any financial projection contained in the information referred to in clause 10.11 above was prepared, on the basis of recent historical information and on the basis of reasonable assumptions as at the time of preparation.
- 10.13 It has not omitted to supply any information to the Valuer which it has or has access to and which, if disclosed, would adversely affect the Valuation.

### **Encroachments**

- 10.14 In respect of improvements erected principally on any Property:
- 10.14.1 on which a Project has been constructed, no part of those improvements encroach on neighbouring land and no part of any improvement erected principally on neighbouring land encroach on any such Property, except in each case as permitted by an easement registered on title; and
- 10.14.2 on which no Project has been constructed, except as disclosed to the Financier in writing, the Borrower is not aware that any part of any such improvement encroaches on neighbouring land or that any part of any improvement erected principally on neighbouring land encroaches on any such Property, except in each case as permitted by an easement registered on title.

### **Environmental issues**

- 10.15 In respect of any Property:
- 10.15.1 on which a Project has been constructed, there is no Contaminant on, in, under or migrating to or from that Property; and
- 10.15.2 on which no Project has been constructed, except as disclosed to the Financier in writing, the Borrower is not aware of any Contaminant on, in, under or migrating to or from that Property.
- 10.16 No Governmental Agency has issued (or threatened to issue) any notice, order or claim in respect of any Property under any law relating to a Contaminant or relating to pollution or the protection of the Environment.

### **Approved Participant**

- 10.17 If the Borrower is entitled to Allocations and Incentives at any time, the Borrower is approved as an Approved Participant.

### **Approved Rental Dwelling**

- 10.18 Where applicable, each LHC Property is an Approved Rental Dwelling.

**No other business**

- 10.19 The Borrower has not traded or carried on any business since the date of its incorporation except for the ownership, development, leasing and management of its interests in the Properties and the provision of the services under the SAHF Services Agreement.
- 10.20 As at the date of this agreement and the Restatement Date, the Borrower is not party to any agreement other than the Transaction Documents.
- 10.21 The Borrower does not have any Subsidiaries.
- 10.22 The Borrower is not a partner or participant in any Joint Venture.

**Ownership**

- 10.23 The Parent is the sole member of the Borrower.
- 10.24 The Group Structure Diagram is true and correct.

**Insurance**

- 10.25 All Insurances are in effect and current and meet the requirements of the Finance Documents, the Borrower has not made any material misrepresentation or omission to its insurers and it is not aware of any reason why any of the Insurances may be terminated or why any of its insurers may refuse to pay a claim when made under those Insurances.

**Tax**

- 10.26 The Borrower is carrying out its activities in accordance with the objectives for which it was established.
- 10.27 The Borrower will only use the Properties to make supplies of accommodation at less than [REDACTED] of the GST inclusive market value rent or, where required in relation to any Authorisation in respect of a Project, for the purposes of commercial leasing at such rent as the Borrower determines.

**Repetition**

- 10.28 The Borrower will be taken to have repeated the Repeating Representations on each Financial Close, on the date of each Funding Notice, on each Funding Date, on each Conversion Date, on the first day of each Interest Period and on each date that a compliance certificate is given pursuant to clause 11.3, with reference to the facts and circumstances existing on those dates.

**Reliance**

- 10.29 The Borrower acknowledges that the Financier has entered into this agreement and agreed to provide the Facilities in reliance on the representations and warranties in this agreement.

**Disclosure**

- 10.30 If the Borrower makes any disclosure under clauses 10.2, 10.5.7, 10.14.2 or 10.15.2, the Borrower must:



- 10.30.1 consult with the Financier as to the subject matter of that disclosure and the need for any action;
- 10.30.2 if required by the Financier (acting reasonably), prepare as soon as reasonably practicable a remedy plan in form and substance acceptable to the Financier (being the **Approved Remedy Plan**); and
- 10.30.3 comply with that Approved Remedy Plan.

## **11. INFORMATION UNDERTAKINGS**

- 11.1 The undertakings in this clause 11 remain in force from the date of this agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **Financial statements**

- 11.2 The Borrower shall supply to the Financier:
  - 11.2.1 as soon as the same become available, but in any event within 120 days after the end of each financial year, the audited financial statements of the Borrower and the Parent for that financial year with the first such financial statements being the financial year ended 30 June 2015 in respect of the Parent, and 30 June 2016 in respect of the Borrower; and
  - 11.2.2 as soon as the same become available, but in any event within 45 days after the end of each calendar quarter the unaudited financial statements of the Borrower and the Parent for that quarter.

### **Compliance Certificate**

- 11.3 The Borrower shall supply to the Financier, with each set of financial statements delivered pursuant to clause 11.2, a compliance certificate setting out (in reasonable detail) computations as to compliance with clause 12 as at the date as at which those financial statements were drawn up.
- 11.4 Each compliance certificate shall be signed by a director of the Borrower or any person who holds the title of "Chief Executive Officer" of the Borrower at the relevant time.

### **Requirements as to financial statements**

- 11.5 Each set of financial statements delivered by the Borrower pursuant to clause 11.2 shall be certified by a director of the Borrower as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition as at the date as at which those financial statements were drawn up.
- 11.6 The Borrower shall procure that each set of financial statements delivered pursuant to clause 11.2 is prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Financier that there has been a change in the Accounting Principles, the accounting practices or reference periods and it delivers to the Financier:
  - 11.6.1 a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices and reference periods upon which the Original Financial Statements were prepared; and

11.6.2 sufficient information, in form and substance as may be reasonably required by the Financier, to enable the Financier to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in this agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### **Base Case Financial Model**

11.7 The Borrower must:

11.7.1 update the Base Case Financial Model:

11.7.1.1 within 10 business days of "Commercial Close" (as defined in the SAHF Services Agreement);

11.7.1.2 annually (in conjunction with, and at the same time as, each new Business Plan under clause 11.13.8) to reflect the relevant Business Plan annual reviews of historical maintenance expenses and annual rental increases for Social Housing and Affordable Housing; and

11.7.1.3 promptly following a request, at any time, from the Financier (acting reasonably); and

11.7.2 supply each updated Base Case Financial Model to the Financier together with a written explanation of the main changes in that updated Base Case Financial Model.

11.8 The Borrower shall ensure that each updated Base Case Financial Model:

11.8.1 is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under clause 11.2;

11.8.2 has been approved by the board of directors of the Borrower; and

11.8.3 is consistent with the most recent Business Plan in all material respects unless otherwise agreed by the Financier.

11.9 The Financier will review the revised Base Case Financial Model provided by the Borrower. If, following that review the Financier:

11.9.1 accepts the revised Base Case Financial Model it will, as soon as practicable, provide a notice to the Borrower confirming its acceptance and approval of the revised Base Case Financial Model; or

11.9.2 determines that a revision is required to the revised Base Case Financial Model, it will consult with the Borrower. If the Financier and the Borrower agree that the revision is required, the Borrower will revise the Base Case Financial Model accordingly. If the Financier and the Borrower do not agree that the revision is required, clause 11.10 will apply.

11.10 In the event of a dispute between the Borrower and the Financier as to the proposed revisions to the Base Case Financial Model, the Borrower and the Financier agree to meet and negotiate in good faith to settle the dispute. If the Parties are unable to agree the revised

Base Case Financial Model, the dispute will be referred to an independent expert (to be acceptable to the Financier) whose decision will be binding on the parties.

- 11.11 Until the Financier approves the revised Base Case Financial Model or any dispute referred to an independent expert is resolved, all calculations will be made on the basis as set out in the then current Base Case Financial Model, revised in accordance with the reasonable directions of the Financier.

**Monitoring of Property**

- 11.12 The Borrower must ensure that all reports and budgets required to be delivered to the Financier under this agreement are prepared pursuant to the Management Services Agreement and delivered to the Financier at the same time as they are delivered to the Borrower.

**Information: miscellaneous**

- 11.13 The Borrower shall supply to the Financier:
- 11.13.1 all documents dispatched by the Borrower to the Parent, any other shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
  - 11.13.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower or the Parent, and which might, if adversely determined, have a Material Adverse Effect;
  - 11.13.3 promptly upon obtaining it or sending it, all material correspondence with insurance brokers in relation to any claim of more than [REDACTED] or claims of more than [REDACTED] in aggregate in any financial year under any Insurances (other than workers compensation);
  - 11.13.4 promptly upon obtaining it, a copy of any valuation of any Property it obtains in form and substance satisfactory to the Financier;
  - 11.13.5 promptly upon request by the Financier, evidence that the Borrower's security interests in personal property are perfected and, where relevant, registered in the Personal Property Security Register including its interests in the goods referred to in clause 14.1.16;
  - 11.13.6 promptly, such further information regarding the financial condition, business and operations of the Borrower or the Parent, as the Financier may reasonably request;
  - 11.13.7 promptly, notice of any acquisition or proposed acquisition by it of, or the entry by it into, an agreement to acquire any interest in real property;
  - 11.13.8 on or before the date which is 30 days prior to each financial year end, a proposed Business Plan in respect of the following financial year. In respect of the proposed Business Plan:
    - 11.13.8.1 the Financier acknowledges and agrees that this proposed Business Plan will be subject to approval of the board of directors of the Borrower;
    - 11.13.8.2 the Financier will review the proposed Business Plan provided by the Borrower. If, following that review the Financier:

- (a) accepts the proposed Business Plan it will, as soon as practicable, provide a notice to the Borrower confirming its acceptance and approval of the proposed Business Plan; or
  - (b) determines that a revision is required to the proposed annual Business Plan, it will make that revision in consultation with the Borrower. Any such amendments will be made prior to submission of the proposed Business Plan to the board of directors of the Borrower for approval. For the avoidance of doubt, until the Financier approves the revised Business Plan, all references in this agreement to the Business Plan will be to the then current Business Plan, revised in accordance with the reasonable directions of the Financier; and
- 11.13.8.3 if the proposed annual Business Plan is approved by the board of directors of the Borrower, it will apply on and from the later of the start of the relevant financial year and the date on which it is approved by the Financier in accordance with clause 11.13.8.2;
- 11.13.9 within 30 days of each Calculation Date, an operating and maintenance report in respect of the quarter prior to that Calculation Date setting out:
  - 11.13.9.1 operating and maintenance expenses and lifecycle capital expenditure;
  - 11.13.9.2 disposals and other activities in accordance with the Active Portfolio Management Plan;
  - 11.13.9.3 details of the implementation and ongoing performance of Housing Sustainability Criteria; and
  - 11.13.9.4 details of the implementation and ongoing performance of Tenancy Sustainability Initiatives,
 during that quarter and including a comparison against the relevant part of the Business Plan;
- 11.13.10 notice promptly after it becomes aware of:
  - 11.13.10.1 a Contractor, that is required to be accredited under the WHS Scheme, ceasing to be accredited under the WHS Scheme; or
  - 11.13.10.2 any matter which may affect such Contractor's accreditation under the WHS Scheme;
- 11.13.11 on or before the date which is 30 days prior to each financial year end, an annual report in relation to the Borrower's compliance with Environmental Laws and Environmental Permits;
- 11.13.12 promptly, a copy of any notice of a material nature to or from, or correspondence of a material nature with, a Governmental Agency (including the LHC or FACS) in relation to it or its assets or any Property;

- 11.13.13 promptly upon becoming aware of it, notification of any change in the Borrower's Authorised Officers;
- 11.13.14 within 20 days of the Group Structure Diagram no longer being a correct representation of the group structure, a copy of an updated Group Structure Diagram;
- 11.13.15 the occurrence of any event or circumstance which has or is likely to have a Material Adverse Effect; and
- 11.13.16 promptly, notice of any "Stage" achieving "Service Readiness" (each as defined in the SAHF Services Agreement).

**Notification of default**

- 11.14 The Borrower shall notify the Financier of any Default or "Force Majeure Event" (as defined in the SAHF Services Agreement) (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- 11.15 Promptly upon a request by the Financier, the Borrower shall supply to the Financier a certificate signed by a director of the Borrower certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

**"Know your customer" checks**

- 11.16 If:
  - 11.16.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this agreement or the Restatement Date, as applicable;
  - 11.16.2 any change in the status of the Borrower or any change in the composition of the shareholders or members of the Borrower, after the date of this agreement or the Restatement Date, as applicable; or
  - 11.16.3 a proposed assignment or transfer by the Financier of any of its rights and obligations under this agreement to a party that is not the Financier prior to such assignment or transfer,

obliges the Financier (or, in the case of clause 11.16.3, any prospective new Financier) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Financier supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Financier (for itself or, in the case of the event described in clause 11.16.3, on behalf of any prospective new Financier) in order for the Financier or, in the case of the event described in clause 11.16.3, any prospective new Financier to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**AML/CTF Compliance**

- 11.17 The Borrower shall promptly, on request, provide all information, documents and other evidence, reasonably requested by the Financier or a proposed assignee under clause 27.4 in order for the Financier or the proposed assignee (as the case may be) to comply with the AML/CTF Laws or to manage its money laundering, terrorism financing or sanctions risk.

**12. FINANCIAL COVENANTS**

**Loan to Value Ratio**

- 12.1 The Borrower must ensure that the actual or forecast LVR does not exceed [REDACTED] in respect of each Calculation Date after the SAHF Tranche Conversion Date.

**Project Life Cover Ratio**

- 12.2 The Borrower must ensure that the forecast PLCR is not less than 1.10:1 in respect of each Calculation Date after the SAHF Tranche Conversion Date.

**Debt Service Cover Ratio**

- 12.3 The Borrower must ensure that:

12.3.1 the actual or forecast LHC Tranche DSCR is not less than 1.10:1 in respect of each Calculation Date that falls after the date which is 3 months after the LHC Tranche Conversion Date (which, in the case of forecast LHC Tranche DSCR, is the LHC Tranche Conversion Date contemplated by the Base Case Financial Model) but before the SAHF Tranche Conversion Date (which, in the case of forecast LHC Tranche DSCR, is the SAHF Tranche Conversion Date contemplated by the Base Case Financial Model); and

12.3.2 the actual or forecast DSCR is not less than 1.10:1 in respect of each Calculation Date that falls after the date which is 3 months after the SAHF Tranche Conversion Date (which, in the case of forecast DSCR, is the SAHF Tranche Conversion Date contemplated by the Base Case Financial Model).

**Financial Indebtedness**

- 12.4 The Borrower must ensure at all times from SAHF Financial Close until the 'Service Commencement Date' for the last "Stage" (each as defined in the SAHF Services Agreement), the total of all Financial Indebtedness of the Group does not exceed [REDACTED]

**Arrears**

- 12.5 The Borrower must ensure that at any time the aggregate arrears of Rental Income under the Lease Documents of more than 30 days overdue does not exceed [REDACTED] of the Rental Income due and payable under the Lease Documents at that time.

- 12.6 The financial covenants set out in this clause 12 shall be calculated in accordance with the Accounting Principles and tested by reference to each compliance certificate delivered pursuant to clause 11.3.

- 12.7 Any financial covenants which relate to forecasted figures shall be tested against the Base Case Financial Model.

**13. BANK ACCOUNTS**

**Designation of Accounts**

- 13.1 The Borrower must, subject to this clause, maintain the following bank accounts in the name of the Borrower:

- 13.1.1 an account designated the "**LHC Tranche Proceeds Account**" in respect of LHC Projects and the LHC Tranche ("**LHC Tranche Proceeds Account**");
  - 13.1.2 an account designated the "**SAHF Tranche Proceeds Account**" in respect of SAHF Projects and the SAHF Tranche ("**SAHF Tranche Proceeds Account**");
  - 13.1.3 a deposit account designated the "**Debt Service Reserve Account**"
  - 13.1.4 a current account designated the "**LHC Tranche Construction Account**" in respect of the LHC Projects and LHC Tranche ("**LHC Tranche Construction Account**");
  - 13.1.5 a current account designated the "**SAHF Tranche Construction Account**" in respect of SAHF Projects and the SAHF Tranche ("**SAHF Tranche Construction Account**");
  - 13.1.6 a deposit account designated the "**Tenancy Sustainability Account**";
  - 13.1.7 a deposit account designated the "**LHC Tranche Mandatory Prepayment Account**" in respect of LHC Projects and the LHC Tranche ("**LHC Tranche Mandatory Prepayment Account**");
  - 13.1.8 a deposit account designated the "**SAHF Tranche Mandatory Prepayment Account**" in respect of SAHF Projects and the SAHF Tranche ("**SAHF Tranche Mandatory Prepayment Account**");
  - 13.1.9 a deposit account designated the "**Maintenance Reserve Account**"; and
  - 13.1.10 a deposit account designated the "**Active Portfolio Management Account**".
- 13.2 Each Account must be held at the Account Bank (or such other bank as the Financier agrees) and the Borrower may not, without the prior written consent of the Financier, maintain any other bank account.

**Proceeds Accounts**

- 13.3 Except as provided in clause 13.8 below, the Borrower must be the sole signatory in relation to each Proceeds Account.
- 13.4 The Borrower must ensure that all amounts received by the Borrower in respect of a Tranche or a Project funded using that Tranche, and not required to be deposited into any other Account, including:
- 13.4.1 all Rental Income;
  - 13.4.2 all "Monthly Service Payments" (as defined in the SAHF Services Agreement) received by the Borrower;
  - 13.4.3 each Advance under a CA Facility other than amounts drawn to pay amounts described in clause 2.5.1, 2.5.2 or 2.5.6; and
  - 13.4.4 any proceeds of Insurances (other than Insurance Prepayment Proceeds or amounts not required to be paid into a Proceeds Account under clause 16.29),
- are paid into the relevant Proceeds Account for that Tranche or Project.
- 13.5 If any payment of any amount required to be paid into a Proceeds Account is paid into an Account other than that Proceeds Account, that payment must be transferred promptly to that Proceeds Account.

13.6 Except as provided in clause 13.8 below:

13.6.1 the Borrower may withdraw from, and apply amounts standing to the credit of, the LHC Tranche Proceeds Account, in the following order:

13.6.1.1 **first**, in or towards payment of operating and maintenance costs and expenses (including payments to the Parent under the Management Services Agreement (but only to the extent such payments relate to services in respect of the LHC Property)) and lifecycle capital expenditure in accordance with the Base Case Financial Model excluding Budgeted Costs;

13.6.1.2 **second**, to fund the Maintenance Reserve Account in accordance with the Base Case Financial Model;

13.6.1.3 **third**, in or towards payment to the Financier of any accrued interest and fees due and payable but unpaid in respect of the LHC Tranche under the Finance Documents;

13.6.1.4 **fourth**, in or towards payment to the Financier of any principal due and payable under the LHC Tranche under the Finance Documents but unpaid under this agreement;

13.6.1.5 **fifth**, in or towards payment of any other Unpaid Amount under the LHC Tranche due and owing to the Financier under the Finance Documents;

13.6.1.6 **sixth**, transfer of any of applicable Construction Shortfall Amount to the LHC Tranche Construction Account;

13.6.1.7 **seventh**, transfer to the Debt Service Reserve Account to the extent necessary to comply with clause 13.10;

13.6.1.8 **eighth**, transfer of a Tenancy Sustainability Contribution referred to in paragraph (b) of the definition of "LHC Tranche Tenancy Sustainability Contribution" to the Tenancy Sustainability Account, provided that no Event of Default is continuing;

13.6.1.9 **ninth**, transfer of a Tenancy Sustainability Contribution referred to in paragraph (d) of the definition of "LHC Tranche Tenancy Sustainability Contribution" to the Tenancy Sustainability Account with the written consent of the Financier; and

13.6.1.10 **tenth**, any Distribution, dividend, loan, loan payment (of interest, fees or principal) or other payment to the Parent to which the Financier has provided its written consent; and

13.6.1.11 **eleventh**, in mandatory prepayment of the LHC Tranche Term Facility in accordance with clause 7.7; and

13.6.2 the Borrower may withdraw from, and apply amounts standing to the credit of, the SAHF Tranche Proceeds Account, in the following order:

13.6.2.1 **first**, in or towards payment of operating and maintenance costs and expenses (including payments to the Parent under the SAHF



- Services Subcontract and the Management Services Agreement (but only to the extent such payments relate to services in respect of the SAHF Property)) and lifecycle capital expenditure in accordance with the Base Case Financial Model;
- 13.6.2.2 **second**, to fund the Maintenance Reserve Account in accordance with the Base Case Financial Model;
- 13.6.2.3 **third**, in or towards payment to the Financier of any accrued interest and fees due and payable but unpaid in respect of the SAHF Tranche under the Finance Documents;
- 13.6.2.4 **fourth**, transfer of any applicable Construction Shortfall Amount to the SAHF Tranche Construction Account;
- 13.6.2.5 **fifth**, transfer of a Tenancy Sustainability Contribution referred to in paragraph (b) of the definition of "SAHF Tranche Tenancy Sustainability Contribution" to the Tenancy Sustainability Account, provided that no Event of Default is continuing;
- 13.6.2.6 **sixth**, transfer of a Tenancy Sustainability Contribution referred to in paragraph (d) of the definition of "SAHF Tranche Tenancy Sustainability Contribution" to the Tenancy Sustainability Account, provided that no Event of Default is continuing; and
- 13.6.2.7 **seventh**, in mandatory prepayment of the SAHF Tranche Term Facility in accordance with clause 7.7;
- 13.6.2.8 **eighth**, payment to the Active Portfolio Management Account, with the written consent of the Financier; and
- 13.6.2.9 **ninth**, any Distribution, dividend, loan, loan payment (of interest, fees or principal) or other payment to the Parent or any "Retention Amounts" required to be paid to FACS in accordance with clause 13.1 of the SAHF Services Agreement.
- 13.7 No Distribution, dividend, loan, loan payment (of interest, fees or principal) or other payment by the Borrower to the Parent is permitted from the SAHF Tranche Proceeds Account without first obtaining the written consent of the Financier other than:
- 13.7.1 any payments expressly permitted under the SAHF Services Subcontract and the Management Services Agreement (but only to the extent such payments relate to the SAHF Property); and
- 13.7.2 any residual amount standing to the credit of the SAHF Tranche Proceeds Account after the cash sweep under clause 7.7 for the SAHF Tranche, subject to maintaining a minimum cash balance of [REDACTED]
- 13.8 The Borrower may withdraw any amount from a Proceeds Account only in accordance with clause 13.6 or clause 16.29. At any time when an Event of Default is continuing, the Financier may:
- 13.8.1 operate the Proceeds Account;

13.8.2 notify the Borrower and the Account Bank that the Borrower's rights to operate the Proceeds Account are suspended, such notice to take effect in accordance with its terms and the Borrower may make no further withdrawal from the Proceeds Account without the Financier's prior consent; and

13.8.3 withdraw from, and apply amounts standing to the credit of the Proceeds Account in or towards any purpose for which moneys in any Account may be applied.

#### **Debt Service Reserve Account**

13.9 The Financier must be the sole signatory to the Debt Service Reserve Account.

13.10 The Borrower must ensure that the Required DSRA Balance stands to the credit of the Debt Service Reserve Account at all times.

13.11 The Borrower must ensure that, to the extent necessary, the Required DSRA Balance is funded immediately prior to:

13.11.1 LHC Financial Close, from the LHC Tranche Equity Contribution Amount; and

13.11.2 SAHF Financial Close, from the SAHF Tranche Equity Contribution Amount.

13.12 Subject to clause 7.8, if on any Calculation Date the amount standing to the credit of the Debt Service Reserve Account exceeds the Required DSRA Balance on that Calculation Date, the Borrower may give the Financier a notice:

13.12.1 setting out the details of its calculation of the Required DSRA Balance in respect of the Calculation Date and the balance of the Debt Service Reserve Account on the Calculation Date; and

13.12.2 requesting the Financier to transfer any other excess amount to the SAHF Tranche Proceeds Account.

13.13 The Financier may make a withdrawal from the Debt Service Reserve Account to pay Debt Service due and payable, but unpaid to the extent that there are insufficient funds available in a Proceeds Account for that purpose.

13.14 The Financier is obliged to transfer an excess amount calculated as described in clause 13.12 to the relevant Account on the later of:

13.14.1 the date on which it is requested to make the transfer in; and

13.14.2 the date which is 3 business days' after,

the notice given in accordance with clause 13.12 above and only if no Event of Default is continuing.

#### **Construction Accounts**

13.15 Except as provided in clause 13.19 below, the Borrower must be the sole signatory in relation to each Construction Account.

13.16 The Borrower must ensure that the following amounts received by it under each Project or Tranche are deposited into the relevant Construction Account:

13.16.1 equity contributions, including any Equity Contribution Amount but excluding any equity contributions which are non-cash items, amounts to be deposited

into the relevant Tenancy Sustainability Account and the Debt Service Reserve Account prior to:

13.16.1.1 in respect of the LHC Tranche, LHC Financial Close; and

13.16.1.2 in respect of the SAHF Tranche, SAHF Financial Close,

13.16.2 the amounts deposited in to the Active Portfolio Management Account under clause 13.27.1 and required to be transferred to the SAHF Tranche Construction Account under clause 13.29.1;

13.16.3 Advances under each CA Facility drawn to pay amounts described in clause 2.5.1 or 2.5.2 and in either case unless paid directly to a third party by the Financier at the direction of the Borrower.

13.17 If on any day the balance standing to the credit of a Construction Account is insufficient to pay Construction Costs which, in respect of a Project being funded by that Tranche that relates to that Construction Account, are, or are forecast to be, due and payable during the following month, the Borrower may transfer an amount sufficient to meet the difference between the balance standing to the credit of that Construction Account on that day and the Construction Costs which are, or are forecast to be, due and payable during the following month (the **Construction Shortfall Amount**) from the relevant Proceeds Account to that Construction Account.

13.18 Except as provided in clause 13.19 below, all amounts in each Construction Account may only be used to pay the following amounts in respect of the relevant Projects or Tranche:

13.18.1 Project Costs in accordance with the Base Case Financial Model;

13.18.2 the Acquisition Price in respect of a Turnkey Project;

13.18.3 payment of commitment fees under clause 6.2;

13.18.4 payment to the Parent under the SAHF Services Subcontract or the Management Services Agreement (but only to the extent, such payments relate to the relevant Tranche) in accordance with the Base Case Financial Model; and

13.18.5 reimbursement of amounts paid to the SAHF Tranche Construction Account from the Active Portfolio Management Account under clause 13.28.

13.19 At any time when an Event of Default is continuing, the Financier may:

13.19.1 operate any Construction Account;

13.19.2 notify the Borrower and the Account Bank that the Borrower's rights to operate a Construction Account are suspended, such notice to take effect in accordance with its terms; and

13.19.3 withdraw from, and apply amounts standing to the credit of, a Construction Account in or towards any purpose for which moneys in any Account may be applied.

#### **Tenancy Sustainability Account**

13.20 Except as provided in clause 13.25 or agreed by the Parties otherwise, the Borrower must be the sole signatory in relation to the Tenancy Sustainability Account.

13.21 The Borrower must ensure that:

- 13.21.1 the LHC Tranche Tenancy Sustainability Contribution described in paragraph (a) of the definition of "LHC Tranche Tenancy Sustainability Contribution" is paid into the Tenancy Sustainability Account by LHC Financial Close; and
- 13.21.2 the SAHF Tranche Tenancy Sustainability Contribution described in paragraph (a) of the definition of "SAHF Tranche Tenancy Sustainability Contribution" is paid into the Tenancy Sustainability Account by SAHF Financial Close.
- 13.22 The Borrower must ensure that:
  - 13.22.1 each LHC Tranche Tenancy Sustainability Contribution other than the Tenancy Sustainability Contribution described in paragraph (a) of the definition of "LHC Tranche Tenancy Sustainability Contribution" is paid into the Tenancy Sustainability Account on or before the date described in the relevant paragraph of the definition of "LHC Tranche Tenancy Sustainability Contribution"; and
  - 13.22.2 each SAHF Tranche Tenancy Sustainability Contribution other than the Tenancy Sustainability Contribution described in paragraph (a) of the definition of "SAHF Tranche Tenancy Sustainability Contribution" is paid into the Tenancy Sustainability Account on or before the date described in the relevant paragraph of the definition of "SAHF Tranche Tenancy Sustainability Contribution".
- 13.23 Except as provided in clause 13.25, the Borrower:
  - 13.23.1 may withdraw any amount from the Tenancy Sustainability Account solely for the purpose of financing Tenancy Sustainability Initiatives provided that the relevant Tenancy Sustainability Conditions are satisfied;
  - 13.23.2 may withdraw any amount from the Tenancy Sustainability Account solely for the purpose of reimbursing, repaying or paying the Parent or, provided that such payment is provided through the Parent, any Related Body Corporate of the Parent (other than the Borrower) for the relevant Reimbursable Tenancy Sustainability Contributions including by way of repayment under the relevant Intercompany Loan Agreement;
  - 13.23.3 must transfer any amount from the Tenancy Sustainability Account to the relevant Mandatory Prepayment Account as required under:
    - 13.23.3.1 paragraph (b) of the definition of "LHC Tranche Tenancy Sustainability Conditions"; and
    - 13.23.3.2 paragraph (b) of the definition of "SAHF Tranche Tenancy Sustainability Conditions";
  - 13.23.4 must not, except with the consent of the Financier, withdraw or transfer any amount from the Tenancy Sustainability Account for any other purpose.
- 13.24 The Borrower must notify the Financier each time it withdraws any amount from the Tenancy Sustainability Account of the amount of the withdrawal and the reason for the withdrawal.
- 13.25 At any time when an Event of Default is continuing, the Borrower may not withdraw from the Tenancy Sustainability Account except with the consent of the Financier. At any time when an Event of Default is continuing, the Financier may:
  - 13.25.1 operate the Tenancy Sustainability Account;

13.25.2 notify the Borrower and the Account Bank that the Borrower's rights to operate the Tenancy Sustainability Account are suspended, such notice to take effect in accordance with its terms; and

13.25.3 withdraw from, and apply amounts standing to the credit of, the Tenancy Sustainability Account in or towards any purpose for which moneys in any Account may be applied.

**Active Portfolio Management Account**

13.26 Except as provided in clause 13.31, the Borrower must be the sole signatory in relation to the Active Portfolio Management Account.

13.27 The Borrower must ensure that:

13.27.1 the net proceeds of any disposal of assets (other than any disposal of a SAHF Property or a Unit, or a disposal made in the ordinary course of business where the proceeds of that disposal are less than or equal to [REDACTED] and where the aggregate proceeds of each such disposal made in the financial year is less than or equal to [REDACTED] including the aggregate net proceeds of sale of all relevant Property referred to in paragraphs (d) and (e) of the definition of SAHF Tranche Equity Contribution Amount; and

13.27.2 the amount of any Disposal Proceeds (other than amounts referred to in clause 13.36.2),

are paid into the Active Portfolio Management Account promptly following receipt or release.

13.28 Once the Financier has either received or waived its requirement to receive each item listed in Part 3 of Schedule 1 in respect of the first Advance under the SAHF Tranche to fund a D&C Project, the Borrower may request an Advance under the SAHF Tranche CA Facility in any amount equal to the aggregate amount previously transferred from the Active Portfolio Management Account to the SAHF Tranche Construction Account in accordance with paragraph (e) of the definition of SAHF Tranche Equity Contribution Amount and such Advance will be paid into the Active Portfolio Management Account.

13.29 Except as provided in clause 13.30 or clause 13.31, the Borrower:

13.29.1 must as soon as practicable after deposit in accordance with clause 13.27.1, withdraw the amounts specified in paragraphs (d) and (e) of the definition of SAHF Tranche Equity Contribution Amount and deposit such amounts into the SAHF Tranche Construction Account; and

13.29.2 may withdraw any other amount deposited in accordance with clause 13.27 from the Active Portfolio Management Account at any time while no Event of Default is continuing, provided that each amount withdrawn is applied, in the following order of priority:

13.29.2.1 for the purposes of funding Project Costs in respect of LHC Property, including up to [REDACTED] per dwelling to re-tenant sold properties;

13.29.2.2 reinvested in the acquisition of further Social Housing or Affordable Housing dwellings on or before the date which is 12 months after the Next Calculation Date; or

13.29.2.3 contracted to be reinvested in the acquisition of further Social Housing or Affordable Housing dwellings on or before the date which is 12 months after the Next Calculation Date and reinvested in the acquisition of further Social Housing or Affordable Housing dwellings on or before the date which is 24 months after the Next Calculation Date,

and such disposal, reinvestment or contracted reinvestment does not have a negative impact on the Borrower's financial condition.

13.30 If an amount deposited into the Active Portfolio Management Account is not invested or contracted to be invested in accordance with clause 13.29, the Borrower must transfer that amount to the LHC Tranche Mandatory Prepayment Account on or before the date which is 3 business days after the last date on which it may be invested or contracted to be invested (as the case may be).

13.31 At any time when an Event of Default is continuing, the Borrower may not withdraw from the Active Portfolio Management Account except with the consent of the Financier. At any time when an Event of Default is continuing, the Financier may:

13.31.1 operate the Active Portfolio Management Account;

13.31.2 notify the Borrower and the Account Bank that the Borrower's rights to operate the Active Portfolio Management Account are suspended, such notice to take effect in accordance with its terms; and

13.31.3 withdraw from, and apply amounts standing to the credit of, the Active Portfolio Management Account in or towards any purpose for which moneys in any Account may be applied.

#### **Maintenance Reserve Account**

13.32 The Borrower must ensure that amounts are only deposited into the Maintenance Reserve Account in accordance with the Base Case Financial Model.

13.33 The Borrower may only withdraw amounts from the Maintenance Reserve Account to pay scheduled and unscheduled Maintenance Costs.

13.34 At any time when an Event of Default is continuing, the Borrower may not withdraw from the Maintenance Reserve Account except with the consent of the Financier. At any time when an Event of Default is continuing, the Financier may:

13.34.1 operate the Maintenance Reserve Account;

13.34.2 notify the Borrower and the Account Bank that the Borrower's rights to operate the Maintenance Reserve Account are suspended, such notice to take effect in accordance with its terms; and

13.34.3 withdraw from, and apply amounts standing to the credit of, the Maintenance Reserve Account in or towards payment of the Secured Money.

#### **Mandatory Prepayment Accounts**

13.35 The Financier must be the sole signatory in relation to each Mandatory Prepayment Account.

13.36 The Borrower must ensure that:

- 13.36.1 the amount of Insurance Prepayment Proceeds;
- 13.36.2 the net proceeds of all disposals of any the SAHF Property;
- 13.36.3 the amount of Compensation Prepayment Proceeds;
- 13.36.4 any amount required to be transferred to:
  - 13.36.4.1 the LHC Tranche Mandatory Prepayment Account under paragraph (b) of the definition of "LHC Tranche Tenancy Sustainability Conditions"; or
  - 13.36.4.2 the SAHF Tranche Mandatory Prepayment Account under paragraph (b) of the definition of "SAHF Tranche Tenancy Sustainability Conditions";
- 13.36.5 any amount required to be transferred to the LHC Tranche Mandatory Prepayment Account under clause 13.30;
- 13.36.6 in respect of SAHF Projects and the SAHF Tranche only, any liquidated damages or other payments received by the Borrower arising out of or in connection with the breach of the performance warranty provisions of the SAHF Tranche Material Documents or the Management Services Agreement (to the extent it relates to the SAHF Projects); and
- 13.36.7 any amount required to be transferred from a Proceeds Account under clause 7.7,

are paid into the relevant Mandatory Prepayment Account promptly following receipt or on the day specified in this agreement.

- 13.37 Subject to clause 13.38, on each Interest Payment Date, the Financier must withdraw and apply all amounts standing to the credit of each Mandatory Prepayment Account towards prepayment of the relevant Term Facility.
- 13.38 The Financier is obliged to make a withdrawal from a Mandatory Prepayment Account in accordance with clause 13.37 above only if no Event of Default is continuing.

#### **Miscellaneous Accounts provisions**

- 13.39 The Borrower must ensure that no Account goes into overdraft.
- 13.40 Any amount received or recovered by the Borrower otherwise than by credit to an Account must be held subject to the security created by the Finance Documents and immediately be paid to the relevant Account or to the Financier in the same amount as received or recovered.
- 13.41 If any payment is made into an Account in relation to which the Financier has sole signing rights which should have been paid into another Account, then, unless an Event of Default is continuing, the Financier must, at the request of the Borrower and on receipt of evidence satisfactory to the Financier that the payment should have been made to that other Account, pay that amount to that other Account.
- 13.42 Subject to the other provisions of this clause 13, the moneys standing to the credit of an Account may be applied by the Financier in payment of any amount due and payable but unpaid to the Financier under the Finance Documents.
- 13.43 The Financier is not responsible or liable to the Borrower for:

- 13.43.1 any non-payment of any liability of the Borrower which could be paid out of moneys standing to the credit of an Account; or
- 13.43.2 any withdrawal wrongly made, if made in good faith or in reliance on instructions from the Borrower.
- 13.44 The Borrower must, within 5 business days of any request by the Financier, supply the Financier with the following information in relation to any payment received in an Account:
  - 13.44.1 the date of payment or receipt;
  - 13.44.2 the payer; and
  - 13.44.3 the purpose of the payment or receipt.

#### 14. GENERAL UNDERTAKINGS

##### General undertakings

- 14.1 The Borrower must do each of the following:
  - 14.1.1 **Authorisations:** Promptly obtain, comply with and do all that is necessary to maintain in full force and effect, all Authorisations, including the Housing Authorisations, required for each of the following purposes:
    - 14.1.1.1 to enable it to perform its obligations under the Transaction Documents;
    - 14.1.1.2 to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document; and
    - 14.1.1.3 which are necessary and material to it carrying on its business.
  - 14.1.2 **Certified copies:** Promptly following request supply certified copies to the Financier of any Authorisations required under the previous clause.
  - 14.1.3 **Compliance with laws:** Comply in all material respects with all laws to which it is subject, including all laws applying to the Secured Property and its ownership, possession or use of the Secured Property (and including all Environmental Law, the Housing Act and the National Housing Law).
  - 14.1.4 **Negative pledge:** Not create, agree to create, or allow to continue any Security Interest in or allow another Security Interest to subsist over any of its assets without the Financier's consent, except for Permitted Security Interests.
  - 14.1.5 **Disposals:** Not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any asset (including any Property), other than any Permitted Disposal.
  - 14.1.6 **Restructuring:** Not enter into any amalgamation, demerger, merger or corporate reconstruction.
  - 14.1.7 **Arm's length dealing:** Not deal in any way with any person except at arm's length in the ordinary course of business for valuable commercial consideration.
  - 14.1.8 **Acquisitions:** Not:



- 14.1.8.1 create or acquire a Subsidiary or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- 14.1.8.2 incorporate a company.
- 14.1.9 **Joint ventures:** Not:
  - 14.1.9.1 enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
  - 14.1.9.2 transfer any assets or lend to or guarantee or give an indemnity for or give any Security Interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- 14.1.10 **Business changes:** Not make any substantial change to the general nature of its business from that carried on at the Restatement Date.
- 14.1.11 **Borrower activity:**
  - 14.1.11.1 Not undertake any business, dealing, transaction or other activity or acquire an asset or incur a liability, other than as necessary for a D&C Project, in connection with the acquisition or ownership by it of a Turnkey Project or for its entry into and observance of its obligations and exercise of its rights under, each Transaction Document and other agreements relating to a Project to which it is a party.
  - 14.1.11.2 Carry on its business in a proper and efficient way and not do anything to change materially the nature of its business from that conducted at the Restatement Date.
- 14.1.12 **Maintain status:** Maintain its status as a company limited by guarantee, incorporated, or taken to be incorporated, under the *Corporations Act 2001* (Cth).
- 14.1.13 **Tax Consolidated Group:** Not become a member of a Tax Consolidated Group.
- 14.1.14 **Administrator:** Not appoint an administrator without prior notice to the Financier.
- 14.1.15 **PPSA policies and steps:** The Borrower must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA. For example, the Borrower must do the following:
  - 14.1.15.1 create and implement appropriate policies and systems; and
  - 14.1.15.2 where appropriate, take reasonable steps to identify Security Interests in its favour and to perfect and protect them, with the highest priority reasonably available, except to the extent it is reasonable not to do so, taking into account the costs and risks involved.

- 14.1.16 **PPSA registration:** The Borrower must ensure that the Borrower's security interests in the following goods are perfected by registration on the Personal Property Securities Register:
  - 14.1.16.1 goods leased or bailed by the Borrower;
  - 14.1.16.2 goods delivered by the Borrower to a consignee under a commercial consignment; and
  - 14.1.16.3 goods supplied by the Borrower under a conditional sale agreement, including an agreement to sell subject to retention of title.
- 14.1.17 **First ranking:** Ensure that its payment obligations under the Finance Documents rank in right and priority of payment and point of security ahead of all its other obligations (actual or contingent, present or future), except for obligations mandatorily preferred by law applying to companies generally.
- 14.1.18 **Security:** Ensure that the Security Interests pursuant to the Security Documents have priority over any other Security Interests (other than in respect of Permitted Security Interests).
- 14.1.19 **Intellectual Property:** Not permit any material intellectual property rights to be abandoned, cancelled or lapsed where to do so would have, or be reasonably likely to have, a Material Adverse Effect.
- 14.1.20 **Constitutional documents:** Not change its constitutional documents in any material respect.
- 14.1.21 **Maintain books:** Keep proper and adequate books and records in accordance with the Accounting Principles, retain an approved auditor and not change its financial year.

**Material Documents**

- 14.2 The Borrower must do each of the following:
  - 14.2.1 **Comply:** In a proper and timely manner, comply and ensure (so far this is within its control) that others comply with all their obligations under the Material Documents to which any of them is a party.
  - 14.2.2 **Notify:**
    - 14.2.2.1 Notify the Financier (and in respect of a Building Contract, the Quantity Surveyor) promptly of any default, alleged breach, breach or purported rescission occurring in respect of or under a Material Document (other than a Lease Document), or any material notice or material information provided to or by a party to a Material Document (other than a Lease Document) including receipt of a "Credit Support Notice" (as defined in the SAHF Services Agreement); and
    - 14.2.2.2 Notify the Financier (and in respect of a Building Contract or a Specification for a D&C Project, the Quantity Surveyor for that D&C Project) of any proposed amendment, supplement, waiver or release in respect of any Material Document (other than a Lease Document) or any Specification and supply to the Financier copies

of any such amendment, supplement, waiver or release made or given.

- 14.2.3 **Amendments:** Other than any Permitted Variation, not amend, supplement or vary:
- 14.2.3.1 a Material Document (other than a Lease Document), and not without the prior written consent of the Financier request a "Modification" (as defined in the SAHF Services Agreement), request a substitution of dwellings under clause 19 of the SAHF Services Agreement or give a notice in relation to the early commencement of services under clause 20A of the SAHF Services Agreement; or
- 14.2.3.2 the terms of a Lease Document, or the form of Lease Document, in each case where such amendment, supplement or variation is made to at least 5 Lease Documents.
- 14.2.4 **Waivers:** Other than any Permitted Variation, not waive, release or grant any time, indulgence or consent in respect of, any requirement of a Material Document (provided that, in respect of a Lease Document, such waiver, release or grant applies in respect of the terms of a Lease Document, or the form of Lease Document, in each case where such amendment, supplement or variation is made to at least 5 Lease Documents).
- 14.2.5 **Termination:** Not terminate, rescind or discharge (except by due performance) a Material Document.
- 14.2.6 **Assignment:**
- 14.2.6.1 Not transfer or assign its rights in or obligations under a Material Document.
- 14.2.6.2 Not consent to a counterparty transferring or assigning its rights in or obligations under a Material Document.
- 14.2.7 **Disputes:**
- 14.2.7.1 Notify the Financier promptly of any dispute in connection with or under a Material Document.
- 14.2.7.2 Not commence any legal action, including any litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or Governmental Agency, in connection with a dispute in relation to or under a Material Document unless it reasonably considers such legal action to be necessary to protect or enforce its rights under the Material Document.
- 14.2.7.3 Notify the Financier and the Quantity Surveyor of any claim or demand made against the Borrower by any person in connection with a D&C Project.
- 14.2.8 **Exercise rights:** Exercise and ensure (so far as this is within its control) that others exercise their rights, authorities, powers, remedies and discretions under the Material Documents prudently and in order to preserve all its rights under

the Material Documents and, while an Event of Default continues, as directed by the Financier.

- 14.3 If the Borrower is not permitted to do something in respect of a Material Document, it must not allow or assist anyone else (including a counterparty) to do that thing.
- 14.4 The Borrower must not, without the prior written consent of the Financier (not to be unreasonably withheld or delayed) enter into any new agreement other than a Transaction Document or any document or agreement:
- 14.4.1 entered into in respect of expenditure or revenue set out in the Business Plan; or
  - 14.4.2 under which the annual contracted expenditure to be paid or annual projected revenue to be received by the Borrower is equal to or less than [REDACTED] provided that the aggregate expenditure and revenue under all such agreements in any financial year is equal to or less than [REDACTED]

**Financial undertakings**

- 14.5 The Borrower must not do any of the following without first obtaining the consent of the Financier:
- 14.5.1 **Repay loans:** Repay any loans to directors, shareholders, members of their families or companies controlled by them or any of them.
  - 14.5.2 **Make loans:** Be a creditor in respect of any Financial Indebtedness or otherwise provide any financial accommodation to any person except for financial accommodation provided to tenants under Lease Documents in aggregate not exceeding [REDACTED] at any time.
  - 14.5.3 **Give guarantee:** Incur or allow to remain outstanding any guarantee in respect of any monetary obligation of any person.
  - 14.5.4 **Distributions:** Make any:
    - 14.5.4.1 payment, distribution, dividend, repayment or reimbursement to the Parent in its capacity as sole member of the Borrower; or
    - 14.5.4.2 payment of Service Charge Part B,  
(Distribution) other than, in the case of an amount described in clause 14.5.4.1, for the purposes of:
    - 14.5.4.3 reimbursing, repaying or paying the Parent for costs incurred by the Parent or a Related Body Corporate of the Parent (other than the Borrower) for Tenancy Sustainability Initiatives as set out in the Business Plan provided that such Distributions can be funded by debiting the Tenancy Sustainability Account; or
    - 14.5.4.4 repaying to the Parent in an amount equal to the relevant Reimbursable Tenancy Sustainability Contribution for any Tenancy Sustainability Initiatives funded by the Parent under the relevant Intercompany Loan Agreement, or
    - 14.5.4.5 making a payment permitted under clause 13.7,

and in each case, provided that no Event of Default is continuing and upon satisfactory evidence of such expenditure being provided to the Financier.

- 14.5.5 **Increase salaries or emoluments:** Pay in any financial year any salary or other emoluments to directors, shareholders, members, members of their families or companies controlled by them or any of them, other than reasonable directors fees in an amount not exceeding [REDACTED] (in aggregate) per financial year.
- 14.5.6 **Financial Indebtedness:** Incur any Financial Indebtedness or allow any further Financial Indebtedness to remain owing, other than Permitted Financial Indebtedness.
- 14.5.7 **Management fees:**
- 14.5.7.1 Make any payment to the Parent under the Management Services Agreement other than:
- (a) in the case of the Service Charge Part B, with the prior written consent of the Financier; or
  - (b) otherwise in the amount set out in the Management Services Agreement, as automatically escalated under clause 2.2(f) of the Management Services Agreement.
- 14.5.7.2 Not agree any increase to any "Service Charge" (as defined in the Management Services Agreement) or other fee set out in Schedule 8 of the Management Services Agreement without the prior written consent of the Financier.

## 15. PROJECT UNDERTAKINGS

### Completion

- 15.1 The Borrower must use reasonable endeavours to ensure that Practical Completion in respect of a D&C Project occurs by no later than the Required Completion Date in respect of that D&C Project.

### Project

- 15.2 The Borrower must use reasonable endeavours to ensure that each D&C Project is promptly commenced and is diligently carried out and must ensure that by Practical Completion it is completed:
- 15.2.1 in accordance with the Building Contract (including the Specifications) for that D&C Project;
  - 15.2.2 in a good and workmanlike manner, using materials of good quality which are fit for their respective purposes;
  - 15.2.3 in accordance with the Development Consents for that D&C Project and applicable law;
  - 15.2.4 in accordance with the relevant Codes of Practice and Australian Standard Specifications; and
  - 15.2.5 in accordance with any relevant Transaction Documents and the Business Plan.

### Authorisations

- 15.3 The Borrower must:

- 15.3.1 use all reasonable endeavours to ensure that each Development Consent is maintained and remains effective without amendment (unless the amendment is for the benefit of the Borrower) for the benefit of the relevant Project; and
- 15.3.2 obtain all necessary consents of adjoining owners or occupiers and all necessary grants, releases, waivers, modifications, covenants and other matters required to enable each D&C Project to be completed.

**Sale Contracts**

- 15.4 The Borrower must:
  - 15.4.1 supply to the Financier a copy of each Sale Contract and each amendment, supplement, waiver or release of such Sale Contract promptly upon entering the same;
  - 15.4.2 exercise its rights and comply with its obligations under each Sale Contract in a proper and timely manner; and
  - 15.4.3 use its reasonable endeavours to ensure that each other party complies with its obligations under each such Sale Contract in a proper and timely manner.
- 15.5 The Borrower must ensure that:
  - 15.5.1 unless agreed otherwise with the Financier in writing, at any time, there are no more than an aggregate of 30 Units in the portfolio of Properties owned, or to be acquired, by the Borrower; and
  - 15.5.2 all Units are sold in a timely manner, taking into account the market for the sale of residential dwellings at that time.

**Building Contracts**

- 15.6 The Borrower must ensure that each Building Contract is substantially in the form of the pro-forma Building Contract in Schedule 5 or otherwise in form and substance satisfactory to the Financier and provides that:
  - 15.6.1 the Borrower's rights under that Building Contract may be assigned to the Financier or its nominee;
  - 15.6.2 the Borrower's obligations under that Building Contract may be assumed by the Financier or its nominee; and
  - 15.6.3 the relevant counterparty consents to the grant by the Borrower of a Security Interest in respect of its rights under the Building Contract,without any requirement for consent from any other person.

**Project costs**

- 15.7 The Borrower must not incur any cost or expense for goods or services in connection with a D&C Project which is not anticipated in the Budgeted Costs for that D&C Project unless it is funded by Subordinated Debt or the subscription by the Parent in the capital of the Borrower.

### **Information on each D&C Project**

- 15.8 The Borrower must supply to the Financier, within 15 days of the first day of each calendar quarter, a construction report in respect of any Community Housing or Property constructed during the preceding quarter.
- 15.9 The Borrower must procure that the Quantity Surveyor supplies to the Financier, within 15 days of the end of each month, the first of which is the first full month after the first Funding Date, details of the costs and expenses incurred in connection with each D&C Project where construction has commenced and details of progress. These must include:
- 15.9.1 a report on progress of each item set out in the Budgeted Costs;
  - 15.9.2 a breakdown of the costs and expenses incurred by the Borrower in connection with the D&C Project to date;
  - 15.9.3 a comparison of costs and expenses incurred as against the anticipated cost or expense set out in the Budgeted Costs;
  - 15.9.4 a forecast of costs and expenses to be incurred during the next month;
  - 15.9.5 the estimated cost to complete in respect of that D&C Project;
  - 15.9.6 the estimated date for Practical Completion in respect of that D&C Project;
  - 15.9.7 for each D&C Project in respect of which a remediation plan as described in paragraph 2.4.2.1 of Part 3 of Schedule 1 was prepared, a report on progress against the remediation plan; and
  - 15.9.8 confirmation that progress on each D&C Project has been undertaken substantially in accordance with the Building Contract for that D&C Project.
- 15.10 The Borrower must supply all information reasonably requested by the Quantity Surveyor, to enable the Quantity Surveyor to supply monthly reports to the Financier on the progress of each D&C Project.
- 15.11 The Borrower must promptly supply to the Financier, if requested, copies of all management accounts and cashflows in connection with each D&C Project prepared by or for the Borrower.
- 15.12 The Borrower must promptly supply any other information in relation to:
- 15.12.1 the costs and expenses incurred by the Borrower for each D&C Project;
  - 15.12.2 the progress of each D&C Project; or
  - 15.12.3 any other matters relating to each D&C Project,
- as the Financier or the Quantity Surveyor may reasonably request.

### **Inspection/meetings**

- 15.13 The Borrower must ensure each of the Financier and the Quantity Surveyor and any of its officers, employees and agents has access to the Property the subject of a D&C Project at all reasonable times and on reasonable notice, provided the Financier, Quantity Surveyor or any of its officers, employees and agents agrees to comply with the occupational health and safety requirements of the Borrower and the Contractor.

15.14 The Borrower must arrange for agreed representatives of the Parent to attend progress meetings with the Financier:

15.14.1 at a mutually convenient location;

15.14.2 at least once per month until the relevant Conversion Date, and thereafter once per calendar quarter unless otherwise agreed with the Financier; and

15.14.3 at which the Borrower will update the Financier in relation to all relevant matters including in relation to the status of each Project and the performance of the Parent under the Management Services Agreement (measured against the relevant KPIs in the Management Services Agreement).

#### **Contractor**

15.15 The Borrower must not appoint a Contractor with respect to a D&C Project without the prior consent of, and on terms approved by, the Financier (acting reasonably).

#### **Effect of approvals and visits**

15.16 The Borrower acknowledges that:

15.16.1 approval of drawings or specifications (including the Specifications) or the passing of any work by the Financier or the Quantity Surveyor; or

15.16.2 any visit to a Property or attendance at any meetings in relation to a D&C Project by the Financier or the Quantity Surveyor or their respective officers, employees or agents,

will not excuse the Borrower from the due performance of any of its obligations under the Finance Documents.

#### **GST**

15.17 The Borrower must promptly pay to the Australian Taxation Office all GST and related interest and penalties payable by it in respect of each Property and each Project.

15.18 The Borrower must ensure that all recoveries of GST referable to a Project are:

15.18.1 promptly applied in connection with that Project towards Budgeted Costs; or

15.18.2 prior to the relevant Conversion Date paid into the relevant Construction Account or on or after that Conversion Date paid into the relevant Proceeds Account.

15.19 The Borrower must, on the last day of each month the first of which starts on the first Funding Date, supply to the Financier:

15.19.1 details of the amount of GST paid by the Borrower in that month; and

15.19.2 details of the amount of GST reclaimed and received by the Borrower in that month and, where applicable, details of the application of amounts received when applied towards the Budgeted Costs.

#### **Procedure for Completion**

15.20 In anticipation of the issue of a Certificate of Practical Completion for a D&C Project, the Borrower must ensure that the Architect supplies the Financier and the Quantity Surveyor



with at least 5 business days' prior notice of the date the Architect intends to carry out each inspection of that D&C Project for those purposes.

- 15.21 The Borrower must allow a representative of the Financier and the Quantity Surveyor to accompany the Architect on each inspection and to make representations in writing to the Architect before the issue of the relevant Certificate of Practical Completion. No representation made will bind or estop the Financier.
- 15.22 The Borrower must ensure that a copy of each Certificate of Practical Completion is promptly supplied to the Financier.

#### **WHS Scheme**

- 15.23 The Borrower must ensure that any person engaged to undertake Building Work on a D&C Project complies with all requirements of, and maintains accreditation under, the WHS Scheme, unless such person is not required to be accredited for the purposes of the WHS Scheme.
- 15.24 If, in respect of a D&C Project, the expiry date for accreditation of the relevant Contractor required under the WHS Scheme is a date prior to the last Required Completion Date for that D&C Contract, the Borrower must ensure that an application for reaccreditation under the WHS Scheme is submitted to the Federal Safety Commissioner by a date that is no later than six months prior to the accreditation expiry date.

#### **Australian Industry Participation**

- 15.25 The Borrower must, unless it is exempt, produce evidence satisfactory to the Financier that it has provided an Implementation Report (as required under the AIP Plan) to the AIP Agency within 60 days of the first anniversary of the Restatement Date, or such other date agreed as by the AIP Agency and notified to the Financier and upon request, provide evidence satisfactory to the Financier that the Borrower has complied with this clause.

#### **Tenancy Sustainability Initiatives**

- 15.26 The Borrower must undertake the Tenancy Sustainability Initiatives in accordance with the Business Plan and must comply with any performance benchmarks agreed between the Borrower and the Financier.

#### **Housing Sustainability Criteria**

- 15.27 The Borrower must use each CA Facility to achieve the Housing Sustainability Criteria in accordance with the Business Plan.

#### **Tenant education**

- 15.28 The Borrower must undertake a program to educate tenants of the Properties of behaviours that result in energy efficiency for the purpose of optimising the ongoing operational performance of buildings comprising the Properties.

#### **SAHF Services Agreement**

- 15.29 The Borrower must provide to the Financier details of the level of performance under the SAHF Services Agreement relevant to the calculation of the "Monthly Service Payments" (as defined in the SAHF Services Agreement) and any adjustments.

### **Plans of Subdivision**

- 15.30 The Borrower must ensure that:
- 15.30.1 no Plan of Subdivision or partition of any Property is registered unless approved in writing by the Financier;
  - 15.30.2 when lodging a Plan of Subdivision, give a written direction to the relevant Governmental Agency to issue all titles to the Financier on registration of the Plan of Subdivision.

### **Sunset Date**

- 15.31 The Borrower must ensure that the LHC Tranche Conversion Date occurs prior to the LHC Tranche Sunset Date.
- 15.32 The Borrower must ensure that the SAHF Tranche Conversion Date occurs prior to the SAHF Tranche Sunset Date.

## **16. PROPERTY UNDERTAKINGS**

### **Title**

- 16.1 The Borrower must exercise its rights and comply in all respects with any material covenant, stipulation or obligation (restrictive or otherwise) at any time affecting any Property.
- 16.2 The Borrower may not:
- 16.2.1 agree to any material amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting any Property; or
  - 16.2.2 acquire any interest in real property otherwise than in accordance with the Active Portfolio Management Plan or with the consent of the Financier.
- 16.3 The Borrower must promptly take all such steps as may be necessary or desirable to enable the Real Property Mortgages and any power of attorney under which it executes a Real Property Mortgage to be registered with Land and Property Information, a division of the Department of Finance and Services, New South Wales.
- 16.4 When the Financier requests, the Borrower must execute:
- 16.4.1 a legal or statutory mortgage in favour of the Financier over any real property; or
  - 16.4.2 any other form of security which the Financier considers appropriate for the property to be subject to that security,
- each in form and substance required by the Financier, (but the Financier cannot require an obligation for which there is no equivalent obligation in any Finance Document or which is more onerous than any equivalent obligation contained in any Finance Document).

### **Housing regulations**

- 16.5 The Borrower must promptly notify the Financier in writing, and in any event within:

16.5.1 7 days, of any notification by a Governmental Agency of any material breach of, or material non-compliance with, any government funding arrangement or performance standards including under or in connection with the Housing Act or the NRAS Act and related regulations; and

16.5.2 3 days of any notification by a Governmental Agency of any material breach of, or material non-compliance with, any government funding arrangement or performance standards including, under or in connection with the Housing Act or the NRAS Act and related regulations, which results in or might reasonably be expected to result in any funds being withheld by the Governmental Agency.

16.6 The Borrower must promptly notify the Financier of any legal action in which the Borrower is engaged involving a claim with any Governmental Agency which if adversely decided against the Borrower might reasonably be expected to have a Material Adverse Effect.

#### **Housing Act**

16.7 The Borrower must:

16.7.1 do all things necessary to maintain its registration as a registered Community Housing Provider under the Housing Act including by continuing to comply with the conditions detailed in the Housing Act;

16.7.2 have appropriate mechanisms, resources and procedures in place to ensure compliance with the Housing Act and any regulations under the Housing Act;

16.7.3 perform any action required by the Registrar or Director-General under the Housing Act, comply with any performance standards, guidelines and regulatory requirements which apply to a Community Housing Provider including in relation to compliance and performance, financial viability, reporting and engagement;

16.7.4 promptly advise the Financier of any exercise or proposed exercise by the Registrar of the Registrar's powers under the Housing Act in respect of the Borrower;

16.7.5 promptly advise the Financier of any appointment by the Borrower of a special adviser under the Housing Act; and

16.7.6 provide the Financier with copies of:

16.7.6.1 material documents or reports dispatched to the Registrar or Director-General at the same time they are dispatched; and

16.7.6.2 material documents or correspondence received from the Registrar or Director-General.

#### **NRAS**

16.8 Until the NRAS End Date, the Borrower must, at its own cost, comply with all obligations imposed upon it:

16.8.1 in relation to each Approved Rental Dwelling and any Special Conditions; and

16.8.2 in relation to the tenants of each Approved Rental Dwelling,

under the NRAS Act, NRAS Regulations and any agreement or arrangement in relation to State Government Contribution.

- 16.9 Until the NRAS End Date, the Borrower must:
- 16.9.1 do all things necessary to maintain its status as an Approved Participant;
  - 16.9.2 do all things necessary to ensure that any Allocation made in respect of any Property is not amended in a materially adverse manner, revoked or transferred;
  - 16.9.3 do all things necessary to ensure that it continues to receive Incentives in respect of each Property where applicable;
  - 16.9.4 promptly advise the Financier of any material failure to comply with or breach of any material conditions under the NRAS Act, the NRAS Regulations, the State Government Contribution or any Special Conditions;
  - 16.9.5 promptly advise the Financier of any exercise or proposed exercise by the Secretary of the Secretary's powers in relation to the Borrower under the NRAS Act and the NRAS Regulations;
  - 16.9.6 promptly advise the Financier of any applications made by it under the NRAS Act or for any State Government Contribution; and
  - 16.9.7 provide the Financier with copies of:
    - 16.9.7.1 material documents or reports dispatched by the Borrower to the Secretary at or around the same time they are dispatched;
    - 16.9.7.2 any material documents or reports lodged under or in connection with the NRAS Act, the NRAS Regulations, and the State Government Contribution including any Statement of Compliance at the same time they are lodged; and
    - 16.9.7.3 material documents or correspondence received by the Borrower from the Secretary.

**Lease Documents**

- 16.10 The Borrower must:
- 16.10.1 diligently collect or procure to be collected all Rental Income;
  - 16.10.2 exercise its rights and comply with its obligations under each Lease Document; and
  - 16.10.3 use its reasonable endeavours to ensure that each tenant complies with its obligations under each Lease Document,
- in a proper and timely manner.

- 16.11 The Borrower must use reasonable endeavours to find tenants for any vacant lettable dwellings or property comprising any Property with a view to entering into a Lease Document with respect to that space.

**Maintenance**

- 16.12 The Borrower must ensure that all buildings, plant, machinery, fixtures and fittings on each Property are in, and maintained in:

16.12.1 good and substantial repair and condition having regard to the age of the property and fair wear and tear excepted, and, as appropriate, in good working order; and

16.12.2 such repair, condition and order as to enable them to be let in accordance with all applicable laws and regulations; for this purpose, a law or regulation will be regarded as applicable if it is either:

16.12.2.1 in force; or

16.12.2.2 it is expected to come into force and a prudent property owner in the same business as the Borrower would ensure that its buildings, plant, machinery, fixtures and fittings were in such condition, repair and order in anticipation of that law or regulation coming into force.

#### **D&C Projects**

16.13 The Borrower must not without the Financier's consent:

16.13.1 make or allow to be made any application for planning permission in respect of any part of the Property; or

16.13.2 carry out, or allow to be carried out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of any part of the Property.

16.14 Clause 16.13 shall not apply to:

16.14.1 the carrying out of a D&C Project in accordance with the terms of this agreement;

16.14.2 the maintenance of existing buildings on any Property, plant, machinery, fixtures and fittings;

16.14.3 the carrying out of non-structural improvements or alterations which affect only the interior of any building on any Property;

16.14.4 activities required to be undertaken by the Borrower in accordance with the Material Documents; or

16.14.5 the carrying out of any works required by law, regulation or any notice, direction or order of a Governmental Agency or to comply with any planning laws, permissions, planning agreements and conditions to which the Property may be subject. The Borrower must give notice of the relevant requirement to the Financier promptly.

16.15 The Borrower must comply in all respects with all planning laws, permissions, planning agreements and conditions to which any Property may be subject.

#### **Notices**

16.16 The Borrower must promptly after receipt by the Borrower of any application, requirement, order or notice served or given by any Governmental Agency or any landlord with respect to the Property (or any part of it):

16.16.1 deliver a copy to the Financier; and

- 16.16.2 if applicable, inform the Financier of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

**Investigation of title**

- 16.17 The Borrower must grant the Financier or its lawyers on request all facilities within the power of the Borrower to enable the Financier or its lawyers to:
- 16.17.1 carry out investigations of title to each Property; and
- 16.17.2 make such enquiries in relation to any part of any Property as a prudent mortgagee might carry out.

**Power to remedy**

- 16.18 If any default occurs under a Material Document relating to a Property, the Borrower must allow the Financier or its agents and contractors:
- 16.18.1 to enter any part of the Property, provided it complies with the occupational health and safety requirements of the Borrower and any relevant Contractor;
- 16.18.2 to comply with or object to any notice served on the Borrower in respect of the Property; and
- 16.18.3 to take any action that the Financier may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice.
- 16.19 The Borrower must immediately on request by the Financier pay the costs and expenses of the Financier or its agents and contractors incurred in connection with any action taken by it under clause 16.18.
- 16.20 The Financier shall not be obliged to account as mortgagee in possession as a result of any action taken under clause 16.18.

**Insurances**

- 16.21 The Borrower must at its own cost ensure that, at all times from the first Funding Date, the following insurances are maintained in full force and effect:
- 16.21.1 Industrial Special Risks (Material Damage and Business Interruption) Insurance insuring the Borrower in respect of its interests in the Property and any plant and machinery on the Property (including fixtures and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs) and to:
- 16.21.1.1 provide cover against loss or damage by accidental damage, fire, storm, tempest, flood, earthquake, lightning, hail, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion, malicious damage, burglary, theft, bursting or overflowing of pipes and water tanks or apparatus and all other normally insurable risks of loss or damage;
- 16.21.1.2 provide cover for debris removal and site clearance, shoring or propping up, professional fees, expediting expenses and value added tax together with adequate allowance for inflation;

- 16.21.1.3 provide cover against acts of terrorism, including any third party liability arising from such acts; and
- 16.21.1.4 provide cover for loss of rent (in respect of a period of not less than 3 years) including provision for any increases in rent during the period of insurance;
- 16.21.2 Public and Products Liability Insurance for an amount of not less than [REDACTED] for any one occurrence (and [REDACTED] in the annual aggregate in respect of Products Liability);
- 16.21.3 Professional Indemnity Insurance for an amount of not less than [REDACTED] any one claim and [REDACTED] in the annual aggregate;
- 16.21.4 insurance against such risks which it is required to insure against under any applicable laws;
- 16.21.5 insurance against such other risks as a prudent company in the same business as the Borrower would obtain;
- 16.21.6 comply with all relevant obligations in each Material Document; and
- 16.21.7 in each case are in an amount, and in form, and with an insurance company or underwriters with a rating from S&P of at least A- or an equivalent rating by Moody's (or any replacement rating classification by either service which is determined in substantially the same manner), and who are acceptable to the Financier.
- 16.22 The Borrower must:
  - 16.22.1 procure that the Financier is named as co-insured under the Insurances specified under clause 16.21.1 but without liability on the part of the Financier for any premium in relation to those Insurances; and
  - 16.22.2 procure that the Financier is named as an interested party under the Insurances specified under clause 16.21.2.
- 16.23 The Borrower must procure that the Insurances specified under clauses 16.21.1 and 16.21.2 comply with the following requirements:
  - 16.23.1 each of the Insurances must contain:
    - 16.23.1.1 a non-invalidation and non-vitiation clause under which the Insurances will not be vitiated or avoided as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any insured party or any agent of any insured party;
    - 16.23.1.2 a waiver of the rights of subrogation of the insurer as against the Borrower, the Financier and its insurers; and
    - 16.23.1.3 except in respect of the Insurances specified under clause 16.21.2, a loss payee clause in such terms as the Financier may reasonably require in respect of insurance claim payments otherwise payable to the Borrower;

- 16.23.2 the insurers must give at least 30 days' notice to the Financier if any insurer proposes to repudiate, rescind or cancel any Insurance, to treat it as avoided in whole or in part, to treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period;
- 16.23.3 the Borrower must be free to assign all amounts payable to it under each of its Insurances and all its rights in connection with those amounts in favour of the Financier (other than any amounts received under liability policies held by the Borrower which are required to satisfy established liabilities of the Borrower to third parties); and
- 16.23.4 the amount or period of any excess or deductible payable by the insured in respect of a claim will not exceed the amount or period which is customary or prudent for similar policies and insureds, that are owners or operators of assets similar to the Borrower.
- 16.24 The Borrower must use all reasonable endeavours to ensure that the Financier receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the insurances and claims under them which the Financier may reasonably require.
- 16.25 The Borrower must promptly notify the Financier of:
- 16.25.1 the proposed terms of any future renewal of any of the Insurances;
- 16.25.2 any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to its knowledge, threatened or pending;
- 16.25.3 any claim and details of any casualty event, and any actual or threatened refusal of any claim, under any of the Insurances; and
- 16.25.4 any event or circumstance which has led or may lead to a breach by the Borrower of any term of clauses 16.21 to 16.33.
- 16.26 The Borrower must:
- 16.26.1 comply with the terms of the Insurances;
- 16.26.2 not do or permit anything to be done which may make void or voidable any of the Insurances; and
- 16.26.3 comply with all reasonable risk improvement requirements of its insurers.
- 16.27 The Borrower must ensure that:
- 16.27.1 each premium for the Insurances is paid promptly and in any event prior to the commencement of the period of insurance for which that premium is payable; and
- 16.27.2 all other things necessary are done so as to keep each of the Insurances in force.
- 16.28 If the Borrower fails to comply with any term of clauses 16.21 to 16.33, the Financier may, at the expense of the Borrower effect any insurance and generally do such things and take such other action as the Financier may reasonably consider necessary or desirable to prevent or remedy any breach of clauses 16.21 to 16.33.
- 16.29 The proceeds of any Insurances must be deposited into, for each Tranche:



- 16.29.1 the relevant Mandatory Prepayment Account to the extent of the Insurance Prepayment Proceeds as required under clause 7.6; or
  - 16.29.2 unless the Financier is satisfied that such proceeds will be applied towards repair, replacement or reinstatement of the asset, building or fixture on the Property damaged or destroyed or to which the relevant claim otherwise relates (where applicable) or discharging a liability or claim or making good the liability the subject of any claim, the relevant Proceeds Account as required under clause 13.4.4. Notwithstanding clause 13.6, the Borrower may withdraw the proceeds of any Insurances deposited into a Proceeds Account to the extent required to repair, replace or reinstate the asset, building or fixture on the Property damaged or destroyed or to which the relevant claim otherwise relates (where applicable) or to discharge the liability or claim or make good the liability the subject of any claim.
- 16.30 To the extent required by the basis of settlement under any Insurances or under any Lease Document and provided the conditions in paragraph (b) of the definition of "Insurance Prepayment Proceeds" are satisfied, the Borrower must apply moneys received under any Insurances in respect of the Property towards repairing, replacing or reinstating the Property.
- 16.31 The proceeds of any loss of rent insurance will be treated as Rental Income and applied in such manner as the Financier (acting reasonably) requires to have effect as if it were Rental Income received over the period of the loss of rent.
- 16.32 Moneys received under liability policies held by the Borrower which are required to satisfy established liabilities of the Borrower to third parties must be used to satisfy these liabilities.
- 16.33 The Borrower must ensure that it or the Contractor has in place and maintains, the following insurances in respect of each D&C Project:
- 16.33.1 Contractor's All Risks Insurance covering the full replacement value of the insured property (being at least the Building Contract sum plus the value of all items supplied by the Borrower, if any), plus reasonable amounts for demolition, the removal of debris, professional fees, expediting expenses, loss mitigation expenses, off site storage and transit to the site of the relevant Property (where applicable), claims preparation costs and increases to the cost of work and to:
    - 16.33.1.1 provide cover against loss or damage by accidental damage, fire, storm, tempest, flood, earthquake, lightning, hail, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion, malicious damage, burglary, theft and all other normally insurable risks of loss or damage;
    - 16.33.1.2 provide cover for resultant damage arising from defects in workmanship, material, plan or specification;
    - 16.33.1.3 provide cover in respect of any defects liability period nominated within the relevant Building Contract;
    - 16.33.1.4 provide cover against acts of terrorism, including any third party liability arising from such acts; and
    - 16.33.1.5 covering the Borrower as principal, the Contractor and sub-contractors and noting the Financier as an interested party;

- 16.33.2 **Public and Products Liability Insurance** for an amount of not less than [REDACTED] for any one occurrence (and [REDACTED] in the annual aggregate in respect of Products Liability) covering the Borrower as principal, the Contractor and sub-contractors and noting the Financier as an interested party;
- 16.33.3 **Professional Indemnity Insurance** for an amount of not less than [REDACTED] any one claim and [REDACTED] in the annual aggregate covering the Contractor, sub-contractors and consultants with a design responsibility; and
- 16.33.4 without limiting the Borrower's obligations under clause 16.21.4, such risks which it is required to insure against under any applicable laws.

**Environmental undertakings**

16.34 The Borrower must:

16.34.1 **Environmental Law:**

- 16.34.1.1 comply and establish procedures to ensure that any relevant third party complies with all Environmental Law;
- 16.34.1.2 obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it or to each Property; and
- 16.34.1.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it or any Property,

where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Financier.

16.34.2 **Environmental Claim:** promptly upon becoming aware, notify the Financier of:

- 16.34.2.1 any Environmental Claim started, or to its knowledge, threatened;
- 16.34.2.2 any circumstances reasonably likely to result in an Environmental Claim; or
- 16.34.2.3 any suspension, revocation or notification of any Environmental Permit.

16.34.3 **Indemnity:** must indemnify the Financier against any loss or liability which:

- 16.34.3.1 the Financier incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
- 16.34.3.2 would not have arisen if a Finance Document had not been entered into,

unless it is caused by the Financier's gross negligence or wilful misconduct.

16.34.4 **Notice:** notify the Financier promptly if there is a Contaminant on, in, under or migrating to or from any Property.

16.34.5 **Contaminant:** not have a Contaminant on, in, or under or release a Contaminant from or allow a Contaminant to escape or migrate from any Property.

- 16.34.6 **Mitigate:** if a Contaminant is released, escapes or migrates from any Property, minimise its impact on the Environment and make good any damage it causes.
- 16.34.7 **Avoid risk:** not deal with any of its property or any Contaminant in such a way as to increase the risk of harm from any Contaminant.
- 16.34.8 **Clean up Notice:** notify the Financier promptly if a Governmental Agency issues any notice, order or claim in respect of any Property under any law relating to a Contaminant or relating to pollution or the protection of the Environment (**Clean-up Notice**).
- 16.34.9 **Remedial work:** do any remedial work or other thing required by any Clean-up Notice within any period of time specified in the notice.
- 16.34.10 **Reports:** if the Financier reasonably believes there is a Contaminant on, in, under or migrating to or from any Property or if a Governmental Agency is entitled to issue a Clean-up Notice, arrange for an environmental examination or audit of the Property to be conducted by an appropriately qualified person approved by the Financier, and have any remedial work or any other thing recommended by that person done within such time as the Financier reasonably requires.

**Financier may remedy breach**

- 16.35 If the Borrower does not comply with an obligation it has under a Transaction Document, the Financier may (at the cost of the Borrower) do what the Borrower was required to do.

**Manager**

- 16.36 The Borrower must ensure that a suitable person approved by the Financier (acting reasonably) at all times:
  - 16.36.1 manages the performance by the Borrower of its obligations under the Transaction Documents; and
  - 16.36.2 is an Authorised Officer of the Borrower for all purposes under this agreement.

**SAHF Land**

- 16.37 On the Restatement Date, the land located at [REDACTED] will cease to be LHC Land and will be allocated as SAHF Land.

**17. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this clause 17 is an Event of Default (save for clauses 17.37 and 17.38).

**Non-Payment**

- 17.1 The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:
  - 17.1.1 its failure to pay is caused by:
    - 17.1.1.1 administrative or technical error; or
    - 17.1.1.2 a Disruption Event; and

17.1.2 payment is made within 3 business days of its due date.

**Financial covenants**

17.2 Any requirement of clause 12 is not satisfied.

**Other obligations**

17.3 The Borrower does not comply with any provision of the Finance Documents (other than those referred to in clauses 17.1 and 17.2).

17.4 No Event of Default under clause 17.3 will occur if the failure to comply is capable of remedy and is remedied within 10 business days of the earlier of (i) the Financier giving notice to the Borrower and (ii) the Borrower or the Parent becoming aware of the failure to comply.

**Misrepresentation**

17.5 Any representation or statement made or taken to be made by the Borrower in the Finance Documents is or proves to have been incorrect or misleading in any material respect when made or taken to be made, unless the incorrect or misleading representation or statement is capable of remedy and is remedied within 10 business days of the earlier of (i) the Financier giving notice to the Borrower and (ii) the Borrower or the Parent becoming aware of the incorrect or misleading representation or statement.

**Other failure to pay**

17.6 Any Financial Indebtedness of the Borrower in excess of [REDACTED] is not paid when due nor within any originally applicable grace period.

**Acceleration**

17.7 Any Financial Indebtedness of the Borrower in excess of [REDACTED] is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or review event (however described).

**Cross default**

17.8 Any commitment for any Financial Indebtedness of the Borrower in excess of [REDACTED] is cancelled or suspended by a creditor of the Borrower as a result of an event of default or review event (however described).

17.9 Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower in excess of [REDACTED] due and payable prior to its specified maturity as a result of an event of default or review event (however described).

**Insolvency**

17.10 The Borrower or the Parent:

17.10.1 is or is presumed or taken to be insolvent; or

17.10.2 admits inability, to pay its debts as they fall due, or suspends making payments on any of its debts; or

- 17.10.3 by reason of actual or anticipated financial difficulties, begins negotiations with one or more of its creditors with a view to rescheduling any of its debts.

**Cessation of business**

- 17.11 The Borrower or the Parent stops carrying on its business, or threatens to.

**Status**

- 17.12 The Borrower or the Parent ceases to be a company limited by guarantee, incorporated, or taken to be incorporated, under the *Corporations Act 2001* (Cth).

**Order or judgement**

- 17.13 An order or judgment requiring the Borrower to pay an amount in excess of [REDACTED] is not complied with within 5 business days (unless, in good faith, the Borrower appeals against the order or judgment).

**Moratorium**

- 17.14 A moratorium is declared in respect of any debts of the Borrower, the Parent or any Contractor (or guarantor of a Contractor) unless, in respect of a Contractor (or guarantor of a Contractor), that party is replaced by a party acceptable to the Financier (acting reasonably) within a time frame acceptable to the Financier (acting reasonably).

**Insolvency proceedings**

- 17.15 Any corporate action, legal proceedings or other procedure or step is taken in relation to any of the following:

17.15.1 the suspension of payments, a moratorium of any debts, winding-up, liquidation, dissolution, administration or reorganisation (by way of a formal or informal arrangement or compromise or otherwise) of the Borrower, the Parent or any Contractor (or guarantor of a Contractor);

17.15.2 a composition, assignment or arrangement with any creditor of the Borrower, the Parent or any Contractor (or guarantor of a Contractor);

17.15.3 the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, receiver and manager, administrator, administrative receiver, compulsory manager or other similar person in respect of the Borrower, the Parent or any Contractor (or guarantor of a Contractor) or any of their property; or

17.15.4 enforcement of any Security Interest over any property of the Borrower, and in respect of a Contractor (or guarantor of a Contractor), that party has not been replaced by a party acceptable to the Financier (acting reasonably) within a time frame acceptable to the Financier (acting reasonably).

**Creditors' process**

- 17.16 Any expropriation, attachment, sequestration, distress or execution affects any property of the Borrower or the Parent having an aggregate value of [REDACTED]

### **Investigations**

- 17.17 A government official, creditors' committee, investigating accountant or person with similar powers is appointed to investigate the Borrower's affairs under the *Corporations Act 2001* (Cth).

### **Change of Control**

- 17.18 The Borrower or the Parent experiences a Change of Control.

### **Unlawfulness**

- 17.19 It is or becomes unlawful for the Borrower to perform any of its obligations under the Transaction Documents, or a part of a Transaction Document is unenforceable or of limited force and effect.

### **Repudiation**

- 17.20 The Borrower rescinds or repudiates a Transaction Document or evidences an intention to rescind or repudiate a Transaction Document.

### **Material Documents**

- 17.21 If:
- 17.21.1 it is or becomes unlawful for a counterparty to a Material Document (other than a Project Document or a Lease Document) to perform any of its obligations under that document, or a part of that document is unenforceable;
  - 17.21.2 an event of default (however described) occurs under a Material Document (other than a Project Document or a Lease Document) or it is terminated (except by performance);
  - 17.21.3 a counterparty to a Material Document (other than a Project Document or a Lease Document) repudiates that document or evidences an intention to repudiate that document; or
  - 17.21.4 it is or becomes unlawful for a counterparty or counterparties to a Lease Document, or the form of Lease Document, which is used in respect of at least 5 Properties, to perform any of its obligations under that document, or a part of that document is unenforceable.

### **Tripartite Deeds**

- 17.22 If
- 17.22.1 it is or becomes unlawful for a party to a Tripartite Deed to perform any of its obligations under that Tripartite Deed, or a part of a Tripartite Deed is unenforceable;
  - 17.22.2 a Tripartite Deed becomes terminable, is terminated (except by performance) or a party evidences an intention to terminate a Tripartite Deed, including pursuant to any 'Trigger Event' under the LHC Tripartite Deed, any notice given by FACS of its intention to terminate under the SAHF Tripartite Deed or any notice given by the Parent of its intention to terminate under the SAHF Subcontract Tripartite Deed; or

17.22.3 a counterparty to a Tripartite Deed repudiates a Tripartite Deed or evidences an intention to repudiate a Tripartite Deed.

**Maintenance of capital**

17.23 The Borrower passes a resolution to do any of the following:

17.23.1 to permit the giving of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or of any right or interest in the Borrower or any holding company of the Borrower;

17.23.2 to reduce its capital;

17.23.3 to limit its ability to make calls on its uncalled capital; or

17.23.4 to approve the purchase by the Borrower of any shares or interests in itself.

**Abandonment**

17.24 The Borrower abandons all or a significant part of a D&C Project for a continuous period of 15 days or more.

**Compulsory purchase**

17.25 Any part of the Property is compulsorily purchased or the applicable local authority makes an order for the compulsory purchase of all or any part of the Property and in the opinion of the Financier (acting reasonably) taking into account the amount and timing of any compensation payable, the compulsory purchase has or will have a Material Adverse Effect.

**Major damage**

17.26 Any substantial part of a Property is destroyed or damaged and, in the opinion of the Financier (acting in good faith), taking into account the amount and timing of receipt of the proceeds of insurance effected in accordance with the terms of this agreement, the destruction or damage has or is reasonably likely to have a Material Adverse Effect.

**Additional events**

17.27 Any event occurs that gives rise to a right of intervention by the Registrar that has or is reasonably likely to have an adverse impact on the interests of the Financier.

17.28 The Borrower assigns or attempts to assign any of its rights or transfer any of its rights or obligations under any funding arrangement with a Governmental Agency to any other person.

17.29 The Borrower or the Parent:

17.29.1 is de-registered as a Community Housing Provider;

17.29.2 ceases to be a registered charity; or

17.29.3 ceases to hold the Housing Authorisations.

17.30 The Borrower is no longer approved as an Approved Participant other than as a result of the NRAS End Date coming into effect.

- 17.31 Where applicable, a Property is no longer approved as an Approved Rental Dwelling other than as a result of the NRAS End Date coming into effect and as a result a Material Adverse Effect is likely to occur.

**Material adverse change**

- 17.32 Any event or circumstance occurs which, in the opinion of the Financier, has or is reasonably likely to have a Material Adverse Effect.

**SAHF Services Agreement**

- 17.33 The Borrower fails to satisfy the conditions precedent in clause 3.8 in respect of the SAHF Tranche within 12 months from the "Date for Service Readiness" for the last "Stage" (each as defined in the SAHF Services Agreement).

- 17.34 The occurrence of:

- 17.34.1 a "Major Default" (as defined in the SAHF Services Agreement) (SAHF Major Default) and, where such SAHF Major Default:

17.34.1.1 is capable or deemed to be capable of remedy, the Borrower fails to promptly demonstrate, to the satisfaction of the Financier (acting reasonably), that it is diligently taking steps towards remedying such SAHF Major Default; or

17.34.1.2 is not capable of remedy, the Borrower fails to promptly demonstrate, to the satisfaction of the Financier (acting reasonably), that it is diligently taking steps towards complying with any reasonable requirements of FACS to overcome the consequences of such SAHF Major Default,

within the period set out in the relevant "Major Default Notice" (as defined in the SAHF Services Agreement), as extended if at all in accordance with the SAHF Services Agreement; and

- 17.34.2 a "Default Termination Event" (as defined in the SAHF Services Agreement).

- 17.35 The failure to achieve "Service Readiness" within 12 months of the "Date for Service Readiness" for any "Stage" (each as defined in the SAHF Services Agreement).

**Insurance**

- 17.36 Any Insurances are void and have not been replaced on terms that comply with this agreement within 10 business days.

**Consequences of an Event of Default**

- 17.37 If an Event of Default has occurred and is continuing, the Financier may, by notice to the Borrower, do any or all of the following:

- 17.37.1 terminate any Facility, in which case the Facility is terminated immediately and the Commitment is zero;



- 17.37.2 declare that the Principal Outstanding and any other Secured Money is payable immediately, in which case those amounts will be immediately due and payable;
- 17.37.3 declare that the Principal Outstanding and any other Secured Money is due and payable on demand, in which case those amounts will be due and payable on demand; and
- 17.37.4 exercise any rights available under any Finance Document.

**Borrower must help Financier**

- 17.38 The Borrower must do everything the Financier asks it to do to help the Financier exercise its powers under this agreement.

**18. REVIEW EVENTS**

- 18.1 Unless waived by the Financier, it is a Review Event if, in respect of a D&C Project:
  - 18.1.1 Practical Completion is not achieved within 20 weeks of the Required Completion Date for that D&C Project;
  - 18.1.2 the Contractor (or guarantor of a Contractor):
    - 18.1.2.1 is or is presumed or taken to be insolvent;
    - 18.1.2.2 admits inability to pay its debts as they fall due, or suspends making payments on any of its debts; or
    - 18.1.2.3 by reason of actual or anticipated financial difficulties, begins negotiations with one or more of its creditors with a view to rescheduling any of its debts,

and that party is not promptly replaced by a party acceptable to the Financier (acting reasonably);

- 18.1.3 it is or becomes unlawful for a counterparty to a Project Document to perform any of its obligations under that document, or a part of that document is unenforceable;
- 18.1.4 an event of default (however described) occurs under a Project Document or it is terminated (except by performance); or
- 18.1.5 a counterparty to a Project Document repudiates that document or evidences an intention to repudiate that document,

(each a "Review Event").

**Consequence of a Review Event**

- 18.2 Following a Review Event, the Borrower and the Financier agree to negotiate in good faith to attempt to agree appropriate amendments to the Finance Documents or to agree appropriate remedies to take into account the Review Event.
- 18.3 If the Borrower and the Financier fail to agree to appropriate amendments or fail to remedy such Review Event (to the Financier's satisfaction), as applicable, within 30 days of the Review Event, then the Financier may by giving, not less than 60 days' notice to the Borrower, cancel all or any part of the Facilities and declare all or any Advance, together

with accrued interest, and any other amounts accrued under the Finance Documents, immediately due and payable, whereupon such Facilities will be cancelled and such outstanding amounts will become immediately due and payable.

**19. SET-OFF**

- 19.1 The Financier may, but need not, set off any matured obligation due from the Borrower under a Finance Document against any obligation owed by the Financier to the Borrower (whether or not matured), regardless of the place of payment, booking branch or currency of either obligation.
- 19.2 If the obligations are in different currencies, the Financier may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**20. TAX**

**Payment of Tax**

- 20.1 The Borrower must pay all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

**Gross up**

- 20.2 The Borrower must do each of the following if it is obliged to make a deduction in respect of Tax from a payment under a Finance Document:
- 20.2.1 pay the amount deducted to the appropriate Governmental Agency as required by law;
- 20.2.2 promptly give the Financier a copy of a receipt, certificate or other document evidencing payment; and
- 20.2.3 pay the Financier, at the same time the deduction in respect of Tax is due to be paid, an additional amount so that the Financier receives a net amount (after allowance for any further deduction and any Tax on the additional amount) equal to the amount it would have received if no deduction had been made (and the Borrower indemnifies the Financier against the Tax and any amounts recoverable from the Financier in respect of the Tax).
- 20.3 The above clause is a continuing obligation of the Borrower that continues after this agreement ends.

**Tax indemnity**

- 20.4 The Borrower indemnifies the Financier against, and must pay the Financier on demand the amount of, all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis) in connection with any Tax payable by the Financier in respect of a Finance Document or a transaction or payment under a Finance Document, other than any of the following:
- 20.4.1 Tax imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Financier under the law of the jurisdiction in which the Financier is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Financier is treated as resident for Tax purposes; or

- 20.4.2 Tax payable by the Financier to the extent the relevant loss, liability, cost or expense suffered in respect of that Tax is compensated for pursuant to a gross-up payment under clause 20.2 or a payment under clause 21.

#### **GST**

20.5 All payments to be made by the Borrower under or in connection with a Finance Document have been calculated without regard to GST. If all or part of any such payment is the consideration for a taxable supply or chargeable with GST then, when the Borrower makes the payment, the following must occur:

20.5.1 the Borrower must pay to the Financier an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST; and

20.5.2 the Financier must promptly provide to the Borrower a tax invoice complying with the relevant law relating to GST.

20.6 Where a Finance Document requires the Borrower to reimburse the Financier for any costs or expenses, that Borrower must also at the same time pay and indemnify the Financier against all GST incurred by the Financier in respect of the costs or expenses except to the extent that the Financier is entitled to repayment or credit in respect of GST. The Financier must promptly provide to the Borrower a tax invoice complying with the relevant law relating to GST.

20.7 For the purpose of the above clauses relating to GST, terms used that are not otherwise defined in this agreement have the meaning given in *A New Tax System (Goods & Services Tax) Act 1999*.

### **21. INCREASED COSTS**

#### **Increased Costs**

21.1 The Borrower must pay the Financier, within 10 business days of demand, any Increased Costs incurred directly or indirectly by the Financier or any Related Body Corporate of the Financier as a result of any of the following happening after the date of this agreement:

21.1.1 the introduction of any law or regulation (including relating to Tax);

21.1.2 a change to any law or regulation or to the interpretation or application of any law or regulation; or

21.1.3 the Financier or any Related Body Corporate of the Financier complying with any direction, request or requirement of any Governmental Agency (whether or not having the force of law).

#### **Exceptions to Increased Costs**

21.2 Despite the above clause, the Borrower does not have to pay the Financier for any Increased Costs to the extent that the following applies:

21.2.1 the Increased Cost is attributable to a deduction in respect of Tax that is required by law to be made by the Borrower (however any applicable "gross-up" provision in this agreement will continue to apply);

21.2.2 the Increased Cost is attributable to a FATCA Deduction required to be made by a party; or

- 21.2.3 the Increased Cost is attributable to the wilful breach by the Financier or any Related Body Corporate of the Financier of any law or regulation.

**Claims for Increased Costs**

- 21.3 The Financier must do the following if it intends to make a demand for payment of Increased Costs:
  - 21.3.1 notify the Borrower as soon as practicable of the event giving rise to the claim; and
  - 21.3.2 provide a certificate confirming the amount of any Increased Costs likely to be demanded.

**22. ILLEGALITY**

- 22.1 If, after the date of this agreement, it becomes unlawful or (as a result of a change in law or regulation) impossible or impractical for the Financier to maintain or give effect to any of its obligations under the Finance Documents, the following will apply:
  - 22.1.1 the Financier's obligations under the Finance Documents will be suspended immediately for the duration of the illegality or impossibility;
  - 22.1.2 the Financier may, by notice to the Borrower, terminate its obligations under all of the Finance Documents; and
  - 22.1.3 if a notice is given under clause 22.1.2, the Borrower must prepay the Principal Outstanding together with all other Secured Money in full immediately, or if delay in prepayment does not compound the unlawful event, within 30 days (or any lesser period if the applicable law requires) of the Financier giving notice to the Borrower.

**23. INDEMNITY**

**General indemnity**

- 23.1 The Borrower indemnifies the Financier against, and must pay the Financier on demand the amount of, all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis) in connection with any of the following:
  - 23.1.1 **Default:** The occurrence of any Default.
  - 23.1.2 **Transactions:** Any:
    - 23.1.2.1 failure by the Borrower to comply with its obligations under a Finance Document; or
    - 23.1.2.2 enquiry, investigation, subpoena (or similar) or proceedings (including any litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or Governmental Agency) with respect to the Borrower or with respect to the transactions contemplated or financed under the Finance Documents.
  - 23.1.3 **Preconditions:** Any failure by the Financier to make an Advance available to the Borrower because of the non-satisfaction of a condition precedent in clause 3.

23.1.4 **Break costs:** Any Advance or part of an Advance being repaid or becoming due for repayment on a date other than the Interest Payment Date for that Advance. This includes any losses, liabilities, costs and expenses that may be incurred by the Financier due to any of the following:

23.1.4.1 the cancellation, termination or alteration of any swap or other arrangement made by the Financier to fund, whether in whole or in part, any Advance or other payment; or

23.1.4.2 any liquidation or re-employment of deposits or other funds acquired by the Financier to fund any Advance or other payment.

23.1.5 **Notices:** Any notice or communication (including any fax) being provided to the Financier that is not genuine, correct or appropriately authorised (where the Financier reasonably believes it to be so).

#### **Currency indemnity**

23.2 The Borrower indemnifies the Financier against, and must pay the Financier on demand the amount of, all losses, liabilities, costs and expenses in connection with the following:

23.2.1 any amount payable in connection with a Finance Document being paid in a currency other than that in which it is expressed to be payable; and

23.2.2 any amount payable under an order, judgment or award given or made in connection with a Finance Document, being paid in a currency other than that in which amounts are generally expressed to be payable under the Finance Document.

23.3 The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

23.4 Payment of an amount in a currency other than the due currency does not discharge that amount except to the extent of the amount of the due currency actually obtained when the recipient converts the amount received into the due currency.

23.5 If the Financier receives payment in a currency other than the due currency, the Financier may convert the amount received at a market rate of exchange in its usual course of business for the purpose of determining the amount received in the due currency.

### **24. COSTS AND EXPENSES**

#### **Transaction expenses**

24.1 The Borrower must promptly on demand pay the Financier the amount of all costs and expenses (including legal fees) reasonably incurred by the Financier in connection with the negotiation, preparation, printing and execution of the Finance Documents.

#### **Amendment costs**

24.2 The Borrower must promptly on demand pay the Financier the amount of all costs and expenses (including legal fees) reasonably incurred by or for the account of the Financier in evaluating, negotiating or documenting any consent or waiver under a Finance Document or any amendment to a Finance Document.

### **Enforcement costs**

- 24.3 The Borrower must, on demand, pay to the Financier the amount of all costs and expenses (including legal expenses on a full indemnity basis) incurred by the Financier in connection with the enforcement of, or the preservation of any rights under, any Finance Document or in connection with anything referred to in clause 23.1.

### **Valuations**

- 24.4 The Borrower shall provide a Valuation to the Financier for each Property annually within 30 days after the last day of each financial year and otherwise the Financier may request a Valuation at any time.
- 24.5 The Borrower shall promptly on demand pay to the Financier the costs of:
- 24.5.1 a Valuation obtained by the Financier in respect of a Project on or about the occurrence of Practical Completion in respect of that Project;
  - 24.5.2 a Valuation obtained by the Financier in connection with the compulsory purchase of all or part of a Property; and
  - 24.5.3 a Valuation obtained by the Financier at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation.
- 24.6 Any Valuation not referred to in clause 24.4 or 24.5 will be at the cost of the Financier.

### **Monitoring costs**

- 24.7 The Borrower must, within 3 business days of demand, reimburse to the Financier the amount of all costs and expenses (including legal fees) reasonably incurred by the Financier in connection with the monitoring of a D&C Project.

### **Consultant costs**

- 24.8 The Borrower acknowledges and agrees that the Financier may, prior to each Financial Close, and following Financial Close appoint consultants in connection with each Project including:
- 24.8.1 a Quantity Surveyor; and
  - 24.8.2 a Sustainability Consultant.
- 24.9 The Borrower shall be liable for payment of the fees, costs and expenses of each consultant appointed by Financier in connection with a Project, provided that, unless a Default is subsisting, the fees, costs and expenses of each such consultant were approved by the Borrower (acting reasonably) prior to appointment.

## **25. APPOINTMENT OF ATTORNEYS**

- 25.1 For valuable consideration, the Borrower irrevocably appoints as its separate attorneys the Financier and each of the Financier's officers, managers and solicitors. Each attorney has power to do any one or more of the following, but only if an Event of Default has occurred and is continuing:
- 25.1.1 anything the Borrower is required to do under a Transaction Document;

25.1.2 anything the attorney thinks necessary to protect the Financier's rights under a Transaction Document or to exercise any power that the Financier has under a Transaction Document; and

25.1.3 anything else the Borrower could do as owner of the Secured Property.

25.2 An attorney appointed under this agreement is not liable for any liability, loss, damage, cost or expense the Borrower incurs or suffers as a result of the attorney's actions, other than to the extent caused by the attorney's fraud, gross negligence or wilful misconduct. The Borrower must indemnify each attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and Taxes incurred or suffered while acting as the Borrower's attorney.

## 26. NOTICES

### Giving notices

26.1 Any notice or communication (including any consent or waiver) given to a Party under this agreement is only given if it is in writing and sent in one of the following ways:

26.1.1 delivered or posted to that Party at its address and marked for the attention of the relevant department or officer (if any) set out below;

26.1.2 faxed to that Party at its fax number and marked for the attention of the relevant department or officer (if any) set out below; or

26.1.3 sent by email to that Party to the email address set out below.

### Financier

Name:

Address:

Email:

Fax number:

Attention:

### Borrower

Name: SGCH Sustainability Limited

Address: Level 5, 38 Humphreys Lane, Hurstville NSW 2220

Email: office@sgch.com.au

Fax number: +61 2 9585 1564

Attention: Chief Executive Officer

### **Change of address, fax number or email address**

- 26.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email address, any notice or communication is only given by that other Party if it is delivered, posted or faxed to the latest address, fax number or email address.

### **Time notice is given**

- 26.3 Any notice or communication is to be treated as given at the following time:
- 26.3.1 to the Borrower:
    - 26.3.1.1 if it is delivered, when it is left at the Borrower's address;
    - 26.3.1.2 if it is sent by post, 2 (or, in the case of a notice or communication posted to another country, 9) business days after it is posted;
    - 26.3.1.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
    - 26.3.1.4 if it is sent by email to the specified email address, as soon as the email is received in readable form; and
  - 26.3.2 to the Financier, when it is actually received.
- 26.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the Party to whom it is sent, it is to be treated as having been given at the beginning of the next business day.

## **27. MISCELLANEOUS**

### **Allowing conduct of others**

- 27.1 If the Borrower is not permitted to do something by this agreement, it must not allow or assist anyone else to do that thing.

### **Assignment**

- 27.2 The Borrower may not assign or transfer all or any part of its rights or obligations under this agreement or any other Finance Document without the prior consent of the Financier.
- 27.3 The Financier may not assign or transfer all or any part of its rights or obligations under this agreement or any other Finance Document without the prior consent of the Borrower, subject to clause 27.4.
- 27.4 The Financier may assign or transfer all or any part of its rights or obligations under this agreement or any other Finance Document without the consent of the Borrower where:
- 27.4.1 the transfer complies with all laws and assignee or transferee is a Qualifying Transferee;
  - 27.4.2 the transfer is to a securitisation or funding vehicle, or is by way of a sub-participation, and in each case the Financier remains the lender of record; or
  - 27.4.3 an Event of Default is continuing.



### **Attorneys**

- 27.5 Each attorney who executes this agreement on behalf of a Party declares that the attorney has no notice of any revocation, suspension or variation of the power of attorney under the authority of which the attorney executes this agreement.

### **Counterparts**

- 27.6 This agreement may be signed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this agreement.

### **Entire agreement**

- 27.7 This agreement contains everything the Financier has agreed in relation to the matters it deals with. The Borrower cannot rely on an earlier document, or anything said or done by the Financier, or by a director, officer, agent or employee of the Financier, before this agreement was executed.

### **Evidence**

- 27.8 A certificate signed by the Financier of the amount of the debts owing under this agreement or anything else relating to this agreement is conclusive evidence of what it states, unless proved to be incorrect. The Borrower cannot object to the admission of a certificate of that type in any proceedings.

### **Exercise of rights**

- 27.9 Except as expressly provided in this agreement, a Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- 27.10 A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy and failure by a Party to exercise, or delay by a Party in exercising, a right, power or remedy does not prevent its exercise.

### **Further steps**

- 27.11 The Borrower must do everything reasonably necessary (including executing or producing documents, getting documents executed or produced by others and obtaining consents) to give effect to this agreement (including the transactions contemplated by it).

### **Governing law and jurisdiction**

- 27.12 This agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Inconsistency between documents**

- 27.13 If the terms of this agreement are inconsistent with another Finance Document, this agreement prevails.

### **Indemnities**

- 27.14 Each indemnity in this agreement is a continuing obligation, separate from the other obligations of the Parties, and continues after this agreement ends.
- 27.15 A Party may enforce a right of indemnity at any time (including before it has incurred loss).

### **Other rights unaffected**

- 27.16 The Financier's rights under this agreement are in addition to any rights that the Financier may have apart from it.

### **Publicity**

- 27.17 The Borrower must:
- 27.17.1 cooperate and provide reasonable assistance to the Financier to meet any publication or reporting requirements under the *Clean Energy Finance Corporation Act 2012* (Cth) or any other law or regulation that may be applicable to the Financier from time to time; and
  - 27.17.2 obtain (and ensure that the Parent obtains) the Financier's prior written consent prior to issuing any communication that refers to the Financier (except to the extent that it is required by any law or stock exchange to issue the communication or make that disclosure).

### **Severability**

- 27.18 Each provision of this agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this agreement in the relevant jurisdiction, but the rest of this agreement will not be affected by the severing of the provision. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **Variation**

- 27.19 No variation of this agreement will be of any force or effect unless it is in writing and signed by the Financier.

### **Waiver and consents**

- 27.20 A waiver or consent provided by the Financier under this agreement:
- 27.20.1 must be in writing and signed by the Financier;
  - 27.20.2 will be provided at the Financier's discretion;
  - 27.20.3 will only affect the particular provision, obligation or breach for which it is given;
  - 27.20.4 will not imply that a waiver or consent is provided in respect of any other provision, obligation or breach or provided on any other occasion; and
  - 27.20.5 may be provided conditionally in which case the Borrower agrees to comply with the conditions of the consent or waiver given by the Financier.
- 27.21 The fact that the Financier fails to do, or delays in doing, something the Financier is entitled to do under this agreement does not amount to a waiver or consent.

### **Privacy Statement**

- 27.22 Each Party acknowledges that the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth) apply to all Personal Information collected and disclosed for the purposes of, or in connection with, this agreement.
- 27.23 The Financier must provide a Privacy Statement to the Borrower on or before the date of this agreement. The Financier may update this Privacy Statement from time to time and provide the same to the Borrower.
- 27.24 If, at any time:
- 27.24.1 the Borrower provides a person's Personal Information to the Financier; or
  - 27.24.2 a person is directed by the Borrower to provide Personal Information to the Financier,
- then the Borrower agrees to provide a copy of the Privacy Statement to the person at or before the time the Personal Information is provided to the Financier (or, if that is not practicable, promptly after that time).

### **AML/CTF Provision**

- 27.25 If the Financier forms the view that, in its reasonable opinion, it is required to disclose information obtained under or in relation to the Finance Documents to any person in order to comply with its obligations under the AML/CTF Laws, the Borrower agrees and consents to such disclosure, and agrees that, to the extent required or authorised by or under any law or regulation, such disclosure will not be a breach of any obligation or duty owed by the Financier to the Borrower, and releases the Financier from any claim that it would otherwise have in respect of such disclosure.
- 27.26 The Financier may delay, block or refuse to process any transaction without incurring any liability if it reasonably suspects that:
- 27.26.1 the Borrower has not complied with its obligations under this clause and/or clause 11.17;
  - 27.26.2 the transaction may breach any AML/CTF Laws;
  - 27.26.3 the transaction involves any country, goods, services, entity or person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any country, goods, services, entity or person that is sanctioned under Australia sanctions laws implementing United Nations Security Council sanction regimes and Australian autonomous sanction regimes, or sanctions laws of any other relevant country or international body; or
  - 27.26.4 the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in Australia or any other relevant country.

### **Disclosure of information**

- 27.27 The Financier may disclose any information it considers appropriate about the Borrower, the Transaction Documents and any transaction in connection with any of them to a proposed assignee, transferee, sub-participant, securitisation vehicle or any proposed participant in a credit derivative transaction or a synthetic securitisation transaction in connection with the Finance Documents, to any ratings agency or Governmental Agency, to any person with

respect to whom it intends on entering into a credit derivative transaction or a synthetic securitisation transaction in relation to all or part of its participation in a Facility and to a person proposing to enter into any arrangement with a Receiver or the Financier in connection with the Finance Documents, provided that such disclosure is made on a confidential basis.

#### **Confidentiality**

- 27.28 Each Party agrees not to disclose to any other person the existence or contents of any Finance Document, or any information provided by another Party in connection with a Finance Document which is not publicly available, except:
- 27.28.1 with the prior consent of the Party providing the information (not to be unreasonably withheld or delayed);
  - 27.28.2 if required by law, a Governmental Agency or administrative guideline or policy (even if not having force of law) which the person disclosing the information customarily complies with (except that this paragraph does not require a Financier to disclose any information of the kind referred to in section 275(1) of the PPSA);
  - 27.28.3 in connection with any exercise of a Power or any legal proceeding relating to any Finance Document;
  - 27.28.4 to the disclosing Party's auditors, legal advisers or other consultants in confidence;
  - 27.28.5 to the disclosing Party's Related Body Corporate, subject to the Related Body Corporate undertaking to observe this clause;
  - 27.28.6 in the case of the Financier, as permitted under clause 27.27;
  - 27.28.7 to any stock exchange, provided that the Borrower may not disclose information relating to pricing, Margin or fees concerning the Facilities without the prior written consent of the Financier;
  - 27.28.8 to any rating agency to the extent required by it and provided that the recipient agrees to keep such information confidential;
  - 27.28.9 to FACS as required under a SAHF Service Package Document; or
  - 27.28.10 as expressly permitted or required under a Finance Document.

#### **Mitigation by the Financier**

- 27.29 The Financier must promptly notify the Borrower of, and in consultation with the Borrower take all reasonable steps to mitigate, any circumstances which arise and which would result in any amount becoming payable to it under, or its Commitment being cancelled pursuant to, clause 20, 21, or 22 including transferring its rights and obligations under the Finance Documents.

EXECUTED AS AN AGREEMENT:

*[Executed under the Facility Restatement Deed]*

## SCHEDULE 1: CONDITIONS PRECEDENT

### Part 1: Conditions precedent to LHC Financial Close

Each of the following, each in form and substance satisfactory to the Financier:

1. **Verification Certificate:** a verification certificate for the Borrower, dated no earlier than 5 business days before the first Funding Date under the LHC Tranche, substantially in the form of Schedule 3 with the attachments listed in the certificate.
2. **Corporate authorisation:**
  - 2.1 A certified copy of the constitutional documents of the Parent.
  - 2.2 A certified copy of an extract of a resolution of the board of directors of the Parent:
    - 2.2.1 approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
    - 2.2.2 authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and
    - 2.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.
  - 2.3 A certificate of the Borrower (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the total Commitment would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
3. **Finance Documents:** A duly executed original of the following Finance Documents:
  - 3.1 this agreement;
  - 3.2 each Security Document;
  - 3.3 the LHC Tripartite Deed;
  - 3.4 the Original Subordination Deed; and
  - 3.5 the Account Bank Deed.
4. **Legal opinion:**
  - 4.1 A legal opinion from the Financier's solicitors in relation to due execution by the Borrower and enforceability against the Borrower of the Finance Documents.
  - 4.2 A legal opinion from the Borrower's solicitors in relation to the due execution by the Borrower and the Parent and enforceability of the LHC Tripartite Deed, the Original Management Services Agreement and the LHC Vesting Agreements.
5. **Authorisation:**

- 5.1 A copy of any Authorisation or other document, opinion or assurance which is necessary in connection with the entry into and performance of the transactions contemplated by the Transaction Documents or for the validity and enforceability of any Transaction Document.
  - 5.2 A copy of each Housing Authorisation and evidence that rent payments collected through Centrelink will be paid into the LHC Tranche Proceeds Account.
6. **Searches:** The results of all searches and enquiries undertaken by the Financier or its solicitors in relation to the Borrower, the Parent and any Secured Property.
7. **LHC Tranche Material Documents:** With regard to the LHC Tranche Material Documents in existence prior to LHC Financial Close:
  - 7.1 a certified copy of each LHC Tranche Material Document; and
  - 7.2 confirmation that all conditions precedents have been satisfied or waived under the LHC Tranche Material Documents;
8. **Proforma Lease Document:** A copy of each Proforma Lease Document.
9. **Insurances:** In relation to insurances:
  - 9.1 provision of an insurance certificate(s) of currency confirming:
    - 9.1.1 buildings and improvements insurance for full replacement value of the Property;
    - 9.1.2 public liability insurance for no less than [REDACTED] and
    - 9.1.3 business interruption insurance for loss of rent (in respect of a period of not less than 3 years);
  - 9.2 evidence that the insurance cover in force in respect of the Property complies with the terms of this agreement and the necessary premiums have been paid; and
  - 9.3 evidence that the Financier is noted on insurance documents as first ranking mortgagee over all assets and undertakings of the Borrower.
10. **Corporate Structure:** A copy of the corporate structure of the corporate group of which the Parent is the head company.
11. **Fees:** Payment of all fees and expenses (including professional fees) which are due on the date of this agreement or on the first Funding Date under the LHC Tranche (or confirmation that these will be paid from the proceeds of the first Advance drawn under the LHC Tranche of this agreement).
12. **Know your customer:** Information required by the Financier to ensure it satisfies any anti-money laundering laws, anti-terrorism laws and any applicable internal policies of the Financier, including any relevant information (or updated information) to confirm the identity of officers of the Borrower or the Parent.
13. **Other:** Any other information or documents that the Financier requests.

14. **Financial Information:**

- 14.1 A pro forma balance sheet of the Borrower as at the first Funding Date under the LHC Tranche.
- 14.2 A copy of the audited Base Case Financial Model.
- 14.3 The Original Financial Statements.
- 14.4 Evidence of the calculation of the LHC Tranche Equity Contribution Amount, including details of:
  - 14.4.1 value of the contribution in kind to be made as described in paragraph (a) of the definition of "LHC Tranche Equity Contribution Amount"; and
  - 14.4.2 any net proceeds received from the sale of any LHC Vested Property prior to LHC Financial Close.
- 14.5 Evidence that the Parent has contributed the cash component of the LHC Tranche Equity Contribution Amount by way of the relevant Intercompany Loan Agreement or will do so prior to the first Funding Date under the LHC Tranche as follows:
  - 14.5.1 [REDACTED] of the LHC Tranche Equity Contribution Amount deposited into the Debt Service Reserve Account;
  - 14.5.2 not less than [REDACTED] of the initial the LHC Tranche Commitment deposited into the Tenancy Sustainability Account; and
  - 14.5.3 the balance of the cash component of the LHC Tranche Equity Contribution Amount (if any) deposited into the LHC Tranche Construction Account.
- 14.6 Evidence that the Accounts (other than the SAHF Tranche Accounts) have been established.
- 14.7 A funds flow statement setting out the funding and application of funds in relation to acquisition of the LHC Property and the financing or refinancing of that acquisition and payment of fees, costs and expenses and Taxes in connection with the same.

15. **Property:**

- 15.1 All title documents relating to the Borrower's interest in the LHC Property.
- 15.2 Evidence that all Security Interests (other than Transaction Security or Permitted Security Interests) affecting the Borrower's interest in the LHC Property have been, or will be, discharged by the first Funding Date under the LHC Tranche.
- 15.3 Evidence in the form of a certificate that a notice has been given to each tenant under a Lease Document in respect of each LHC Vested Property, in form and substance satisfactory to the Financier, that:
  - 15.3.1 the landlord under that Lease Document is now the Borrower; and
  - 15.3.2 all rent to be paid under that Lease Document is to be paid to the LHC Tranche Proceeds Account.



15.4 Copies of all Authorisations required in connection with the transfer of the LHC Property to the Borrower and the mortgage of the LHC Property in favour of the Financier under the Real Property Mortgage.

15.5 Evidence that the transfer of the LHC Vested Property and Land from the Parent to the Borrower was for nominal consideration.

**16. Security and other Finance Documents:**

Evidence of stamping and registration of all Finance Documents (including under the PPSA) including receipt and lodgement, as applicable of all title documents.

**17. Tax:**

17.1 A copy of the GST registration certificate for the Borrower.

17.2 Tax ruling confirming:

17.2.1 the Parent will not incur any capital gains tax in respect of the transfer of the LHC Vested Property, the LHC Land or any Turnkey Project to the Borrower; and

17.2.2 the Co-Op Endorsement Notice continues to apply to the Parent.

17.3 Tax Ruling confirming that if the Borrower or the Financier disposes of any LHC Property, no capital gains tax will be incurred by the Borrower or the Financier.

17.4 Evidence that each of the Borrower and Parent is registered as a charity and each is exempt from NSW stamp duty and income tax in respect of all Community Housing and that the transfer of the LHC Vested Property, the LHC Land or any Turnkey Project by the Parent to the Borrower, and any supply of accommodation to be made by the Borrower, is not subject to GST. This will include evidence confirming that the Parent and the Borrower are each exempt from income tax for the purposes of Division 50 of the *Income Tax Assessment Act 1997*.

**18. Other documents and evidence:**

18.1 Evidence of any grants received by the Borrower from any Governmental Agency including that:

18.1.1 the Borrower has been given assistance under the Housing Act by LHC; and

18.1.2 where applicable, the Borrower has been given Incentives under the NRAS Act in respect of the LHC Property.

18.2 Evidence of any Allocation made by the Secretary to the Borrower in respect of the LHC Property.

18.3 Evidence satisfactory to the Financier that the Borrower's AIP Plan (including an executive summary of the relevant Projects) has either been approved by the AIP Agency or an exemption to the requirement for an AIP Plan has been issued by the AIP Agency.

- 18.4 Confirmation that there is an absence of any material pending or threatened litigation or other proceedings.
- 18.5 Confirmation that no event or circumstance resulting in a Material Adverse Effect has occurred and is continuing.
- 18.6 The initial Business Plan.
- 18.7 A Valuation confirming valuation of the LHC Vested Property at no less than [REDACTED] (subject to any reduction in respect of the sale of any LHC Vested Property prior to LHC Financial Close to the extent that the net proceeds of sale form part of the Equity Contribution Amount) and the LHC Land valued at no less than [REDACTED]
- 18.8 An audit report of the Base Case Financial Model (including confirmation of the Borrower's forecast CFADS of [REDACTED] prior to the LHC Tranche Conversion Date).
- 18.9 A report by Corrs addressed to the Financier confirming that:
- 18.9.1 no security interests are registered against the Borrower on the Personal Property Securities Register other than in favour of the Financier;
  - 18.9.2 the LHC Land and the LHC Vested Property is registered in the name of the Borrower; and
  - 18.9.3 the LHC Land and the LHC Vested Property is free from Security Interests (other than Transaction Security and any Permitted Security Interests, each of which will be specifically described in the report) and restrictions or covenants.
- 18.10 An insurance report, the scope of which is agreed by the Borrower and the Financier.
- 18.11 A report by a Sustainability Consultant in relation to the LHC Land, the LHC Vested Property and each D&C Project which has commenced prior to the date of this agreement, the scope of which is agreed by the Borrower and the Financier.

## Part 2: Conditions precedent to SAHF Financial Close

Each of the following, each in form and substance satisfactory to the Financier:

1. **Verification Certificate:** a verification certificate for the Borrower, dated no earlier than 5 business days before "Commercial Close" (as defined in the SAHF Services Agreement), substantially in the form of Schedule 3 with the attachments listed in the certificate.
2. **Corporate authorisation:**
  - 2.1 A certified copy of the constitutional documents of the Parent.
  - 2.2 A certified copy of an extract of a resolution of the board of directors of the Parent:
    - 2.2.1 approving the terms of, and the transactions contemplated by, the SAHF Tranche Finance Documents, the SAHF Tranche Material Documents and the MSA Amendment Deed to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
    - 2.2.2 authorising a specified person or persons to execute the SAHF Tranche Finance Documents, the SAHF Tranche Material Documents and the MSA Amendment Deed to which it is a party on its behalf; and
    - 2.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the SAHF Tranche Finance Documents, the SAHF Tranche Material Documents and the MSA Amendment Deed to which it is a party.
  - 2.3 A certificate of the Borrower (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the total Commitment would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
3. **Finance Documents:** A duly executed original of each SAHF Tranche Finance Document and the MSA Tripartite Deed.
4. **Legal opinion:**
  - 4.1 A legal opinion from the Financier's solicitors in relation to due execution by the Borrower and the Parent and enforceability of the SAHF Tranche Finance Documents (other than the SAHF Tripartite Deed) and the MSA Tripartite Deed.
  - 4.2 A legal opinion from the Borrower's solicitors in relation to the due execution by the Borrower, the Parent and FACS of, and the enforceability of, the SAHF Services Agreement, the SAHF Services Subcontract, the SAHF Tripartite Deed, the MSA Amendment Deed and the SAHF Tranche Intercompany Loan Agreement (to the extent they are party to those documents).
5. **Authorisation:** A copy of any Authorisation or other document, opinion or assurance which is necessary in connection with the entry into and performance of the transactions contemplated by the SAHF Tranche Finance Documents, the SAHF Tranche Material Documents and the MSA Amendment Deed or for the validity and enforceability of any such document.

6. **Searches:** The results of all searches and enquiries undertaken by the Financier or its solicitors in relation to the Borrower, the Parent and any Secured Property.
7. **Equity Documents:** A certified copy of the SAHF Tranche Intercompany Loan Agreement.
8. **Material Documents:** With regard to the SAHF Tranche Material Documents and the MSA Amendment Deed:
  - 8.1 a certified copy of each SAHF Tranche Material Document and the MSA Amendment Deed; and
  - 8.2 confirmation that all conditions precedents have been satisfied or waived under the SAHF Tranche Material Documents and the MSA Amendment Deed or will be satisfied or waived on SAHF Financial Close.
9. **Insurances:** In relation to insurances:
  - 9.1 provision of insurance certificate(s) of currency confirming that the following policies are in place:
    - 9.1.1 Industrial Special Risks (Material Damage and Business Interruption) Insurance in compliance with clause 16.21.1
    - 9.1.2 Public and Products Liability Insurance in compliance with clause 16.21.2;
    - 9.1.3 Professional Indemnity Insurance in compliance with clause 16.21.3;
    - 9.1.4 Statutory Insurances in compliance with clause 16.21.4; and
    - 9.1.5 any other relevant Insurances in compliance with clause 16.21.5; and
  - 9.2 evidence that all certificates of currency provided notes compliance with the requirements of clause 16.22.
10. **Fees:** Payment of all fees and expenses (including professional fees) which are due on or prior to SAHF Financial Close or on the first Funding Date under the SAHF Tranche (or confirmation that these will be paid from the proceeds of the first Advance drawn under the SAHF Tranche).
11. **Know your customer:** Information required by the Financier to ensure it satisfies any anti-money laundering laws, anti-terrorism laws and any applicable internal policies of the Financier, including any relevant information (or updated information) to confirm the identity of officers of the Borrower or the Parent.
12. **Other:** Any other information or documents that the Financier requests.
13. **Financial Information:**
  - 13.1 A copy of the audited Base Case Financial Model.
  - 13.2 Evidence:

13.2.1 that the Parent has transferred to the Borrower the land located at [REDACTED] having an unencumbered value of at least [REDACTED]

13.2.2 of the calculation of the SAHF Tranche Equity Contribution Amount, including details of the value of the contribution in kind to be made as described in paragraph (c) of the definition of "SAHF Tranche Equity Contribution Amount".

13.3 Evidence that the Parent has contributed all amounts under paragraph (a) of the definition of 'SAHF Tranche Equity Contribution Amount' by way of the SAHF Tranche Intercompany Loan Agreement or will do so prior to the first Funding Date under the SAHF Tranche as follows:

13.3.1 applied to pay the establishment fee for the SAHF Tranche under clause 6.1.2;

13.3.2 not less than [REDACTED] of the initial the SAHF Tranche Commitment deposited into the Tenancy Sustainability Account; and

13.3.3 the balance of cash deposited into the SAHF Tranche Construction Account.

13.4 Evidence that the SAHF Tranche Construction Account, the SAHF Tranche Mandatory Prepayment Account, the SAHF Tranche Proceeds Account and the Maintenance Reserve Account have been established.

**14. Property:**

14.1 All title documents relating to the Borrower's interest in the SAHF Property.

14.2 Evidence that all Security Interests (other than Transaction Security or Permitted Security Interests) affecting the Borrower's interest in the SAHF Property have been, or will be, discharged by the first Funding Date under the SAHF Tranche.

14.3 Copies of all Authorisations required in connection with the transfer of the SAHF Property to the Borrower and the mortgage of the SAHF Property in favour of the Financier under a Real Property Mortgage.

**15. Security and other Finance Documents:**

Evidence of registration of all Finance Documents (including under the PPSA and any Real Property Mortgage in respect of SAHF Property) including receipt and lodgement, as applicable of all title documents.

**16. Other documents and evidence:**

16.1 Evidence that the Borrower's AIP Plan (including an executive summary of the relevant Projects) has either been approved by the AIP Agency or an exemption to the requirement for an AIP Plan has been issued by the AIP Agency.

16.2 Confirmation that there is an absence of any material pending or threatened litigation or other proceedings.

- 16.3 Confirmation that no event or circumstance resulting in a Material Adverse Effect has occurred and is continuing.
- 16.4 An up-to-date Business Plan.
- 16.5 An insurance report, the scope of which is agreed by the Borrower and the Financier.
- 16.6 A report by a Sustainability Consultant in relation to the SAHF Land and each D&C Project on SAHF Land which has commenced prior to the Restatement Date, the scope of which is agreed by the Borrower and the Financier.
- 16.7 Indicative Drawdown Schedule for the SAHF Tranche CA Facility.

**Part 3: Conditions precedent to the first Advance for a D&C Project:**

Each of the following, each in form and substance satisfactory to the Financier:

**1. Finance Documents:**

- 1.1 Where the Project Costs for the D&C Project exceed [REDACTED] or where the aggregate Project Costs for all D&C Projects with respect to the same Contractor exceed [REDACTED] a duly executed original of the Contractor Tripartite Deed with the Contractor for the D&C Project.
- 1.2 Unless already provided, a duly executed Real Property Mortgage over the Property on which the D&C Project is located.

**2. Valuation, Survey and other diligence:**

- 2.1 Where the Project Costs for the D&C Project exceed [REDACTED] a Valuation confirming a realisation value for the D&C Project which is acceptable to the Financier.
- 2.2 If requested by the Financier, a site survey report showing the identity of the site and location of the building(s).
- 2.3 If requested by the Financier, a dilapidation report prepared by a structural engineer detailing the current condition of neighbouring buildings, roads and structures.
- 2.4 If requested by the Financier, a phase 1 environmental assessment report, either:
  - 2.4.1 confirming that the site is suitable for the intended purpose; or
  - 2.4.2 which indicates that the Borrower will need to undertake site remediation actions in order for the site to be suitable for the intended purposes, in which case:
    - 2.4.2.1 a remediation plan acceptable to the Financier (acting reasonably) detailing the site remediation actions to be undertaken by the Borrower; and
    - 2.4.2.2 evidence that the Budgeted Costs includes a contingency amount acceptable to the Financier (acting reasonably) in respect of the site for payment of the costs associated with the remediation actions.

**3. Project Documents:**

- 3.1 The Budgeted Costs and an updated Base Case Financial Model reflecting Budgeted Costs including details of the amount to be incurred by the Borrower in respect of Tenancy Sustainability Initiatives for the D&C Project, compliance with:
  - 3.1.1 in respect of the LHC Tranche, clauses 2.2.1 to 2.2.5; and
  - 3.1.2 in respect of the SAHF Tranche, clauses 2.3.1 to 2.3.4,

and, where that amount (or any part of it) will be funded by the Parent under the relevant Intercompany Loan Agreement, the Reimbursable Tenancy Sustainability Contribution.

- 3.2 A copy of the Building Contract (including the Specifications, if requested by the Financier).
- 3.3 Originals of each Project Security for that D&C Project including a performance bond in favour of the Borrower in a face value amount of not less than [REDACTED] of the Building Contract sum from the relevant Contractor at all times until Practical Completion at which time the face value amount can reduce to [REDACTED] of the Building Contract sum for the defects liability period of at least one year after Practical Completion, and, where the Project Costs for the D&C Project exceed [REDACTED] or where the aggregate Project Costs for all D&C Projects with respect to the same Contractor exceed [REDACTED] each such bond must provide that the Borrower is able to assign its rights under that bond to the Financier.
- 3.4 If requested by the Financier, certified copies of the Development Consents and any other Authorisations that are required, including any site access approvals and the final development approval, any required Construction Certificate and any required site access approvals and satisfactory expiration of all applicable waiting periods without any actions that will affect the construction and completion of the Project.
- 3.5 If the D&C Project includes any Units:
  - 3.5.1 a copy of the Proforma Sale Contract; and
  - 3.5.2 evidence that the Borrower has presold at least:
    - 3.5.2.1 in respect of an Advance under the LHC Tranche, [REDACTED] (by number and value) of the Units on terms and subject to conditions satisfactory to the Financier; and
    - 3.5.2.2 in respect of an Advance under the SAHF Tranche, [REDACTED] (by number and value) of the Units on terms and subject to conditions satisfactory to the Financier.
- 3.6 A report on the Project, the Project Documents and ancillary documents (including the Contractor (any guarantor of the Contractor), all plans, the Specifications, the Budgeted Costs and the development programme) and compliance with the Housing Sustainability Criteria prepared by the Quantity Surveyor or Sustainability Consultant (as applicable) and addressed to the Financier. This report must include confirmation that all Development Consents have been obtained and any applicable judicial review period has passed, and comment on the documents provided under item 2.2, 2.4 and 3.4 of this Part 3 of Schedule 1 if requested by the Financier and the documents provided under item 4.1, 4.2 and 4.3 of this Part 3 of Schedule 1.
- 3.7 A written schedule with sufficient detail to enable the Financier to determine the likely amount and timing of each Advance.
- 3.8 A copy of any APS Agreement applicable to the D&C Project.

4. **Insurance:**



- 4.1 Evidence that the insurance cover in force in respect of the Property complies with the terms of this agreement and the necessary premiums have been paid.
- 4.2 Evidence that the Borrower or the Contractor has in place the following insurances in respect of the Project:
  - (a) Contractor's All Risks Insurance in compliance with clause 16.33.1;
  - (b) Public and Products Liability Insurance in compliance with clause 16.33.2;
  - (c) Professional Indemnity Insurance in compliance with clause 16.33.3; and
  - (d) statutory insurances in compliance with clause 16.33.4.
- 4.3 Copies of certificates of currency of each of the insurance policies noted in item 4.2 of this Part 3 of Schedule 1.
5. Any other Authorisations that are required.
6. **Other documents and evidence:**
  - 6.1 A certificate of an authorised signatory of the Borrower certifying that each copy of a Project Document relating to it specified in this Part 3 of Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this agreement or the Restatement Date, as applicable.
  - 6.2 If applicable, evidence of any Allocation made by the Secretary to the Borrower in respect of the Property.
  - 6.3 Confirmation that each person engaged to undertake Building Works on the D&C Project and required to be accredited under the WHS Scheme under clause 15.23 is accredited and registered under that scheme.
  - 6.4 Confirmation that the dwelling units constructed as part of the D&C Project will be covered by the Management Services Agreement or the SAHF Services Subcontract, as applicable.
  - 6.5 In respect of an Advance under the SAHF Tranche, confirmation that the dwelling units constructed as part of the D&C Project will be covered by the SAHF Services Agreement.
  - 6.6 Evidence that the Borrower has fully utilised in respect of the D&C Project that part of the Equity Contribution Amount allocated to the D&C Project in the updated Base Case Financial Model referred to in paragraph 3.1 of this Part 3 of Schedule 1.
  - 6.7 In respect of a D&C Project under the SAHF Tranche, a Drawdown Schedule for the SAHF Tranche CA Facility.

**Part 4: Conditions precedent to an Advance for an Acquisition Price:**

In this Part 4, for the relevant Turnkey Project:

"**Development Contract**" means, in respect of the Turnkey Project, the development contract entered into between the Parent or a Related Body Corporate of the Parent and the Turnkey Contractor for the construction or refurbishment by the Parent of residential dwellings and, if applicable, Commercial Units and includes the drawings, plans and specifications for that Turnkey Project.

Each of the following, each in form and substance satisfactory to the Financier:

**1. Development Contract:**

- 1.1 Certificate of Practical Completion provided in accordance with the terms of the Development Contract.
- 1.2 Principal Certifying Authorities Certificate of Occupancy authorising approval to occupy the Turnkey Project.
- 1.3 Certified copy of the Development Contract (including, if requested by the Financier, acting reasonably, the Specifications) and each other Material Document in relation to the Turnkey Project.
- 1.4 If the Turnkey Project includes any Units:
  - 1.4.1 a copy of the Proforma Sale Contract; and
  - 1.4.2 evidence that the Borrower has presold at least [REDACTED] (by number and value) of the Units on terms and subject to conditions satisfactory to the Financier.
- 1.5 Letter of acknowledgment from the Turnkey Contractor confirming that it extends to the Borrower all warranties provided to the Parent under the Development Contract.
- 1.6 Certification from the Turnkey Contractor that the building has been designed and constructed in accordance with the Development Contract or otherwise of details of all differences (with supporting information to the satisfaction of the Financier) and such differences to be acceptable to the Financier acting reasonably.
- 1.7 A defects liability performance bond in favour of the Borrower in a face value amount of not less than [REDACTED] of the contract sum under the Development Contract for the defects liability period of at least one year after Practical Completion, such bond to provide that the Borrower is able to assign its rights under that bond to the Financier.

**2. Insurance:**

- 2.1 Evidence that the insurance cover in force in respect of the Property and Turnkey Project complies with the terms of this agreement and the necessary premiums have been paid.
- 2.2 Copies and certificate of currency of the relevant insurance policies, including:

- 2.2.1 Contractors All Risk Insurance in compliance with clause 16.33.1 covering material damage arising from the completion of building defects of the Acquisition Contractor in respect of the Turnkey Project;
  - 2.2.2 Public and Products Liability insurance in compliance with clause 16.33.2 for the period of the defects liability period under the Development Contract;
  - 2.2.3 Professional Indemnity Insurance covering the Contractor, sub-contractors and consultants with a design responsibility in compliance with clause 16.33.3; and
  - 2.2.4 Statutory Insurances (including workers compensation insurance) in compliance with clause 16.33.4 for the defects liability period under the Development Contract.
3. Any other Authorisations that are required and satisfactory expiration of all applicable waiting periods without any actions that will affect any aspect of the Turnkey Project.
4. Evidence of any Allocation made by the Secretary to the Borrower in respect of that Turnkey Project.
5. **Project Information:**
  - 5.1 A report on the Turnkey Project, including in respect of the Development Contract (including the specifications), the Development Consents and confirming compliance with the Housing Sustainability Criteria for the Turnkey Project prepared by a Quantity Surveyor and/or a Sustainability Consultant in either case approved by the Financier and appointed by or on behalf of the Borrower and the Financier in respect of the Turnkey Project.
  - 5.2 An updated Base Case Financial Model reflecting the Acquisition Price, forecast cashflows, compliance with:
    - 5.2.1 in respect of the LHC Tranche, clauses 2.2.1 to 2.2.5; and
    - 5.2.2 in respect of the SAHF Tranche, clauses 2.3.1 to 2.3.4,and any Reimbursable Tenancy Sustainability Contribution in respect of the Turnkey Project.
  - 5.3 A Valuation confirming the realisation value of the Turnkey Project acceptable to the Financier.
  - 5.4 The agreed Acquisition Price.
  - 5.5 Evidence satisfactory to the Financier that the Turnkey Project comprises residential dwellings constructed or refurbished for the purposes of Community Housing (or a mixture of Community Housing and housing for other purposes as approved by the Financier) and Commercial Units.
  - 5.6 Originals of all bank guarantees, performance bonds and other security for payment given under any Material Document for the Turnkey Project.
6. **Transfer of Property:**

- 6.1 All title documents relating to and evidencing that the Borrower is, or will be upon payment of the Acquisition Price be, the legal and beneficial owner of, and has or will have good title to, the Property on which the Turnkey Project is located.
- 6.2 Evidence that all Security Interests (other than Transaction Security or Permitted Security Interests) affecting the Property on which the Turnkey Project is located has been, or will be, discharged by the Funding Date.
- 6.3 Evidence that the Property on which the Turnkey Project is located is free from restrictions and onerous covenants which have a material adverse impact on the value of the Property (subject to the interest held by LHC or FACS (as applicable)).

7. **Other documents and evidence:**

- 7.1 Confirmation that (other than in relation to a Turnkey Project where the Financier has directly or indirectly funded less than [REDACTED] of 'BW Costs' (as defined below) for that Turnkey Project):
  - 7.1.1 each person engaged to undertake Building Works on the Turnkey Project and required to be accredited under the WHS Scheme under clause 15.23 is accredited and registered under that scheme; or
  - 7.1.2 the Borrower is not a party to any "preconstruction agreement" (as defined in the *Fair Work (Building Industry) Act 2012\_(Cth)*) in relation to the Turnkey Project.

For the purposes of this item 7.1 only, "BW Costs" means, in respect of a Turnkey Project, the portion of the Acquisition Price for that Turnkey Project attributable only to the actual costs (excluding GST) of Building Work for that Turnkey Project.
- 7.2 Confirmation that the residential dwellings and Commercial Units constructed as part of the Turnkey Project will be covered by the Management Services Agreement or SAHF Services Subcontract, as applicable.
- 7.3 In respect of an Advance under the SAHF Tranche, confirmation that the dwelling units constructed as part of the Turnkey Project will be covered by the SAHF Services Agreement.
- 7.4 A duly executed Real Property Mortgage over the Property on which the Turnkey Project is located.
- 7.5 A copy of any APS Agreement applicable to the Turnkey Project.

**SCHEDULE 2: LHC VESTED PROPERTY**

| Street Address | Suburb | Folio Identifier |
|----------------|--------|------------------|
| [REDACTED]     |        |                  |



### SCHEDULE 3: VERIFICATION CERTIFICATE

SGCH SUSTAINABILITY LIMITED  
ABN 21 606 965 799  
(Borrower)

To: [...] (Financier)

#### 1. Facility Agreement

- 1.1 We refer to the Facility Agreement dated 19 November 2015 (as amended on or about 20 January 2017) between (1) the Borrower and (2) the Financier (**Facility Agreement**)
- 1.2 Definitions in the Facility Agreement apply in this certificate.
- 1.3 We are directors of the Borrower.

#### 2. Certified documents

- 2.1 The attachments to this certificate are complete and up to date copies of the following:
  - 2.1.1 **Constitution:** Constitution of the Borrower, as in force when the resolutions mentioned below were passed and at all times since.
  - 2.1.2 **Extract of minutes:** Extract of minutes of a meeting of the board of directors of the Borrower containing resolutions which did the following:
    - 2.1.2.1 authorised execution and (where applicable) delivery by the Borrower of, and the exercise of its rights and the performance by it of its obligations under, the Facility Agreement and each other Finance Document;
    - 2.1.2.2 appointed Authorised Officers for the Borrower (which resolutions have not been amended or revoked);
    - 2.1.2.3 confirmed that the directors had considered the circumstances of the Borrower and determined that there is genuine commercial benefit to the Borrower in entering into, or affirming, the Finance Documents;
    - 2.1.2.4 confirmed that the directors had considered whether (and had sought legal advice as necessary) there would be any breach of Part 2J.3 of the *Corporations Act 2001* (Cth) as a result of the Borrower entering into, or affirming, any Finance Document and determined that there would be no breach of Part 2J.3 of the *Corporations Act 2001* (Cth) as a result of the Borrower entering into, or affirming, the Finance Documents; and
    - 2.1.2.5 confirmed that the directors had considered (and had sought legal advice as necessary) whether there would be any breach of Chapter 2E of the *Corporations Act 2001* (Cth) as a result of the Borrower entering into, or affirming, any Finance Document and

determined that there would be no breach of Chapter 2E of the *Corporations Act 2001* (Cth) as a result of the Borrower entering into, or affirming, the Finance Documents.

2.1.3 **Power of Attorney:** If a Finance Document is being signed by power of attorney, the power of attorney (which has not been revoked by the Borrower and is in full force and effect) authorising the execution and (if appropriate) delivery, on behalf of the Borrower, of the Facility Agreement and each other Finance Document.

2.2 Each other copy document relating to the Borrower specified in Part 1 of Schedule 1 to the Facility Agreement is correct, complete and in full force and effect.

### 3. Certification

3.1 We certify that each of the following is true:

3.1.1 **Material Adverse Effect:** As at that date of this certificate, nothing has occurred which might reasonably be expected to have a Material Adverse Effect on the financial position, assets, revenues, business or prospects of the Borrower, or the ability of the Borrower to perform its obligations under any Finance Document.

3.1.2 **Approvals:** All necessary corporate and regulatory approvals and consents required for the Borrower to enter into and perform the Finance Documents have been obtained and remain in full force and effect.

3.1.3 **Solvency, Financial Assistance and Related Party Transactions:**

3.1.3.1 The Borrower, before entering into any Finance Document to which it is a party, has, in connection with the execution, delivery and performance of each such Finance Document, complied with Chapter 2E and Part 2J.3 of the *Corporations Act 2001* (Cth); and

3.1.3.2 as at the date of execution of each Finance Document, the Borrower is solvent and will not become insolvent by entering into and performing its obligations under each Finance Document to which is a party.

3.1.4 **Notices under leases:** A notice has been given to each tenant under a Lease Document in respect of each LHC Vested Property, in form and substance satisfactory to the Financier, that:

3.1.4.1 the landlord under that Lease Document is the Borrower; and

3.1.4.2 all rent to be paid under that Lease Documents is to be paid to the Proceeds Account.

### 4. Authorised Representatives

4.1 The persons named below are the Borrower's Authorised Officers and the signature appearing beside the name of each such Authorised Officer is the true signature, or a copy of the true signature, of that person.



| Name | Position | Signature |
|------|----------|-----------|
|      |          |           |
|      |          |           |
|      |          |           |
|      |          |           |

Dated:

Signed by: .....

Director

SGCH SUSTAINABILITY LIMITED  
 ABN 21 606 965 799

Signed by: .....

Director

SGCH SUSTAINABILITY LIMITED  
 ABN 21 606 965 799

## SCHEDULE 4: FUNDING NOTICE

SGCH SUSTAINABILITY LIMITED  
ABN 21 606 965 799  
(Borrower)

To: [REDACTED]

### 1. Facility Agreement

- 1.1 We refer to the Facility Agreement dated 19 November 2015 (as amended on or about 20 January 2017) between (1) the Borrower and (2) the Financier (**Facility Agreement**).
- 1.2 Definitions in the Facility Agreement apply in this Funding Notice.
- 1.3 The Borrower gives you irrevocable notice that it wishes to draw an Advance as follows:
  - 1.3.1 Tranche: [ ]
  - 1.3.2 Funding Date: [ ]
  - 1.3.3 Amount: [ ]
  - 1.3.4 Interest Period: [ ]
  - 1.3.5 Purpose: [ ]
- 1.4 *[For Advances for D&C Projects where the Contractor is a non-accredited contractor – to be certified by the Quantity Surveyor]*The aggregate amount of this Advance which will be utilised for BW Costs in respect of *[name of D&C Project]* is \$*[insert]*.
- 1.5 *[For Advances for D&C Projects where the Contractor is a non-accredited contractor – to be certified by the Quantity Surveyor]*The Contractor for the D&C Project to be funded by this Advance is a non-accredited contractor, and the aggregate of all Advances, after this Advance is made, utilised for BW Costs in respect of *[name of D&C Project]* is \$*[insert]* and does not exceed [REDACTED]
- 1.6 *[For Advances for D&C Projects where the Contractor is a non-accredited contractor – to be certified by the Quantity Surveyor]*The aggregate amount of this Advance which will be utilised for costs (excluding GST) in respect of *[name of D&C Project]* payable by the Borrower under the Building Contract for *[name of D&C Project]* which are not BW Costs is \$*[insert]*.
- 1.7 *[For Advances for D&C Projects where the Contractor is an accredited contractor – to be certified by the Quantity Surveyor]*The aggregate amount of this Advance which will be utilised for costs (excluding GST) in respect of *[name of D&C Project]* payable by the Borrower under the Building Contract is \$*[insert]*.
- 1.8 The Repeating Representations are currently true and not misleading and will be true and not misleading (whether by omission or otherwise) on the Funding Date with reference to the facts and circumstances then subsisting.

1.9 The Borrower represents and warrants to the Financier that no Default has occurred and is continuing or might reasonably be expected to result from the Advance.

1.10 We enclose with this Funding Notice:

1.10.1 [ ]\*.

\*include details of any supporting information required for the Advance.

Dated: [insert date]

For and on behalf of  
**SGCH SUSTAINABILITY LIMITED**  
ABN 21 606 965 799  
by its Authorised Officer

.....  
Name (print) Signature

**SCHEDULE 5: BUILDING CONTRACT**

---

SGCH Sustainability Limited

---

[#Panel Member#]

---

# Contract for [#insert#]

# Formal Instrument of Agreement

Date .....

[Note: the Contract shall be dated upon execution – see section 7(1) of the Home Building Act]

## Parties

SGCH Sustainability Limited ABN 21 606 965 799 of [#####] (Principal)

[#Panel Member#] ACN [##] of [#####] [#Contractor Licence No: [insert]#]  
(Contractor)

[Note: ensure that the name of the Contractor matches that shown on the contractor licence – section 7 of the Home Building Act]

---

## Background

- A. The *Principal* has entered into an agreement titled 'Social and Affordable Housing Fund – Services Agreement' with *FACS*. Under the *Services Agreement*, the *Principal* has been engaged to provide certain services to *FACS* in relation to certain *Dwellings* owned by the *Principal*.
  - B. The *Principal* and the *Contractor* agree that the *Contractor* shall carry out and complete the *WUC* for the *Principal* on the terms of the *Contract*.
- 

## Agreed Terms

### 1 Performance

- (a) The *Contractor* shall carry out and complete the *WUC* in accordance with the *Contract*.
- (b) The *contract sum* is [#####] dollars (\$[#####]), excluding *GST* and including the following *provisional sums*:
  - (i) \$[#####] for [#description of work#].
- (c) Each of the parties shall perform the obligations imposed on it by the *Contract*.

### 2 Warning

The remuneration payable to the *Contractor* by the *Principal* may be adjusted pursuant to the following clauses of the General Conditions of Contract AS4902-2000 (as amended):

- (a) clause 3 for *provisional sums*;

- (b) subclause 8.1 for compliance with a direction by the *Superintendent* in relation to an inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out the *WUC*;
- (c) subclause 11.2 for a change in a *legislative requirement*;
- (d) subclause 14.2 for a direction by the *Superintendent* to rectify loss or damage to the *WUC* caused by an *expected risk*;
- (e) subclause 24.3 for costs incurred in relation to minerals, fossils and relics;
- (f) subclause 25.3 for *latent conditions*;
- (g) subclause 26.2 for rectifying errors in setting out where those errors were caused by incorrect data, *survey marks* or information given by the *Superintendent*;
- (h) subclause 26.3 for reinstating *survey marks* if disturbed by the *Superintendent* or other person referred to in subclause 24.2 other than the *Contractor*;
- (i) subclause 29.4 for acceptance of defective work;
- (j) clause 32 for compliance with a direction by the *Superintendent* regarding the order and time that various stages or portions of the *WUC* shall be carried out (except where that direction is pursuant to the *Contractor's* default.
- (k) subclause 33.4 for costs in relation to suspension of the *WUC*;
- (l) subclause 34.9 for additional costs arising pursuant to delay by a *compensable cause*; and
- (m) subclause 36.4 for *variations*.

The warnings and explanations of the provisions of the *Contract* which may vary the *contract sum* or the consideration payable to the *Contractor* without any adjustment to the *contract sum* are included to satisfy the requirements of the *Home Building Act*. None of the provisions of the *Contract* will be construed or interpreted by reference to those warnings and explanations.

### 3 Contract documents

The *Contract* comprises the following documents marked as follows:

- (a) This Formal Instrument of Agreement;
- (b) General Conditions of Contract AS4902-2000 (as amended), including Annexures Part [A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R];

### 4 Entire contract

The *Contract* constitutes the entire agreement between the parties in respect of the *WUC* and the *Contract* supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the *Contract*.

5 Work performed prior to date of execution of Contract

The terms of the *Contract* apply to the whole of the *WUC*, whether performed before, on or after the date of the *Contract*.

6 Contra proferentum

In the interpretation of the *Contract*, no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward the *Contract* or any part of it.



Executed as a deed.

Executed by **SGCH Sustainability** )  
**Limited** ABN 21 606 965 799 in )  
accordance with section 127 of the )  
*Corporations Act 2001* (Cth): )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

Executed by [##] ACN [##] accordance )  
with section 127 of the *Corporations Act* )  
*2001* (Cth): )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

AS 4902-2000

Amended from  
AS 4902—2000  
(Incorporating Amendment No. 1)

**Design and construction of [#]  
at [insert]**

**Principal: [insert]**

**Contractor: [insert]**

Australian Standard™

## General conditions of contract for design and construct

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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

---

The following are represented on Committee OB-003:

Association of Consulting Engineers Australia  
Australian Chamber of Commerce and Industry  
Australian Procurement and Construction Council  
AUSTROADS  
Construction Industry Engineering Services Group  
Construction Policy Steering Committee  
Electricity Supply Association of Australia  
Institution of Engineers, Australia  
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Master Builders Australia  
National Construction Council of the Australian Industry Group  
Process Engineers and Constructors Association  
Royal Australian Institute of Architects

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*This Standard was issued in draft form for comment as DR 97528.*

AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

## General conditions of contract for design and construct

First published as 4300-1995.  
Revised and redesigned AS 4902-2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) **The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.**
- (4) **Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.**
- (5) **Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.**

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## ANNEXURE PART A

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## STANDARDS AUSTRALIA

\_\_\_\_\_  
**Australian Standard**  
**General conditions of contract for design and construct**  
 \_\_\_\_\_

**1 Interpretation and construction of Contract**

In the *Contract*, except where the context otherwise requires:

- Access Routes*** has the meaning in subclause 24.5(a)(iii);
- Accommodation Services Side Deed*** means the document so entitled dated on or about the date of this *Contract* between *FACS*, the *Principal* and the *Contractor*;
- Accredited Certifier*** has the meaning given to that term in the Building Professionals Act 2005 (NSW);
- Adjudication Application*** has the meaning given to that term in subclause 37.8(b)(i);
- Approval*** means any certificate, licence, consent, permit, approval or requirement required by:
- (a) any *legislative requirement* arising out of or in any way connected with *WUC*; or
  - (b) any:
    - (i) organisation; or
    - (ii) *Authority*,  
having jurisdiction in connection with the carrying out of *WUC*;
- Affordable Housing Tenant*** means a household which meets the affordable housing eligibility criteria outlined in the NSW Affordable Housing Guidelines, and has a right to occupy a *Dwelling* under a *Residential Tenancy Agreement*;
- Associate*** means, in relation to a person, any *Related Body Corporate* of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that *Related Body Corporate*;
- Australian Standard*** means any standard published by Standards Australia;
- Authority*** means any:
- (a) government having jurisdiction in connection with the carrying out of *WUC*;
  - (b) public, local or statutory authority including any *Certification Authority* having jurisdiction in connection with the carrying out of *WUC*;
  - (c) utility or telecommunications provider having jurisdiction in connection with the carrying out of *WUC*;
  - (d) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality; or

- (e) any other person having jurisdiction over, or ownership of, any *Utilities* or *Utility Infrastructure*;

**Building Code** means the National Construction Code published by the Australian Building Codes Board, as in force in New South Wales on the date of the application for the relevant *Construction Certificate*;

**Business Day** means:

- (a) in clause 37, any day which is a business day under the *Security of Payment Act*; and
- (b) in any other provision of the *Contract*, any day which is not a Saturday, Sunday or public holiday in New South Wales;

**certificate of practical completion** has the meaning in subclause 34.6;

**Certification Authority** means any:

- (a) *Council*;
- (b) *Consent Authority*;
- (c) *Accredited Certifier*; or
- (d) *Principal Certifying Authority*;

**Civil Liability Act** means the Civil Liability Act 2002 (NSW);

**Claim** means any claim, action, demand, suit, proceeding, penalty or fine (including by way of contribution or indemnity) made:

- (a) in connection with this *Contract*, any *Relevant Infrastructure*, any *site* or the *Delivery Service Package*; or
- (b) at *Law* or for specific performance, restitution, payment of money (including damages);

**Collateral** has the meaning in clause 52(b)(ii);

**Commonwealth Funding Conditions** means:

- (a) compliance with the Building and Construction Industry (Fair and Lawful Building Sites) Code 2014 and the *Building Code*;
- (b) accreditation of the *Contractor* under the *OHS Accreditation Scheme* or, where the *Contractor* is not accredited, it has a valid exemption applying to that Entity and that Entity complies with the relevant conditions; and
- (c) any other requirements of the Commonwealth in connection with the Commonwealth funding associated with the *Delivery Service Package* required in accordance with the National Partnership Agreement on Asset Recycling dated 2 May 2014, as notified by the *Principal* to the *Contractor* to the extent applicable to the *Delivery Service Package*;

**compensable cause** means:

- (a) any act, default or omission of:
- (i) the *Superintendent*;
- (ii) the *Principal* or its consultants or agents; or

- (iii) any other contractor(excluding any *Certification Authority*), other than any act or omission permitted under the *Contract* including a deemed *variation* or the *direction* of a *variation* or a *Design Detail Change*; or
- (b) any of the causes listed in *Item 31*;
- Compensable Extension Event** means any of the following events:
- (a) **(breach by the Principal):** a breach by the *Principal* of this *Contract*; and
- (b) **(fraudulent act or omission):** a fraudulent, reckless, unlawful or malicious act or omission of the *Principal* or any of its *Associates* in connection with the *Delivery Service Package*;
- Confidential Information** means:
- (a) the terms of the *Contract* and all information, material and technology disclosed or provided in any form by any party to any other party in connection with the subject matter of the *Contract* or in any way related to the *Contract*; and
- (b) in respect of the definition of *Relevant Person* and subclauses 8.5(c) and 8.5(d):
- (i) this *Contract*;
- (ii) information provided by:
- (A) *FACS* or any of its *Associates* to the *Principal* and provided by the *Principal* to the *Contractor* or any of their *Associates*; or
- (B) the *Contractor* to the *Principal* and then provided by the *Principal* or any of its *Associates* to *FACS* or any of its *Associates*,
- in connection with this *Contract* or the *Delivery Service Package*, whether provided prior to or after the date of this *Contract*; and
- (iii) *Personal Information* and any other information in connection with the *Delivery Service Package* which the *Principal* is required to keep confidential in complying with any *Privacy Legislation* or any other applicable *Law*;
- Consent Authority** has the meaning given to that term in the *EPA Act*;
- Construction Certificate** means a construction certificate under the *EPA Act* relating to the whole or any part of *WUC*;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- Construction Project** has the meaning given to that term in the *WHS Regulation*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** means this agreement between the *Principal* and the *Contractor*;

- contract sum** means the *Initial Contract Sum* as adjusted by any additions or deductions under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC* stated in *Item 3*;
- Contractor Act or Omission** means:  
 (a) a breach of this *Contract* by the *Contractor*; or  
 (b) any other act or omission of the *Contractor* or its *Associates* other than an act or omission undertaken in accordance with the *Contract* and undertaken lawfully in with the performance of the *Delivery Service Activities*;
- Contractors Debts Act** means the Contractors Debts Act 1997 (NSW);
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;
- Corporations Act** means the Corporations Act 2001 (Cth);
- Council** has the meaning given to that term in the Local Government Act 1993 (NSW);
- DA Matrix** means the document at Annexure Part P;
- date for practical completion** means:  
 (a) where *Item 7(a)* provides a date for *practical completion*, the date; or  
 (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,  
 but if any *EOT* is directed by the *Superintendent* or allowed in any *dispute resolution procedure*, it means the date resulting therefrom;
- date of practical completion** means:  
 (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or  
 (b) where another date is determined in any *dispute resolution procedure* as the date upon which *practical completion* was reached, that other date;
- deed of guarantee** means the form of guarantee at Annexure Part F;
- Default Termination Event** means the occurrence of any of the following events:  
 (a) **(abandonment)**: the *Contractor* wholly or substantially abandons the *Delivery Service Package* or any material part of the *Delivery Service Activities* or is otherwise not ready, willing or able to perform its obligations under this *Contract*;  
 (b) **(Contractor fraud)**: the *Contractor* engages in fraud, collusion or dishonest conduct in performing its obligations under any *WUC*;  
 (c) **(assignment, transfer or disposal)**: the *Contractor* assigns,

transfers or otherwise disposes of any of its rights, title and interest in or under this *Contract*, the whole or any part of a *site*;

- (d) (**Sunset Date**): the *Contractor* fails to achieve *practical completion* by the *Sunset Date*;
- (e) (**Illegality Event**): an *Illegality Event* occurs;
- (f) (**Probity Investigation**): *FACS* does not give approval for the *Contractor* following a *Probity Investigation* carried out under clause 53; or
- (g) (**delay – Look Forward**): it is determined after the *date for practical completion* by the *Superintendent* that the *Contractor* will not be able to achieve practical completion by the *Sunset Date*;

*defects* means defects in *the Works* and includes omissions;

*defects liability period* has the meaning in clause 35 and includes any period under clause 35(c);

*Defects Program* means the program for rectification of *defects* approved by the *Superintendent* following the *defects* inspection required by paragraph (f) of the definition of *practical completion*;

*Delivery Service Activities* means all works, things and tasks that the *Contractor* is, or may be, required to do to comply with its obligations in connection with the *Delivery Service Documents*;

*Delivery Service Documents* means:

- (a) this *Contract*;
- (b) the *Accommodation Services Side Deed*;
- (c) the *Financier's Side Deed*; and
- (d) any other document the parties agree is a *Delivery Service Document*;

*Delivery Service Package* means:

- (a) the performance of the *Delivery Service Activities*; and
- (b) the performance of all other obligations,

in accordance with, or as contemplated by, any *Delivery Service Document*, or incidental to any *Delivery Service Documents*;

*Design Detail Change* means any change to the *design documents* or *WUC* considered necessary by the *Superintendent* to:

- (a) ensure that the design, construction, finishes or other aesthetic aspects of *the Works* are in accordance with the requirements of the *Contract*; or
- (b) adequately detail the nature and extent of *the Works*;
- (c) other than a change which alters the internal or external lay-out of *the Works*; or
- (d) otherwise alters the overall nature and extent of *the Works*;

*design documents* means the drawings, specifications, manuals and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be

- created by the *Contractor*) for the construction of the *Works*;
- Development Consent** means the Determination of the Development Application No. identified at *Item 45*, a copy of which is at Annexure Part G;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- Director** has the meaning given to that term in the *Corporations Act*;
- Discrepancy** has the meaning in subclause 8.1;
- dispute** has the meaning in clause 42;
- Dwelling** means a room or suite of rooms occupied, used, constructed or adapted so as to be capable of being occupied or used as a separate, self-contained and lockable domicile that:
- (a) may be occupied by one or more households; and
  - (b) shall have its own cooking, bathing and toilet facilities and be accessible without passing through another *Dwelling*,
- comprising part of the *Works* and which a *Tenant* is to reside in and occupy;
- Employee Checks** means the employee checks set out in *Item 47*;
- Entitlement** means any rights, remedies, benefits, compensation, recovery or other relief;
- Entity** has the meaning given in section 64A of the *Corporations Act*, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131);
- Environment** includes all aspects of the surroundings of human beings including:
- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
  - (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
  - (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures;
- EOT (from 'extension of time')** means extension to the *date for practical completion*;
- EPA Act** means the Environmental Planning and Assessment Act 1979 (NSW);
- excepted risk** has the meaning in subclause 14.3;
- Executive Director** means a *Director* acting in an executive capacity;
- Expert Determination Agreement** means the form of agreement at Annexure Part H;
- FACS** means Department of Family and Community Services;
- FACS Delivery Service Document** means those *Delivery Service Documents* to which *FACS* is a party;
- final certificate** has the meaning in subclause 37.4;

- final payment*** has the meaning in clause 37;
- final payment claim*** means the final payment claim referred to in subclause 37.4;
- Financier*** means any financier of the *Principal* in connection with *the Works*;
- Financier's Side Deed*** means the document so entitled dated on or about the date of this *Contract* between the *Financier*, the *Principal* and the *Contractor*;
- GIPA Act*** means the *Government Information (Public Access) Act 2009* (NSW);
- GST Law*** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- High Risk Construction Work*** has the meaning given to that term in the *WHS Regulation*;
- Holding Entity*** means each company or trust which, directly or indirectly, holds all of the issued shares or units in:
- (a) the *Contractor*, and which is not itself wholly owned by any other *Entity*; and
  - (b) any company that holds *Securities* in the *Contractor*;
- Home Building Act*** means the Home Building Act 1989 (NSW);
- Home Building Legislation*** means the *Home Building Act* and the *Home Building Regulation*;
- Home Building Regulation*** means the Home Building Regulation 2014 (NSW);
- Illegality Event*** means the *Contractor*:
- (a) ceases to hold an *Approval*; or
  - (b) breaches applicable *Legislation*,  
and the *Principal* forms the view (acting reasonably) that such failure or breach is material to the performance of the *Contractor's* obligations under this *Contract* and such failure or breach is not remedied within 30 days after the earlier:
    - (c) the date on which the *Principal* notifies the *Contractor* of the failure or breach; or
    - (d) the date on which the *Contractor* becomes aware of the failure or breach;
- Indirect or Consequential Loss*** means any consequential, indirect, special or punitive loss or damage and any loss of production, business, business opportunity, use, custom, revenue, profit or anticipated profit;
- Initial Contract Sum*** means the amount stated in *Item 38*;
- Insolvency Event*** means, in relation to a body corporate:
- (a) an administrator of the body corporate being appointed under the *Corporations Act*;
  - (b) the body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;
  - (c) the entry by the body corporate into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them, otherwise than for the purpose of an amalgamation or

reconstruction;

- (d) the body corporate being insolvent within the meaning of section 95A(2) of the *Corporations Act*;
- (e) the appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- (f) the making of a winding up order, or the passing of, or attempted passing of, a resolution for winding up, except for the purposes of reconstruction or amalgamation;
- (g) an application being made (which is not dismissed within 10 *Business Days*) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above, other than for the purposes of an amalgamation or reconstruction; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction,

and in relation to a person other than a body corporate means:

- (a) the bankruptcy of the person concerned;
- (b) the appointment of an official manager in respect of all or any part of the property of the person concerned;
- (c) the entry by the person concerned into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them;
- (d) the person concerned being or stating that he or she is unable to pay his or her debts when they fall due;
- (e) an application being made (which is not dismissed within 10 *Business Days*) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above; or
- (f) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction;

***intellectual property right*** means any patent, registered design, trademark or name, copyright or other protected right;

***Item*** means an item in Annexure Part A;

***Key Personnel*** means those personnel listed in *Item* 43 as substituted in accordance with subclause 23.2;

***Landlord*** means St George Community Housing Limited ABN 21 606 965 799.



**latent condition** has the meaning in subclause 25.1;

**Law** means:

- (a) those principles of common law and equity established by decisions of courts; and
- (b) *Legislation*;

**Legislation** means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State of NSW or an *Authority*;

**Legislative Inspection** means an inspection which is required to be carried out in relation to *WUC* by a *legislative requirement*;

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth of Australia or of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) the *Building Code*;
- (c) to the extent not inconsistent with the *Building Code, Australian Standards* current as at the date of the *Contract* and the date of commencement of *WUC*, or, if they are different dates, whichever is earlier;
- (d) certificates, licences, consents, permits, approvals and requirements of:
  - (i) organisations; or
  - (ii) any *Authority*,
 having jurisdiction in connection with the carrying out of *WUC*; and
- (e) fees and charges payable in connection with the foregoing;

**Liability** means any debt, obligation, *Claim*, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or *Liability* of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
  - (b) currently ascertainable or not,
- and whether under or arising out of or in any way in connection with this *Contract* or arising at *Law*;

**Linked Dispute** means a dispute:

- (a) to which the *Contractor* is a party;
- (b) which arises out of this *Contract*; and
- (b) which is concerned with matters which arise in respect of the respective rights or obligations of the *Principal* and *FACS* under the *Services Agreement*;

**Month** means a calendar month.

**Nominated Person** has the meaning in subclause 9.1;

- Notice** has the meaning in clause 7(a);
- Notice of Dispute** has the meaning in subclause 42.1;
- Notice of Proposed Acceleration** has the meaning in clause 32A(a);
- Occupation Certificate** means an occupation certificate issued under the *EPA Act* in respect of *the Works*;
- OHS Accreditation Scheme** means the Australian Government Building and Construction OHS Accreditation Scheme established by the *Fair Work (Building Industry) Act 2012* (Cth);
- Ongoing Operations** has the meaning in clause 47(a);
- Other Subcontract Work** has the meaning in subclause 9.3(c);
- Other Subcontractor** has the meaning in subclause 9.3(c);
- Payment Claim** means a payment claim the subject of a *Payment Withholding Request*;
- Payment Withholding Request** has the meaning given to that term in the *Security of Payment Act*;
- Percentage Amount** has the meaning in subclause 36.4(a)(ii);
- Personal Information** means any personal information, within the meaning given in the *Privacy Act 1988* (Cth), about any *Tenant*;
- Policy** means any binding rule, guideline, regulation, policy, standard, procedure, directive, circular or requirement relating to the performance of *WUC*, as may be published by the NSW Government or the Commonwealth Government from time to time;
- Practical completion** is that stage in the carrying out and completion of *WUC* when:
- (a) all:
    - (i) internal aspects of *the Works*; and
    - (ii) all external aspects of *the Works* (including balconies and courtyards) that reasonably can only be accessed from an internal aspect of *the Works*,  
are completed free of any *defects* which have been identified by the *Superintendent* in a *defects* inspection;
  - (b) subject to paragraph (a) of this definition, all external aspects of *the Works* are complete except for minor *defects*:
    - (i) which do not prevent *the Works* from being reasonably capable of being used for their intended purpose;
    - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
    - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
  - (c) those *tests* which are required by the *Contract* or the *Superintendent* to be carried out and passed before *the Works* reach practical completion have been carried out and passed;
  - (d) all services and equipment incorporated in *the Works* have been commissioned, tested and are fully functional;

- (e) the *Contractor* has supplied *Superintendent* with the following in a form satisfactory to:
  - (i) the *Superintendent* and the *Principal Certifying Authority*:
    - (A) if there are *separable portions*:
      - (I) for each *separable portion*, other than the last *separable portion* to reach *practical completion* (excluding the requirements of this paragraph (e)(i)(A)(I)), all documentation relating to *WUC* necessary to obtain an interim *Occupation Certificate* for the *Works* comprised in the *separable portion*; and
      - (II) for the last *separable portion* to reach *practical completion* (excluding the requirements of this paragraph (e)(i)(A)(II)), all documentation relating to *WUC* necessary to obtain a final *Occupation Certificate* for the *Works* comprised in each *separable portion*; or
    - (B) if there are not *separable portions*, all documentation relating to *WUC* necessary to obtain a final *Occupation Certificate* for the *Works*; and
  - (ii) the *Superintendent* any other *Approval* which shall be issued or given by any *Authority* as a condition precedent to the use and occupation of the *Works*;
- (f) a *defects* inspection has been carried out by the *Superintendent* and the *Contractor* and, in respect of all *defects* identified at the date of the inspection, a program for rectification of the *defects* has been approved by the *Superintendent*;
- (g) documents and other information:
  - (i) required under the *Contract*; or
  - (ii) which, in the *Superintendent's* opinion, are necessary for the proper use, operation or maintenance of the *Works*,

have been supplied to the *Superintendent* and the *Principal* in the form required by the *Contract* or, if no form is so specified, in the form required by the *Superintendent*
- (h) the *Superintendent* has received:
  - (i) the documents referred to in *Item 17*;
  - (ii) the warranties required by subclause 9.2(e);
  - (iii) the *Subcontractor's Side Deeds* required by subclause 9.2(f); and
  - (iv) the warranties and certificates required by subclause 9.6; and
  - (v) all *Tenant Handover Packs*;

- (i) the *site* is clean and tidy including:
  - (i) all floors have been cleaned and where appropriate washed and polished;
  - (ii) all carpeted and soft surfaces have been vacuumed;
  - (iii) all glass has been cleaned;
  - (iv) *temporary works* and *construction plant* have been removed; and
  - (v) *the Works* are otherwise suitable for habitation;
- (j) the *Superintendent* has been supplied with the originals of all *Approvals* issued by any *Authority* in respect of *WUC*;
- (k) all keys, electronic access mechanisms and security coding details for *the Works* have been provided to the *Superintendent*;
- (l) the *Superintendent* has been supplied with all completed and signed consent and waiver forms required to be obtained by the *Contractor* under subclause 10.3;
- (m) those areas of the *site*, excluding *the Works*, have been reinstated to the condition detailed in the dilapidation report prepared by the *Contractor* under subclause 24.5(a)(i);
- (n) any property identified in a dilapidation report prepared by the *Contractor* under subclause 24.5(a)(ii) which has been damaged arising out of or as a consequence of the *Contractor* undertaking *WUC* has been reinstated to the condition detailed in the dilapidation report prepared for that property;
- (o) the *Contractor* has provided training in the operation of *the Works* to the *Principal's* operations staff to the satisfaction of the *Superintendent*;
- (p) the *Contractor* has achieved:
  - (i) [insert any additional "Service Readiness Criteria" under Schedule 8 of the Services Agreement]; and
  - (q) any other thing required by the *Contract* to be done by the *Contractor* to achieve practical completion has been done to the satisfaction of the *Superintendent*;

***preliminary design*** means the documents stated in *Item 11*;

***Prescribed Notice*** has the meaning in subclause 41.4;

***Principal*** means the person stated in *Item 1*;

***Principal Certifying Authority*** has the meaning given to that term in the *EPA Act*;

***Principal Contractor*** has the meaning given to that term in the *WHS Regulation*;

***Principal Contractor WHS Management Plan*** has the meaning given to the term "WHS management plan" in the *WHS Regulation*;

***Principal's project requirements*** means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- (a) not used;

(b) may include the *Principal's* design, timing and cost objectives for the Works; and

(c) where stated in *Item 10*, shall include a *preliminary design*;

**Privacy Legislation** means the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth), and any other applicable Commonwealth or NSW Government *Legislation* or guidelines relating to privacy;

**Probity Investigation** means any probity or criminal investigations to report on or check the character, integrity, experience or honesty of a person or *Entity*, including:

(a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and

(b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation;

**program** has the meaning in clauses 32(e) and 32(f);

**progress certificate** has the meaning in subclause 37.2;

**Project Documents** means:

(a) the *design documents*, any as-built drawings of the Works, any operation and maintenance manuals for the Works (including software codes) and any similar documents prepared by or on behalf of the *Contractor* in relation to the Works; and

(b) any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4;

**provisional sum** has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

**public liability policy** has the meaning in clause 17A;

**qualifying cause of delay** means:

(a) any act, default or omission of:

(i) the *Superintendent*;

(ii) the *Principal* or its consultants, agents or authorised persons; or

(iii) any other contractor of the *Principal*,

(b) other than an act, default or omission which is permitted by the *Contract*, which prevents or impedes performance of the *Contractor's* obligations under the *Contract*; or

(b) any of the causes listed in *Item 28(a)*;

**Rates** means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any *Authority* in connection with the *site* or the *Relevant Infrastructure*;

**Recipient** has the meaning in subclause 44.3(a);

- Reference Date Obligations** means the *Contractor's* obligations to provide:
- (a) to the *Superintendent* the things set out in subclauses 37.1(d)(i), 37.1(d)(ii) and 37.1(d)(iii); and
  - (b) to the *Principal* the things set out in subclauses 37.1(e)(i) and 37.1(e)(ii);
- Related Body Corporate** has the meaning given in the *Corporations Act*;
- Relevant Infrastructure** in respect of a *site*, means the whole of the area inside the boundaries of the *site*, the physical works, infrastructure and grounds contained within those boundaries, and all equipment owned, leased, licensed or controlled by the *Principal*;
- Relevant Person** means:
- (a) a director or secretary of the *Contractor*; or
  - (b) an officer, agent, employee, consultant or agent of a *subcontractor* who:
    - (i) works on, or at, a *site*; or
    - (ii) has access to *Personal Information* and any other *Confidential Information* which compromises the security of the *Relevant Infrastructure*;
- Residential Tenancy Agreement** has the meaning given in section 13 of the *Residential Tenancies Act 2010* (NSW);
- Responsible Entity** has the meaning given in the *Corporations Act*;
- Retained Money** has the meaning given to that term in subclause 37.8(a);
- Safe Work Method Statement** has the meaning given to that term in the *WHS Regulation*;
- Securities** means shares, units, interests in a partnership, and any other interests, which would constitute 'securities' as defined under the *Corporations Act*;
- security** means:
- (a) retention moneys;
  - (b) an unconditional undertaking without an expiry date in a form approved by the *Principal* in its absolute and sole discretion (the form in Annexure Part B is approved) from a financial institution approved by the *Principal* in its absolute and sole discretion; or
  - (c) other form approved by the *Principal* in its absolute and sole discretion;
- Security of Payment Act** means the Building and Construction Industry Security of Payment Act 1999 (NSW);
- selected subcontract work** has the meaning in subclause 9.3(a);
- selected subcontractor** has the meaning in subclause 9.3(a);
- separable portion** means a portion of the *Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- Services Agreement** means the agreement titled 'Social and Affordable Housing Fund – Services Agreement' entered into by the *Principal* and *FACS*;

- site** means the area identified on the plan in Annexure Part L, the land on which the *Relevant Infrastructure* is or is to be located, and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- Social Housing** means each *Dwelling* identified as being made available to the *Social Housing Tenants*;
- Social Housing Tenant** means a household which meets the social housing eligibility criteria outlined in the FACS Eligibility for Social Housing Policy, and has the right to occupy a *Dwelling* under a *Residential Tenancy Agreement*;
- Solvent** has the meaning given in the *Corporations Act*;
- Standards** means all standards, codes, specifications, policies and requirements to be complied with in accordance with, and subject to, the terms of this *Contract* including:
- (a) the standards, codes, specifications, policies and requirements set out in, or otherwise expressly referred to in, the *Specification*;
  - (b) all *Approvals* (including any conditions or requirements under them);
    - (i) all requirements and standards of *Authorities*; and
    - (ii) any other policy, guideline, standard, procedure or requirement, which applies in connection with the *Delivery Service Package*:
      - (A) which is notified to the *Contractor*;
      - (B) which is publicly available or otherwise available to the *Contractor*; or
      - (C) with which the *Contractor* is expressly required by the terms of this *Contract*, by *Law* or by direction of *Principal* to comply,
- unless the *Principal* gives notice to the *Contractor* that any *Approval*, standard, code, specification, policy or requirement does not constitute a *Standard* for the purposes of this *Contract*;
- Subcontract** means an agreement the *Contractor* enters into with a *subcontractor*, in connection with the *Delivery Service Activities*;
- subcontractor** means any contractor, other than the *Contractor*, engaged in performing *WUC* including a *consultant*, a *selected subcontractor* and an *Other Subcontractor*;
- Subcontractor's Side Deed** means the form of deed at Annexure Part M;
- Sunset Date** means [#] *Months* from the *date for practical completion*;
- Supporting Statement** has the meaning given to that term in the *Security of Payment Act*;
- Superintendent** means the person stated in *Item 5* as the Superintendent or other person from time to time appointed by the *Principal* to be the Superintendent and notified as such to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's** means a person appointed by the *Superintendent* under clause 21;

**Representative**

**Supplier** has the meaning in subclause 44.3(a);

**survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;

**Tax** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, the NSW Government or the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any *Rates*;

**temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;

**Tenant** means any:

- (a) *Social Housing Tenant*; and
- (b) *Affordable Housing Tenant*;

**Tenant Handover Pack** is a pack which will include the following:

- (a) all instructions and user manuals for any piece of equipment installed as part of *the Works*;
- (b) any unfixed sections of equipment that are supplied as part of *the Works* (for example remote controls, spare cables, extra plugs/sockets etc);
- (c) all specific cleaning instructions for tiles, carpets etc;
- (d) any extras that have been provided for use as part of the purchase of equipment installed as part of *the Works* (for example washing powder, trial samples etc);
- (e) all keys and access requirements as required by the *Principal* (for example unit keys, common areas codes, swipe cards etc);

**test** has the meaning in subclause 30.1 and includes examine and measure;

**Utility** means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, facsimile and internet access);

**Utility Infrastructure** means any part of the supply, distribution or reticulation network owned, operated or controlled by a *Utility* provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the *Relevant Infrastructure*;

**Utility Interruption** means any one or more *Utilities* not being available for use at a *site* (at all or in the necessary quantity);

**the Works** means:

- (a) in relation to a *separable portion*, the whole of the *work* to be carried out and completed in accordance with the *Contract* comprised in that *separable portion*; and
- (b) otherwise, the whole of the *work* to be carried out and completed in accordance with the *Contract*,



including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;

**variation** has the meaning in subclause 36.1 excluding a *Design Detail Change*;

**WHS** means work health and safety;

**WHS Act** means the Work Health and Safety Act 2011 (NSW);

**WHS Laws** means:

- (a) those Acts, regulations, by-laws, orders, awards, proclamations, standards and codes of the Commonwealth and the State or Territory in which the *site* is located relating to *WHS* (including the *WHS Act* and the *WHS Regulation*) with respect to *WUC*;
- (b) the requirements of any *Authority* relating to *WHS* with respect to *WUC*; and
- (c) any *directions* on safety or notices issued by any relevant *Authority* or any code of practice or compliance code appropriate or relevant to *WUC*;

**WHS Management Plan** means a management plan for *WHS* that satisfies the requirements of clause 309(2) of the *WHS Regulation*;

**WHS Regulation** means the Work Health and Safety Regulation 2011 (NSW);

**work** includes the provision of materials;

**Workplace** has the meaning given to that term in the *WHS Act*;

**WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*, and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a day which is not a *Business Day*, be deemed to end on the next *Business Day*;
- (c) clause headings, subclause headings and the table of contents shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement for expert determination, is the

law of the jurisdiction in *Item 8*;

- (i) not used;
- (j) a reference to legislation or a legislative provision includes:
  - (i) any modification or substitution of that legislation or legislative provision; and
  - (ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted;
- (k) a reference to a clause, subclause, paragraph, annexure or a schedule is a reference to a clause, subclause, paragraph, annexure or a schedule to or of the *Contract*;
- (l) a reference to a person includes that person's successors and permitted assignees and permitted novatees;
- (m) an obligation or warranty on the part of two or more persons binds them jointly and severally and an obligation or warranty in favour of two or more persons benefits them jointly and severally;
- (n) "including" and "includes" are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning; and
- (p) a reference to a thing includes each part of that thing.

Neither the *Contract* nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## 2 Nature of Contract

### 2.1 Performance and payment

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* of the *Superintendent* or the *Principal*.

Subject to the provisions of the *Contract*, the *Principal* shall pay the *contract sum* to the *Contractor*.

### 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that the *Contractor*:

- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
- (b) has examined any *preliminary design* included in the *Principal's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
- (c) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's* consultants for any *work* the subject of a prior contract with the *Principal*; and

- (d) subject to subclause 2.6, shall carry out and complete *WUC* in accordance with the *design documents* so that *the Works*, when completed, shall:
  - (i) be fit for the purpose stated in the *Principal's project requirements*;
  - (ii) be able to be used without risk or harm to the health or safety of people; and
  - (iii) otherwise comply with all the requirements of the *Contract*.

### 2.3 Warranties unaffected

The warranties in subclause 2.2 remain unaffected notwithstanding:

- (a) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent* or the *Principal*;
- (d) any deemed *variation* or any *variation*; or
- (e) any *Design Detail Change* directed by the *Superintendent*.

### 2.4 Not used

### 2.5 Not used

### 2.6 Design review

- (a) The *Contractor* shall give each of the *Superintendent* and the *Principal* one hard copy and one electronic copy of the *design documents*, at the time or times required by the *program* or, if no time is stated in the *program*, within a reasonable time, allowing the *Superintendent* and the *Principal* 10 *Business Days* to review and comment on the compliance of the *design documents* with the requirements of the *Contract*.
- (b) If within the 10 *Business Days* referred to in subclause 2.6(a), the *Superintendent* or the *Principal* gives the *Contractor* a notice stating that the *design documents* do not comply with the requirements of the *Contract*, the *Contractor* shall:
  - (i) amend the *design documents* so that they comply with the requirements of the *Contract* and any comments of the *Superintendent* and the *Principal* regarding the compliance of the *design documents* with the requirements of the *Contract* at the *Contractor's* cost; and
  - (ii) promptly submit such amended *design documents* to the *Superintendent* and the *Principal*, in which case subclause 2.6(a) and this subclause 2.6(b) shall apply in relation to the amended *design documents*.
- (c) The review of or comment on any *design documents* by the *Principal* and the *Superintendent* in accordance with the *Contract* is solely to monitor the performance of the *Contractor*. The *Contractor* is fully responsible for designing the relevant part of *the Works* in accordance with the *Contract*.
- (d) The *Contractor* shall maintain a register of all *design documents* and, upon request, shall provide the *Superintendent* and the *Principal* with a copy of the register.
- (e) The *Contractor* shall not:

- (i) commence any part of the construction, manufacture, supply or installation of the relevant part of *the Works* until:
  - (A) the *design documents* relevant to that part of *the Works* have been provided to the *Superintendent* and the *Principal* in accordance with this subclause 2.6;
  - (B) the time period by which the *Superintendent* and the *Principal* may review and comment on the *design documents* has expired; and
  - (C) the *design documents* have been amended in accordance with comments made (if any) by the *Superintendent* or the *Principal* under this subclause 2.6; and
- (ii) without limiting clause 36, make any amendments to the *design documents* unless the proposed amendments have been provided to the *Superintendent* and the *Principal* in accordance with this subclause 2.6.

### 2.7 Design Detail Change

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to carry out a *Design Detail Change*.

### 3 Provisional sums

- (a) The *Initial Contract Sum* includes the *provisional sums* listed in *Item 13(a)*.
- (b) The *Contractor* shall comply with a *direction* of the *Superintendent* to carry out the *work* or supply an item to which the *provisional sum* relates.
- (c) Subject to clause 3(d), the *Contractor* agrees that in relation to each *provisional sum*, the *Contractor* shall:
  - (i) invite at least three different tenderers to tender on the *work* or item to which the *provisional sum* relates; and
  - (ii) submit the tender prices for the *work* or item to which each *provisional sum* relates to the *Superintendent* together with a recommendation as to which tender should be accepted,
 in accordance with the construction program.
- (d) The *Superintendent* may direct the *Contractor* to adopt a different tender process to that described in clause 3(c).
- (e) The *Contractor* shall not tender any *work* or item to which a *provisional sum* relates without notifying the *Superintendent* before tendering for the *work* or item.
- (f) The *Contractor* shall have the *work* or item to which a *provisional sum* relates carried out in accordance with the tender which the *Superintendent* directs the *Contractor* to accept.
- (g) A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and;
  - (i) in the case where the aggregate of all amounts priced by the *Superintendent* for *provisional sums* exceeds the aggregate of the *provisional sums* listed in *Item 13(a)*, then any difference (together with the margin stated in *Item 13(b)* on the difference) shall be added to the *contract sum*; and
  - (ii) in the case where the aggregate of all amounts priced by the *Superintendent* for *provisional sums* is less than the aggregate of the *provisional sums* listed in *Item 13(a)*, then any difference will be deducted from the *contract sum*.

#### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of *the Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus and liquidated damages.

#### 5 Security

##### 5.1 Provision

*Security* shall be provided in accordance with *Item 14*. All delivered *security*, other than retention moneys, shall be transferred in escrow.

If the *contract sum* is \$20million at the date of the *contract* or where after the date of the *contract* the *contract sum* reaches \$20million as a result of adjustments under the *contract*, Part 2 of the *Building and Construction Industry Security of Payment Regulation 2008* (Regulation) applies and the *Contractor* agrees that it will:

- (a) comply with its obligations under the Regulation and pay retention money it holds from *subcontractors* in a trust account with an approved authorised deposit-taking institution (ADI);
- (b) notify the *Principal* and NSW Fair Trading of the details of the trust account and particulars of retention money deposited; and
- (c) indemnify the *Principal* against any or all *Claims* from *subcontractors* arising from the *Contractor's* failure to comply with its obligations under the Regulation.

##### 5.2 Recourse

*Security* shall be subject to recourse if:

- (a) the *Principal* has a bona fide *Claim* that the *Contractor*:
  - (i) is in default under the *Contract*; or
  - (ii) has suffered an *Insolvency Event*; or
- (b) the *Principal* exercises its right under subclause 37.6.

The *Principal* is not required to give any notice to the *Contractor* of its intention to have recourse to *security* or to convert *security* into money.

The *Contractor* acknowledges and agrees that where either (a) or (b) applies, the *Principal* is entitled to have recourse to the *security* and that it will not take any steps to prevent the *Principal* from:

- (a) taking any steps to obtain payment under the *security*;
- (b) using the *security*.

##### 5.3 Change of security

The *Principal* may, at its absolute and sole discretion, agree to the substitution of the then current form of the *security* with another form of *security*. To the extent that another form of *security* is provided, the *Principal* shall promptly release and return the then current form of the *security*.

#### 5.4 Reduction and release

Upon:

- (a) if there are *separable portions*, the issue of the *certificate of practical completion* for the last *separable portion* to reach *practical completion*; or
  - (b) if there are not *separable portions*, the issue of the *certificate of practical completion*,
- the *Principal's* entitlement to *security* (other than in *Item 14(e)* and subject to clause 5.2) shall be reduced by the percentage or amount in *Item 14(f)* and the reduction shall be released and returned within 10 *Business Days* to the *Contractor*.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 10 *Business Days* after incorporation into *the Works* of the plant and materials for which that *security* was provided and such *security* shall be released and returned forthwith to the *Contractor*.

The *Principal's* entitlement otherwise to *security* shall cease 45 *Business Days* after *final certificate*.

Upon the *Principal's* entitlement to *security* ceasing, the *Principal* shall release and return forthwith the *security* to the *Contractor*.

#### 5.5 Interest

Interest earned on retention moneys shall belong to the *Principal*.

#### 5.6 Deed of guarantee

As a condition precedent to commencing *WUC*, the *Contractor* shall provide the *deed of guarantee* to the *Principal* duly executed and enforceable.

#### 5.7 Additional security

- (a) Where the *contract sum* exceeds the *Initial Contract Sum* by the percentage specified at *Item 14(g)* or more, the *Principal* may by notice to the *Contractor* require the *Contractor* to provide additional *security* in the same form as the *security* provided in accordance with subclause 5.1 and *Item 14* and in the amount specified in *Item 14(h)*. Such *security* shall be provided by the *Contractor* within 5 *Business Days* of the *Principal's* notice.
- (b) Where the *Principal* considers, in its absolute and sole discretion, that any financial information provided by the *Contractor* under subclause 5.8(a) or any financial review carried out under subclause 5.8(b) justifies the *Principal* requiring the *Contractor* to provide additional *security*, the *Principal* may by notice to the *Contractor* require the *Contractor* to provide additional *security* in the same form as the *security* provided in accordance with subclause 5.1 in the amount the *Principal* considers appropriate. Such *security* shall be provided by the *Contractor* within 5 *Business Days* of the *Principal's* notice.

#### 5.8 Financial information

At any time and from time to time by notice to the *Contractor*, the *Principal* may require:

- (a) the *Contractor*, at the *Principal's* expense, to provide the *Principal*:
  - (i) within the time specified in the *Principal's* notice; or
  - (ii) if no time is specified in the *Principal's* notice, within 5 *Business Days* of the *Principal's* notice,

with financial information regarding the *Contractor* including a then current balance sheet and then current details of the *Contractor's* secured and unsecured creditors; and

- (b) the *Contractor* to permit the *Principal* and its financial advisers to carry out a financial review of the *Contractor* to determine the then current financial status of the *Contractor* which may include the *Contractor*, at the *Principal's* expense, being required to provide the *Principal* and its financial advisers:
- (i) within the time specified in any *Principal's* notice; or
  - (ii) if no time is specified in any such *Principal's* notice, within 5 *Business Days* of the *Principal's* notice,
- with such financial information as the *Principal* or its financial advisers deem reasonably necessary to carry out the financial review.

## 6 Pre Contract documents and investigations

### 6.1 No responsibility

Without limiting subclause 6.2:

- (a) the *Principal* does not warrant, guarantee or make any representation about the accuracy or adequacy of any information, data and documents made available to the *Contractor* by the *Principal* or anyone on behalf of the *Principal* before the date of commencement of *WUC* and which does not form part of the *Contract*; and
- (b) to the extent permitted by law, the *Principal* shall not be liable upon any *Claim* by the *Contractor* arising out of, or in any way connected with, such information, data and documents.

### 6.2 Non-reliance

Without limiting subclause 25.1, the *Contractor*:

- (a) warrants that it did not in any way rely upon:
  - (i) any information, data, representation, statement or document (not forming part of the *Contract*) made available to the *Contractor* by the *Principal* or anyone on behalf of the *Principal*; or
  - (ii) the accuracy or adequacy of any such information, data, representation, statement or document,
 for the purposes of entering into the *Contract*; and
- (b) warrants that it enters into the *Contract* based on its own investigations, interpretations, deductions, information and determinations.

## 7 Notices

- (a) A notice, demand, consent, approval, request or other communication (including a *Prescribed Notice*) ('*Notice*') to be given under the *Contract* shall be in writing unless otherwise specified in the *Contract* and shall be given to the recipient at the relevant address in the *Contract* (or the address last communicated in accordance with this clause 7 by the recipient to the person giving the *Notice*) by being:
  - (i) hand delivered;
  - (ii) sent by facsimile transmission;
  - (iii) sent by prepaid ordinary mail within Australia; or
  - (iv) sent by email transmission except for any *Notice* under clause 33, clause 39, clause 41 or clause 42.
- (b) The date of receipt of a *Notice* is:

- (i) if hand delivered, on the date of delivery but, if delivery occurs after 5:00pm New South Wales time or on a day which is not a *Business Day*, it is taken to be received on the next *Business Day*;
- (ii) if sent by facsimile transmission, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted but, if the transmittal is recorded as after 5:00pm New South Wales time or on a day which is not a *Business Day*, it is taken to be received on the next *Business Day*;
- (iii) if sent by prepaid ordinary mail within Australia, on the date that is 3 *Business Days* after the date of posting; or
- (iv) subject to clause 7(a)(iv), if sent by email transmission, on the date that the email is sent except that:
  - (A) subject to clause 7(b)(iv)(B), if the email is sent after 5:00pm New South Wales time or on a day which is not a *Business Day*, it is taken to be received on the next *Business Day*; and
  - (B) if the sending party's electronic equipment records that the email has not been successfully delivered, the *Notice* is taken not to be received.
- (c) The *Principal*, the *Contractor* and the *Superintendent* shall each promptly notify the others of any change of notice details.
- (d) This clause 7 will survive the expiration, termination or frustration of the *Contract*.

## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any error, omission, inconsistency, ambiguity, discrepancy or illogicality in or between any document prepared for the purpose of carrying out *WUC* or any other document forming part of the *Contract* (*'Discrepancy'*), that party shall promptly, and, if that party is the *Contractor*, before commencing the relevant *WUC*, give the *Superintendent* notice of the *Discrepancy*. The *Superintendent*, thereupon, and upon otherwise becoming aware of a *Discrepancy*, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any *Discrepancy* in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than should reasonably have been anticipated by a competent contractor at the date of the *Contract* and the date of commencement of *WUC* or, if they are different dates, whichever is earlier the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number and type of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.



### 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number and type of copies thereof at the times or stages stated in *Item 17*.

Other documents required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 10 *Business Days* before the relevant *work* is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies, illogicalities or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* direction about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's* project requirements.

Subject to subclause 10.2, copies of documents supplied by the *Contractor* shall be the *Principal's* property.

The *Contractor* agrees that the *Principal* may by notice require the *Contractor* to provide the *Principal* with any other reasonable information relating to the *Contractor's* performance of the *Contract*.

### 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete and up-to-date set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, an up-to-date set of the documents affecting that part.

### 8.5 Confidential Information

- (a) Subject to subclause 8.5(b), the *Contractor* shall maintain in confidence all *Confidential Information* and ensure that the *Confidential Information* is kept confidential.
- (b) The *Contractor* may only reveal *Confidential Information*:
  - (i) if required by law or by any stock exchange to disclose, in which case the *Contractor* shall immediately notify the *Principal* of the requirement and shall take lawful steps and permit the *Principal* to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the *Confidential Information*;
  - (ii) if the *Confidential Information* is in or enters the public domain for reasons other than a breach of the *Contract*;
  - (iii) if the *Confidential Information* is disclosed to the *Contractor* by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to the *Principal*; or
  - (iv) to its professional advisers to obtain professional advice.

- (c) Without limiting any obligations in respect of privacy set out in the Principal's project requirements, the *Contractor* agrees to be bound by the *Privacy Legislation* with respect to any act done, or practice engaged in, by it in connection with this *Contract* or with the *Subcontract* (as the case may be), in the same way as the *Principal* would be bound by the *Privacy Legislation*, in connection with that act or practice had it been directly done or engaged in by the *Principal*.
- (d) The *Contractor* shall release, indemnify and shall keep indemnified on demand the *Principal* and its *Associates* from and against any *Claim* or *Liability* (including any *Claim* made by, or *Liability* to, *FACS* or any other third party) which the *Principal* or any of its *Associates* suffer or incur resulting from any act done or practice engaged in by the *Contractor* or any *Associate* of the *Contractor* in connection with the *Delivery Service Package*, which would, had that act or practice been done or engaged in by the *Principal*, have contravened any of the *Privacy Legislation*.
- (e) This subclause 8.5 will survive the expiration, termination or frustration of the *Contract*.

#### \*8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which may be given or withheld, including on terms, at the *Principal's* absolute and sole discretion). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

### 9 Assignment, novation, subcontracting and warranties

#### 9.1 Assignment and novation to new Principal

The *Contractor* shall not assign the *Contract* or any payment or any other right, benefit or interest thereunder without the prior approval of the *Principal* (which may be given or withheld, including on terms, at the *Principal's* absolute and sole discretion).

The *Principal* may assign the *Contract* or any payment or any other right, benefit or interest thereunder without the *Contractor's* approval but the *Principal* shall notify the *Contractor* of any such assignment.

If, at any time prior to the expiry of the *defects liability period*, the *Principal* wishes to novate the *Contract* to another person nominated by the *Principal* in its absolute and sole discretion ('*Nominated Person*'), at the *direction* of the *Principal*, the *Contractor*, without being entitled to compensation, shall enter into a deed of novation with the *Principal* and the *Nominated Person* in the form set out in Annexure Part K (or such other form as the *Principal* may reasonably require).

#### 9.2 Subcontracting generally

- (a) Subject to subclause 9.3, the *Contractor* shall not without the *Superintendent's* prior approval subcontract or allow a *subcontractor* to subcontract any *work* described in *Item 19(a)*. The *Contractor* shall maintain a register of all *subcontractors*, including contact details, and shall, upon request, provide a copy to the *Superintendent*.
- (b) With a request for approval, the *Contractor* shall give the *Superintendent* particulars of the *work* to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

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\* See Preface

- (c) Within 10 *Business Days* of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* notice of approval or of the reasons why approval is not given.
- (d) Except to the extent otherwise approved by the *Superintendent*, the *Contractor* shall ensure that each subcontract includes:
- (i) provision that the *subcontractor* shall not:
    - (A) assign the subcontract or any payment or any other right, benefit or interest thereunder; nor
    - (B) subcontract work under the subcontract, without the prior consent of the *Principal* (which may be given or withheld, including on terms, at the *Principal's* absolute and sole discretion) and the *Contractor*;
  - (ii) provision that the *subcontractor* shall not novate the subcontract without the *Principal's* prior consent (which may be given or withheld, including on terms, at the *Principal's* absolute and sole discretion);
  - (iii) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
  - (iv) in relation to those *subcontractors* listed or referred to in *Item 19(b)*, provision that the *subcontractor* shall, before commencing work under the subcontract, execute a deed in the form of the *Subcontractor's Side Deed*;
  - (v) provisions which may be reasonably necessary to enable the *Principal* and the *Contractor* to fulfil their respective obligations under the *WHS Laws* including an obligation for the *subcontractor* to provide evidence to the *Contractor* that all of the *subcontractor's* employees, agents and contractors have been properly inducted on to the *site* and for *WUC* in accordance with the *WHS Laws*;
  - (vi) a provision that excludes the operation of Part 4 of the *Civil Liability Act* in relation to all rights, obligations and liabilities of the *Contractor* and the *subcontractor* with respect to any matter to which Part 4 of that Act would apply but for the provision;
  - (vii) the provisions required by subclause 37.9(b);
  - (viii) provisions enabling the *Contractor* to comply with clause 52(c)(ii); and
  - (ix) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c)*, *24(d)* and *24(e)*.
- (e) The *Contractor* shall, prior to any *subcontractor* listed in *Item 42* commencing any part of *WUC*, provide the *Superintendent* with a warranty from the *subcontractor* in a form acceptable to and in favour of the *Principal*. The form of warranty at Annexure Part N is acceptable to the *Principal*.
- (f) The *Contractor*, without being entitled to compensation, shall:
- (i) procure the execution of a *Subcontractor's Side Deed* by a *subcontractor* listed or referred to in *Item 19(b)*; and
  - (ii) execute that *Subcontractor's Side Deed*, prior to that *subcontractor* commencing any part of *WUC*.
- (g) If the *Contractor* fails to execute the *Subcontractor's Side Deed* within 5 *Business Days* of the *subcontractor* commencing any part of *WUC*, the *Contractor* irrevocably appoints the *Principal* as the attorney of the *Contractor* to execute the deed on behalf of the *Contractor*.
- (h) Where the *Contractor*:
- (i) wishes to subcontract any *work* or item other than *Other Subcontract Work*; or

(ii) subcontracts any *selected subcontract work* to a *selected subcontractor*, and subclause 9.6(a)(i) applies to the whole or any part of the relevant *work*, item or *selected subcontract work*, the *Contractor* shall, prior to subcontracting such *work*, item or *selected subcontract work*, obtain the *Principal's* approval (which may be given or withheld, including on terms, at the *Principal's* absolute and sole discretion) of the form of subcontractor's, manufacturer's or supplier's warranty or installation certificate, including by providing the form of subcontractor's, manufacturer's or supplier's warranty or installation certificate to the *Superintendent*.

### 9.3 Selected subcontract work and Other Subcontract Work

- (a) If the *Principal* has included in *Item 40(a)* a list of one or more *subcontractors* ('*selected subcontractors*') for particular *work* listed in *Item 40(a)* ('*selected subcontract work*'), the *Contractor* shall subcontract that *selected subcontract work* to a *selected subcontractor* and thereupon give the *Superintendent* notice of that *selected subcontractor's* name.
- (b) If no *selected subcontractor* will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list of potential *subcontractors* for the *work* for the approval of the *Superintendent*.
- (c) When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form set out in Annexure Part C (or such other form as the *Principal* may reasonably require), such deed being between the *Principal*, the *Contractor* and any *subcontractor* stated in *Item 40(b)* ('*Other Subcontractor*') for the particular *work* listed in *Item 40(b)* ('*Other Subcontract Work*'). If the *Contractor* fails to execute the deed within 5 *Business Days* of the *direction* by the *Principal*, the *Contractor* irrevocably appoints the *Principal* as the attorney of the *Contractor* to execute the deed on behalf of the *Contractor*.
- (d) The *Contractor* shall not unreasonably terminate a subcontract for *selected subcontract work* or *Other Subcontract Work* and as early as possible, the *Contractor* shall notify the *Superintendent* of the *Contractor's* intention to terminate and the reasons. If a *selected subcontractor* or *Other Subcontractor* repudiates or abandons a subcontract or it is terminated, the *Contractor* shall forthwith notify the *Superintendent* of that fact. The *Superintendent* shall promptly issue a *direction* as to the manner of completing the *selected subcontract work* or *Other Subcontract Work*. With the *Contractor's* consent (which shall not be unreasonably withheld), the *Superintendent* may direct the *Contractor* to perform *selected subcontract work* or *Other Subcontract Work*. Otherwise the *Superintendent* shall direct the *Contractor* to subcontract the *selected subcontract work* or *Other Subcontract Work* to a *subcontractor* chosen by the *Contractor* from a list of *subcontractors* to be provided by the *Principal* or the *Superintendent* to the *Contractor*.
- (e) Subclauses 9.2(d), 9.2(e), 9.2(f), 9.2(g) and 9.2(h) shall also apply to a subcontract with a replacement *subcontractor* under subclause 9.3(d).

#### 9.3A Employee Checks

- (a) This clause applies if *Item 15* states that it applies.
- (b) The *Contractor* shall ensure that each employee or *subcontractor* engaged to provide any *Delivery Service Activities* prior to being engaged to provide the *Delivery Service Activities*, and at the frequencies specified in *Item 47*, passes the relevant *Employee Checks*.
- (c) The *Contractor* shall promptly, on request make the results of any *Employee Checks* available to the *Principal*.

- (d) The *Principal* may require the *Contractor* to deny employment to a prospective employee or *subcontractor* or discontinue employment of any person involved in the *Delivery Service Activities* if:
- (i) the *Probity Investigation* reveals information indicating that that person does not comply with the requirements of this *Contract*;
  - (ii) the employee or *subcontractor* fails an *Employee Check*; or
  - (iii) the *Principal* considers that that person is unsuitable or unqualified to provide the *Delivery Service Activities* assigned to that person.

#### 9.4 Novation of consultant

This subclause applies only where the *Principal's project requirements* include a *preliminary design*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form set out in Annexure Part D (or such other form as the *Principal* may reasonably require), such deed being between the *Principal*, the *Contractor* and any *consultant* stated in *Item 20* for the particular part of the *preliminary design*. If the *Contractor* fails to enter into the deed within 5 *Business Days* of the *direction* by the *Principal*, the *Contractor* irrevocably appoints the *Principal* as the attorney of the *Contractor* to execute the deed on behalf of the *Contractor*.

The *Contractor* shall not unreasonably terminate a contract with a *consultant* whose prior contract with the *Principal* is novated to the *Contractor* under this subclause 9.4. As early as possible, the *Contractor* shall notify the *Superintendent* of the *Contractor's* intention to terminate and the reasons. If such a *consultant* repudiates or abandons its contract or it is terminated, the *Contractor* shall forthwith notify the *Superintendent* of that fact. The *Superintendent* shall promptly issue a *direction* as to the manner of completing the *work* which remained to be performed under that contract. The *Superintendent* shall direct the *Contractor* to subcontract that *work* to a *consultant* chosen by the *Contractor* from a list of *consultants* to be provided by the *Principal* or the *Superintendent* to the *Contractor*.

#### 9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any *Liability* or obligation under the *Contract*.

#### 9.6 Benefit of warranties

- (a) Without limiting any other provision of the *Contract*, the *Contractor* shall ensure that:
- (i) subcontractors', manufacturers' and suppliers' warranties and installation certificates for the *work* or items listed in *Item 41*:
    - (A) for the periods set out in *Item 41*;
    - (B) for *work* or items other than *Other Subcontract Work*, in the form approved by the *Principal* in accordance with subclause 9.2(h); and
    - (C) for *Other Subcontract Work*, in the form required by the contract between the *Contractor* and the relevant *Other Subcontractor*; and
  - (ii) any other subcontractors', manufacturers' and suppliers' warranties and installation certificates relating to *the Works* which are available on reasonable commercial terms,

are:

(iii) given:

- (A) if available, severally in favour of the *Contractor* and the *Principal*;
- (B) if not available severally in favour of the *Contractor* and the *Principal*, only in favour of the *Principal*; or
- (C) if not available:
  - (I) severally in favour of the *Contractor* and the *Principal*; or
  - (II) only in favour of the *Principal*,  
only in favour of the *Contractor*,

and if given:

- (iv) severally in favour of the *Contractor* and the *Principal* or if given only in favour of the *Principal*, permit the assignment of the rights of the *Principal* by the *Principal* to another person, without the warrantor's or certifier's consent;
- (v) only in favour of the *Contractor*, permit the assignment:
  - (A) of the rights of the *Contractor* by the *Contractor* to the *Principal* or to another person, without the warrantor's or certifier's consent; and
  - (B) of the rights of the *Principal* by the *Principal* to another person, without the *Contractor's*, warrantor's or certifier's consent following an assignment to the *Principal* under subclause 9.6(a)(v)(A),

and are:

(vi) given:

- (A) if available, with effect from the *date of practical completion*; or
- (B) if not available with effect from the *date of practical completion*, with effect from the date of completion of the relevant part of *WUC*; and

(vii) duly executed.

- (b) The warranties and certifications required by subclause 9.6(a) shall be provided to the *Superintendent* prior to *practical completion*.
- (c) The provision of the warranties and certifications required by this subclause 9.6 shall not derogate from any rights which the *Principal* may have against the *Contractor* in respect of the subject matter of the warranties and certifications.
- (d) If requested by the *Principal*, the *Contractor* shall, within 5 *Business Days* of receipt of the *Principal's* request, assign the rights of the *Contractor* under those subcontractors', manufacturers' and suppliers' warranties and installation certificates relating to *the Works* given only in favour of the *Contractor* specified in the request to:
  - (i) the *Principal*; or
  - (ii) a person nominated in the request.

## 10 Intellectual property rights

### 10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's* project requirements, design, materials, documents and methods of working, each specified in the

*Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor* or any *subcontractor*, shall not infringe any *intellectual property right*.

The *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* arising out of or as a consequence of any breach of this subclause 10.1 by the *Contractor*.

## 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

The *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* arising out of or as a consequence of any breach of this subclause 10.2 by the *Contractor*.

### *Alternative 1*

- (a) The *Contractor* retains the *intellectual property rights* in or in relation to the *Project Documents*.
- (b) The *Contractor* grants to the *Principal* an exclusive, worldwide, perpetual, irrevocable, transferable (in whole or in part), royalty and fee free licence to use:
  - (i) the *intellectual property rights* in or relating to the *Project Documents*; and
  - (ii) the *Project Documents*,

for any purpose relating to or in connection with *WUC*, *the Works* and the *site* including any subsequent repairs, maintenance or servicing, the supply of replacement parts and additions or alterations and the copying of the *Project Documents* for such purposes. Such licence shall be capable of being sublicensed by the *Principal*, and by any sublicensee of the *Principal*, in the *Principal's* or the sublicensee's (as applicable) absolute and sole discretion.

### *Alternative 2*

- (a) Subject to subclause 10.2(c), the *Contractor* assigns to the *Principal* all *intellectual property rights* in or relating to the *Project Documents*. The assignment operates as an assignment of future rights to the extent that any of the *Project Documents* are not in existence at the date of commencement of *WUC*.
- (b) The *Principal* grants to the *Contractor* an irrevocable licence to use the *intellectual property rights* in or relating to the *Project Documents* and the *Project Documents* for *WUC*.
- (c) To the extent the *intellectual property rights* in or relating to the *Project Documents* are not capable of being assigned to the *Principal* because the *Contractor* does not own such *intellectual property rights*, the *Contractor* grants to the *Principal* an exclusive, worldwide, perpetual, irrevocable, transferable (in whole or in part), royalty and fee free licence to use:
  - (i) the *intellectual property rights* in or relating to the *Project Documents*; and
  - (ii) the *Project Documents*,

for any purpose relating to or in connection with *WUC*, *the Works* and the *site* including any subsequent repairs, maintenance or servicing, the supply of replacement parts and additions or alterations and the copying of the *Project Documents* for such purposes. Such licence may be sublicensed by the *Principal*, and by any sublicensee of the *Principal*, in the *Principal's* or the sublicensee's (as applicable) absolute and sole discretion.

### 10.3 Moral rights

The *Contractor* shall obtain from each individual who is an author of any *Project Document* (prior to that individual's commencement of creation of any part of the *Project Document*) a completed and signed consent and waiver form substantially in the form set out in Annexure Part O and provide such completed and signed consent and waiver form to the *Superintendent* prior to the individual's commencement of creation of any part of the *Project Document*.

The *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* arising out of or as a consequence of any breach of this subclause 10.3 by the *Contractor*.

### 10.4 Survival

This clause 10 will survive the expiration, termination or frustration of the *Contract*.

## 11 Legislative requirements

### 11.1 Compliance

- (a) The *Contractor* shall satisfy all *legislative requirements* except those:
- (i) in *Item 22(a)*;
  - (ii) in the *DA Matrix* that are specified to be the responsibility of the *Principal*; or
  - (iii) directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.
- (b) In relation to those *legislative requirements*:
- (i) in *Item 22(a)*;
  - (ii) in the *DA Matrix* that are specified to be the responsibility of the *Principal*; or
  - (iii) directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*,
- the *Contractor* shall provide the *Principal* with reasonable assistance requested by the *Principal*.
- (c) In relation to *legislative requirements* that are the responsibility of the *Contractor*, the *Principal* shall provide the *Contractor* with reasonable assistance to the extent that a *legislative requirement* may by law only be performed by the *Principal*.
- (d) The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's project requirements*, shall promptly give the *Superintendent* notice thereof and comply with any *direction* by the *Superintendent* given to ensure *WUC* complies with any *legislative requirement*.

### 11.2 Changes

If a *legislative requirement*:

- (a) comes into effect:
- (i) before the *date for practical completion*; and
  - (ii) after the 10th *Business Day* before:
    - (A) the date of the *Contract*; and
    - (B) the date of commencement of *WUC*,
 or, if they are different dates, whichever is earlier, but could not reasonably then have been anticipated by a competent contractor; or



- (b) was in effect before the date determined under subclause 11.2(a)(ii) and the *legislative requirement* is at variance with the *Contract*; and
- (c) necessitates a change:
  - (i) to the *Principal's project requirements*;
  - (ii) to *the Works*;
  - (iii) to so much of *WUC* as is identified in *Item 22(b)*;
  - (iv) being the provision of services by an *Authority* in connection with *WUC*; or
  - (v) in a fee or charge or payment of a new fee or charge, being a fee or charge incurred by the *Contractor* in connection with *WUC*; and
- (d) causes the *Contractor* to incur more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 11.3 Approvals

- (a) The *Principal* has obtained the *Development Consent*.
- (b) The *Contractor* shall:
  - (i) obtain all remaining *Approvals*, except those *Approvals* that by law may only be obtained by the *Principal*, necessary to execute *WUC* including liaising with any *Authority* in relation to such *Approvals*; and
  - (ii) promptly provide copies of all such *Approvals* to the *Superintendent*.
- (c) In relation to those *Approvals* that by law may only be obtained by the *Principal*, the *Contractor* shall, to the extent such assistance is not otherwise included in *WUC*, provide the *Principal* with reasonable assistance requested by the *Principal* in relation to obtaining those *Approvals*.

### 11.4 Non-compliance

Subject to subclause 11.1(a), if the *Contractor* does not comply with any *legislative requirement*, and such non-compliance has not been remedied within 5 *Business Days* after the *Contractor* receives notice from the *Superintendent* that the *Principal* intends to take measures to effect compliance, the *Principal* may take measures to effect compliance and all costs incurred by the *Principal* in doing so shall be certified by the *Superintendent* as moneys due and payable from the *Contractor* to the *Principal*.

### 11.5 Warranties about Legislative Inspections

The *Contractor* warrants that:

- (a) it understands the *Legislative Inspections* required in relation to *WUC*;
- (b) it has made sufficient allowance in the *program* for the *Legislative Inspections* to take place; and
- (c) it shall co-ordinate *WUC* to accommodate the *Legislative Inspections*.

### 11.6 Performance of Legislative Inspections

- (a) When a *Legislative Inspection* is required to be performed the *Contractor* shall:
  - (i) give the *Superintendent* 5 *Business Days'* notice that such *Legislative Inspection* is required; and

- (ii) leave *WUC* which is to be the subject of the *Legislative Inspection* uncovered until that *Legislative Inspection* is completed.
- (b) If the *Contractor* fails to comply with its obligations in subclause 11.6(a), the *Contractor* shall at its own cost uncover, remove, reinstate or perform any other *works* required in order that the relevant *Legislative Inspection* may take place.
- (c) The *Contractor* indemnifies the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* arising out of or as a consequence of a breach of this subclause 11.6 by the *Contractor*.

#### 11.7 Documents evidencing Authority approvals

The *Contractor* shall, prior to *practical completion*, provide the *Superintendent* with the originals of all *Approvals* issued by any *Authority* in respect of *WUC*.

#### 11.8 Long service levy

Before commencing *WUC*, the *Contractor* shall, where applicable:

- (a) pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent, the amount of the long service levy payable under the Building and Construction Industry Long Service Payments Act 1986 (NSW); and
- (b) provide evidence of the payment of the long service levy to the *Superintendent*.

#### 11A Compliance with Commonwealth Funding Conditions

- (a) (**Acknowledgement**): The *Contractor* acknowledges that the Commonwealth of Australia may contribute to the funding for the performance of the *Delivery Service Package*.
- (b) (**Compliance**): Without limiting clauses 48 and 50, the *Contractor* shall comply with any *Commonwealth Funding Conditions* to the extent required for the performance of the *Delivery Service Package*.

#### 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly notify the *Superintendent* and the *Principal* of such damage and pay any compensation which the law requires the *Contractor* to pay and, subject to subclause 14.2, promptly rectify the damage.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable from the *Contractor* to the *Principal*.

#### 13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due and payable from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior notice of the intention to take action pursuant to this clause.

## 14 Care of work, reinstatement of damage and Environment

### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to:

- (a) *WUC* during the period of the *Contractor's* care, the *Contractor* shall, at its cost, rectify such loss or damage; or
- (b) the *Principal's* property or the property of any other person arising out of or as a consequence of the carrying out of or failure to carry out *WUC*, the *Contractor* shall, at its cost, rectify such loss or damage if directed to do so by the *Superintendent*.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or negligent omission of:
  - (i) the *Superintendent*;
  - (ii) the *Principal* or its consultants or agents; or
  - (iii) any other contractor of the *Principal* (excluding any *Certification Authority*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, terrorism (but not any eligible terrorism loss under the Terrorism Insurance Act 2003 (Cth)), acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or any *subcontractors* or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by:

- (i) the *Principal* or its consultants or agents; or
- (ii) any other contractor of the *Principal* (excluding any *Certification Authority*).

#### 14.4 Environment

The *Contractor* shall ensure that in carrying out *WUC* it does not pollute, contaminate or otherwise damage the *Environment*, and shall immediately make good any pollution, contamination or damage to the *Environment* arising out of, or in connection with, *WUC*.

#### 14.5 Environmental Management Plan

- (a) Prior to the commencement of the *WUC*, the *Contractor* shall submit an Environmental Management Plan (EMP) to the *Principal*. The EMP shall include:
  - (i) a statement of commitment - overall objectives of the EMP;
  - (ii) a sediment and erosion control plan for the *site* prepared by a suitably qualified person in accordance with the principles outlined in the Managing Urban Stormwater Soils and Construction' (Volume 1) dated March 2004 by Landcom NSW;
  - (iii) worksheets completed by the *Contractor* and a list of likely *Environmental* issues and impacts associated with *WUC*;
  - (iv) any *Environmental* requirements deriving from the project *Approvals* for the *WUC*;
  - (v) any additional *Environmental* requirements imposed by any *Authority* (for example, sampling and the like);
  - (vi) an *Environmental* emergency response plan and incident reporting procedures;
  - (viii) monitoring requirements including a site *Environmental* logbook comprising weekly log sheets;
  - (ix) a quality management system for the identified *Environmental* issues and impacts associated with *WUC*, including:
    - A. the *Contractor's* statement of responsibilities and duties as to *Environmental* management;
    - B. a clear indication and communication of the *Environmental* responsibilities on the *site*; and
    - C. *Environmental* awareness and training for site personnel and *subcontractors*.
- (b) All *WUC* shall be conducted in compliance with the EMP at all times.

#### 14.6 Traffic and Pedestrian Management Plan

- (a) For the purpose of this clause 14.6 a Traffic and Pedestrian Management Plan (TMP) is a fully detailed engineering plan which includes specifications of:
  - (i) all works, line marking, signage and assessment of pedestrian and vehicle access in and around the *site* for each stage of the *WUC*;
  - (ii) all internal driveways, car parking areas, delivery areas, accesses (including installation of signage) to appropriately control vehicles entering the *site*;
  - (iii) stipulates the date that it was prepared; and
  - (iv) is signed by the nominated *Contractor's* representative.

- (b) The *Contractor* shall prepare and provide to the *Principal* a TMP before commencing any of the *WUC* on the *site* and prior to the issue of a Construction Certificate by the *Consent Authority*.
- (c) After review of the TMP the *Superintendent* may issue a *direction* that additional items be added that are otherwise missing or inaccurately detailed.
- (d) The *Contractor* shall promptly comply with any *direction* issued under paragraph (c).
- (e) The *Contractor* shall ensure that its activities do not interfere with the access to and the normal operation of:
  - (i) adjoining sites; and/or
  - (ii) any business, school or residence in the vicinity of the *site* and will provide suitable public access (temporary access for vehicles and pedestrians). This access shall be maintained in good condition at all times, and any disturbances or damage to any roads or footpaths shall be rectified immediately.
- (f) The *Contractor* shall ensure all traffic controllers hold a current Roads and Maritime Services Traffic Controllers Certificate.
- (g) Excavations in public access ways shall be properly protected by barricades and lights, promptly backfilled and the surface reinstated on the completion of the *work* and its testing and acceptance (if applicable), to minimise the disruption of the free movement of the public.

#### 14.7 Vibration Management Plan

- (a) The *Contractor* shall prepare and provide to the *Principal* a Vibration Management Plan (VMP) before commencement of any demolition or excavation on the *site*.
- (b) A VMP shall:
  - (i) be prepared by an appropriately experienced geotechnical engineer or engineering geologist;
  - (ii) include recommendations for:
    - A. performance standards to be met during the *WUC* (in terms of acceptable ground vibration);
    - B. strategies for the management of ground vibration and monitoring requirements for vibration through the *WUC*;
- (a) After review of the VMP the *Superintendent* may issue a *direction* that additional items be added that are otherwise missing or inaccurately detailed.
- (b) The *Contractor* shall promptly comply with any *direction* issued under paragraph (c).
- (c) When conducting the *WUC* the *Contractor* shall:
  - (i) select appropriate demolition methods and equipment to minimise the effect of vibration and concussion on buildings in the vicinity of the *Works*;
  - (ii) comply with all *legislative requirements* relating to noise and its suppression.
- (d) All *construction plant* and/or equipment shall be fitted with noise suppressors, so that noise is minimised. Jackhammers and other noise generating tools used in the performance of the *Work* shall be fitted with effective silencers of a type recommended by the relevant jackhammer manufacturer. Tools and silencers shall be kept in good working condition.
- (e) Compressor sets used in the performance of the *Works* shall be fitted with effective acoustic canopies and engine exhaust silencers of a type recommended by the relevant compressor manufacturer, or purpose built machines for quiet operation. Compressor sets

and canopies shall be kept in good working condition. Access panels in acoustic canopies shall be kept closed while sets are running.

- (f) The *Superintendent* may instruct that noise generating activities be suspended at certain additional times during the course of the *WUC*.

#### 14.8 Dust control during demolition and generally

- (a) The *Contractor* shall in the course of any demolition works adopt techniques which will minimise the release of dust into the atmosphere.
- (b) Before commencing demolition work, any existing accumulations of dust are to be collected, placed in suitable containers and removed from the *site* by the *Contractor*. Selection of appropriate collection techniques, such as vacuuming or hosing down, shall take account of the nature of the dust and the type of hazard it presents (eg., explosive, respiratory etc).
- (c) Dust which is generated during stripping or during the breaking down of any or all building fabric to removable sized pieces shall be kept damp until it is removed from the site or can be otherwise contained.

#### 14.9 Conservation and Protection of trees

- (a) The *Contractor* shall conserve and maintain established streetscape and other canopy trees in and around the site by establishing Tree Protection Zones (TPZ) around all trees to be retained on the site in a manner consistent with the Australian Standard 4970-2009 for the Protection of Trees on Development Sites.
- (b) The TPZ shall encompass the maximum possible area around the drip line of the canopy, but shall be located at a distance of no less than 2.5 metres from the base of the trees.
- (c) An inspection of the structures associated with the TPZ shall be arranged with the *Consent Authority* or a qualified arborist to verify that the TPZ have been correctly installed prior to the commencement of *the Works*.
- (d) The Contractor shall ensure TPZ are maintained in good order during the *WUC* by ensuring that there is:
- (i) no excavation, trenching or soil removal carried beyond those works indicated on approved plans, without the prior written consent of the Principal.
  - (ii) no:
    - A. storage of goods or materials;
    - B. no parking or operation of vehicles;
    - C. no dumping of refuse or stockpiling of waste; and
    - D. no chemical run-off (including concrete wash, paint wash etc.) in the TPZ.
- (e) Should an encroachment into the TPZ become necessary as *the Works* progress the *Contractor* shall arrange for the TPZ to be reviewed by a qualified arborist and obtain the written consent of the *Consent Authority* before carrying out any such works.
- (f) The *Contractor* shall ensure any pruning (and subsequent aftercare) of tree canopy and roots which are required in the course of the *WUC* are undertaken by an appropriately qualified arborist and in accordance with the Australian Standard 4970-2009 for the Protection of Trees on Development Sites.
- (g) If, in the course of the *WUC*, any tree proposed for retention suffers accidental damage to the primary root zone, trunk, crown or major branching, the *Contractor* shall ensure that the tree(s) is treated as soon as it is practicable and in any event within 48 hours by an Arborist or a qualified horticulturalist.

- (h) If repair work is attempted and fails, or is impracticable, additional vegetation removal may be undertaken only after the *Contractor* has notified the *Principal* and the *Principal* approves.
- (i) The *Contractor* shall replace any tree damaged by planting advanced to super-advanced species, characteristic of the locality, or of the same species as the tree which was the subject of the damage. Where an alternative species is proposed by the *Contractor* the selection shall be approved by the *Consent Authority*.

## 15 Damage to persons and property and Contractor responsibility

### 15.1 Indemnity by Contractor

- (a) Insofar as this subclause applies to property, it applies to property other than *WUC*.
- (b) The *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* resulting from:
  - (i) loss of or damage to the *Principal's* property arising out of or as a consequence of the carrying out of or failure to carry out *WUC*;
  - (ii) personal injury, death, disease or illness (including mental illness) or loss of, or damage to, any other property or the *Environment* arising out of or as a consequence of the carrying out of or failure to carry out *WUC*;
  - (iii) a breach of the *Contract* by the *Contractor* other than a breach of subclause 34.1; or
  - (iv) any wilful or negligent act or wilful or negligent omission of the *Contractor*, a *subcontractor* or the employees or agents of any of them,
 but the indemnity shall be reduced proportionally to the extent that any breach of the *Contract* by the *Principal* or any negligent act or negligent omission of:
  - (v) the *Superintendent*;
  - (vi) the *Principal* or its consultants or agents; or
  - (vii) any other contractor of the *Principal* (excluding any *Certification Authority*),
 contributed to the cost, expense, loss, damage or *Liability*.
- (c) This subclause shall not apply to:
  - (i) the extent that the *Contractor's Liability* is limited by another provision of the *Contract*;
  - (ii) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
  - (iii) things for the care of which the *Contractor* is responsible under subclause 14.1; and
  - (iv) *Claims* in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of *Claims* referred to in subclause 15.1(c)(iv).

### 16A Insurance of the Works

- (a) Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.
- (b) Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's Liability* under subclause 14.2(a) and things in storage off *site* and in transit to

the *site* (both within and outside of Australia for each of storage and transit) but may exclude:

- (i) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
  - (ii) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
  - (iii) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
  - (iv) damages for delay in completing or for the failure to complete *the Works*;
  - (v) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
  - (vi) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.
- (c) The insurance cover shall be for an amount not less than the aggregate of the:
- (i) *contract sum*;
  - (ii) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
  - (iii) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
  - (iv) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
  - (v) additional amount or percentage in *Item 23(e)* of the total of the items referred to in clauses 16A(c)(i) to 16A(c)(iv).
- (d) The insurance cover shall have an excess per insured event of not more than the sum in *Item 23(f)*.
- (e) Insurance shall name the *Principal* and the *Contractor* as separate insureds, shall cover the parties and all *subcontractors* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved by the *Principal* (which approvals shall not be unreasonably withheld).
- (f) The insurance shall note the interest of the *Financier*.
- (g) The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

#### **16B Professional indemnity insurance**

- (a) Before commencing *WUC*, the *Contractor* shall effect a professional indemnity insurance policy with:
- (i) cover for an amount in respect of any one *Claim* of not less than the sum stated in *Item 24(a)*; and
  - (ii) a total aggregate cover for any year of not less than the sum stated in *Item 24(a)*.
- (b) The policy shall include provisions for:
- (i) one automatic reinstatement of the sum insured;
  - (ii) an excess per *Claim* of not more than the sum stated in *Item 24(c)*; and
  - (iii) loss of documents.
- (c) The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.



- (d) The policy shall be with an insurer and on terms (including that the policy applies in relation to *WUC*) both approved by the *Principal* (which approvals shall not be unreasonably withheld).
- (e) The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(d)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(d)* applicable to that category. The insurance cover shall have an excess per *Claim* of not more than the sum in *Item 24(c)*.
- (f) Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(e)*.

#### 17A Public liability insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain until the expiry of the last *defects liability period*, a *public liability policy*.

The policy shall:

- (a) be an occurrence based policy and name the *Principal* and the *Contractor* as separate insureds;
- (b) cover the:
  - (i) respective rights and interests; and
  - (ii) liabilities to third parties (including the other party),
 of the parties, the *Superintendent* and *subcontractors* from time to time;
- (c) cover the parties' respective *Liability* to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death, disease or illness (including mental illness) of or injury to any person (other than *Liability* which the law requires to be covered under a workers compensation insurance policy);
- (d) note the interest of the *Financier*;
- (e) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (f) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*;
- (g) have an excess per occurrence of not more than the sum in *Item 25(c)*; and
- (h) be with an insurer and otherwise in terms both approved by the *Principal* (which approvals shall not be unreasonably withheld).

#### 17B Motor vehicle and plant and equipment insurance

##### 17B.1 Motor vehicle insurance

- (a) Before commencing *WUC*, the *Contractor* shall effect and maintain until the expiry of the last *defects liability period*:
  - (i) compulsory third party motor vehicle insurance as required by law;
  - (ii) motor vehicle insurance covering the *Contractor's Liability* to third parties (including the *Principal* and the *Superintendent*) arising out of the use of any motor vehicle registered or required to be registered in accordance with any law and used in connection with *WUC* for:
    - (A) injury, death, disease or illness (including mental illness); and
    - (B) loss of or damage to property.

- (b) The insurance required under clause 17B.1(a)(ii) shall:
- (i) provide cover in respect of any one occurrence of not less than the sum in *Item 25(b)*;
  - (ii) have an excess per occurrence of not more than the sum in *Item 25(c)*; and
  - (iii) be with an insurer and otherwise in terms both approved by the *Principal* (which approvals shall not be unreasonably withheld).
- (c) The *Contractor* shall ensure that every *subcontractor* shall effect and maintain for the duration of the *subcontractor's* involvement in *WUC*:
- (i) compulsory third party motor vehicle insurance as required by law; and
  - (ii) motor vehicle insurance covering the *subcontractor's Liability* to third parties for the matters described in subclause 17B.1(a)(ii) with cover in respect of any one occurrence of not less than the sum stated in *Item 25(b)* and with an excess per occurrence of not more than the sum in *Item 25(c)*.

### 17B.2 Plant and equipment insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain plant and equipment insurance until the expiry of the last *defects liability period*:

- (a) covering all *construction plant* which the *Contractor* may use in connection with *WUC* either at the *site*, in storage off *site* or in transit to the *site* (both within and outside of Australia for each of storage and transit); and
- (b) for the full replacement value of the relevant *construction plant*.

### 17C Payment of Excesses

- (a) The excess, as quoted in the insurance policies required to be taken out by the *Contractor*, is the responsibility of, and shall be paid by, the *Contractor* on demand unless the *Claim* for which the excess applies relates to the negligent acts or omissions of the *Principal*, or employees or agents of the *Principal*.
- (b) Any excess payable but unpaid by the *Contractor* will be treated as a debt due and payable from the *Contractor* to the *Principal* or may be deducted by the *Principal* from any monies which may be payable by the *Principal* to the *Contractor* or from any *security* provided under the *contract*.

### 18 Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law *Liability* for death, disease or illness (including mental illness) of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory and common law *Liability* to the *Contractor's* employees.

The *Contractor* shall ensure that all *subcontractors* have similarly insured their employees.

### 19 Inspection and provisions of insurance policies

#### 19.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested by the *Principal*, the *Contractor* shall provide satisfactory evidence of the insurance the *Contractor* is required to effect and maintain and of the insurance to be effected and maintained by *subcontractors*.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

### 19.2 Failure to produce proof of insurance

If after being so requested, the *Contractor* fails promptly to provide satisfactory evidence of compliance with clause 16A, clause 16B, clause 17A, clause 17B or clause 18, then without prejudice to other rights or remedies, the *Principal* may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the *Contractor* to the *Principal*.

### 19.3 Notices from or to insurer

The *Contractor* shall ensure that each insurance policy contains provisions acceptable to the *Principal* which:

- (a) requires the insurer to inform both parties, whenever the insurer gives the *Contractor* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of *Claim* given to the insurer by either party, the *Superintendent* or a *subcontractor* shall be accepted by the insurer as a notice of *Claim* given by both parties, the *Superintendent* and the *subcontractor*; and
- (c) requires the insurer, whenever the *Contractor* fails to maintain the policy, promptly to give notice thereof to both parties and prior to cancellation of the policy.

### 19.4 Notices of potential Claims

A party shall, as soon as practicable, inform the other party of any occurrence that may give rise to a *Claim* under an insurance policy required by clause 16A, clause 16B, clause 17A, clause 17B or, where the occurrence relates to *WUC*, clause 18 and shall keep the other party informed of subsequent developments concerning the *Claim*. The *Contractor* shall ensure that *subcontractors* in respect of their operations similarly inform the parties.

### 19.5 Not used

### 19.6 Cross liability and subrogation

Any insurance required to be effected in the names of the *Principal* and the *Contractor* in accordance with the *Contract* shall include:

- (a) a cross liability clause in which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured (and any other person the *Contract* requires the insurance to cover for its rights, interests and liabilities) as if a separate policy of insurance had been issued to each of them; and
- (b) a waiver of subrogation clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured (and any other person the *Contract* requires the insurance to cover for its rights, interests and liabilities),

subject always to the overall sum insured not being increased thereby.

### 19.7 Survival

Clauses 16A, 16B, 17A, 17B, 17C, 18 and this clause 19 will survive the expiration, termination or frustration of the *Contract*.

## 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides and notwithstanding clause 7, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing.

The *Contractor* acknowledges that the *Principal* has engaged the *Superintendent* as its project manager in relation to *WUC* in addition to its engagement as the *Superintendent*.

## 21 Superintendent's Representative

With the prior approval of the *Principal* (which may be given or withheld, including on terms, at the *Principal's* absolute and sole discretion), the *Superintendent* may from time to time appoint any person to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* notice of respectively:
  - (i) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
  - (ii) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

## 23 Contractor's employees, subcontractors and Key Personnel

### 23.1 Contractor's employees and subcontractors

- (a) The *Superintendent* may direct the *Contractor* to have removed, within a stated time including immediately, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct. That person shall not thereafter be employed on the *site* or on activities connected with *WUC* without the prior approval of the *Superintendent*.
- (b) The *Contractor* shall ensure that all *WUC* is executed under the supervision of appropriately qualified and skilled personnel.
- (c) Without limiting subclause 23.1(a) or subclause 23.1(b), the *Superintendent* may at any time give the *Contractor* a *direction* in relation to any *subcontractor* to address any concern the *Superintendent* may have in relation to that *subcontractor*.

### 23.2 Key Personnel

- (a) In the carrying out of *WUC*, the *Contractor* shall employ the *Key Personnel* in the roles specified in *Item 43*.

- (b) The *Contractor* shall not release any of the *Key Personnel* from carrying out the role specified in *Item 43* unless the *Superintendent* approves a substitute.

## 24 Site

### 24.1 Access and possession

Provided the *Contractor* has complied with subclauses 5.1, 5.6 and 19.1, the *Principal* shall by the date stated in *Item 26(a)*, give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclauses 5.1, 5.6, 11.8, 19.1, 24.5, 48.6(a)(ix) and 48.6(a)(x) the *Principal* shall by the date stated in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and comply with its obligations under clause 48 and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

- (a) Without limiting subclause 24.2(b) and subject to subclause 24.2(c), the *Principal* and the *Principal's* employees, consultants, agents and other persons authorised by the *Principal* may at any time after reasonable notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged or authorised by the *Principal* to carry out *work* or other activities on the *site*, other than *WUC*, and shall cooperate with them, coordinate *WUC* with them and shall not hinder or otherwise delay them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged or authorised.
- (b) Subject to subclause 24.2(c), the *Contractor* shall at all reasonable times give the *Principal*, the *Superintendent* and any *Certification Authority* access to *WUC*.
- (c) Any person identified in subclause 24.2(a) or subclause 24.2(b) who accesses the *site* or *WUC* shall comply with the *Contractor's* reasonable *directions*, procedures and policies relating to *WHS* and security for the relevant part of the *site* or *WUC*. The *Contractor* shall provide safe access to the *site* for the persons referred to in this subclause 24.2.

### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

The *Contractor* shall comply with any *direction* given by the *Superintendent* in relation to such things. All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

#### 24.4 Adjoining property

Where *WUC* requires the *Contractor* to execute *WUC* on, in or over any property adjoining or in the vicinity of the *site*, the *Contractor* shall:

- (a) obtain the appropriate permission from the owner and, where necessary, the occupier of that property;
- (b) comply with all conditions attaching to such permission; and
- (c) be responsible for:
  - (i) all matters relating to the execution of *WUC* outside the boundaries of the *site*; and
  - (ii) any cost, expense, loss, damage or other *Liability* to the extent it arises from the execution of *WUC* outside the boundaries of the *site*.

The *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* to the extent it arises from the execution of *WUC* outside the boundaries of the *site*.

#### 24.5 Dilapidation reports

- (a) The *Contractor* shall:
  - (i) prepare a dilapidation report of the *site* acceptable to the *Superintendent*, prior to executing any *WUC* on the *site*, and provide a copy of the report to the *Superintendent* prior to executing that *WUC*;
  - (ii) if subclause 24.4 applies, prepare a dilapidation report of that property acceptable to the *Superintendent*, prior to executing any *WUC* on that property, and provide a copy of the report to the *Superintendent* prior to executing that *WUC*;
  - (iii) prepare a dilapidation report of all access routes and roads to, adjoining or in the vicinity of the *site* ('*Access Routes*') and services adjoining or in the vicinity of the *Access Routes* acceptable to the *Superintendent* prior to executing any *WUC* on the *site* or as otherwise required by the *Superintendent* from time to time, and provide a copy of the report to the *Superintendent* prior to executing that *WUC* or as otherwise required by the *Superintendent*; and
  - (iv) ensure that any dilapidation report prepared under this subclause 24.5(a) shall be prepared by a suitably qualified and experienced person who has been approved by the *Superintendent*, acting reasonably; prior to that person commencing preparation of the dilapidation report; and
- (b) Prior to *practical completion*, the *Contractor* shall reinstate those areas of the *site*, excluding the *Works*, detailed in the dilapidation report prepared by the *Contractor* under subclause 24.5(a)(i) to the condition detailed in the report.
- (c) Prior to *practical completion*, the *Contractor* shall reinstate any property or *Access Route* identified in a dilapidation report prepared by the *Contractor* under subclause 24.5(a)(ii) or subclause 24.5(a)(iii) which has been damaged arising out of or as a consequence of the *Contractor* undertaking *WUC* to the condition detailed in the dilapidation report prepared for that property or *Access Route*.
- (d) If the *Contractor* fails to comply with any obligation in subclause 24.5(a) to subclause 24.5(c), the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.
- (e) If:
  - (i) the *Contractor* fails to comply with a *direction* under subclause 24.5(d); and

- (ii) that failure has not been made good within 5 *Business Days* after the *Contractor* receives notice from the *Superintendent* notifying the *Contractor* of its failure to comply with the *direction* under subclause 24.5(d),

the *Principal* may have carried out by others what was required by the *direction* under subclause 24.5(d), but without prejudice to any other rights and remedies the *Principal* may have, to the extent not carried out by the *Contractor* at the time of the *Superintendent's* notice under subclause 24.5(e)(ii), and the *Superintendent* shall certify the cost incurred as moneys due and payable from the *Contractor* to the *Principal*.

#### 24.6 Utility and telecommunication costs

The *Contractor* shall pay all costs associated with the supply of utility and telecommunication services for the carrying out of *WUC*.

### 25 Latent conditions

#### 25.1 Scope

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions or the effect of weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the date of the *Contract* and the date of commencement of *WUC* or, if they are different dates, whichever is earlier if it had inspected:

- (a) all written information made available by or on behalf of the *Principal* to the *Contractor* for the purpose of the *Contract*;
- (b) all information known to the *Contractor* or reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

#### 25.2 Earthworks

- (a) For the purposes of the *Contract* "Rock" is defined as:
  - (i) material which in the opinion of the *Superintendent* is so hard it cannot be removed until broken up by rippers or percussion tools.
  - (ii) material such as hard Hawkesbury Sandstone, including Ironstone Bands occurring therein, igneous rock and concrete which occurs in solid masses, but does not include Sandstone which can be crushed in the hand after excavation.
- (b) The cost of excavating Rock and/or materials of all classes encountered in excavation as part of the *WUC* is included in the *contract sum*.
- (c) Should any dispute or difference arise with regard to the proper classification of excavation, the decision of the *Superintendent* as to the classification of the material is final and binding on the *Contractor*.

#### 25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

### 25.3 Deemed variation

- (a) The effect of the *latent condition* shall be a deemed *variation*.
- (b) The deemed *variation* shall be priced having no regard to additional cost:
  - (i) incurred before the date on which the Contractor gave the notice required by subclause 25.2, or
  - (ii) that the Contractor could reasonably have avoided.

## 26 Setting out the Works

### 26.1 Setting out

The *Contractor* shall obtain the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*. Thereupon the *Contractor* shall set out *the Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 *Business Days* directs otherwise.

### 26.3 Care of survey marks

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 *Business Days* directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be assessed by the *Superintendent* and added to the *contract sum*.

### 26.4 Survey

As a condition precedent to commencing construction of *the Works*, the *Contractor* shall provide the *Superintendent* with a survey from a registered surveyor stating that *the Works* have been set out in accordance with the *Contract*.

## 27 Cleaning up

- (a) The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.
- (b) Prior to *practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform this obligation.
- (c) If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.
- (d) If:
  - (i) the *Contractor* fails to comply with such a *direction*; and
  - (ii) that failure has not been made good within 5 *Business Days* after the *Contractor* receives notice from the *Superintendent* notifying the *Contractor* of its failure to comply with the *direction* under clause 27(c),



the *Principal* may have carried out by others what was required by the *direction* under clause 27(c), but without prejudice to any other rights and remedies the *Principal* may have, to the extent not carried out by the *Contractor* at the time of the *Superintendent's* notice under clause 27(d)(ii), and the *Superintendent* shall certify the cost incurred as moneys due and payable from the *Contractor* to the *Principal*.

## 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### \*29.2 Quality assurance

The *Contractor* shall:

- (a) plan, establish and maintain an appropriate quality system;
- (b) ensure that each *subcontractor* plans, establishes and maintains an appropriate quality system; and
- (c) ensure that the *Superintendent* has access to the quality system of the *Contractor* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### 29.3 Defective work

- (a) If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written notice thereof.
- (b) If the *work* the subject of the notice given by the *Superintendent* under subclause 29.3(a) has not been rectified within 5 *Business Days* after the *Contractor* receives notice from the *Superintendent* under subclause 29.3(a), the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

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\* See Preface

- (i) remove the material from the *site*;
  - (ii) demolish the *work*;
  - (iii) redesign, reconstruct, replace or correct the *work*; and
  - (iv) not deliver it to the *site*.
- (c) Without limiting clause 35, if:
- (i) the *Contractor* fails to comply with such a *direction* under subclause 29.3(b); and
  - (ii) that failure has not been made good within 5 *Business Days* after the *Contractor* receives notice from the *Superintendent* notifying the *Contractor* of its failure to comply with the *direction* under subclause 29.3(b),

the *Principal* may have carried out by others what was required by the *direction* under subclause 29.3(b), but without prejudice to any other rights and remedies the *Principal* may have, to the extent not carried out by the *Contractor* at the time of the *Superintendent's* notice under subclause 29.3(c)(ii), and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

#### 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

#### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

### 30 Examination and testing

#### 30.1 Tests

- (a) The *Contractor* shall carry out all *tests* necessary to ensure that *the Works* comply with the requirements of the *Contract*.
- (b) At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

#### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior *direction*.

#### 30.3 Who conducts if Superintendent directs

Where the *Superintendent* directs that *WUC* be tested, *tests* shall be conducted by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

#### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

### 30.7 Costs

Costs in connection with testing pursuant to:

- (a) subclause 30.1(a) shall be borne by the *Contractor*; and
- (b) subclause 30.1(b) shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract*.

Where the *Principal* has incurred costs for which the *Contractor* is responsible under this subclause 30.7, those costs shall be certified by the *Superintendent* as moneys due and payable from the *Contractor* to the *Principal*.

### 31 Working hours and days

Subject to subclause 11.1(a), the *Contractor* shall carry out *WUC* during the hours and the days permitted by the *Development Consent*.

### 32 Programming

- (a) The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.
- (b) The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.
- (c) The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the date of commencement of *WUC*.
- (d) The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall promptly notify the *Superintendent* of the costs (if any, including time-related costs) the *Contractor* may incur as a result of the *direction*. The *Contractor* shall comply with the *Superintendent's direction*, provided that where the *Contractor* has notified the *Superintendent* that costs may be incurred, the *Superintendent* has approved the incurring of those costs. If the *Contractor* cannot reasonably comply, the *Contractor* shall promptly give the *Superintendent* notice of the reasons.
- (e) A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed including a critical path functionality for elements comprised in *WUC*. It shall be deemed a *Contract* document.
- (f) The *Contractor* shall give the *Superintendent* a *program* within the time and in the form directed prior to commencing *WUC* and at such other times as may be directed by the *Superintendent*.

- (g) The *Contractor* shall not, without reasonable cause, depart from a *program*.
- (h) If compliance with any *direction* under clause 32(d), except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 32A Acceleration

- (a) The *Superintendent* may at any time give the *Contractor* a *Notice of Proposed Acceleration* for the *Contractor* to accelerate the carrying out of *WUC*. The *Notice of Proposed Acceleration* shall propose that the *date for practical completion* shall be a date no earlier than the original *date for practical completion*.
- (b) The *Contractor* shall, within 5 *Business Days* (or such further period agreed with the *Superintendent*) of receiving a *Notice of Proposed Acceleration*, notify the *Superintendent* whether the *Contractor* can comply with the *Notice of Proposed Acceleration*, together with details of:
  - (i) whether and to what extent the acceleration is achievable;
  - (ii) the effect on the *program*;
  - (iii) all costs (including time related costs, if any) of complying with the *Notice of Proposed Acceleration* and how that cost has been determined, including any quotations or supporting documentation;
  - (iv) the delay costs (either paid or payable) the *Contractor* will not be entitled to under subclause 34.9 if a *direction* is given to accelerate;
  - (v) any changes in labour, plant, activities or hours of work required to comply with the *Notice of Proposed Acceleration*; and
  - (vi) any other matters requested by the *Superintendent* in the *Notice of Proposed Acceleration*.
- (c) The *Superintendent* shall, as soon as practicable after receiving the *Contractor's* notification, assess the information provided by the *Contractor* and may give a *direction* to the *Contractor* to accelerate the carrying out of *WUC*. A *direction* given under this clause 32A(c) shall be taken to be a *direction* under clause 32 provided that:
  - (i) such *direction* may allow the *Superintendent* to change the then current *date for practical completion* to a date no earlier than the original *date for practical completion*;
  - (ii) such *direction* may allow the *Superintendent* to assess what, if any, delay costs have already been paid by the *Principal* under the *Contract* in relation to any *EOT* which has previously been directed by the *Superintendent* where that *EOT* is reduced by the *direction* and set off this amount against any acceleration costs payable by the *Principal* as a result of the *direction* under this clause 32A(c); and
  - (iii) the *Contractor* cannot *Claim* an *EOT* or any delay costs as a result of or arising out of the *direction* under this clause 32A(c).
- (d) Notwithstanding any other provision of the *Contract*, any costs payable by the *Principal* as a result of a *direction* under clause 32A(c) shall only be payable to the *Contractor* if the *Contractor* achieves *practical completion* by the *date for practical completion* directed by the *Superintendent* under clause 32A(c) (or as extended by any subsequent *EOT*) and only in accordance with clause 37 following the *date of practical completion*.
- (e) The *Principal's* right to liquidated damages in accordance with subclause 34.7 shall not be prejudiced by any *direction* under clause 32A(c).

### 33 Suspension

#### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit:

- (a) for any reason determined by the *Principal* in its absolute and sole discretion; or
- (b) if the *Superintendent* is of the opinion that it is necessary:
  - (i) because of an act, default or omission of:
    - (A) the *Superintendent*;
    - (B) the *Principal* or its consultants, agents or authorised persons;
    - (C) any other contractor of the *Principal* (excluding any *Certification Authority*); or
    - (D) the *Contractor*, a *subcontractor* or the employees or agents of any of them;
  - (ii) because of any act of any *Certification Authority*;
  - (iii) for the protection or safety of any person or property; or
  - (iv) to comply with a court order.

#### 33.2 Contractor's suspension

To the extent permitted by law, if the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

#### 33.3 Recommencement

To the extent permitted by law, as soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or subclause 39.9 at any time after reasonable notice to the *Superintendent*.

#### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to subclause 33.1(b)(i)(D) and, to the extent permitted by law, subclause 33.2. If the *Contractor* made the act of the *Certification Authority*, protection, safety or court order necessary, the *Contractor* shall bear the cost of suspension pursuant to subclause 33.1(b)(ii), subclause 33.1(b)(iii) or subclause 33.1(b)(iv). If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 34 Time and progress

#### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

#### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall:

- (a) if that party is the *Contractor*, promptly give the *Superintendent*; and
- (b) if that party is the *Principal*, promptly give the *Contractor* and the *Superintendent* notice of that cause and the estimated delay.

### 34.3 Claim

- (a) Subject to subclause 34.3(c) and subclause 34.4, the *Contractor* shall be entitled to such *EOT* as the *Superintendent* assesses, if:
  - (i) the *Contractor* is or will be delayed:
    - (A) prior to or on the *date for practical completion*, in reaching *practical completion* by the *date for practical completion* by a *qualifying cause of delay*; or
    - (B) after the *date for practical completion*, in reaching *practical completion* by a *qualifying cause of delay*; and
  - (ii) the *Contractor* gives the *Superintendent*, notice of commencement of the delay within *5 Business Days* of when the *Contractor* became aware or should reasonably have become aware of the commencement of the delay;
  - (iii) following the *Contractor's* giving of a notice under subclause 34.3(a)(ii), the delay the subject of the notice under subclause 34.3(a)(ii) is continuing, the *Contractor* gives the *Superintendent* notice of the continuing delay no more than *10 Business Days* after the date of the notice under subclause 34.3(a)(ii) and thereafter, if the delay is still continuing the *Contractor* gives the *Superintendent* notice of the continuing delay no more than *10 Business Days* after the date of the most recent prior notice given under this subclause 34.3(a)(iii);
  - (iv) the *Contractor* gives the *Superintendent* notice of the cessation of the delay, within *5 Business Days* of when the *Contractor* became aware or should reasonably have become aware of the cessation of the delay; and
  - (v) the *Contractor* gives the *Superintendent*, within *5 Business Days* of when the *Contractor* became aware or should reasonably have become aware of the cessation of the delay, a *Claim* for an *EOT* comprising evidence, including by an updated construction program, of the facts of causation and of the delay to *WUC* (including extent and effect on the critical path of *WUC*) and the prevention and mitigation of delay effected by the *Contractor*.
- (b) If the *Contractor* fails to comply in any respect with subclause 34.3(a)(ii), subclause 34.3(a)(iii), subclause 34.3(a)(iv) or subclause 34.3(a)(v), the *Contractor* shall not be entitled to any *EOT* for the delay.
- (c) The *Contractor* is not entitled to an *EOT* for inclement weather occurring on any of the days set out in *Item 28(b)* that delays the *Contractor* from achieving *practical completion* by the *date for practical completion*.

### 34.4 Assessment

Where a delay in reaching *practical completion* arising from a *qualifying cause of delay* overlaps with a delay in reaching *practical completion* arising from a cause that is not a *qualifying cause of delay*, then, to the extent that the delays are concurrent, the *Contractor* shall not be entitled to an *EOT*.

In assessing each *EOT Claimed* by the *Contractor* under subclause 34.3, the *Superintendent* shall disregard whether the *Contractor* can accelerate, but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 Extension of time

Subject to subclauses 34.3(b) and 34.4, within 20 *Business Days* after receiving the *Contractor's Claim* for an *EOT* under subclause 34.3, the *Superintendent* shall give to the *Contractor* and the *Principal* a *direction* evidencing the *EOT* so assessed.

Notwithstanding that the *Contractor* is not entitled to or has not *Claimed* an *EOT* under subclause 34.3, the *Superintendent* may, for the benefit of the *Principal*, at any time and from time to time before issuing the *final certificate* direct an *EOT*.

### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 10 *Business Days'* notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 10 *Business Days* after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable from the *Contractor* to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

### 34.8 Not used

### 34.9 Delay costs

For every day the subject of an *EOT* for a *compensable cause* (excluding an *EOT* directed under the last paragraph of subclause 34.5) and for which the *Contractor* gives the *Superintendent* a *Claim* for delay costs pursuant to subclause 41.3, delay costs up to the rate in *Item 46* that the *Contractor* has incurred or will incur due to the *compensable cause* the subject of the *EOT*, as certified by the *Superintendent* under subclause 41.6, shall be due and payable from the *Principal* to the *Contractor* under subclause 37.2.

### 35 Defects liability

- (a) The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.
- (b) The *Contractor* shall carry out rectification of *defects* at times and in a manner directed by the *Superintendent*, causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible.

- (c) Subject to clause 35(g), the *Contractor* shall rectify all *defects* existing at the *date of practical completion* in accordance with the *Defects Program*.
- (d) Subject to clause 35(g), during the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:
  - (i) shall identify the *defect* and the date for completion of its rectification; and
  - (ii) may state a date for commencement of the rectification.
- (e) There shall be a separate *defects liability period* for each *defect* the subject of a *direction* by the *Superintendent* under clause 35(d) or subclause 29.3 during the *defects liability period* for the period in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause.
- (f) If the rectification is not commenced or completed by the required dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable from the *Contractor* to the *Principal*.
- (g) *Defects* which:
  - (i) affect the safety or security of *WUC*, *the Works*, or people; or
  - (ii) seriously interfere with the essential functions of *WUC* or *the Works*,
 shall be rectified by the *Contractor* immediately after they are reported to the *Contractor* by the *Superintendent*.
- (h) During any *defects liability period*, on the giving of reasonable notice by the *Superintendent* defects inspections shall be undertaken by the *Superintendent*, the *Principal's* architect (if necessary) and the *Contractor*. Following a *defects* inspection the *Superintendent* shall issue to the *Contractor* a *defects* schedule showing the *defects* rectification status.
- (i) During any *defects liability period*:
  - (i) the *Contractor* is to make available to the *Principal* all necessary personnel on *site* to attend to all *defects* management issues arising out of any *defects*. These personnel shall be required to be at the *site* until all identified *defects* have been rectified and signed off by the *Superintendent*; and
  - (ii) the *Contractor* is to notify the *Superintendent* of the *Contractor's* emergency contact personnel and their contact details.
- (j) The *Contractor* acknowledges rectification of any *defects* in a *Dwelling* and once the *Dwelling* is occupied by a *Tenant* shall be undertaken strictly in accordance with the following criteria:
  - (i) access is to be arranged with the *Landlord*;
  - (ii) no *defects* rectification *work* can occur in a *Dwelling* before 9.00am on any day;
  - (iii) all *defects* rectification *work* is to be completed in one day by 5.00pm of that day (provided that if this is not reasonably able to occur then all *defects* rectification *work* is to be left in a clean and safe condition);
  - (iv) linen dust sheets are to be placed on all floor surfaces prior to commencement of the *defects* rectification *work*; and
  - (v) on completion of the *defects* rectification *works*, all carpets are to be vacuumed, tiled floors are to be washed and all surfaces wiped down with a damp cloth.



## 36 Variations

### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

### 36.2 Proposed variations and proposed time and cost effect of variations

- (a) The *Superintendent* may give the *Contractor* notice of a proposed *variation*.
- (b) The *Contractor* shall within 10 *Business Days* after:
  - (i) receiving notice under subclause 36.2(a);
  - (ii) a *direction* under subclause 36.1 for which the *variation* has not been the subject of a notice under subclause 36.2(a);
  - (iii) a deemed *variation* arising, other than a deemed *variation* under subclause 25.3(a); or
  - (iv) giving notice under subclause 25.2,
 notify the *Superintendent* of:
  - (v) any *EOT* required to carry out the *work*; and
  - (vi) the trade cost (including all design, warranties and certifications costs, if any) of the *work*.
- (c) The *Superintendent* may direct the *Contractor* to give further information for the proposed *variation*, deemed *variation* or *variation* supported by measurements or other evidence of cost and the *Contractor* shall do so within 5 *Business Days* of any such *direction*.
- (d) Notwithstanding subclause 36.4, the *Superintendent* may assess that the adjustment to the *contract sum* or the *EOT* is to be that notified by the *Contractor* under subclause 36.2(b).

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Cost and time effect of variations

- (a) Subject to subclause 25.3(b), the *contract sum* shall be adjusted for a deemed *variation* or a *variation* that has been the subject of a *direction* by the *Superintendent* by:
  - (i) the trade cost of the *work* comprising the deemed *variation* or *variation* (including all design, warranties and certificates costs, if any) as assessed by the *Superintendent*; and

- (ii) the amount determined by applying the percentage specified in *Item 39* for preliminaries, profit and on-site and off-site overheads to the amount assessed under subclause 36.4(a)(i) ('*Percentage Amount*').
- (b) Subject to subclause 36.4(d), and clause 36.6, the *Contractor* shall be entitled to such *EOT* as the *Superintendent* assesses if the *Contractor* is or will be delayed:
  - (i) prior to or on the *date for practical completion* in reaching *practical completion* by the *date for practical completion* by the deemed *variation* or *variation*; or
  - (ii) after the *date for practical completion*, in reaching *practical completion*, by the deemed *variation* or *variation*.
- (c) Within 20 *Business Days* after:
  - (i) for a deemed *variation* or a *variation* that has not been the subject of a notice under subclause 36.2(a), the *Superintendent* receiving the *Contractor's* notice under subclause 36.2(b); or
  - (ii) for a *variation* that has been the subject of a notice under subclause 36.2(a), the *Superintendent* directing the *Contractor* to vary *WUC* to which the proposed *variation* relates,
 

the *Superintendent* shall assess:

    - (iii) the trade cost of the *work* (including all design, warranties and certification costs, if any);
    - (iv) the *Percentage Amount*; and
    - (v) subject to subclause 36.4(d), and clause 36.6, any *EOT* if the *Contractor* is or will be delayed:
      - (A) prior to or on the *date for practical completion*, in reaching *practical completion* by the *date for practical completion* by the deemed *variation* or *variation*; or
      - (B) after the *date for practical completion*, in reaching *practical completion*, by the deemed *variation* or *variation*,

and notify the parties of the assessment.
- (d) If the *Contractor* fails to provide the notice required by subclause 36.2(b) in accordance with and within the time required by subclause 36.2(b), the *Contractor* will not be entitled to any *EOT* arising out of or in connection with the deemed *variation* or *variation* including a *variation* that has been the subject of a notice under subclause 36.2(a).
- (e) Notwithstanding that the *Contractor* is not entitled to or has not *Claimed* an *EOT* under subclause 36.2(b) for a deemed *variation* or a *variation*, the *Superintendent* may, for the benefit of the *Principal*, at any time and from time to time before issuing the *final certificate* direct an *EOT* in relation to the deemed *variation* or *variation*.

### 36.5 Possible variations

- (a) If a *direction* by the *Superintendent* (other than a *variation* directed under subclause 36.1 or a *direction* under subclause 8.1) in the opinion of the *Contractor* constitutes or involves a *variation*, the *Contractor* shall before commencing *work* on the subject matter of the *direction* give notice to the *Superintendent* that it considers the *direction* constitutes or involves a *variation* (such notice may be given orally but shall be confirmed in writing by the *Business Day* following the date of such notice).
- (b) Within 5 *Business Days* of the *Contractor* giving the notice required by subclause 36.5(a) (being the confirmatory written notice required by subclause 36.5(a) where the *Contractor*

has given an oral notice), the *Contractor* may submit a *Claim* to the *Superintendent*, which shall comply with the requirements of subclause 36.2(b).

- (c) Within 3 *Business Days* after receiving the *Contractor's Claim* under subclause 36.5(b), the *Superintendent* shall assess the *Claim* in accordance with subclause 36.4 and notify the parties of the assessment.
- (d) Notwithstanding any other provision of the *Contract*, if the *Contractor*:
  - (i) commences *work* on the subject matter of a *direction* referred to in subclause 36.5(a) before giving the notice to the *Superintendent* required by subclause 36.5(a); or
  - (ii) fails to submit a *Claim* to the *Superintendent* in accordance with subclause 36.5(b),
 the *Contractor* shall not be entitled to an adjustment to the *contract sum* or any *EOT* arising out of or in connection with a *direction* of the *Superintendent* referred to in subclause 36.5(a).
- (e) Notwithstanding that the *Contractor* is not entitled to or has not *Claimed* an *EOT* under subclause 36.5(b) for a *direction* of the *Superintendent* referred to in subclause 36.5(a), the *Superintendent* may, for the benefit of the *Principal*, at any time and from time to time before issuing the *final certificate* direct an *EOT* in relation to the *direction*.

### 36.6 Assessment of extensions of time

- (a) Where a delay in reaching *practical completion* arising from:
  - (i) a deemed *variation* or a *variation* that has been the subject of a *direction* by the *Superintendent* for which the *Contractor* is not disentitled to an *EOT* by subclause 36.4(d); or
  - (ii) a *direction* of the *Superintendent* referred to in subclause 36.5(a) for which the *Contractor* is not disentitled to an *EOT* by subclause 36.5(d),
 overlaps with a delay in reaching *practical completion* arising from a cause that is not a *qualifying cause of delay*, then, to the extent that the delays are concurrent, the *Contractor* shall not be entitled to an *EOT*.
- (b) In assessing each *EOT Claimed* by the *Contractor* under this clause 36, the *Superintendent* shall disregard whether the *Contractor* can accelerate, but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

## 37 Payment

### 37.1 Progress claims

- (a) The *Contractor* shall claim payment progressively in accordance with *Item 33(a)*.
- (b) An early progress claim shall be deemed to have been made on the date for making that claim.
- (c) Each progress claim shall be given to the *Superintendent* and shall:
  - (i) include details of:
    - (A) the amount claimed for *WUC* done;
    - (B) any amounts assessed by the *Superintendent* as additions to or deductions from the *contract sum*; and
    - (C) details of any amounts certified by the *Superintendent* as due from the *Principal* to the *Contractor*;

- (ii) be accompanied by a *Supporting Statement* that complies with the requirements of the Security of Payment Act and the Building and Construction Industry Security of Payment Regulation 2008 (NSW) regarding *Supporting Statements*; and
- (iii) include any other information reasonably requested by the *Superintendent*;
- (d) On the dates provided for in *Item 33(b)*, the *Contractor* shall give the *Superintendent*:
  - (i) a statutory declaration made on the relevant date in the form provided in Annexure Part I by an *Executive Director* of the *Contractor* who is in a position to know the facts declared;
  - (ii) satisfactory evidence that:
    - (A) the insurances which the *Contract* requires the *Contractor* to effect are being maintained;
    - (B) the *Contractor* has complied with subclause 5.1, subclause 5.6, subclause 9.2(e), subclause 9.2(f), subclause 10.3, subclause 11.8, subclause 24.5, subclause 48.6(a)(ix), subclause 48.6(a)(x) and subclause 48.7; and
    - (C) the *Contractor* has provided final as-built drawings of *the Works* and final operation and maintenance manuals for *the Works* (including software codes) within the time required by subclause 8.3; and
  - (iii) a copy of the monthly report referred to in subclause 46.5(c).
- (e) On the dates provided for in *Item 33(b)*, the *Contractor* shall give to the *Principal*:
  - (i) a statutory declaration in the form provided in Annexure Part I by an *Executive Director* of the *Contractor* who is in a position to know the facts declared; and
  - (ii) the monthly report referred to in subclause 46.5(c).

### 37.2 Progress certificates

The *Superintendent* shall, within 10 *Business Days* after receiving such a progress claim, issue to the *Principal* and the *Contractor* a *progress certificate*:

- (a) evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference; and
- (b) evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33(a)*, the *Superintendent* may issue the *progress certificate*.

Subject to subclause 37.7, the *Principal* shall within 15 *Business Days* after the *Superintendent* receives the progress claim, pay to the *Contractor* the amount specified in the *progress certificate* or, if the *progress certificate* produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 5 *Business Days* of receiving the *progress certificate*.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials:

- (i) have been paid for, properly stored and protected, and labelled the property of the *Principal*; and
- (ii) are insured in accordance with clause 16A.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

#### 37.4 Final payment claim and certificate

Within 20 *Business Days* after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other *Claims* whatsoever in connection with the subject matter of the *Contract*.

The *Superintendent* shall, by the earlier of:

- (a) 10 *Business Days* after receipt of the *final payment claim*; and
- (b) 30 *Business Days* after the expiry of the last *defects liability period*,

issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due shall be paid by the *Principal* or the *Contractor*, as the case may be, within:

- (a) 15 *Business Days* after the *Superintendent* receives the *final payment claim*; or
- (b) if no *final payment claim* has been given, 25 *Business Days* after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation;
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 10<sup>th</sup> *Business Day* after the issue of the *final certificate*;
- (e) the *Contractor's* entitlement to release of *security* under subclause 5.4;
- (f) the debtor's obligation to pay the amount stated in the *final certificate*; and
- (g) the *Contractor's* obligations under clause 50.

#### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

#### 37.6 Other moneys due

The *Principal* may elect that moneys due from the *Contractor* to the *Principal* otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

### 37.7 Withholding

To the extent permitted by law, without limiting any other rights of the *Principal* under the *Contract* or at law, the *Principal* may withhold payment to the *Contractor* under this clause 37:

- (a) in accordance with the following, as applicable:
- (i) section 127(5) of the Industrial Relations Act 1996 (NSW);
  - (ii) clause 18(6) of Schedule 2 of the Payroll Tax Act 2007 (NSW);
  - (iii) section 175B(7) of the Workers Compensation Act 1987 (NSW); or
  - (iv) subclause 37.8; or
- (b) where the *Principal* terminates the *Contract* pursuant to subclause 39.4(b), in which case the *Principal* may withhold payment until there is a determination of the parties' remedies, rights and liabilities in accordance with subclause 39.10(a).

### 37.8 Subcontractors and Payment Withholding Requests

- (a) If a *subcontractor* serves a *Payment Withholding Request* on the *Principal* in accordance with the *Security of Payment Act*, the *Principal* shall be entitled to withhold from money due and payable to the *Contractor* under the *Contract* an amount equivalent to the whole or any part of the *Payment Claim* ('*Retained Money*').
- (b) The *Principal* shall be entitled to withhold any *Retained Money* until the first of the following occurs:
- (i) the adjudication application for the *Payment Claim* ('*Adjudication Application*') is withdrawn;
  - (ii) the *Contractor* pays to the *subcontractor* the amount claimed to be due under the *Payment Claim*;
  - (iii) the *subcontractor* serves a notice of claim on the *Principal* for the purposes of section 6 of the *Contractors Debts Act* in respect of the *Payment Claim*; or
  - (iv) a period of 20 *Business Days* elapses after a copy of the adjudicator's determination of the *Adjudication Application* is served on the *Principal* by the *subcontractor*.
- (c) If the *Principal* is served with the *Payment Withholding Request* under clause 37.8(a), the *Principal* is not in breach of its payment obligations under the *Contract* as a result only of the retention of such money in such circumstances, and the *Contractor* waives its rights and releases the *Principal* from liability in respect of all losses or expenses of any nature suffered or incurred by the *Contractor*, and may not terminate, rescind or treat as repudiated the *Contract* arising out of or in connection with the *Principal* retaining such money in such circumstances.
- (d) If the *Principal*, in making a payment to the *Contractor* under the *Contract*, fails to comply with a *Payment Withholding Request* served on the *Principal* by a *subcontractor*, such that under the *Security of Payment Act* the *Principal* becomes jointly and severally liable with the *Contractor* in respect of the whole or any part of a debt owed by the *Contractor* to the *subcontractor*, the *Superintendent* shall certify the debt so incurred as moneys due and payable from the *Contractor* to the *Principal*. The moneys shall be certified by the *Superintendent* as so due and payable even if the amount for which the *Principal* is liable to the *subcontractor* is greater than the amount which the *Contractor* is ultimately required to pay the *subcontractor*.

### 37.9 Documents under Security of Payment Act

The *Contractor* shall:

- (a) on the day of issue or receipt, give the *Superintendent* a copy of any document that the *Contractor*:
  - (i) issues to the *Principal*; or
  - (ii) receives from or issues to any adjudicator or court, under or in connection with the *Security of Payment Act* or the *Contractors Debts Act* which is related to *WUC*, whether being performed by the *Contractor* or a *subcontractor*;
- (b) on the day of issue or receipt give the *Principal* a copy of any document that the *Contractor* receives from or issues to any adjudicator or court under or in connection with the *Security of Payment Act* or the *Contractors Debts Act* which is related to *WUC* whether being performed by the *Contractor* or a *subcontractor*; and
- (c) ensure in any contract with a *subcontractor* that:
  - (i) the *subcontractor* is obliged to provide a copy of any *Payment Withholding Request* served on the *Principal* to the *Superintendent* on the day of issue; and
  - (ii) the *subcontractor* is obliged to serve a copy of the adjudication determination to which the *Payment Withholding Request* relates on the *Principal* within 5 *Business Days* after the adjudication determination is served on the *subcontractor*.

### 38 Direct payment

38.1 Not used

38.2 Not used

### 38.3 Direct payment of employees and subcontractors

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the *Corporations Act*) may pay unpaid moneys to:

- (a) employees of the *Contractor*;
  - (b) any *subcontractor*; or
  - (c) employees of any *subcontractor*,
- if:
- (d) permitted or required by law;
  - (e) a court order exists in favour of the employee or *subcontractor*;
  - (f) requested by the *Contractor*;
  - (g) the *Superintendent* determines that the employee or *subcontractor* remains unpaid after the due date for payment; or
  - (h) the *Principal* considers, in its absolute and sole discretion, that any financial information provided by the *Contractor* under subclause 5.8 justifies the payment.

Such payment and a payment made to an employee or a *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or subclause 37.4, as the case may be, irrespective of whether, in the case of a payment to a *subcontractor*, the amount paid by the *Principal* to the *subcontractor* is greater than the amount which the *Contractor* is ultimately required to pay the *subcontractor*.

The *Contractor* acknowledges that the *Principal* has the right to contact employees of the *Contractor*, any *subcontractor* and employees of any *subcontractor* to determine whether any such employee or *subcontractor* remains unpaid after the due date for payment.

#### 38.4 Subcontractors and suspension under Security of Payment Act

Where a *subcontractor* has made a payment claim on the *Contractor* under the *Security of Payment Act*:

- (a) if that payment claim has become subject to adjudication under, or court proceedings relating to, the *Security of Payment Act*, the *Contractor* shall without delay give the *Superintendent* and the *Principal* a copy of any notice that the *Contractor* receives from, or issues to, the *subcontractor*, the adjudicator or court; and
- (b) if the *Principal* becomes aware that the *subcontractor* is entitled to suspend *work* under the *Security of Payment Act* in relation to that payment claim, the *Principal* may (at its absolute and sole discretion) pay the *subcontractor* in respect of *work* forming part of *WUC*, and any amount paid by the *Principal* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or subclause 37.4, as the case may be, irrespective of whether the amount paid by the *Principal* to the *subcontractor* is greater than the amount which the *Contractor* is ultimately required to pay the *subcontractor*.

### 39 Default or insolvency

#### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

#### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) perform properly the *Contractor's design obligations*;
  - (ii) provide *security*;
  - (iii) provide evidence of insurance;
  - (iv) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3 or clause 35;
  - (v) use the materials or standards of *work* required by the *Contract*;
  - (vi) comply with any *legislative requirement*; or
  - (vii) comply with any requirement of clause 48;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *program*, failing to proceed with due expedition and without delay;
- (e) knowingly providing documentary evidence containing an untrue statement.
- (f) knowingly providing a report under subclause 48.5 containing an untrue statement;
- (g) releasing any *Key Personnel* from carrying out the role specified in *Item 43* in breach of subclause 23.2;



- (h) the *Principal* having exercised its right under subclause 38.3(g) to make a direct payment to an employee or *subcontractor*;
- (i) a material change in the financial position of the *Contractor* from the financial position of the *Contractor* at the date of the *Contract*, as evidenced by the *Principal* exercising its right under subclause 5.8 and as determined by the *Principal* in its absolute and sole discretion; and
- (j) a *Default Termination Event* occurring.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of the *Contract*;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* shall show cause (which shall not be less than 5 *Business Days* after the notice is received by the *Contractor*); and
- (e) the place at which cause shall be shown.

### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

### 39.5 Completion of work

- (a) The *Principal* may complete *work* taken out of the *Contractor's* hands under subclause 39.4(a).
- (b) If the *Principal*:
  - (i) takes *work* out of the *Contractor's* hands under subclause 39.4(a); or
  - (ii) terminates the *Contract* under subclause 39.4(b),
 the *Principal* may:
  - (iii) use materials, equipment and other things intended for *WUC* which are located on-site or off-site; and
  - (iv) without payment of compensation to the *Contractor*:
    - (A) take possession of, and use, such of the *construction plant, temporary works* and other things on-site or off-site as were used by the *Contractor* or any *subcontractors*;
    - (B) contract with such of the *subcontractors*; and
    - (C) take possession of, and use, such of the *Project Documents*,
 as are reasonably required by the *Principal* to facilitate completion of the *work* taken out or the use, operation or maintenance of the *Works*.

- (c) If the *Principal* takes possession of *construction plant*, *Project Documents* or other things in accordance with its rights under subclause 39.5(b), the *Principal* shall reasonably maintain them and, subject to subclause 39.6, on completion of the *work* taken out or remaining to be completed at the date of termination, as applicable, shall return such of them as are surplus.
- (d) The *Superintendent* shall keep records of the cost of completing the *work* taken out under subclause 39.4(a).
- (e) This subclause 39.5 will survive the expiration, termination or frustration of the *Contract*.

### 39.6 Payment for completion of work

- (a) When *work* taken out of the *Contractor's* hands under subclause 39.4(a) has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*. If the amount certified constitutes more than would have been paid to the *Contractor*, that amount shall be due and payable from the *Contractor* to the *Principal*.
- (b) If the *Contractor* is indebted to the *Principal* arising out of or as a consequence of the *Principal*:
  - (i) taking *work* out of the *Contractor's* hands under subclause 39.4(a); or
  - (ii) terminating the *Contract* under subclause 39.4(b),
 the *Principal* may retain *construction plant* or other things taken under subclause 39.5(b) until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.
- (c) This subclause 39.6 will survive the expiration, termination or frustration of the *Contract*.

### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include:

- (a) failing to:
  - (i) not used;
  - (ii) not used;
  - (iii) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - (iv) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - (v) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of the *Contract*;
- (b) the alleged substantial breach;

- (c) that the *Principal* is required to show cause why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* shall show cause (which shall not be less than 5 *Business Days* after the notice is received by the *Principal*); and
- (e) the place at which cause shall be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Costs incurred by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent* and added to the *contract sum*.

### 39.10 Termination

- (a) If the *Contract* is terminated pursuant to subclause 39.4(b) or subclause 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* if the party receiving the notice of termination had repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.
- (b) If the *Contract* is terminated, there shall be only one reference date for the purposes of the *Security of Payment Act* after the date of termination, which shall be the date upon which the *Contractor* would have been entitled to make the next progress claim under subclause 37.1 if the *Contract* had not been terminated.
- (c) If the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *Project Documents*.
- (d) If the *Principal* has terminated the *Contract*, the *Contractor* shall provide the *Principal* with any *subcontractors'*, manufacturers' and suppliers' warranties and installation certificates relating to the *Works* that are in existence at the date of termination.
- (e) This subclause 39.10 will survive the expiration, termination or frustration of the *Contract*.

### 39.11 Insolvency

If an *Insolvency Event* occurs in respect of a party then, where the other party is:

- (a) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise any right under subclause 39.4; or
- (b) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

**40 Termination by frustration**

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (iii) the costs reasonably incurred:
    - (A) removing *temporary works* and *construction plant*;
    - (B) not used; and
    - (C) not used; and
- (c) subject to any right to have recourse to *security* under subclause 5.2, the *Principal* shall promptly release and return all *security* provided by the *Contractor*.

**40A Termination for convenience**

- (a) Notwithstanding any other provision of the *Contract*, the *Principal* may:
  - (i) at any time, in the *Principal's* absolute and sole discretion, terminate the *Contract* by giving notice to the *Contractor*; and
  - (ii) subsequently either itself or by any third party complete the uncompleted part of *WUC*.
- (b) If the *Contract* is terminated pursuant to subclause 40A(a)(i):
  - (i) the parties' remedies, rights and liabilities shall be the same as under clause 40; and
  - (ii) the *Contractor* shall have no right or entitlement to *Claim* any other costs, expenses, losses or damages (including *Indirect or Consequential Loss*) arising out of, or in any way connected with such termination.

**40B Termination due to Services Agreement termination**

- (a) If the *Services Agreement* is terminated by *FACS* in relation to the *Delivery Service Package* and such termination is caused by the *Contractor*, the *Principal* may in its absolute discretion, terminate this *Contract*.
- (b) If the *Services Agreement* is terminated in accordance with clause 40B(a), the *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* to the extent it arises from such termination.

**41 Notification of Claims****41.1 Not used****41.2 Not used****41.3 Notices of other Claims**

Except for *Claims* for an *EOT*, a *variation* or a deemed *variation* (but excluding a deemed *variation* under subclause 14.2) and *Claims* under clause 37, the *Contractor* shall give the *Superintendent* the notice required by subclause 41.4 if it wishes to make a *Claim* in respect of a monetary entitlement of the *Contractor* under the *Contract* which the *Contract* provides for the determination of the entitlement to be undertaken by the *Superintendent*.

**41.4 Prescribed Notice**

The notice (a '*Prescribed Notice*') referred to in subclause 41.3 is a *Claim* within 10 *Business Days* of the first occurrence of the *direction* or other thing upon which the *Claim* is based, expressly specifying:

- (a) the *direction* or other thing upon which the *Claim* is based;
- (b) detailed particulars concerning the *direction* or other thing upon which the *Claim* is based;
- (c) the provision of the *Contract* on which the *Claim* is based;
- (d) the facts relied upon in support of the *Claim* in sufficient detail to permit verification; and
- (e) details of the amount *Claimed* and how it has been calculated.

**41.5 Failure to give Prescribed Notice**

Notwithstanding any other provision of the *Contract*, failure by the *Contractor* to give a *Prescribed Notice*:

- (a) in the form required by; or
- (b) by the time specified in,

subclause 41.4 shall disentitle the *Contractor* from making the relevant *Claim*.

**41.6 Superintendent's decision**

Within 20 *Business Days* of receipt of:

- (a) the *Prescribed Notice*; or
- (b) a *Claim* by the *Principal* in respect of an entitlement of the *Principal* under the *Contract* which is to be determined by the *Superintendent*,

the *Superintendent* shall assess the *Claim* and notify the parties of the assessment.

Unless a party within a further 20 *Business Days* of such notification gives a *Notice of Dispute* under subclause 42.1(a) which includes such assessment, the *Superintendent* shall certify the amount of any assessment as moneys due. Any moneys due from the *Principal* to the *Contractor* shall be moneys due and payable under subclause 37.2.

**42 Dispute resolution****42.1 Notice of dispute**

- (a) If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (i) an act, default or omission of the *Superintendent*; or
- (ii) a *Claim*:
  - (A) in tort;
  - (B) under statute;
  - (C) for restitution based on unjust enrichment or quantum meruit; or
  - (D) for rectification or frustration,
 or like *Claim* available under the law governing the *Contract*,

then either party may give the other and the *Superintendent* a notice of *dispute* ('*Notice of Dispute*').

- (b) The *Notice of Dispute* shall:
  - (i) adequately identify and provide details of the *dispute*; and
  - (ii) specify a senior representative of that party who has authority to settle the *dispute*.

#### 42.2 Not used

#### 42.3 Not used

#### 42.4 Senior representative resolution

- (a) Within 3 *Business Days* of receiving a *Notice of Dispute*, the other party shall give notice of the senior representative it allocates to the *dispute* to the party giving the *Notice of Dispute*.
- (b) Within 10 *Business Days* of receipt of the *Notice of Dispute*, the parties' senior representatives shall meet and attempt to resolve the *dispute* at that meeting.
- (c) All aspects of the meeting except the fact of occurrence shall be confidential and without prejudice to the parties' rights.

#### 42.5 Expert determination

If, or to the extent that, the *dispute* is not resolved by the senior representatives within the 10 *Business Days* of receipt of the *Notice of Dispute* (or within any further period agreed in writing by the senior representatives), either party may submit the *dispute* to expert determination in accordance with the version of the Expert Determination Rules of The Institute of Arbitrators & Mediators Australia in force at the date of the submission.

#### 42.6 The expert

- (a) The parties shall, if subclause 42.5 applies, agree on the expert within 5 *Business Days* of the *dispute* having been submitted to expert determination. The parties shall use their best endeavours to choose an expert with skills most appropriate to the *dispute*, having regard to the nature of the *dispute*. For example, where the *dispute* relates to:
  - (i) a *direction* of the *Superintendent* regarding a standard of construction, the expert will have experience relevant to that type of construction; and
  - (ii) the interpretation of the *Contract*, the expert will be legally trained.
- (b) Where:
  - (i) the parties fail to agree on the expert within the time specified in subclause 42.6(a); or
  - (ii) the expert to which the parties have agreed:
    - (A) is unavailable;

- (B) declines to act;
- (C) does not respond within 5 *Business Days* to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
- (D) does not make a determination within the time specified in the *Expert Determination Agreement*,

then either party may apply to the Chair (for the time being) of the New South Wales Chapter of The Institute of Arbitrators & Mediators Australia, or his or her nominee, to select an appropriate expert.

- (c) The expert shall act as an expert and not as an arbitrator.

#### 42.7 Agreement with expert

- (a) The parties and the expert selected pursuant to subclause 42.6, shall enter into the *Expert Determination Agreement* (or such other agreement as the parties and expert may agree) for the resolution of the *dispute*.
- (b) In addition the expert shall:
  - (i) disclose to the parties any interest it has in the outcome of the determination; and
  - (ii) not communicate with one party to the determination without the knowledge of the other.

#### 42.8 Determination of expert

The determination of the expert shall be in writing and, subject to subclause 42.9, shall be given effect to by the parties.

#### 42.9 Litigation

- (a) The determination of the expert shall be final and binding on the parties except:
  - (i) in the case of fraud or manifest error of fact or law; or
  - (ii) where:
    - (A) the monetary amount *Claimed* by a party or determined by the expert is more than the amount specified in *Item 44*; or
    - (B) the determination concerns a matter other than a monetary amount, and a party commences court proceedings within 60 *Business Days* of the expert's determination.
- (b) If subclause 42.9(a)(ii) applies, the expert's determination shall be final and binding upon the parties until:
  - (i) the court proceedings are dismissed or discontinued; or
  - (ii) judgment is entered in the court proceedings.
- (c) If subclause 42.9(a)(ii) applies and the court proceedings are dismissed or discontinued, the expert's determination shall be final and binding upon the parties after the dismissal or discontinuance.

#### 42.10 Condition precedent

Subject to subclause 42.11 and without limiting subclause 42.9, it is a condition precedent to a party being entitled to commence court proceedings that the procedures referred to in subclauses 42.1 to 42.9 first be complied with.

**42.11 Summary relief**

Nothing in this clause 42 shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

**42.12 Survival**

This clause 42 will survive the expiration, termination or frustration of the *Contract*.

**42.13 Linked disputes**

- (a) The parties acknowledge and agree that:
- (i) disputes between *FACS* and the *Principal* under the *Services Agreement* relating to *Linked Disputes* shall be conclusively resolved under and in accordance with the *Services Agreement*;
  - (ii) subject to clause 42.13(a)(i), to the extent a dispute is a *Linked Dispute*, the *Linked Dispute* will not be progressed while the dispute under the *Services Agreement* is in progress, and the running of time under, the parties' obligations to comply with clauses 42.1 – 42.9 of this *Contract* will be suspended; and
  - (iii) subject to clause 42.13(c) and the *Principal's* compliance with this clause 42.13, the *Contractor* and the *Principal* are bound by the resolution of the dispute under the *Services Agreement* to the extent of the *Linked Dispute*.
- (b) Where the *Principal* receives a *Notice of Dispute* under this *Contract* and the *Principal* considers that the dispute is a *Linked Dispute*, the *Principal* shall by notice in writing notify the *Contractor* of the *Linked Dispute*, including identifying the *Services Agreement* and *FACS*.
- (c) Where the *Principal* receives a *Notice of Dispute* which is a *Linked Dispute*, the *Principal* shall diligently and expeditiously pursue such *Entitlements* as may be claimable in relation to the related claim under the *Services Agreement* (including by passing to the *FACS* submissions to the extent required by the *Contractor* and employing the dispute resolution procedures in the *Services Agreement*), and promptly notify the *Contractor* upon, and provide details in relation to, the resolution of the related dispute under the *Services Agreement*.
- (d) If the *Principal* gives written notice to the *Contractor* of a *Linked Dispute* in accordance with clause 42.13(b), the *Contractor* shall except to the extent that the *Principal* fails to comply with clause 42.13(c), promptly pay to the *Principal* any reasonable third party costs incurred by the *Principal* (including adverse cost orders, awards and judgments but not including management or administration costs incurred in the ordinary course of the *Principal's* business) in submitting and pursuing the related dispute under the *Services Agreement* in accordance with this clause 42.13(d) to the extent to which the related dispute under the *Services Agreement* is a *Linked Dispute* or is the subject of a notice in writing notifying the *Contractor* of the *Linked Dispute*.

**43 General****43.1 Waiver**

A right created by the *Contract* cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same or of any other right of that party.



#### 43.2 Entire agreement

The *Contract* constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties whether orally or in writing.

#### 43.3 Further assurances

Each party shall promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in the *Contract*.

#### 43.4 Severance

If any provision of the *Contract* or part of any provision of the *Contract* is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the provision (or where possible, the offending part) is to be severed from the *Contract* without affecting the enforceability, validity or legality of the remaining provisions (or parts of those provisions) which will continue in full force and effect.

#### 43.5 Preservation of existing rights

The expiration, termination or frustration of the *Contract* does not affect any right that has accrued to a party before the expiration, termination or frustration date.

#### 43.6 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the expiration, termination or frustration of the *Contract* for any reason will not merge on the occurrence of that event but will remain in full force and effect.

#### 43.7 Counterparts

The *Contract* may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### 43.8 Indemnities

- (a) Each indemnity contained in the *Contract* constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the *Contract*.
- (b) Any amount payable by the *Contractor* under any indemnity contained in the *Contract* is payable on demand being made by the *Principal*.
- (c) Any indemnity contained in the *Contract* survives the expiration, termination or frustration of the *Contract*.

#### 43.9 Amounts due

Where no time is stated in the *Contract* for payment of an amount due from the *Contractor* to the *Principal*, that amount is payable on demand being made by the *Principal*. This subclause 43.9 does not apply to any amount that is due and payable, which is payable without demand being made by the *Principal*.

#### 43.10 Set off

The *Principal* may deduct from moneys due from the *Principal* to the *Contractor* under the *Contract* or in connection with the subject matter of the *Contract* any money due from the *Contractor* to the *Principal* under the *Contract* including any money due under subclause 37.6.

#### 43.11 Court jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of the jurisdiction in *Item 8* and any courts competent to hear appeals from those courts.

#### 44 GST

##### 44.1 Definitions

Words and phrases used in the *Contract* that are defined in the *GST Law* have the meaning given in that legislation where used in the *Contract*.

##### 44.2 Consideration is GST-exclusive

Unless otherwise specified, all amounts payable under the *Contract* are exclusive of GST and shall be calculated without regard to GST.

##### 44.3 GST payable on taxable supply

- (a) If a supply made under the *Contract* is a taxable supply, the recipient of that taxable supply ('*Recipient*') shall, in addition to any other consideration, pay to the party making the taxable supply ('*Supplier*') the amount of GST in respect of the supply.
- (b) The *Recipient* shall only be required to pay an amount of GST to the *Supplier* if and when the *Supplier* provides a valid tax invoice to the *Recipient* in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under the *Contract* then the *Supplier* shall provide an adjustment note to the *Recipient*.
- (d) The amount of a party's entitlement under the *Contract* to recovery or compensation for any of its costs, expenses, losses, damages or other liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses, losses, damages or liabilities.

#### 45 Financing

- (a) The *Contractor* acknowledges that the *Principal* is obtaining funding for the *Works* from the *Financier* and the *Contractor* agrees to do all things reasonably required by the *Principal* to assist the *Principal* in relation to such funding for the *Works*.
- (b) The *Contractor* agrees that, if requested by the *Principal*, the *Contractor*, without being entitled to compensation, shall enter into a side deed with the *Financier* and the *Principal* in a form reasonably required by the *Financier* (and approved by the *Principal* acting reasonably) at a time reasonably required by the *Principal*.
- (c) The *Contractor* shall cooperate with the *Financier* and supply the *Financier* with information which the *Financier* may, from time to time, reasonably request.

#### 46 Meetings and reports

##### 46.1 Calling of site meetings

The *Superintendent* may call a *site* meeting at any time.

##### 46.2 Contractor's obligations

The *Contractor* shall, as requested by the *Superintendent*:

- (a) attend *site* meetings; and
- (b) ensure attendance of relevant *subcontractors* at appropriate *site* meetings.

### 46.3 Site meeting matters

*Site meetings will be a forum for the discussion of any matters relevant to WUC.*

### 46.4 Minutes of site meetings

If requested by the *Superintendent*, within 2 *Business Days* after each *site meeting* (or earlier if required by the *Superintendent*), the *Contractor* shall provide the *Superintendent* with written minutes of the meeting in the form required by the *Superintendent*.

### 46.5 Monthly meetings and reports

- (a) The *Contractor* shall meet with the *Principal*, the *Superintendent* and such other persons as advised by the *Superintendent* on a monthly basis and as otherwise required by the *Principal* or the *Superintendent*.
- (b) At each meeting, the following may be discussed:
  - (i) the progress of *WUC* as against the *program*;
  - (ii) any likely causes of delay in achieving *practical completion*;
  - (iii) the matters set out in Annexure Part J; and
  - (iv) any other matter required to be discussed by the *Principal*, the *Superintendent* or the *Contractor*.
- (c) At least one *Business Day* prior to each meeting, the *Contractor* shall provide the *Principal* and the *Superintendent* with an agenda and a report on the matters specified in subclause 46.5(b) and subclause 48.5.
- (d) Within 2 *Business Days* after each meeting, the *Contractor* shall provide the *Principal* and the *Superintendent* with minutes of the meeting in the form required by the *Superintendent*.

### 47 Ongoing Operations

- (a) The *Contractor* acknowledges that activities in buildings and areas forming part of the *site*, adjoining the *site* or in the vicinity of the *site* will continue during the carrying out of *WUC* ('*Ongoing Operations*'). The *Contractor* agrees that, during the carrying out of *WUC*, the *Contractor* shall ensure that the persons carrying out the *Ongoing Operations* continue to have quiet enjoyment of their premises and the *Contractor* shall:
  - (i) not interfere with or otherwise affect the *Ongoing Operations*;
  - (ii) maintain continuous and safe access to the *Ongoing Operations* for any person; and
  - (iii) comply with any *direction* of the *Superintendent* in this regard.
- (b) The *Contractor* shall indemnify the *Principal* against any cost, expense, loss, damage or other *Liability* suffered or incurred by the *Principal* to the extent it arises from a breach by the *Contractor* of this clause 47.

### 48 Work health and safety

#### 48.1 Compliance with WHS Laws

- (a) At all times during the undertaking of *WUC* the *Contractor* shall identify and exercise all necessary precautions and take all reasonably practicable steps to ensure the health and safety of all persons on the *site* or who may be affected by *WUC*.
- (b) The *Contractor*:
  - (i) shall comply and shall ensure that it and the *subcontractors* and either's employees and agents comply with the *WHS Laws*;

- (ii) warrants that it is familiar with and has the capability, appropriate resources and processes to comply with the *WHS Laws*;
- (iii) shall develop and implement *WHS* processes and programs, including a *subcontractor* management system, to identify and manage *WHS* requirements; and
- (iv) shall ensure that any person engaged to provide any part of *WUC* who is required by any *legislative requirement* to have an *Approval* in order to perform that part of *WUC* has obtained the *Approval* prior to the commencement of that part of *WUC*.

#### 48.2 Control and management of risks

- (a) The *Principal* and the *Contractor* acknowledge and agree that the *Contractor* has control of:
  - (i) the manner in which *WUC* is performed; and
  - (ii) all matters arising out of or as a consequence of the carrying out of or failure to carry out *WUC* that give rise or may give rise to risks to the health or safety of any person.
- (b) The *Contractor* shall, prior to the performance of any part of *WUC*:
  - (i) undertake an assessment of the *WHS* risks associated with the performance of *WUC* and identify and take all reasonably practicable steps to implement appropriate *WHS* risk control measures to eliminate or, if that is not reasonably practicable, to minimise, all such *WHS* risks; and
  - (ii) as required by the *Superintendent*, provide the *Principal* with details of the *WHS* risk assessment undertaken and evidence of implementation of appropriate *WHS* risk control measures required under subclause 48.2(b)(i).

#### 48.3 Appointment of Contractor as Principal Contractor

Without limiting the *Contractor's* obligations under any other provision of the *Contract*:

- (a) the *Principal*:
  - (i) engages the *Contractor* as the *Principal Contractor* for the *Construction Project*; and
  - (ii) authorises the *Contractor* to have management and control of the *Workplace* and to discharge the duties of a *Principal Contractor*; and
- (b) the *Contractor* accepts the engagement as *Principal Contractor* and agrees to discharge the duties of a *Principal Contractor*.

#### 48.4 Consultation, cooperation and coordination

The *Contractor* shall so far as is reasonably practicable consult, cooperate and coordinate *WUC* with:

- (a) any person identified in subclause 24.2(a) or subclause 24.2(b) who accesses the *site* or *WUC*; or
- (b) any person who has control of access to or from the *site* or *WUC*,  
so as to:
  - (c) achieve effective coordination of activities to ensure optimal health and safety risk management; and
  - (d) enable:
    - (i) the *Principal*, the *Contractor* and any person identified in subclause 24.2(a) or subclause 24.2(b); and
    - (ii) any person who has control of access to or from the *site* or *WUC*,

to comply with their respective obligations under all relevant *WHS Laws*.

#### 48.5 Contractor's reporting obligations

- (a) The *Contractor* shall on the date required under subclause 46.5(c), submit to the *Principal* a report setting out all *WHS* issues relating to *WUC* in relation to the previous month. The report shall include the following:
- (i) information regarding any workplace safety incidents or near-misses including:
    - (A) details of the date, time and nature of the incidents or near-misses; and
    - (B) any action taken by the *Contractor* or any other person to eliminate or reduce risks to health and safety arising from the incidents or near-misses; and
  - (ii) certification to the *Principal* that:
    - (A) the *Contractor* has complied with its obligations as the *Principal Contractor* and, if not, details of the extent to which it has not done so;
    - (B) the *Contractor* has complied with the requirements of the *WHS Laws* applicable to it as a contractor and, if not, details of the extent to which it has not done so; and
    - (C) each of the *Contractor's* employees and *subcontractors* have complied with the requirements of the *WHS Laws* applicable to the employee or the *subcontractor*.
- (b) The *Principal* may require the *Contractor* to include additional information in the report required under subclause 48.5(a).

#### 48.6 Notification and provision of information

- (a) Subject to subclause 48.6(c), the *Contractor* shall:
- (i) immediately orally notify the *Superintendent* and the *Principal* of any incident, lost time incident or injury which occurs during the undertaking of *WUC*;
  - (ii) within 2 *Business Days* of any incident, lost time incident or injury referred to in subclause 48.6(a)(i), provide a report to the *Principal* (with a copy to the *Superintendent*) giving complete details of the incident, lost time incident, injury or damage, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence;
  - (iii) immediately notify the *Superintendent* of any act, fact or circumstance associated with the activities of the *Contractor* or any other person that might affect the ability of the *Contractor* to perform any part of *WUC* in a manner that is safe and without risks to the health or safety of any person;
  - (iv) prior to the commencement of *WUC*, provide the *Superintendent* with a copy of any *Approval* that any person engaged to provide any part of *WUC* is required by any *legislative requirement* to have in order to perform that part of *WUC*;
  - (v) maintain and prepare such necessary records, documents and information concerning the health, safety and welfare of persons arising out of or as a consequence of the carrying out of or failure to carry out *WUC*;
  - (vi) as the *Superintendent* may require, provide a report to the *Principal* (with a copy to the *Superintendent*) concerning:
    - (A) the health, safety and welfare of persons arising out of or as a consequence of the carrying out of or failure to carry out *WUC*; and
    - (B) the *Contractor's* compliance or non-compliance with its *WHS* obligations under the *Contract*;

- (vii) at all reasonable times provide the *Principal* with access to such records, documents and information as may be necessary to establish the *Contractor's* compliance or non-compliance with its *WHS* obligations under the *Contract*;
- (viii) as the *Superintendent* may require, provide the *Principal* with audits of the *Contractor's* *WHS* management system and the *Contractor's*:
  - (A) *Principal Contractor* *WHS* Management Plan;
  - (B) *WHS* Management Plan; and
  - (C) *Safe Work Method Statement*,
 as applicable;
- (ix) if the *Contractor*:
  - (A) is appointed the *Principal Contractor*, before the *Contractor* commences *WUC*, provide the *Superintendent* and the *Principal* with a copy of the *Contractor's* *Principal Contractor* *WHS* Management Plan; or
  - (B) is not appointed the *Principal Contractor*, before the *Contractor* commences *WUC*, provide the *Principal* with a *WHS* Management Plan relating to *WUC* (with a copy to be provided to the *Superintendent*); and
- (x) if *WUC* includes the carrying out of *High Risk Construction Work*, before the *Contractor* commences the *High Risk Construction Work*, provide the *Superintendent* and the *Principal* with a copy of the *Contractor's* *Safe Work Method Statement*.
- (b) Subject to subclause 48.6(c), if the *Contractor* is required by any legislative requirement to give any notice of any event specified in subclause 48.6(a)(i) to an appropriate *Authority*, the *Contractor* shall at the same time or as soon practicable thereafter give a copy of the notice to the *Superintendent* and the *Principal*.
- (c) Any review or inspection by the *Principal* or the *Superintendent* of any information provided by the *Contractor* under subclause 48.6(a) or subclause 48.6(b) shall not constitute the verification or acceptance by the *Principal* or the *Superintendent* of the adequacy of the information, which remains the sole responsibility of the *Contractor*.

#### 48.7 Design report

If the *Contractor*, for the purposes of clause 295 of the *WHS* Regulation, is the designer of a structure or any part of a structure that is to be constructed, the *Contractor* shall provide the *Principal*, within such time as required by the *Principal*, with the report required by clause 295 of the *WHS* Regulation.

If the *Contractor*, for the purposes of clause 295 of the *WHS* Regulation, has commissioned the design of a structure or any part of a structure that is to be constructed, the *Contractor* shall provide the *Principal* with a copy of the report required by clause 295 of the *WHS* Regulation within 5 *Business Days* of receipt of the report.

#### 49 Application of Contract prior to date of Contract

Any act or omission of:

- (a) the *Principal* or its consultants, agents or authorised persons;
- (b) any other contractor of the *Principal*;
- (c) the *Superintendent*; or
- (d) the *Contractor*, a *subcontractor* or the employees or agents of any of them,

prior to the date of the *Contract* that relates to the *Contract* is deemed to have been performed or not performed, as applicable, under or in relation to, as applicable, the *Contract*.

The rights and obligations of the parties under the *Contract* apply from the date of the *Contract* and the date of commencement of *WUC* or, if they are different dates, whichever is earlier.

## 50 Home Building Legislation

- (a) The provisions of this clause 50 apply to the extent that *WUC* is residential building work.
- (b) The *Contractor* warrants that:
- (i) the work will be done with due care and skill and in accordance with the plans and specifications set out in the contract;
  - (ii) all materials supplied by the *Contractor* will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
  - (iii) the work will be done in accordance with and will comply with the *Home Building Act* or any other law;
  - (iv) the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time;
  - (v) if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
  - (vi) the work and all materials used in doing the work will be reasonably fit for the specified purpose or result, if the *Principal* expressly makes it known to the *Contractor*, the particular purpose for which the work is required or the result that the *Principal* desires the work to achieve, so as to show that the *Principal* relies on the *Contractor's* skill and judgment.
- (c) All work done under this contract will comply with:
- (i) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
  - (ii) all other relevant codes, standards and specifications that the work is required to comply with under any law; and
  - (iii) the conditions of any relevant development consent or complying development certificate.
- (d) Despite clause 50(c), this contract may limit the *Liability* of the *Contractor* for a failure to comply with clause 50(c) if the failure relates solely to:
- (i) a design or specification prepared by or on behalf of the *Principal* (but not by or on behalf of the *Contractor*); or
  - (ii) a design or specification required by the *Principal*, if the *Contractor* has advised the *Principal* in writing that the design or specification contravenes clause 50(c).
- (e) For the purposes of:
- (i) clause 50(a), clause 50(b) and clause 50(g), 'residential building work' has the meaning given to that term in the *Home Building Legislation*; and
  - (ii) clause 50(b) 'dwelling' has the meaning given to that term in the *Home Building Legislation*.

- (f) The *Contractor* acknowledges and agrees that clauses 50(b), 50(c) and 50(d):
- (i) are required by the *Home Building Legislation*; and
  - (ii) do not derogate from the other provisions of the *Contract*.
- (g) For the purposes of the *Home Building Legislation*, the completion of residential building work occurs on the *date of practical completion*.

#### 50A Indemnity for breach of statutory warranties

The *Contractor* indemnifies the *Principal* against any *Claim*, loss, expense or damage of any nature, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by the *Principal* arising out of or in connection with a breach of any of the warranties set out in clause 50 by the *Contractor* (or its subcontractors or consultants), but the indemnity shall be reduced proportionally to the extent that a negligent act or omission of the *Principal* or breach by the *Principal* may have contributed to the *Claim*, loss, expense or damage.

#### 50B Contractor's licence

The *Contractor* warrants that it has, and will hold, a valid licence when performing the *WUC* as required under the *Home Building Act*.

#### 50C Termination

- (a) The parties acknowledge that the *Contract* may be terminated in the circumstances provided by general law, however this does not prevent the parties agreeing to additional circumstances in which the *Contract* may be terminated.
- (b) The statement at clause 50C(a) above is included to satisfy the requirements of the *Home Building Act*. None of the provisions of the *Contract* will be construed or interpreted by reference to that statement.

#### 50D Checklist

The checklist set out at Annexure Part Q is included as required by regulation 8 of the *Home Building Regulation*, but does not form part of the *Contract*.

#### 51 Civil Liability Act

The operation of Part 4 of the *Civil Liability Act* is excluded in relation to all rights, obligations and liabilities of the parties with respect to any matter to which Part 4 of that Act would apply but for this clause 51.

#### 52 Personal Property Securities Act

- (a) In this clause:
  - (i) '*Financing Statement*' has the meaning given to it in the *PPSA*;
  - (ii) '*Financing Change Statement*' has the meaning given to it in the *PPSA*;
  - (iii) '*PPS Register*' means the Personal Property Securities Register established under section 147 of the *PPSA*;
  - (iv) '*PPSA*' means the Personal Property Securities Act 2009 (Cth);
  - (v) '*Security Agreement*' has the meaning given to it in the *PPSA*;
  - (vi) '*Security Interest*' has the meaning given to it in the *PPSA*; and
  - (vii) '*Verification Statement*' has the meaning given to it in the *PPSA*.



- (b) The *Contractor* acknowledges and agrees that:
- (i) the *Contract* constitutes a *Security Agreement*; and
  - (ii) subclause 39.5 creates a *Security Interest* of the *Principal* in:
    - (A) all materials, equipment and other things intended for *WUC* which are located on-site or off-site;
    - (B) all *construction plant, temporary works* and other things on-site or off-site as are used by the *Contractor* or any *subcontractors*; and
    - (C) all *Project Documents*, ('*Collateral*').
- (c) The *Contractor*:
- (i) consents to the *Principal* registering the *Principal's Security Interest* in the *Collateral*; and
  - (ii) shall ensure that each *subcontractor* consents to the *Principal* registering the *Principal's Security Interest* in the *Collateral*.
- (d) The *Contractor* undertakes to:
- (i) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which the *Principal* may reasonably require to:
    - (A) register a *Financing Statement* or *Financing Change Statement* on the *PPS Register* in relation to a *Security Interest* in the *Collateral*;
    - (B) register any other document on the *PPS Register* which is necessary to perfect the *Principal's Security Interest* in the *Collateral*; or
    - (C) correct a defect in any document referred to in clause 52(d)(i)(A) or clause 52(d)(i)(B);
  - (ii) not register, or permit to be registered by any third party including a *subcontractor*, a *Financing Statement* or a *Financing Change Statement* in respect of the *Collateral* without the prior consent of the *Principal*; and
  - (iii) keep full and complete records of the *Collateral*.
- (e) The *Principal* and the *Contractor* agree that, subject to the terms of the *Contract* and to the extent permitted by law, the following provisions of the *PPSA* do not apply to the *Contract*:
- (i) section 95;
  - (ii) section 121(4);
  - (iii) section 125;
  - (iv) section 129;
  - (v) section 130;
  - (vi) section 132(3)(d);
  - (vii) section 132(4);
  - (viii) section 135;
  - (ix) section 142; and
  - (x) section 143.

- (f) Unless otherwise agreed to by the *Principal*, the *Contractor* waives its right to receive a *Verification Statement* in accordance with section 157 of the *PPSA*.

**53 Probity Investigation**

- (a) **(Requirement for Probity Investigation):** *The Contractor* agrees that *FACS*, or the *Principal* (if required by *FACS*) may at any time, conduct a *Probity Investigation* in respect of the *Contractor*.
- (b) **(Consents required for Probity Investigation):** The *Contractor* shall cooperate with the *Principal* or *FACS* (as the case may be) and provide all consents necessary to enable the *Principal* or *FACS* to conduct any *Probity Investigation*.

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

This Annexure is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

*Item*

- |   |                                     |   |
|---|-------------------------------------|---|
| 1 | <i>Principal</i><br>(clause 1)      | St George Community Housing Limited<br>.....<br>.....<br>ACN 133 729 503..... ABN 32 565 549 842.....   |
| 2 | <i>Principal's address</i>          | Level 5, 38 Humphreys Lane, Hurstville NSW<br>2220.....<br>.....<br>Phone (02) 9585 1499 ..... Fax (02) 9585 1564.....<br>Email: [# - insert] |
| 3 | <i>Contractor</i><br>(clause 1)     | [# - insert] .....<br>.....<br>ACN [# - insert] ..... ABN [# - insert].....   |
| 4 | <i>Contractor's address</i>         | [# - insert] .....<br>.....<br>Phone [# - insert] ..... Fax [# - insert] .....<br>Email: [# - insert]   |
| 5 | <i>Superintendent</i><br>(clause 1) | [# - insert] .....<br>.....<br>ACN [# - insert] ..... ABN [# - insert].....   |
| 6 | <i>Superintendent's address</i>     | [# - insert] .....<br>.....<br>Phone [# - insert] ..... Fax [# - insert] .....<br>Email: [# - insert]   |

† 7 (a) *Date for practical completion* .....  
(clause 1)

OR

(b) *Period of time for practical completion* .....  
(clause 1)

8 Governing law New South Wales.....  
(clause 1(h)) If nothing stated, that of the jurisdiction where the *site* is located

9 (a) Currency Australian dollars.....  
(clause 1(g)) If nothing stated, that of the jurisdiction where the *site* is located

(b) Not used .....

(c) Not used .....

10 The *Principal's project requirements* are described in the following documents (clause 1)  
1 *Preliminary design* (if included in *Item 11*)  
2 .....  
3 .....  
4.....  
5.....

11 *Preliminary design* (clause 1) (a) A *preliminary design* is included in the *Principal's project requirements*.

(b) The *preliminary design* documents are:

1 Those documents identified in Appendix A of the Request for Tender (RFT) .....

2 .....

3 .....

4.....

5 .....

12 Not used

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

|      |   |  |
|------|---|--|
| 13   | (a) <i>Provisional sums</i><br><br>(clause 3)   | Not applicable   |
|      | (b) Percentage for margin on<br><i>provisional sums</i><br>(clause 3(g))                                    | 10%  |
| † 14 | <i>Contractor's security</i>  |  |
|      | (a) Form<br>(clause 5)  | Two unconditional undertakings, each without an expiry date, in a form approved by the <i>Principal</i> in its absolute and sole discretion (the form in Annexure Part B is approved) from a financial institution approved by the <i>Principal</i> in its absolute and sole discretion each for 2.5% of the <i>Initial Contract Sum</i> |
|      | (b) Amount or maximum<br>percentage of <i>Initial Contract Sum</i><br>(clause 5)                            | 5.0% of the <i>Initial Contract Sum</i><br>If nothing stated, 5% of the <i>contract sum</i>  |
|      | (c) If retention moneys,<br>percentage of each <i>progress certificate</i><br>(clause 5 and subclause 37.2) | Not applicable<br>If nothing stated, 10%, until the limit in <i>Item 14(b)</i>   |
|      | (d) Time for provision (except<br>for retention moneys)<br>(clause 5)                                       | Prior to commencement of <i>WUC</i>  |
|      | (e) Additional <i>security</i> for<br>unfixed plant and materials<br>(subclauses 5.4 and 37.3)              | Not applicable<br>.....<br>.....\$.....  |
|      | (f) <i>Contractor's security</i> is<br>reduced by<br>(subclause 5.4)  | 50% of amount held<br>If nothing stated, 50% of amount held  |
|      | (g) <i>Initial Contract Sum</i><br>percentage amount<br>(subclause 5.7)                                     | Not applicable   |
|      | (h) Additional <i>security</i> amount<br>(subclause 5.7)  | Not applicable   |
| † 15 | Application of subclause 9.3A   | Subclause 9.3A [will / will not] apply.<br><br>If nothing stated, subclause 9.3A will apply.   |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A  
† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

|    |   |   |                           |
|----|---|---|---------------------------|
| 16 | <i>Principal</i> -supplied documents<br>(subclause 8.2) | Document                                  | No. and type of<br>copies |
|    |   | 1 <i>Principal's project requirements</i> | 1.....                    |
|    |   | 2 .....                                   | .....                     |
|    |   | 3 .....                                   | .....                     |
|    |   | 4 .....                                   | .....                     |
|    |   | 5.....                                    | .....                     |

|    |   |  |                                   |                                      |
|----|---|--|-----------------------------------|--------------------------------------|
| 17 | Documents, numbers of copies,<br>and the times or stages at which<br>they are to be supplied by the<br><i>Contractor</i><br>(subclause 8.3) | Document   | No. and type of<br>copies         | Time/stage                           |
|    |   | 1 Final as-built drawings of <i>the Works</i>  | 2 x A1 plus<br>electronic version | Prior to <i>practical completion</i> |
|    |   | 2 Final operation and maintenance manuals<br>for <i>the Works</i> (including software codes) | 1                                 | Prior to <i>practical completion</i> |
|    |   | 3 Final Plan of Consolidation  | 2 x A3 plus<br>electronic version | Prior to <i>practical completion</i> |
|    |   | 4 Final Strata Sub-division Plan in<br>registrable form                                      | 2 x A3 plus<br>electronic version | Prior to <i>practical completion</i> |

|    |   |   |
|----|---|---|
| 18 | Time for <i>Superintendent's</i><br><i>direction</i> about documents<br>(subclause 8.3) | 10 <i>Business Days</i><br>If nothing stated, 10 <i>Business Days</i> |
|----|---|---|

|    |   |                       |
|----|---|-----------------------|
| 19 | Subcontracting<br>(subclause 9.2)                                       | Not applicable        |
|    | (a) Subcontract <i>work</i> requiring<br>approval<br>(subclause 9.2(a)) | Per subclause 9.2 (a) |

(b) *Subcontractors to execute Subcontractor's Side Deed* (subclauses 9.2(d)(iv) and 9.2(e)(i)) Per subclause 9.2 (d)(iv) and 9.2 (e) (i)

20 Novation (subclause 9.4) *Consultant* Particular part of the preliminary design  
Not applicable

21 *Intellectual property rights granted to the Principal, the Alternative applying* (subclause 10.2) Alternative 2  
If nothing stated, Alternative 1 applies

22 *Legislative requirements* (a) Those excepted (subclause 11.1) [# - Set out any legislative requirements, other than those set out in DA Matrix, which are to be complied with by the Principal.].....  
.....  
(b) Identified WUC (subclause 11.2(c)(iii)) None.....  
.....

23 *Insurance of the Works* (clause 16A) (a) Not used  
(b) Provision for demolition and removal of debris [# - insert] .....  
..... \$.....  
OR  
.....% of the contract sum

(c) Provision for *consultants'* fees and *Principal's* consultants' fees [ # - insert ] .....  
 .....\$.....

OR

.....% of the *contract sum*

(d) Value of materials or things to be supplied by the *Principal* [ # - insert ] .....  
 .....\$.....

(e) Additional amount or percentage [ # - insert ] .....  
 .....\$.....

OR

.....% of the total of clause 16A(c)(i) to clause 16A(c)(iv)

(f) Maximum excess [ # - insert ] .....

24 Professional indemnity insurance (clause 16B and subclause 9.2(e))

(a) Level of cover of *Contractor's* professional indemnity insurance shall be not less than .....  
 .....\$.....  
 If nothing stated, \$5 000 000

(b) Period for which *Contractor's* professional indemnity insurance shall be maintained after issue of the *final certificate* 7 years.....  
 If nothing stated, 6 years

(c) Maximum excess [ # - insert ].....

| (d) Categories of <i>consultants</i> and levels of cover of <i>consultants'</i> professional indemnity insurance | Category | Levels of cover                |
|--|----------|--------------------------------|
| .....  | .....    | \$.....                        |
| .....  | .....    | \$.....                        |
| .....  | .....    | \$.....                        |
| .....  | .....    | \$.....                        |
|  |          | If nothing stated, \$1 000 000 |

(e) Period for which each *consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate* 7 years .....  
 If nothing stated, 6 years



- 25 Public liability, motor vehicle and plant and equipment insurance (clauses 17A and 17B)
  - (a) Not used .....
  - (b) Amount per occurrence shall be not less than .....  
 [# - insert].....\$.  
 If nothing stated, \$20 000 000
  - (c) Maximum excess [# - insert].....
  
- 26 (a) Date for giving access (subclause 24.1) [# - insert]
- (b) Date for giving possession (subclause 24.1) [# - insert]
  
- 27 The information, materials, documents or instructions and the times by, or periods within which they are to be given to the Contractor (clause 32)
 

| Documents or instructions | Times/Periods |
|---------------------------|---------------|
| 1.....                    | .....         |
| 2.....                    | .....         |
| 3.....                    | .....         |
| 4.....                    | .....         |
| 5.....                    | .....         |

- 28 (a) *Qualifying causes of delay*  
 Causes of delay for which  
*EOTs* may be granted  
 (clause 1 and subclause  
 34.3)
- (a) Subject to subclause 34.3(c), inclement weather occurring  
 prior to the *date for practical completion*  
 .....
- .....
- .....
- (b) **(Compensable Extension Event):** a *Compensable  
 Extension Event*;
- (c) **(Principal Act or Omission):** any act or omission of:
- (i) the *Principal*; or
- (ii) any *Associate of the Principal*,
- in connection with the *Delivery Service Package*, other than  
 any act or omission which is authorised or permitted under a  
*Delivery Service Document, Standard or Law*;
- (d) **(Force Majeure Event):** a *Force Majeure Event*; and
- (e) **(Additional Requirements):** any additional requirements  
 imposed by an *Authority* and made known to the *Principal* by  
 that *Authority* after the *Principal* has obtained *Development  
 Consent* in respect of a *site*.

(b) Number of days of inclement weather for which there is no  
*EOT* entitlement      The first [#] days of inclement weather occurring prior to the *date  
 for practical completion*

† 29 Liquidated damages, rate (subclause 34.7)      [# - insert] .....

.....per day      \$..... per day

† 30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate .....

.....per day      \$..... per day

† If applicable, delete and instead complete equivalent *Item* in the *separable portion* section of the Annexure Part A

(b) Limit .....  
..... \$ .....

OR

.....% of *contract sum*  
If nothing stated, there is no waiver

† 31 Other *compensable causes* [# - consider whether any additional *compensable causes*  
(clause 1 and subclause 34.9) should only apply before the *date for practical*  
*completion.*].....  
.....  
.....

32 Defects *liability period* [# - insert] .....  
(clause 35) If nothing stated, 12 months

33 Progress claims  
(subclause 37.1(a))  
(a) Times for progress claims [# - insert]..... day of each month for *WUC*  
done to the [# - insert].....day of that month provided that a  
progress claim can only be made up to and including the month in  
which the *date of practical completion* occurs unless the *date of*  
*practical completion* occurs after the [# - insert]...day of the month  
in which case a progress claim can be made on the [# -  
insert]....day of the month following the *date of practical*  
*completion*

OR

(b) Stages of *WUC* for progress .....  
claims .....  
.....  
.....  
.....  
.....  
.....

34 Unfixed plant and materials for [# - insert] .....  
which payment claims may be .....  
made .....  
(subclause 37.3) .....

|    |  |   |                                     |
|----|--|---|-------------------------------------|
| 35 | Interest rate on overdue payments<br>(subclause 37.5)  | The prescribed rate under the uniform rules, each as referred to in section 101 of the Civil Procedure Act 2005 (NSW), applicable at the date of default..... |                                     |
| 36 | (a) Time for <i>Principal</i> to rectify inadequate access<br>(subclause 39.7(a)(iii))                                   | [# - insert]..... <i>Business Days</i><br>If nothing stated, 10 <i>Business Days</i>  |                                     |
|    | (b) Time for <i>Principal</i> to rectify inadequate possession<br>(subclause 39.7(a)(iv))                                | [# - insert]..... <i>Business Days</i><br>If nothing stated, 10 <i>Business Days</i>  |                                     |
| 37 | Not used   |   |                                     |
| 38 | <i>Initial Contract Sum</i><br>(clause 1)  | \$[# - insert] (exclusive of GST).....  |                                     |
| 39 | Percentage amount for preliminaries, profit and on-site and off-site overheads for variations<br>(subclause 36.4(a)(ii)) | [# - insert]%.....  |                                     |
| 40 | <i>Selected subcontractors</i> and <i>Other Subcontractors</i><br>(subclause 9.3)  |   |                                     |
|    | (a) <i>Selected subcontractors</i> for specified work<br>(subclause 9.3(a))  | <i>Subcontractor</i>  | <i>Work</i>                         |
|    | (b) Novation of <i>Other Subcontractors</i><br>(subclause 9.3(c))  | <i>Subcontractor</i>  | <i>Work</i>                         |
| 41 | Manufacturers' and suppliers' warranties and installation certifications<br>(subclause 9.6(a))                           | <i>Work</i> or item   | Period of warranty or certification |
| 42 | <i>Subcontractor</i> warranties<br>(subclause 9.2(e))  | <i>Subcontractor</i>  |                                     |

|    |   |  |      |
|----|---|--|------|
| 43 | <i>Key Personnel</i><br>(subclause 23.2)                      | Person   | Role |
| 44 | Expert determination limit<br>(subclause 42.9(a)(ii)(A))      | [\$500,000]  |      |
| 45 | Determination of Development<br>Application No.<br>(clause 1) | [# - insert relevant number]   |      |
| 46 | Delay costs<br>(subclause 34.9)                               | As assessed by the <i>Superintendent</i> up to a maximum of \$[# - insert] per day |      |

## 47 Employee Checks

| Employee Check | The <i>Contractor's</i> employees and <i>subcontractors</i> to whom it applies | Frequency of update |
|----------------|--|---------------------|
|----------------|--|---------------------|

---

|   |   |  |
|---|---|--|
| A 'national police check' conducted through the NSW Police. | Those who are reasonably likely to have access to Tenants or Household Members, whether supervised or unsupervised, and are not exempt. | <ul style="list-style-type: none"> <li>• During the <i>defects liability period</i></li> </ul> |
|---|---|--|



---

|  |  |  |
|--|--|--|
| A 'working with children check' conducted through the NSW Office of the Children's Guardian in accordance with the <i>Child Protection (Working with Children) Act 2012</i> (NSW). | Those who are conducting child-related work and are not exempt under Part 4, regulation 20 of the <i>Child Protection (Working with Children) Regulation 2013</i> (NSW). | <ul style="list-style-type: none"> <li>• During the <i>defects liability period</i></li> </ul> |
|--|--|--|

# Part A Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

|             |  |  |
|-------------|--|--|
|             | <i>Separable portion</i><br>(clause 1)   | No. ....   |
|             | Description of <i>separable portion</i><br>(clause 1)  | .....<br>.....<br>.....  |
| <br>        |  |  |
| <i>Item</i> |  |  |
| 7           | (a) <i>Date for practical completion</i><br>(clause 1)   | .....  |
|             | OR   |  |
|             | (b) <i>Period of time for practical completion</i><br>(clause 1)   | .....  |
| <br>        |  |  |
| 14          | <i>Contractor's security</i>   |  |
|             | (a) Form<br>(clause 5)   |  |
|             | (b) Amount or maximum percentage value of this <i>separable portion</i><br>(clause 5)  | .....<br>If nothing stated, 5% of value of this <i>separable portion</i>                                     |
|             | (c) If retention moneys, percentage of each <i>progress certificate</i> applicable to this <i>separable portion</i><br>(clause 5 and subclause 37.2) | .....%, until the limit in <i>Item 14(b)</i><br>If nothing stated, 10%, until the limit in <i>Item 14(b)</i> |
|             | (d) Time for provision (except for retention moneys)<br>(clause 5)   |  |
|             | (e) Additional <i>security</i> for unfixed plant and materials<br>(subclauses 5.4 and 37.3)  | .....<br>..... \$ .....  |
|             | (f) Not used   |  |
| <br>        |  |  |
| 15          | Not used   |  |

29 Liquidated damages, rate .....  
(subclause 34.7) .....per day \$.....per day

30 Bonus for early *practical completion*  
(subclause 34.8)

(a) Rate .....  
.....per day \$.....per day

(b) Limit .....  
.....\$.....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 Other *compensable causes* [# - consider whether any additional *compensable causes*  
(clause 1 and subclause 34.9) should only apply before the *date for practical completion.*]



Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part B

## Approved form of unconditional undertaking

(clause 1 – security)

At the request of .....

ACN .....ABN.....(the *Contractor*) and in consideration of

ACN .....ABN.....(the *Principal*) accepting this undertaking

in respect of the contract for.....

ACN .....ABN.....(the *Financial Institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of .....

.....(\$.....)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed for and on behalf of the *Principal* that the *Principal* desires

payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Principal* the sum of .....

.....(\$.....)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 20.....

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

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DEED OF NOVATION  
SUBCONTRACTOR TO CONTRACTOR

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part D

---

DEED OF NOVATION  
CONSULTANT

---

**Deletions, amendments and additions**

1 The following clauses have been deleted from AS 4902—2000

As identified in this Annexure Part E.....

[This will be a comparison of the amended General Conditions against the standard AS4902 General Conditions].....

.....  
.....  
.....  
.....  
.....  
.....  
.....

2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

As identified in this Annexure Part E.....

[This will be a comparison of the amended General Conditions against the standard AS4902 General Conditions].....

.....  
.....  
.....  
.....  
.....  
.....  
.....

3 The following clauses have been added to AS 4902—2000

As identified in this Annexure Part E.....

[This will be a comparison of the amended General Conditions against the standard AS4902 General Conditions].....

.....  
.....  
.....  
.....  
.....  
.....  
.....

**ANNEXURE PART F  
DEED OF GUARANTEE**

**ANNEXURE PART G  
DEVELOPMENT CONSENT**

**ANNEXURE PART H**  
**EXPERT DETERMINATION AGREEMENT**

**1 Background**

- (a) By contract made on [date] (Contract) the Principal engaged the Contractor for the design and construction of the Works.
- (b) The Principal and the Contractor have agreed that, subject to the provisions of clause 42 of the Contract and this Agreement, disputes will be submitted to expert determination in accordance with the version of The Institute of Arbitrators & Mediators Australia Expert Determination Rules in force at the date of the submission.

**2 Request to Determine and Acceptance**

- (a) The Principal and the Contractor hereby request [expert name] (Expert) to determine the dispute outlined in the Notice of Dispute dated [date] annexed to this Agreement by issuing a written determination.
- (b) By signing this Agreement, the Expert agrees to comply with such request in accordance with the terms of this Agreement.

**3 Written Submissions**

- (a) Within 10 Business Days of the Expert's acceptance to act as expert in accordance with this Agreement, the party giving the Notice of Dispute (Notifying Party) shall provide a written submission on the dispute in support of the Notifying Party's contention to both the other party (Other Party) and the Expert.
- (b) Within 10 Business Days of the Other Party receiving the information specified in clause 3(a), the Other Party or its nominee shall provide a written response to the written submission of the Notifying Party to both the Notifying Party and the Expert.
- (c) If the Expert decides that further information or documents are required for the determination of the dispute, the Expert may:
  - (i) require further written submissions or documents from either or both the Principal and the Contractor; and
  - (ii) call a meeting between the parties and the Expert in accordance with clause 4 below.

**4 Meeting**

- (a) If the Expert considers it appropriate, the Expert may arrange a meeting with the parties to discuss the dispute at a venue and time convenient for the parties.
- (b) If such a meeting is arranged, the following will apply:
  - (i) at least 10 Business Days prior to the meeting, the Expert will inform the parties of the matters to be addressed at the meeting;
  - (ii) the parties will appear before the Expert at the meeting to make representations as to the matters the subject of the meeting;
  - (iii) the meeting will be held in private;
  - (iv) transcripts of the meeting will be taken and be available to the Expert and the parties if required by either party;
  - (v) either party may be accompanied by legal or other representatives; and

- (vi) the parties agree to be bound by such procedural directions as may be given by the Expert both in preparation for and during the course of the meeting.

#### **5 Determination by Expert**

- (a) Unless otherwise agreed by the parties, within 15 Business Days following receipt by the Expert of the parties' submissions, or any meeting referred to in clause 4 (whichever is later), the Expert will determine the dispute and notify such determination in writing to the Principal and the Contractor.
- (b) Where the Expert's determination contains:
- (i) a clerical mistake;
  - (ii) an error arising from an accidental slip or omission;
  - (iii) a material miscalculation of figures or mistake in the description of any person, matter or thing; or
  - (iv) a defect of form,
- the Expert will correct the determination.

#### **6 Role of Expert**

The Expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner the Expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) take into consideration all documents, information and other written and oral material that the parties provide in accordance with this Agreement;
- (d) conduct any investigation which the Expert considers necessary to resolve the dispute;
- (e) examine such documents, and interview such persons, as the Expert may require;
- (f) reach a decision from the Expert's knowledge and expertise and, where the Expert considers it appropriate, the Expert may consult with the Expert's own advisers and consultants including lawyers, engineers or other technical consultants and accountants to assist the Expert in the Expert's determination;
- (g) make such directions for the conduct of the determination as the Expert considers necessary; and
- (h) act with expedition with a view to issuing the determination as soon as practicable.

#### **7 Liability of Expert**

The Expert is not liable to the Principal or the Contractor for or in respect of any act or omission in the discharge or purported discharge of its functions unless such act or omission is shown to have been fraudulent or grossly negligent.

#### **8 Costs**

- (a) Each party's costs in respect of any expert determination will be paid by the parties as determined by the Expert. If the parties agree that the Expert is not to make a determination, each party will pay its own costs.
- (b) The Expert's costs (which include the cost of any advisers or consultants engaged by the Expert) will be paid by the parties as determined by the Expert. If the parties agree that the Expert is not to make a determination, each party will pay one half of the Expert's costs.



## 9 GST

- (a) Words used in this Agreement that are defined in the GST Law have the meaning given in that legislation where used in this Agreement.
- (b) Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and will be calculated without regard to GST.
- (c) If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) will, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (d) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (e) If there is an adjustment to a taxable supply made under this Agreement then the Supplier will provide an adjustment note to the Recipient.
- (f) The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses, losses, damages or other liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses, losses, damages or liabilities.

## 10 Confidentiality

All proceedings and submissions relating to the determination of a dispute by the Expert in accordance with this Agreement will be kept confidential between the parties and the Expert. No information will be divulged to any other party at any time or in any circumstances except with the prior written consent of the parties or as may be required by law.

## 11 Governing Law

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## 12 Definitions

Any term used in this Agreement which is defined in the Contract has the meaning given to that term in the Contract.

**EXECUTED** by the **Principal** in accordance )  
with section 127 of the Corporations Act: )  
)

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

.....  
Date

**EXECUTED** by the **Contractor** in accordance )  
with section 127 of the Corporations Act: )  
)

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

.....  
Date

**EXECUTED** by the **Expert** in accordance with )  
section 127 of the Corporations Act: )  
)

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

.....  
Date

**ANNEXURE PART I**  
**STATUTORY DECLARATION**

Statutory declaration in the matter of the agreement dated [            ] (agreement) between

[#Principal] [#ACN] of [#address] (Principal)

and

[#Contractor] [#ACN] of [#address] (Contractor)

I, [#insert], of [#insert] in the state of New South Wales, [#occupation], do solemnly and sincerely declare that:

1 I have knowledge of the relevant facts and am authorised by the Contractor to make this statutory declaration on its behalf in relation to progress claim number [#insert] submitted by the Contractor on [#insert].

2 All amounts payable to subcontractors of the Contractor for work done in connection with WUC from the date of commencement of WUC to the date of this declaration have been paid.

3 All remuneration payable to employees of the Contractor for work done in connection with WUC from the date of commencement of WUC to the date of this declaration has been paid.

4 All 'workers compensation insurance premiums' (as that term is defined in section 175B of the Workers Compensation Act 1987 (NSW) (**Workers Compensation Act**)) payable by the Contractor in respect of WUC from the date of commencement of WUC to the date of this declaration have been paid. A copy of the certificate of currency for the insurance to which those premiums relate is attached to this declaration.

*[/#Certificate of currency to be attached.]*

5 The Contractor [#is/is not] a 'principal contractor' (as that term is defined in section 175B of the Workers Compensation Act) in connection with WUC.

6 [The Contractor has received, in its capacity as a 'principal contractor' (as that term is defined in section 175B of the Workers Compensation Act) in connection with WUC, a written statement for the purposes of section 175B of the Workers Compensation Act from each 'subcontractor' (as that term is defined in section 175B of the Workers Compensation Act).]

*[/Only to be included if Contractor is a 'principal contractor'.]*

7 The Contractor is registered as an employer under the Payroll Tax Act 2007 (NSW) (**Payroll Tax Act**).

8 All payroll tax payable by the Contractor in respect of wages paid or payable to the Contractor's employees for work done in connection with WUC from the date of commencement of WUC to the date of this declaration has been paid.

9 The Contractor [#is/is not] a 'principal contractor' (as that term is defined in clause 17 of Schedule 2 of the Payroll Tax Act) in connection with WUC.

10 [The Contractor has received in its capacity as a 'principal contractor' (as that term is defined in clause 17 of Schedule 2 of the Payroll Tax Act) in connection with WUC, a written statement for the purposes of clause 18 of Schedule 2 of the Payroll Tax Act from each 'subcontractor' (as that term is defined in clause 17 of Schedule 2 of the Payroll Tax Act).]

*[/Only to be included if Contractor is a 'principal contractor'.]*

11 I am not aware of anything which would contradict the statements made in this declaration or in the written statements provided to the Contractor referred to in this declaration.

Any term used in this declaration which is defined in the agreement has the same meaning as in the agreement.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 (NSW).

DECLARED at )  
this [ ] day of [ ] before me: )

\_\_\_\_\_  
Signature of authorised witness )

\_\_\_\_\_  
Name of authorised witness )  
(block letters) )

\_\_\_\_\_  
Address of authorised witness )

Justice of the Peace \*/ notary public \*/ legal practitioner )  
holding a current practising certificate under the Legal )  
Profession Act 2004 (NSW)\* )

\_\_\_\_\_  
Capacity in which authorised witness takes the statutory )  
declaration )

\_\_\_\_\_  
Signature of declarant )

\* Delete whichever is not applicable

And as a witness, I certify the following matters concerning the person who made this declaration:

[For 1 delete whichever option is inapplicable]

- 1. #I saw the face of the person.
- 1. #I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.<sup>‡</sup>

[For 2 delete whichever option is inapplicable]

- 2. #I have known the person for at least 12 months.
- 2. #I have confirmed the person's identity using the following identification document:

[list identification document. Identification document relied on may be an original or certified copy<sup>§</sup>]

<sup>‡</sup> The only "special justification" for not removing a face covering is a legitimate medical reason.

<sup>§</sup> "Identification documents" include a drivers licence, Medicare card, credit card, citizenship certificate, birth certificate and passport.

# Part D

Annexure to the  
Australian Standard General Conditions of Contract  
AS 4000 – 1997

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## ANNEXURE PART J MONTHLY REPORT REQUIREMENTS

1. Procedural / Administration issues
  - a. List of project correspondence
  - b. Current management chart
2. Key issues and resolutions report
  - a. Status of outstanding items
  - b. New items
3. Contractual / Legal issues
4. Authorities
  - a. Permits and approvals
5. Design
  - a. Status reports
  - b. Outstanding issues
  - c. New issues
6. Construction report
  - a. Progress / Program status
  - b. Matters affecting progress
    - i. Procurement
    - ii. Manufacture
    - iii. Delivery
    - iv. Construction issues
  - c. Variations
  - d. Subcontractors
  - e. Manpower statistics

- f. Plant and equipment on site
  - g. Rainfall / inclement weather records
  - h. Quality assurance issues
  - i. Industrial relations issues
  - j. Environmental issues
  - k. Insurance claims submitted and status
7. Financial reports
- a. Progress claims summary
  - b. Other claims summary
  - c. Certification and payment summary
  - d. Draw-down forecast
  - e. Retention Money in Trust from Subcontractors
8. Work health and safety report (in accordance with subclause 48.5)
9. Commissioning reports
- a. Status of commissioning / testing
  - b. Status of as-built drawings
  - c. Status of operation and maintenance manuals
10. Appendix
- a. Progress photographs
  - b. Other documents referenced from above

**ANNEXURE PART K  
DEED OF NOVATION  
NEW PRINCIPAL**

**ANNEXURE PART L  
SITE**



**ANNEXURE PART M  
SUBCONTRACTOR'S SIDE DEED**

*[Note: To remove all reference to limitations to liability for the Contractor]*

ANNEXURE PART N  
SUBCONTRACTOR WARRANTY

ANNEXURE PART O  
MORAL RIGHTS CONSENT AND WAIVER FORM

I ..... [insert author's name], in respect of the Information, ideas or concepts created by me in relation to [# - insert project details] (Material):

- 1 consent to [# - insert Principal details] (Principal) and [# - insert Contractor's details] (Contractor), anyone authorised by the Principal or the Contractor, and the Principal's and the Contractor's licensees, successors, permitted assignees and novatees, doing or omitting to do anything, for any purpose, which may infringe any or all moral rights (as defined in the Copyright Act 1968 (Cth)) granted to me; and
- 2 to the extent permitted by laws outside Australia, waive to the Principal and the Contractor, anyone authorised by the Principal or the Contractor, and the Principal's and the Contractor's licensees, successors, permitted assignees and novatees, any or all moral rights (or rights known as "droit moral") granted to me,

including the right to edit, change, copy, add to, take from, adapt or translate my Material, and the right not to have my Material attributed to me.

**Information** means any material, whether tangible or intangible, in any form, including documents, records, software, data and any other information.

**SIGNED** by

.....  
 Signature Date

.....  
 Name of signatory

**WITNESSED** by

.....  
 Signature Date

.....  
Name of witness

ANNEXURE PART P  
DA MATRIX



# Part D

Annexure to the  
Australian Standard General Conditions of Contract  
AS 4000 – 1997

---

## ANNEXURE PART Q

### Checklist under Schedule 2 of the Home Building Regulation 2014 (NSW)

#### Checklist

- |    |  |                              |                             |
|----|--|------------------------------|-----------------------------|
| 1  | Have you checked that contractor holds a current contractor licence?   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2  | Does the licence cover the type of work included in the contract?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3  | Is the name and number on the contractor's licence the same as on the contract?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4  | Is the work to be undertaken covered in the contract, drawings or specification?   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 5  | Does the contract clearly state a contract price or contain a warning that the contract price is not known?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 6  | If the contract price may be varied, is there a warning and an explanation about how it may be varied?   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 7  | Are you aware of the cooling-off provisions relating to the contract?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 8  | Is the deposit within the legal limit of 10%?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 9  | Does the contract include details of the progress payments payable under the contract?   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 10 | Do you understand the procedure to make a variation to the contract?   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 11 | Are you aware of who is to obtain any council or other approval for the work?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 12 | Do you understand that you are not required to pay the contractor a deposit or any progress payments until the contractor has given you a certificate of insurance under the Home Building Compensation Fund (except where the work is of a kind that does not require insurance)? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 13 | Has the contractor given you a copy of the Consumer Building Guide, which provides key information about your rights and responsibilities under NSW's home building laws and where to get more information?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

- 14 Does the contract include a statement about the circumstances in which the contract may be terminated? Yes  No

### Signatures

Do not sign the contract unless you have read and understand the clauses as well as the notes and explanations contained in the contract and this document.  
If you have answered "no" to any question in the checklist, you may not be ready to sign the contract. Both the contractor and the owner should retain an identical signed copy of the contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

### Signed copy of contract

Under the *Home Building Act 1989* a signed copy of the contract shall be given to the owner within 5 working days after the contract is entered into.

### Home Building Compensation Fund

The contractor shall provide you with a certificate of insurance under the Home Building Compensation Fund before the contractor commences work and before the contractor can request or receive any payment.

### Acknowledgement of owners

I/We have been given a copy of the Consumer Building Guide and I/we have read and understand it.  
I/We have completed the checklist and answered "Yes" to all items on it.

### Note.

Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, shall be inserted.

Signature

Name [*print*]

Capacity [*print*]

Signature

Name [*print*]

Capacity [*print*]





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ME\_135692162\_2



INV-1522

I certify that this is a true,  
complete and up to date copy  
of the original document  
sighted by me at 2:00pm  
this 10th day of February 2017.

Execution version

(1) SGCH SUSTAINABILITY LIM  
as grantor

- and -

(2)

GENERAL SECURITY DEED

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THIS GENERAL SECURITY DEED is made on 19 NOVEMBER 2015

**BETWEEN:**

- (1) SGCH SUSTAINABILITY LIMITED ABN 21 606 965 799 ("Grantor")  
(2) [REDACTED] ("Secured Party")

**BACKGROUND:**

- A The Secured Party has agreed to lend money, give credit or provide finance to, or at the request of, the Grantor.  
B The Grantor considers that by providing this deed there will be a commercial benefit flowing to the Grantor.

**OPERATIVE PROVISIONS:**

NEW SOUTH WALES DUTY  
22-02-2016 0008542311-003  
SECTION 275(3)(A)-ORIGINAL  
NO DUTY PAYABLE

**1. DEFINITIONS AND INTERPRETATION**

**Incorporated terms**

PRIME  
INITIAL AD [REDACTED]

- 1.1 Terms used in the PPSA and the PPS Regulations have the same meaning in this deed, unless the context requires otherwise.  
1.2 Terms defined in the Facility Agreement have the same meaning in this deed, unless the context requires otherwise or the term is otherwise defined in this deed.

**Definitions**

- 1.3 In this deed the following definitions apply:

"Account Bank" means the ADI and branch approved by the Secured Party with which the Blocked Account is maintained;

"Additional Security" means any present or future Security Interest securing, or any Guarantee in respect of, any Secured Money or Secured Obligation;

"Attorney" means an attorney appointed under this deed;

"Blocked Account" means the bank account opened by the Grantor in accordance with clause 4.1;

"Collateral" means all present and after-acquired rights, assets and undertaking of the Grantor, including each of the following:

- (a) all present and after-acquired property of the Grantor;  
(b) all present and after-acquired estates and interests in land in which the Grantor has an interest; and  
(c) anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a Security Interest;

**"Control Event"** means:

- (a) in respect of any Collateral that is, or would have been, a Revolving Asset:
  - (i) the Grantor breaches, or attempts to breach clause 3.1 in respect of the Collateral or takes any step which would result in it doing so; or
  - (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to a Governmental Agency, ranking ahead of the Security Interest in the Collateral under this deed; or
  - (iii) distress is levied or a judgment, order or a Security Interest is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security Interest, over the Collateral; or
  - (iv) the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset (however, the Secured Party may only give a notice if the Secured Party reasonably considers that it is necessary to do so to protect its rights under this deed or if an Event of Default is continuing); or
- (b) in respect of all Collateral that is or would have been Revolving Assets:
  - (i) an administrator, liquidator or provisional liquidator is appointed in respect of the Grantor or the winding up of the Grantor begins; or
  - (ii) a receiver, receiver and manager or controller is appointed to any of the Grantor's property; or
  - (iii) something having a substantially similar effect to paragraph (i) or (ii) happens under any law;

**"Controllable Property"** means the kinds of Collateral in respect of which a security interest may be perfected by control as referred to in section 21(2)(c) of the PPSA;

**"Facility Agreement"** means the Facility Agreement dated on or around the date of this deed between the Secured Party and the Grantor;

**"Excluded Contract"** means any document referred to in any of paragraph (a) to (d) of the definition of Key Contract which contains a provision that prohibits assignment or transfer by way of security of that document;

**"Key Contract"** means:

- (a) each Development Consent;
- (b) the Intercompany Loan Agreement;
- (c) each Material Document; and
- (d) any other document which the Secured Party and the Grantor agree is a Key Contract,



in each case, other than any Excluded Contract;

**"Personal Property Securities Register"** means the register established under s147 of the PPSA;

**"Priority Security Interest"** means a Permitted Security Interest:

- (a) mandatorily preferred by law; or
- (b) approved by the Secured Party as a Priority Security Interest for the purpose of this deed;

**"PPS Regulations"** means the *Personal Property Securities Regulations 2010* (Cth);

**"Receiver"** means any person the Secured Party appoints under this deed as a receiver or receiver and manager of any Collateral; and

**"Revolving Assets"** means any Collateral:

- (a) which is:
  - (i) inventory (using its ordinary meaning);
  - (ii) a negotiable instrument (using its ordinary meaning);
  - (iii) machinery, plant, or equipment which is not inventory and has a value of less than [REDACTED] or its equivalent; or
  - (iv) money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution); and
- (b) in relation to which no Control Event has occurred, subject to clause 3.4.

### **Interpretation**

- 1.4 Clause 1.2 of the Facility Agreement applies to this deed as if set out in full (with reference to "this agreement" being read as "this deed").

## **2. GRANT OF SECURITY**

### **Grant of security**

- 2.1 The Grantor grants the Secured Party a security interest in the Collateral to secure payment of the Secured Money and performance of the Secured Obligations.

### **Nature of security**

- 2.2 The Security Interest granted pursuant to this deed operates as a transfer by way of security of:
  - 2.2.1 a Key Contract (excluding any interest in land conferred by a Key Contract); and

- 2.2.2 any Collateral consisting of accounts and chattel paper which are not, or cease to be, Revolving Assets.
- 2.3 To the extent any Collateral is not transferred, the Security Interest operates as a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.

#### **Priority**

- 2.4 The Security Interest created by this deed is intended to rank in priority to any other Security Interest granted over the Collateral, except any Priority Security Interest.

#### **Acknowledgement of no subordination**

- 2.5 The Grantor acknowledges that the Secured Party has not agreed to subordinate its Security Interest in the Collateral to any other interest in the Collateral, except to the extent (if any) expressly provided by a Finance Document.

### **3. DEALING WITH COLLATERAL**

#### **Restricted dealings**

- 3.1 The Grantor must not do, or agree to do, any of the following unless permitted to do so by clause 3.2 or another provision in a Finance Document:
- 3.1.1 create or allow another interest in any Collateral;
- 3.1.2 dispose, or part with possession, of any Collateral; or
- 3.1.3 allow any Collateral to become a fixture or an accession to, or to become commingled with, anything not already subject to a Security Interest in favour of the Secured Party, and even then only if the priority of that Security Interest is no less favourable than the priority of the Security Interest held by the Secured Party in the Collateral that is to become a fixture, an accession or commingled.

#### **Permitted dealings**

- 3.2 The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business (unless prohibited from doing so by another provision in a Finance Document):
- 3.2.1 create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset;
- 3.2.2 withdraw or transfer money from an account (other than a Blocked Account) with a bank or other financial institution;
- 3.2.3 grant an interest which is a Permitted Security Interest; or
- 3.2.4 dispose of any Collateral which is a Permitted Disposal.

#### **Revolving Assets**

- 3.3 If a Control Event occurs in respect of any Collateral, then automatically:

- 3.3.1 that Collateral is not, and immediately ceases to be, a Revolving Asset;
- 3.3.2 any floating charge over that Collateral immediately operates as a fixed charge;
- 3.3.3 if the Collateral is accounts or chattel paper (each as defined in the PPSA), it is transferred to the Secured Party by way of security; and
- 3.3.4 the Grantor may no longer deal with the Collateral as permitted by clause 3.2.

#### **Conversion to Revolving Assets**

- 3.4 If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under clause 3.3, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

#### **Inventory**

- 3.5 Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a Security Interest under this deed. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

#### **Non-restriction of Security Interests**

- 3.6 Where by law a mortgagee may not restrict the creation of any Security Interest over an asset ranking after the Security Interest created by this deed, clause 3.1 will not restrict that creation. However, the Grantor must ensure that before that Security Interest is created the holder of that Security Interest enters into a deed of priority in form and substance reasonably acceptable to the Secured Party.

### **4. BLOCKED ACCOUNTS**

#### **Security over Blocked Accounts**

- 4.1 The Secured Party may require the Grantor to do the following:
  - 4.1.1 open and maintain a Blocked Account at the Account Bank on terms that satisfy each of the following requirements:
    - 4.1.1.1 Authorised Officers of the Secured Party must be signatories to the Blocked Account;
    - 4.1.1.2 no withdrawals can be made from the Blocked Account without the signature of one of those Authorised Officers;
    - 4.1.1.3 the Secured Party must be able to direct disposition of the funds from the Blocked Account without consent from the Grantor; and
    - 4.1.1.4 depositing an amount in the Blocked Account will not result in any person coming under a present liability (within the meaning of section 341(3)(d) of the PPSA) to pay:
      - (a) the Grantor; or

(b) a Related Body Corporate of the Grantor. and

- 4.1.2 obtain from any Account Bank a priority deed in a form satisfactory to the Secured Party that confirms the following:
- 4.1.2.1 the Account Bank will comply with and give effect to the terms set out in clause 4.1.1;
  - 4.1.2.2 the Security Interest held by the Secured Party in the Blocked Account ranks in priority to any present or future Security Interest held by the Account Bank;
  - 4.1.2.3 the Account Bank must not repay any money in the Blocked Account to the Grantor or any other person without the prior written consent of the Secured Party or an Authorised Officer of the Secured Party;
  - 4.1.2.4 the Account Bank agrees that the laws specified in clause 19.22 will govern the Secured Party's Security Interest in the Blocked Account;
  - 4.1.2.5 the Account Bank waives all rights of set off and combination in respect of the Blocked Account; and
  - 4.1.2.6 the Account Bank must not enforce any Security Interest in respect of the Blocked Account.

**Deposits into Blocked Accounts**

- 4.2 If notified by the Secured Party while an Event of Default is continuing, the Grantor must immediately and until notified otherwise by the Secured Party deposit in the Blocked Account any proceeds the Grantor receives in relation to the Collateral.
- 4.3 Clause 4.2 does not apply to proceeds received from any workers' compensation or public liability policy or reinstatement policy to the extent that the proceeds are paid to either of the following:
- 4.3.1 a person entitled to be compensated under the workers' compensation or public liability policy; or
  - 4.3.2 with the consent of the Secured Party, a person under a contract for the reinstatement of the Collateral.

**Administration of Blocked Accounts**

- 4.4 The Grantor must give all notices and directions and execute all necessary documents as requested by the Secured Party to ensure clauses 4.1 and 4.2 are complied with.
- 4.5 The Grantor may collect as agent for the Secured Party for this purpose the proceeds of any debts or other amounts now or in the future payable to the Grantor subject to using those proceeds as permitted under the Finance Documents.

### **Perfection of security**

- 4.6 If a right arising under clause 4.1 or clause 4.2 is waived by the Secured Party, the Security Interest created by this deed in respect of the relevant Blocked Account, proceeds or other relevant asset may be perfected by another means available under the PPSA.

## **5. REPRESENTATIONS**

### **Representations relating to the Collateral**

- 5.1 The Grantor represents and warrants to the Secured Party that, except as previously disclosed to and accepted by the Secured Party in writing, each of the following is true:

5.1.1 **Representations true:** each of its representations and warranties contained in the Finance Documents is correct and not misleading when made or repeated;

5.1.2 **Details:** the details of the Grantor specified in Item 1 of Schedule 1 are complete and correct;

5.1.3 **Title:** the Grantor has good title to, and is the sole legal owner of, the Collateral (other than any Collateral described in paragraph (c) of the definition of Collateral);

5.1.4 **Attachment:** the Grantor has rights in the Collateral or the power to transfer rights in the Collateral to the Secured Party, and will have these rights or powers in respect of after-acquired property;

5.1.5 **Security Interests:**

5.1.5.1 this deed creates the Security Interest purported to be created by it over the assets purported to be encumbered by it;

5.1.5.2 the Security has the priority contemplated by this deed; and

5.1.5.3 no Security Interest exists in respect of the Collateral, other than a Permitted Security Interest; and

5.1.6 **Commercial property:** None of the Collateral is consumer property or used predominantly for the Grantor's domestic or household purposes.

### **Survival**

- 5.2 The representations and warranties given under this deed survive the execution of this deed.

### **Repetition**

- 5.3 The Grantor will be taken to have repeated the representations and warranties in this deed on each day the representations and warranties are taken to have been repeated pursuant to clause 10.25 of the Facility Agreement.

### **Reliance**

- 5.4 The Grantor acknowledges that the Secured Party has entered into the Finance Documents in reliance on the representations and warranties in this deed.

## 6. UNDERTAKINGS

### Pay and performance undertakings

6.1 The Grantor must do each of the following:

- 6.1.1 **Payment:** duly and punctually pay the Secured Money in accordance with the Finance Documents; and
- 6.1.2 **Performance:** ensure that no Event of Default occurs. The Grantor must duly and punctually comply with its obligations under the Finance Documents.

### Information undertakings

6.2 The Grantor must promptly notify the Secured Party:

- 6.2.1 if the Grantor acquires, or enters into an agreement to acquire, any interest in real property or any Controllable Property, other than in the ordinary course of the Grantor's business;
- 6.2.2 if the Grantor acquires, or enters into an agreement to acquire, any personal property:
  - 6.2.2.1 that must be described in a financing statement by reference to a serial number or any personal property with a value in excess of [REDACTED] that may be described in a financing statement by reference to a serial number, other than in the ordinary course of the Grantor's business; or
  - 6.2.2.2 with a value greater than [REDACTED] which is situated outside Australia.
- 6.2.3 of:
  - 6.2.3.1 any change of the jurisdiction in which any of the Collateral with a value greater than [REDACTED] is situated; and
  - 6.2.3.2 any data contained in a registration under the PPSA with respect to the Security being or becoming incorrect.

### Undertakings relating to the Collateral

6.3 The Grantor must do each of the following:

- 6.3.1 **Prior Security Interest:** perform its obligations under any security agreement in respect of a prior Security Interest over any Collateral;
- 6.3.2 **Use of Collateral:** not use Collateral other than in the ordinary course of its usual business;
- 6.3.3 **Not remove Collateral:** not take any Collateral out of Australia without the Secured Party's consent, except in the ordinary course of its usual business;

- 6.3.4 **Store Collateral:** store its tangible Collateral at its principal place of business, a Property or any place notified to the Secured Party, unless the Collateral is in transit or being used in the ordinary course of its business;
- 6.3.5 **Lease obligations:** perform its obligations under any lease of any premises at which any of its tangible Collateral is stored;
- 6.3.6 **Loss of possession:** if any Collateral is seized by a third party under a legal power or taken out of its possession without its consent, within two business days advise the Secured Party of that fact and, if known, the place where the Collateral is stored;
- 6.3.7 **Manufacturer's specifications:** comply with the manufacturer's specifications for the installation of any Collateral and use reasonable endeavours to ensure the manufacturer's specifications are complied with for the use of any Collateral;
- 6.3.8 **Not prejudice insurance:** not use any Collateral in such a way that if the Collateral was damaged or destroyed it would not be insured or a manufacturer's or supplier's warranty would be void or inapplicable;
- 6.3.9 **Comply with authorisations:** maintain and comply with the terms of all licences, manufacturer's or supplier's warranties, consents and authorisations applying to any Collateral or the use of any Collateral;
- 6.3.10 **Maintenance:** maintain the Collateral in good condition having regard to the age of the Collateral and fair wear and tear excepted;
- 6.3.11 **Inspections:** subject to the requirements of any relevant Occupational Lease, allow the Secured Party or a person appointed by the Secured Party to inspect or test the Collateral at any reasonable time and upon reasonable notice, provided the Secured Party or the person appointed by it complies with the occupational health and safety requirements of the Grantor;
- 6.3.12 **Payments:** pay all charges, fees, taxes and duties that apply to any Collateral when they are due (unless, in good faith, it disputes its obligation to pay them), and if the Secured Party asks, give the Secured Party evidence that it has done so;
- 6.3.13 **Documents:** deliver to the Secured Party and allow the Secured Party to retain all title documents relating to the ownership of the Collateral and, if requested, all other documents relating to the use or possession of the Collateral, unless those documents are held by the holder of a prior Security Interest over the Collateral. The Secured Party may retain the title documents deposited with it until the Security Interest in respect of all the Collateral is discharged in accordance with the terms of this deed. If the Security is enforced by the Secured Party, the Secured Party, Receiver or Attorney is entitled:
  - 6.3.13.1 to deal with the title documents and as if it was the absolute and unencumbered owner of the Collateral to which the title documents relate; and
  - 6.3.13.2 in exercising a power of sale, to deliver any title document to a purchaser of the Collateral to which the title document relates;

- 6.3.14 **Prior secured parties:** irrevocably direct any holder of any prior Security Interest over the Collateral to deliver to the Secured Party all title documents relating to the ownership of the Collateral held by that person when that person ceases to be entitled to hold them; and
- 6.3.15 **Perfection, registration and protection of Security:**
- 6.3.15.1 the Grantor must take all steps reasonably required by the Secured Party to ensure that:
- (a) the Security Interest under this deed is perfected in relation to all the Collateral in all jurisdictions; and
  - (b) this deed and the Security Interest under it are registered and filed in all registers in all jurisdictions,
- in which it must be perfected, registered and filed, to ensure its enforceability, validity, perfection and priority against all persons and to be effective as a security;
- 6.3.15.2 whenever the Secured Party requires that the Security Interest under this deed be perfected in a particular way in relation to any part of the Collateral, the Grantor must ensure that the Security Interest under this deed is perfected in that way;
- 6.3.15.3 the Grantor will not be in breach of its obligation under this clause 6.3.15 and its representation and warranty under clause 5.1.4 will not be incorrect or misleading if the Secured Party fails to take any action which can only be taken by the Secured Party to enable the Security Interest under this deed to be perfected as required under this clause 6.3.15, after written request from the Grantor to take that action;
- 6.3.15.4 whenever any part of the Collateral is transferred to or retained in a place where this deed or the Collateral, because of an increase in the Secured Moneys or otherwise, bears insufficient stamp duty or is not registered or recorded, or for any other reason is of limited or of no force or effect, unenforceable, inadmissible in evidence or of reduced priority, the Grantor must within 14 days after that transfer or retention ensure that:
- (a) this deed is stamped to the satisfaction of the Secured Party;
  - (b) this deed is in full force and effect, enforceable, perfected, admissible in evidence and not of reduced priority; and
  - (c) this deed and the Security Interest under this deed are registered in that place, or that part of the Collateral is removed from that place.

#### **Term of undertakings**

- 6.4 Each undertaking in this clause continues from the date of this deed until the Security Interest created by this deed is released.



## 7. CO-OPERATION WITH THE SECURED PARTY

- 7.1 The Grantor must co-operate with the Secured Party by doing:
- 7.1.1 everything the Secured Party asks the Grantor to do to give the Secured Party the full benefit of this deed, including:
    - 7.1.1.1 providing details of any Collateral necessary for the Secured Party to register and maintain an effective financing statement in respect of the Security Interest created by this deed;
    - 7.1.1.2 giving the Secured Party possession of any Controllable Property if possession of the Collateral could give another person an interest in the Collateral with priority over the Security Interest in that Collateral created by this deed;
    - 7.1.1.3 signing a real property mortgage in respect of any land charged by this deed, in substantially the same form as the Real Property Mortgage;
    - 7.1.1.4 taking all reasonable action to remove any financing statement which is registered against the Grantor which is not in respect of a Permitted Security Interest; and
    - 7.1.1.5 executing and delivering to the Secured Party transfers in relation to any Controllable Property, undated and blank as to transferee and consideration; and
  - 7.1.2 everything the Grantor can (acting reasonably) to make sure any person expressed to be a party to a Finance Document complies with its obligations to the Secured Party under that Finance Document.

## 8. APPOINTMENT OF ATTORNEYS

- 8.1 For valuable consideration (receipt of which is acknowledged), the Grantor irrevocably appoints as its separate attorneys the Secured Party, any Receiver and each of the Secured Party's officers, managers and solicitors (each an "**Attorney**") with the power to do any one or more of the following, but only if an Event of Default has occurred and is continuing:
- 8.1.1 anything the Grantor is required to do under a Finance Document;
  - 8.1.2 anything the Attorney thinks necessary to protect the Secured Party's rights under a Finance Document or to exercise any power that the Secured Party has under a Finance Document;
  - 8.1.3 anything else the Grantor could do as owner of, or in connection with, the Collateral; and
  - 8.1.4 delegate its powers to any person for any period.
- 8.2 Each Attorney appointed under this deed is not liable for any liability, loss, damage, cost or expense the Grantor incurs or suffers as a result of the Attorney's actions. The Grantor must indemnify each Attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and Taxes incurred or suffered while acting as the Grantor's Attorney.

## 9. ENFORCEMENT

### Enforcement of Security Interest

- 9.1 If an Event of Default occurs, and while it continues, the Security Interest created by this deed will become immediately enforceable and any Secured Money is immediately due and payable.

### Consequences

- 9.2 In addition to any other rights provided by law or any Finance Document, at any time after an Event of Default occurs and while it continues, the Secured Party may do all or any of the following:
- 9.2.1 sue the Grantor for the Secured Money;
  - 9.2.2 appoint one or more qualified persons as a Receiver or takes any other step to enforce its Security Interest; and
  - 9.2.3 give notice to the Grantor not to dispose, part with possession of or deal with any, or any specified part, of the Collateral (including by selling or leasing its inventory in the ordinary course of the Grantor's business of selling or leasing inventory of that kind) that the Grantor was permitted by this deed to deal with prior to the Event of Default.

### Secured Party's enforcement powers

- 9.3 If this deed has become enforceable, the Secured Party is entitled to do any one or more of the following, as if it were the Grantor:
- 9.3.1 **Deal with Collateral:** deal with any Collateral in any way the Grantor could;
  - 9.3.2 **Take possession:** take possession of or seize any Collateral and, if it does so, give up possession of any Collateral at any time. In the case of intangible property, the Secured Party may seize the intangible property by any method determined by the Secured Party or, if the intangible property is a licence, by any method determined by the Secured Party, including by agreement with the licensor or the licensor's successor;
  - 9.3.3 **Sell Collateral:** sell the Collateral (whether or not it has taken possession). Any sale may be by auction, private treaty, tender or otherwise and may be on terms and conditions that the Secured Party thinks fit. The Collateral can be sold together with any other property;
  - 9.3.4 **Liquid assets:** exercise its power under the PPSA to apply Collateral which is an account, a chattel paper or a negotiable instrument to the satisfaction of the Secured Money and Secured Obligations;
  - 9.3.5 **Retain Collateral:** exercise any power under the PPSA to retain any Collateral in satisfaction of the Secured Money and Secured Obligations;
  - 9.3.6 **Acquire property:** acquire any interest in any property, in the name or on behalf of the Grantor, which on acquisition forms part of the Collateral;

- 9.3.7 **Borrow money:** borrow money for the purpose of exercising the Secured Party's powers, and to give a Security Interest over any of the Collateral as security for the loan;
- 9.3.8 **Employ:** employ or discharge people to help it or advise it how to deal with the Collateral;
- 9.3.9 **Give receipts:** give receipts and sign any documents needed to deal with any of the Collateral;
- 9.3.10 **Exercise powers:** exercise the Grantor's powers in respect of the Collateral;
- 9.3.11 **Sign documents:** sign documents and enter into contracts relating to the Collateral on the Grantor's behalf;
- 9.3.12 **Legal proceedings:** bring or defend legal proceedings relating to the Collateral in the Grantor's name;
- 9.3.13 **Insolvency proceedings:** make any debtor bankrupt, wind up any company, corporation or other entity and do all things in relation to any bankruptcy or winding up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- 9.3.14 **Appoint receiver:** appoint one or more qualified persons as receiver or receiver and manager of any Collateral;
- 9.3.15 **Delegate powers:** delegate any of its powers (including this power) to any other person;
- 9.3.16 **All other acts:** do anything else that the Grantor could do in respect of the Collateral; and
- 9.3.17 **Any other power:** exercise any other power it has as a matter of law.

#### **Calls on shares**

- 9.4 The Secured Party may do the following at any time while an Event of Default continues:
  - 9.4.1 in the name of the Grantor, make a call on the unpaid share capital of the Grantor (whether on account of the nominal value of shares or by way of premium);
  - 9.4.2 sue in the name of the Grantor or otherwise for the recovery of moneys becoming due in respect of calls; and
  - 9.4.3 give valid receipts for such moneys.

#### **Investigation of Default**

- 9.5 If a Default is continuing, the Secured Party may appoint an accountant, solicitor, valuer or other expert to investigate and report on those circumstances, the viability of any business of the Grantor and the value of any of its assets. For the purpose of this clause:
  - 9.5.1 the Grantor must cooperate with the investigation; and

- 9.5.2 any costs in respect of the investigation are payable by the Grantor and may be recovered by the Secured Party as an enforcement cost under the costs and expenses provision of this deed.

#### **Marshalling**

- 9.6 The Secured Party is not under any obligation to marshal this deed in favour of the Grantor or any other creditor of the Grantor.

#### **Grantor must help Secured Party**

- 9.7 The Grantor must do everything the Secured Party asks it to do to help the Secured Party, any Receiver and any Attorney exercise their powers under this deed.

### **10. RECEIVERS**

#### **Appointing and removing Receivers**

- 10.1 An appointment by the Secured Party of a Receiver must be in writing and be signed by or on behalf of the Secured Party. The Secured Party will determine the terms of the Receiver's appointment and the amount and basis of the Receiver's remuneration.
- 10.2 The Secured Party may remove any Receiver it appoints and, if it wants to, reappoint that person or appoint another person as a replacement.

#### **Receiver's powers**

- 10.3 Unless the Secured Party expressly restricts a Receiver's powers on appointment, the Receiver will have the following powers in addition to the powers the Receiver has as a matter of law:
- 10.3.1 to do everything the Secured Party may do under clause 9.3 (except appoint a receiver or receiver and manager); and
- 10.3.2 to delegate any of the Receiver's powers (including this power) to any other person.

#### **Agent of Grantor**

- 10.4 Subject to clause 10.5, a Receiver will be the agent of the Grantor, not the Secured Party. The Grantor, and not the Secured Party, will be responsible for anything a Receiver does or fails to do in its capacity as Receiver.

#### **Appointing Receiver after winding up**

- 10.5 The Secured Party may appoint a Receiver even if an order is made, or a resolution passed, to wind-up the Grantor. If for any reason, including operation of law, a Receiver appointed in the circumstances described in this clause or appointed at any other time, ceases to be the agent of the Grantor as a result of an order being made or a resolution being passed for the winding up of the Grantor, then the Receiver immediately becomes the agent of the Secured Party.

### **Indemnity by Grantor**

- 10.6 The Grantor must indemnify a Receiver and each of the Receiver's agents and employees against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including legal costs on a full indemnity basis) and Taxes they incur or suffer in their capacity as Receiver, other than any liability, loss, damage, expense or Taxes arising as a result of the fraud, gross negligence or wilful default of the Receiver or its agent or employee.

### **Grantor must help Receiver**

- 10.7 The Grantor must do everything a Receiver asks it to do to help the Receiver exercise its powers under this deed.

### **Acting severally**

- 10.8 If the Secured Party appoints more than one person to act as a Receiver, those persons may act severally unless specified otherwise in the instrument of appointment.

## **11. STATUTORY POWERS**

### **Statutory powers**

- 11.1 The powers conferred on a mortgagee by law:
- 11.1.1 are in addition to the powers conferred by this deed, any Additional Security or any other Finance Document;
  - 11.1.2 to the extent permitted by law, may be exercised by the Secured Party immediately if an Event of Default occurs and at any time while it continues; and
  - 11.1.3 are excluded or varied only so far as they are inconsistent with the express terms of this deed, any Additional Security or any other Finance Document.

### **Exercise of PPSA rights by Secured Party**

- 11.2 If the Secured Party exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

## **12. EXCLUSION OF LEGISLATION**

### **Legislation other than PPSA**

- 12.1 In respect of legislation other than the PPSA:
- 12.1.1 all legislation which at any time directly or indirectly does the following is, to the full extent permitted by law, excluded from this deed, any Additional Security and any Finance Document:
    - 12.1.1.1 lessens, varies or affects in favour of the Grantor any obligation under this deed, any Additional Security or any Finance Document;

- 12.1.1.2 delays, prevents or prejudicially affects the exercise of any power by the Secured Party, any Receiver or Attorney; or
- 12.1.1.3 confers any right on the Grantor or imposes any obligation on the Secured Party or a Receiver or Attorney in connection with the exercise of any power;
- 12.1.2 to the extent permitted by law (but without prejudice to any express requirement in a Finance Document) the Secured Party may enforce this deed, any Additional Security or any Finance Document at any time while an Event of Default is continuing, or exercise any rights under this deed or conferred by law at any time while an Event of Default is continuing, without giving any notice or allowing any time to lapse;
- 12.1.3 any law requiring the giving of notice, or the compliance with a procedure, or the lapse of time before enforcement or exercise, is, to the extent permitted by law, excluded; and
- 12.1.4 where a law which cannot be excluded requires that a period of notice must be given, or a lapse of time must occur, but allows the period to be specified or changed, that period will be one day or the minimum period the law allows to be agreed (whichever is the longer).

**Exclusion of PPSA provisions**

- 12.2 In respect of the PPSA and to the extent the law permits:
  - 12.2.1 for the purposes of sections 115(1) and 115(7) of the PPSA:
    - 12.2.1.1 the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
    - 12.2.1.2 sections 142 and 143 are excluded;
  - 12.2.2 for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
  - 12.2.3 if the PPSA is amended after the date of this deed to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions, as notified to the Grantor by the Secured Party; and
  - 12.2.4 the Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA (but this does not limit the Grantor's rights to request information other than under section 275), to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

**No notice required unless mandatory**

- 12.3 To the extent the law permits, the Grantor waives:
  - 12.3.1 its rights to receive any notice that is required by:

- 12.3.1.1 any provision of the PPSA (including a notice of a verification statement); or
  - 12.3.1.2 any other law before a secured party or receiver exercises a right, power or remedy; and
- 12.3.2 any time period that must otherwise lapse under any law before the secured party or a receiver exercises a right, power or remedy.
- 12.4 To the extent permitted by law (but without prejudice to any express requirement in a Finance Document) the Secured Party may enforce this deed or any Additional Security at any time while an Event of Default is continuing, or exercise any rights under this deed or conferred by law at any time while an Event of Default is continuing, without giving any notice or allowing any time to lapse.
- 12.5 Where a law which cannot be excluded requires that a period of notice must be given, or a lapse of time must occur, but allows the period to be specified or changed, that period will be one day or the minimum period the law allows to be agreed (whichever is the longer).
- 12.6 Nothing in this clause 12 prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.

### **13. PROCEEDS OF ENFORCEMENT**

#### **Applying the proceeds**

- 13.1 At any time after this deed is enforceable, all money received by the Secured Party, any Receiver, any Attorney or any other person acting on their behalf under this deed or any Additional Security may be appropriated and applied:
  - 13.1.1 in accordance with the PPSA to the extent it applies and otherwise in the following order, subject to the claims of any person ranking ahead of the Secured Party; and
  - 13.1.2 subject to clause 13.1.1, in any order that the Secured Party, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by law.
- 13.2 Failing a determination under clause 13.1.2, the money must be applied in the following manner and order:
  - 13.2.1 first in payment of all costs, charges and expenses of the Secured Party, any Receiver and any Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any power or otherwise in relation to this deed, any Additional Security or any Finance Document;
  - 13.2.2 secondly in payment of such other outgoings incurred in or incidental to the exercise or performance or attempted exercise or performance of any power or otherwise in relation to this deed, any Additional Security or any Finance Document as the Secured Party may think fit to pay;
  - 13.2.3 thirdly in payment to the Receiver of any remuneration whether by way of commission or otherwise;

13.2.4 fourthly in payment to the Secured Party of all amounts necessary to give effect to any indemnity contained in this deed; and

13.2.5 fifthly in payment to the Secured Party of the Secured Money.

#### **Surplus proceeds**

13.3 After payment in accordance with the previous clause:

13.3.1 any remaining surplus will belong to the Grantor or other persons entitled to it;

13.3.2 the surplus will not carry interest; and

13.3.3 the Secured Party may pay the surplus to the credit of a bank account in the name of the Grantor or other persons entitled to it and will then be under no further liability in respect of it.

#### **Payments actually received**

13.4 When applying money towards the repayment of the Secured Money, the Secured Party will credit the Grantor only for money actually received by the Secured Party in immediately available funds.

#### **Contingent amounts**

13.5 If, at the time the Secured Party receives any money under this deed, any part of the Secured Money is contingently owing, the Secured Party may retain an amount equal to that part or any part of it and:

13.5.1 the Secured Party must pay the amount retained into a short term interest bearing account;

13.5.2 when the relevant Secured Money becomes due or is no longer contingently owing, the Secured Party must pay to itself the due amount; and

13.5.3 the balance of the retained amount, together with interest earned, must be applied in accordance with clause 13.1 and, after payment in accordance with clause 13.1, in accordance with clause 13.3.

#### **14. ADDITIONAL SECURITIES**

14.1 If the Secured Party has or obtains any Additional Security, the Grantor's obligations under this deed are not affected in any way. The Secured Party can choose to exercise its rights under this deed or under an Additional Security at the same time or at different times.

14.2 This deed is collateral to and secures the same moneys as are secured by any Additional Security.



## **15. CONTINUING SECURITY**

### **Continuing security**

- 15.1 The Security Interest created by this deed is a continuing security. It is not released even if the Grantor has paid any intermediate payment in respect of the Secured Money or performed some of the Secured Obligations.
- 15.2 The Security Interest created by this deed will only be released if the Secured Party gives the Grantor a formal written discharge or formal notice of release of all or part of the Collateral.

### **Requirements for release**

- 15.3 The Secured Party has no obligation to give a discharge or notice releasing the Security Interest created by this deed until the Secured Party is satisfied on each of the following points:
  - 15.3.1 the Secured Party has received payment of all the Secured Money;
  - 15.3.2 no further Secured Money will or is likely to become owing to the Secured Party in the future; and
  - 15.3.3 no payment made by the Grantor will or is likely to be avoided or required to be repaid by the Secured Party under any law relating to insolvency or the protection of creditors.

### **Reinstatement**

- 15.4 If, after the Secured Party applies any amount against any of the Secured Money, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to insolvency or the protection of creditors:
  - 15.4.1 the Secured Party's rights are to be reinstated and will be the same in respect of that amount or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
  - 15.4.2 the Grantor must immediately do anything (including the signing of documents) required by the Secured Party to restore to the Secured Party any Guarantee or Security Interest to which it was entitled immediately before application or the payment or transaction giving rise to it.

## **16. PROTECTION OF THIRD PARTIES**

### **No duty to check**

- 16.1 No person who deals with the Secured Party, any Receiver or any Attorney needs to check any of the following:
  - 16.1.1 whether the Security Interest created by this deed has become enforceable;
  - 16.1.2 whether any power the Secured Party, any Receiver or any Attorney exercises has become exercisable;
  - 16.1.3 whether a Receiver has been properly appointed;

- 16.1.4 whether the Secured Party, any Receiver or any Attorney has a power that it claims to have;
- 16.1.5 whether any Secured Money is owed to the Secured Party; or
- 16.1.6 how any money paid to the Secured Party, any Receiver or any Attorney is used.

#### **Protection of purchasers**

- 16.2 The title of any property acquired by a third party from the Secured Party, any Receiver or any Attorney will not be adversely affected by any irregularity or impropriety in the exercise of the powers under this deed.

#### **Receipt**

- 16.3 Once the Secured Party or any of its Authorised Officers receives any money or assets payable to or receivable by the Secured Party, the person who paid that money or handed over that asset cannot be liable for their subsequent loss or misapplication.

### **17. LIMITED LIABILITY**

#### **Accounting for money received**

- 17.1 The Secured Party, each Receiver and each Attorney only has to account to the Grantor for the amount actually received by it for the purpose of repaying the Secured Money or from any dealing with the Collateral. The Secured Party, each Receiver and each Attorney is not liable to account to the Grantor as a mortgagee in possession or for anything that a mortgagee in possession could be liable for. If it does anything it should not do in relation to the Collateral, the Grantor's only remedy is damages.
- 17.2 The Grantor will continue to owe the Secured Party the difference between the amount of the Secured Money and the amount the Secured Party actually receives for the purpose of repaying the Secured Money or from any dealing with the Collateral.
- 17.3 The Secured Party, its Authorised Officers, any Receiver and any Attorney are not liable for any loss caused by the exercise or attempted exercise, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by their negligence. This clause does not apply to any loss which arises from fraud, gross negligence or wilful default of the relevant person.

### **18. NOTICES**

#### **Giving statutory notices**

- 18.1 Notices and any other documents relating to this deed required or authorised by the PPSA (and not contracted out of by this deed) must be served or given in accordance with that Act.

#### **Giving notices**

- 18.2 Any notice or communication given to a party under this deed is only given if it is in writing and given in accordance with clause 25 of the Facility Agreement.

**19. MISCELLANEOUS**

**Conflict**

- 19.1 Where any right, power, authority, discretion or remedy conferred on the Secured Party, Receiver or Attorney by this deed or any Finance Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

**Consent of Secured Party**

- 19.2 Whenever the doing of any thing by the Grantor is dependent on the consent of the Secured Party, the Secured Party may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Finance Document.
- 19.3 Any conditions imposed on the Grantor under clause 19.2 must be complied with by the Grantor.

**Completion of blank securities**

- 19.4 The Secured Party, a Receiver, Attorney or any Authorised Officer of the Secured Party may at any time complete, in favour of the Secured Party, any appointee of the Secured Party or any purchaser, any instrument executed in blank by or on behalf of the Grantor and deposited with the Secured Party as security under this deed or under any Collateral Security.
- 19.5 The Secured Party, a Receiver, Attorney or any Authorised Officer of the Secured Party must not exercise any power under clause 19.4 until an Event of Default occurs but a breach of this clause 19.5 does not affect the validity of the act of the Secured Party, Receiver, Attorney or Authorised Officer of the Secured Party.

**Principal obligations**

- 19.6 The Security Interest created by this deed and each Collateral Security is:
- 19.6.1 a principal obligation and is not ancillary or collateral to any other Security Interest (other than another Collateral Security) or other obligation; and
- 19.6.2 independent of, and unaffected by, any other Security Interest or other obligation which the Secured Party may hold at any time in respect of the Secured Moneys.

**No obligation to marshal**

- 19.7 The Secured Party is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:
- 19.7.1 any Security Interest or Collateral Security held, at any time, by the Secured Party; or
- 19.7.2 any moneys or assets which the Secured Party, at any time, holds or is entitled to receive.

#### **Non avoidance**

- 19.8 If any payment by the Grantor to the Secured Party is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting the Grantor or any other thing, and whether or not:
- 19.8.1 any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
  - 19.8.2 any thing was or ought to have been within the knowledge of the Secured Party, the Grantor:
  - 19.8.3 as an additional, separate and independent obligation, indemnifies the Secured Party against that avoided payment; and
  - 19.8.4 acknowledges that any liability of the Grantor under the Finance Documents and any power is the same as if that payment had not been made.

#### **Increase in financial accommodation**

- 19.9 The Secured Party may at any time increase the financial accommodation provided under any Finance Document or otherwise provide further financial accommodation.

#### **Performance by Secured Party of the Grantor's obligations**

- 19.10 If the Grantor defaults in fully and punctually performing any obligation contained or implied in any Finance Document, the Secured Party may, without prejudice to any power, do all things necessary or desirable, in the opinion of the Secured Party, to make good or attempt to make good that default to the satisfaction of the Secured Party.

#### **Allowing conduct of others**

- 19.11 If the Grantor is not permitted to do something by this deed, it must not allow or assist anyone else to do that thing.

#### **Assignment**

- 19.12 The Secured Party can assign or transfer any of its rights and obligations under this deed to the extent permitted to do so under and in accordance with the Facility Agreement.
- 19.13 The Grantor can only assign or deal with any of its rights and obligations under this deed with the Secured Party's consent.

#### **Completion and registration of deed**

- 19.14 The Grantor irrevocably authorises the Secured Party and its solicitors to do the following:
- 19.14.1 register one or more financing statements or financing change statements (electronically or otherwise) on the Personal Property Securities Register in connection with this deed; and

- 19.14.2 register and record this deed (electronically or otherwise) in such other places as the Secured Party or its solicitors may at any time consider necessary or desirable to perfect this deed or to protect the rights of the Secured Party under this deed.

**Conflict of interest**

- 19.15 The Secured Party, each of its Authorised Officers or other person appointed by the Secured Party under this deed, each administrator of the Grantor appointed by the Secured Party, each Attorney and each Receiver may exercise the powers conferred by this deed or by law even though that person may have a conflict of interests in exercising those powers or a direct or personal interest in the means or result of that exercise of those powers.

**Counterparts**

- 19.16 This deed may be signed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this deed.

**Entire agreement**

- 19.17 This deed contains everything the Secured Party has agreed in relation to the matters they deal with. The Grantor cannot rely on an earlier document, or anything said or done by the Secured Party, or by an Authorised Officer, agent or employee of the Secured Party, before this deed was executed.

**Evidence**

- 19.18 A certificate signed by the Secured Party of the amount of the Secured Money or the amount of the Secured Obligations comprising monetary liabilities is conclusive evidence of what it states, except in the case of obvious error. The Grantor cannot object to the admission of a certificate of that type in any proceedings.

**Exercise of rights**

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

**Finance Document**

- 19.21 This deed is a "Finance Document" as that term applies in the Facility Agreement.

**Governing law and jurisdiction**

- 19.22 This deed is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

**Indemnities**

- 19.23 Each indemnity in this deed is a continuing obligation, separate from the other obligations of the parties, and continues after this deed ends.

19.24 A party may enforce a right of indemnity at any time (including before it has incurred loss).

**Joint and several liability**

19.25 If there is more than one Grantor under this deed, each reference to "the Grantor" is to be treated as a reference to each of the Grantors individually, and to each of the Grantors jointly with any one or more of the others. This means the Secured Party can take action against any number of the persons who are a Grantor together or against one Grantor alone.

**Other rights unaffected**

19.26 The Secured Party's rights under this deed are in addition to any rights that the Secured Party may have apart from it.

**Severability**

19.27 Each provision of this deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this deed in the relevant jurisdiction, but the rest of this deed will not be affected by the severing of the provision. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

**Variation**

19.28 No variation of this deed will be of any force or effect unless it is in writing and signed by the Secured Party.

**Waiver and consents**

19.29 A waiver or consent provided by the Secured Party under this deed:

19.29.1 must be in writing and signed by the Secured Party;

19.29.2 will be provided at the Secured Party's discretion;

19.29.3 will only affect the particular provision, obligation or breach for which it is given;

19.29.4 will not imply that a waiver or consent is provided in respect of any other provision, obligation or breach or provided on any other occasion; and

19.29.5 may be provided conditionally in which case the Grantor agrees to comply with the conditions of the consent or waiver given by the Secured Party.

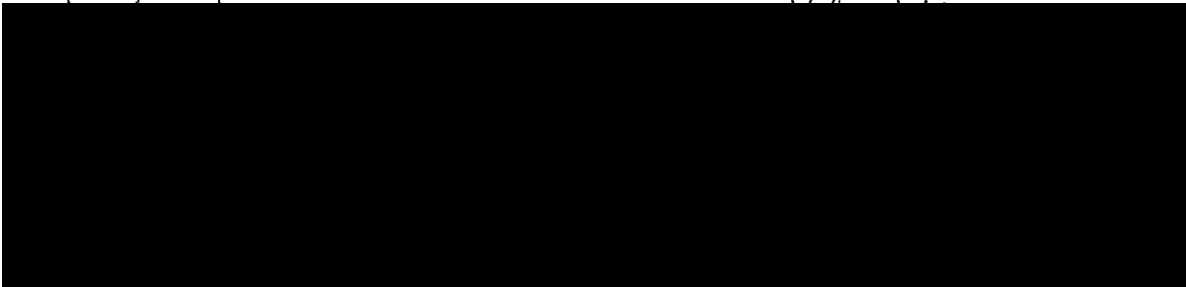
19.30 The fact that the Secured Party fails to do, or delays in doing, something the Secured Party is entitled to do under this deed does not amount to a waiver or consent.

**EXECUTED AS A DEED**

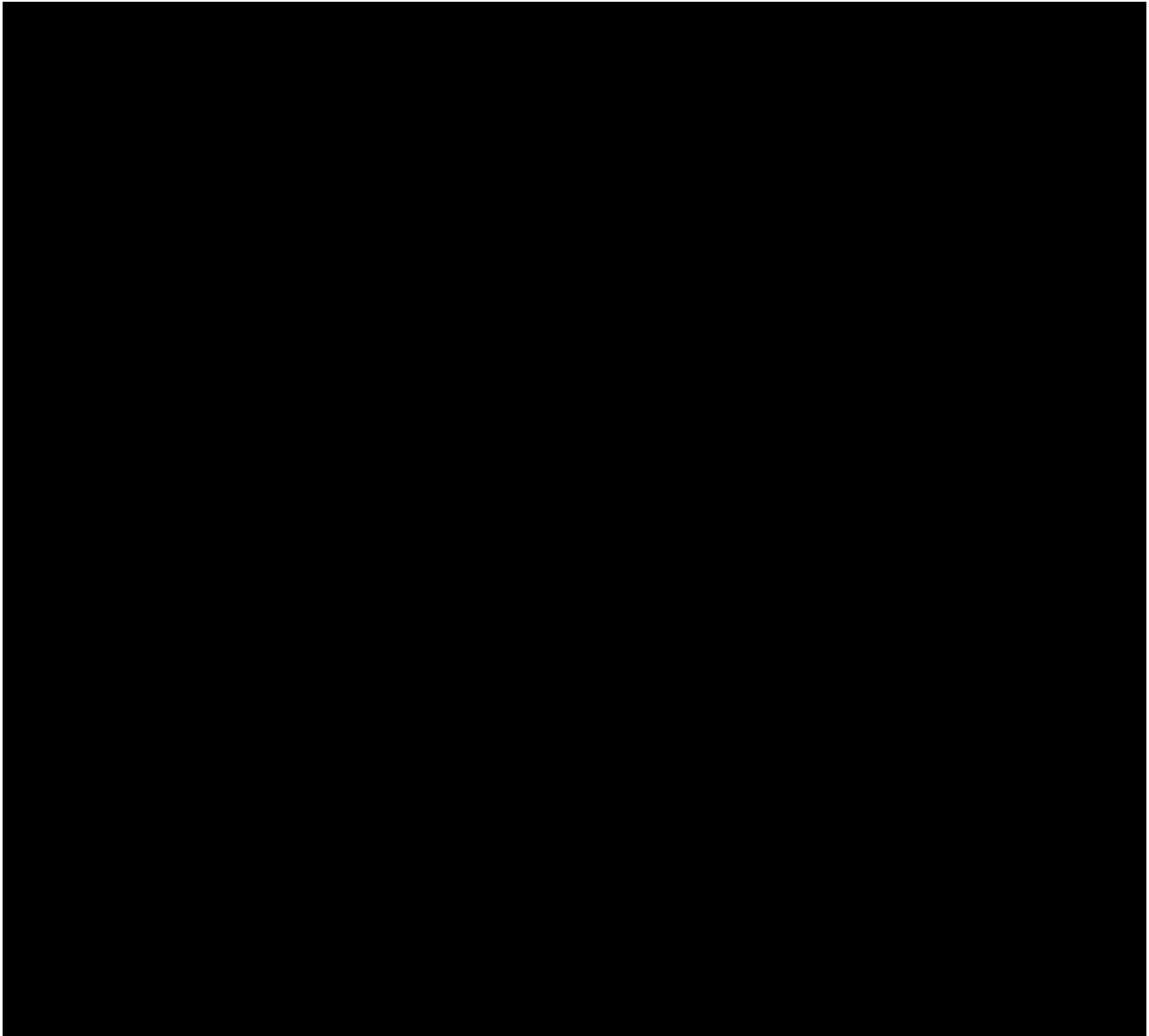
**GRANTOR**

Signed, sealed and delivered by **SGCH Sustainability Limited** ABN 21 606 965 799 by its attorney duly appointed by power of attorney dated 19 NOVEMBER 2015 and who has received no notice of the revocation of the power, in the presence of:

W D



**SECURED PARTY**







## SCHEDULE 1: DETAILS

### Item 1 – Details of the Grantor:

|                           |                             |
|---------------------------|-----------------------------|
| <b>Grantor type:</b>      | Organisation                |
| <b>Organisation name:</b> | SGCH Sustainability Limited |
| <b>Organisation type:</b> | Company                     |
| <b>ABN number:</b>        | 21 606 965 799              |

I certify that this is a true, complete and up to date copy of the original document sighted by me at 2:00pm this 10th day of February 2016

Form: 05M

# MORTGAGE

New South Wales  
Real Property Act 1900



## AK256079B

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

### STAMP DUTY

|                                  |  |
|----------------------------------|--|
| Office of State Revenue use only | NEW SOUTH WALES DUTY<br>22-02-2016 0008542311-003<br>SECTION 275(3)(A)-COLLATERAL<br>NO DUTY PAYABLE<br><i>Initial Advance</i> |
|----------------------------------|--|

### (A) TORRENS TITLE

See Annexure B

### (B) LODGED BY

*4 x extra fees charged.*

| Delivery | Name, Address or DX and Telephone | Code |
|----------|-----------------------------------|------|
| B        | [Redacted]                        | M    |

### (C) MORTGAGOR

SGCH SUSTAINABILITY LIMITED (ABN 21 606 965 799)

### (D)

mortgages to the mortgagee all the mortgagor's estate and interest in the abovementioned land and covenants with the mortgagee that the provisions set out in Annexure C are incorporated in this mortgage.

### (E)

Encumbrances (if applicable) 1. 2. 3.

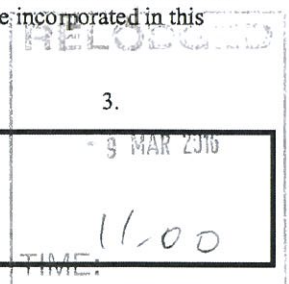
### (F) MORTGAGEE

[Redacted]

### (G)

DATE

*26/02/2016*



(H) I certify that I am an eligible witness and that the mortgagor signed this dealing in my presence. [See note\* below]

Certified correct for the purposes of the Real Property Act 1900 by the mortgagor

Signature of witness

Name of witness:

Address of witness

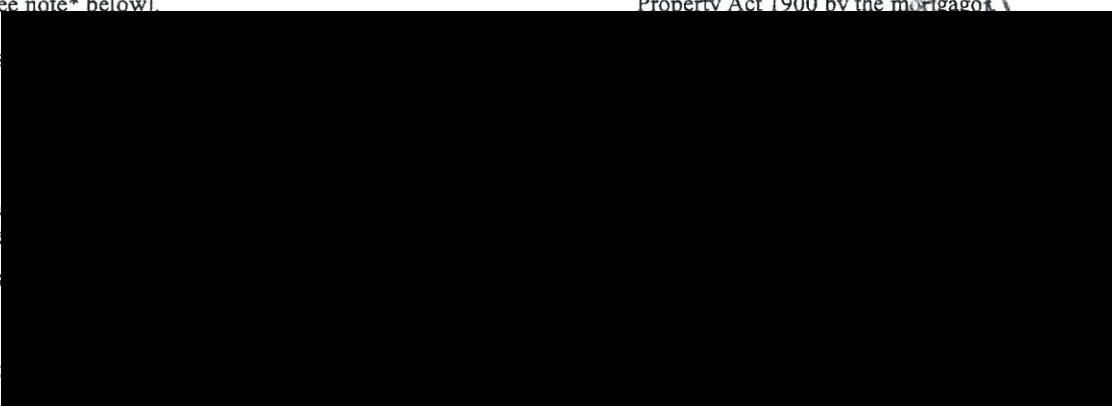
I certify that I am a [Redacted] in my presence. [See note\* below]

Signature of witness

Name of witness:

Address of witness

\*s117 RP Act requires



*Consent letter from DFCS herewith*

THIS IS ANNEXURE A REFERRED TO IN A MORTGAGE

BETWEEN: SGCH SUSTAINABILITY LIMITED (ABN 21 606 965 799) AS MORTGAGOR

AND: [REDACTED] AS MORTGAGEE

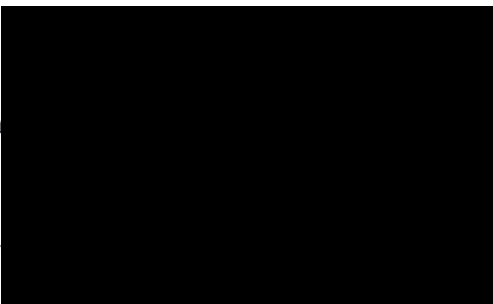
OF THE LAND IN THE CERTIFICATES OF TITLE SET OUT IN ANNEXURE B

DATED: 26 FEBRUARY 2016

Signed by Mortgagor

(H) I certify that I am an eligible witness and that the Mortgagor's attorney signed this dealing in my presence. [See note\*below]. Certified correct for the purposes of the Real Property Act 1900 by the Mortgagor's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of witness:



Signature of attorney:



Name of witness:

Attorney's name:

Address of witness:

Signing on behalf of:

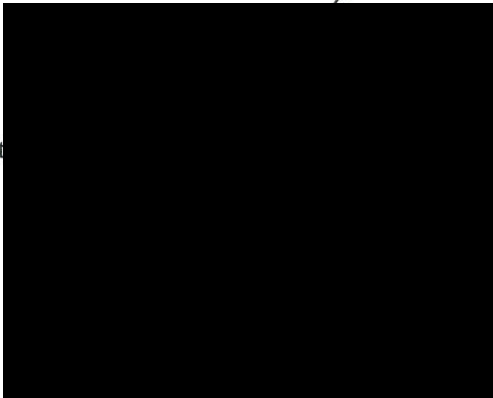
Power of attorney -Bo

-N

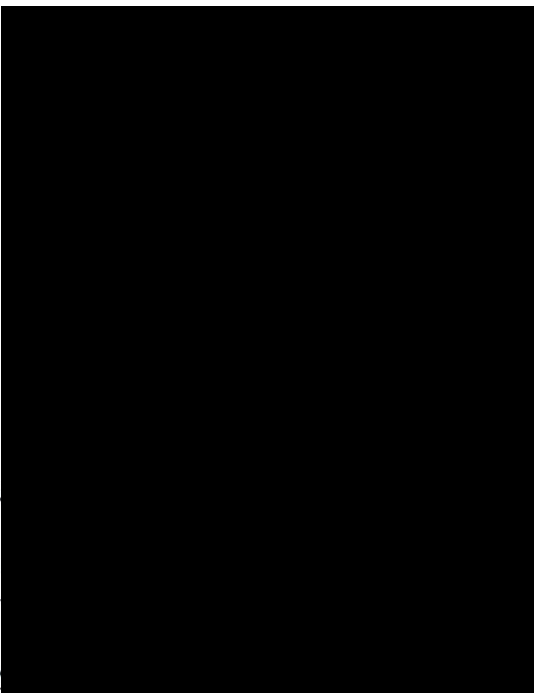
Signed by Mortgagee

(H) I certify that I am an eligible witness and that the Mortgagee's attorney signed this dealing in my presence. [See note\*below]. Certified correct for the purposes of the Real Property Act 1900 by the Mortgagees' attorneys who signed this dealing pursuant to the power of attorney specified.

Signature of witness:



Signature of attorney:



Name of witness:

Attorney's name:

Address of witness:

Signature of attorney:

Attorney's name:

Signing on behalf of:

Power of attorn

\*s117 RP Act requires that you must have known the signatory for more than 12 months or

1.  $\int_0^1 x^2 dx = \frac{1}{3}$

THIS IS ANNEXURE B REFERRED TO IN A MORTGAGE

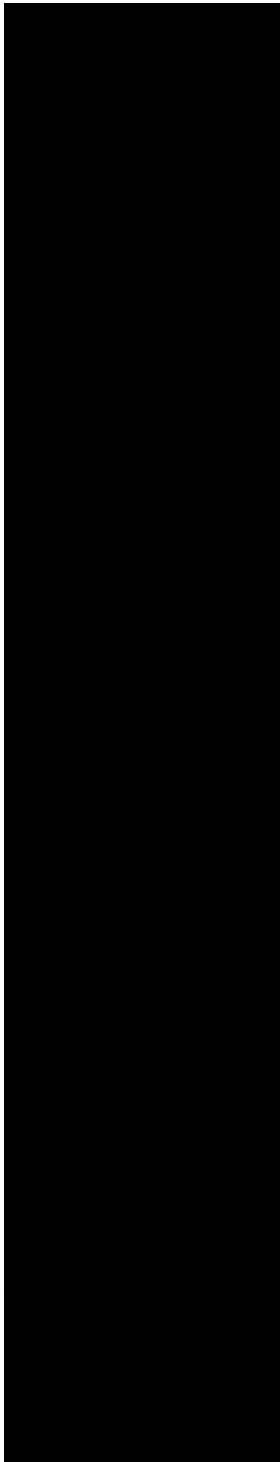
BETWEEN: SGCH SUSTAINABILITY LIMITED (ABN 21 606 965 799) AS MORTGAGOR

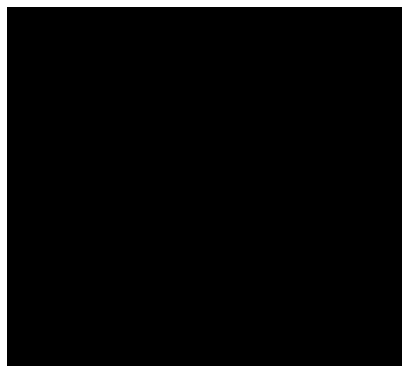
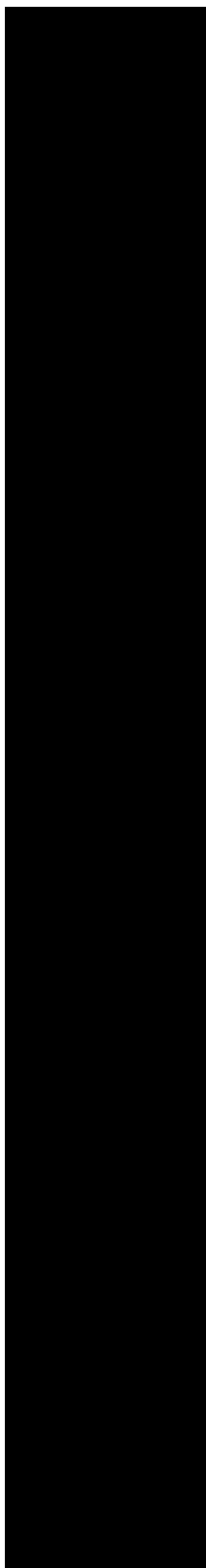
AND: [REDACTED] AS MORTGAGEE

OF THE LAND IN THE CERTIFICATES OF TITLE SET OUT IN THIS ANNEXURE B

DATED: 26 FEBRUARY 2016

(A) TORRENS TITLES:





**THIS IS ANNEXURE C REFERRED TO IN A MORTGAGE**

**BETWEEN: SGCH SUSTAINABILITY LIMITED ABN 21 606 965 799 AS MORTGAGOR**

**AND [REDACTED] AS MORTGAGEE**

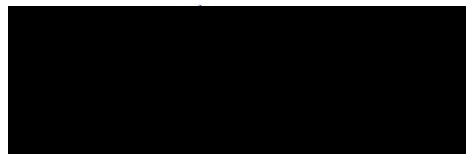
**OF THE LAND IN THE CERTIFICATES OF TITLE SET OUT IN ANNEXURE B**

**DATED: 26 FEBRUARY 2016**

The parties acknowledge that the provisions set out in this Annexure C form part of the Mortgage referred to above.

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## MORTGAGE PROVISIONS:

### 1. DEALING WITH MORTGAGED PROPERTY

- 1.1 Except with the prior written consent of the Mortgagee, or as expressly permitted in any Finance Document (including any Permitted Security Interest or any Permitted Disposal), the Mortgagor must not do any of the following:
- 1.1.1 create or allow to exist any Security Interest over the Mortgaged Property;
  - 1.1.2 create or allow any interest in, or dispose of or part with possession of, the Mortgaged Property; and
  - 1.1.3 otherwise deal with the Mortgaged Property.
- 1.2 Where by law a mortgagee may not restrict the creation of any Security Interest over an asset ranking after this mortgage, the above clause will not restrict that creation. However, the Mortgagor must ensure that before that Security Interest is created the holder of that Security Interest enters into a deed of priority in form and substance reasonably acceptable to the Mortgagee.
- 1.3 The Security Interest created by this mortgage is intended to rank in priority to any other Security Interest granted over the Mortgage Property, except those Permitted Security Interests which the Mortgagee agrees are to rank in priority.

### 2. REPRESENTATIONS

#### Representations relating to the Mortgaged Property

- 2.1 The Mortgagor represents and warrants to the Mortgagee that, except as previously disclosed to and accepted by the Mortgagee in writing, each of the following is true:
- 2.1.1 **Representations true:** each of its representations and warranties contained in the Finance Documents is correct and not misleading when made or repeated;
  - 2.1.2 **Title:** the Mortgagor is, or will become, the only owner of the Mortgaged Property and has, or will have, good right and title to, and full power to mortgage, the Mortgaged Property;
  - 2.1.3 **Security Interests:** no Security Interest exists in respect of any Mortgaged Property, other than a Permitted Security Interest;
  - 2.1.4 **Encroachments:** no part of any improvement erected principally on the Mortgaged Property encroaches on neighbouring land and no part of any improvement erected principally on neighbouring land encroaches on the Mortgaged Property, except in each case as permitted by an easement registered on title;
  - 2.1.5 **No compulsory acquisition:** to the best of the Mortgagor's knowledge, having made all reasonable enquiries, no Governmental Agency has any proposal to compulsorily acquire or purchase, or to change the permitted use of, the Mortgaged Property or to do any other thing which may have a Material Adverse Effect; and
  - 2.1.6 **No assignment of Rental Income:** Subject to this mortgage, no Rental Income payable now or in the future in respect of the Mortgaged Property has been assigned or encumbered to any person other than under a Permitted Security Interest.

#### Survival

- 2.2 The representations and warranties given under this mortgage survive the execution of this mortgage.

### **Repetition**

- 2.3 The Mortgagor will be taken to have repeated the representations and warranties in this mortgage on each day the representations and warranties are taken to have been repeated pursuant to clause 10.25 of the Facility Agreement.

### **Reliance**

- 2.4 The Mortgagor acknowledges that the Mortgagee has entered into the Finance Documents in reliance on the representations and warranties in this mortgage.

## **3. UNDERTAKINGS**

### **Pay and performance undertakings**

- 3.1 The Mortgagor must do each of the following:
- 3.1.1 **Payment:** Duly and punctually pay the Secured Money in accordance with the Finance Documents.
- 3.1.2 **Performance:** Ensure that no Event of Default occurs. The Mortgagor must duly and punctually comply with its obligations under the Finance Documents.

### **Registration**

- 3.2 The Mortgagor must immediately do the following at its own cost and expense:
- 3.2.1 register this mortgage with Land and Property Information, a division of the NSW Office of Finance and Services; and
- 3.2.2 register or record this mortgage in such other places as the Mortgagee may at any time consider necessary or desirable to perfect this mortgage or to protect the rights of the Mortgagee under this mortgage.

### **Undertakings relating to the Mortgaged Property**

- 3.3 The Mortgagor must do each of the following:
- 3.3.1 **Prior Security Interest:** perform its obligations under any security agreement in respect of a prior Security Interest over the Mortgaged Property;
- 3.3.2 **Use of Mortgaged Property:** not use the Mortgaged Property in an unlawful manner, for any unlawful purpose;
- 3.3.3 **Manufacturer's specifications:** comply with the manufacturer's specifications for the installation of any plant or equipment forming part of the Mortgaged Property and use reasonable endeavours to ensure the manufacturer's specifications are complied with for the use of any plant or equipment forming part of the Mortgaged Property;
- 3.3.4 **Not prejudice insurance:** not do or permit anything that would cause any insurance held in respect of the Mortgaged Property to be void or inapplicable;
- 3.3.5 **Comply with authorisations:** maintain and comply with the terms of all licences, consents and authorisations applying to the Mortgaged Property or necessary for the Mortgagor to conduct and maintain any business carried on by it on the Mortgaged Property;
- 3.3.6 **Maintenance:** maintain the Mortgaged Property in good condition having regard to the age of the Mortgaged Property and fair wear and tear excepted;
- 3.3.7 **No modification:** not, without the Mortgagee's consent, do any of the following:

- 3.3.7.1 demolish, remove or alter any Improvements or structures on the Mortgaged Property, other than in connection with any Project;
- 3.3.7.2 change the use of the Mortgaged Property, other than in connection with any Project;
- 3.3.7.3 change the nature of the Mortgaged Property, other than in connection with any Project, or the Mortgagor's title to the Mortgaged Property or
- 3.3.7.4 change the Mortgagor's interest in or rights of occupation of the Mortgaged Property, other than upon entry into of any Lease Document;
- 3.3.8 **No modification of identifying features:** not remove or modify any name, identification number or trademark on any plant, machinery or apparatus fixed to the Land, without the Mortgagee's consent;
- 3.3.9 **Inspections and access:** subject to the requirements of any relevant Lease Document, allow the Mortgagee or a person appointed by the Mortgagee to inspect the Mortgaged Property at any reasonable time and upon reasonable notice (provided the Mortgagee or the person appointed by it complies with the occupational health and safety requirements of the Mortgagor), including by ensuring that:
  - 3.3.9.1 the Mortgagee or a person appointed by the Mortgagee has access to the Land; and
  - 3.3.9.2 the Mortgagee or a person appointed by the Mortgagee is provided entry to any building or premises forming part of the Mortgaged Property;
- 3.3.10 **Payments and outgoings:** pay all charges, fees, taxes, duties and such other outgoings of any nature that apply to the Mortgaged Property and which are not payable by tenants under any Lease Document when they are due (unless, in good faith, it disputes its obligation to pay them), and if the Mortgagee asks, give the Mortgagee evidence that it has done so;
- 3.3.11 **Documents:** deliver to the Mortgagee and allow the Mortgagee to retain all title documents relating to the ownership of the Mortgaged Property and, if requested, all other documents relating to the ownership or use of the Mortgaged Property, unless those documents are held by the holder of a prior Security Interest over the Mortgaged Property. The Mortgagee may retain the title documents deposited with it until the Security Interest in respect of all the Collateral is discharged in accordance with the terms of this mortgage. If the Security is enforced by the Mortgagee, the Mortgagee, Receiver or Attorney is entitled;
  - 3.3.11.1 to deal with the title documents and as if it was the absolute and unencumbered owner of the Collateral to which the title documents relate; and
  - 3.3.11.2 in exercising a power of sale, to deliver any title document to a purchaser of the Collateral to which the title document relates;
- 3.3.12 **Prior secured parties:** irrevocably direct any holder of any prior Security Interest over the Mortgaged Property to deliver to the Mortgagee all title documents and, if requested, all other documents relating to the ownership or use of the Mortgaged Property held by that person when that person ceases to be entitled to hold them;
- 3.3.13 **No dealing:** not deal with (whether in a single transaction or a series of related or unrelated transactions, and whether voluntarily or involuntarily) the Mortgaged Property except as permitted under clause 1.1;
- 3.3.14 **Encroachments:** use reasonable endeavours to rectify any encroachment on neighbouring land by an improvement erected principally on the Mortgaged Property by obtaining an easement to permit its continued existence and use or by acquiring the affected land;
- 3.3.15 **Value and saleability:** not do anything which may do any of the following:

- 3.3.15.1 reduce the value of the Mortgaged Property;
  - 3.3.15.2 adversely affect the saleability of the Mortgaged Property; or
  - 3.3.15.3 render the Mortgaged Property or any right in relation to the Mortgaged Property liable to forfeiture, cancellation or resumption;
- 3.3.16 **Caveats:** notify the Mortgagee promptly of becoming aware of any caveat lodged in respect of the Mortgaged Property and, if that caveat is not permitted under any Finance Document and so requested by the Mortgagee, ensure the caveat is withdrawn as soon as reasonably practicable but in any event within 7 business days after the date that it becomes aware of its existence;
- 3.3.17 **Compulsory acquisitions and claims for compensation:** notify the Mortgagee promptly upon becoming aware of the following:
- 3.3.17.1 any proposal for the resumption, appropriation or compulsory acquisition of the Mortgaged Property; or
  - 3.3.17.2 any claim for compensation arising in respect of the Mortgaged Property or any work carried out on it;
- 3.3.18 **Additional security:** promptly give the Mortgagee a mortgage with an equivalent ranking to this mortgage over the following:
- 3.3.18.1 any interest in land acquired at any time in conjunction with the Mortgaged Property or appended at any time to the Mortgaged Property; or
  - 3.3.18.2 any interest or tenure acquired at any time in or pursuant to the Mortgaged Property;
- 3.3.19 **Noxious activities:** the Mortgagor must:
- 3.3.19.1 not carry on, or permit to be carried on, on the Mortgaged Property any noxious, noisome or offensive trade, business, art or occupation;
  - 3.3.19.2 not cause or contribute to or permit any nuisance to or disturbance of the owners, occupiers or users of any neighbouring or adjoining lands; and
  - 3.3.19.3 clear from the Mortgaged Property all noxious growths which in the reasonable opinion of the Mortgagee would or might materially lessen the value or utility of the Mortgaged Property; and
- 3.3.20 **Access to Mortgaged Property:** the Mortgagor must permit the Mortgagee, any Authorised Officer of the Mortgagee or any other person authorised by the Mortgagee or any Authorised Officer of the Mortgagee, to enter upon the Mortgaged Property:
- (a) if no Event of Default is subsisting, at all reasonable times during normal business hours upon 24 hours' notice; or
  - (b) if an Event of Default is subsisting, at any time,
- to enable the Mortgagee:
- (c) to inspect the state and condition of the Mortgaged Property;
  - (d) to determine whether the Mortgagor is complying with the terms and conditions of each Finance Document; or
  - (e) to exercise or attempt to exercise any Power.

### **Term of undertakings**

- 3.4 Each undertaking in this clause continues from the date of this mortgage until the Security Interest created by this mortgage is released.

## **4. STRATA SCHEMES**

### **Application**

- 4.1 This clause 4 applies to the extent the Mortgaged Property forms part of a Strata Scheme.

### **Undertakings**

- 4.2 The Mortgagor must do the following:

- 4.2.1 **By-laws:** comply with the by-laws, rules, regulations and other requirements of the Strata Scheme, including paying all contributions and other moneys which at any time become payable in respect of the Mortgaged Property to the Strata Body;
- 4.2.2 **Strata Laws:** exercise its reasonable endeavours to ensure the Strata Scheme complies with all laws, including all Strata Laws;
- 4.2.3 **Voting:**
- 4.2.3.1 preserve its right to vote at general meetings of the Strata Scheme;
- 4.2.3.2 if the Mortgagee requires, give the Mortgagee not less than five business days' notice of proposed meetings of the Strata Scheme;
- 4.2.3.3 if requested by the Mortgagee and a Default is continuing, subject to the rights of a prior mortgagee, vote in accordance with the direction of the Mortgagee on any motion requiring a special or unanimous resolution of the Strata Scheme; and
- 4.2.3.4 if requested by the Mortgagee and a Default is continuing, appoint the Mortgagee or its nominee as the Mortgagor's proxy to vote on its behalf at any meeting of the Strata Scheme;
- 4.2.4 **Maintain rights:** maintain its rights under the Strata Scheme and ensure to the extent possible that those rights are not varied;
- 4.2.5 **Notice:** notify the Mortgagee as soon as the Mortgagor is aware that any of the following has occurred:
- 4.2.5.1 any application or proposal has been made for the variation or termination of the Strata Scheme;
- 4.2.5.2 any notice or order has been received by the Strata Scheme from any relevant Governmental Agency or any court relating to the Mortgaged Property or the common property; or
- 4.2.5.3 the Strata Scheme has not complied with its obligations under any Strata Law (including its insurance obligations); and
- 4.2.6 **Information:** give the Mortgagee any information requested by the Mortgagee in connection with the Strata Scheme, the Strata Body or the Mortgaged Property.

### **Obligations to insure**

- 4.3 The Mortgagor must do the following:

- 4.3.1 use its best endeavours to ensure the Strata Body maintains all insurances required by law; and
- 4.3.2 at the Mortgagee's request, provide the Mortgagee with particulars of all insurances held by the Strata Body.

#### **Notices**

- 4.4 The Mortgagor must immediately cause notice to be served on the Strata Body in accordance with section 118 of the *Strata Schemes Management Act 1996* (NSW) and provide evidence of registration of the Mortgagee's interest.
- 4.5 Upon demand by the Mortgagee, the Mortgagor must provide any information and confirmation required by the Mortgagee to give an effective notice pursuant to section 47 of the *Community Land Management Act 1989* (NSW).

#### **Authority to obtain information**

- 4.6 The Mortgagor irrevocably authorises the Mortgagee, any Receiver and each of their officers to apply to the Strata Body for any information in relation to the Mortgagor, the Mortgaged Property, the Strata Scheme or the Strata Body.

#### **Term of undertakings**

- 4.7 Each undertaking in this clause continues from the date of this mortgage until the Security Interest created by this mortgage is released.

### **5. ASSIGNMENT OF RENTAL INCOME**

- 5.1 The Mortgagor as beneficial owner assigns absolutely to the Mortgagee all the Mortgagor's interest in and to the Rental Income, subject to the proviso for redemption in this clause 5.
- 5.2 The assignment referred to in clause 5.1 is a continuing security for the performance by the Mortgagor of its obligations under each Finance Document and for the payment and repayment of the Secured Moneys.
- 5.3 The Mortgagor irrevocably appoints the Mortgagee as the agent of the Mortgagor to do all things which the Mortgagee considers necessary or desirable to perfect the assignment referred to in clause 5.1.
- 5.4 At any time after an Event of Default occurs, the Mortgagee may notify the Lessees to make payments under the Lease Documents to the Mortgagee.
- 5.5 Upon the occurrence of an Event of Default, unless the Mortgagee gives written notice to the Mortgagor to the contrary, the Mortgagor must procure payment of all Rental Income by the Lessees directly to the Mortgagee or to any other person nominated by the Mortgagee.
- 5.6 At the same time the Mortgagee is obliged to discharge the Mortgage in respect of all the Mortgaged Property under clause 3, the Mortgagee must, at the request and cost of the Mortgagor, reassign to the Mortgagor all rights the Mortgagee has in the Rental Income by virtue of the assignment in clause 5.1.

### **6. ASSOCIATED RIGHTS**

- 6.1 The Mortgagor assigns by way of security to the Mortgagee the benefit of each of the following:
  - 6.1.1 **General:** the Mortgagor's interest in any licence, permission, approval, trademark, business name, quota or other right attached to or used in relation to the Mortgaged Property;
  - 6.1.2 **Insurance:** any insurance held, and the proceeds of any insurance claims made, in relation to the Mortgaged Property;

- 6.1.3 **Compensation:** the Mortgagor's right to receive compensation in connection with the Mortgaged Property, including any right to receive compensation due to the resumption, appropriation or compulsory acquisition of the Mortgaged Property and the proceeds of any compensation payment made;
  - 6.1.4 **Sale proceeds:** any deposit, bond, premium or other amount payable in connection with any dealing with the Mortgaged Property or any part of it and the proceeds of payment made;
  - 6.1.5 **Warranties:** all warranties held in relation to any goods fixed to the Mortgaged Property; and
  - 6.1.6 **Plans and approvals:** all plans, specifications, consents and approvals held in relation to any works conducted in relation to the Mortgaged Property.
- 6.2 The Mortgagee may only exercise its rights as assignee of the rights in the above clause if an Event of Default has occurred and is continuing.

## 7. CO-OPERATION WITH THE MORTGAGEE

- 7.1 The Mortgagor must co-operate with the Mortgagee by doing each of the following:
- 7.1.1 everything the Mortgagee asks the Mortgagor to do to give the Mortgagee the full benefit of this mortgage; and
  - 7.1.2 everything the Mortgagor can (acting reasonably) to make sure that any person who is expressed to be a party to a Finance Document complies with its obligations to the Mortgagee under that Finance Document.

## 8. APPOINTMENT OF ATTORNEYS

- 8.1 For valuable consideration (receipt of which is acknowledged), the Mortgagor irrevocably appoints as its separate attorneys the Mortgagee, any Receiver and each of the Mortgagee's officers, managers and solicitors (each an "**Attorney**") with the power to do any one or more of the following, but only if an Event of Default has occurred and is continuing:
- 8.1.1 anything the Mortgagor is required to do under a Finance Document;
  - 8.1.2 anything the Attorney thinks necessary to protect the Mortgagee's rights under a Finance Document or to exercise any power that the Mortgagee has under a Finance Document;
  - 8.1.3 anything else the Mortgagor could do as owner of the Mortgaged Property; and
  - 8.1.4 delegate its powers to any person for any period.
- 8.2 Each Attorney appointed under this mortgage is not liable for any liability, loss, damage, cost or expense the Mortgagor incurs or suffers as a result of the Attorney's actions. The Mortgagor must indemnify each Attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and Taxes incurred or suffered while acting as the Mortgagor's Attorney.

## 9. ENFORCEMENT

### Enforcement of Security Interest

- 9.1 If an Event of Default occurs, and while it continues, the Security Interest created by this mortgage will become immediately enforceable and any Secured Money is immediately due and payable.

### Consequences

- 9.2 In addition to any other rights provided by law or any Finance Document, at any time after an Event of Default occurs and while it continues, the Mortgagee may do all or any of the following:



- 9.2.1 sue the Mortgagor for the Secured Money;
- 9.2.2 appoint one or more qualified persons as a Receiver or takes any other step to enforce its Security Interest; and
- 9.2.3 exercise any other right available to the Mortgagee under this mortgage or any other Finance Document.

**Mortgagee's enforcement powers**

- 9.3 If this mortgage has become enforceable, the Mortgagee is entitled to do any one or more of the following, as if it were the Mortgagor:
  - 9.3.1 **Deal with Mortgaged Property:** deal with the Mortgaged Property in any way the Mortgagor could;
  - 9.3.2 **Take possession:** take possession of the Mortgaged Property and, if it does so, give up possession of the Mortgaged Property at any time;
  - 9.3.3 **Sell Mortgaged Property:** sell the Mortgaged Property (whether or not it has taken possession). Any sale may be by auction, private treaty, tender or otherwise and may be on terms and conditions that the Mortgagee thinks fit. The Mortgaged Property can be sold together with any other property;
  - 9.3.4 **Acquire property:** acquire any interest in any property, in the name or on behalf of the Mortgagor, which on acquisition forms part of the Collateral;
  - 9.3.5 **Borrow money:** borrow money for the purpose of exercising the Mortgagee's powers, and to give a Security Interest over any of the Mortgaged Property as security for the loan;
  - 9.3.6 **Employ:** employ or discharge people to help it or advise it how to deal with the Mortgaged Property;
  - 9.3.7 **Give receipts:** give receipts and sign any documents needed to deal with any of the Mortgaged Property;
  - 9.3.8 **Exercise powers:** exercise the Mortgagor's powers in respect of the Mortgaged Property;
  - 9.3.9 **Sign documents:** sign documents and enter into contracts relating to the Mortgaged Property on the Mortgagor's behalf;
  - 9.3.10 **Legal proceedings:** bring or defend legal proceedings relating to the Mortgaged Property in the Mortgagor's name;
  - 9.3.11 **Insolvency proceedings:** make any debtor bankrupt, wind up any company, corporation or other entity and do all things in relation to any bankruptcy or winding up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
  - 9.3.12 **Appoint receiver:** appoint one or more qualified persons as receiver or receiver and manager of any Mortgaged Property;
  - 9.3.13 **Remove goods:** remove and place in storage any personal property of the Mortgagor left on the Mortgaged Property;
  - 9.3.14 **Remove fixtures:** sever any fixture to the Mortgaged Property and dispose of it on any terms and in any manner;
  - 9.3.15 **Delegate powers:** delegate any of its powers (including this power) to any other person;
  - 9.3.16 **All other acts:** do anything else that the Mortgagor could do in respect of the Mortgaged Property; or

9.3.17 **Any other power:** exercise any other power it has as a matter of law.

#### **Marshalling**

9.4 The Mortgagee is not under any obligation to marshal this mortgage in favour of the Mortgagor or any other creditor of the Mortgagor.

#### **Mortgagor must help Mortgagee**

9.5 The Mortgagor must do everything the Mortgagee asks it to do to help the Mortgagee, any Receiver and any Attorney exercise their powers under this mortgage.

### **10. RECEIVERS**

#### **Appointing and removing Receivers**

10.1 An appointment by the Mortgagee of a Receiver must be in writing and be signed by or on behalf of the Mortgagee. The Mortgagee will determine the terms of the Receiver's appointment and the amount and basis of the Receiver's remuneration.

10.2 The Mortgagee may remove any Receiver it appoints and, if it wants to, reappoint that person or appoint another person as a replacement.

#### **Agent of Mortgagor**

10.3 Subject to clause 10.4, a Receiver will be the agent of the Mortgagor, not the Mortgagee. The Mortgagor, and not the Mortgagee, will be responsible for anything a Receiver does or fails to do in its capacity as Receiver.

#### **Appointing Receiver after winding up**

10.4 The Mortgagee may appoint a Receiver even if an order is made, or a resolution passed, to wind-up the Mortgagor. If for any reason, including operation of law, a Receiver appointed in the circumstances described in this clause or appointed at any other time, ceases to be the agent of the Mortgagor as a result of an order being made or a resolution being passed for the winding up of the Mortgagor, then the Receiver immediately becomes the agent of the Mortgagee.

#### **Receiver's powers**

10.5 Unless the Mortgagee expressly restricts a Receiver's powers on appointment, the Receiver will have the following powers in addition to the powers the Receiver has as a matter of law:

10.5.1 to do everything the Mortgagee may do under clause 9.3 (except appoint a receiver or receiver and manager); and

10.5.2 to delegate any of the Receiver's powers (including this power) to any other person.

#### **Indemnity by Mortgagor**

10.6 The Mortgagor must indemnify a Receiver and each of the Receiver's agents and employees against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including legal costs on a full indemnity basis) and Taxes they incur or suffer in their capacity as Receiver, other than any liability, loss, damage, expense or Taxes arising as a result of the fraud, gross negligence or wilful default of the Receiver or its agent or employee.

#### **Mortgagor must help Receiver**

10.7 The Mortgagor must do everything a Receiver asks it to do to help the Receiver exercise its powers under this mortgage.

### **Acting severally**

- 10.8 If the Mortgagee appoints more than one person to act as a Receiver, those persons may act severally unless specified otherwise in the instrument of appointment.

## **11. STATUTORY POWERS**

### **Statutory powers**

- 11.1 The powers conferred on a mortgagee by law:

- 11.1.1 are in addition to the powers conferred by this mortgage, any Additional Security or any other Finance Document;
- 11.1.2 to the extent permitted by law, may be exercised by the Mortgagee immediately if an Event of Default occurs and at any time while it continues; and
- 11.1.3 are excluded or varied only so far as they are inconsistent with the express terms of this mortgage, any Additional Security or any other Finance Document.

### **Exclusion of Legislation**

- 11.2 All legislation which at any time directly or indirectly does the following is, to the full extent permitted by law, excluded from this mortgage and any Additional Security:

- 11.2.1 lessens, varies or affects in favour of the Mortgagor any obligation under this mortgage or any Additional Security; or
- 11.2.2 delays, prevents or prejudicially affects the exercise of any power by the Mortgagee, any Receiver or attorney.

### **Notice not required**

- 11.3 To the extent permitted by law (but without prejudice to any express requirement in a Finance Document) the Mortgagee may enforce this mortgage or any Additional Security at any time while an Event of Default is continuing, or exercise any rights under this mortgage or conferred by law at any time while an Event of Default is continuing, without giving any notice or allowing any time to lapse.
- 11.4 Any law requiring the giving of notice, or the compliance with a procedure, or the lapse of time before enforcement or exercise, is, to the extent permitted by law, excluded.
- 11.5 Where a law which cannot be excluded requires that a period of notice must be given, or a lapse of time must occur, but allows the period to be specified or changed, that period will be one day or the minimum period the law allows to be agreed (whichever is the longer).

## **12. PROCEEDS OF ENFORCEMENT**

### **Applying the proceeds**

- 12.1 At any time after this mortgage is enforceable, all money received by the Mortgagee, any Receiver, any Attorney or any other person acting on their behalf under this mortgage or any Additional Security may be appropriated and applied, subject to clause 12.2, in any order that the Mortgagee, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by law.
- 12.2 Failing a determination under clause 12.1, the money must be applied in the following manner and order:
- 12.2.1 first in payment of all costs, charges and expenses of the Mortgagee, any Receiver and any Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any power or otherwise in relation to this mortgage, any Additional Security or any Finance Document;

- 12.2.2 secondly in payment of such other outgoings incurred in or incidental to the exercise or performance or attempted exercise or performance of any power or otherwise in relation to this mortgage, any Additional Security or any Finance Document as the Mortgagee may think fit to pay;
- 12.2.3 thirdly in payment to the Receiver of any remuneration whether by way of commission or otherwise;
- 12.2.4 fourthly in payment to the Mortgagee of all amounts necessary to give effect to any indemnity contained in this mortgage; and
- 12.2.5 fifthly in payment to the Mortgagee of the Secured Money.

#### **Surplus proceeds**

- 12.3 After payment in accordance with the previous clause:
  - 12.3.1 any remaining surplus will belong to the Mortgagor or other persons entitled to it;
  - 12.3.2 the surplus will not carry interest; and
  - 12.3.3 the Mortgagee may pay the surplus to the credit of a bank account in the name of the Mortgagor or other persons entitled to it and will then be under no further liability in respect of it.

#### **Payments actually received**

- 12.4 When applying money towards the repayment of the Secured Money, the Mortgagee will credit the Mortgagor only for money actually received by the Mortgagee in immediately available funds.

#### **Contingent amounts**

- 12.5 If, at the time the Mortgagee receives any money under this mortgage, any part of the Secured Money is contingently owing, the Mortgagee may retain an amount equal to that part or any part of it and:
  - 12.5.1 the Mortgagee must pay the amount retained into a short term interest bearing account;
  - 12.5.2 when the relevant Secured Money becomes due or is no longer contingently owing, the Mortgagee must pay to itself the due amount; and
  - 12.5.3 the balance of the retained amount, together with interest earned, must be applied in accordance with clause 12.1 and, after payment in accordance with clause 12.1, in accordance with clause 12.3.

### **13. ADDITIONAL SECURITIES**

- 13.1 If the Mortgagee has or obtains any Additional Security, the Mortgagor's obligations under this mortgage are not affected in any way. The Mortgagee can choose to exercise its rights under this mortgage or under an Additional Security at the same time or at different times.
- 13.2 This mortgage is collateral to and secures the same moneys as are secured by any Additional Security.

### **14. CONTINUING SECURITY**

#### **Continuing security**

- 14.1 The Security Interest created by this mortgage is a continuing security. It is not released even if the Mortgagor has paid any intermediate payment in respect of the Secured Money or performed some of the Secured Obligations.
- 14.2 The Security Interest created by this mortgage will only be released if the Mortgagee gives the Mortgagor a formal written discharge or formal notice of release of all or part of the Mortgaged Property.

### **Requirements for release**

- 14.3 The Mortgagee has no obligation to give a discharge or notice releasing the Security Interest created by this mortgage until the Mortgagee is satisfied on each of the following points:
- 14.3.1 the Mortgagee has received payment of all the Secured Money;
  - 14.3.2 no further Secured Money will or is likely to become owing to the Mortgagee in the future; and
  - 14.3.3 no payment made by the Mortgagor will or is likely to be avoided or required to be repaid by the Mortgagee under any law relating to insolvency or the protection of creditors.

### **Reinstatement**

- 14.4 If, after the Mortgagee applies any amount against any of the Secured Money, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to insolvency or the protection of creditors:
- 14.4.1 the Mortgagee's rights are to be reinstated and will be the same in respect of that amount or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
  - 14.4.2 the Mortgagor must immediately do anything (including the signing of documents) required by the Mortgagee to restore to the Mortgagee any Guarantee or Security Interest to which it was entitled immediately before application or the payment or transaction giving rise to it.

## **15. PROTECTION OF THIRD PARTIES**

### **No duty to check**

- 15.1 No person who deals with the Mortgagee, any Receiver or any Attorney needs to check any of the following:
- 15.1.1 whether the Security Interest created by this mortgage has become enforceable;
  - 15.1.2 whether any power the Mortgagee, any Receiver or any Attorney exercises has become exercisable;
  - 15.1.3 whether a Receiver or Attorney has been properly appointed;
  - 15.1.4 whether the Mortgagee, any Receiver or any Attorney has a power that it claims to have;
  - 15.1.5 whether any Secured Money is owed to the Mortgagee; or
  - 15.1.6 how any money paid to the Mortgagee, any Receiver or any Attorney is used.

### **Protection of purchasers**

- 15.2 The title of any property acquired by a third party from the Mortgagee, any Receiver or any Attorney will not be adversely affected by any irregularity or impropriety in the exercise of the powers under this mortgage.

### **Receipt**

- 15.3 Once the Mortgagee or any of its Authorised Officers receives any money or assets payable to or receivable by the Mortgagee, the person who paid that money or handed over that asset cannot be liable for their subsequent loss or misapplication.

## 16. LIMITED LIABILITY

### Accounting for money received

- 16.1 The Mortgagee, each Receiver and each Attorney only has to account to the Mortgagor for the amount actually received by it for the purpose of repaying the Secured Money or from any dealing with the Mortgaged Property. The Mortgagee, each Receiver and each Attorney is not liable to account to the Mortgagor as a mortgagee in possession or for anything that a mortgagee in possession could be liable for. If it does anything it should not do in relation to the Mortgaged Property, the Mortgagor's only remedy is damages.
- 16.2 The Mortgagor will continue to owe the Mortgagee the difference between the amount of the Secured Money and the amount the Mortgagee actually receives for the purpose of repaying the Secured Money or from any dealing with the Mortgaged Property.
- 16.3 The Mortgagee, its Authorised Officers, any Receiver and any Attorney are not liable for any loss caused by the exercise or attempted exercise, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by their negligence. This clause does not apply to any loss which arises from fraud, gross negligence or wilful default of the relevant person.

## 17. NOTICES

### Giving notices

- 17.1 Any notice or communication given to a party under this mortgage is only given if it is in writing and given in accordance with clause 25 of the Facility Agreement.

## 18. MISCELLANEOUS

### Conflict

- 18.1 Where any right, power, authority, discretion or remedy conferred on the Mortgagee, Receiver or Attorney by this mortgage or any Finance Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

### Consent of Mortgagee

- 18.2 Whenever the doing of any thing by the Mortgagor is dependent on the consent of the Mortgagee, the Mortgagee may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Finance Document.
- 18.3 Any conditions imposed on the Mortgagor under clause 18.2 must be complied with by the Mortgagor.

### Principal obligations

- 18.4 The Security Interest created by this deed and each Collateral Security is:
- 18.4.1 a principal obligation and is not ancillary or collateral to any other Security Interest (other than another Collateral Security) or other obligation; and
- 18.4.2 independent of, and unaffected by, any other Security Interest or other obligation which the Mortgagee may hold at any time in respect of the Secured Moneys.

### No obligation to marshal

- 18.5 The Mortgagee is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:
- 18.5.1 any Security Interest or Collateral Security held, at any time, by the Mortgagee; or

18.5.2 any moneys or assets which the Mortgagee, at any time, holds or is entitled to receive.

**Non avoidance**

18.6 If any payment by the Mortgagor to the Mortgagee is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting the Mortgagor or any other thing, and whether or not:

18.6.1 any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or

18.6.2 any thing was or ought to have been within the knowledge of the Mortgagee,  
the Mortgagor:

18.6.3 as an additional, separate and independent obligation, indemnifies the Mortgagee against that avoided payment; and

18.6.4 acknowledges that any liability of the Mortgagor under the Finance Documents and any power is the same as if that payment had not been made.

**Increase in financial accommodation**

18.7 The Mortgagee may at any time increase the financial accommodation provided under any Finance Document or otherwise provide further financial accommodation.

**Performance by Mortgagee of the Mortgagor's obligations**

18.8 If the Mortgagor defaults in fully and punctually performing any obligation contained or implied in any Finance Document, the Mortgagee may, without prejudice to any power, do all things necessary or desirable, in the opinion of the Mortgagee, to make good or attempt to make good that default to the satisfaction of the Mortgagee.

**Allowing conduct of others**

18.9 If the Mortgagor is not permitted to do something by this mortgage, it must not allow or assist anyone else to do that thing.

**Assignment**

18.10 The Mortgagee can assign or transfer any of its rights and obligations under this mortgage to the extent permitted to do so under and in accordance with the Facility Agreement.

18.11 The Mortgagor can only assign or deal with any of its rights and obligations under this mortgage with the Mortgagee's consent.

**Attorneys**

18.12 Each attorney who executes this mortgage on behalf of a party declares that the attorney has no notice of any revocation, suspension or variation of the power of attorney under the authority of which the attorney executes this mortgage.

**Completion and registration of mortgage**

18.13 The Mortgagor irrevocably authorises the Mortgagee and its solicitors to do the following:

18.13.1 register this mortgage (electronically or otherwise) with Land and Property Information, a division of the NSW Office of Finance and Services; and

- 18.13.2 register and record this mortgage (electronically or otherwise) in such other places as the Mortgagee or its solicitors may at any time consider necessary or desirable to perfect this mortgage or to protect the rights of the Mortgagee under this mortgage.

**Conflict of interest**

- 18.14 The Mortgagee, each of its Authorised Officers or other person appointed by the Mortgagee under this mortgage, each administrator of the Mortgagor appointed by the Mortgagee, each attorney and each Receiver may exercise the powers conferred by this mortgage or by law even though that person may have a conflict of interest in exercising those powers or a direct or personal interest in the means or result of that exercise of those powers.

**Entire agreement**

- 18.15 This mortgage contains everything the Mortgagee has agreed in relation to the matters it deals with. The Mortgagor cannot rely on an earlier document, or anything said or done by the Mortgagee, or by an Authorised Officer, agent or employee of the Mortgagee, before this mortgage was executed.

**Evidence**

- 18.16 A certificate signed by the Mortgagee of the amount of the Secured Money or the amount of the Secured Obligations comprising monetary liabilities is conclusive evidence of what it states, except in the case of obvious error. The Mortgagor cannot object to the admission of a certificate of that type in any proceedings.

**Exercise of rights**

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

**Finance Document**

- 18.19 This mortgage is a "Finance Document" as that term applies in the Facility Agreement.

**Governing law and jurisdiction**

- 18.20 This mortgage is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

**Indemnities**

- 18.21 Each indemnity in this mortgage is a continuing obligation, separate from the other obligations of the parties, and continues after this mortgage ends.
- 18.22 A party may enforce a right of indemnity at any time (including before it has incurred loss).

**Joint and several liability**

- 18.23 If there is more than one Mortgagor under this mortgage, each reference to "the Mortgagor" is to be treated as a reference to each of the Mortgagors individually, and to each of the Mortgagors jointly with any one or more of the others. This means the Mortgagee can take action against any number of the persons who are a Mortgagor together or against one Mortgagor alone.



### **Other rights unaffected**

- 18.24 The Mortgagee's rights under this mortgage are in addition to any rights that the Mortgagee may have apart from it.

### **Severability**

- 18.25 Each provision of this mortgage is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this mortgage in the relevant jurisdiction, but the rest of this mortgage will not be affected by the severing of the provision. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **Variation**

- 18.26 No variation of this mortgage will be of any force or effect unless it is in writing and signed by the Mortgagee.

### **Waiver and consents**

- 18.27 A waiver or consent provided by the Mortgagee under this mortgage:
- 18.27.1 must be in writing and signed by the Mortgagee;
  - 18.27.2 will be provided at the Mortgagee's discretion;
  - 18.27.3 will only affect the particular provision, obligation or breach for which it is given;
  - 18.27.4 will not imply that a waiver or consent is provided in respect of any other provision, obligation or breach or provided on any other occasion; and
  - 18.27.5 may be provided conditionally in which case the Mortgagor agrees to comply with the conditions of the consent or waiver given by the Mortgagee.
- 18.28 The fact that the Mortgagee fails to do, or delays in doing, something the Mortgagee is entitled to do under this mortgage does not amount to a waiver or consent.

## **19. DEFINITIONS AND INTERPRETATION**

### **Incorporated terms**

- 19.1 Terms defined in the Facility Agreement have the same meaning in this mortgage, unless the context requires otherwise or the term is otherwise defined in this mortgage.

### **Definitions**

- 19.2 In this mortgage the following definitions apply:

**"Additional Security"** means any present or future Security Interest securing, or any Guarantee in respect of, any Secured Money or Secured Obligation;

**"Attorney"** means an attorney appointed under this mortgage;

**"Facility Agreement"** means the Facility Agreement dated on or around the date of this mortgage between the Mortgagee and the Mortgagor;

**"Improvements"** means all improvements, buildings, fences, structures, fixtures and fittings which are now, or in the future, on the Mortgaged Property;

**"Land"** means the land described in Annexure B of this mortgage (being the mortgage form executed by the Mortgagor and which refers to and incorporates this Annexure C);

**"Lessee"** means the lessee, licensee or equivalent party under any Lease Document;

**"Mortgaged Property"** means all the Mortgagor's rights, assets and undertaking under or in connection with any of the following:

- (a) the Land;
- (b) where the context permits, any interest in any land acquired by the Mortgagor which is to be used or held in conjunction with the Mortgaged Property;
- (c) the Improvements;
- (d) any fixtures, fittings, improvements, buildings, fences and structures now or in the future on the Land, including plant, machinery and apparatus fixed to the Land;
- (e) all easements, paths, ways, waters, watercourses, mines, minerals, quarries, trees and timber and other benefits on or used or enjoyed in conjunction with the Mortgaged Property; and
- (f) any Lease Document granted over or in respect of the above;

**"Receiver"** means any person the Mortgagee appoints under this mortgage as a receiver or receiver and manager of the Mortgaged Property;

**"Strata Body"** means, in respect of a Strata Scheme, the body corporate, strata company, community association, committee or other body or committee which administers the Strata Scheme;

**"Strata Law"** means any law applicable to, or governing the operation of, any Strata Scheme, including:

- (a) the *Strata Scheme (Freehold Development) Act 1973* (NSW); and
- (b) the *Community Land Development Act 1989* (NSW); and

**"Strata Scheme"** means any scheme or arrangement pursuant to which real property is divided into strata lots, units, flats or apartments, including:

- (a) any scheme or arrangement arising pursuant to any Strata Law; and
- (b) any community development lot or Mortgaged Property that is subject to the *Community Land Development Act 1989* (NSW) or the *Community Land Management Act 1989* (NSW).

### **Interpretation**

- 19.3 Clause 1.2 of the Facility Agreement applies to this mortgage as if set out in full (with reference to "this agreement" being read as "this mortgage").
-



Mr Trevor Wetmore
Acting Chief Executive Officer
St George Community Housing Limited
PO Box 348
HURSTVILLE BC NSW 1481

Ref HOG15/98305

Dear Mr Wetmore,

Noting of dealing in vested property – Mortgage of 87 properties

I advise that the Government consents to the request to mortgage properties vested to St George Community Housing Limited and transferred to SGCH Sustainability Limited as per the attached listing.

It is noted that the land as per the attached list should continue to be affected by the notification made pursuant to Section 67L of the Housing Act 2001, subsequent to the transfer from St George Community Housing Limited to SGCH Sustainability Limited. The legislation applicable to community housing providers changed in January 2012, under the Community Housing Providers (Adoption of National Law) Act 2012 the notification of Government's interest on the Certificate of Title should state "The land is held subject to the provisions of Section 18(3) Community Housing Providers (Adoption of National Law) Act 2012. Consent of the Government is required for plans and dealings inconsistent with the interests of the Government".

Should you require any further information, please contact Roopa Raha, A/Manager, Contracting and Payment System on 02 8753 8741 or roopa.raha@facs.nsw.gov.au.

Yours sincerely

[Handwritten signature]

Eleri Morgan-Thomas
Executive Director
Service System Commissioning
11 JAN 2016

I certify this to be a true and accurate copy of the document reported to me to be the original document

Date: 15/1/16

Signed: [Signature]

Lisa Sloan JP (NSW) Reg # 171200

Property details:

**Schedule of Land to be transferred to SGCH Sustainability Ltd**

**Vested Properties**

Properties had been transferred to SGCH Ltd allocated under the Community Housing Asset Ownership Tender\*

| No. | Street Address | Suburb | Title Particulars |
|-----|----------------|--------|-------------------|
| 1   |                |        |                   |
| 2   |                |        |                   |
| 3   |                |        |                   |
| 4   |                |        |                   |
| 5   |                |        |                   |
| 6   |                |        |                   |
| 7   |                |        |                   |
| 8   |                |        |                   |
| 9   |                |        |                   |
| 10  |                |        |                   |
| 11  |                |        |                   |
| 12  |                |        |                   |
| 13  |                |        |                   |
| 14  |                |        |                   |
| 15  |                |        |                   |
| 16  |                |        |                   |
| 17  |                |        |                   |
| 18  |                |        |                   |
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| No. | Street Address | Suburb | Title Particulars |
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| No. | Street Address | Suburb | Title Particulars |
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I certify that this is a true, complete and up to date copy of the original document sighted by me at 4:20pm this 14th day of February 2017.

Form: 05M  
Licence: 03--099  
Licensee: MinterEllison

# MORTGAGE

New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

[Redacted]

(B) LODGED BY

|                             |  |                  |
|-----------------------------|--|------------------|
| Delivery Box<br><b>599D</b> | Name, Address or DX and Telephone<br><b>Minter Ellison</b><br>1 Farrer Place, Sydney<br>Telephone (02) 9921 8888<br><br>Customer Account Number: 123438 S<br>REFERENCE (optional): SLW 1139538 | Code<br><b>M</b> |
|-----------------------------|--|------------------|

(C) MORTGAGOR

SGCH SUSTAINABILITY LIMITED (ABN 21 606 965 799)

(D) mortgages to the mortgagee all the mortgagor's estate and interest in the abovementioned land and covenants with the mortgagee that the provisions set out in Annexure B are incorporated in this mortgage.

(E) Encumbrances (if applicable) 1. 2. 3.

(F) MORTGAGEE

[Redacted]

(G)

DATE

14 / 2 / 2017

(H) I certify that I am an eligible witness and that the mortgagor signed this dealing in my presence. [See note\* below].

Certified correct for the purposes of the Real Property Act 1900 by the mortgagor.

Signature of witness:

Signature of mortgagor: \_\_\_\_\_

Name of witness:

FOR CERTIFICATION, DATE AND EXECUTION SEE ANNEXURE A

Address of witness:

I certify that I am an eligible witness and that the mortgagee signed this dealing in my presence. [See note\* below].

Certified correct for the purposes of the Real Property Act 1900 by the mortgagee.

Signature of witness:

Signature of mortgagee: \_\_\_\_\_

Name of witness:

FOR CERTIFICATION, DATE AND EXECUTION SEE ANNEXURE A

Address of witness:

\*s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation

THIS IS ANNEXURE A REFERRED TO IN A MORTGAGE

BETWEEN: SGCH SUSTAINABILITY LIMITED (ABN 21 606 965 799) AS MORTGAGOR

AND:



OF THE LAND IN THE CERTIFICATES OF TITLE SET OUT IN THE MORTGAGE

DATED:

Signed by Mortgagor

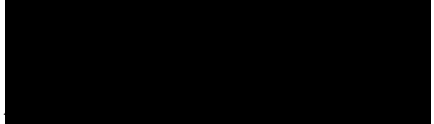
(H) I certify that I am an eligible witness and that the Mortgagor's attorney signed this dealing in my presence. [See note\*below].

Certified correct for the purposes of the Real Property Act 1900 by the Mortgagor's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of witness:



Signature of attorney:



Name of witness:

Attorney's name:

Rebecca Kate Pierro  
SGCH Sustainability

Address of witness:

Signing on behalf of:

Limited

Power of attorney -Book: 4718

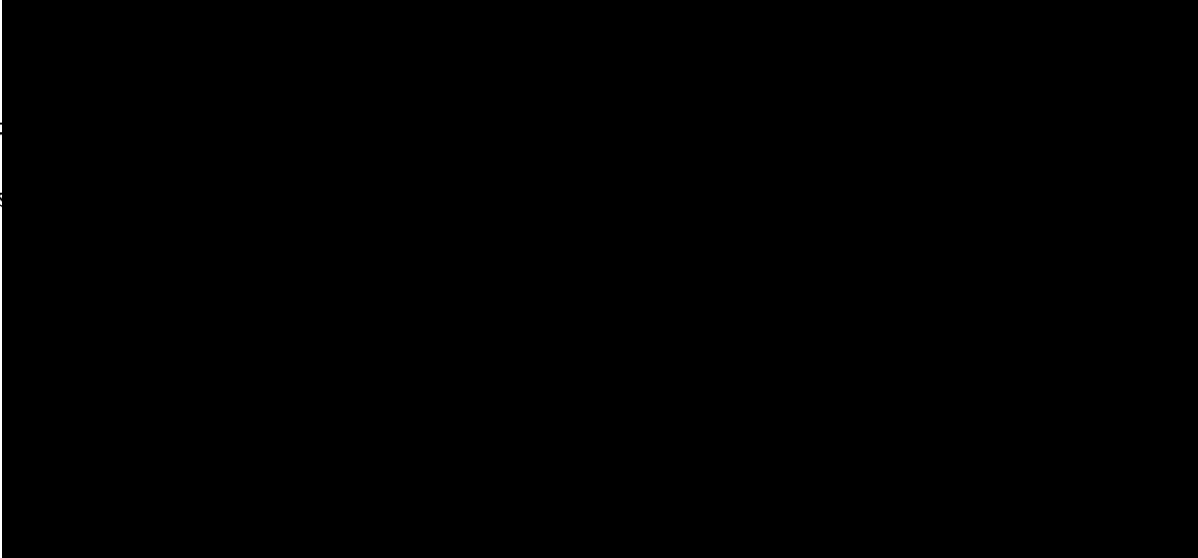
-No.: 698

Signed by Mortgagee

(H) I certify that I am an eligible witness and that the Mortgagee's attorney signed this dealing in my presence. [See note\*below].

Certified correct for the purposes of the Real Property Act 1900 by the Mortgagees' attorneys who signed this dealing pursuant to the power of attorney specified.

Signature witness:



Name of witness:

Address of witness:

\*s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation



THIS IS ANNEXURE B REFERRED TO IN A MORTGAGE

BETWEEN: SGCH SUSTAINABILITY LIMITED ABN 21 606 965 799 AS MORTGAGOR

AND [REDACTED] AS MORTGAGEE

OF THE LAND IN THE CERTIFICATES OF TITLE SET OUT IN THE MORTGAGE

DATED:

The parties acknowledge that the provisions set out in this Annexure C form part of the Mortgage referred to above.

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*Handwritten signatures and initials: "dw 57.", "H.Y.", and other illegible marks.*

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## MORTGAGE PROVISIONS:

### 1. DEALING WITH MORTGAGED PROPERTY

- 1.1 Except with the prior written consent of the Mortgagee, or as expressly permitted in any Finance Document (including any Permitted Security Interest or any Permitted Disposal), the Mortgagor must not do any of the following:
  - 1.1.1 create or allow to exist any Security Interest over the Mortgaged Property;
  - 1.1.2 create or allow any interest in, or dispose of or part with possession of, the Mortgaged Property; and
  - 1.1.3 otherwise deal with the Mortgaged Property.
- 1.2 Where by law a mortgagee may not restrict the creation of any Security Interest over an asset ranking after this mortgage, the above clause will not restrict that creation. However, the Mortgagor must ensure that before that Security Interest is created the holder of that Security Interest enters into a deed of priority in form and substance reasonably acceptable to the Mortgagee.
- 1.3 The Security Interest created by this mortgage is intended to rank in priority to any other Security Interest granted over the Mortgage Property, except those Permitted Security Interests which the Mortgagee agrees are to rank in priority.

### 2. REPRESENTATIONS

#### Representations relating to the Mortgaged Property

- 2.1 The Mortgagor represents and warrants to the Mortgagee that, except as previously disclosed to and accepted by the Mortgagee in writing, each of the following is true:
  - 2.1.1 **Representations true:** each of its representations and warranties contained in the Finance Documents is correct and not misleading when made or repeated;
  - 2.1.2 **Title:** the Mortgagor is, or will become, the only owner of the Mortgaged Property and has, or will have, good right and title to, and full power to mortgage, the Mortgaged Property;
  - 2.1.3 **Security Interests:** no Security Interest exists in respect of any Mortgaged Property, other than a Permitted Security Interest;
  - 2.1.4 **Encroachments:** no part of any improvement erected principally on the Mortgaged Property encroaches on neighbouring land and no part of any improvement erected principally on neighbouring land encroaches on the Mortgaged Property, except in each case as permitted by an easement registered on title;
  - 2.1.5 **No compulsory acquisition:** to the best of the Mortgagor's knowledge, having made all reasonable enquiries, no Governmental Agency has any proposal to compulsorily acquire or purchase, or to change the permitted use of, the Mortgaged Property or to do any other thing which may have a Material Adverse Effect; and
  - 2.1.6 **No assignment of Rental Income:** Subject to this mortgage, no Rental Income payable now or in the future in respect of the Mortgaged Property has been assigned or encumbered to any person other than under a Permitted Security Interest.

#### Survival

- 2.2 The representations and warranties given under this mortgage survive the execution of this mortgage.

### **Repetition**

- 2.3 The Mortgagor will be taken to have repeated the representations and warranties in this mortgage on each day the representations and warranties are taken to have been repeated pursuant to the Facility Agreement.

### **Reliance**

- 2.4 The Mortgagor acknowledges that the Mortgagee has entered into the Finance Documents in reliance on the representations and warranties in this mortgage.

## **3. UNDERTAKINGS**

### **Pay and performance undertakings**

- 3.1 The Mortgagor must do each of the following:
- 3.1.1 **Payment:** Duly and punctually pay the Secured Money in accordance with the Finance Documents.
  - 3.1.2 **Performance:** Ensure that no Event of Default occurs. The Mortgagor must duly and punctually comply with its obligations under the Finance Documents.

### **Registration**

- 3.2 The Mortgagor must immediately do the following at its own cost and expense:
- 3.2.1 register this mortgage with Land and Property Information, a division of the NSW Office of Finance and Services; and
  - 3.2.2 register or record this mortgage in such other places as the Mortgagee may at any time consider necessary or desirable to perfect this mortgage or to protect the rights of the Mortgagee under this mortgage.

### **Undertakings relating to the Mortgaged Property**

- 3.3 The Mortgagor must do each of the following:
- 3.3.1 **Prior Security Interest:** perform its obligations under any security agreement in respect of a prior Security Interest over the Mortgaged Property;
  - 3.3.2 **Use of Mortgaged Property:** not use the Mortgaged Property in an unlawful manner, for any unlawful purpose;
  - 3.3.3 **Manufacturer's specifications:** comply with the manufacturer's specifications for the installation of any plant or equipment forming part of the Mortgaged Property and use reasonable endeavours to ensure the manufacturer's specifications are complied with for the use of any plant or equipment forming part of the Mortgaged Property;
  - 3.3.4 **Not prejudice insurance:** not do or permit anything that would cause any insurance held in respect of the Mortgaged Property to be void or inapplicable;
  - 3.3.5 **Comply with authorisations:** maintain and comply with the terms of all licences, consents and authorisations applying to the Mortgaged Property or necessary for the Mortgagor to conduct and maintain any business carried on by it on the Mortgaged Property;
  - 3.3.6 **Maintenance:** maintain the Mortgaged Property in good condition having regard to the age of the Mortgaged Property and fair wear and tear excepted;
  - 3.3.7 **No modification:** not, without the Mortgagee's consent, do any of the following:

- 3.3.7.1 demolish, remove or alter any Improvements or structures on the Mortgaged Property, other than in connection with any Project;
- 3.3.7.2 change the use of the Mortgaged Property, other than in connection with any Project;
- 3.3.7.3 change the nature of the Mortgaged Property, other than in connection with any Project, or the Mortgagor's title to the Mortgaged Property or
- 3.3.7.4 change the Mortgagor's interest in or rights of occupation of the Mortgaged Property, other than upon entry into of any Lease Document;
- 3.3.8 **No modification of identifying features:** not remove or modify any name, identification number or trademark on any plant, machinery or apparatus fixed to the Land, without the Mortgagee's consent;
- 3.3.9 **Inspections and access:** subject to the requirements of any relevant Lease Document, allow the Mortgagee or a person appointed by the Mortgagee to inspect the Mortgaged Property at any reasonable time and upon reasonable notice (provided the Mortgagee or the person appointed by it complies with the occupational health and safety requirements of the Mortgagor), including by ensuring that:
  - 3.3.9.1 the Mortgagee or a person appointed by the Mortgagee has access to the Land; and
  - 3.3.9.2 the Mortgagee or a person appointed by the Mortgagee is provided entry to any building or premises forming part of the Mortgaged Property;
- 3.3.10 **Payments and outgoings:** pay all charges, fees, taxes, duties and such other outgoings of any nature that apply to the Mortgaged Property and which are not payable by tenants under any Lease Document when they are due (unless, in good faith, it disputes its obligation to pay them), and if the Mortgagee asks, give the Mortgagee evidence that it has done so;
- 3.3.11 **Documents:** deliver to the Mortgagee and allow the Mortgagee to retain all title documents relating to the ownership of the Mortgaged Property and, if requested, all other documents relating to the ownership or use of the Mortgaged Property, unless those documents are held by the holder of a prior Security Interest over the Mortgaged Property. The Mortgagee may retain the title documents deposited with it until the Security Interest in respect of all the Collateral is discharged in accordance with the terms of this mortgage. If the Security is enforced by the Mortgagee, the Mortgagee, Receiver or Attorney is entitled;
  - 3.3.11.1 to deal with the title documents and as if it was the absolute and unencumbered owner of the Collateral to which the title documents relate; and
  - 3.3.11.2 in exercising a power of sale, to deliver any title document to a purchaser of the Collateral to which the title document relates;
- 3.3.12 **Prior secured parties:** irrevocably direct any holder of any prior Security Interest over the Mortgaged Property to deliver to the Mortgagee all title documents and, if requested, all other documents relating to the ownership or use of the Mortgaged Property held by that person when that person ceases to be entitled to hold them;
- 3.3.13 **No dealing:** not deal with (whether in a single transaction or a series of related or unrelated transactions, and whether voluntarily or involuntarily) the Mortgaged Property except as permitted under clause 1.1;
- 3.3.14 **Encroachments:** use reasonable endeavours to rectify any encroachment on neighbouring land by an improvement erected principally on the Mortgaged Property by obtaining an easement to permit its continued existence and use or by acquiring the affected land;
- 3.3.15 **Value and saleability:** not do anything which may do any of the following:
  - 3.3.15.1 reduce the value of the Mortgaged Property;

- 3.3.15.2 adversely affect the saleability of the Mortgaged Property; or
- 3.3.15.3 render the Mortgaged Property or any right in relation to the Mortgaged Property liable to forfeiture, cancellation or resumption;
- 3.3.16 **Caveats:** notify the Mortgagee promptly of becoming aware of any caveat lodged in respect of the Mortgaged Property and, if that caveat is not permitted under any Finance Document and so requested by the Mortgagee, ensure the caveat is withdrawn as soon as reasonably practicable but in any event within 7 business days after the date that it becomes aware of its existence;
- 3.3.17 **Compulsory acquisitions and claims for compensation:** notify the Mortgagee promptly upon becoming aware of the following:
  - 3.3.17.1 any proposal for the resumption, appropriation or compulsory acquisition of the Mortgaged Property; or
  - 3.3.17.2 any claim for compensation arising in respect of the Mortgaged Property or any work carried out on it;
- 3.3.18 **Additional security:** promptly give the Mortgagee a mortgage with an equivalent ranking to this mortgage over the following:
  - 3.3.18.1 any interest in land acquired at any time in conjunction with the Mortgaged Property or appended at any time to the Mortgaged Property; or
  - 3.3.18.2 any interest or tenure acquired at any time in or pursuant to the Mortgaged Property;
- 3.3.19 **Noxious activities:** the Mortgagor must:
  - 3.3.19.1 not carry on, or permit to be carried on, on the Mortgaged Property any noxious, noisome or offensive trade, business, art or occupation;
  - 3.3.19.2 not cause or contribute to or permit any nuisance to or disturbance of the owners, occupiers or users of any neighbouring or adjoining lands; and
  - 3.3.19.3 clear from the Mortgaged Property all noxious growths which in the reasonable opinion of the Mortgagee would or might materially lessen the value or utility of the Mortgaged Property; and
- 3.3.20 **Access to Mortgaged Property:** the Mortgagor must permit the Mortgagee, any Authorised Officer of the Mortgagee or any other person authorised by the Mortgagee or any Authorised Officer of the Mortgagee, to enter upon the Mortgaged Property:
  - (a) if no Event of Default is subsisting, at all reasonable times during normal business hours upon 24 hours' notice; or
  - (b) if an Event of Default is subsisting, at any time,
 to enable the Mortgagee:
  - (c) to inspect the state and condition of the Mortgaged Property;
  - (d) to determine whether the Mortgagor is complying with the terms and conditions of each Finance Document; or
  - (e) to exercise or attempt to exercise any Power.

### **Term of undertakings**

- 3.4 Each undertaking in this clause continues from the date of this mortgage until the Security Interest created by this mortgage is released.

## **4. STRATA SCHEMES**

### **Application**

- 4.1 This clause 4 applies to the extent the Mortgaged Property forms part of a Strata Scheme.

### **Undertakings**

- 4.2 The Mortgagor must do the following:
- 4.2.1 **By-laws:** comply with the by-laws, rules, regulations and other requirements of the Strata Scheme, including paying all contributions and other moneys which at any time become payable in respect of the Mortgaged Property to the Strata Body;
  - 4.2.2 **Strata Laws:** exercise its reasonable endeavours to ensure the Strata Scheme complies with all laws, including all Strata Laws;
  - 4.2.3 **Voting:**
    - 4.2.3.1 preserve its right to vote at general meetings of the Strata Scheme;
    - 4.2.3.2 if the Mortgagee requires, give the Mortgagee not less than five business days' notice of proposed meetings of the Strata Scheme;
    - 4.2.3.3 if requested by the Mortgagee and a Default is continuing, subject to the rights of a prior mortgagee, vote in accordance with the direction of the Mortgagee on any motion requiring a special or unanimous resolution of the Strata Scheme; and
    - 4.2.3.4 if requested by the Mortgagee and a Default is continuing, appoint the Mortgagee or its nominee as the Mortgagor's proxy to vote on its behalf at any meeting of the Strata Scheme;
  - 4.2.4 **Maintain rights:** maintain its rights under the Strata Scheme and ensure to the extent possible that those rights are not varied;
  - 4.2.5 **Notice:** notify the Mortgagee as soon as the Mortgagor is aware that any of the following has occurred:
    - 4.2.5.1 any application or proposal has been made for the variation or termination of the Strata Scheme;
    - 4.2.5.2 any notice or order has been received by the Strata Scheme from any relevant Governmental Agency or any court relating to the Mortgaged Property or the common property; or
    - 4.2.5.3 the Strata Scheme has not complied with its obligations under any Strata Law (including its insurance obligations); and
  - 4.2.6 **Information:** give the Mortgagee any information requested by the Mortgagee in connection with the Strata Scheme, the Strata Body or the Mortgaged Property.

### **Obligations to insure**

- 4.3 The Mortgagor must do the following:
- 4.3.1 use its best endeavours to ensure the Strata Body maintains all insurances required by law; and

4.3.2 at the Mortgagee's request, provide the Mortgagee with particulars of all insurances held by the Strata Body.

#### Notices

4.4 The Mortgagor must immediately cause notice to be served on the Strata Body in accordance with section 118 of the *Strata Schemes Management Act 1996* (NSW) and provide evidence of registration of the Mortgagee's interest.

4.5 Upon demand by the Mortgagee, the Mortgagor must provide any information and confirmation required by the Mortgagee to give an effective notice pursuant to section 47 of the *Community Land Management Act 1989* (NSW).

#### Authority to obtain information

4.6 The Mortgagor irrevocably authorises the Mortgagee, any Receiver and each of their officers to apply to the Strata Body for any information in relation to the Mortgagor, the Mortgaged Property, the Strata Scheme or the Strata Body.

#### Term of undertakings

4.7 Each undertaking in this clause continues from the date of this mortgage until the Security Interest created by this mortgage is released.

### 5. ASSIGNMENT OF RENTAL INCOME

5.1 The Mortgagor as beneficial owner assigns absolutely to the Mortgagee all the Mortgagor's interest in and to the Rental Income, subject to the proviso for redemption in this clause 5.

5.2 The assignment referred to in clause 5.1 is a continuing security for the performance by the Mortgagor of its obligations under each Finance Document and for the payment and repayment of the Secured Moneys.

5.3 The Mortgagor irrevocably appoints the Mortgagee as the agent of the Mortgagor to do all things which the Mortgagee considers necessary or desirable to perfect the assignment referred to in clause 5.1.

5.4 At any time after an Event of Default occurs, the Mortgagee may notify the Lessees to make payments under the Lease Documents to the Mortgagee.

5.5 Upon the occurrence of an Event of Default, unless the Mortgagee gives written notice to the Mortgagor to the contrary, the Mortgagor must procure payment of all Rental Income by the Lessees directly to the Mortgagee or to any other person nominated by the Mortgagee.

5.6 At the same time the Mortgagee is obliged to discharge the Mortgage in respect of all the Mortgaged Property under clause 3, the Mortgagee must, at the request and cost of the Mortgagor, reassign to the Mortgagee all rights the Mortgagee has in the Rental Income by virtue of the assignment in clause 5.1.

### 6. ASSOCIATED RIGHTS

6.1 The Mortgagor assigns by way of security to the Mortgagee the benefit of each of the following:

6.1.1 **General:** the Mortgagor's interest in any licence, permission, approval, trademark, business name, quota or other right attached to or used in relation to the Mortgaged Property;

6.1.2 **Insurance:** any insurance held, and the proceeds of any insurance claims made, in relation to the Mortgaged Property;

6.1.3 **Compensation:** the Mortgagor's right to receive compensation in connection with the Mortgaged Property, including any right to receive compensation due to the resumption, appropriation or compulsory acquisition of the Mortgaged Property and the proceeds of any compensation payment made;



6.1.4 **Sale proceeds:** any deposit, bond, premium or other amount payable in connection with any dealing with the Mortgaged Property or any part of it and the proceeds of payment made;

6.1.5 **Warranties:** all warranties held in relation to any goods fixed to the Mortgaged Property; and

6.1.6 **Plans and approvals:** all plans, specifications, consents and approvals held in relation to any works conducted in relation to the Mortgaged Property.

6.2 The Mortgagee may only exercise its rights as assignee of the rights in the above clause if an Event of Default has occurred and is continuing.

## 7. CO-OPERATION WITH THE MORTGAGEE

7.1 The Mortgagor must co-operate with the Mortgagee by doing each of the following:

7.1.1 everything the Mortgagee asks the Mortgagor to do to give the Mortgagee the full benefit of this mortgage; and

7.1.2 everything the Mortgagor can (acting reasonably) to make sure that any person who is expressed to be a party to a Finance Document complies with its obligations to the Mortgagee under that Finance Document.

## 8. APPOINTMENT OF ATTORNEYS

8.1 For valuable consideration (receipt of which is acknowledged), the Mortgagor irrevocably appoints as its separate attorneys the Mortgagee, any Receiver and each of the Mortgagee's officers, managers and solicitors (each an "Attorney") with the power to do any one or more of the following, but only if an Event of Default has occurred and is continuing:

8.1.1 anything the Mortgagor is required to do under a Finance Document;

8.1.2 anything the Attorney thinks necessary to protect the Mortgagee's rights under a Finance Document or to exercise any power that the Mortgagee has under a Finance Document;

8.1.3 anything else the Mortgagor could do as owner of the Mortgaged Property; and

8.1.4 delegate its powers to any person for any period.

8.2 Each Attorney appointed under this mortgage is not liable for any liability, loss, damage, cost or expense the Mortgagor incurs or suffers as a result of the Attorney's actions. The Mortgagor must indemnify each Attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and Taxes incurred or suffered while acting as the Mortgagor's Attorney.

## 9. ENFORCEMENT

### Enforcement of Security Interest

9.1 If an Event of Default occurs, and while it continues, the Security Interest created by this mortgage will become immediately enforceable and any Secured Money is immediately due and payable.

### Consequences

9.2 In addition to any other rights provided by law or any Finance Document, at any time after an Event of Default occurs and while it continues, the Mortgagee may do all or any of the following:

9.2.1 sue the Mortgagor for the Secured Money;

9.2.2 appoint one or more qualified persons as a Receiver or takes any other step to enforce its Security Interest; and

9.2.3 exercise any other right available to the Mortgagee under this mortgage or any other Finance Document.

#### **Mortgagee's enforcement powers**

9.3 If this mortgage has become enforceable, the Mortgagee is entitled to do any one or more of the following, as if it were the Mortgagor:

9.3.1 **Deal with Mortgaged Property:** deal with the Mortgaged Property in any way the Mortgagor could;

9.3.2 **Take possession:** take possession of the Mortgaged Property and, if it does so, give up possession of the Mortgaged Property at any time;

9.3.3 **Sell Mortgaged Property:** sell the Mortgaged Property (whether or not it has taken possession). Any sale may be by auction, private treaty, tender or otherwise and may be on terms and conditions that the Mortgagee thinks fit. The Mortgaged Property can be sold together with any other property;

9.3.4 **Acquire property:** acquire any interest in any property, in the name or on behalf of the Mortgagor, which on acquisition forms part of the Collateral;

9.3.5 **Borrow money:** borrow money for the purpose of exercising the Mortgagee's powers, and to give a Security Interest over any of the Mortgaged Property as security for the loan;

9.3.6 **Employ:** employ or discharge people to help it or advise it how to deal with the Mortgaged Property;

9.3.7 **Give receipts:** give receipts and sign any documents needed to deal with any of the Mortgaged Property;

9.3.8 **Exercise powers:** exercise the Mortgagor's powers in respect of the Mortgaged Property;

9.3.9 **Sign documents:** sign documents and enter into contracts relating to the Mortgaged Property on the Mortgagor's behalf;

9.3.10 **Legal proceedings:** bring or defend legal proceedings relating to the Mortgaged Property in the Mortgagor's name;

9.3.11 **Insolvency proceedings:** make any debtor bankrupt, wind up any company, corporation or other entity and do all things in relation to any bankruptcy or winding up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;

9.3.12 **Appoint receiver:** appoint one or more qualified persons as receiver or receiver and manager of any Mortgaged Property;

9.3.13 **Remove goods:** remove and place in storage any personal property of the Mortgagor left on the Mortgaged Property;

9.3.14 **Remove fixtures:** sever any fixture to the Mortgaged Property and dispose of it on any terms and in any manner;

9.3.15 **Delegate powers:** delegate any of its powers (including this power) to any other person;

9.3.16 **All other acts:** do anything else that the Mortgagor could do in respect of the Mortgaged Property; or

9.3.17 **Any other power:** exercise any other power it has as a matter of law.

#### **Marshalling**

9.4 The Mortgagee is not under any obligation to marshal this mortgage in favour of the Mortgagor or any other creditor of the Mortgagor.

### **Mortgagor must help Mortgagee**

- 9.5 The Mortgagor must do everything the Mortgagee asks it to do to help the Mortgagee, any Receiver and any Attorney exercise their powers under this mortgage.

## **10. RECEIVERS**

### **Appointing and removing Receivers**

- 10.1 An appointment by the Mortgagee of a Receiver must be in writing and be signed by or on behalf of the Mortgagee. The Mortgagee will determine the terms of the Receiver's appointment and the amount and basis of the Receiver's remuneration.
- 10.2 The Mortgagee may remove any Receiver it appoints and, if it wants to, reappoint that person or appoint another person as a replacement.

### **Agent of Mortgagor**

- 10.3 Subject to clause 10.4, a Receiver will be the agent of the Mortgagor, not the Mortgagee. The Mortgagor, and not the Mortgagee, will be responsible for anything a Receiver does or fails to do in its capacity as Receiver.

### **Appointing Receiver after winding up**

- 10.4 The Mortgagee may appoint a Receiver even if an order is made, or a resolution passed, to wind-up the Mortgagor. If for any reason, including operation of law, a Receiver appointed in the circumstances described in this clause or appointed at any other time, ceases to be the agent of the Mortgagor as a result of an order being made or a resolution being passed for the winding up of the Mortgagor, then the Receiver immediately becomes the agent of the Mortgagee.

### **Receiver's powers**

- 10.5 Unless the Mortgagee expressly restricts a Receiver's powers on appointment, the Receiver will have the following powers in addition to the powers the Receiver has as a matter of law:
- 10.5.1 to do everything the Mortgagee may do under clause 9.3 (except appoint a receiver or receiver and manager); and
- 10.5.2 to delegate any of the Receiver's powers (including this power) to any other person.

### **Indemnity by Mortgagor**

- 10.6 The Mortgagor must indemnify a Receiver and each of the Receiver's agents and employees against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including legal costs on a full indemnity basis) and Taxes they incur or suffer in their capacity as Receiver, other than any liability, loss, damage, expense or Taxes arising as a result of the fraud, gross negligence or wilful default of the Receiver or its agent or employee.

### **Mortgagor must help Receiver**

- 10.7 The Mortgagor must do everything a Receiver asks it to do to help the Receiver exercise its powers under this mortgage.

### **Acting severally**

- 10.8 If the Mortgagee appoints more than one person to act as a Receiver, those persons may act severally unless specified otherwise in the instrument of appointment.

## **11. STATUTORY POWERS**

### **Statutory powers**

11.1 The powers conferred on a mortgagee by law:

- 11.1.1 are in addition to the powers conferred by this mortgage, any Additional Security or any other Finance Document;
- 11.1.2 to the extent permitted by law, may be exercised by the Mortgagee immediately if an Event of Default occurs and at any time while it continues; and
- 11.1.3 are excluded or varied only so far as they are inconsistent with the express terms of this mortgage, any Additional Security or any other Finance Document.

### **Exclusion of Legislation**

11.2 All legislation which at any time directly or indirectly does the following is, to the full extent permitted by law, excluded from this mortgage and any Additional Security:

- 11.2.1 lessens, varies or affects in favour of the Mortgagor any obligation under this mortgage or any Additional Security; or
- 11.2.2 delays, prevents or prejudicially affects the exercise of any power by the Mortgagee, any Receiver or attorney.

### **Notice not required**

- 11.3 To the extent permitted by law (but without prejudice to any express requirement in a Finance Document) the Mortgagee may enforce this mortgage or any Additional Security at any time while an Event of Default is continuing, or exercise any rights under this mortgage or conferred by law at any time while an Event of Default is continuing, without giving any notice or allowing any time to lapse.
- 11.4 Any law requiring the giving of notice, or the compliance with a procedure, or the lapse of time before enforcement or exercise, is, to the extent permitted by law, excluded.
- 11.5 Where a law which cannot be excluded requires that a period of notice must be given, or a lapse of time must occur, but allows the period to be specified or changed, that period will be one day or the minimum period the law allows to be agreed (whichever is the longer).

## **12. PROCEEDS OF ENFORCEMENT**

### **Applying the proceeds**

- 12.1 At any time after this mortgage is enforceable, all money received by the Mortgagee, any Receiver, any Attorney or any other person acting on their behalf under this mortgage or any Additional Security may be appropriated and applied, subject to clause 12.2, in any order that the Mortgagee, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by law.
- 12.2 Failing a determination under clause 12.1, the money must be applied in the following manner and order:
  - 12.2.1 first in payment of all costs, charges and expenses of the Mortgagee, any Receiver and any Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any power or otherwise in relation to this mortgage, any Additional Security or any Finance Document;
  - 12.2.2 secondly in payment of such other outgoings incurred in or incidental to the exercise or performance or attempted exercise or performance of any power or otherwise in relation to this mortgage, any Additional Security or any Finance Document as the Mortgagee may think fit to pay;
  - 12.2.3 thirdly in payment to the Receiver of any remuneration whether by way of commission or otherwise;

12.2.4 fourthly in payment to the Mortgagee of all amounts necessary to give effect to any indemnity contained in this mortgage; and

12.2.5 fifthly in payment to the Mortgagee of the Secured Money.

#### **Surplus proceeds**

12.3 After payment in accordance with the previous clause:

12.3.1 any remaining surplus will belong to the Mortgagor or other persons entitled to it;

12.3.2 the surplus will not carry interest; and

12.3.3 the Mortgagee may pay the surplus to the credit of a bank account in the name of the Mortgagor or other persons entitled to it and will then be under no further liability in respect of it.

#### **Payments actually received**

12.4 When applying money towards the repayment of the Secured Money, the Mortgagee will credit the Mortgagor only for money actually received by the Mortgagee in immediately available funds.

#### **Contingent amounts**

12.5 If, at the time the Mortgagee receives any money under this mortgage, any part of the Secured Money is contingently owing, the Mortgagee may retain an amount equal to that part or any part of it and:

12.5.1 the Mortgagee must pay the amount retained into a short term interest bearing account;

12.5.2 when the relevant Secured Money becomes due or is no longer contingently owing, the Mortgagee must pay to itself the due amount; and

12.5.3 the balance of the retained amount, together with interest earned, must be applied in accordance with clause 12.1 and, after payment in accordance with clause 12.1, in accordance with clause 12.3.

### **13. ADDITIONAL SECURITIES**

13.1 If the Mortgagee has or obtains any Additional Security, the Mortgagor's obligations under this mortgage are not affected in any way. The Mortgagee can choose to exercise its rights under this mortgage or under an Additional Security at the same time or at different times.

13.2 This mortgage is collateral to and secures the same moneys as are secured by any Additional Security.

### **14. CONTINUING SECURITY**

#### **Continuing security**

14.1 The Security Interest created by this mortgage is a continuing security. It is not released even if the Mortgagor has paid any intermediate payment in respect of the Secured Money or performed some of the Secured Obligations.

14.2 The Security Interest created by this mortgage will only be released if the Mortgagee gives the Mortgagor a formal written discharge or formal notice of release of all or part of the Mortgaged Property.

#### **Requirements for release**

14.3 The Mortgagee has no obligation to give a discharge or notice releasing the Security Interest created by this mortgage until the Mortgagee is satisfied on each of the following points:

14.3.1 the Mortgagee has received payment of all the Secured Money;

14.3.2 no further Secured Money will or is likely to become owing to the Mortgagee in the future; and

- 14.3.3 no payment made by the Mortgagor will or is likely to be avoided or required to be repaid by the Mortgagee under any law relating to insolvency or the protection of creditors.

#### **Reinstatement**

- 14.4 If, after the Mortgagee applies any amount against any of the Secured Money, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to insolvency or the protection of creditors:
- 14.4.1 the Mortgagee's rights are to be reinstated and will be the same in respect of that amount or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
- 14.4.2 the Mortgagor must immediately do anything (including the signing of documents) required by the Mortgagee to restore to the Mortgagee any Guarantee or Security Interest to which it was entitled immediately before application or the payment or transaction giving rise to it.

### **15. PROTECTION OF THIRD PARTIES**

#### **No duty to check**

- 15.1 No person who deals with the Mortgagee, any Receiver or any Attorney needs to check any of the following:
- 15.1.1 whether the Security Interest created by this mortgage has become enforceable;
- 15.1.2 whether any power the Mortgagee, any Receiver or any Attorney exercises has become exercisable;
- 15.1.3 whether a Receiver or Attorney has been properly appointed;
- 15.1.4 whether the Mortgagee, any Receiver or any Attorney has a power that it claims to have;
- 15.1.5 whether any Secured Money is owed to the Mortgagee; or
- 15.1.6 how any money paid to the Mortgagee, any Receiver or any Attorney is used.

#### **Protection of purchasers**

- 15.2 The title of any property acquired by a third party from the Mortgagee, any Receiver or any Attorney will not be adversely affected by any irregularity or impropriety in the exercise of the powers under this mortgage.

#### **Receipt**

- 15.3 Once the Mortgagee or any of its Authorised Officers receives any money or assets payable to or receivable by the Mortgagee, the person who paid that money or handed over that asset cannot be liable for their subsequent loss or misapplication.

### **16. LIMITED LIABILITY**

#### **Accounting for money received**

- 16.1 The Mortgagee, each Receiver and each Attorney only has to account to the Mortgagor for the amount actually received by it for the purpose of repaying the Secured Money or from any dealing with the Mortgaged Property. The Mortgagee, each Receiver and each Attorney is not liable to account to the Mortgagor as a mortgagee in possession or for anything that a mortgagee in possession could be liable for. If it does anything it should not do in relation to the Mortgaged Property, the Mortgagor's only remedy is damages.
- 16.2 The Mortgagor will continue to owe the Mortgagee the difference between the amount of the Secured Money and the amount the Mortgagee actually receives for the purpose of repaying the Secured Money or from any dealing with the Mortgaged Property.

16.3 The Mortgagee, its Authorised Officers, any Receiver and any Attorney are not liable for any loss caused by the exercise or attempted exercise, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by their negligence. This clause does not apply to any loss which arises from fraud, gross negligence or wilful default of the relevant person.

## 17. NOTICES

### Giving notices

17.1 Any notice or communication given to a party under this mortgage is only given if it is in writing and given in accordance with clause 25 of the Facility Agreement.

## 18. MISCELLANEOUS

### Conflict

18.1 Where any right, power, authority, discretion or remedy conferred on the Mortgagee, Receiver or Attorney by this mortgage or any Finance Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

### Consent of Mortgagee

18.2 Whenever the doing of any thing by the Mortgagor is dependent on the consent of the Mortgagee, the Mortgagee may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Finance Document.

18.3 Any conditions imposed on the Mortgagor under clause 18.2 must be complied with by the Mortgagor.

### Principal obligations

18.4 The Security Interest created by this deed and each Collateral Security is:

18.4.1 a principal obligation and is not ancillary or collateral to any other Security Interest (other than another Collateral Security) or other obligation; and

18.4.2 independent of, and unaffected by, any other Security Interest or other obligation which the Mortgagee may hold at any time in respect of the Secured Moneys.

### No obligation to marshal

18.5 The Mortgagee is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:

18.5.1 any Security Interest or Collateral Security held, at any time, by the Mortgagee; or

18.5.2 any moneys or assets which the Mortgagee, at any time, holds or is entitled to receive.

### Non avoidance

18.6 If any payment by the Mortgagor to the Mortgagee is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting the Mortgagor or any other thing, and whether or not:

18.6.1 any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or

18.6.2 any thing was or ought to have been within the knowledge of the Mortgagee,

the Mortgagor:

18.6.3 as an additional, separate and independent obligation, indemnifies the Mortgagee against that avoided payment; and

18.6.4 acknowledges that any liability of the Mortgagor under the Finance Documents and any power is the same as if that payment had not been made.

**Increase in financial accommodation**

18.7 The Mortgagee may at any time increase the financial accommodation provided under any Finance Document or otherwise provide further financial accommodation.

**Performance by Mortgagee of the Mortgagor's obligations**

18.8 If the Mortgagor defaults in fully and punctually performing any obligation contained or implied in any Finance Document, the Mortgagee may, without prejudice to any power, do all things necessary or desirable, in the opinion of the Mortgagee, to make good or attempt to make good that default to the satisfaction of the Mortgagee.

**Allowing conduct of others**

18.9 If the Mortgagor is not permitted to do something by this mortgage, it must not allow or assist anyone else to do that thing.

**Assignment**

18.10 The Mortgagee can assign or transfer any of its rights and obligations under this mortgage to the extent permitted to do so under and in accordance with the Facility Agreement.

18.11 The Mortgagor can only assign or deal with any of its rights and obligations under this mortgage with the Mortgagee's consent.

**Attorneys**

18.12 Each attorney who executes this mortgage on behalf of a party declares that the attorney has no notice of any revocation, suspension or variation of the power of attorney under the authority of which the attorney executes this mortgage.

**Completion and registration of mortgage**

18.13 The Mortgagor irrevocably authorises the Mortgagee and its solicitors to do the following:

18.13.1 register this mortgage (electronically or otherwise) with Land and Property Information, a division of the NSW Office of Finance and Services; and

18.13.2 register and record this mortgage (electronically or otherwise) in such other places as the Mortgagee or its solicitors may at any time consider necessary or desirable to perfect this mortgage or to protect the rights of the Mortgagee under this mortgage.

**Conflict of interest**

18.14 The Mortgagee, each of its Authorised Officers or other person appointed by the Mortgagee under this mortgage, each administrator of the Mortgagor appointed by the Mortgagee, each attorney and each Receiver may exercise the powers conferred by this mortgage or by law even though that person may have a conflict of interest in exercising those powers or a direct or personal interest in the means or result of that exercise of those powers.

**Entire agreement**

18.15 This mortgage contains everything the Mortgagee has agreed in relation to the matters it deals with. The Mortgagor cannot rely on an earlier document, or anything said or done by the Mortgagee, or by an Authorised Officer, agent or employee of the Mortgagee, before this mortgage was executed.



### **Evidence**

- 18.16 A certificate signed by the Mortgagee of the amount of the Secured Money or the amount of the Secured Obligations comprising monetary liabilities is conclusive evidence of what it states, except in the case of obvious error. The Mortgagor cannot object to the admission of a certificate of that type in any proceedings.

### **Exercise of rights**

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

### **Finance Document**

- 18.19 This mortgage is a "Finance Document" as that term applies in the Facility Agreement.

### **Governing law and jurisdiction**

- 18.20 This mortgage is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Indemnities**

- 18.21 Each indemnity in this mortgage is a continuing obligation, separate from the other obligations of the parties, and continues after this mortgage ends.
- 18.22 A party may enforce a right of indemnity at any time (including before it has incurred loss).

### **Joint and several liability**

- 18.23 If there is more than one Mortgagor under this mortgage, each reference to "the Mortgagor" is to be treated as a reference to each of the Mortgagors individually, and to each of the Mortgagors jointly with any one or more of the others. This means the Mortgagee can take action against any number of the persons who are a Mortgagor together or against one Mortgagor alone.

### **Other rights unaffected**

- 18.24 The Mortgagee's rights under this mortgage are in addition to any rights that the Mortgagee may have apart from it.

### **Severability**

- 18.25 Each provision of this mortgage is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this mortgage in the relevant jurisdiction, but the rest of this mortgage will not be affected by the severing of the provision. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **Variation**

- 18.26 No variation of this mortgage will be of any force or effect unless it is in writing and signed by the Mortgagee.

### **Waiver and consents**

- 18.27 A waiver or consent provided by the Mortgagee under this mortgage:

18.27.1 must be in writing and signed by the Mortgagee;

- 18.27.2 will be provided at the Mortgagee's discretion;
  - 18.27.3 will only affect the particular provision, obligation or breach for which it is given;
  - 18.27.4 will not imply that a waiver or consent is provided in respect of any other provision, obligation or breach or provided on any other occasion; and
  - 18.27.5 may be provided conditionally in which case the Mortgagor agrees to comply with the conditions of the consent or waiver given by the Mortgagee.
- 18.28 The fact that the Mortgagee fails to do, or delays in doing, something the Mortgagee is entitled to do under this mortgage does not amount to a waiver or consent.

## 19. DEFINITIONS AND INTERPRETATION

### Incorporated terms

- 19.1 Terms defined in the Facility Agreement have the same meaning in this mortgage, unless the context requires otherwise or the term is otherwise defined in this mortgage.

### Definitions

- 19.2 In this mortgage the following definitions apply:

"**Additional Security**" means any present or future Security Interest securing, or any Guarantee in respect of, any Secured Money or Secured Obligation;

"**Attorney**" means an attorney appointed under this mortgage;

"**Facility Agreement**" means the Facility Agreement dated 19 November 2015 between the Mortgagee and the Mortgagor as amended from time to time, including pursuant to the Deed of Amendment and Restatement dated on or about the date of this mortgage;

"**Improvements**" means all improvements, buildings, fences, structures, fixtures and fittings which are now, or in the future, on the Mortgaged Property;

"**Land**" means the land described in Annexure B of this mortgage (being the mortgage form executed by the Mortgagor and which refers to and incorporates this Annexure C);

"**Lessee**" means the lessee, licensee or equivalent party under any Lease Document;

"**Mortgaged Property**" means all the Mortgagor's rights, assets and undertaking under or in connection with any of the following:

- (a) the Land;
- (b) where the context permits, any interest in any land acquired by the Mortgagor which is to be used or held in conjunction with the Mortgaged Property;
- (c) the Improvements;
- (d) any fixtures, fittings, improvements, buildings, fences and structures now or in the future on the Land, including plant, machinery and apparatus fixed to the Land;
- (e) all easements, paths, ways, waters, watercourses, mines, minerals, quarries, trees and timber and other benefits on or used or enjoyed in conjunction with the Mortgaged Property; and
- (f) any Lease Document granted over or in respect of the above;

"Receiver" means any person the Mortgagee appoints under this mortgage as a receiver or receiver and manager of the Mortgaged Property;

"Strata Body" means, in respect of a Strata Scheme, the body corporate, strata company, community association, committee or other body or committee which administers the Strata Scheme;

"Strata Law" means any law applicable to, or governing the operation of, any Strata Scheme, including:

- (a) the *Strata Scheme (Freehold Development) Act 1973* (NSW); and
- (b) the *Community Land Development Act 1989* (NSW); and

"Strata Scheme" means any scheme or arrangement pursuant to which real property is divided into strata lots, units, flats or apartments, including:

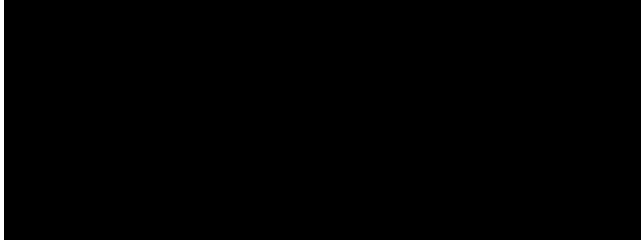
- (a) any scheme or arrangement arising pursuant to any Strata Law; and
- (b) any community development lot or Mortgaged Property that is subject to the *Community Land Development Act 1989* (NSW) or the *Community Land Management Act 1989* (NSW).

### Interpretation

- 19.3 Clause 1.2 of the Facility Agreement applies to this mortgage as if set out in full (with reference to "this agreement" being read as "this mortgage").
- 

*AW G. C. C.*  
*LT. SRP H.Y.*

I certify that this  
is a true, <sup>complete</sup> and up  
to date copy of the  
original document  
sighted by me at  
2:00pm this 10<sup>th</sup> day  
of February 2017



Final

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**New South Wales Land and Housing  
Corporation**



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SGCH Sustainability Limited

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# Tripartite Deed

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Date 26 FEBRUARY 2016

## Parties

**New South Wales Land and Housing Corporation** ABN 24 960 729 253 a body corporate constituted under section 6 of the *Housing Act 2001* (NSW) and being a Housing Agency under the Act (**Corporation**)

  
**SGCH Sustainability Limited** ACN 606 965 799 (**Company**)

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## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this document:

**Acceptable CHP** means a registered community housing provider that, at the relevant time:

- (a) is solvent;
- (b) has not been wound up and is not being wound up;
- (c) is not the subject of an extant notice of intent to cancel registration;
- (d) is a company registered under the *Corporations Act 2001* (Commonwealth);
- (e) is registered as a community housing provider within the meaning of the National Law; and
- (f) is registered either as a Tier 1 or Tier 2 community housing provider, and which, at the relevant time, the Corporation has not notified the Financier, in accordance with clause 4.3(b), that the registered community housing provider is not acceptable to the Corporation for the purposes of clause 4.3(b).

**Act** means the Community Housing Providers (Adoption of National Law) Act 2012 (NSW).

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

**Corporation Interest** means the interest of the Corporation in a parcel of Designated Land arising under section 14 of the Act.

**Designated Land** means land (including dwellings and improvements) owned or acquired by, transferred to or vested in the Company:

- (a) in which the Corporation has or is taken to have an interest by reason of section 14 of the Act; and
- (b) against the security of which the Financier proposes to make or makes a Loan.

This definition can apply to different parcels of land.

For the purposes of this definition:

- (c) a written notice by the Corporation given in accordance with clause 8.2 is conclusive evidence of the existence of the Corporation's interest in the land; and
- (d) the Corporation, the Company and the Financier may agree or confirm in writing from time to time that land is Designated Land. The form of writing includes an exchange of letters or the updating of a mutually agreed register.

**Financier Enforcement Event** means the occurrence of any event or circumstance that gives the Financier an immediate right to enforce a Financier Security.

**Financier Security**, for a parcel of Designated Land, means a mortgage or a charge over the parcel of Designated Land granted by the Company in favour of the Financier referred to in Schedule 1.

**First Priority Amount**, for a parcel of Designated Land, means the aggregate amount (including principal, interest and costs) from time to time actually or contingently owing by the Company to the Financier under, or in connection with, the Relevant Loan up to an aggregate maximum referred to in Schedule 2.

**Loan** includes any form of financial accommodation.

**National Law** means the Appendix to the Community Housing Providers (Adoption of National Law) Act 2012 (NSW), which establishes the National Regulatory System for Community Housing.

**Powers** means any right, power, authority, discretion, remedy or privilege, whether express or implied (including to exercise a right to terminate or grant releases or waivers) conferred on any person or entity).

**Receiver**, for a parcel of Designated Land, means a receiver or receiver and manager appointed to the parcel of Designated Land and any person who derives a right directly or indirectly from a Receiver.

**Recovery Costs**, for a parcel of Designated Land, means all costs and expenses incurred by the Financier (or by a Receiver appointed by it) in exercising or otherwise enforcing any Powers in relation to a Financier Security, including:

- (a) all outgoings which the Financier (or a Receiver appointed by it) thinks fit to pay;



- (b) all payments towards the satisfaction of any monetary obligation which has mandatory priority under any statute; and
- (c) the remuneration of, and any costs and expenses claimed by, a Receiver appointed by the Financier including the fees and expenses of any investigative accountant or other advisors.

**Relevant Loan**, for a parcel of Designated Land, means a Loan made or to be made by the Financier to the Company, under the agreement referred to in Schedule 2, the repayment of which is secured by a mortgage or charge over the parcel of Designated Land.

**Remedy Proceeds**, for a parcel of Designated Land, means an amount equal to:

- (a) all money received by the Financier (or by any Receiver appointed by it) from exercising or otherwise enforcing any Powers against the parcel of Designated Land; less
- (b) all Recovery Costs paid or incurred by the Financier (or by a Receiver appointed by it) in exercising or enforcing those Powers.

**Second Security**, for a parcel of Designated Land, means any mortgage or charge dated on or after the date of this document over the parcel of Designated Land in favour of the Corporation (including any charge created as permitted by section 19 of the Act).

**Security Interest** means any interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation. It includes any retention of title to any property and any right to set off or withhold payment of any deposit or other money.

**Standstill Period**, for a parcel of Designated Land, means, subject to clause 1.8, a period of 90 days (or such longer period as the Corporation and the Financier may agree in writing from time to time) from the date of first notification under clause 4.1 or clause 4.2.

**Trigger Event** means:

- (a) the Company states in writing that it is insolvent;
- (b) the Company's registration under the Act is cancelled;
- (c) the circumstances of section 24(1)(c) of the Act apply;
- (d) a community housing agreement to which the Company is a party is terminated by the Corporation; or
- (e) a Financier Enforcement Event occurs and the Financier has formed an intention to enforce, or to commence to enforce, a Financier Security.

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## 1.2 Expressions defined in the Act

The following words or expressions have the meaning given to them by the Act:

- **community housing agreement;**

- **community housing provider;**
- **notice of intent to cancel registration;**
- **registered community housing provider; and**
- **Registrar.**

### **1.3 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) includes means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
  - (i) a person includes the person's successors, permitted assigns and persons substituted by permitted novation;
  - (ii) the Corporation includes the Corporation as reconstituted, renamed or replaced, and if its powers or functions are transferred to another entity, includes that new entity;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) time is to local time in Sydney;
  - (v) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and
  - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions.

### **1.4 Headings**

Headings do not affect the interpretation of this document.

### **1.5 No limitations**

Except as expressly provided in this document, nothing in this document:

- ~~(a) limits or qualifies any Powers of the Corporation under the Act or under any community housing agreement to which the Corporation and the Company are parties; or~~

- (b) relieves the Company of any obligation or liability under the Act or under any community housing agreement to which the Corporation and the Company are parties.

## **1.6 Inconsistencies**

In the event of any inconsistency between:

- (a) the provisions of this document and a Financier Security; or
- (b) the provisions of this document and any community housing agreement to which the Corporation and the Company are parties,

the provisions of this document will apply to the extent of the inconsistency.

## **1.7 Registrar**

Nothing in this document prevents or precludes the Financier from making any complaint about the Company to the Registrar.

## **1.8 Standstill Period**

If the Financier (or the Corporation on its behalf) makes a nomination under clause 4.3(b) and the procedures and actions in clause 4.3(b) and clause 4.3(c) are not duly completed or do not duly occur before the end of the Standstill Period, the Standstill Period will be taken to be extended for such additional period as is necessary to enable those procedures and actions to be duly completed and to duly occur. For the avoidance of doubt, the Corporation (on behalf of the Financier) is not permitted to make a further nomination during any extension period.

# **2 Order of priority**

## **2.1 Priority**

The Corporation acknowledges and agrees that:

- (a) a Financier Security secures the First Priority Amount;
  - (b) a Financier Security is a first ranking security over the relevant parcel of Designated Land; and
  - (c) any relevant Remedy Proceeds received by the Financier (or any Receiver appointed by it) can be applied in favour of the Financier, up to the First Priority Amount.
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## **2.2 Second Security**

If a Second Security now or in the future affects a parcel of Designated Land that is the subject of a Financier Security:

- ~~(a) the Second Security ranks second, behind the Financier Security;~~
- (b) the priority in clause 2.2(a) applies despite anything which, but for clause 2.2(a), would affect that order of priority; and

- (c) the Financier and the Corporation must account to each other for all Remedy Proceeds (or equivalent moneys) received by it (or any Receiver appointed by it) to the extent necessary to give effect to clause 2.1 and clause 2.2(a).

### 3 Waiver and consent

#### 3.1 Waiver and consent

- (a) Subject to the terms of this document, the Corporation consents to the creation by the Company of a mortgage or charge over a parcel of Designated Land in favour of the Financier.
- (b) The Financier:
  - (i) acknowledges the existence of the Corporation Interest in the parcel of Designated Land;
  - (ii) consents to the creation and registration of any Second Security in the parcel of Designated Land;
  - (iii) agrees that the existence of the Corporation Interest in the parcel of Designated Land and the creation and registration of any Second Security in the parcel of Designated Land are not, of themselves, a Financier Enforcement Event;
  - (iv) subject to the relevant parcel of Designated Land being subject to the terms of this document, agrees that it is not entitled to object to, and undertakes that it will not object to, the registration of the Corporation Interest in the parcel of Designated Land as contemplated by section 18(3) of the Act; and
  - (v) acknowledges that the Corporation is not liable or responsible in any way for, and that the Corporation has not made any representation or warranty of any nature regarding:
    - (A) the business, affairs, solvency or financial viability of, or the performance of obligations owed to the Financier by, the Company;
    - (B) the value of any Designated Land; or
    - (C) the repayment of any Relevant Loan.

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- (c) The Financier consents to the Company providing any information to the Corporation from time to time in relation to:
  - (i) a Relevant Loan;
  - (ii) a Financier Security;

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  - (iii) a Financier Enforcement Event or an event or circumstance that with the giving of notice or lapse of time would constitute a Financier Enforcement Event; and

- (iv) any matter or thing necessary to enable the Company or an officer of the Company to comply with a notice under section 23 of the Act.
- (d) The Corporation consents to the Company providing any information to the Financier from time to time in relation to a Second Security subject to usual privacy principles.

### **3.2 Information**

- (a) The Financier must, on request by the Corporation reasonably made from time to time, inform the Corporation of the amount of the principal, interest and other money actually or contingently owing by the Company to the Financier and which are secured by a Financier Security.
- (b) The Company, after receipt from the Financier of any notice of default or demand to pay any money under a Financier Security, must as soon as practicable give a copy of that notice to the Corporation.
- (c) On request reasonably made by the Financier from time to time, the Corporation must provide information related to a Second Security including the terms of the Second Security and the amount actually or contingently owing by the Company to the Corporation and which are secured by the Second Security.

### **3.3 Company must co-operate**

The Company must co-operate in the implementation of the transactions contemplated by this document. The Company must as soon as practicable execute all documents and do all things that the Corporation from time to time reasonably requires to protect and preserve and to enable the exercise of the Corporation's Powers under this document and otherwise to give effect to the matters contemplated by this document, including clause 4.

### **3.4 Company's obligations not affected**

- (a) The liabilities and obligations of the Company and the respective Powers of the Corporation and the Financier against the Company under or in relation to a Financier Security or any Second Security are not affected by:
    - (i) this document, other than as expressly provided in it; or
    - (ii) ~~the failure of the Corporation or the Financier (as the case may be)~~ to comply with the terms of this document.
  - (b) The Company acknowledges that this document is intended only to benefit the Corporation and the Financier.
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## 4 Trigger Event regime

### 4.1 Notification by Corporation

The Corporation must as soon as practicable notify the Financier in writing upon becoming aware of the occurrence of any of the events in paragraphs (a), (b), (c) or (d) of the definition of Trigger Event.

### 4.2 Notification by Financier

The Financier must as soon as practicable notify the Corporation in writing:

- (a) upon becoming aware of the occurrence of the event in paragraph (a) of the definition of Trigger Event; or
- (b) with reasonable details, upon becoming aware of the occurrence of the event in paragraph (e) of the definition of Trigger Event.

The Financier is not required to give a separate notice under clause 4.2(a) if the subject matter of such a notice is covered by a notice given under clause 4.2(b).

### 4.3 Consequences

- (a) If a Trigger Event occurs, the Financier may go into possession or may appoint a Receiver under a Financier Security but, except as permitted by this clause 4.3, the Financier and any Receiver appointed by it must not sell, transfer or otherwise dispose of, or attempt to sell, transfer or otherwise dispose of, the parcel of Designated Land before or during the Standstill Period. For the avoidance of doubt, the Financier as mortgagee in possession or a Receiver appointed under a Financier Security may from the time of going into possession or from appointment (as the case may be) until such time as it ceases to be in possession or its appointment ends (as the case may be) collect all rent payments from tenants of the parcel of Designated Land.
- (b) As soon as practicable after the commencement of the Standstill Period, the Financier must use reasonable endeavours to nominate to the Corporation in writing one or more Acceptable CHP in whose favour the Corporation might wish to consider exercising the Corporation's Powers under section 24(2)(a) of the Act. If the Financier fails to make a nomination within 7 days of the commencement of the Standstill Period, the Corporation may make a nomination on the Financier's behalf (and the Corporation must advise the Financier in writing of the nomination). The Financier may from time to time seek guidance from the Corporation as to the identity of an Acceptable CHP. In making a nomination of a registered community housing provider as an Acceptable CHP, the Financier must use reasonable endeavours to consult with the Corporation and must have due regard to any material concerns stated by the Corporation. Following such a nomination, the Financier must as soon as practicable and in good faith seek credit and other internal approvals for the Relevant Loan to be novated to or to be refinanced for the benefit of the Acceptable CHP. The Financier must not decline to

give credit or other approvals solely on the basis that the Financier no longer wishes to finance registered community housing providers. Except for the preceding sentence, nothing requires the Financier to act contrary to its internal policies or credit procedures. The Financier must as soon as practicable notify the Corporation in writing whether credit and other internal approvals have or have not been obtained. If credit and other internal approvals are not obtained, the Financier, if requested in writing by the Corporation, must certify that the procedures and requirements of this clause 4.3(b), as they relate to the Financier, have been complied with.

- (c) If credit and other internal approvals as referred to in clause 4.3(b) are obtained, the Financier and the relevant Acceptable CHP must as soon as practicable enter into such documentation as is necessary to bring about the novation or refinancing, as well as (and contemporaneously) a document (to which the Corporation is also a party) that is the same or substantially the same as this document. The novation or refinancing documentation must be prepared by or on behalf of the Financier and the Financier must act reasonably in so doing. The entry into of the novation or refinancing documentation has the effect, as between the Corporation and the Financier, of permanently waiving the Trigger Event (but without prejudice to any obligations and liabilities of the Company owed to the Corporation or to the Financier) and the Financier must terminate the enforcement of a Financier Security (as it relates to the parcel of Designated Land) and must terminate its possession or must withdraw the appointment of any Receiver (as the case may be).
  - (d) If credit and other internal approvals as referred to in clause 4.3(b) are not obtained, the process in clause 4.3(b) may be repeated during the Standstill Period as often as the Corporation sees fit and the Financier (or the Corporation on its behalf) must as soon as practicable make further nominations of one or more Acceptable CHP.
  - (e) Nothing in this document (including under clause 5.1) limits the Powers of the Corporation during the Standstill Period to give an instruction under section 24(2)(a) that the parcel of Designated Land is to be transferred to the Corporation. It is the Corporation's intention that its Powers for such a transfer only be exercised if a novation or refinancing as referred to in clause 4.3(c) cannot be effected or implemented within the contemplated timeframes referred to in this clause. ~~At the time of, or~~ as soon as practicable after, the transfer, the Corporation must pay the Financier the First Priority Amount and simultaneously the Financier must give a full release and discharge of a Financier Security as it relates to the parcel of Designated Land.
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- (f) ~~if~~
    - (i) during the Standstill Period, the Corporation does not give an instruction under clause 4.3(e) or no nomination is made under clause 4.3(b); or

- (ii) in circumstances where clause 4.3(b) applies and a nomination is made, by the end of the Standstill Period, credit and other internal approvals as referred to in clause 4.3(b) are not obtained,

then, subject to clause 4.3(k), the Financier or any Receiver appointed by it may sell, transfer or otherwise dispose of the parcel of Designated Land as it sees fit, subject only to the requirement that the Remedy Proceeds are accounted for in accordance with this document. If the Financier or any Receiver appointed by it requires that the parcel of Designated Land to be in a state of vacant possession and has notified the Company of this requirement, then the Company must as soon as practicable after the end of the Standstill Period cause the parcel of Designated Land to be in a state of vacant possession.

- (g) Prior to and during the Standstill Period, the Financier and any Receiver appointed by it must not at any time interfere with the quiet enjoyment of any tenant or occupier of a parcel of Designated Land
- (h) The Corporation, in its absolute discretion, may consent in writing to a sale, transfer or other dealing of a parcel of Designated Land by the Financier or a Receiver appointed by it during the Standstill Period.
- (i) If a sale, transfer or other dealing of a parcel of Designated Land is permitted by this clause 4.3, the Corporation, upon written request by the Financier, must as soon as practicable:
  - (i) give a full release and discharge of any Second Security as it relates to the parcel of Designated Land; and
  - (ii) give a relevant notice or make a relevant application to the Registrar-General for the purposes of sections 18(5) and 18(6) of the Act.
- (j) The Corporation agrees with the Financier that if clause 4.3(b) applies, the Corporation will not give any instruction under section 24(2)(a) of the Act that is inconsistent with the regime that is intended by clause 4.3(b).
- (k) If a Financier Security applies to more than one parcel of Designated Land and the Company or the Corporation considers that not all those parcels are required to be sold, transferred or otherwise dealt with by the Financier and any Receiver appointed by it in order for the Financier to recover the First Priority Amount, then the Financier will consider in good faith any request by the Company or by Corporation for the Company to be relieved of its obligations under clause 4.3(f) to cause the parcel of Designated Land to be in a state of vacant possession in respect of specified parcels of Designated Land. Any relief granted by the Financier may be expressed to be on the basis that the Financier may revoke that relief if required to ensure that the Financier recovers the First Priority Amount.
- (l) The Corporation agrees with the Financier that if requested in writing by the Financier the Corporation will provide all reasonable assistance to the Financier or the Receiver (as the case may be) to achieve an orderly



transition of tenants of the parcel of Designated Land to other dwellings to enable the parcel of Designated Land to be in a state of vacant possession but without the Corporation assuming any responsibility or liability whatsoever for the relocation of tenants or for causing the parcel of Designated Land to be in a state of vacant possession.

## 5 Rights and obligations of the Corporation and the Financier

### 5.1 Enforcement of Securities

- (a) Subject to clause 4.3, the Financier may exercise its Powers under a Financier Security to recover payment of the money secured by it at any time and in any manner that the Financier thinks fit.
- (b) If a Financier Security or any Second Security become enforceable, the Financier or the Corporation (as the case may be) may determine in its absolute discretion the extent (if any) to which it will have recourse to a Financier Security or any Second Security (as the case may be) and the extent (if any) to which it will have recourse to any other source which may be available to it.
- (c) As between the Company and the Corporation and as between the Company and the Financier, nothing in this document requires the Corporation or the Financier (as the case may be) to exercise, or prevents it from exercising, any of its Powers.
- (d) Any enforcement action by the Financier (including any enforcement action taken by any Receiver appointed under a Financier Security) takes precedence over any enforcement action by the Corporation.
- (e) The Corporation must not enforce any Second Security during the period under clause 4.3 that the Financier is unable to enforce, or is restricted in its enforcement of, a Financier Security.

### 5.2 Notification of action taken

- (a) If the Financier takes action to enforce a Financier Security before or, subject to clause 4.3, during the Standstill Period it must give written notice of such action to the Corporation. Such notice must be given before any such action is taken.
- (b) The Financier must, on request by the Corporation reasonably made from time to time, inform the Corporation of any action taken by it in enforcing its Powers under a Financier Security.
- (c) If the Corporation takes action to enforce any Second Security, it must ~~give written notice of such action to the Financier. Such notice must be~~ given at least 5 Business Days before any such action is taken.

### **5.3 Insurance proceeds**

- (a) Subject to clause 5.3(b), any insurance proceeds paid by any insurer for any parcel of Designated Land must be applied by the Financier in or towards the reinstatement of or repairs to the dwelling(s) on the parcel of Designated Land.
- (b) The Corporation may agree in writing that the insurance proceeds are to be applied in reduction of amounts secured under a Financier Security or any Second Security in the order of priority conferred by clause 2.
- (c) The Company must do all things in its power or control to give effect to the matters contemplated by clauses 5.3(a) and 5.3(b), including giving any notice or document to any insurer.

### **5.4 Section 24(2)(a) acknowledgment**

The Corporation and the Financier acknowledge that any transfer of a parcel of Designated Land in accordance with section 24(2)(a) of the Act will be subject to a Financier Security, any Second Security and the Corporation Interest.

## **6 Assignment**

### **6.1 Assignment**

- (a) Subject to clause 6.1(b), the Financier must not transfer, assign or otherwise deal with its interest under a Financier Security or under this document unless the transferee, assignee or other person acquiring the interest first enters into a deed with the Corporation (in such form as the Corporation reasonably requires) by which it undertakes to be bound by the terms of this document to the same extent as the Financier.
- (b) Clause 6.1(a) does not apply where:
  - (i) the transfer, assignment or dealing is for the purposes of or results from the enforcement of a Financier Security; or
  - (ii) the transfer, assignment or other dealing is done in connection with a securitisation and the Financier continues to be bound to perform all its obligations under this document.

### **6.2 Disclosure of information**

~~The Financier may disclose to any transferee, assignee or other person~~ acquiring an interest in a Financier Security all information about the Company and this document which the Financier thinks appropriate subject to usual privacy principles.

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## **7 General**

### **7.1 Amendment**

This document may only be varied or replaced by a deed executed by the parties.

## **7.2 Waiver and exercise of rights**

- (a) A right in favour of the Corporation or the Financier under this document or a breach of an obligation of the Company under this document can only be waived by an instrument executed by the Corporation or the Financier (as the case may be). No other act, omission or delay of the Corporation or the Financier constitutes a waiver binding, or estoppel against, the Corporation or the Financier (as the case may be).
- (b) A single or partial exercise or waiver by the Corporation or the Financier of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.
- (c) The Corporation, the Financier and their respective officers, employees, contractors and agents are not liable for any loss, cost or expense of the Company caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## **7.3 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **7.4 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

# **8 Notices**

## **8.1 General**

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an officer, attorney or authorised representative of the sender.

## **8.2 How to give a communication**

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail;
- (d) sent by fax to the party's current fax number for notices; or
- (e) sent by email to the party's current email address for notices.

### 8.3 Address for service

(a) The initial particulars for service are:

**Corporation:**

Address: 4-6 Cavill Avenue, Ashfield NSW 2131

Fax: (02) 8753 8294

Attention: Lauvena Wong

Email: Lauvena.wong@facs.nsw.gov.au

**Financier:**

Address:

Fax:

Attention:

Email:

**Company:**

Address: Level 5, 38 Humphreys Lane Hurstville NSW 2220

Fax: (02) 9585 1564

Attention: Chief Financial Officer – Trevor Wetmore

Email: office@sgch.com.au

(b) Each party may from time to time change its particulars for service by notice to each other party.

### 8.4 Communications by post

Subject to clause 8.6, a communication that is posted is given three Business Days after posting.

### 8.5 Communications by fax

Subject to clause 8.6, a communication is given if sent by fax when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### 8.6 Communications by email

Subject to clause 8.7, a communication is given if sent by email 24 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives either an automated message that the email has not been delivered or the sender receives an out of office response.

### 8.7 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

**8.8 Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this clause 8 or in accordance with any applicable law.

## Schedule 1

### Financier Security and Designated Land

Mortgage(s) by the Company in favour of the Financier over the properties listed in the table below which properties are Designated Land for the purposes of this document:

| No. | Street Address | Suburb | Title Reference |
|-----|----------------|--------|-----------------|
|     |                |        |                 |









## Schedule 2

### First Priority Amount

Aggregate Maximum of [REDACTED]

### Relevant Loan

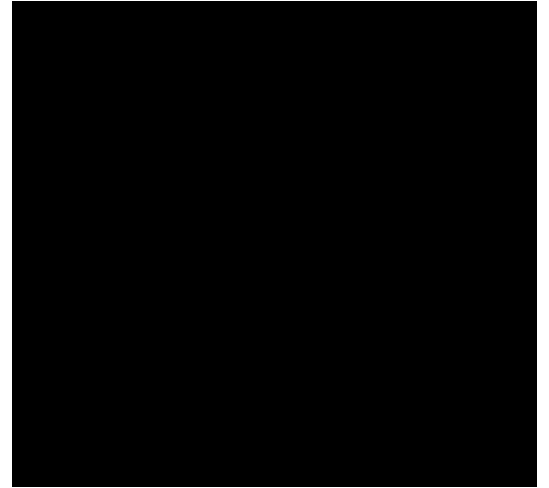
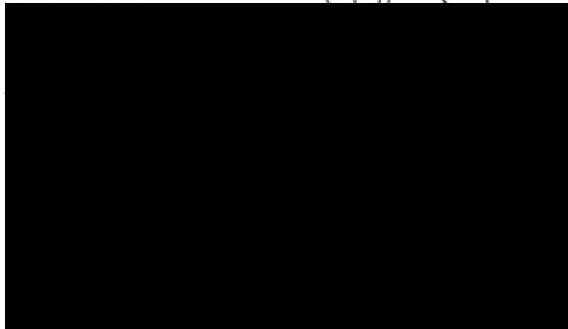
The Facility Agreement dated 19 November 2015 between the Financier and the Company for a cash advance facility with a commitment of up to [REDACTED]

**Executed** as a deed.

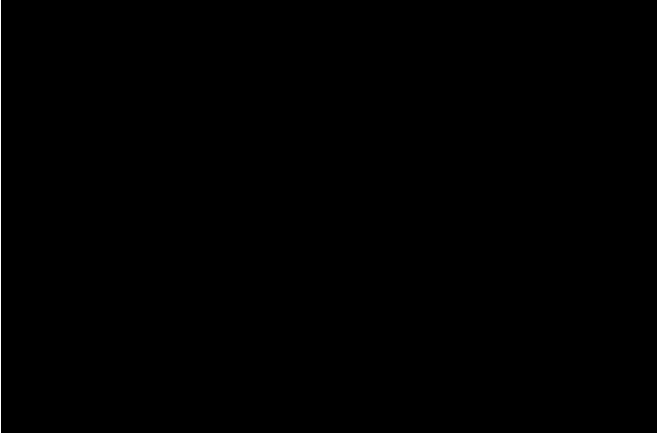
Signed, sealed and delivered by New )  
South Wales Land and Housing )  
Corporation in the presence of

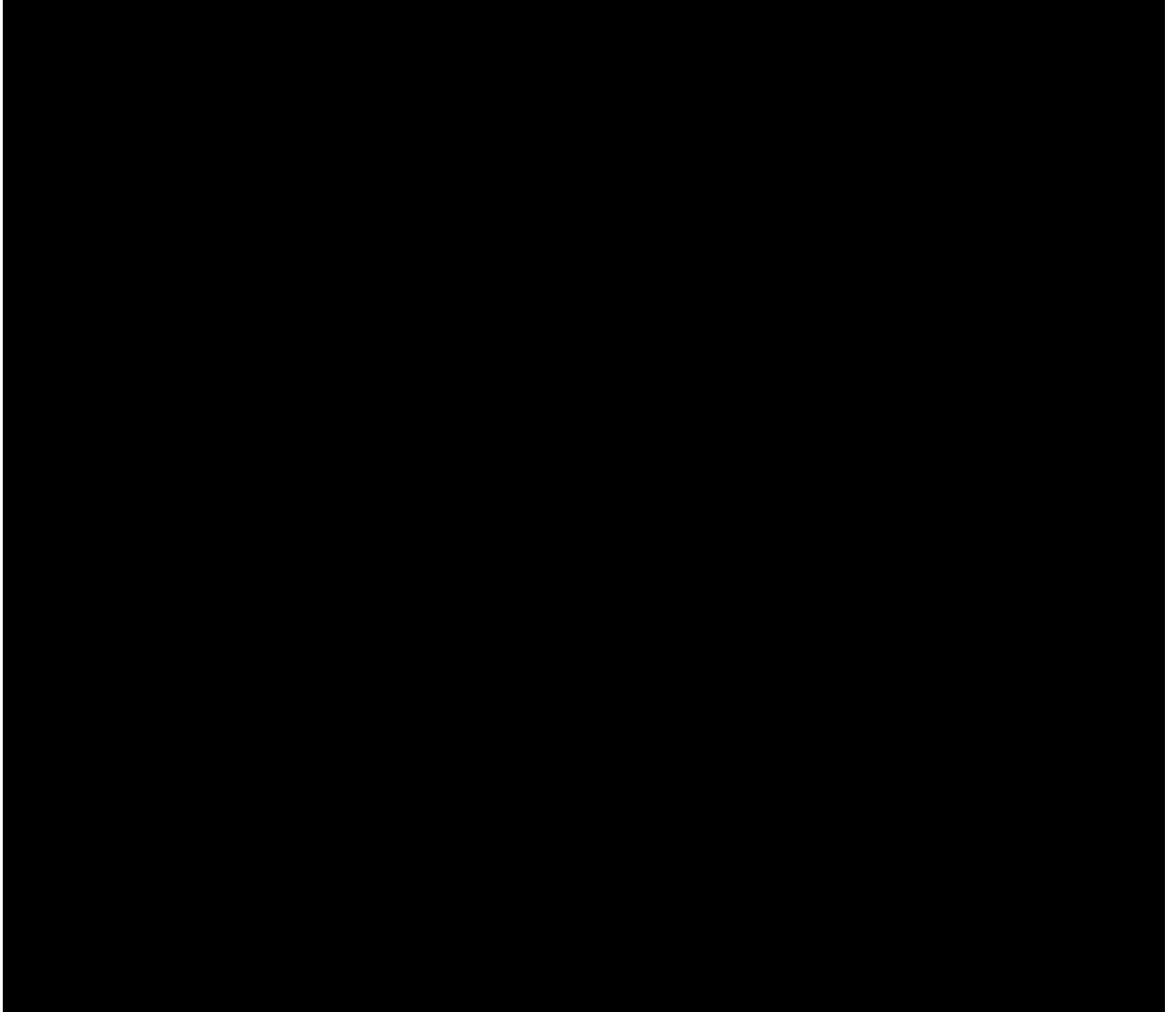


**Executed by SGCH Sustainability Limited**  
under Power of Attorney dated 19 November  
2015 registered Book 4698 No. 752 by its  
attorney who states they have no notice of  
revocation of the said power of attorney in the  
presence of:



Witnessed by:







Execution version

(1)   
as Senior Creditor

- and -

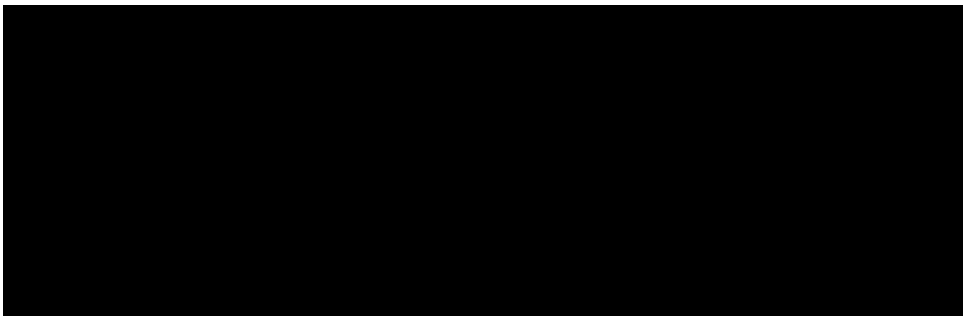
(2) ST GEORGE COMMUNITY HOUSING LIMITED  
as Junior Creditor

- and -

(3) SGCH SUSTAINABILITY LIMITED  
as Borrower

### SUBORDINATION DEED

*I certify that this is a true, complete  
and up to date copy of the original  
document sighted by me at 2.00pm this  
10<sup>th</sup> day of February 2017*



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THIS DEED is made on 19 NOVEMBER

2015

**BETWEEN:**

- (1) [REDACTED]
- (2) ST GEORGE COMMUNITY HOUSING LIMITED ACN 133 729 503 ("Junior Creditor")
- (3) SGCH SUSTAINABILITY LIMITED ABN 21 606 965 799 ("Borrower")

**BACKGROUND:**

- A The Senior Creditor and the Junior Creditor are creditors of the Borrower.
- B The Junior Creditor subordinates its right to receive payment from the Borrower as set out in this deed.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

NEW SOUTH WALES DUTY  
01-03-2016 0008571299-001  
SECTION 58(1)  
DUTY \$ \*\*\*\*\*500.00

**Definitions**

1.1 In this deed the following definitions apply:

"Attorney" means an attorney appointed under this deed;

"Authorisation" means any accreditation, approval, authorisation, consent, exemption, filing, licence, notarisation, registration or waiver, however described, from a Governmental Agency and any renewal of or variation to any of them;

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

"Creditor" means the Junior Creditor or the Senior Creditor;

"Debt" means the Senior Debt or the Junior Debt;

"Discharge Date" means the earlier to occur of:

- (a) the date on which all Senior Debt has been Finally Paid or discharged and all commitments of the Senior Creditor to the Borrower have expired in accordance with the Senior Loan Agreement; and
- (b) 30 years from the date of this deed;

"External Administration" includes any form of administration, including liquidation, winding up, bankruptcy, voluntary administration, dissolution, management or receivership or any analogous process;

"Finally Paid" in respect of the Senior Debt or any other monetary liability related to the Senior Debt, means:



- (a) payment or satisfaction of it in full; and
- (b) at the time of payment or satisfaction, the Borrower gives to the Senior Creditor a certificate signed by at least two directors of the Borrower stating that the Borrower is solvent and would not become insolvent as a result of making the payment or satisfaction to which the certificate relates;

**"Governmental Agency"** means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange;

**"Guarantee"** includes any guarantee, suretyship, letter of credit, letter of comfort or any other obligation to pay (or to indemnify against non-payment of) any actual or contingent debts or monetary liability or obligation (whether or not it involves the payment of money) by another person, and the incurring of an obligation of that type;

**"Intercompany Loan Agreement"** means the Intercompany Loan Agreement dated on or about the date of this deed by and among the Junior Creditor and the Borrower;

**"Junior Debt"** means all indebtedness and liabilities owing at any time by the Borrower to the Junior Creditor under the Junior Loan Documents;

**"Junior Loan Documents"** means:

- (a) the Intercompany Loan Agreement; and
- (b) any other document designated as a Junior Loan Document by the Junior Creditor, the Borrower and the Senior Creditor;

**"Permitted Payment"** means any payment or repayment by or from the Borrower to or in favour of the Junior Creditor expressly permitted under and in accordance with clause 14.5.4 (*Distributions*) or clause 14.5.7 (*Management fees*) of the Senior Loan Agreement, up to the maximum amount permitted to be paid or repaid under the Senior Loan Agreement or such other payment and amount with the prior written consent of the Senior Creditor;

**"Security Interest"** means any mortgage, pledge, lien or charge and any other agreement, right or interest having a similar effect, other than a security interest as defined in s12(3) of the PPSA which does not secure payment or performance of an obligation;

**"Senior Debt"** means all indebtedness and liabilities owing at any time by the Borrower to the Senior Creditor under the Senior Loan Documents;

**"Senior Loan Agreement"** means the Facility Agreement dated on or around the date of this deed between the Senior Creditor and the Borrower;

**"Senior Loan Documents"** means each of the following:

- (a) the Senior Loan Agreement;
- (b) each "Finance Document" as defined in the Senior Loan Agreement (other than this deed); and
- (c) any other document designated as a Senior Loan Document by the Senior Creditor and the Borrower; and

**"Tax"** means any tax, levy, impost, deduction, charge, duty, compulsory loan or withholding and any related interest, penalty, fine or expense imposed by any Governmental Agency.

### **Interpretation**

- 1.2 In the interpretation of this deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 headings are inserted for convenience only and do not affect the interpretation of this deed;
  - 1.2.2 a reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney and in Brisbane;
  - 1.2.3 if the day on which any act, matter or thing is to be done under this deed is not a business day, the act, matter or thing must be done on the next business day;
  - 1.2.4 a reference in this deed to "dollars" or "\$" means Australian dollars and all amounts payable under this deed are payable in Australian dollars;
  - 1.2.5 a reference in this deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - 1.2.6 a reference in this deed to any deed, document or agreement is to that deed, document or agreement as amended, novated, supplemented or replaced;
  - 1.2.7 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed;
  - 1.2.8 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
  - 1.2.9 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
  - 1.2.10 a word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender also indicates the other genders;
  - 1.2.11 a reference to the word "include" or "including" is to be interpreted without limitation;
  - 1.2.12 a reference to "deal with" includes selling, leasing, transferring, parting with possession of, otherwise disposing of and conferring a right or interest on someone else and agreeing to do any of those things, and "dealing" and "dealing with" have equivalent meanings;
  - 1.2.13 a reference to "owing" means actually or contingently owing, and "owe" and "owed" have an equivalent meaning;
  - 1.2.14 any schedules and attachments form part of this deed;

- 1.2.15 a reference in this deed to a day, month or quarter means a calendar day, calendar month or calendar quarter;
- 1.2.16 a reference to "immediately available funds" means a bank cheque or any immediately available funds received during normal banking hours;
- 1.2.17 a reference to a "law or regulation" includes any law or regulation regarding capital adequacy, prudential limits, liquidity, reserve assets or Tax;
- 1.2.18 a reference to a "subsidiary" or to a "related body corporate" has the meaning that applies in the *Corporations Act 2001* (Cth); and
- 1.2.19 a reference to a "holding company" means, in relation to a person, any other person in respect of which it is a subsidiary.

## **2. SUBORDINATION AND PERMITTED PAYMENTS**

### **Subordination**

- 2.1 The Junior Debt and the rights and claims of the Junior Creditor in respect of the Junior Debt are, subject only to clause 2.3, subordinated and postponed and made subject in right of payment to the Senior Debt and the rights and claims of the Senior Creditor in respect of the Senior Debt. Until the Discharge Date, subject only to clause 2.3:
  - 2.1.1 the Junior Debt is not payable (from any source) and may not be declared payable;
  - 2.1.2 the Borrower must not pay or repay (from any source) the Junior Debt; and
  - 2.1.3 the Junior Creditor must not accept payment of the Junior Debt.
- 2.2 The subordination effected by this deed applies at all times until the Discharge Date, including if and while the Borrower is in liquidation.

### **Permitted Payments**

- 2.3 Prior to the Discharge Date and despite clause 2.1, if, and only if, the conditions set out in clause 2.4 are fully satisfied, the Borrower may pay any amount in respect of the Junior Debt up to an amount equal to a Permitted Payment.
- 2.4 The conditions referred to in clause 2.3 are that:
  - 2.4.1 the amount is a Permitted Payment and for an amount equal to or less than the Permitted Payment;
  - 2.4.2 neither the Borrower nor the Junior Creditor is in breach of this deed unless that breach has been remedied to the satisfaction of the Senior Creditor or waived in writing by the Senior Creditor;
  - 2.4.3 the Borrower is not in breach of the Senior Loan Documents unless that breach has been remedied to the satisfaction of the Senior Creditor or waived in writing by the Senior Creditor;

- 2.4.4 the Borrower is not in breach of the Junior Loan Documents unless that breach has been remedied to the satisfaction of the Junior Creditor or waived in writing by the Junior Creditor;
- 2.4.5 neither the Borrower nor the Junior Creditor is in liquidation and winding-up proceedings have not been issued, commenced or threatened for its liquidation or if issued or commenced have been permanently dismissed or withdrawn; and
- 2.4.6 the Borrower is, or if the payment were made would be, able to pay all its debts as and when they become due out of its own money.

### 3. PROTECTIONS FOR SENIOR CREDITOR

#### Restrictions on Junior Creditor

- 3.1 Until the Discharge Date the Junior Creditor must not do any of the following:
  - 3.1.1 **Demand payment:** except as permitted under clause 2.3, take any step to recover the Junior Debt or claim or receive the benefit of any money held by the Senior Creditor;
  - 3.1.2 **Set-off:** except as permitted under clause 2.3, discharge the Junior Debt under any right of set off, deduction or combination of accounts;
  - 3.1.3 **Enforce rights:** take any step to enforce a Guarantee or Security Interest provided in support of the Junior Debt or make a claim or exercise a right, power or remedy (including under any Junior Loan Documents) against the Borrower;
  - 3.1.4 **Liquidation:**
    - 3.1.4.1 vote for, or take any step which may lead to, the Borrower being wound up or taken to be insolvent under any law;
    - 3.1.4.2 prove for or claim, or exercise any vote or other rights in respect of, the Junior Debt in any form of External Administration of the Borrower; and
    - 3.1.4.3 receive the benefit of any dividend, distribution or other payment made pursuant to any process of External Administration;
  - 3.1.5 **Subrogation:** be subrogated to the Senior Creditor; and
  - 3.1.6 **Maintain rights:** novate, assign, vary, replace, rescind or waive any right held in respect of the Junior Debt, including under any Junior Loan Document.

#### Payments held in trust

- 3.2 The Junior Creditor must, subject only to clause 2.3, hold in trust for the Senior Creditor any amount received by the Junior Creditor that is not permitted to be received under this deed.

### Turnover of payments

- 3.3 The Junior Creditor must promptly pay to the Senior Creditor any amount by which the Junior Debt is paid, reduced or discharged in contravention of this deed. For the purpose of this deed:
- 3.3.1 amounts that must be paid to the Senior Creditor include the following:
- 3.3.1.1 any amount by which the Junior Debt is at any time reduced or discharged by set off, deduction or combination of account;
  - 3.3.1.2 any amount recovered from enforcement of a guarantee or a Security Interest provided in support of the Junior Debt;
  - 3.3.1.3 any amount received as a dividend, distribution or other payment made pursuant to any process of External Administration of the Borrower; and
  - 3.3.1.4 any amount received from the novation, assignment, variance, replacement, rescission or waiver of any right held in respect of the Junior Debt, including under any Junior Loan Document; and
- 3.3.2 the Junior Debt will be deemed, as between the Junior Creditor and the Borrower, not to have been reduced or discharged to the extent the Junior Creditor turns over payment to the Senior Creditor under this clause.
- 3.4 The perpetuity period applicable to each trust contained in this deed is a period from the date of this deed until the Discharge Date.
- 3.5 The Junior Creditor acknowledges that on the date of this deed the Senior Creditor has deposited in New South Wales the sum of [REDACTED] with the Junior Creditor to establish each trust for which each Junior Creditor is to act as trustee under this deed.
- 3.6 The Junior Creditor declares that it holds the sum mentioned in clause 3.5, together with all amounts referred to in clause 3.2, on the trusts constituted in this deed.
- 3.7 All amounts held in trust by each Junior Creditor under this deed must be immediately paid and applied by that Junior Creditor in the following manner and order of priority:
- 3.7.1 first, by payment to the Senior Creditor of an amount equal to the costs, expenses and liabilities incurred by the Senior Creditor in respect of the recovery or receipt of such amounts;
  - 3.7.2 second, by payment to the Senior Creditor towards satisfaction of the Senior Debt;
  - 3.7.3 third, by payment to the Senior Creditor of all other money due and owing to the Senior Creditor by the Junior Creditors under this deed; and
  - 3.7.4 fourth, but only after the Senior Debt and all amounts referred to in clause 3.7.1 and 3.7.3 have been Finally Paid, by payment to the Junior Creditor in or towards satisfaction of the Junior Debt.

### **Suspense accounts**

- 3.8 The Senior Creditor may apply to the credit of a suspense account:
- 3.8.1 any amounts received under this deed;
  - 3.8.2 any dividends, distributions or other amounts received in any liquidation of the Borrower in respect of the Senior Debt or any money due or owing under this deed; and
  - 3.8.3 any other amounts received from the Borrower or the Junior Creditor or any other person in respect of the Senior Debt or any money due or owing under this deed.
- 3.9 The Senior Creditor may retain the amounts in a suspense account for as long as it determines and is not obliged to apply them in or towards satisfaction of the Senior Debt or any money due or owing under this deed.

### **Subordination on insolvency**

- 3.10 If any process of External Administration occurs in respect of the Borrower, the following will apply:
- 3.10.1 the Junior Debt will be payable immediately;
  - 3.10.2 the Senior Creditor may take any action on behalf of the Junior Creditor to recover the Junior Debt. For example, the Senior Creditor may:
    - 3.10.2.1 demand, claim, enforce and prove for the Junior Debt;
    - 3.10.2.2 exercise any right in respect of the Junior Debt, including any right to vote as a creditor of the Borrower;
    - 3.10.2.3 file claims, give receipts and take any proceedings or other legal action the Senior Creditor considers necessary; and
    - 3.10.2.4 receive distributions of any kind in respect of the Junior Debt;
  - 3.10.3 the Junior Creditor must:
    - 3.10.3.1 not take any action to recover the Junior Debt, other than as directed by the Senior Creditor;
    - 3.10.3.2 direct any trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Borrower to pay distributions owing to it directly to the Senior Creditor or as the Senior Creditor directs; or
    - 3.10.3.3 take action necessary to give effect to clause 3.10.2 if the Senior Creditor is not entitled to take, or is prevented from taking, any action for the recovery of the Junior Debt;
  - 3.10.4 the Junior Creditor's claims against the Borrower in respect of Junior Debt will be subordinate in right of payment to claims against the Borrower in respect of Senior Debt; and

- 3.10.5 if there is a distribution of any of the Borrower's assets, including payment in cash, property or securities, to creditors of the Borrower on liquidation, all of the Senior Debt must be paid in full in cash before a payment is made for or on account of the Junior Debt.
- 3.11 Prior to the Discharge Date and if required by the Senior Creditor, the Junior Creditor must prove in any liquidation of the Borrower for all the Junior Debt or a part of the Junior Debt nominated by the Senior Creditor and any money recovered or received under or in respect of the liquidation will be held on the trusts of this deed.
- 3.12 If the Junior Creditor proves in any liquidation in accordance with clause 3.11 it must not withdraw or vary or attempt to withdraw or vary any proof or claim so lodged without the prior written consent of the Senior Creditor.
- 3.13 If the Junior Creditor does not comply with clause 3.11 or clause 3.12 the Senior Creditor may, and the Junior Creditor irrevocably authorises the Senior Creditor to, prove in the liquidation (without limitation, by filing any claim or proof on behalf of the Junior Creditor).

#### **Appointment of attorneys**

- 3.14 For valuable consideration (receipt of which is acknowledged), the Junior Creditor irrevocably appoints as its separate attorneys the Senior Creditor and each of the Senior Creditor's officers, managers and solicitors (each an "Attorney") with the power to do any one or more of the following, but only if a process of External Administration has commenced in respect of the Borrower and is continuing:
- 3.14.1 anything the Junior Creditor can do in connection with the bankruptcy or insolvency of the Borrower;
- 3.14.2 anything connected to recovery of the Junior Debt;
- 3.14.3 anything the Attorney thinks necessary to protect the Senior Creditor's rights under this deed or to exercise any power that the Secured Party has under this deed; and
- 3.14.4 delegate its powers to any person for any period.
- 3.15 Each Attorney appointed under this deed is not liable for any liability, loss, damage, cost or expense the Junior Creditor incurs or suffers as a result of the Attorney's actions, other than any liability, loss, damage, cost or expense which arises from the fraud, wilful default or gross negligence of the attorney. The Borrower must indemnify each Attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and Taxes incurred or suffered while acting as the Borrower's Attorney.

#### **Order absolute**

- 3.16 The ranking of debt set out in this deed is absolute and is not affected by any act, omission, matter or thing which, but for this clause, might operate to alter that ranking. This includes any one or more of the following:
- 3.16.1 any act of the Borrower or any failure of the Borrower to comply with this deed;
- 3.16.2 anything contained in any document creating or relating to a Debt;

- 3.16.3 any reduction or increase from time to time in the amount of a Debt; and
- 3.16.4 the giving of any time, waiver, discharge or other indulgence or concession to the Borrower or any other person.

#### **Reinstatement**

- 3.17 If, after the Senior Creditor applies any amount against any of the Senior Debt, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to insolvency or the protection of creditors:
  - 3.17.1 the Senior Creditor's rights are to be reinstated and will be the same in respect of that amount or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
  - 3.17.2 the Junior Creditor and the Borrower must immediately do anything (including the signing of documents) required by the Senior Creditor to restore to the Senior Creditor the rights under this deed to which it was entitled immediately before application or the payment or transaction giving rise to it.

#### **Indemnity**

- 3.18 The Borrower and the Junior Creditor jointly and severally and unconditionally and irrevocably indemnify the Senior Creditor against any loss, liability, cost or expense (including legal costs on a full indemnity basis) incurred or suffered because the Borrower or the Junior Creditor fails to comply with its obligations to the Senior Creditor under this deed for any reason (including, but not limited to the liquidation of either of them).

### **4. REPRESENTATIONS AND WARRANTIES**

#### **General representations**

- 4.1 Each of the Junior Creditor and the Borrower represents and warrants to the Senior Creditor (each in respect of itself) that, except as previously notified to and accepted by the Senior Creditor in writing, each of the following is true:
  - 4.1.1 **Status:** It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
  - 4.1.2 **Power:** It has the power to do each of the following:
    - 4.1.2.1 to own its property and carry on its business as it is being conducted; and
    - 4.1.2.2 to enter into, perform and deliver this deed and the transactions contemplated by this deed.
  - 4.1.3 **Binding obligations:** The obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable.
  - 4.1.4 **No conflict:** The entry into and performance by it of, and the transactions contemplated by, this deed do not and will not conflict with any of the following:
    - 4.1.4.1 any law or regulation applicable to it;



- 4.1.4.2 its constitutional documents; or
- 4.1.4.3 any material obligation under any agreement or instrument binding on it or any of its property.

4.1.5 **Authority:** It has taken all corporate actions and obtained or effected all required Authorisations, each of which is in full force and effect:

4.1.5.1 to enable it lawfully to enter into, deliver, exercise its rights and perform its obligations under this deed and the transactions contemplated by this deed;

4.1.5.2 to make this deed valid, binding, enforceable and admissible in evidence in its jurisdiction of incorporation and

4.1.5.3 which are necessary and material to it carrying on its business.

4.1.6 **Not a trustee:** It does not enter this deed as a trustee.

#### **Additional representations**

4.2 The Junior Creditor represents and warrants to the Senior Creditor as at the date of this deed that each of the following is true:

4.2.1 **No other debt:** No financial indebtedness of any kind, whether current or prospective and whether actual or contingent, is due by the Borrower to the Junior Creditor, other than under the Junior Loan Documents; and

4.2.2 **No security:** No Security Interest is held by the Junior Creditor in respect of any asset of the Borrower or in support of the Junior Debt.

#### **Survival**

4.3 The representations and warranties given under this deed survive the execution of this deed.

### **5. UNDERTAKINGS**

#### **Confirmation by the Borrower**

5.1 The Borrower consents to this deed and confirms that each of its obligations and undertakings under or in respect of the Senior Loan Documents and the Junior Loan Documents is and will remain in full force and effect despite this deed, and are not discharged or, other than as expressly set out in this deed, affected by any of the provisions of this deed.

#### **No effect on Security Interests and Guarantees**

5.2 The Borrower confirms that neither its obligations under, nor any of the rights, powers and remedies conferred upon the Senior Creditor by, a Senior Loan Document and each Junior Loan Document which is a Security Interest or Guarantee or by law is discharged, impaired or otherwise affected by the provisions of this deed.

### **Information undertakings**

- 5.3 The Borrower and the Junior Creditor must supply to the Senior Creditor each of the following:
- 5.3.1 **Information requested:** Promptly, any information regarding the Junior Debt as the Senior Creditor may request;
  - 5.3.2 **Notification of breach:** Promptly on becoming aware of a breach of this deed, a notice of the breach and details of the steps, if any, being taken to remedy it; and
  - 5.3.3 **Junior Loan Documents:** Promptly on request, a copy of all Junior Loan Documents.

### **Co-operation**

- 5.4 The Borrower and the Junior Creditor must co-operate with the Senior Creditor by doing everything the Senior Creditor asks to give the Senior Creditor the full benefit of this deed.

### **Amendments to documents**

- 5.5 Prior to the Discharge Date, the Junior Creditor must not (without the prior written consent of the Senior Creditor) amend or vary any of the Junior Loan Documents.

### **Amendments to Junior Loan Documents**

- 5.6 The parties to, or holding any benefit under, the Junior Loan Documents agree that:
- 5.6.1 despite the Junior Loan Documents, except to the extent expressly permitted by this deed the Junior Debt is not repayable until the Discharge Date has occurred; and
  - 5.6.2 the Junior Loan Documents are varied to the extent necessary to give effect to this deed.

## **6. SET-OFF**

- 6.1 The Senior Creditor may, but need not, set off any matured obligation due from the Junior Creditor under this deed against any matured obligation owed by the Senior Creditor to the Junior Creditor (whether or not matured), regardless of the place of payment, booking branch or currency of either obligation.
- 6.2 If the obligations are in different currencies, the Senior Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 6.3 Prior to the Discharge Date, if after the commencement of the liquidation of the Borrower, the Junior Creditor does not actually receive a dividend, payment or other distribution because of the application of any law or rule relating to set off (including section 553C of the Corporations Act), then the Junior Creditor must nevertheless pay to the Senior Creditor that amount which would otherwise have been payable under any liquidation had the set-off not applied and had the dividend, payment or other distribution actually been received.

## **7. INTEREST**

### **Payment of interest**

7.1 Each of the Borrower and the Junior Creditor must pay interest on:

7.1.1 any money due and payable under this deed but unpaid; and

7.1.2 any interest payable but unpaid under this clause 7.

### **Accrual of interest**

7.2 The interest payable under this clause 7:

7.2.1 accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money become merged; and

7.2.2 may be capitalised by the Senior Creditor at monthly intervals.

### **Rate of interest**

7.3 The rate of interest payable under this clause 7 on the Senior Debt or any money due or owing under this deed is the higher of:

7.3.1 the rate specified in clause 5.3 of the Senior Loan Agreement:

7.3.1.1 on the date that part of any money payable under this deed becomes due and payable but is unpaid; and

7.3.1.2 on each date which is one month after the immediately preceding date on which the rate was specified under this clause 7.3; and

7.3.2 the rate fixed or payable under a judgment or other thing referred to in clause 7.2.2.

## **8. COSTS AND EXPENSES**

### **Transaction expenses**

8.1 The Borrower must promptly on demand pay a Creditor the amount of all costs and expenses (including legal fees) reasonably incurred by the Creditor in connection with the negotiation, preparation, printing and execution of this deed.

### **Amendment costs**

8.2 The Borrower must promptly on demand pay a Creditor the amount of all costs and expenses (including legal fees) reasonably incurred by or for the account of the Creditor in evaluating, negotiating or documenting any consent or waiver under this deed or any amendment to this deed.

**Enforcement costs**

8.3 The Borrower must, on demand, pay to a Creditor the amount of all costs and expenses (including legal expenses on a full indemnity basis) incurred by the Creditor in connection with the enforcement of, or the preservation of any rights under, this deed.

**9. NOTICES**

**Giving notices**

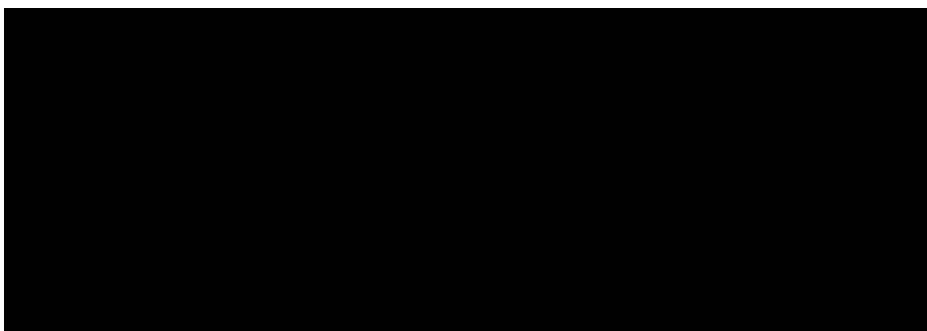
9.1 Any notice or communication (including any consent or waiver) given to a party under this deed is only given if it is in writing and sent in one of the following ways:

9.1.1 delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below;

9.1.2 faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below; or

9.1.3 sent by email to that Party to the email address set out below.

**Senior Creditor**



**Junior Creditor**

Name: St George Community Housing Limited  
Address: 38 Humphreys Lane, Hurstville NSW 2220  
Email: office@sgch.com.au  
Fax number: +61 2 9585 1564  
Attention: Chief Financial Officer

**Borrower**

Name: SGCH Sustainability Limited  
Address: 38 Humphreys Lane, Hurstville NSW 2220

Email: office@sgch.com.au  
Fax number: +61 2 9585 1564  
Attention: Chief Executive Officer

**Change of address, fax number or email address**

- 9.2 If a party gives the other party three business days' notice of a change of its address, fax number or email address, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address, fax number or email address.

**Time notice is given**

- 9.3 Any notice or communication is to be treated as given at the following time:
- 9.3.1 to the Borrower or the Junior Creditor:
    - 9.3.1.1 if it is delivered, when it is left at the its address;
    - 9.3.1.2 if it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted;
    - 9.3.1.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
    - 9.3.1.4 if it is sent by email to the specified email address, as soon as the email is received in readable form; and
  - 9.3.2 to the Senior Creditor, when it is actually received.
- 9.4 However, if any notice or communication is given, on a day that is not a business day or after 5.00pm on a business day, in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next business day.

**10. MISCELLANEOUS**

**Conflict**

- 10.1 Where any right, power, authority, discretion or remedy conferred on the Senior Creditor or an Attorney by this deed is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

**Termination of subordination**

- 10.2 Subject to clause 10.3, this deed will automatically terminate with no further action required of the parties and will cease to have any effect the day following the Discharge Date.
- 10.3 If the circumstances set out in clause 3.17 arise after the Discharge Date, the provisions of this deed will apply as if this deed had not been terminated in accordance with clause 10.2.

**Allowing conduct of others**

- 10.4 If the Borrower or the Junior Creditor is not permitted to do something by this deed, it must not allow or assist anyone else to do that thing.

**Assignment**

- 10.5 The Senior Creditor cannot assign or transfer any of its rights and obligations under this deed other than as permitted under and in accordance with the Facility Agreement.
- 10.6 The Borrower and the Junior Creditor can only assign or deal with its rights and obligations under this deed with the Senior Creditor's consent.

**Attorneys**

- 10.7 Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of any revocation, suspension or variation of the power of attorney under the authority of which the attorney executes this deed.

**Completion of deed**

- 10.8 The Borrower and the Junior Creditor irrevocably authorise the Senior Creditor to date this deed.

**Confidentiality**

- 10.9 The Borrower authorises each Creditor to disclose to the other all information held by them in relation to the Borrower from time to time.

**Counterparts**

- 10.10 This deed may be signed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this deed.

**Entire agreement**

- 10.11 This deed contains everything the Senior Creditor has agreed in relation to the matters it deals with. The Borrower and the Junior Creditor cannot rely on an earlier document, or anything said or done by the Senior Creditor, or by a director, officer, agent or employee of the Senior Creditor, before this deed was executed.

**Exercise of rights**

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

#### **Further steps**

- 10.14 The Borrower and the Junior Creditor must do everything reasonably necessary (including executing or producing documents, getting documents executed or produced by others and obtaining consents) to give effect to this deed (including the transactions contemplated by it).

#### **Governing law and jurisdiction**

- 10.15 This deed is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **Indemnities**

- 10.16 Each indemnity in this deed is a continuing obligation, separate from the other obligations of the parties, and continues after this deed ends.
- 10.17 A party may enforce a right of indemnity at any time (including before it has incurred loss).

#### **Other rights unaffected**

- 10.18 The Senior Creditor's rights under this deed are in addition to any rights that the Senior Creditor may have apart from it.

#### **Severability**

- 10.19 Each provision of this deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this deed in the relevant jurisdiction, but the rest of this deed will not be affected by the severing of the provision. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

#### **Variation**

- 10.20 No variation of this deed will be of any force or effect unless it is in writing and signed by the Senior Creditor. No variation (including any change to the Facility Limit or the Maturity Date (each as defined in the Intercompany Loan Agreement)) of any Junior Loan Document will be of any force or effect unless the Senior Creditor has provided its prior written consent.

#### **Waiver and consents**

- 10.21 A waiver or consent provided by the Senior Creditor under this deed:
- 10.21.1 must be in writing and signed by the Senior Creditor;
  - 10.21.2 will be provided at the Senior Creditor's discretion;
  - 10.21.3 will only affect the particular provision, obligation or breach for which it is given;
  - 10.21.4 will not imply that a waiver or consent is provided in respect of any other provision, obligation or breach or provided on any other occasion; and
  - 10.21.5 may be provided conditionally in which case the Borrower agrees to comply with the conditions of the consent or waiver given by the Senior Creditor.

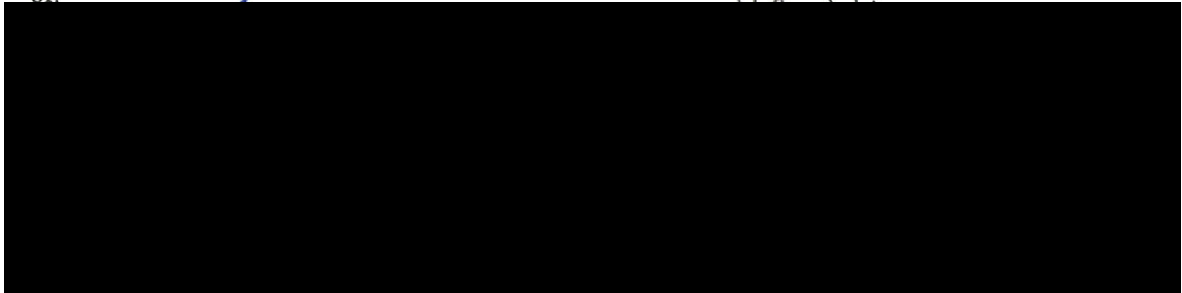
10.22 The fact that the Senior Creditor fails to do, or delays in doing, something the Senior Creditor is entitled to do under this deed does not amount to a waiver or consent.



**EXECUTED AS A DEED**

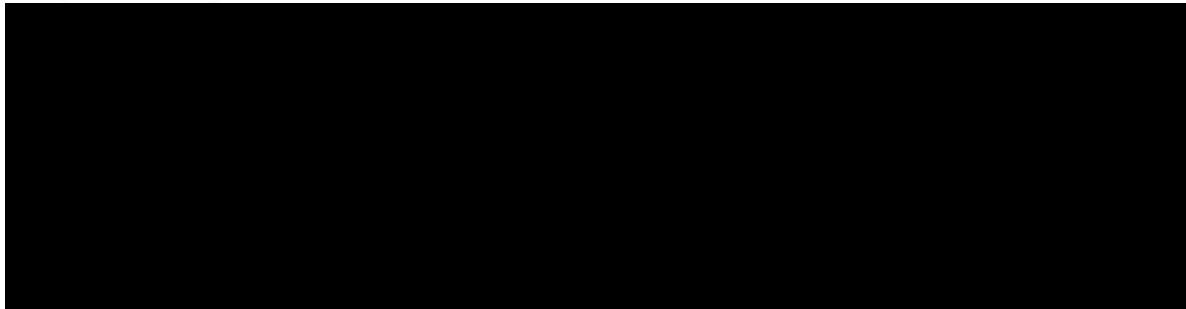
**BORROWER**

Signed, sealed and delivered by **SGCH Sustainability Limited** ABN 21 606 965 799 by its attorney duly appointed by power of attorney dated **19 NOVEMBER 2015** and who has received no notice of the revocation of the power, in the presence of:

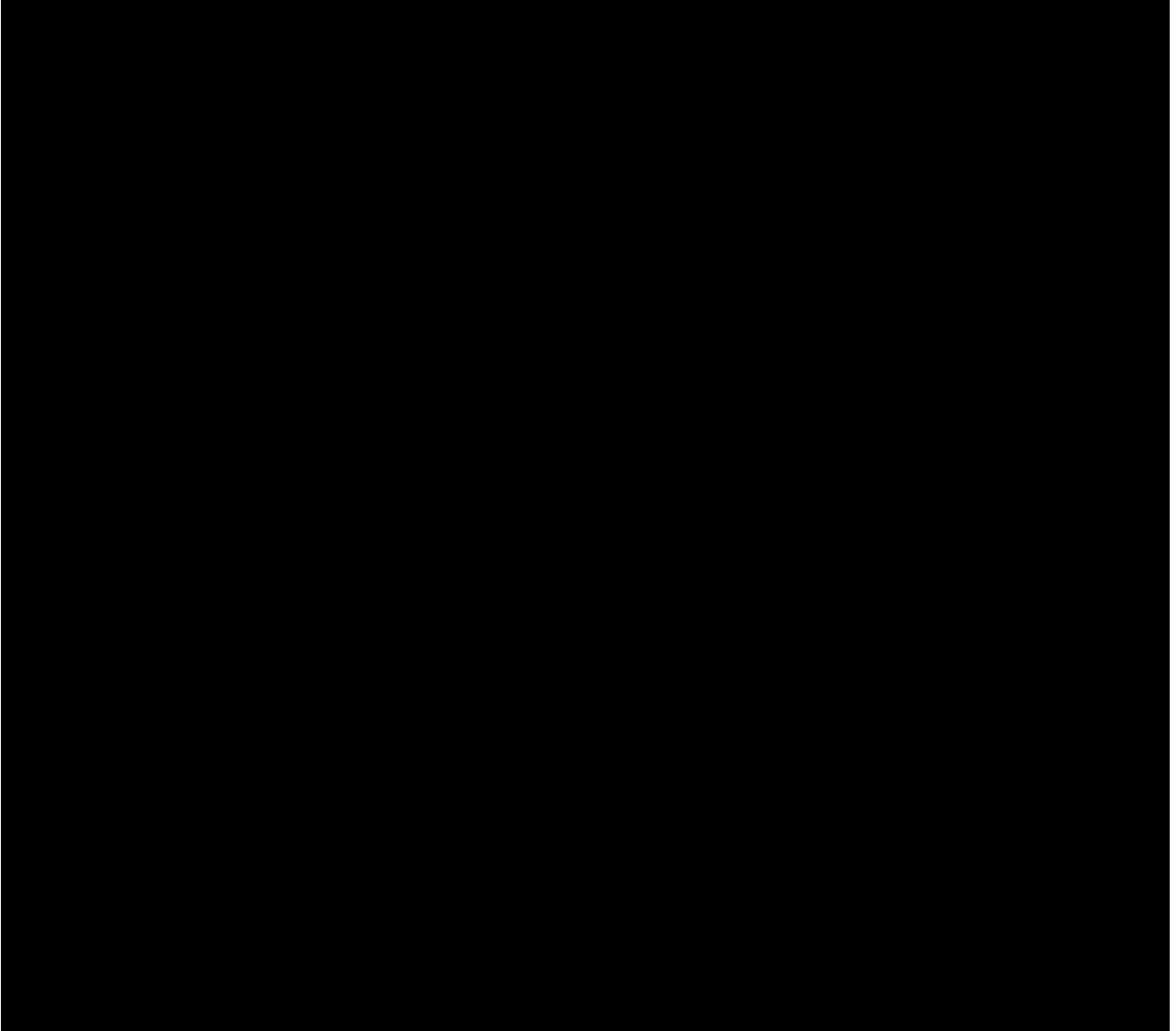


**JUNIOR CREDITOR**

Signed, sealed and delivered by **St George Community Housing Limited** ACN 133 729 503 by its attorney duly appointed by power of attorney dated **19 NOVEMBER 2015** and who has received no notice of the revocation of the power, in the presence



**SENIOR CREDITOR**



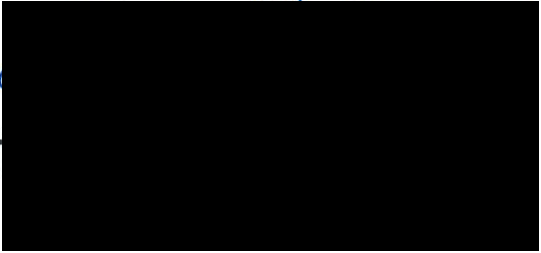
2020年10月10日



I certify that this is a true, complete and up to date copy of the original document sighted by me at 3:40PM this 10<sup>th</sup> day of February 2015

Execution Version

# Deed of Amendment



ADI Account Control Deed



SGCH Sustainability Limited (**Borrower**)



Level 40 Governor Macquarie Tower 1 Farrer Place  
Sydney NSW 2000 Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
minterellison.com

MinterEllison

# Deed of Amendment

## ADI Account Control Deed

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|  |          |
|--|----------|
| <b>Details</b>                               | <b>3</b> |
| <b>Agreed terms</b>                          | <b>4</b> |
| <b>1. Defined terms &amp; interpretation</b> | <b>4</b> |
| 1.1 Account Deed defined terms               | 4        |
| 1.2 Defined terms                            | 4        |
| 1.3 Interpretation                           | 4        |
| <b>2. Amendment</b>                          | <b>4</b> |
| <b>3. New ADI Accounts</b>                   | <b>4</b> |
| 3.1 Notice of charge                         | 4        |
| 3.2 Acknowledgments and confirmations        | 4        |
| <b>4. General provisions</b>                 | <b>5</b> |
| 4.1 Further steps                            | 5        |
| 4.2 Severability                             | 5        |
| 4.3 Governing law and jurisdiction           | 5        |
| 4.4 Counterparts                             | 5        |
| <b>Schedule 1 - Amendment</b>                | <b>6</b> |
| <b>Signing page</b>                          | <b>7</b> |

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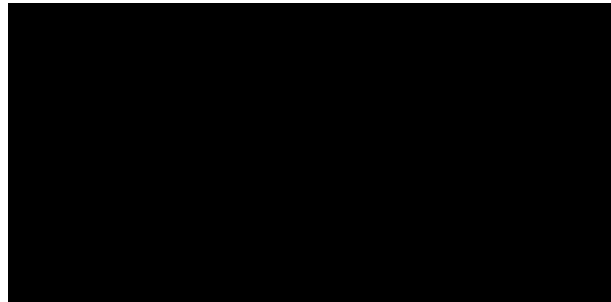
# Details

Date 20 January 2017

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## Parties

Name  
ABN  
Short form name  
Notice details

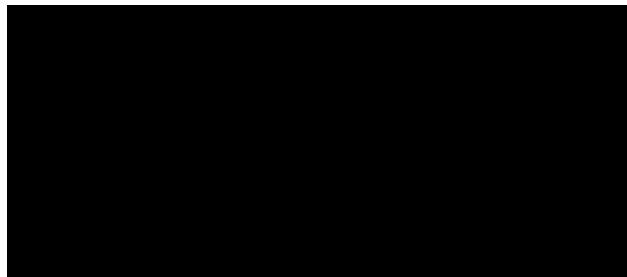


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|                 |  |
|-----------------|--|
| Name            | <b>SGCH Sustainability Limited</b>   |
| ABN             | 21 606 965 799   |
| Short form name | <b>Borrower</b>  |
| Notice details  | Level 5, 38 Humphreys Lane, Hurstville NSW 2220<br>Facsimile: +61 2 9585 1564<br>Email: office@sgch.com.au<br>Attention: Chief Executive Officer |

---

Name  
ABN  
Short form name  
Notice details



# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Account Deed defined terms

In this document, unless the contrary intention appears, terms that are capitalised and not otherwise defined in this document have the meaning provided in the Amended Account Deed.

### 1.2 Defined terms

In this document:

**Account Deed** means the deed titled "*ADI Account control deed*" between the Financier, the Borrower and the Account Bank dated 1 December 2015.

**Amended Account Deed** means the Account Deed as amended by the Amendment.

**Amendment** has the meaning given in clause 2.

**New ADI Account** means each of:

- (a) "*SAHF Tranche Proceeds Account*" account of the Borrower held with the Account Bank and designated with account number [REDACTED] and BSB number [REDACTED]
- (b) "*SAHF Tranche Construction Account*" account of the Borrower held with the Account Bank and designated with account number [REDACTED]
- (c) "*SAHF Tranche Mandatory Prepayment Account*" account of the Borrower held with the Account Bank and designated with account number [REDACTED] and
- (d) "*Maintenance Reserve Account*" account of the Borrower held with the Account Bank and designated with account number [REDACTED]

### 1.3 Interpretation

Clause 1.2 of the Amended Account Deed is incorporated in, and applies to, this document as if set out in full with any necessary amendments.

## 2. Amendment

On and from the date of this document:

- (a) the Account Deed is amended in accordance with Schedule 1 (**Amendment**); and
- (b) each party agrees to be bound by the Amended Account Deed.

## 3. New ADI Accounts

### 3.1 Notice of charge

The Borrower and the Financier gives notice to the Account Bank of:

- (a) the creation of a charge over each New ADI Account by the Borrower in favour of the Financier under the General Security Deed; and
- (b) the Financier's interest in each New ADI Account.

### 3.2 Acknowledgments and confirmations

The Account Bank repeats each of its acknowledgements and confirmations contained in clause 2.1 of the Amended Account Deed, with reference to the facts and circumstances as at the date of this document.

## 4. General provisions

### 4.1 Further steps

The Account Bank and the Borrower each agree to do anything the Financier reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind the Account Bank and the Borrower and any other person intended to be bound under this document.

### 4.2 Severability

Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of the document will not be affected by the severing of the provisions. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### 4.3 Governing law and jurisdiction

- (a) This document is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each party irrevocably waives any immunity in respect of its obligations under this document that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

### 4.4 Counterparts

- (a) This document may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this document by signing any counterpart.



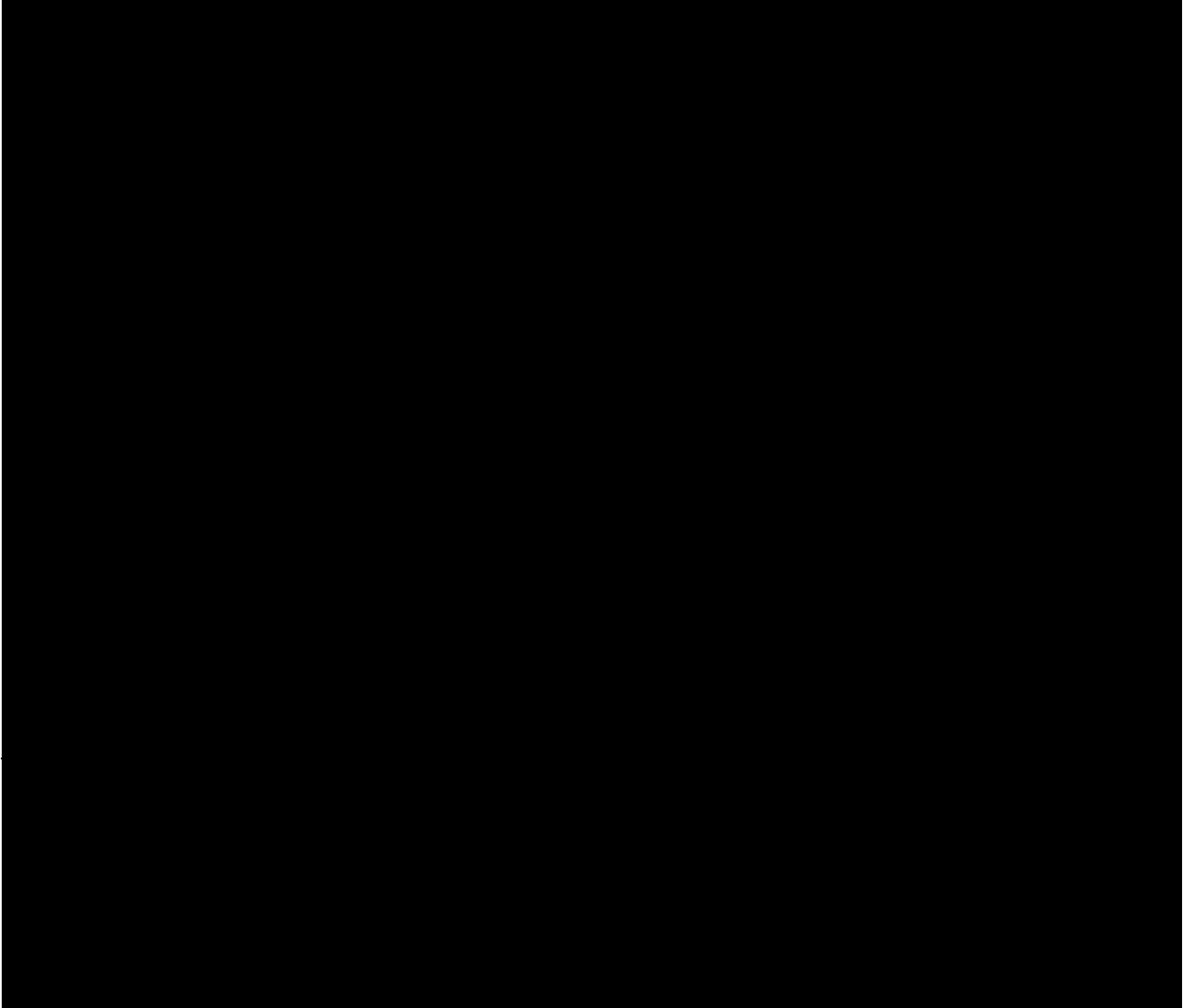
# Schedule 1 - Amendment

|   | Clause                                       | Amendment:   |
|---|--|--|
| 1 | Definition of 'Borrower Controlled Account'  | <p>Delete this definition in its entirety and replace with the following definition:</p> <p><b>Borrower Controlled Account</b> means each of the:</p> <ol style="list-style-type: none"> <li>1 "LHC Tranche Proceeds Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>2 "LHC Tranche Construction Account" account of the Borrower held with the Account Bank and designated with account [REDACTED]</li> <li>3 "Tenancy Sustainability Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>4 "Active Portfolio Management Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>5 "SAHF Tranche Proceeds Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>6 "SAHF Tranche Construction Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>7 "Maintenance Reserve Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> </ol> |
| 2 | Definition of 'Facility Agreement'           | <p>Insert the following words 'as amended from time to time, including pursuant to the Deed of Amendment and Restated dated on or about 20 January 2017' after the words 'Borrower and the Financier'.</p>   |
| 3 | Definition of 'Financier Controlled Account' | <p>Delete this definition in its entirety and replace with the following definition:</p> <p><b>Financier Controlled Account</b> means each of the:</p> <ol style="list-style-type: none"> <li>1 "Debt Service Reserve Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>2 "LHC Tranche Mandatory Prepayment Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>3 "SAHF Tranche Mandatory Prepayment Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> </ol>  |

# Signing page

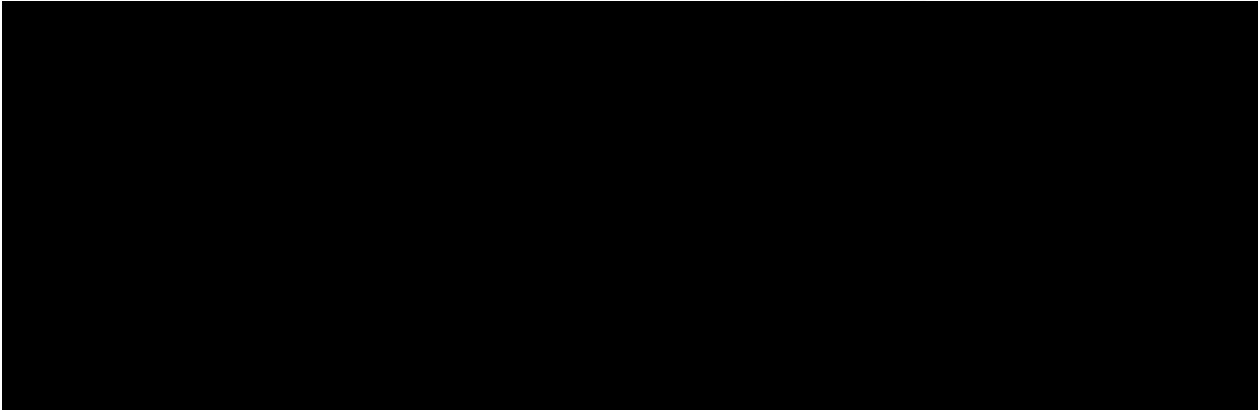
**EXECUTED** as a deed.

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

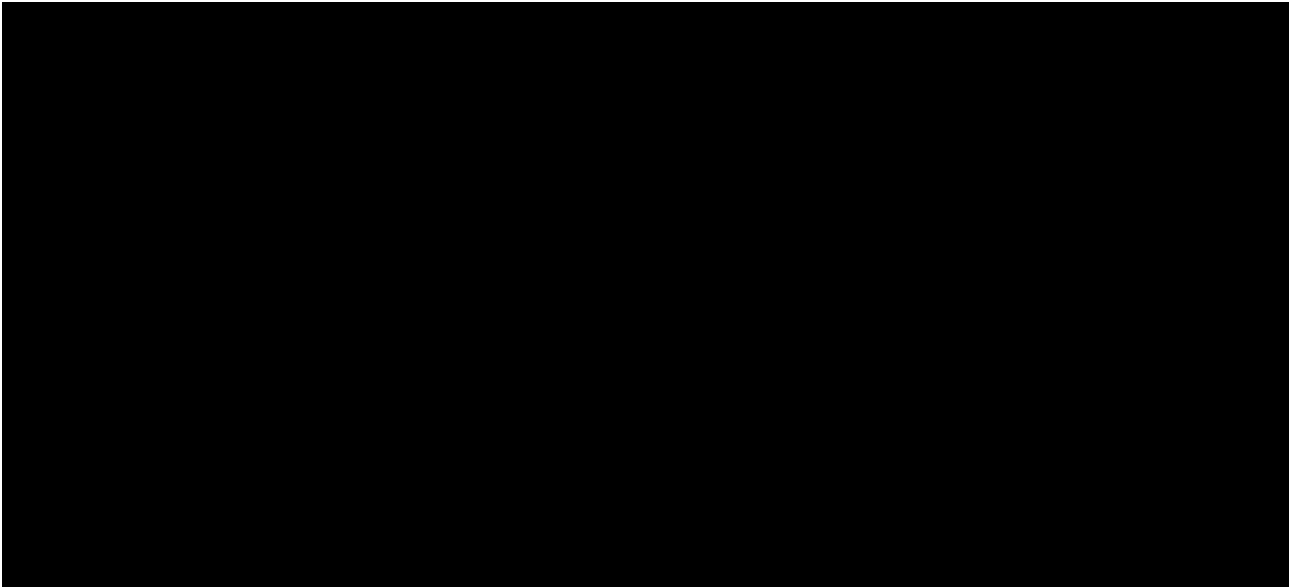


**Borrower**

Signed by **SGCH Sustainability Limited** ABN 21 606 965 799 by its attorney duly appointed by power of attorney dated 9 December 2016 and who has received no notice of the revocation of the power, in the presence of:



**Account Bank**

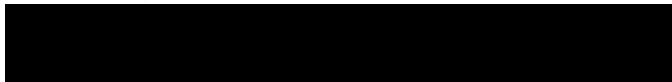




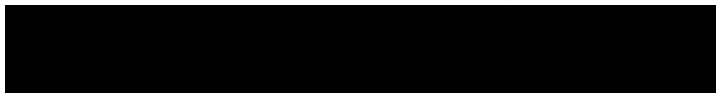
Execution Version

# Deed of Amendment

ADI Account Control Deed



SGCH Sustainability Limited (**Borrower**)



Level 40 Governor Macquarie Tower 1 Farrer Place  
Sydney NSW 2000 Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
minterellison.com

MinterEllison

# Deed of Amendment

## ADI Account Control Deed

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|  |          |
|--|----------|
| <b>Details</b>                               | <b>3</b> |
| <b>Agreed terms</b>                          | <b>4</b> |
| 1. <b>Defined terms &amp; interpretation</b> | <b>4</b> |
| 1.1 Account Deed defined terms               | 4        |
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| 2. <b>Amendment</b>                          | <b>4</b> |
| 3. <b>New ADI Accounts</b>                   | <b>4</b> |
| 3.1 Notice of charge                         | 4        |
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| 4.1 Further steps                            | 5        |
| 4.2 Severability                             | 5        |
| 4.3 Governing law and jurisdiction           | 5        |
| 4.4 Counterparts                             | 5        |
| <b>Schedule 1 - Amendment</b>                | <b>6</b> |
| <b>Signing page</b>                          | <b>7</b> |

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# Details

Date

20 January 2017

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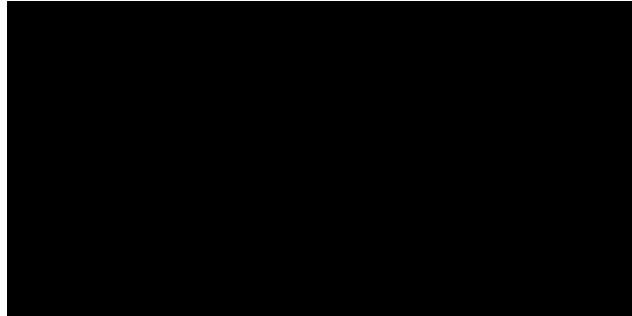
## Parties

Name

ABN

Short form name

Notice details



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Name

**SGCH Sustainability Limited**

ABN

21 606 965 799

Short form name

**Borrower**

Notice details

Level 5, 38 Humphreys Lane, Hurstville NSW 2220

Facsimile: +61 2 9585 1564

Email: office@sgch.com.au

Attention: Chief Executive Officer

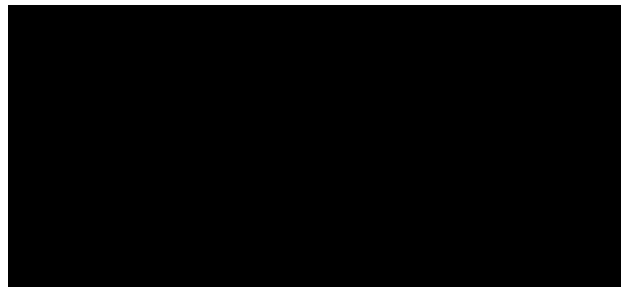
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Name

ABN

Short form name

Notice details



# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Account Deed defined terms

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### 1.2 Defined terms

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- (c) "*SAHF Tranche Mandatory Prepayment Account*" account of the Borrower held with the Account Bank and designated with account number [REDACTED] and
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Clause 1.2 of the Amended Account Deed is incorporated in, and applies to, this document as if set out in full with any necessary amendments.

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## 3. New ADI Accounts

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## 4. General provisions

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### 4.2 Severability

Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of the document will not be affected by the severing of the provisions. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

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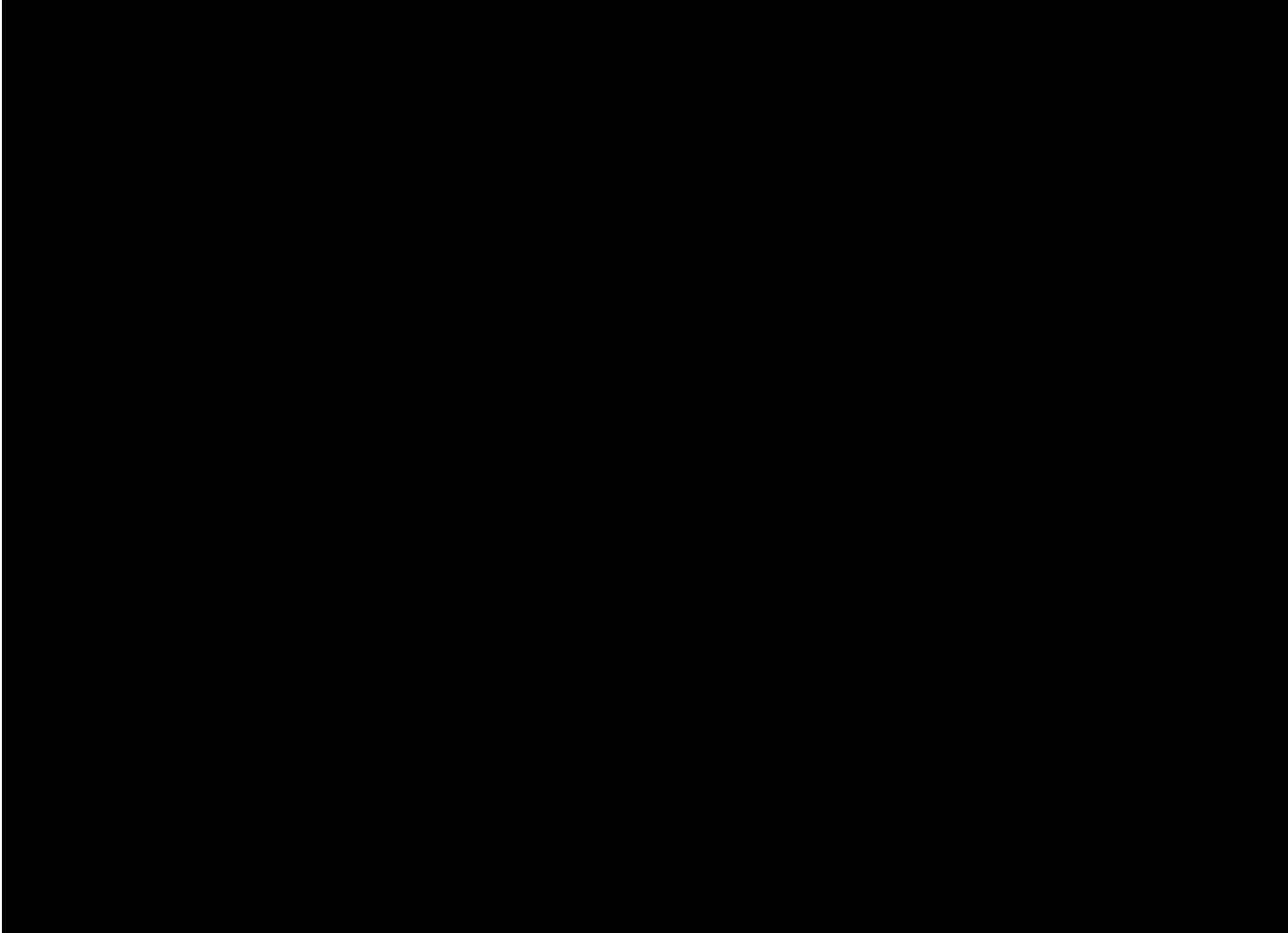
# Schedule 1 - Amendment

|   | Clause                                       | Amendment   |
|---|--|---|
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| 2 | Definition of 'Facility Agreement'           | <p>Insert the following words 'as amended from time to time, including pursuant to the Deed of Amendment and Restated dated on or about 20 January 2017' after the words 'Borrower and the Financier'.</p>  |
| 3 | Definition of 'Financier Controlled Account' | <p>Delete this definition in its entirety and replace with the following definition:</p> <p><b>Financier Controlled Account</b> means each of the:</p> <ol style="list-style-type: none"> <li>1 "Debt Service Reserve Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> <li>2 "LHC Tranche Mandatory Prepayment Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED] and</li> <li>3 "SAHF Tranche Mandatory Prepayment Account" account of the Borrower held with the Account Bank and designated with account number [REDACTED]</li> </ol>   |

# Signing page

EXECUTED as a deed.

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.



.....  
Name of witness  
(BLOCK LETTERS)

**Borrower**

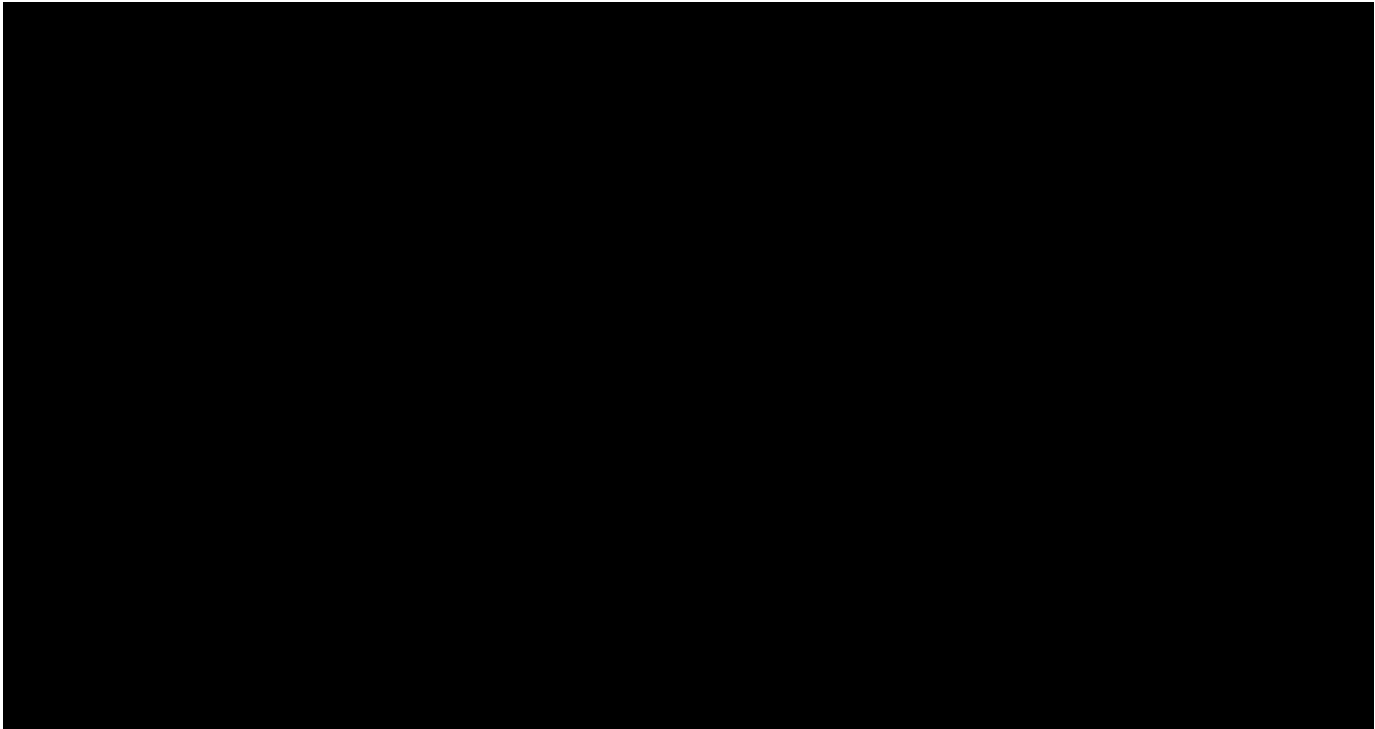
Signed by SGCH Sustainability Limited ABN 21 606 965 799 by its attorney duly appointed by power of attorney dated 9 December 2016 and who has received no notice of the revocation of the power, in the presence of:

.....  
Signature of witness

.....  
Signature of attorney

.....  
Name of witness (print)

.....  
Name of attorney (print)



I certify that this is a true complete and up to date copy of the original document sighted by me at 3:40PM this 10<sup>th</sup> day of February 201

**SGCHL TRIPARTITE DEED**

between

[Redacted]

(the "Financier")

**SGCH Sustainability Limited**  
("ServiceCo")

AND

**St George Community Housing Limited**  
("SGCHL")

in connection with the Social and Affordable Housing Fund - Services  
Subcontract

## SGCHL TRIPARTITE DEED

This deed is made on the 20 day of January 2017

BETWEEN:

1. [REDACTED]
2. SGCH Sustainability Limited ABN 21 606 965 799 ("ServiceCo"); and
3. St George Community Housing Limited ACN 133 729 503 ("SGCHL").

RECITALS:

- A. ServiceCo has entered into the Subcontract with SGCHL in relation to the Services.
- B. The Financier has provided financing to ServiceCo.
- C. ServiceCo has agreed to give the Financier the Financier Security.
- D. The parties have agreed to enter into this Deed in order to clarify the way in which their respective interests in the Subcontract and the Services relate to each other.

AGREEMENT

### 1. DEFINITIONS

In this Deed, the following words have the following meanings unless the context requires otherwise:

**'Controller'** means any receiver or receiver and manager, administrator, liquidator or official manager;

**'Facility Agreement'** means the Facility Agreement dated 19 November 2015 between ServiceCo and the Financier as amended and restated by the Deed of Amendment and Restatement dated on or about the date of this Deed;

**'Financier Security'** means a security interest over all assets of ServiceCo including ServiceCo's rights under the Subcontract and a mortgage over each Site by ServiceCo in favour of the Financier;

**'Insolvency Event'** means any of the following events:

- (a) ServiceCo becomes insolvent;
- (b) a Controller is appointed to ServiceCo or ServiceCo enters into a scheme of arrangement with its creditors or is wound up;
- (c) ServiceCo assigns any of its property for the benefit of creditors or any class of them;
- (d) an encumbrancee takes any step towards taking possession or takes possession of any assets of ServiceCo or exercises any power of sale in respect of ServiceCo; or

- (e) any insolvency event as defined in the Subcontract occurs in respect of ServiceCo;

**'Novatee'** means:

- (a) the Financier or a Controller appointed in accordance with the Financier Security; or
- (b) a person which SGCHL considers (acting reasonably) has the financial capacity to comply with ServiceCo's obligations under the Subcontract;

**'Project Materials'** means all documents and materials produced by SGCHL in performance of the Services;

**'Remedy Period'** has the meaning given in paragraph (c)(i) of Clause 5.1;

**'Secured Property'** means the property (including, without limitation, the Subcontract) secured by the Financier Security;

**'Services'** has the meaning given in the Subcontract;

**'Site'** has the meaning given in the Subcontract; and

**'Subcontract'** means Social and Affordable Housing Fund - Services Subcontract between ServiceCo and SGCHL.

## 2. CONSENTS

SGCHL:

- (a) consents to the Financier Security;
- (b) acknowledges that:
  - (i) the Financier Security constitutes an encumbrance on the Secured Property in priority to any interest which SGCHL may at any time have in any of the Secured Property;
  - (ii) at any time after the commencement or enforcement of the Financier Security, the Financier or a Controller appointed in accordance with the Financier Security may, but is not obliged to exercise all or any of the powers and perform all or any of the obligations, of ServiceCo under or in relation to the Subcontract as if it were ServiceCo to the exclusion of ServiceCo and such exercise or performance in accordance with the terms of the Subcontract will not itself constitute a default event or entitle SGCHL to terminate, rescind or accept repudiation of, or suspend performance of any of its obligations under the Subcontract; and
  - (iii) neither the Financier nor a Controller, appointed in accordance with the Financier Security will be liable, and will not be taken to have assumed liability, for any obligations of ServiceCo under the Subcontract as a result of the entry into or exercise of any powers under with the Financier Security or this Deed.

### 3. COMPLIANCE WITH SUBCONTRACT

- (a) SGCHL agrees with the Financier to comply with the terms of the Subcontract.
- (b) Nothing in this Deed obliges the Financier to make any payments under the Subcontract, and, for the avoidance of doubt, ServiceCo and not the Financier is liable to make all payments to SGCHL under the Subcontract other than where the Financier elects to pay SGCHL for the Services under Clause 5.1(e) or 5.3(b) or otherwise or where the Subcontract is novated to the Financier under Clause 7.1(c).

### 4. VARIATIONS TO SUBCONTRACT

#### 4.1 ServiceCo's agreement

ServiceCo:

- (a) agrees with the Financier not to vary the Subcontract or the Services without the Financier's written consent;
- (b) authorises SGCHL to agree with the Financier under Clause 4.2.

#### 4.2 SGCHL's agreement

SGCHL agrees with the Financier not to act on any instructions which would have the effect of varying the Subcontract unless it:

- (a) knows that the Financier has consented; or
- (b) has requested consent from the Financier and the Financier has not refused consent within 7 business days of receiving a request.

#### 4.3 No variations as at the date of this Deed

ServiceCo and SGCHL represent and warrant that, as at the date of this Deed, there have been no amendments to the terms of the Subcontract or the Services except as otherwise disclosed.

#### 4.4 Information generally

SGCHL agrees to provide the Financier with any information reasonably requested in relation to the Subcontract or the Services, including copies of any Project Materials (and ServiceCo irrevocably authorises SGCHL to provide this information to the Financier).

### 5. DEFAULT BY SERVICECO UNDER SUBCONTRACT

#### 5.1 Financier right to remedy

If SGCHL believes that any event has occurred giving SGCHL a right under the Subcontract or otherwise to terminate the Subcontract or suspend the Services (or any event has occurred which, after the giving of notice or the elapse of a period of time, will give SGCHL such a right) it shall:

- (a) give written notice to the Financier:
  - (i) describing the event which SGCHL believes has occurred; and

- (ii) stating whether the event is, in the reasonable opinion of SGCHL:
  - a. capable of being remedied and, if so, the acts, matters or things that would be required to remedy the event; or
  - b. not capable of being remedied and, if so, the monetary compensation or other arrangements reasonably determined by SGCHL to compensate it for that event;
- (b) answer within a reasonable time any reasonable questions which the Financier may ask to help it understand the nature or potential consequences of that event;
- (c) not exercise or enforce any rights under the Subcontract or otherwise as a result of that event unless:
  - (i) in respect of any default capable of remedy, that default has not been remedied within 30 days from receipt by the Financier of the notice under Clause 5.1(a) ("**Remedy Period**");
  - (ii) in respect of any default that is not capable of remedy (other than an Insolvency Event), the notice under Clause 5.1(a) contains a reasonable claim for compensation in money for that default and the amount claimed is not paid to SGCHL within the Remedy Period or other arrangements reasonably satisfactory to SGCHL have not been made within the Remedy Period; and
  - (iii) in respect of any Insolvency Event, the Insolvency Event has not ceased to subsist within the Remedy Period or the Financier has not appointed a Controller under the Financier Security within the Remedy Period;
- (d) provide to the Financier within 3 days from the date of the notice referred to in Clause 5.1(a), full details of all Services performed prior to the date of the notice, for which payment has not yet been made; and
- (e) if the Financier requests, SGCHL agrees not to unreasonably withhold its agreement to extend the Remedy Period where a remedy or course of action to resolve the default is being diligently pursued to the reasonable satisfaction of SGCHL and provided the Financier pays SGCHL for any Services provided before, during or after expiry of the initial Remedy Period.

The Financier's cure rights in this Clause 5 run concurrently with ServiceCo's cure rights under the Subcontract.

## 5.2 Consequent action

If:

- (a) a default under the Subcontract:
  - (i) is capable of remedy and is remedied during the Remedy Period;
  - (ii) is not capable of remedy and the amount claimed in the notice under Clause 5.1(a) is paid or other arrangements reasonably satisfactory to SGCHL are made within the Remedy Period; or



- (iii) is an Insolvency Event and the Insolvency Event ceases to subsist or the Financier appoints a Controller before the end of the Remedy Period,

SGCHL will take no further action as a result of the default;

- (b) a default under the Subcontract:

- (i) is capable of remedy but is not remedied during the Remedy Period;
- (ii) is not capable of remedy and the amount claimed in the notice under Clause 5.1(a) is not paid or other arrangements reasonably satisfactory to SGCHL are not made within the Remedy Period; or
- (iii) is an Insolvency Event and the Insolvency Event has not ceased to subsist or the Financier has not appointed a Controller before the end of the Remedy Period,

SGCHL may, subject to Clause 7 (*Enforcement Action by Financier*), take whatever action it can under the Subcontract or otherwise as a result of that default.

### 5.3 Right to suspend

- (a) If SGCHL is entitled to suspend any Services under the Subcontract or otherwise, SGCHL must notify the Financier in writing promptly (and in any case at least 5 days before suspending the Services).
- (b) If the Financier becomes aware that SGCHL may be entitled to suspend any Services, the Financier may (at its absolute discretion) pay SGCHL such money as is required to prevent or stop any suspension and any amount paid is recoverable from ServiceCo as a debt due to the Financier.

## 6. TERMINATION OF SUBCONTRACT

Neither SGCHL nor ServiceCo may terminate the Subcontract without cause or for convenience, unless the Financier has given its prior written consent.

If the Subcontract is terminated, rescinded or accepted as repudiated, SGCHL will promptly if so required by the Financier:

- (a) assign all agreements entered into in respect of the Services to ServiceCo, or its nominee or, if the Financier has exercised its rights under the Financier Security, to the Financier, a Controller appointed by the Financier or as otherwise directed by the Financier or any Controller appointed by the Financier; and
- (b) do all other things reasonably required in connection with such assignment.

All parties agree to co-operate with SGCHL in this process.

## 7. ENFORCEMENT ACTION BY FINANCIER

### 7.1 SGCHL's Obligations

If the Financier exercises its rights under the Financier Security by taking possession of, appointing a Controller to, or exercising its power of sale over any Secured Property (or doing something similar), SGCHL agrees:

- (a) not to exercise any right which it may have to terminate or vary the Subcontract or suspend the Services as a result only of such action (but, subject to Clause 5, without affecting its right to take action as a result of any other default);
- (b) to continue to perform the Services in accordance with the terms of the Subcontract as if the Financier, or Controller or any purchaser (as applicable) was the contracting party;
- (c) to novate the Subcontract, at the request of the Financier in favour of a Novatee nominated by the Financier; and
- (d) not to take any action opposing or hindering the Financier's rights under the Financier Security.

SGCHL need not require any evidence of the Financier's right or authority to take any of the actions referred to in this clause.

## 7.2 Limitation on liability of the Financier

The Financier:

- (a) need not exercise any of its rights under this Deed;
- (b) is not liable to any person in respect of any act or omission by it or any of its employees, officers, agents or contractors or otherwise in respect of anything referred to in this Deed; and
- (c) is not liable to SGCHL or any other person in respect of any act or omission by, or breach of any obligation of, ServiceCo,

other than (in the case of clause 7.2(b) and (c)):

- (d) any liability arising from the Financier's breach of this Deed, fraud or gross negligence; or
- (e) where the Financier elects to pay SGCHL for the Services under Clause 5.1(e) or 5.3(b) or otherwise or where the Subcontract is novated to the Financier under Clause 7.1(c).

## 7.3 Limitation on liability of SGCHL

The parties agree that, despite any other provision of this Deed, the maximum aggregate liability of SGCHL under this Deed, the Subcontract and the Side Deed (as defined in the Subcontract) is:

- (a) no greater than; and
- (b) subject to the same exclusions and limitations in relation to,

the maximum liability of SGCHL under the Subcontract.

## 8. SUPPLEMENT TO SUBCONTRACT

### 8.1 Assignment

- (a) SGCHL may not:
  - (a) dispose of, deal with or assign its rights or obligations under the Subcontract (other than as may be expressly permitted under the Subcontract) or this Deed; or
  - (b) create or allow to come into existence a security interest over any asset of ServiceCo, including any security interest which affects a Site, the Subcontract or the Project Materials, other than a Permitted Security Interest (as defined in the Facility Agreement).
- (b) The Financier may assign or otherwise deal with its rights under this Deed in accordance with the Facility Agreement.
- (c) The Financier may amend, supplement or replace the Financier Security without SGCHL's consent.
- (d) SGCHL agrees that it will not exercise any right of set off it may have under the Subcontract in respect of any money owed by SGCHL from time to time.

## 8.2 SGCHL's Representation and Warranties

SGCHL declares that:

- (a) it does not breach any law or any obligation to any other person (including its constitution) by signing this Deed; and
- (b) its obligations under this Deed are valid and binding and enforceable in accordance with its terms; and
- (c) its obligations under the Subcontract are valid and binding and are not unenforceable by ServiceCo; and
- (d) it has no right which is now exercisable or which with the giving of notice, lapse of time or fulfilment of any other condition will or may become exercisable, to:
  - (i) terminate, rescind or repudiate the Subcontract; or
  - (ii) vary the Subcontract in any material respect; or
  - (iii) refuse to perform or observe any of its obligations under the Subcontract; and
- (e) the Subcontract sets out the entire terms and conditions pursuant to which it will undertake the Services.

## 9. NOTICES

All notices under this Deed must be in writing to the following addresses unless the relevant parties advise otherwise:

Financier: [REDACTED]

SGCHL: Level 5, 38 Humphreys Lane, Hurstville NSW 2220

ServiceCo: Level 5, 38 Humphreys Lane, Hurstville NSW 2220

Notices to be given by the Financier will be signed by a person whose title includes the word "chief".

10. COUNTERPARTS

This Deed may be executed in counterparts and all such counterparts taken together shall be deemed to constitute the one instrument.

11. COSTS

- (a) ServiceCo agrees to pay its own and the Financier's costs involved in the preparation, negotiation, execution and enforcement of this Deed, all stamp duty and similar taxes payable on it and all goods and services or similar taxes with respect to any supply made or contemplated by it.
- (b) SGCHL agrees to pay its own costs involved in the preparation, negotiation, execution and enforcement of this Deed.

12. WAIVERS

Except as specifically stated in this Deed, no failure to exercise or delay in exercising any right power or remedy under this Deed by the Financier shall operate as a waiver, nor shall any single or partial exercise of any right power or remedy preclude any other or further exercise of that or any other right power or remedy.

13. NO REPRESENTATION

SGCHL and ServiceCo confirm that they have not entered into this Deed in reliance on or as a result of any advice, warranty, representation, undertaking or other statement or conduct of any kind of or on behalf of the Financier.

14. JURISDICTION AND GOVERNING LAW

This Deed shall be governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of courts in that State.

15. POWER OF ATTORNEY

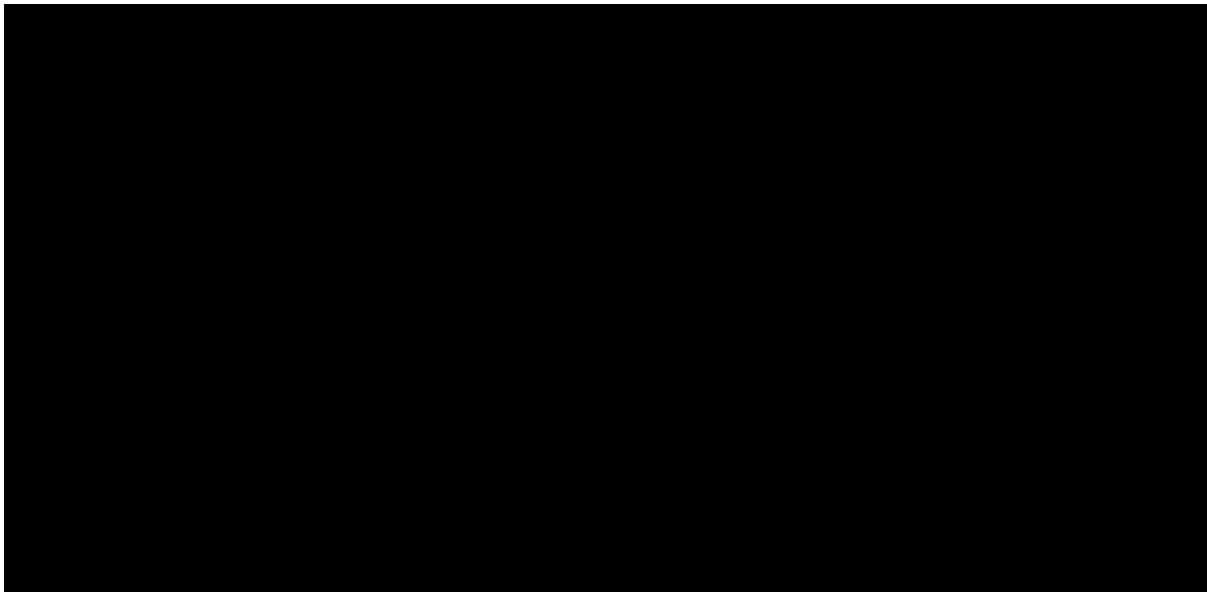
SGCHL irrevocably appoints the Financier and each officer of the Financier whose title includes the word "chief" as its attorney to do any thing or sign any document which SGCHL was required to do under Clause 6 of this Deed but has failed to do within 15 business days of a request from the Financier.

16. TERM

This Deed continues in full force until each of the Financier Securities has been fully and finally discharged in accordance with its terms.

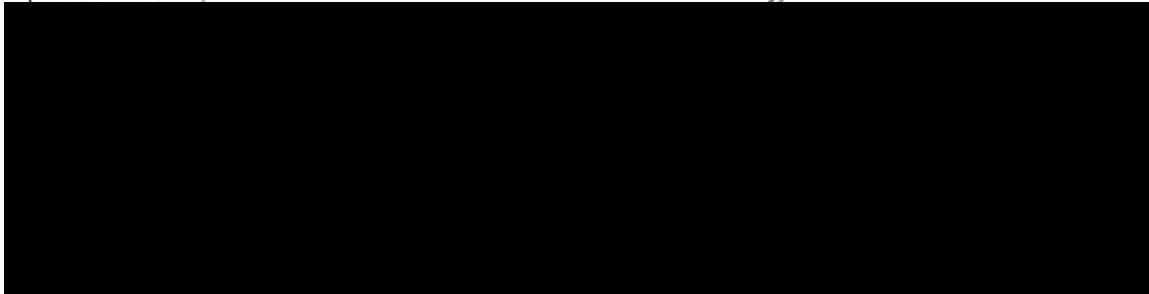
EXECUTED as a deed on the date referred to above.

**FINANCIER**



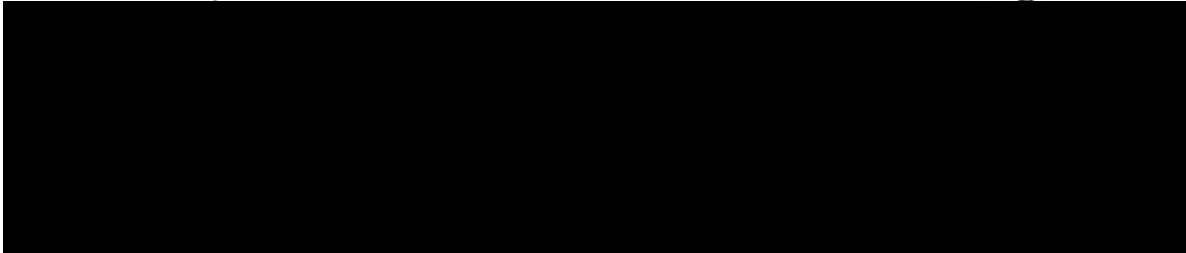
**SERVICECO**

SIGNED, SEALED AND DELIVERED for )  
and on behalf of **SGCH Sustainability** )  
**Limited** ABN 21 606 965 799 by its )  
Attorney, under Power of Attorney dated 9 )  
December 2016 who states, by executing )  
this Deed, has received no notice of )  
revocation of that Power of Attorney, in the )  
presence of: )



**SGCHL**

SIGNED, SEALED AND DELIVERED for )  
and on behalf of **St George Community** )  
**Housing Limited** ACN 133 729 503 by its )  
Attorney, under Power of Attorney dated 9 )  
December 2016 who states, by executing )  
this Deed, has received no notice of )  
revocation of that Power of Attorney, in the )  
presence of: )

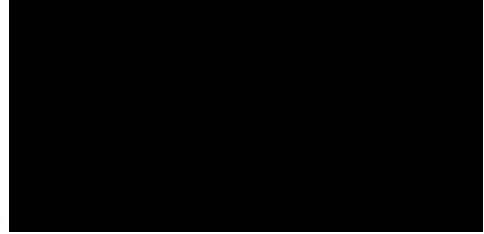




I certify that this is a true complete and up to date copy of the original document sighted by me at 3:40PM this 10<sup>th</sup> day of February 2017

Execution Version

# Guarantee and indemnity



St George Community Housing Limited (**Guarantor**)





# Guarantee and indemnity

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# Details

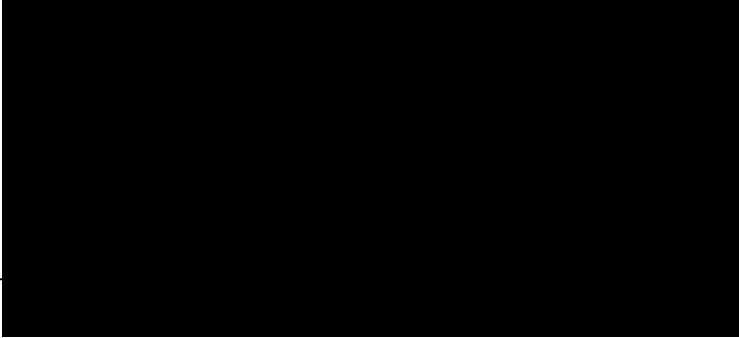
Date 20 January 2017

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## Parties

|                 |  |
|-----------------|--|
| Name            | <b>St George Community Housing Limited</b>   |
| ABN             | 32 565 549 842   |
| Short form name | <b>Guarantor</b>   |
| Notice details  | Address: Level 5, 38 Humphreys Lane, Hurstville, NSW, 2220<br>Email: rebecca.pierro@sgch.com.au<br>Attention: Rebecca Pierro |

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|                 |   |
|-----------------|---|
| Name            |  |
| ABN             |   |
| Short form name |   |
| Notice details  |   |

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## Background

This document sets out the terms on which the Guarantor gives a guarantee and indemnity in respect of the Guaranteed Money and the Borrower's obligations under the Finance Documents.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Facility Agreement defined terms

In this document, unless the contrary intention appears, terms that are capitalised and not otherwise defined in this document have the meaning provided in the Facility Agreement.

### 1.2 Defined terms

In this document:

**Attorney** means an attorney appointed under a Finance Document.

**Authorised Officer** means:

- (a) in respect of the Guarantor, any director or company secretary, or any person from time to time nominated as an Authorised Officer by the Guarantor by notice to the Financier accompanied by certified copies of signatures of all new persons so appointed and where applicable the identity of that person has been verified to the Financier's satisfaction in order to ensure compliance with the Financier's obligations under the AML/CTF Laws and in respect of which the Financier has not received notice of revocation of the appointment; and
- (b) in respect of the Financier, any person whose title or acting title includes the word Chief.

**Borrower** means SGCH Sustainability Limited ABN 21 606 965 799.

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

**External Administrator** means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**End Date** has the meaning given in clause 3.9.

**Facility Agreement** means the agreement titled '*Facility Agreement*' between the Borrower and the Financier dated on 19 November 2015 (as amended and restated from time to time, including by a Deed of Amendment and Restatement dated on or about the date of this document).

**Guarantee and Indemnity** means the guarantee and indemnity contained in clause 2.

**Guaranteed Money** means all money and amounts (in any currency) that the Borrower is or may become liable at any time (presently, prospectively or contingently, whether alone or not and in any capacity) to pay to or for the account of the Financier (whether alone or not and in any capacity) under or in connection with a Finance Document. It includes money and amounts:

- (a) in the nature of principal, interest, fees, costs, charges, expenses, duties, indemnities, Guarantee obligations or damages;
- (b) whether arising or contemplated before or after the date of this document or as a result of the assignment (with or without the Guarantor's consent) of any debt, liability or Finance Document; and
- (c) which a person would be liable to pay but for an Insolvency Event in respect of that person.

**Insolvency Event** means, in respect of a person, any of the following occurring:

- (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;

- (b) except with the Financier's consent:
  - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
  - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (c) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body Corporate requests such an appointment;
- (d) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (e) if a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due;
- (f) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (g) it stops or suspends payment to creditors generally.

**Liquidation** means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

**Material Adverse Effect** means an effect which has or results in:

- (a) a materially adverse effect on the business, assets, operation or condition, financial or otherwise, of the Guarantor and its subsidiaries;
- (b) material impairment of the ability of the Guarantor to perform any of its obligations under this document;
- (c) material impairment of the rights of or benefits available to the Financier under this document; or
- (d) a material adverse effect on the validity or enforceability of this document.

**Net Tangible Assets** means, at any time, the net tangible assets of the Guarantor at that time, determined in accordance with 'Australian Equivalents to International Financial Reporting Standards' ('A-IFRS') as amended or replaced from time to time.

**Notice** means a notice given in accordance with clause 10.

**Obligor** means each of the Borrower and the Guarantor.

**Project Costs' Savings** means, in respect of a D&C Project which has reached "Service Readiness" (as defined in the SAHF Services Agreement), at any time, the greater of:

- (a) nil; and
- (b) the amount of the Budgeted Costs in respect of that D&C Project less the actual Project Costs in respect of that D&C Project.

**Power** means any right or power under this document.

### 1.3 Interpretation

Clause 1.2 of the Facility Agreement is incorporated in, and applies to, this document as if set out in full with any necessary amendments.

## 2. Guarantee and Indemnity

### 2.1 Consideration

The Guarantor acknowledges entering this document in return for the Financier agreeing to provide financial accommodation to the Borrower at the Guarantor's request, for the entry by the Financier into the Finance Documents and for other valuable consideration, and that the Financier relies on the Guarantee and Indemnity.

### 2.2 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Financier:

- (a) the payment of the Guaranteed Money in accordance with the Finance Documents; and
- (b) the performance by the Borrower of all its other obligations under the Finance Documents.

### 2.3 Non-payment or non-performance

If the Borrower does not:

- (a) pay any Guaranteed Money (or money which would be Guaranteed Money if its payment was enforceable, valid and not illegal) in accordance with the Finance Documents, the Guarantor must pay that money on demand as if it was the principal obligor; or
- (b) perform any of its other obligations under a Finance Document, the Guarantor must perform, or procure the performance of, those obligations (without the need for demand by the Financier) in accordance with the Finance Documents.

### 2.4 Indemnity

The Guarantor indemnifies the Financier against, and must pay to the Financier on demand amounts equal to, any Loss of the Financier as a result of or in connection with:

- (a) any obligation or liability of, or obligation or liability guaranteed by, the Guarantor under this clause 2 (or which would be such an obligation or liability if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
- (b) the Borrower failing, or being unable, to pay any Guaranteed Money or to perform any of its other obligations in accordance with the Finance Documents;
- (c) any Guaranteed Money (or money which would be Guaranteed Money if it were recoverable) not being recoverable from the Borrower; or
- (d) an Insolvency Event in respect of the Borrower (but only to the extent that Loss relates to the Guaranteed Money),

in each case, for any reason and whether or not the Financier knew or ought to have known anything about those matters.

### 2.5 Limit of Guaranteed Money

- (a) Despite anything else in this document other than clause 2.5(b), the maximum amount which the Guarantor is required to pay under the Guarantee and Indemnity at any time is an amount equal to:

- (i) [REDACTED] less
- (ii) the sum of:
  - (A) any amounts paid under this document by the Guarantor to the Financier;
  - (B) any amounts paid by the Guarantor which were utilised to meet:
    - (I) any cost overruns on any Project; or
    - (II) any payments to be made by the Borrower to FACS following termination of the SAHF Services Agreement (in whole or in part); and
  - (C) any Project Costs' Savings in respect of any Project.

- (b) Unless expressly provided for otherwise in this document, the limit in this clause 2.5 does not:
  - (i) limit the amount that the Financier can claim or prove for in any Liquidation of the Guarantor;
  - (ii) limit any other obligation of the Guarantor to the Financier outside of the Guarantee and Indemnity and the Guaranteed Money (including under clauses 6 and 7); or
  - (iii) affect the amount of the Guaranteed Money payable by, or recoverable from, the Borrower.

## 2.6 Demands

A demand under this clause 2 may be made at any time and from time to time. A demand need only specify the amount owing, and need not specify how that amount is calculated.

## 3. Extent of guarantee and indemnity

### 3.1 Immediate recourse

The Guarantor waives any right it may have to require the Financier to proceed against, or enforce any other rights or Security Document or claim payment from, any other person before claiming from the Guarantor under the Guarantee and Indemnity. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### 3.2 Continuing obligations

The Guarantee and Indemnity:

- (a) extends to the present and future balance of all the Guaranteed Money (including in respect of any contingent liability of the Borrower in connection with the Finance Documents) as varied from time to time, including as a result of:
  - (i) the creation or designation of any new Finance Document after the date of this document;
  - (ii) any amendment to, or waiver under, any Finance Document; or
  - (iii) the provision of new or further accommodation to the Borrower, and whether or not with the consent of, or notice to, the Guarantor;
- (b) is not, subject to clause 3.2(c), wholly or partially discharged by the payment of any Guaranteed Money, the waiver by the Financier of a condition precedent to the provision of financial accommodation, the settlement of any account or anything else; and
- (c) continues until, subject to clauses 3.9 and 11.4, the End Date.

### 3.3 Liability not affected

The Guarantor's liability under the Guarantee and Indemnity is not adversely affected by anything which would otherwise reduce or discharge that liability (whether or not any Obligor or the Financier is aware of it or consents to it and despite any legal rule to the contrary), including:

- (a) any time, waiver, concession, forbearance or consent granted to, or composition with, the Borrower or other person;
- (b) any opening of further accounts in connection with, or any increase in, change or replacement of the type, amount or terms of, financial accommodation provided to any person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Finance Document), between the Financier and the Borrower or another person;
- (d) an Insolvency Event in respect of the Borrower or another person;

- (e) any judgment or order being obtained or made against, or the conduct of any proceedings by, the Borrower or another person;
- (f) the Borrower's obligation or a Finance Document (or any provision of a Finance Document), being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of the Guarantee and Indemnity or a Security Document;
- (h) the Guaranteed Money not being recoverable or the liability of the Borrower or any other person to the Financier ceasing or reducing (including due to a release or discharge by the Financier or by law);
- (i) any Finance Document not being executed by, or binding or enforceable against, the Borrower;
- (j) the exercise or non-exercise of any Power (including any right to terminate a contract);
- (k) any set-off, combination of accounts or counterclaim;
- (l) any Secured Property being destroyed, forfeited, extinguished, surrendered or resumed;
- (m) any waiver of or failure to satisfy a condition or condition precedent under a Finance Document (and any such waiver or failure will be disregarded in determining the Guarantor's liability under the Guarantee and Indemnity or whether an amount is part of the Guaranteed Money);
- (n) any default, misrepresentation, negligence, breach of contract or misconduct by any person;
- (o) any acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Borrower) by the Financier or any other person; or
- (p) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person.

### 3.4 Principal and independent obligation

Each guarantee, indemnity and other obligation of the Guarantor in this document is:

- (a) a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation; and
- (b) in addition to, and not prejudiced by, any other Guarantee or Security Document now or later held by the Financier.

### 3.5 Deferral of certain rights

Until all Guaranteed Money has been received and the Financier is satisfied that it will not have to repay any money received by it, the Guarantor may not (either directly or indirectly) without the Financier's prior written consent:

- (a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence:
  - (i) against the Borrower; or
  - (ii) which the Borrower may have against the Financier,
 which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity;
- (b) claim or exercise a right of subrogation or contribution or otherwise claim the benefit of:
  - (i) a Security Document or Guarantee relating to the Guaranteed Money;
  - (ii) any Security Interest or Guarantee which would rank in priority or preference to a Security Document or Guarantee relating to the Guaranteed Money,



and if the Guarantor receives any money in breach of this paragraph (b) the Guarantor must promptly pay that money to the Financier; or

- (c) unless the Financier has given a direction to do so (in which case the Guarantor must do so in accordance with the direction as trustee for the Financier)
  - (i) prove, claim or exercise voting rights in the Borrower's Liquidation, or otherwise claim or receive the benefit of any distribution, dividend or payment arising out of the Borrower's Liquidation on any account; or
  - (ii) demand, or accept payment of, any money owed to the Guarantor by any Obligor (except as permitted under the Finance Documents),

and any such money it receives must be paid promptly to the Financier.

### **3.6 Prove in Liquidation**

The Guarantor irrevocably authorises the Financier and each of its Authorised Officers to prove in the Liquidation of the Borrower for all money that the Guarantor can claim against the Borrower on any account. The Financier need only account to the Guarantor for dividends it receives in excess of the Guaranteed Money, without interest.

### **3.7 Suspense account**

- (a) The Financier may credit money received from the Guarantor or on account of the Guarantor's liability under the Guarantee and Indemnity (including dividends received in any Liquidation) to a suspense account, and keep the money in that account for as long as, and at whatever interest rate, the Financier thinks fit until the Financier has received the full amount of the Guaranteed Money. The Financier may apply the money (including interest) to reduce the Guaranteed Money whenever it thinks fit.
- (b) If the Guaranteed Money has been fully and finally paid or discharged and the Financier is satisfied that such payment or discharge is not liable to be set aside, avoided or reversed, then the balance standing to the credit of the suspense account and any accrued interest will be paid to or for the account of the Guarantor for distribution to the person entitled to it and the Financier will have no further liability in relation to it.

### **3.8 Variations and replacements**

The Guarantor acknowledges that the Finance Documents may be varied or replaced from time to time. The Guarantor confirms that the Guaranteed Money includes any amount payable by the Borrower under any Finance Document which is relevant to the Guaranteed Money as varied or replaced. The Guarantor confirms that this applies regardless of:

- (a) how a Finance Document is varied or replaced;
- (b) the reasons for the variation or replacement; and
- (c) whether the Guaranteed Money decreases or increases or a Finance Document is otherwise more onerous as a result of the variation or replacement.

### **3.9 Last Date of Services Readiness**

The Guarantee and Indemnity continues, subject to clause 11.4, until (and including) the last Date of Service Readiness of all SAHF Projects (**End Date**), provided that this does not affect any rights of the Financier under the Guarantee and Indemnity which have accrued prior to that time (including to make any claim under the Guarantee and Indemnity after the End Date in respect of any matter which occurred on or prior to the End Date).

## 4. Representations and warranties

### 4.1 Representations and warranties

The Guarantor represents and warrants to the Financier, except as to matters disclosed by it to the Financier and accepted by the Financier in writing, that:

- (a) **(status)** it is properly registered and incorporated as a company limited by guarantee and validly exists under the laws of its jurisdiction of incorporation;
- (b) **(capacity)** except as specified otherwise in this document, it acts on its own behalf on entering into the Finance Documents, and it is not a trustee of any trust which is not specified in this document;
- (c) **(power and authority)** it has the power, right and necessary corporate authority to own its assets, carry on its current and contemplated business, and to enter into, and exercise its rights and observe and perform its obligations under, each Finance Document to which it is expressed to be a party;
- (d) **(no immunity)** neither it nor any of its assets is immune from suit or execution;
- (e) **(valid and binding)** this document is (subject to equitable principles and insolvency laws generally affecting creditors' rights and, subject to applicable stamping and registration) valid, binding and enforceable against it in accordance with its terms, and the transactions contemplated by this document are for its commercial benefit;
- (f) **(no conflicts)** its execution and performance of this document do not and will not:
  - (i) conflict with or contravene section 208 or section 260A of the Corporations Act;
  - (ii) conflict with its constituent documents;
  - (iii) result in a Security Interest being created on, or crystallising over, any of its assets (other than creation of a Permitted Security Interest); or
  - (iv) result in a default, acceleration of date of payment, cancellation event, prepayment event or similar event (however described) under any agreement relating to any actual or contingent debt or other monetary liability in respect of money borrowed or raised or any financial accommodation;
- (g) **(law, Authorisations)** it has complied with all laws and Authorisations applicable to it or its business to enable it to perform its obligations under this document and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this document;
- (h) **(solvency)** it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (i) **(ranking)** its payment obligations under this document rank equally with the claims of all its other unsecured creditors, except those mandatorily preferred by law applying to companies generally or as agreed to by the Financier in writing;
- (j) **(full disclosure)** it has, or persons acting under its instruction have, fully disclosed in writing to the Financier all documents and information known to it relating to it, its assets, the Finance Documents and anything in connection with them which:
  - (i) is material to the assessment of the nature and amount of risk undertaken by the Financier in entering into and performing the Finance Documents; or
  - (ii) could reasonably be expected to have a Material Adverse Effect;
- (k) **(information accurate)** all information (excluding financial projections, estimates and forecasts) provided by it or on its behalf to the Financier in connection with the Finance Documents is at the date it was provided accurate in all material respects and not deficient, misleading or deceptive in any material respect (whether by its inclusion or by omission of other information); and
- (l) **(own enquiries)** it has relied on its own investigations and enquiries regarding the transactions contemplated by the Finance Documents and has not relied on any

information, advice or opinion (including as to interest rates or exchange rates) given or offered by or on the Financier's behalf even if in answer to any enquiry by or for it.

#### 4.2 Repetition

The Guarantor repeats each representation and warranty in clause 4.1 (other than those in clauses 4.1(j) and 4.1(k)) with reference to the facts and circumstances at the time on each date on which any financial accommodation under the Finance Documents is provided and each date on which any of the Guaranteed Money is paid to the Financier.

#### 4.3 Reliance and survival

The Guarantor acknowledges that:

- (a) the Financier has entered into the Finance Documents in reliance on the representations and warranties in this clause 4; and
- (b) those representations and warranties survive execution and delivery of the Finance Documents and the provision of financial accommodation under them.

### 5. Undertakings

#### 5.1 General

The Guarantor must (unless the Financier otherwise consents):

- (a) (**corporate existence**) maintain its corporate existence and its registration in the place of its registration as at the date of this document;
- (b) (**constituent documents**) not change its constituent documents in any way where to do so will have or be likely to have a Material Adverse Effect;
- (c) (**carry on business**) carry on its business in a proper and efficient way and not do anything to change materially the nature of its business from that conducted at the date of this document;
- (d) (**maintain books**) keep proper and adequate books and records in accordance with the Accounting Principles and not change its financial year;
- (e) (**comply with laws and Authorisations**) comply with all applicable laws and Authorisations to enable it to perform its obligations under this document and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this document; and
- (f) (**pay Taxes**) pay when due all Taxes assessed, levied or imposed on it or its assets, other than where the payment of those Taxes is in dispute and it has made an appropriate provision for payment of those amounts in its accounts, and it is diligently pursuing a resolution to the dispute.

#### 5.2 Notice to Financier

The Guarantor must ensure that the Financier is notified, with reasonable details, on becoming aware of any of the following:

- (a) (**incorrect representation or warranty**) any representation or warranty made, repeated or taken to be made or repeated by it or on its behalf under this document becoming untrue, incorrect or misleading (whether by omission or otherwise) in any material respect when so made, repeated or taken to be made or repeated;
- (b) (**change in business or internal management**) any material change in its business, the nature of its business or its internal management from that which prevailed at the date of this document;
- (c) (**litigation**) any litigation or administrative, arbitration or other proceeding or action (including any action by a Governmental Agency) which is current or pending or, to its

knowledge, likely or threatened which if adversely determined, would have or be likely to have a Material Adverse Effect;

- (d) **(Material Adverse Effect)** the occurrence of any event or circumstance which has or is likely to have a Material Adverse Effect; and
- (e) **(Authorised Officers)** any change in the Guarantor's Authorised Officers, such notice to be signed by a director of the Guarantor accompanied by specimen signatures of any new Authorised Officers and any other information or documents required by the Financier to verify the identity of any new Authorised Officers to the Finance Party's satisfaction in order to ensure compliance with the Financier's obligations under the AML/CTF Laws.

### 5.3 Financial covenant

The Guarantor must:

- (a) ensure that, on 30 June each year, its Net Tangible Assets are no less than [REDACTED] and
- (b) supply to the Financier, with each set of financial statements delivered pursuant to clause 5.4, a compliance certificate setting out (in reasonable detail) computations as to compliance with paragraph (a) as at the date on which those financial statements were drawn up. Each compliance certificate shall be signed by a director of the Guarantor.

### 5.4 Financial statements and reports

The Guarantor must ensure that the Financier is given the following items, at the times and in respect of the entities as specified, and in each case audited as specified.

| Item                             | Entities      | Audited (Y/N)? | Consolidated/unconsolidated | When   |
|----------------------------------|---------------|----------------|-----------------------------|--|
| Financial statements (Annual)    | The Guarantor | Y              | Unconsolidated              | As soon as practicable (but within 120 days) after annual balance date             |
| Financial statements (Quarterly) | The Guarantor | N              | Unconsolidated              | As soon as practicable (but within 45 days) after the end of each calendar quarter |

## 6. Costs, Indemnities and Taxes

Clauses 20 (*Tax*), 23 (*Indemnity*) (excluding clauses 23.1.1, 23.1.3 and 23.1.4), 24.2 (*Amendment costs*) and 24.3 (*Enforcement costs*) of the Facility Agreement are incorporated in, and apply to, this document as if set out in full as though any reference to "Borrower" is a reference to "Guarantor" and any reference to a "Finance Document" is a reference to this document, and with any necessary amendments.

## 7. Interest on overdue amounts

### 7.1 Accrual and calculation

Unless the Guaranteed Money is already accruing interest at the Default Rate under the Facility Agreement, interest accrues daily on each unpaid amount of the Guaranteed Money which is due and payable by the Guarantor (including on unpaid interest under this clause):

- (a) from and including the due date (or, for an amount payable by reimbursement or indemnity, any earlier date the amount was incurred), up to but excluding the date of actual payment; and
- (b) subject to clause 7.2, at the Default Rate.

## 7.2 Judgment or order

If the Guarantor's liability under a Finance Document is the subject of a judgment or order:

- (a) its obligation to pay interest under clause 7.1 is separate from, and continues despite, the judgment or order; and
- (b) the interest accrues both before and after judgment at the higher of the rate determined under clause 7.1 and the rate payable under that judgment or order.

## 7.3 Payment

The Guarantor must pay to the Financier accrued interest under this clause 7 on the last Business Day of each calendar month and on demand.

## 8. Payments

Clause 8 (*Payments generally*) of the Facility Agreement is incorporated in, and applies to, this document as though any reference to "Borrower" is a reference to "Guarantor" and any reference to a "Finance Document" is a reference to this document, and with any necessary amendments.

## 9. Assignment

### 9.1 By Guarantor

The Guarantor may not assign or transfer all or any part of its rights or obligations under this document without the prior consent of the Financier.

### 9.2 By Financier

The Financier may assign or transfer all or any part of its rights or obligations under this document in accordance with the Facility Agreement.

### 9.3 Disclosure of information

The Financier may disclose any information it considers appropriate about the Guarantor, the Finance Documents and any transaction in connection with any of them to a proposed assignee, transferee, sub-participant, securitisation vehicle or any proposed participant in a credit derivative transaction or a synthetic securitisation transaction in connection with the Finance Documents, to any ratings agency or Governmental Agency, to any person with respect to whom it intends on entering into a credit derivative transaction or a synthetic securitisation transaction in relation to all or part of its participation in a Facility and to a person proposing to enter into any arrangement with a Receiver or the Financier in connection with the Finance Documents, provided that such disclosure is made on a confidential basis.

## 10. Notices, demands and communications

### 10.1 Defined term

In this clause 10, **Notice** means a notice, demand, consent, approval or communication given by a party pursuant to or in connection with this document.

### 10.2 Giving Notices

Any notice or communication (including any consent or waiver) given to a party under this document is only given if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any);
- (b) faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any); or
- (c) sent by email to that party to the email address,

in each case as set out in the 'Details' section of this document, as varied by any Notice given in accordance with clause 10.3.

### 10.3 Change of address, fax number or email address

If a party gives the other party 3 Business Days' notice of a change of its address, fax number or email address, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address, fax number or email address.

### 10.4 Time Notice is given

- (a) Any notice or communication is to be treated as given at the following time:
  - (i) to the Guarantor:
    - (A) if it is delivered, when it is left at the Guarantor's address;
    - (B) if it is sent by post, 2 (or, in the case of a notice or communication posted to another country, 9) business days after it is posted;
    - (C) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
    - (D) if it is sent by email to the specified email address, as soon as the email is received in readable form; and
  - (ii) to the Financier, when it is actually received.
- (b) However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next business day.

## 11. Protection of Financier

### 11.1 Financier not restricted

The Financier need not:

- (a) exercise a Power, give a consent or make a decision under a Finance Document unless the Finance Document expressly provides otherwise; or
- (b) resort to a Security Document or Power before resorting to any other of them.

### 11.2 Financier not liable

To the extent permitted by law, the Financier and any Attorney will not be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

### 11.3 Financier may set off

At any time while an Event of Default subsists, the Financier may, without any demand or notice, set off and apply indebtedness it owes to the Guarantor (whatever the currency) against any money owing to it by the Guarantor under any Finance Document, whether or not the amount owed by the Financier or the Guarantor is immediately payable or is owed alone or with any other person. The Guarantor irrevocably authorises the Financier to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

### 11.4 Reinstating avoided transaction

The Guarantor agrees that if a payment or other transaction relating to the Guaranteed Money is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then even though the Financier knew or should have known of the Avoidance:

- (a) each Power and the Guarantor's liability under this document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and

- (b) the Guarantor will immediately execute and do anything necessary or required by the Financier to restore the Financier to its position immediately before the Avoidance (including reinstating this document).

This clause survives any termination or full or partial discharge or release of this document.

### **11.5 Authorised Officers**

The Guarantor irrevocably authorises the Financier to rely on a certificate by any person purporting to be its director or company secretary as to the identity and signatures of its Authorised Officers, and to rely on any Notice or other document contemplated by any Finance Document which bears the purported signature (whether given by facsimile, email or otherwise) of its Authorised Officers. The Guarantor warrants that those persons have been authorised to give notices and communications under or in connection with the Finance Documents.

### **11.6 Financier's opinion**

An opinion or view of the Financier for the purposes of the Finance Documents may be formed or held on its behalf by its Authorised Officers, its board of directors or by any other person it authorises to act on its behalf in relation to the Finance Documents.

## **12. General provisions**

### **12.1 Confidentiality**

Each party agrees not to disclose to any other person the existence or contents of any Finance Document, or any information provided by another party in connection with a Finance Document which is not publicly available, except:

- (a) with the prior consent of the party providing the information (not to be unreasonably withheld or delayed);
- (b) if required by law, a Governmental Agency or administrative guideline or policy (even if not having force of law) which the person disclosing the information customarily complies with (except that this paragraph does not require the Financier to disclose any information of the kind referred to in section 275(1) of the PPSA);
- (c) in connection with any exercise of a Power or any legal proceeding relating to any Finance Document;
- (d) to the disclosing party's auditors, legal advisers or other consultants in confidence;
- (e) to the disclosing party's Related Body Corporate, subject to the Related Body Corporate's undertaking to observe this clause;
- (f) in the case of the Financier, as permitted under clause 9.3;
- (g) to any rating agency to the extent required by them and provided that the recipient agrees to keep such information confidential;
- (h) to FACS as required under a SAHF Service Package Document; or
- (i) as expressly permitted or required under a Finance Document.

### **12.2 Prompt performance**

If a time is not specified for the performance by the Guarantor of an obligation under this document, it must be performed promptly.

### **12.3 Performance by Financier**

The Financier may do anything which the Guarantor fails to do as required by, or in accordance with, this document. This does not limit or exclude the Financier's Powers in any way.

### **12.4 Powers**

Powers under this document are cumulative and do not limit or exclude Powers under law. Full or partial exercise of a Power does not prevent a further exercise of that or any other Power. No

failure or delay in exercising a Power operates as a waiver or representation. Unless expressly provided in a Finance Document, no Power or Finance Document merges in, limits or excludes any other Power, Finance Document or judgment which the Financier (or anyone claiming through it) may have or obtain.

#### **12.5 Consent, approval and waivers**

- (a) A consent, approval or waiver by the Financier in relation to a Finance Document is effective only if in writing. If given subject to conditions, the consent, approval or waiver only takes effect when the conditions are complied with to the Financier's satisfaction.
- (b) Despite any other provision of this document or another Finance Document, the Financier may withhold any consent, approval or waiver that it may otherwise give in connection with a Finance Document if the giving of such consent, approval or waiver may have an adverse impact on the ratings given by a ratings agency in connection with any securitisation or similar transaction.

#### **12.6 Indemnities and reimbursement obligations**

Each indemnity in this document is a continuing obligation, separate from the other obligations of the parties, and, subject to clause 3.2(c), continues after this document ends. A party may enforce a right of indemnity at any time (including before it has incurred Loss).

#### **12.7 Notices or demands as evidence**

A certificate signed by the Financier of the amount of the debts owing under this document or anything else relating to this document is sufficient evidence of what it states, unless proved to be incorrect. The Guarantor cannot object to the admission of a certificate of that type in any proceedings.

#### **12.8 Law and legislation**

To the extent permitted by law:

- (a) this document prevails to the extent of inconsistency with any law; and
- (b) any present or future legislation operating to reduce the Guarantor's obligations under this document or the effectiveness of the Powers is excluded.

#### **12.9 Severability**

Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected by the severing of the provision. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

#### **12.10 Variation**

No variation of this document will be of any force or effect unless it is in writing and signed by the Financier.

#### **12.11 Governing law and jurisdiction**

This document is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **12.12 Service of process**

Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of Notices under this document.

#### **12.13 Counterparts**

This document may be signed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this document.



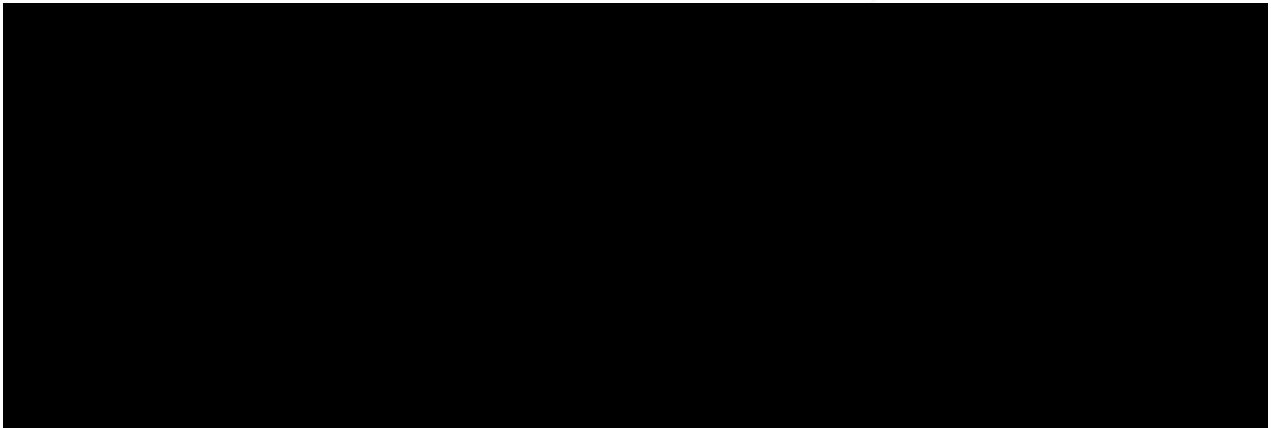
# Signing page

**EXECUTED** as a deed.

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

## **Guarantor**

Signed by **St George Community Housing Limited**  
ABN 32 565 549 842 by its attorney duly appointed by  
power of attorney dated 9 December 2015 and who  
has received no notice of the revocation of the power,  
in the presence of:



**Financier**

