



HERBERT
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Deed of Extension of Services Agreement – Hawkesbury District Health Service

**Nepean Blue Mountains Local Health
District**
ABN 31 910 677 424

**St John of God Hawkesbury District Health
Campus Limited**
ACN 608 054 379



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THIS DEED is made on

2022

BETWEEN

Nepean Blue Mountains Local Health District

ABN 31 910 677 424

Address: PO Box 63 Penrith NSW 2751

Attention: Chief Executive

Email: nbmlhd-mail@health.nsw.gov.au

(NBMLHD)

St John of God Hawkesbury District Health Campus Limited

ACN 608 054 379

Address: Level 1, 556 Wellington St Perth 6000

Attention: Company Secretary

Email: larissa.johnstone@sjog.org.au

(Operator)

RECITALS

- 1 NBMLHD and the Operator are parties to the Services Agreement.
 - 2 Under the Services Agreement, the Operator provides services to patients at the hospital known as Hawkesbury District Health Service, a licensed private health facility under the *Private Health Facilities Act 2007* (NSW).
 - 3 The term of the Services Agreement expires on 30 June 2022.
 - 4 The parties have agreed to an extension of the Services Agreement for the Extended Term on the conditions of this deed.
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1 Definitions, interpretation and deed components

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Ancillary Agreements	<p>the documents titled:</p> <ol style="list-style-type: none"> 1 'Support Services Agreement – Hawkesbury Living Cancer Trust Chemotherapy Service' between NBMLHD and the Operator dated 22 December 2016; 2 'Services Agreement - Palliative and Supportive Care' between NBMLHD and the Operator (undated); 3 'Services Agreement - Mental Health' between NBMLHD and the Operator (undated); 4 'Services Agreement - JMO Employment' between NBMLHD and the Operator (undated); and 5 'Licence - Hawkesbury Living Cancer Trust Chemotherapy Service' between NBMLHD and the Operator dated 22 December 2016.
Effective Date	1 July 2022.
Extended Term	a term of one year and six months commencing on 1 July 2022 and expiring on 31 December 2023 which may be extended further pursuant to clause 2.2.
Guarantor	St John of God Health Care Inc (ARBN 051 960 911).
Guarantor's Covenants	the covenants, agreements and obligations of the Guarantor contained or implied in the Parent Company Guarantee or by law.
Parent Company Guarantee	the parent company guarantee dated 3 November 2015 between NBMLHD, Health Administration Corporation, the Guarantor and the Operator.
Services Agreement	the agreement titled 'Services Agreement' entered into between NBMLHD (formerly known as Wentworth Area Health Service and



Term	Meaning
	<p>defined as 'WAHS') and Hawkesbury District Health Service Limited dated 21 December 1994, including:</p> <ol style="list-style-type: none"> 1 as amended by way of deed titled 'Deed of Amendment to Services Agreement' entered into between NBMLHD (formerly known as Wentworth Area Health Service and defined as 'WAHS') and Hawkesbury District Health Service Limited dated 23 June 2000; 2 as extended by way of letter titled 'Notice to extend Services Agreement' dated 20 May 2015; and 3 as amended and novated from Hawkesbury District Health Service Limited to the Operator by way of 'Deed of Novation and Variation of Services Agreement' dated 3 November 2015.
Services	has the meaning given to it in the Services Agreement.

1.2 Interpretation

In this deed:

- (a) unless the context otherwise requires, capitalised terms have the same meanings as in the Services Agreement;
- (b) the provisions of clause 1.2 (Interpretation) of the Services Agreement are incorporated in this deed as if set out in full in this deed, save that (other than in respect of clause 1.2(e)) any reference to 'this Agreement' shall be deemed to be a reference to 'this deed'; and
- (c) unless expressly stated otherwise, a reference to a clause or Schedule is a reference to a Clause of, or a Schedule to, the Services Agreement.

1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Deed components

This deed includes any attachment, exhibit, plan or schedule.

2 Extension of Services Agreement

2.1 Extension and variation of Services Agreement

The parties agree that, with effect on and from the Effective Date, the Services Agreement:

- (a) is extended for the Extended Term; and



- (b) is varied in the manner set out in Schedule 1.

2.2 Extension of Extended Term

The parties acknowledge and agree that:

- (a) the parties will act reasonably and in good faith, and exercise best endeavours to define and agree on the principles of a new services agreement for the Hawkesbury District Health Service by 31 December 2022 (which agreement, for the avoidance of doubt will replace and supersede the Services Agreement);
- (b) provided that both parties (acting reasonably) have defined and agreed the principles of a new services agreement in accordance with clause 2.2(a) but have been unable to agree binding documentation for a new agreement by 30 April 2023, then the Term will be extended to 30 April 2024, which extension may be effected and evidenced by an exchange of letters between the parties to that effect prior to 30 April 2023; and
- (c) if the parties fail to define and agree on the principles of a new services agreement for the Hawkesbury District Health Service by 31 December 2022, the Operator will transition services back to NBMLHD in accordance with its obligations under the Services Agreement by no later than 31 December 2023.

2.3 Effect of variation

- (a) The parties acknowledge and agree that clause 2.1 does not affect nor limit any right or obligation of either party that arose pursuant to the Services Agreement before the Effective Date.
- (b) Except as varied under clause 2.1(b):
- (1) the terms of the Services Agreement remain unchanged;
 - (2) the parties affirm and agree to continue to be bound by the terms of the Services Agreement as varied by this deed.

2.4 Confirmation of Ancillary Agreements

- (a) The parties acknowledge and agree that:
- (1) some of the Ancillary Agreements have not been executed by the parties prior to the date of this deed;
 - (2) notwithstanding clause 2.4(a)(1), the signing of this deed constitutes valid and binding acceptance by the parties of the terms of such unexecuted Ancillary Agreements as if they had been fully executed by the parties; and
 - (3) all Ancillary Agreements and relevant associated supporting or amending documents to the Ancillary Agreements are extended for the Extended Term on the same terms and conditions as are set out in those agreements, unless terminated earlier in accordance with their terms.
- (b) If, after the Effective Date, the parties wish to extend any further agreements (other than the Ancillary Agreements) between them for the Extended Term, they may do so by way of agreement in writing signed by both parties, in which case the relevant agreement or agreements will be deemed to be 'Ancillary Agreements' for the purposes of this clause 2.4, including that they will be extended for the Extended Term.



2.5 Acknowledgement

For the avoidance of doubt, each of the Operator and NBMLHD acknowledge and agree that the following agreements will continue to have effect for the duration of the Extended Term on the same terms and conditions as are set out in those agreements, unless terminated earlier in accordance with their terms:

- (a) 'Memorandum of Understanding - Hawkesbury Living Cancer Trust Chemotherapy Unit Satellite Services of Nepean Cancer Care Centre' between NBMLHD and Hawkesbury Living Cancer Trust dated 9 March 2015;
- (b) 'Bed Buy Agreement - Purchase of non-specified acute and sub-acute beds' between NBMLHD and the Operator dated 22 October 2021;
- (c) 'Hawkesbury Hospital Sinking Fund' between NSW Treasury Corporation, the Operator and NBMLHD dated 3 November 2015;
- (d) 'General Security Deed' between the Operator and NBMLHD dated 3 November 2015.
- (e) 'Services Agreement – Echocardiogram study services' between the Operator and NBMLHD dated on or about 1 July 2019.

3 Guarantor's covenants

- (a) The Guarantor extends the Guarantor's Covenants to apply to:
 - (1) the Extended Term; and
 - (2) the Services Agreement as varied by this deed and the Ancillary Agreements,
 subject only to such amendments as are necessary to apply the Parent Company Guarantee to this deed and the amendment in clause 3(b) below.
- (b) The Parent Company Guarantee is amended by deleting the word "earlier" in the definition of 'Repayment Date' and replacing it with the word "later".

4 General

4.1 Legal and other costs

Each party must pay its own legal and other costs arising from this deed including preparing, negotiating and completing this deed.

4.2 Further action

NBMLHD and the Operator must each do everything necessary to give effect to this deed.

4.3 New South Wales law applies

This deed is governed by New South Wales law.



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4.4 Counterparts

This deed may be executed in any number of counterparts each of which, when taken together, constitute one instrument.



Schedule 1

Variations to Services Agreement

- (a) The following definitions are inserted into clause 1.1 of the Services Agreement:
- “Commercially Sensitive Information”** means:
- (a) any information relating to the Operator's cost structure or profit margins; or
 - (b) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Operator or the Operator's shareholders, financiers or subcontractors.
- “GIPA Act”** means the *Government Information (Public Access) Act 2009* (NSW).
- “Privacy Legislation”** means the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW) and all other applicable laws or government guidelines which relate to privacy and data protection or the collection, storage, use and disclosure of information about individuals.
- (b) A new clause 11.23 is inserted into the Services Agreement as follows:
- 11.23 Other reporting requirements**
- The Operator must, at its cost:
- (a) at least 3 months prior to commencing any proposed new Service or expanding an existing Service at the Health Facility, obtain approval in writing from NBMLHD for any such proposed new Service or expansion to any existing Service;
 - (b) provide regular reports against key performance indicators as required by the terms of Service Performance Meetings, including but not limited to those relating to capital expenditure and ICT, avoidable admissions and readmissions, emergency treatment performance, elective surgery access performance and actual activity against agreed targets with projections;
 - (c) comply with mandatory data collection and reporting requirements established by the Ministry of Health including maintaining currency and accuracy of data extracts in response to changing Ministry of Health requirements;
 - (d) participate in data quality auditing activities as required from time to time by NBMLHD;
 - (e) work with the NBMLHD Clinical Governance Unit to ensure information regarding patient safety issues and other risks are shared and appropriately reported; and
 - (f) document and comply with any business continuity plans which are reviewed regularly and updated in-line with Ministry of Health policy requirements.



(c) A new clause 11.24 is inserted into the Services Agreement as follows:

11.24 Disclosure and access by NBMLHD under the GIPA Act

The parties acknowledge that:

- (a) **(Records):** the Operator must provide NBMLHD with an immediate right of access to the following information contained in Records:
- i. information that relates directly to the performance of its obligations under this Deed;
 - ii. information collected by the Operator from members of the public to whom it provides, or offers to provide, the Services to Public Patients;
 - iii. information received by the Operator from NBMLHD under this Deed; and
 - iv. without limiting the above, health records relating to or in connection with any Public Patient who receives care or treatment as a result of, or related to, the Services,

at the Operator's expense and in such medium as NBMLHD may reasonably require in accordance with the GIPA Act or the Privacy Legislation (as applicable);

- (b) **(Availability of Project Documents):** NBMLHD may make the Project Documents, the Records, or any of them available to any person;
- (c) **(Notification):** NBMLHD will notify the Operator of any proposed disclosure of Commercially Sensitive Information by NBMLHD under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
- (d) **(Consultation):** following notification by NBMLHD in accordance with clause 11.24(c), NBMLHD will take reasonable steps to consult with the Operator before disclosing Commercially Sensitive Information, including under the GIPA Act;
- (e) **(Objection):** if, following:
- i. notification by NBMLHD in accordance with clause 11.24(c); or
 - ii. consultation between NBMLHD and the Operator in accordance with clause 11.24(d),

the Operator objects to disclosure of some or all of the Commercially Sensitive Information, the Operator must provide details of any such objection within 5 Business Days after the date the Operator received notification from NBMLHD or the date on which the consultation process concluded (as relevant).

- (f) **(Disclosure):** NBMLHD may take into account any objection received from the Operator pursuant to clause 11.24(e) in determining whether the Commercially Sensitive Information identified by the Operator should be disclosed.
- (g) **(NBMLHD's obligations):** nothing in this clause will limit or otherwise affect the discharge of NBMLHD's obligations under the GIPA Act.



(d) A new clause 11.25 is inserted into the Services Agreement as follows:

11.25 Compliance with Annual Service Agreement

The Operator agrees:

- (a) to comply with all of the obligations imposed on the Hawkesbury District Health Service (**Organisation**) in the 'Annual Service Agreement 2021/22' between NBMLHD and Hawkesbury District Health Service (Organisation) in respect of service delivery and performance requirements, as amended or re-issued from time to time by the NSW Ministry of Health; and
- (b) to execute any documentation reasonably required by NBMLHD to give effect to clause 11.25(a); and
- (c) that, to the extent of any inconsistency between:
 - (1) any document of the type referred to in clause 11.25(b);
 - (2) an Ancillary Agreement; or
 - (3) the Services Agreement,

the order of priority for the resolution of that inconsistency is as set out in descending order in this clause 11.25(c).



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Signing page

Executed as a deed

NBMLHD

Executed as a deed for and on behalf of **Nepean Blue Mountains Local Health District** (ABN 31 910 677 424), a body corporate constituted under the *Health Services Act 1997* (NSW) by its authorised representative:

in the presence of

sign here ►

Representative

sign here ►

Witness

print name

Kay Hyman

print name

Kyle Sparkes

Operator

Executed as a deed for and on behalf of **St John of God Hawkesbury District Health Campus Limited** (ACN 608 054 379) in accordance with s127 of the *Corporations Act 2001* (Cth) by:

sign here ►

Company Secretary/Director

sign here ►

Director

print name

print name



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Guarantor

Executed as a deed for and on behalf of **St John of God Health Care Inc** (ARBN 051 960 911) an incorporated association established under the laws of Western Australia with limited liability in accordance with its constitution by:

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____