

5 May 2017

The Manager
Company Announcements Office
Australian Securities Exchange Limited
Level 4, Exchange Centre
20 Bridge Street
Sydney NSW 2000

REVISED, UNCONDITIONAL AND FINAL¹ CASH OFFER OF A\$2.30 PER GENERATION UNIT² FROM NORTHWEST AUSTRALIA

APNFM BOARD UNANIMOUSLY RECOMMENDS UNITHOLDERS ACCEPT THE OFFER, IN THE ABSENCE OF A SUPERIOR PROPOSAL AND SUBJECT TO THE INDEPENDENT EXPERT FINDING THE OFFER FAIR AND REASONABLE

APN Funds Management Limited (**APNFM**), the responsible entity of Generation Healthcare REIT (ASX: GHC.AX) (**Generation**), today announces it has reached an agreement with NWH Australia Asset Co Pty Ltd as trustee for NWH Australia Asset Trust (**NorthWest Australia**), a controlled entity of NorthWest Healthcare Properties Real Estate Investment Trust (TSX: NWH.UN) (**NorthWest**), to increase its offer price under its all-cash, unconditional, off-market takeover offer (**Offer**) for all outstanding units it does not already own (**Generation Units**) in Generation from A\$2.24 to A\$2.30² (**Offer Price**).

NorthWest Australia has declared its Offer Price as best and final¹ and will not be increasing the Offer, subject only to no competing proposal for Generation being publicly announced.

Absent a superior proposal, **the Board of APNFM believes the revised Offer Price of A\$2.30 per Generation Unit² represents full and fair value** for Unitholders in Generation and implies a premium of:

- 49.4% to Generation's 31 December 2016 net tangible assets (NTA) of A\$1.54 per Generation Unit, reported on 20 February 2017;
- 13.4% to Generation's one day VWAP on 21 April 2017, being the last trading day before the announcement of the Offer;
- 13.4% to Generation's one month VWAP (calculated from 22 March 2017);
- 15.8% to Generation's three month VWAP (calculated from 22 January 2017); and
- 2.7% to the A\$2.24 previous Offer Price.

In addition to the premiums implied by the Offer Price, the APNFM Board has had regard to the Offer Price relative to the underlying market value of Generation's existing portfolio, including the future upside resulting from Generation's development pipeline.

The Board of APNFM unanimously recommends that all Generation Unitholders accept Northwest Australia's Offer, in the absence of a superior proposal and provided that an Independent Expert determines the Offer is fair and reasonable.

¹ Final as to price and will not be increased, subject only to no competing proposal for Generation being publicly announced.

² The cash consideration of \$2.30 will be reduced by the amount or value of any rights attaching to the Generation Units (including any distributions) which arise or are paid on or after the date of the bidder's statement which NorthWest Australia does not receive.

Independent Expert

The Board of APNFM has engaged Ernst & Young as the Independent Expert, and it is intended that the Independent Expert's report will be included as part of Generation's Target's Statement to be lodged and sent to Unitholders.

APNFM's Chairman, Mr Geoff Brunsdon said, "NorthWest Australia's increased Offer price of \$2.30 per unit represents full and fair value for Generation Unitholders, taking into account the implied market value of Generation's property portfolio, including the potential for future development upside."

Mr Brunsdon added "The Board has carefully considered Generation's development pipeline and is satisfied that the increase in offer price to A\$2.30 per unit appropriately captures this potential upside in the portfolio and accordingly the Board has determined to recommend the Offer, in the absence of a superior proposal and provided that the Independent Expert determines the offer is fair and reasonable."

Bid Implementation Deed

APNFM and NorthWest Australia have entered into a Bid Implementation Deed, which includes provisions customary for a transaction of this nature including no shop, no talk, no due diligence, notification and matching right provisions, some of which are subject to customary fiduciary exceptions. A copy of the Bid Implementation Deed is attached to this announcement.

APNFM has engaged Merrill Lynch Markets (Australia) Pty Limited as financial adviser and Gilbert + Tobin as legal adviser.

ENDS

For further information, please contact:

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About Generation Healthcare REIT

Generation Healthcare REIT (ASX code: GHC), is Australia's only ASX-listed healthcare real estate investment entity.

The Fund owns 16 properties including hospitals, medical centres, laboratories, residential aged care facilities and other purpose-built healthcare facilities. The Fund partners with high quality healthcare tenants with strongly diversified income streams. The Fund has total assets of approximately \$621 million with investments located in Victoria, New South Wales and Queensland.

www.generationreit.com.au

About APN Funds Management Limited

APN Funds Management Limited (APNFM) is the Responsible Entity of Generation Healthcare REIT. The Board of APNFM consists of four directors, three of which, including the Chairman are Independent Directors. APNFM is a wholly owned subsidiary of APN Property Group Limited (APN) (ASX code: APD), a specialist real estate investment manager.

www.apngroup.com.au

Bid Implementation Deed

**NWH Australia AssetCo Pty Ltd as trustee
for NWH Australia Asset Trust**

**APN Funds Management Limited as
responsible entity of Generation Healthcare
REIT**

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Title **Bid Implementation Deed**

Date 5 May 2017

Parties **NWH Australia AssetCo Pty Ltd** (ACN 617 449 948) of c/- Baker McKenzie, Level 19, 181 William Street, Melbourne, Victoria 3000 as trustee for NWH Australia Asset Trust (**Bidder**)

APN Funds Management Limited (ABN 60 080 674 479) of Level 30, 101 Collins Street, Melbourne, Victoria 3000 as responsible entity of Generation Healthcare REIT (ARSN 118 712 584) (**APNFM**)

Recitals

- A The Bidder has made a Bid.
- B The Bidder is proposing to announce a variation to the terms of the Offer to increase the consideration offered.
- C The APNFM Directors propose to recommend that Target Unitholders accept the Offer in respect of their Target Units in the absence of a Superior Proposal and subject to the Independent Expert determining that the Offer is fair and reasonable.
- D The Bidder and APNFM have agreed to certain matters in relation to the conduct of the Bid as set out in this Deed.

Operative provisions

1. **Defined terms and interpretation**

Dictionary

- 1.1 In this Deed, the following definitions apply.

Aggregate Consideration means the amount calculated by multiplying the number of Target Units not held by the Bidder (or its Associates) as at the date of this Deed by the Consideration (as set out in item 1 of Schedule 1).

Agreed Bid Terms means the terms and conditions set out in Schedule 1.

Agreed Public Announcement means the public announcement concerning the Bid, substantially in the form agreed between the parties in writing.

Announcement Date means the date that the Agreed Public Announcement is made.

APNFM Board means the board of directors of APNFM in its capacity as responsible entity of the Target.

APNFM Director means a director from time to time of APNFM in its capacity as responsible entity of the Target.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning it has in section 12 of the Corporations Act as if subsection (1) of that section included a reference to this Deed.

ASX means ASX Limited (ABN 98 008 624 691) and, as the context requires, the financial market that it operates.

ASX Listing Rules means the official listing rules of ASX.

Bid means an off-market takeover bid by the Bidder for all Target Units under Chapter 6 of the Corporations Act.

Bid Protocols means the protocols dated on or around the date of this Deed agreed between APNFM, the Manager and NorthWest Healthcare Properties Real Estate Investment Trust.

Bidder's Statement means the bidder's statement dated 24 April 2017 prepared by the Bidder in connection with the Bid in accordance with Chapter 6 of the Corporations Act.

Bidder Trust means NWH Australia Asset Trust.

Break Fee means \$5,000,000.

Business Day means a day on which banks are open for business in Sydney, New South Wales, excluding a Saturday, Sunday or public holiday.

Competing Proposal means any expression of interest, proposal, offer or transaction (or a series of transactions), which if entered into or completed, would result in a person (other than the Bidder or one of its Associates):

- (a) acquiring Voting Power in the Target of more than 20%;
- (b) directly or indirectly, acquiring an interest in, a relevant interest in, having the right to acquire, becoming the holder of, or entering into a cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to more than 20% of the Target Units;
- (c) acquiring control of the Target, within the meaning of section 50AA of the Corporations Act;
- (d) acquiring all or a substantial part or material part of the business or assets of, or merging with, the Target (including by way of one or more of a scheme of arrangement, trust scheme, stapling, capital reduction, purchase of assets, strategic alliance, joint venture, partnership, reverse takeover bid or dual listed company structure); or
- (e) seeking to remove or replace the Responsible Entity of the Target or a meeting being convened to do so.

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

Deed means this bid implementation deed.

Encumbrance means any mortgage, fixed or floating charge, pledge, lien, option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement, hypothec or other security interest of any kind, and any agreement to create any of the foregoing and includes a security interest that is subject to the *Personal Property Securities Act 2009* (Cth).

End Date means the time at which the Offer Period ends.

Exclusivity Period means the period commencing on the date of this Deed and ending on the first to occur of:

- (a) the date of termination of this Deed; and
- (b) the End Date.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation.

Government Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

Independent Expert means an expert engaged by APNFM to opine on whether the Bid is fair and reasonable.

Independent Expert's Report means the report to be issued by the Independent Expert in respect of the Transaction.

Manager means the investment manager of the Target, being Generation Healthcare Management Pty Limited.

Material Contract means any contract to which APNFM as responsible entity of the Target or a trustee of a Target Sub-Trust is a party, and which:

- (a) involves annual commitments or expenditure greater than \$200,000 or is otherwise in respect of any Financial Indebtedness greater than \$200,000; or
- (b) is otherwise material to the conduct of the business of the Target.

Offer means each offer by the Bidder for all Target Units under the Bid and **Offers** means all such offers.

Offer Period means the period the Offer is open for acceptance.

Offer Price means the consideration specified in item 1 of Schedule 1.

Permitted Distribution means a cash distribution which is paid in the ordinary course of the Target's business in respect of any half year.

Prescribed Occurrence means any one of the following:

- (a) the Target converts all or any of the Target Units into a larger or smaller number of units;
- (b) the Target resolves to reduce its capital in any way;
- (c) the Target entering into a buy-back agreement or resolving to approve the terms of such an agreement;
- (d) the Target issues units, or grants an option over its units, or agrees to make such an issue or grant such an option;
- (e) the Target issues, or agrees to issue, securities or other instruments convertible into units or debt securities;

- (f) the Target disposes or agrees to dispose, of the whole, or a substantial part, of its business or property other than in the ordinary course of the business;
- (g) the Target grants a security interest, or agrees to grant a security interest, over the whole, or a substantial part, of its business or property other than in the ordinary course of the business;
- (h) the Target declares, determines to pay, pays or distributes any distribution, dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (in each case whether in cash or not), other than a Permitted Distribution;
- (i) the Responsible Entity of the Target being removed or replaced or a meeting being convened to do so;
- (j) the Target resolves that it be wound up or the members of the Target resolve that the Responsible Entity of the Target wind-up the Target;
- (k) the making of an order by a court for the winding up of the Target, or Responsible Entity of the Target determining to terminate the Target in accordance with the constitution of the Target;
- (l) the Responsible Entity of the Target being required to wind up the Target;
- (m) the appointment of a receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official in relation to the whole, or a substantial part, of the property of the Target; or
- (n) the Target making any material change or amendment to its constitution or other constituent documents (including the trust deed establishing the Target), other than any amendment expressly contemplated by the Transaction or this Deed,

but does not include any matter:

- (o) relating to the issue of any Target Units in accordance with the terms of any distribution reinvestment plan in existence as at the date of this Deed to the extent that it relates to a Permitted Distribution;
- (p) expressly required or permitted by this Deed, the Bid or the Transaction;
- (q) for which the Bidder has given its prior written consent (which may be withheld in the Bidder's absolute discretion); or
- (r) that has been directly or indirectly caused, or contributed to, by the Bidder or any of its Associates, including the Manager (except where the Manager is acting pursuant to an express direction by the Responsible Entity).

Register means the register of Target Units kept by the Target.

Related Body Corporate has the meaning given in section 50 of the Corporations Act, but on the basis that a trust may be a subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share, and a corporation or trust may be a subsidiary of a trust if it would have been a subsidiary if that trust was a corporation, and with any necessary modification with respect to overseas entities.

Relevant Interests Register means the register kept by APNFM in respect of the Target as required by section 672DA of the Corporations Act.

Replacement Bidder's Statement means the replacement bidder's statement to be prepared by the Bidder in connection with the Bid in accordance with Chapter 6 of the Corporations Act and ASIC Class Order [CO 13/528].

Representative of a person means an employee, agent, officer, director, adviser or financier of the person and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable). For the avoidance of doubt, the Manager is not a Representative of APNFM or the Target and is treated as a Representative of the Bidder for the purposes of this Deed.

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

RG 9 means Regulatory Guide 9 issued by ASIC and dated December 2016.

Superior Proposal means a bona fide Competing Proposal by a person (other than the Bidder or one of its Associates) which:

- (a) is not resulting from a breach by APNFM of any of its obligations under clause 6 of this Deed (it being understood that any actions by the APNFM Board, the Target or any of APNFM's or the Target's Representatives in breach of clause 6 will be deemed to be a breach by APNFM for the purposes of this Deed); and
- (b) the APNFM Board, acting in good faith, and after receiving written legal advice from its external legal adviser and written advice from its financial adviser, determines:
 - (i) is reasonably capable of being valued and completed in a timely fashion, taking into account all aspects of the Competing Proposal (including consideration, conditionality, funding, certainty and the identity of the proponent(s)); and
 - (ii) would, if completed substantially in accordance with its terms, be more favourable to Target Unitholders (as a whole) than the Bid, taking into account all terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing).

Target means Generation Healthcare REIT (ARSN 118 712 584), and where applicable, includes the Target Sub-Trusts.

Target Costs mean all professional advisory costs and expenses (including GST) in connection with responding to the Bid of Gilbert + Tobin, Merrill Lynch Markets (Australia) Pty Limited, Ernst & Young Transaction Advisory Services Limited and a taxation adviser to APNFM except where those costs and expenses are incurred in connection with:

- (a) work undertaken with respect to the process contemplated by clauses 4.6 and 4.7 relating to any Material Contracts that may contain a change of control or similar provision;
- (b) any Competing Proposal that is received;
- (c) any action or investigation that is announced or commenced by, or any temporary restraining order, preliminary or permanent injunction, decision, decree or other order issued by, any court of competent jurisdiction or by any Government Agency that is in effect or any other legal restraint or prohibition, other than any action or investigation announced, commenced or initiated by APNFM or any of its Associates; or
- (d) any breach by the Bidder (or any of its Associates) of this Deed or the Corporations Act.

Target Costs Cap means \$3,150,000.

Target Sub-Trust means a trust in which the Target holds an interest.

Target's Statement means the target's statement to be issued by the Target under section 638 of the Corporations Act in response to the Bid.

Target Units means fully paid ordinary units issued in the capital of the Target.

Target Unitholders means a registered holder of Target Units.

Timetable means the indicative timetable for implementation of the Transaction as set out in Schedule 2.

Transaction means the acquisition by the Bidder of all Target Units under the Bid.

Voting Power has the meaning it has in the Corporations Act.

1.2 In this Deed:

- (a) unless the context otherwise requires, a reference to:
 - (i) **dollars** or \$ are to Australian dollars, the lawful currency of the Australia;
 - (ii) the singular includes the plural and vice versa;
 - (iii) a gender includes all genders;
 - (iv) a document (including this Deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
 - (v) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (vi) parties means the parties to this Deed and to a party means a party to this Deed;
 - (vii) an item, recital, clause, schedule or annexure is to an item, recital, clause, schedule or annexure of or to this Deed;
 - (viii) a notice means all notices, approvals, demands, requests, nominations or other communications given by one party to another under or in connection with this Deed;
 - (ix) a person (including any party) includes:
 - (A) a reference to an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency as the case requires; and
 - (B) the person's successors, permitted assigns, executors and administrators;
 - (x) a law:
 - (A) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange;

- (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
 - (xi) the word including or includes means including, but not limited to, or includes, without limitation;
 - (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (c) headings are for convenience only and do not affect interpretation;
 - (d) if a period occurs from, after or before a day or the day of an act or event, it excludes that day;
 - (e) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it; and
 - (f) capitalised terms which are not defined in this Deed and which are defined in, or given a meaning for the purpose of, the Corporations Act have the meaning given in the Corporations Act.
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2. The Takeover Bid

Agreement to make the Bid

- 2.1 The Bidder agrees to vary the Bid to acquire all the Target Units on the Agreed Bid Terms.
- 2.2 The Bidder must make the Offers.
- 2.3 The Bidder and APNFM each agree to use reasonable endeavours to implement the Transaction in accordance with the Timetable.

Recommendation and acceptance of Offer by the APNFM Directors

- 2.4 APNFM represents and warrants to the Bidder that:
 - (a) the APNFM Board has confirmed to the Target that they will announce to the ASX that they unanimously recommend that Target Unitholders accept the Offer in respect of their Target Units, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and any update or variation to that report) that the Offer is fair and reasonable;
 - (b) each APNFM Director does not hold or control (in their personal capacity) any Target Units; and
 - (c) each APNFM Director has confirmed to the Target each of the matters set out in paragraphs 2.4(a) and 2.4(b).
- 2.5 APNFM must use reasonable endeavours to procure that each APNFM Director will not withdraw, revise, revoke or qualify, or make any public statement inconsistent with, the recommendation in paragraph 2.4(a), unless:
 - (a) a Superior Proposal emerges (other than as a result of a breach of clause 6 of this Deed) and the matching right procedure set out in clauses 6.8, 6.9 and 6.10 have been

fully complied with by APNFM and each of its Representatives, the Target and the Target's Representatives; or

- (b) the Independent Expert concludes in the Independent Expert's Report (and any update or variation to that report) that the Offer is not fair and not reasonable.

Public announcement

- 2.6 Immediately after the execution of this Deed, the Bidder and APNFM must jointly issue the Agreed Public Announcement.
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3. Facilitating the Offer

Access to information

- 3.1 Each party agrees to provide the other party, on a timely basis, with assistance and information that may be reasonably required to assist in the preparation of the Replacement Bidder's Statement or the Target's Statement (as applicable), including:
 - (a) the giving of written consent to the inclusion of information relating to that party in the Replacement Bidder's Statement or the Target's Statement (as applicable) in the form and context in which it appears (such consent not to be unreasonably withheld or delayed); and
 - (b) if requested in writing by a party, confirming that the information that is subject to the consent referred to paragraph 3.1(a) is factually accurate and, in the form and context in which it appears, is not materially misleading or deceptive.
- 3.2 APNFM agrees to provide to the Bidder (or any of its Associates) on the Business Day after the date of this Deed and at any time thereafter when reasonably requested by the Bidder (or any of its Associates) in writing, until the end of the Exclusivity Period, at no cost to the Bidder (or any of its Associates), such information about Target Unitholders as reasonably requested by the Bidder (or any of its Associates) to make the Offers and solicit acceptances, including the Register and the Relevant Interests Register and any updates to those registers.

Review of Target's Statement

- 3.3 APNFM agrees to give the Bidder a reasonable opportunity to review an advanced draft of the Target's Statement and will consult in good faith with the Bidder in relation to any comments the Bidder may have, which comments the Bidder agrees to provide as promptly as possible.

Review of Supplementary Bidder's Statement or Supplementary Target's Statement

- 3.4 In each instance where a party proposes to lodge a supplementary bidder's statement or supplementary target's statement (as the case may be), that party agrees to give the other party a reasonable opportunity to review an advanced draft of that supplementary bidder's statement or supplementary target's statement (as the case may be) and will consult in good faith with the other party in relation to any comments the other party may have, which comments the other party agrees to provide as promptly as possible.

Dispatch of Replacement Bidder's Statement

- 3.5 APNFM represents and warrants to the Bidder that each of the APNFM Directors has confirmed his or her agreement to the Offers and accompanying documents being sent by the Bidder under item 6 of section 633(1) of the Corporations Act on a date nominated by the Bidder that is earlier than the earliest date prescribed by item 6 of section 633(1) of the Corporations Act and item 4 of ASIC Class Order [CO 13/528]. For the avoidance of doubt,

the Replacement Bidder's Statement must be substantially in the same form as at that provided by the Bidder's counsel to APNFM's counsel on 2 May 2017 (with such changes as are agreed between the parties to reflect the higher consideration offered under the Offer, the Bid Protocols and the recommended nature of the Transaction).

Dispatch of Target's Statement

- 3.6 The Bidder represents and warrants to APNFM that the Bidder will support any application to ASIC by APNFM seeking an extension of time to lodge and despatch the Target's Statement to a date to be nominated by APNFM that is no later than 30 May 2017 and will do all other things reasonably necessary to facilitate this extension.

Independent expert

- 3.7 APNFM and the Bidder will each use all reasonable endeavours to provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report as soon as practicable including, in the case of the Bidder, the assistance of the Manager and its Representatives in accordance with the Bid Protocols.

Replacement Bidder's Statement

- 3.8 The Bidder must prepare the Replacement Bidder's Statement in compliance with the Corporations Act and RG 9.

Target's Statement

- 3.9 APNFM must prepare the Target's Statement in compliance with the Corporations Act and RG 9.
- 3.10 APNFM must ensure that the Target's Statement:
- (a) prominently displays the unanimous recommendation of the APNFM Board referred to in clause 2.4 (including on the cover of the Target's Statement); and
 - (b) subject to clause 2.4, includes a statement that each APNFM Director maintains their recommendation that Target Unitholders accept the Offer.

Variation and waiver

- 3.11 Subject to clauses 2.1 to 2.3 (inclusive), the Bidder may vary the terms of the Offers in any manner which is permitted by the Corporations Act, provided that the varied terms are not less favourable to Target Unitholders than the Agreed Bid Terms.
- 3.12 Subject to the Corporations Act, the Bidder may extend the Offer Period at any time.

Promotion of Offer

- 3.13 Unless each APNFM Director withdraws, revises, qualifies or makes any public statement inconsistent with their recommendation of the Offer in accordance with clause 2.4(c), APNFM must ensure that each APNFM Director as reasonably requested by the Bidder participate in efforts to promote the merits of the Offer. In determining what constitutes reasonable co-operation, the fact that each of the APNFM Directors are non-executive directors of the Target is to be taken into account.

4. Conduct of business

Conduct of business

- 4.1 Until the end of the Exclusivity Period, APNFM must ensure, and will procure that the Target will:
- (a) not take or fail to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to, a Prescribed Occurrence;
 - (b) conduct their business and operations and maintains their assets only in, and not take any action except in, the ordinary course and consistent with the manner in which, in the last 12 months, the business and operations have been conducted and those assets have been maintained;
 - (c) operate their businesses in all material respects in accordance with current business plans and budgets;
 - (d) not dispose, agree to dispose or offer to dispose of any securities, business, assets, interest in a joint venture, entity or undertaking, the price or value of which exceeds \$2,500,000 (individually or in aggregate);
 - (e) not acquire, agree to acquire or offer to acquire any securities, business, assets, interest in a joint venture, entity or undertaking, the price or value of which exceeds \$2,500,000 (individually or in aggregate);
 - (f) make all reasonable efforts within its control to:
 - (i) preserve the value of the Target's businesses and assets;
 - (ii) preserve the Target's relationships with customers, suppliers, financiers, bankers, licensors and others with whom the Target has business dealings;
 - (iii) maintain and preserve its relationships with Government Agencies;
 - (iv) retain the services of all key contractors of the Target (provided they remain in compliance with their contractual obligations to the Target);
 - (g) comply in all material respects with all Material Contracts and all laws, regulations, rules, requirements, authorisations, licenses, permits, consents and approvals applicable to the Target;
 - (h) not terminate, novate, enter into, renew, extend, materially alter or amend any Material Contract;
 - (i) enter into a joint venture or strategic partnership with any person where the contractually committed investment by the Target exceeds \$2,500,000 (individually or in aggregate);
 - (j) settle or offer to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount exceeds \$500,000;
 - (k) not do or cause to be done, or fail to do or cause not to be done, anything that would or may prevent, inhibit or otherwise have a material adverse effect on the Transaction being implemented or being implemented otherwise than in accordance with the Timetable and the terms of this Deed;

- (l) ensure that the Target Units continue to be quoted on the securities market conducted by the ASX; and
- (m) authorise, commit or agree to do any of the matters set out in this clause 4.1,

but does not include any matter:

- (n) relating to the issue of any Target Units in accordance with the terms of any distribution reinvestment plan in existence as at the date of this Deed to the extent that it relates to a Permitted Distribution;
- (o) expressly required or permitted by this Deed, the Bid or the Transaction;
- (p) for which the Bidder has given its prior written consent (which may be withheld in the Bidder's absolute discretion);
- (q) fairly disclosed by the Target in an announcement to or filing with ASX, or a document lodged by the Target with ASIC prior to the date of this Deed; or
- (r) that has been directly or indirectly caused, or contributed to, by the Bidder or any of its Associates, including the Manager (except where the Manager is acting pursuant to an express direction by the Responsible Entity).

4.2 From the date of this Deed until the end of the Exclusivity Period APNFM must continue to act as the Responsible Entity of the Target, unless (subject always to the Corporations Act):

- (a) prior written consent is given by the Bidder; or
- (b) any change to the Responsible Entity of the Target is made in accordance with clause 4.8 or otherwise as expressly required or contemplated by the terms of this Deed.

4.3 APNFM must, as soon as practicable after the date of this deed, provide to the Manager a list setting out the Prescribed Occurrences, and must direct the Manager to provide services pursuant to the Investment Management Agreement between the Manager and APNFM dated 21 March 2006 (as amended) subject to complying with such Prescribed Occurrences unless expressly directed otherwise by the Responsible Entity.

Access

4.4 APNFM must use reasonable endeavours to provide the Bidder and its Representatives with reasonable access to the APNFM Directors and such, information and records (within the possession, power or control of APNFM) and premises which the Bidder reasonably requires for the purposes of:

- (a) implementing the Transaction;
- (b) for the purposes of finalising its plans for the Target following implementation of the Transaction; or
- (c) preparing for its nominee to become the Responsible Entity of the Target,

provided that such access:

- (d) does not place an unreasonable burden on, or unduly disrupt, the ability of the Target or APNFM (in its personal capacity) to operate their respective business; or
- (e) would be a breach of law.

Integration planning

- 4.5 As soon as practicable after the date of this Deed, the parties must work together in good faith with the Manager to commence planning for the takeover of the Target by the Bidder following the close of the Offer.
- 4.6 As soon as practicable after the date of this Deed, APNFM and the Bidder must seek to identify any Material Contract that contains a change of control or similar provision which may be triggered by:
- (a) the implementation of the Transaction; or
 - (b) the replacement of the Responsible Entity of the Target in accordance with clause 4.8 (including the appointment of any custodian by the new Responsible Entity).
- 4.7 In respect of the Material Contracts identified pursuant to clause 4.6, APNFM and the Bidder will use reasonable endeavours to agree a proposed course of action and then APNFM and the Manager are to jointly initiate contact with the relevant counter-parties and request that they provide any consents required. The parties must cooperate with, and provide all reasonable assistance to (including promptly providing any information reasonably required by any counter-party), each other and the Manager to obtain such consents or waivers (as applicable) as expeditiously as possible.

Replacement as Responsible Entity

- 4.8 If the Bidder acquires Voting Power in the Target of more than 50%:
- (a) the Bidder may give written notice to APNFM that NorthWest Healthcare Australia RE Limited (or another nominee of the Bidder) wishes to be appointed as the Responsible Entity of the Target at the date specified in the notice (subject always to member approval); or
 - (b) APNFM may give written notice to the Bidder that it wishes to resign and/or be replaced as the Responsible Entity of the Target by a date that is two months after the later of (subject always to member approval):
 - (i) the date on which the Offer Period ends; and
 - (ii) the date on which any compulsory acquisition or buy-out procedure(s) that the Bidder chooses to undertake in accordance with Part 6A.1 of the Corporations Act are completed.
- 4.9 If the Bidder gives notice to APNFM under clause 4.8(a), APNFM represents and warrants to the Bidder that APNFM will, and will procure that the Target will, take all actions reasonably necessary and as soon as reasonably practicable to call a meeting for the purposes of seeking member approval in accordance with the Corporations Act to appoint NorthWest Healthcare Australia RE Limited (or another nominee of the Bidder) as the Responsible Entity of the Target at the date specified in the notice.
- 4.10 If APNFM gives notice to the Bidder under clause 4.8(b), the Bidder represents and warrants to APNFM that the Bidder will do all things reasonably necessary to facilitate this resignation and/or replacement, including nominating NorthWest Healthcare Australia RE Limited (or another nominee of the Bidder) to be appointed as the Responsible Entity of the Target.

Bid Protocols

- 4.11 APNFM agrees and acknowledges that any access or information rights pursuant to the Bid Protocols are subject to, and modified by, the terms of this Deed.

5. Public announcements

- 5.1 Subject always to clause 5.2, before making any public announcement that relates principally to the Transaction (whether to ASX or otherwise), a party must (or, if applicable, procure that its related body corporate that is proposing to make the announcement) provide the other party with a draft copy of such public announcement as soon as reasonably practicable before it is proposed that such public announcement is made, and each party must give the other party a reasonable opportunity to comment on the form and content of the draft announcement and must consider all reasonable comments from that other party and its Representatives on the draft.
- 5.2 A party is required to comply with clause 5.1 only if, and to the extent, that compliance would not, in the reasonable opinion of that party, be likely to result in the party breaching its continuous disclosure or similar obligations under a corresponding law.

6. Exclusivity

No existing discussion

- 6.1 APNFM represents and warrants to the Bidder that as at the date of this Deed none of APNFM or the Target or any of their respective Representatives are involved in any discussions or negotiations with any person in relation to, or which could reasonably be expected to lead to, a Competing Proposal being made, enquired about, negotiated or discussed.

No shop

- 6.2 During the Exclusivity Period, APNFM must not, and must ensure that each of its Representatives, the Target and the Target's Representatives do not, directly or indirectly:
- (a) solicit, invite, encourage, facilitate or initiate any enquiries, negotiations or discussions in relation to, or which could reasonably be expected to lead to, a Competing Proposal being made, enquired about, negotiated or discussed; or
 - (b) communicate any intention to do any of the things referred to in clause 6.2(a).

No talk

- 6.3 Subject to clause 6.7, during the Exclusivity Period, APNFM must not, and must ensure that each of its Representatives, the Target and the Target's Representatives do not:
- (a) directly or indirectly enter into, continue or participate in negotiations or discussions with any other person regarding, or that could reasonably be expected to lead to, a Competing Proposal being made, enquired about, negotiated or discussed, even if:
 - (i) those negotiations or discussions were not directly or indirectly encouraged, solicited, invited or initiated by APNFM, the Target or any of their respective Representatives; or
 - (ii) that person has publicly announced their Competing Proposal;
 - (b) enter into any agreement, arrangement or understanding of any kind (whether written or verbal, binding or non binding, express or implied or enforceable or unenforceable) regarding a Competing Proposal; or

- (c) communicate to any person any intention to do any of the things referred to in clause 6.3(a) or 6.3(b).

Nothing in this clause 6.3 prevents APNFM from continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Offer.

No due diligence

- 6.4 Subject to clause 6.7, during the Exclusivity Period, APNFM must not, and must ensure that each of its Representatives, the Target and the Target's Representatives do not, make available to any other person or permit any other person to receive any non-public information relating to the Target or any of its businesses, assets or operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal. Nothing in this clause 6.4 prevents APNFM from providing information to the ASX where required by law or APNFM's auditors and advisers acting in that capacity in the ordinary course of business.

Notification of approaches

- 6.5 During the Exclusivity Period, APNFM must, as soon as reasonably practicable (and, in any event within two Business Days) notify the Bidder in writing if:
 - (a) it, the Target or any of their respective Representatives is asked to do, proposes to take, or is approached by any person to take, any action of a kind that is set out in clauses 6.2 to 6.4 (inclusive); or
 - (b) it, the Target or any of their respective Representatives directly or indirectly receives any approach, inquiry or proposal (whether written or verbal) from any person regarding, or that could reasonably be expect to lead to, a Competing Proposal (regardless of whether clauses 6.8, 6.9 or 6.10 apply).
- 6.6 A notice given under clause 6.5 must include all material details of the relevant event (including, if specified, the consideration offered, terms and conditions and identity of the proponent(s) of the Competing Proposal).

Exceptions to no talk and no due diligence

- 6.7 The restrictions in clauses 6.3 and 6.4 do not apply to the extent that they restrict APNFM, the Target or an APNFM Director from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited or initiated in contravention of clauses 6.2, 6.3 or 6.4) in circumstances where:
 - (a) the APNFM Board determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
 - (b) the APNFM Board, acting in good faith, and after having considered written advice from its external legal advisers, determines that taking or refusing to take the action in question would be likely to constitute a breach of the fiduciary or statutory duties owed by any APNFM Director,

or it would otherwise be unlawful.

Matching right

- 6.8 Without limiting clauses 6.2, 6.3 or 6.4, during the Exclusivity Period:

- (a) APNFM must not, and must ensure that each of its Representatives, the Target and the Target's Representatives do not, enter into any legally binding agreement, arrangement or understanding pursuant to which any third party (other than the Bidder or its Associates), APNFM or the Target (whether separately or together) proposes or propose to undertake or give effect to a Competing Proposal; and
- (b) APNFM must use, and must ensure that each of its Representatives, the Target and the Target's Representatives use, its best endeavours to procure that none of the APNFM Directors publicly recommend a Competing Proposal,

unless:

- (c) the APNFM Board, acting in good faith and in order to satisfy what the APNFM Directors consider to be their fiduciary and statutory duties and after receiving written legal advice from its external legal adviser and written advice from its financial adviser, determines that the Competing Proposal would be a Superior Proposal;
- (d) APNFM has provided the Bidder with written notification of the material terms and conditions of the Competing Proposal (including price and details of the party making the proposal, if specified);
- (e) APNFM has given the Bidder at least five Business Days after the provision of the information referred to in clause 6.8(d) to provide an irrevocable offer of a matching or superior proposal to the terms of the relevant Competing Proposal on terms which APNFM considers in good faith to be no less favourable to the relevant Competing Proposal (**Bidder Counter Proposal**); and
- (f) APNFM has not announced a Bidder Counter Proposal by the expiry of the time period set out in clause 6.8(e).

6.9 APNFM must use, and must ensure that each of its Representatives, the Target and the Target's Representatives use, its best endeavours to procure that the APNFM Directors, within two Business Days of receiving the Bidder Counter Proposal, consider any Bidder Counter Proposal in good faith and promptly notify the Bidder in writing of its decision. If the APNFM Directors determine that the terms and conditions of the Bidder Counter Proposal taken as a whole are no less favourable for Target Unitholders (as a whole) than those of the relevant Competing Proposal:

- (a) the Bidder and APNFM must use their, and each of the Bidder and APNFM must ensure that their respective Representatives use, best endeavours to agree and enter into such documentation as is reasonably necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable; and
- (b) subject to the agreements referred to in clause 6.9(a) being reached and the documentation referred to in clause 6.9(a) being executed, APNFM must use, and APNFM must ensure that each of its Representatives, the Target and the Target's Representatives use, its best endeavours to procure that each of the APNFM Directors makes a public statement recommending the Bidder Counter Proposal to Target Unitholders (on terms consistent with clauses 2.4(a) and 2.5).

6.10 Each successive amendment to any Competing Proposal that results in an increase in, or modification of, the consideration (or value of such consideration) to be received by Target Unitholders will constitute a new Competing Proposal for the purposes of clauses 6.8 and 6.9, except that any reference to 'five Business Days' in clause 6.8(e) would in that event be taken to be a reference to 'three Business Days'.

7. Break fee

Acknowledgment

7.1 APNFM:

- (a) acknowledges that, if the Bidder enters into this Deed and the Bid does not succeed, the Bidder will have incurred significant costs and losses, including significant opportunity costs;
- (b) acknowledges and agrees that the costs and losses that have been and will be incurred by the Bidder under this clause 7 will be of such nature that they cannot accurately be ascertained, but that the Break Fee is a genuine and reasonable estimate of those costs and losses and has been calculated to reimburse the Bidder for those costs and losses; and
- (c) represents and warrants to the Bidder that:
 - (i) it has received legal advice on this Deed and the operation of this clause 7; and
 - (ii) it considers this clause 7 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 7 in order to secure the significant benefits to the Target (and Target Unitholders) if the Bid is successful.

Break fee

7.2 Subject to this clause 7, APNFM must pay the Bidder the Break Fee (plus any GST, only once and without set-off or withholding) within five Business Days after receiving a written demand from the Bidder, if any of the following occur:

- (a) during the Exclusivity Period, any APNFM Director fails to make, or makes and then withdraws, revises, revokes or qualifies, their recommendation to Target Unitholders to accept the Offer except where, either:
 - (i) the Independent Expert has, in the Independent Expert's Report (and any update or variation to that report), determined that the Offer is not fair and not reasonable other than where the reason for that determination is a Competing Proposal; or
 - (ii) APNFM is entitled to terminate this Deed under clauses 9.2(a) or 9.2(c);
- (b) during the Exclusivity Period, any APNFM Director publicly endorses or otherwise publicly supports a Competing Proposal except where the Independent Expert has, in the Independent Expert's Report (and any update or variation to that report), determined that the Offer is not fair and not reasonable other than due to the existence of that Competing Proposal;
- (c) a Competing Proposal is announced during the Exclusivity Period and, within 12 months of the date of such announcement, the person or persons (either alone or in aggregate) announcing or making the Competing Proposal:
 - (i) completes in all material respects a Competing Proposal (which, for the purposes of this clause 7.2(c)(i), excludes paragraphs (a) and (b) of the definition of Competing Proposal); or

- (ii) without limiting clause 7.2(c)(i), acquires (either alone or in aggregate) a legal, beneficial or economic interest in, or control of, in excess of 50% or more of the Target Units; or
 - (d) the Bidder validly terminates this Deed under clause 9.1(a) or clause 9.1(b).
- 7.3 This clause 7 does not impose obligations on APNFM to the extent that the performance of all or part of those obligations:
- (a) constitutes unacceptable circumstances as declared by the Takeovers Panel;
 - (b) constitutes a breach of the fiduciary or statutory duties of any APNFM Director as determined by a court or the Takeovers Panel; and
 - (c) is otherwise unlawful or held to be unenforceable by a court,
- after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted.
- If the Break Fee has been paid to the Bidder and clause 7.3(a), 7.3(b) or 7.3(c) applies, the Bidder must refund the relevant part of the Break Fee (if any) to APNFM within 10 Business Days after receipt of a written demand from APNFM.

Other claims and remedies

- 7.4 The maximum aggregate amount which APNFM is required to pay in relation to a breach of this Deed (including in respect of a breach or representation and warranty, but excluding wilful or intentional breaches of this Deed by APNFM, fraud or wilful misconduct) is an amount equal to the Break Fee and in no event, except with respect to wilful or intentional breaches of this Deed by APNFM, fraud or wilful misconduct, will the aggregate liability of APNFM under or in connection with a breach of this Deed exceed an amount equal to the Break Fee.
- 7.5 Notwithstanding any other provision under this Deed, where the Break Fee becomes payable to the Bidder under this Deed and has in fact been paid in full to the Bidder, the Bidder cannot make any claim against APNFM in relation to any event or occurrence referred to in clause 7.2 or for any material breach referred to in clause 9.1(a) (but excluding wilful or intentional breach by APNFM, fraud or wilful misconduct).

8. Representations and warranties

Target Warranties

- 8.1 APNFM represents and warrants to the Bidder that each of the warranties set out in clause 8.2 is true and correct:
- (a) as at the date of this Deed; and
 - (b) on each day during the Exclusivity Period.
- 8.2 APNFM represents and warrants that:
- (a) the Responsible Entity is a corporation validly existing under the laws of its place of incorporation;
 - (b) the Target is a registered managed investment scheme validly registered under Chapter 5C of the Corporations Act;

- (c) it has the corporate power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
- (d) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed and to carry out the transactions contemplated by this Deed;
- (e) this Deed is valid and binding upon it and the execution and performance of this Deed will not result in a breach or default under APNFM's or the Target's constituent documents or any agreement or deed or any writ, order or injunction, rule or regulation to which APNFM or the Target is a party or to which either of them are bound;
- (f) APNFM and the Target are solvent and no resolution has been passed nor has any other step been taken or legal proceedings commenced or threatened against either APNFM or the Target for APNFM's or the Target's winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of APNFM's or the Target's respective assets;
- (g) so far as APNFM is aware (being limited to the actual knowledge or awareness of each APNFM Director and Michael Groth), the Target is not in breach of its continuous disclosure obligations under the Corporations Act and the Listing Rules in any material respect;
- (h) as at the date of this Deed, following the release of the Agreed Public Announcement, the Target is not relying on Listing Rule 3.1A to withhold any information from disclosure;
- (i) as at the date of this Deed, the Target has 220,742,347 Target Units on issue and has no other issued securities;
- (j) neither APNFM nor the Target has issued, granted or agreed to issue or grant any other Target Units or securities convertible into Target Units, other than the securities referred to clause 8.2(i) nor has either APNFM or the Target agreed or offered to issue any other securities (other than pursuant to the distribution reinvestment plan in place as at the date of this Deed); and
- (k) there is no litigation, mediation or arbitration current or pending, nor is there, to the best of the knowledge, information and belief of APNFM or the Target, any threatened litigation, mediation or arbitration, in each case which may materially and adversely affect the value of the Target.

Bidder Warranties

8.3 The Bidder represents and warrants to APNFM that each of the warranties set out in clause 8.4 is true and correct:

- (a) as at the date of this Deed; and
- (b) on each day during the Exclusivity Period.

8.4 The Bidder represents and warrants to APNFM that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;

- (c) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed and to carry out the transactions contemplated by this Deed;
- (d) this Deed is valid and binding upon it and the execution and performance of this Deed will not result in a breach or default under the Bidder's constitution or any agreement or deed or any writ, order or injunction, rule or regulation to which the Bidder is a party or to which it is bound;
- (e) the Bidder is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;
- (f) the Bidder:
 - (i) has as at the date of this Deed, legally binding financing arrangements, as described in the Bidder's Statement; and
 - (ii) will have during the Offer Period, sufficient funds available to satisfy its payment obligations under the Offer as and when required; and
- (g) the Offer Price at which the Offers will be made is in compliance with the Corporations Act.

Survival of representations

8.5 Each representation and warranty in clauses 8.2 and 8.4:

- (a) is severable;
- (b) will survive the termination of this Deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this Deed.

Notification

8.6 Each party must promptly advise the other in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations and warranties given by it under this Deed.

9. Termination rights

Termination events

9.1 The Bidder may terminate this Deed at any time by notice in writing to APNFM:

- (a) if:
 - (i) APNFM or the Target is in material breach of this Deed (including a material breach of an APNFM representation or warranty under clause 8) that is not directly or indirectly caused, or contributed to, by the Bidder or any of its Associates, including the Manager (except where the Manager is acting pursuant to an express direction by the Responsible Entity);
 - (ii) the Bidder has given notice to APNFM setting out the relevant circumstances of such material breach and stating an intention to terminate this Deed; and

- (iii) the material breach is not remedied to the reasonable satisfaction of the Bidder within, in the case of a breach of clause 6, one Business Day from the time such notice is given, and, in any other case, five Business Days from the time such notice is given;
- (b) if a Prescribed Occurrence occurs;
- (c) if a Competing Proposal is publicly proposed by a person other than the Bidder (or one of its Associates) and is recommended by any APNFM Director;
- (d) if any APNFM Director fails to make or withdraws, changes, revises, revokes or adversely qualifies, or makes a public statement inconsistent with, the recommendation referred to in clause 2.4 or makes a public statement indicating that they no longer recommend or intend to accept the Offer;
- (e) in any circumstance (including circumstances permitted by clauses 6.8, 6.9 or 6.10) where either APNFM or the Target enter into a definitive agreement to implement a Competing Proposal;
- (f) if any APNFM Director recommends, endorses or otherwise supports a Competing Proposal; or
- (g) a court or Government Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Bid, and the action is final and cannot be appealed or reviewed.

9.2 APNFM may terminate this Deed at any time by notice in writing to the Bidder:

- (a) if:
 - (i) the Bidder is in material breach of this Deed which breach is material in the context of the Bid;
 - (ii) APNFM has given notice to the Bidder setting out the relevant circumstances of such material breach and stating an intention to terminate this Deed; and
 - (iii) the material breach is not remedied to the reasonable satisfaction of APNFM within five Business Days from the time such notice is given;
- (b) if a majority of APNFM Directors:
 - (i) withdraw or change their recommendation of the Offer in accordance with clause 2.5; or
 - (ii) publicly recommends a Competing Proposal by a person other than the Bidder (or one of its Associates) provided this happens following the occurrence of one of the events referred to in clause 2.5,

and APNFM has complied with all of its obligations under clause 6; or
- (c) if a court or Government Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Bid, and the action is final and cannot be appealed or reviewed.

9.3 This Deed automatically terminates on the End Date.

Effect of termination

- 9.4 In the event of termination of this Deed by either the Bidder or the Target pursuant to this clause 9, the Deed will have no further effect, other than in respect of any liability for any breach of this Deed committed prior to termination and provided that this clause 9 and clauses 1, 7, 8, 10, 11, 13 and 14 survive termination.

10. Confidentiality

General

- 10.1 Subject always to clause 5, no party may disclose the existence or contents of this Deed except:
- (a) in the Agreed Public Announcement;
 - (b) to that party's professional advisers; or
 - (c) to the extent required by law or the rules of any stock exchange (provided the disclosing party consults with the other party as to the form and content of any disclosure required and uses its best endeavours to minimise the extent of such disclosure).

Disclosure in Replacement Bidder's Statement or Target's Statement

- 10.2 For the avoidance of doubt, disclosure of the existence or contents of this Deed in the Replacement Bidder's Statement or the Target's Statement will be subject to the requirements of clause 10.1(c).

11. Limitation of liability of APNFM

Responsible entity

- 11.1 APNFM enters into this Deed only in its capacity as Responsible Entity of the Target, and in no other capacity.

Limitation of liability

- 11.2 A liability arising under or in connection with this Deed is limited to and can be enforced against APNFM only to the extent to which it is indemnified out of the assets of the Target and is actually indemnified. Subject to clause 11.4, this limitation of liability of APNFM applies despite any other provision of this Deed and extends to all liabilities and obligations of the APNFM in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- 11.3 A person is not entitled to sue APNFM in any capacity other than as Responsible Entity or trustee of the Target, including seeking the appointment of a receiver, a liquidator, an administrator or any similar person to APNFM or prove in any liquidation, administration or arrangement of or affecting APNFM (except in relation to the assets of the Target).
- 11.4 The provisions of this clause 11 do not apply to any obligation or liability of APNFM to the extent that it is not satisfied because under the relevant Target's constituent documents or by operation of law APNFM is not indemnified or there is an elimination of or a reduction in the extent of APNFM's indemnification out of the assets of the Target as a result of APNFM's fraud, negligence, wilful misconduct or breach of trust.

- 11.5 No act or omission of APNFM (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful misconduct of APNFM for the purpose of clause 11.4 above to the extent to which the act or omission was caused or contributed to by any failure by another person (other than a person whose acts or omissions APNFM is liable for, as agent, officer, employee, contractor or otherwise) to fulfil its obligations relating to the Target or by any other act or omission of another person (other than a person whose acts or omissions APNFM is liable for, as agent, officer, employee, contractor or otherwise) regardless of whether or not that act or omission is purported to be done on behalf of APNFM.
- 11.6 No receiver or receiver and manager appointed has authority to act on behalf of APNFM in any way which exposes APNFM to any personal liability and no act or omission of any such person will be considered fraud, negligence, wilful misconduct or a breach of a representation and warranty as to authority for the purpose of clause 11.4 above.
- 11.7 APNFM is not obliged to enter into any commitment or obligation under this Deed unless the relevant Responsible Entity's liability is limited in accordance with this clause 11.

Target Costs

- 11.8 APNFM agrees and acknowledges that it will use its best endeavours to ensure that the Target Costs must not exceed the Target Costs Cap, including that it will use its best endeavours to ensure that its professional advisers, being Gilbert + Tobin, Merrill Lynch Markets (Australia) Pty Limited, Ernst & Young Transaction Advisory Services Limited and a taxation adviser, will each use their best endeavours to ensure that their contribution to the Target Costs does not exceed the Target Costs Cap in aggregate.

12. Limitation of liability of the Bidder

Trustee

- 12.1 The Bidder enters into this Deed in its capacity as trustee of the Bidder Trust and is entitled to be indemnified from the assets of the Bidder Trust, subject to the constitution of the Bidder Trust.

Limitation of liability

- 12.2 The parties acknowledge and agree that:
- (a) the Bidder enters into this Deed in the capacity stated in clause 12.1 and in no other capacity;
 - (b) except in the case of any liability of the Bidder under or in respect of this Deed resulting from the Bidder's own fraud, negligence, wilful default or breach of trust, the recourse for any person to the Bidder in respect of any obligations and liabilities of the Bidder under or in respect of this Deed is limited to the Bidder's ability to be indemnified from the assets of the Bidder Trust; and
 - (c) if any party (other than the Bidder) does not recover the full amount of any money owing to it arising from non-performance by the Bidder of any of its obligations, or non-payment by the Bidder of any of its liabilities, under or in respect of this Deed by enforcing the rights referred to in clause 12.2(b), that party may not (except in the case of fraud, negligence, wilful default or breach of trust by the Bidder) seek to recover the shortfall by:
 - (i) bringing proceedings against the Bidder in its personal capacity; or

- (ii) applying to have the Bidder wound up.

Override

12.3 This clause 12 applies despite any other provision of this Deed or any principle of equity or law to the contrary.

13. Notices

13.1 All notices must be:

- (a) in writing and in English;
- (b) addressed to the recipient at the address or email address set out below or to such other address or email address as that party may notify to the other parties:

to the Bidder:

Address: Level 19, 181 William Street, Melbourne VIC
3000

Attention: The Directors

Email: Bernard.Crotty@nwhreit.com

with a copy to: Mike Brady
NorthWest Healthcare Properties REIT
284 King Street East, Suite 100
Toronto, ON M5A 1K4
Canada

Email: Mike.Brady@nwhreit.com

with a copy to: Baker McKenzie

Address: Level 27, AMP Centre
50 Bridge Street
Sydney NSW 2000

Attention: Lewis Apostolou / Rick Troiano

Email: lewis.apostolou@bakermckenzie.com /
riccardo.troiano@bakermckenzie.com

to APNFM:

Address: Level 30
101 Collins Street
Melbourne VIC 3000

Attention: The Directors

Email: cchurchill@apngroup.com.au

with a copy to: Gilbert + Tobin

Address: Level 35, Tower Two, International Towers
Sydney
200 Barangaroo Avenue
Barangaroo NSW 2000
Attention: Peter Cook / Adam D'Andreti
Email: pcook@gtlaw.com.au / adandreti@gtlaw.com.au

- (c) signed by or on behalf of the party giving the notice. If the notice is sent by email and does not contain a signature, it is deemed to be signed by the person identified as the sender of the email;
- (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or email; and
- (e) if sent by email, in a form which:
 - (i) identifies the sender; and
 - (ii) clearly indicates the subject matter of the notice in the subject heading of the email.

Receipt

13.2 Without limiting any other means by which a party may prove that a notice has been received, a notice is deemed to be received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by prepaid post, three Business Days (if posted within Australia to an address in Australia) or seven Business Days (if posted from one country to another) after the date of posting; or
- (c) if sent by email, upon the first to occur of:
 - (i) the sender receiving an automated message confirming delivery; and
 - (ii) two hours after it is sent, as recorded on the device from which the email is sent but provided that the sender does not receive an automated message that the email has not been delivered,

but if a notice is left at the recipient's address or is received by or email on a day which is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice is deemed to be received by the recipient at 9:00 am (recipient's local time) on the first Business Day after that day.

14. General

Costs

- 14.1 Each party must bear its own costs and expenses in relation to the negotiation, preparation and execution of this Deed.
- 14.2 The Bidder must pay all stamp duties and all related fines and penalties payable in respect of this Deed or the Transaction and indemnifies each of APNFM and the Target against any liability arising from or in connection with any failure to so pay all such stamp duties and all related fines and penalties.

Further assurances

- 14.3 Each party must, at its own expense, whenever reasonably requested by the other party, promptly do or arrange for others to do, everything reasonably necessary or desirable to give full effect to this Deed.

Successors and assigns

- 14.4 This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

Assignment

- 14.5 Subject to clause 14.6, a party must not assign or deal in any way with any of its rights under this Deed without the other party's prior written consent. A breach of this clause 14.5 shall be deemed to be a material breach for the purposes of clauses 9.1(a)(i) and 9.2(a)(i).
- 14.6 The Bidder may grant Encumbrances over, and assign the benefit of its rights under, this Deed in favour of:
- (a) any secured lenders or any other person providing financial accommodation on secured terms to the Bidder and any Related Body Corporate of the Bidder (each, a **Finance Party**); and
 - (b) any person or persons acting as trustee or agent for a Finance Party in respect of facilities made available to the Bidder or any Related Body Corporate of the Bidder, and

in the event of enforcement of such Encumbrance but in no other circumstance, the Bidder or the Finance Parties or their agents or trustee may also assign the benefit of the Bidder's rights under this Deed to any purchaser or assignee from a Finance Party or such agent or trustee (or any receiver appointed by any of them) who acquires the securities of the Bidder and / or the Bidder Trust or all or any part of the business of the Bidder and / or the Bidder Trust.

Waiver and exercise of rights

- 14.7 A waiver by a party of a provision of or of a right under this Deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.
- 14.8 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 14.9 A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right.
- 14.10 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

Rights cumulative

- 14.11 The rights, remedies and powers of the parties under this Deed are cumulative and do not exclude any other rights, remedies or powers provided by law and in equity independently of this Deed.

Indemnities

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

14.13 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

Invalid or unenforceable provisions

14.14 If a provision of this Deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

GST

14.15 In clauses 14.15 to 14.18 (inclusive), a word or expression defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

14.16 Unless expressly included, the consideration for any supply under or in connection with this Deed does not include GST.

14.17 To the extent that any supply made by a party to another party (***Recipient***) under or in connection with this Deed is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Deed for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

14.18 The amount of GST payable in accordance with clause 14.17 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

Amendment

14.19 This Deed may be amended only by a document signed by all parties.

Counterparts

14.20 This Deed may be signed in counterparts and all counterparts taken together constitute one document.

Governing law

14.21 This Deed is governed by the laws of New South Wales.

Jurisdiction

14.22 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Schedule 1

Agreed Bid Terms

1. Consideration

- (a) The consideration offered under the Bid will be **\$2.30** per Target Unit (less the amount or value of any Rights (including Permitted Distributions) attaching to Target Units which arise or are paid on or after the date of the Bidder's Statement and which the Bidder does not receive), subject to any variation permitted by the Corporations Act and any deduction under paragraph (b).
- (b) If a holder of Target Units accepts the Offer in respect of their Target Units (an **Accepting Unitholder**), the Bidder is entitled to all Rights in respect of those Target Units.

For the purpose of this paragraph 1, **Rights** means all accretions, rights and benefits of whatever kind attaching to or arising from or in respect of the Target Units directly or indirectly at or after the date of the Bidder's Statement (including all distributions and all rights to receive them and rights to receive or subscribe for units, shares, notes, bonds, options, or other securities, distributions, capital returns or entitlements declared, made, paid or issued by the Target or any controlled entity of the Target (and where applicable the trustee of such entity)).

2. Offer Period

The Offer will remain open until 8 June 2017 subject to the Bidder's right to extend the Offer Period under the Corporations Act.

3. Conditions

The Offer, and any contract resulting from its acceptance, is not subject to any defeating conditions.

Schedule 2

Timetable

Event	Date
Bidder and APNFM issue the Agreed Public Announcement	Before 10:00am on 5 May 2017
Completion of dispatch of Replacement Bidder's Statement to Target Unitholders	8 May 2017
Bidder lodges Replacement Bidder's Statement with ASIC and ASX and serves it on APNFM	8 May 2017
Offer Period commences	8 May 2017
Final Independent Expert's Report is provided to APNFM	23 May 2017 (or such later date as reasonably necessary)*
APNFM lodges Target's Statement with ASIC and ASX and serves it on the Bidder	23 May 2017 (or such later date as reasonably necessary)*
Completion of dispatch of Target's Statement to Target Unitholders	23 May 2017 (or such later date as reasonably necessary)*
Offer Period ends (unless extended)	8 June 2017

* Subject to clause 3.6.

Execution

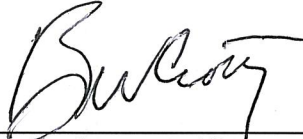
Executed as a deed.

Signed sealed and delivered
by **NWH Australia AssetCo Pty Ltd**
(ACN 617 449 948) as trustee for **NWH**
Australia Asset Trust
in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:



Signature of director

RUPERT SMOKER
Name of director (please print)



Signature of secretary/director

BERNARD WILLIAM CROTTY
Name of secretary/director (please print)

Signed sealed and delivered
by **APN Funds Management Limited**
(**ABN 60 080 674 479**) as responsible
entity of **Generation Healthcare REIT**
(**ARSN 118 712 584**)

in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:



Signature of director

Geoff Brunson

Name of director (please print)



Signature of secretary/director

Chantal Churchill

Name of secretary (please print)