

DATED 2nd April

2013

(1) SECRETARY OF STATE FOR HEALTH

-and-

(2) NHS PROPERTY SERVICES LIMITED

DEED OF INDEMNITY

BETWEEN

- (1) **THE SECRETARY OF STATE FOR HEALTH** of 79 Whitehall, London SW1A 2NS ("Secretary of State"); and
- (2) **NHS PROPERTY SERVICES LIMITED** incorporated and registered in England and Wales with company number 07888110 whose registered office is at 4th Floor, Skipton House, 80 London Road, London SE1 6LH ("**NHS Property Services**").

RECITALS

- (A) The Secretary of State has made various property transfer schemes in respect of certain primary care trust and strategic health authority property ("**Schemes**") in exercise of the powers conferred by sections 300(1) and (2) and 301(1) to (4) and (6) of and Schedule 22 to the Health and Social Care Act 2012.
- (B) Pursuant to Paragraph 8 and Paragraphs 11 - 14 of the Schemes, certain property, contracts and related rights, liabilities and documents defined and described in each of the Schemes have transferred to NHS Property Services.
- (C) In anticipation of the transfer described in Recital (B), the NHS Commissioning Board has agreed to provide NHS Property Services with annual financial support in order to ensure that NHS Property Services has sufficient funds to manage and meet the anticipated obligations, debts and liabilities arising under or in respect of the transferred contracts, property and related rights and liabilities described in Recital (B) and future projects. In addition, NHS Property Services may receive other sources of financial support and income in respect of property the subject of the Relevant Property Agreements.
- (D) Notwithstanding the income and financial support described in Recital (C) above, the Secretary of State has agreed, as an exercise of the Secretary of State's powers under section 223(2) of the National Health Service Act 2006 that, if the income and financial support referred to in Recital (C) shall be insufficient to meet in whole or in part, any obligations, debts and liabilities arising in respect of the Relevant Property Agreements (defined below), the Secretary of State shall indemnify NHS Property Services in respect of the obligations arising out of the Relevant Property Agreements on the terms set out in this Deed.

1. INTERPRETATION

1.1 In this Deed,

the term "**Relevant Property Agreements**" means:

- (a) all leases, agreements for leases, development agreements, PFI agreements, building contracts, professional appointments, licences, services contracts, supply contracts, estate management contracts, planning agreements, guarantees and similar or ancillary arrangements, and other property related contracts and obligations which have transferred pursuant to the terms of the Schemes (or a variation, modification or supplemental provision made under any of the Schemes) to NHS Property Services; and
- (b) all leases, agreements for leases, development agreements, PFI agreements, building contracts, professional appointments, licences, services contracts, supply contracts, estate management contracts, planning agreements, guarantees and similar or ancillary arrangements, and other property related contracts and obligations approved by (or on behalf of) NHS Property Services and entered into by NHS Property Services on or after the date of a Scheme; and

the term "**Relevant Property Liabilities**" means all obligations and liabilities of NHS Property Services to make any payments that are certified by NHS Property Services in accordance with clause 2.2 as due and owing by NHS Property Services under or pursuant to the Relevant Property Agreements (including, without limitation, any obligation or liability to pay rent, service payments and/or pass through costs, amounts on termination, amounts under or in respect of indemnities or payments in respect of liabilities arising on breach or in respect of disputes arising under the Relevant Property Agreements).

- 1.2 Unless the context requires otherwise, the definitions and rules of interpretation shall apply in this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to writing or written does not include faxes or emails.
- 1.6 References to clauses and schedules are to clauses and schedules of this Deed.

2. OBLIGATION OF THE SECRETARY OF STATE

- 2.1 Subject to clause 3, if the income and financial support referred to in Recital (C) shall at any time be insufficient to meet, in whole or in part, the Relevant Property Liabilities, the Secretary of State agrees to unconditionally indemnify NHS Property Services, on demand, against such Relevant Property Liabilities that are certified by NHS Property Services in accordance with clause 2.2 by NHS Property Services but only to the extent that such Relevant Property Liabilities exceed the income and financial support referred to in Recital (C).
- 2.2 The certificate to be provided by NHS Property Services shall:
- 2.2.1 state that the amounts sought under the indemnity in clause 2.1 are agreed by NHS Property Services as properly due and owing (and not in dispute) under the terms of the relevant agreement by NHS Property Services;
 - 2.2.2 set out the reasons why and the extent to which the income and financial support referred to in Recital (C) is insufficient to meet, in whole or in part, the Relevant Property Liabilities; and
 - 2.2.3 be signed for and on behalf of NHS Property Services by a director of NHS Property Services.

3. LIABILITY

- 3.1 The indemnity of the Secretary of State in this Deed is not revocable during the period referred to in clause 3.2.
- 3.2 The indemnity of the Secretary of State shall remain in full force and effect until NHS Property Services has no obligation or liability to make any payment under or pursuant to any Relevant Property Agreements (including, without limitation, any obligation to pay rent, service payments and/or pass through costs, amounts on termination, amounts under or in respect of indemnities or payments in respect of liabilities arising on breach or in respect of disputes arising under the Relevant Property Agreements), at which point it shall terminate automatically without notice.

4. PAYMENT

- 4.1 Each payment to be made by the Secretary of State under this Deed shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Secretary of State shall pay that additional amount which is necessary to ensure that NHS Property Services receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

5. ASSIGNMENT

- 5.1 NHS Property Services shall not be entitled to assign the benefit of this Deed or the indemnity hereunder at any time to any person.

6. NOTICES

- 6.1 Any notice to or demand on the Secretary of State to be served under this Deed may be delivered or sent by first-class recorded delivery post to:

Director General, Strategy, Finance and NHS of the Department of Health, 79 Whitehall, London SW1A 2NS (or to such other person and address as the Secretary may notify NHS Property Services).

- 6.2 Any such notice or demand shall be deemed to have been served:

6.2.1 if delivered, at the time of delivery; or

6.2.2 if posted, at 10.00 am on the second day after it was put into the post.

- 6.3 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class recorded delivery letter.

7. WAIVER

- 7.1 No delay or omission of NHS Property Services in exercising any right, power or privilege under this Deed shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of NHS Property Services provided for in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 8.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Deed is not intended to, and does not, give to any person who is not a party to this Deed any rights to enforce any provisions contained in this Deed.
- 8.2 It is further agreed that this Deed is not intended to, and does not, entitle any third party, to whom a copy (or copies) of this Deed (or draft(s) of this Deed) has been provided or may be provided, to rely on any of the terms of this Deed, nor has any representation whatsoever of any kind been provided to such third party in connection with this Deed.

9. GOVERNING LAW

9.1 This Deed and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.

IN WITNESS whereof the parties hereto have caused this Deed to be duly executed the day and year first before written

The OFFICIAL SEAL OF THE SECRETARY)
OF STATE FOR HEALTH hereunto affixed)
is authenticated by:)

PA Watts



A member of the Senior Civil Service or Authorised Signatory:

Executed as a deed by NHS Property)
Services Limited acting by)
a director, in the presence of:)

Director:

[Handwritten signature]

RP

SIGNATURE OF WITNESS

NAME: RINA PANDYA

ADDRESS: 14 SIXPENNY COURT, IG11 8PA

OCCUPATION: BUSINESS MANAGER