



HEALTH INFRASTRUCTURE
NSW HEALTH

Orange and Associated Health Services Public Private Partnership

**Updated Summary of contracts
as at 30 June 2010**

Artistic view of the new Orange Hospital



NORTH WEST VIEW OF WARDS

A copy of the Orange and Associated Services PPP Project Deed is available on:

http://www.hinfra.health.nsw.gov.au/projects/ppp_projects

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1 INTRODUCTION

The original (2008) version of this report was prepared by the NSW Department of Health in accordance with the *Working with Government Guidelines for Privately Financed Projects, December 2006 (WWG)* and the *Premier's Memorandum No. 2007-01 Public Disclosure of Information Arising from NSW Government Tenders and Contracts*. It provided high level summary of key features of the Project Deed and related documents dated 21 December 2007 for the delivery of the Orange and Associated Health Services Project (the Project).

The original contract summary has now been updated to incorporate the changes due to Orange and Associated Health Services Project Deed of Amendment No. 1 (the Amending Deed) which became effective on 30 June 2010. The Amending Deed incorporates a number of variations since December 2007, including the State variation to expand the facilities to accommodate extra services.

The Project Deed and the Amending Deed, less any commercial-in-confidence material has been released on NSW Health's website in accordance with Government policy and the *Freedom of Information Act 1989*. The website and contact details are provided at the beginning of this report.

This amended contract summary has been submitted to the Auditor General for auditing prior to tabling in Parliament. The contract does not disclose commercially sensitive information, including the private sector parties' information relating to the financing facilities, cost structures, profit margins, intellectual property or any other information which might place them at a disadvantage with their competitors.

This report should not be relied upon for legal advice and is not intended for use as a substitute for the contracts.

It is based on the Project's contracts as at 30 June 2010 including the Amending Deed. Subsequent amendments of or additions to these contracts, if any, are not reflected in this report.

1.1 Background

The Project is a major redevelopment and enhancement of the Orange Health Service, including:

- The \$236 million for construction of a new Orange Base Hospital at the Bloomfield site and the new tertiary mental health facilities
- \$19 million for new cancer radiation therapy facilities
- \$1.4 million for oral health facilities.

The Orange Hospital, a NSW Department of Health facility, will be managed by the Greater Western Area Health Service (GWAHS). All clinical, clinical support and related administration functions for the care, treatment and rehabilitation of patients will be provided and managed by GWAHS's staff.

Following investigations, the NSW Government decided that the Orange and Associated Health Services Project would be redeveloped as a “public private partnership”(PPP). This was announced by the Premier on 21 June 2006.

Following contract award, the NSW Government requested a planning review covering service demands and functional spaces. Based on the planning review findings, the Government approved the business case to expand the Orange facilities to accommodate extra services including:

- Six medical/surgical beds
- Four cardiovascular beds
- Four renal dialysis chairs and
- Six chemotherapy treatment chairs.

This was announced by the Minister for Health on 16 October 2008.

1.2 Project Description

The Orange and Associated Health Services Project involves:

- The private sector undertaking the design, construction and commissioning of the new Orange Hospital and new health facilities including Orange Tertiary Mental Health, Radiotherapy Unit and Oral Health Unit, to standards that meet or exceed NSW Department of Health specifications.
- The refurbishment of a number of buildings at Bloomfield including ward 18, ward 19, the Canobolas Building and the Amaroo Building.
- The financing of the new Orange Hospital and refurbishment of existing buildings at Bloomfield.
- Mobilisation and transitioning of support services from the existing Orange Hospital to the new Orange Hospital at Bloomfield.
- Private sector facilities management and delivery of ancillary non-clinical services for these hospital facilities and the new Bathurst Hospital until 21 December 2035 or any earlier termination of the project’s contracts, when the hospital facilities will be handed over to the public sector.

In return for the associated works and services, the Health Administration Corporation (HAC) will make performance based monthly payments over the term of the project.

The private sector parties' services at the Bathurst and Orange Hospitals will be delivered by GWAHS's employees, who will continue to be employed by GWAHS but will be managed by the private sector parties under a Labour Services Agreement (LSA).

Artistic view of the new Orange Hospital



NORTH EAST VIEW OF WARDS

1.3 Structure of this contract summary

This report is structured as follows:

- Section 2 summarises the process for selecting and contracting with the private sector parties
- Section 3 summarises the evaluation criteria and weighting
- Section 4 provides an outline of participants in the project
- Section 5 provides a contract structure summary
- Section 6 provides a description of services
- Section 7 summarises the payments and total net present value
- Section 8 summarises the results of the public interest evaluation
- Section 9 summarises the key terms and conditions of the agreements
- Section 10 summarises the NSW Government's guarantee of HAC's performance under the *Public Authorities (Financial Arrangements) Act*.

2 PROCUREMENT AND TENDERING METHOD

The procurement and tender process was in accordance with the NSW Government Working with Government Guidelines and current Tendering Guidelines.

2.1 Expressions of Interest (EOI)

On 3 July 2006, the NSW Department of Health issued a Call for Expressions of Interest for the development of the Orange and Associated Health Services as a privately financed project.

Expressions of Interest were received by the closing date of 1 August 2006 from five (5) consortia:

- CareWest, comprising Westpac, Abigroup, Honeywell and Medirest.
- Mitchell Health Partnership (Mitchell), comprising Macquarie Bank, John Holland Group and United Group Services.
- Pinnacle Healthcare (Pinnacle), comprising Babcock & Brown, Hansen Yuncken and Spotless P&F.
- Plenary comprising Plenary, Deutsche Australia, Laing O'Rourke / Richards Crookes, Multiplex Facilities Management /ISS
- Pulse comprising Leighton Contractors, ABN AMRO, Leighton Contractors Services Division.

These Expressions of Interest were evaluated by an Evaluation Panel comprising Glenn Monckton (NSW Health's Project Director), Jon Barnes (Project Director Capital Insight), Robert Martin (GWAHS) and Stephen Brady (NSW Treasury). The Evaluation Panel was assisted by KPMG (financial matters), NSW Treasury Corporation (financial matters), Blake Dawson (legal matters), Milliken Berson Madden (technical matters) and Capital Insight (design and construction matters).

Its activities were overseen by a Project Executive Committee, comprising David Gates (NSW Department of Health's Director, Asset and Contract Services), Danny Graham (NSW Treasury's Director, Private Projects Branch), Claire Blizzard (Chief Executive of GWAHS), and by an independent probity auditor Andrew Marsden/Emily Tripp of Deloitte (a member of Deloitte Touche Tohmatsu).

Three (3) of the respondents, CareWest, Mitchell Health Partnership and Pinnacle Healthcare were short listed to submit detailed proposals for the Project.

2.2 Request for Detailed Proposals (RDP)

On 30 November 2006, the Department of Health issued a Request for Detailed Proposals to CareWest and Mitchell Health Partnership and to Pinnacle Healthcare on 1 December 2006 after each of them signed a Deed of Disclaimer.

The closing date was extended from 20 March 2007 to 3 April 2007 after considering a proponent's request concerning the time for preparing the proposals would be less than

intended due to the Christmas holiday period. All three short listed consortia submitted proposals on the closing date, 3 April 2007.

The Detailed Proposals were evaluated by an Evaluation Panel comprising Glenn Monckton (NSW Health Project Director) as Chair, Robert Martin (GWAHS), Tina Goudie (NSW Treasury's Private Projects Branch) and Jon Barnes (Project Director Capital Insight).

The Evaluation Panel was assisted by four (4) Evaluation Sub Panels comprising Design, Construction and Technical, Services Delivery, Legal and Commercial, and Financial. The Sub Panels were assisted by Blake Dawson (legal matters), KPMG and the NSW Treasury Corporation (financial matters), Dragi Kozarovski (NSW Treasury), Milliken Berson Madden (costing and services matters) and Marsh (insurance matters).

The Evaluation Panel's activities were overseen by a Project Executive Committee, comprising David Gates (the Department of Health's Director, Asset and Contract Services), Danny Graham (NSW Treasury's Director, Private Projects Branch) and Claire Blizzard (Chief Executive GWAHS) and by the independent probity auditor, Andrew Marsden of Deloitte.

Following the evaluation of the Detailed Proposals there was no offer from any of the three consortia that was capable of being accepted as submitted. The submission from Pinnacle Healthcare achieved the highest overall score against the evaluation criteria and Pinnacle Healthcare achieved the highest value for money.

2.3 Pre-selection proposal and negotiation process

The Project Executive Committee endorsed the Evaluation Panel recommendations that Pinnacle Healthcare be provided with an exclusive pre-selection negotiation process in accordance with the provisions of the RDP (Volume 1 Section 5) documentation. In particular the negotiation process was split into two distinct phases. Initially, there was a two-week clarification phase to address the key commercial issues. Upon the resolution of the key commercial issues to NSW Health's satisfaction, NSW Health would enter into a period of six weeks of negotiations with a view to resolving all outstanding deficiencies.

The Budget Committee of Cabinet endorsed the proposed two-phase pre-selection process being entered into with Pinnacle Healthcare on 25 July 2007.

On 1 August 2007, a Pre-Selection negotiation process was commenced with Pinnacle Healthcare to resolve their commercial departures and deficiencies.

A revised Proposal was required to be submitted by Pinnacle Healthcare which included confirmation of acceptance of the amended Project Deed and schedules, confirmation of any amendments to the Project Company Proposals, updated subcontracts, updated base case model and pricing, updated commitment letters and a full suite of debt and equity documents.

The revised Proposal was to be evaluated in terms of the extent to which Pinnacle Healthcare's revised proposal resolved to the satisfaction of NSW Health the identified areas of deficiency.

Pinnacle Healthcare addressed the key commercial issues and advised of their acceptance by NSW Health's position on the key commercial issues in a letter dated 15 August 2007.

A Request for Pre-Selection Proposal, which documented the remaining departures and deficiencies, plus provided details of some minor scope changes, was issued to Pinnacle Healthcare on 23 August 2007. Pinnacle Healthcare's Pre-Selection Proposal was received on 3 October 2007.

The Evaluation Panel reviewed the Pre-Selection Proposal to establish the extent to which Pinnacle Healthcare had resolved the departures and deficiencies as required by NSW Health. Deficiencies not sufficiently addressed were resolved through further clarifications.

Following a value for money assessment the Project Executive Committee endorsed the Evaluation Panel's recommendation to remove the catering services and Oberon and Blayney Hospitals from the Project. However Biomedical Engineering and the Sterile Supplies Department services for Oberon and Blayney Hospitals were to be retained under the Project. This reduced scope was advised to Pinnacle Healthcare on 27 November 2007.

Following resubmission of their proposal on 7 December 2007, the Evaluation Panel recommended Pinnacle Healthcare be selected as the preferred proponent and a PPP Contract being entered into with Pinnacle Healthcare as negotiated for the Project.

2.4 Execution of the contracts

Following a recommendation from the Health Minister Ms Reba Meagher, the Treasurer approved on 20 December 2007 Pinnacle Healthcare being the preferred proponent and a PPP contract being entered into with Pinnacle Healthcare. Pinnacle Healthcare's address is level 23, Chifley Tower, 2 Chifley Square, Sydney 2000.

A Deed of Guarantee under the *Public Authorities (Financial Arrangements) Act (NSW)* was executed on 21 December 2007.

The Project reached contract execution and financial close on 21 December 2007.

2.5 Contract variations

Since the contract execution, there have been a number of variations, some were initiated by the State (State variations) and other variations were proposed by Pinnacle.

State Variation 8 to expand the facilities

Following NSW Health's planning review of the capacity and extent of services proposed for the Orange Hospital, in 2008 the Premier and the Minister for Health agreed to expand the services at the Orange Hospital. Consequently, extended works are necessary to increase the functional floor areas. The extended works are integrated with the construction of the new Orange Hospital.

In accordance with the Project Deed, the proposed scope changes are being implemented through the change procedures and the estimated cost effect provisions. In May 2008, the

Project Director issued a Variation Request to Pinnacle. Pinnacle submitted progressive proposals, which were reviewed and assessed by NSW Health.

Assessment and negotiation of the Variation 8 (V08) Proposals was overseen by the Project Executive Committee including the Chief Executive of Health Infrastructure, Chief Executive of Greater Western Area Health Services and the Director, Private Finance Branch of NSW Treasury.

Specialist advisers were engaged to evaluate the Variation Proposal.

The parties reached agreement on the final capital cost effects in April 2010. The final capital cost effect includes a provisional amount for Group 1 Equipment.

In addition to the capital cost effect, there will be increases in PPP operating costs including support services, recurrent maintenance and life cycle capital maintenance for buildings. It was agreed that maintenance and life cycle replacement for furniture, fixtures, fittings and equipment (FF&FE) and the Baseline Energy Usage associated with V08 extended capital works will be dealt with by the parties outside of the Amending Deed as separate Contract Variations.

Other variations impacting on the capital costs

Timing of the expansion works in relation to the radiotherapy services and oral health services will be affected as a result of Variation 8. The Blood Bank Unit was also excluded from the scope.

Other variations impacting on the PPP service payments

There are a number of variations including:

- Provision of catering services at Bloomfield Mental Health
- Fees for service for LSA staff
- Additional electronic security building services.

2.6 Execution of the Amending Deed

Following a recommendation from the Health Minister, Ms Carmel Tebutt, the Treasurer approved on 18 June 2010 for HAC to enter into the revised arrangements with Pinnacle Healthcare including the Amending Deed.

The Amending Deed was executed on 28 June 2010 and all Conditions Precedent were satisfied by 30 June 2010, making 30 June 2010 the effective date for the purposes of the Amending Deed.

3 EVALUATION CRITERIA AND WEIGHTINGS

The evaluation process was carried out having regard to the NSW Government Code of Practice for Procurement and the Working with Government Guidelines.

3.1 EOI and RDP Evaluation Criteria

The five EOI respondents were evaluated under the following criteria.

Table 1: EOI - Evaluation Criteria

	Evaluation Criteria	Weighting
1	<i>Structure, Finance and Management of Project Risks</i> The respondents' business structure, financial capacity of the Respondents; allocation of responsibilities and risks and demonstrated acceptance of the key commercial terms proposed in the <i>Expressions of Interest</i> invitation.	15%
2	<i>Social infrastructure Experience and overall Strategy</i> The extent of understanding, experience, expertise and capacity of the Respondent and participants of the public-private interface and other key matters likely to affect the project as a social infrastructure PPP. The Respondent's strategies that will deliver the project objectives.	25%
3	<i>Design and Construction</i> The extent of understanding (by the Respondent and by the relevant Participants) of the design and construction requirements of the Project and strategies to procure and manage the design and construction of the facilities at Orange (at Bloomfield).	25%
4	<i>Facilities Management and Handover</i> The extent of understanding (by the Respondent and the relevant Participants) of the operation, maintenance and handover requirements of the project and strategies to procure and manage the operation, maintenance and handover of the facilities at each of the sites.	25%
5	<i>Project Finance</i> The extent of understanding by the Respondent and by relevant Participants and key personnel of the financial requirements of the project and appropriate strategies to provide certainty of delivery of the financial requirements.	10%
6	The preservation of effective competition and probity between and within the Respondents	Assessed on a pass/fail basis

The Detailed Proposals were evaluated in terms of:

Table 2: RDP – Evaluation Criteria

	Evaluation Criteria	Weighting
1.	Design, construction and commissioning	30%
	Extent to which the Proposal (Design) complies with the Facility and Support Services Specifications and applicable laws, codes and Government policies.	
	Delivery of Construction Health Facilities that support high quality, effective and efficient health care throughout the Project Term.	
	Extent to which the Proponent's Proposal maximises the ability of GWAHS to deliver efficiently its clinical and clinical support services at the Health Facilities relative to Reference Project.	
	Ability of the design to meet the changing requirements of Health Functions	

	Evaluation Criteria	Weighting
	during the Project Term and the future cost of modification being minimised through flexibility in the design and construction of the Construction Health Facilities.	
	Certainty of delivery of the design documentation, demolition, construction or refurbishment and commissioning of the Construction Health Facilities within the proposed Milestones.	
	Minimise any disruption to the health services delivered at the Sites, during the construction phase, including demonstration of effective staging plans, functionality and amenity of the Health Facilities and certainty of preservation of existing access and utilities across the Greater Bloomfield Site during a Construction Phase.	
	Environmental sustainability and energy efficiency of the design and building elements used.	
2	Service delivery	40%
	Robustness, quality and completeness of a Project specific risk identification and management processes including: <ul style="list-style-type: none"> • clear and complete identification of project risks • robust and deliverable approach to the minimisation and management of project risks • quality of management plans, programmes and manuals to minimise and manage risk including but not limited to draft quality assurance manuals, draft OHS&R Manuals, draft Disaster and Emergency Procedures Manual and draft Infection Control Procedures 	
	Certainty of delivery of Mobilisation Services and Interim Services delivery including: <ul style="list-style-type: none"> • compliance with Volume 3 “Support Services Specification” (including Key Performance Indicators (KPI) and applicable laws, codes and Government policies.) • demonstration of comprehensive and appropriate Mobilisation Services and Interim Service Proposals • demonstration of robust, comprehensive and effective change management processes and transition arrangements for introduction of new systems, policies and procedures and work practices 	
	Certainty of delivery of Management Services including: <ul style="list-style-type: none"> • compliance with Volume 3 “Support Services Specification” (including KPIs and applicable laws, codes and Government policies.) • certainty of establishing and maintaining a cooperative relationship with State Related Parties. • demonstration of robust, comprehensive and appropriate Management Service Proposals 	
	Certainty of delivery of Support Services including: <ul style="list-style-type: none"> • compliance with Volume 3 “Support Services Specification” (including KPIs and applicable laws, codes and Government policies) • demonstration of robust, comprehensive and appropriate Support Services Proposals 	
	Certainty of delivery of the requirements of the Labour Services Agreement including:	

	Evaluation Criteria	Weighting
	<ul style="list-style-type: none"> compliance with the Labour Services Agreement including applicable laws, codes and Government policies demonstration of robust, comprehensive and appropriate Labour Services Agreement Services Proposals certainty of transitioning the management of Health Staff Members under the Labour Services Agreement 	
3	Commercial and Legal	15%
	Compliance with the terms of the Project Documents, with proposed departures from Volume 4 “Project Deed” evaluated qualitatively	
	Certainty of delivery of the commercial arrangements including consistency between legal, financial and technical aspects of the Proposal and appropriate allocation of risks to consortium participants	
	The Proponent’s understanding and acceptance of the Payment Mechanism as provided in Schedule 5 of the Project Deed.	
4	Financial	15%
	Achievement of value for money by taking into account a comparison of the Net Present Value of the service payments due to the Project Company with the Public Sector Comparator and the financial and risk consequences of the Proponent’s Proposal	
	Financial strength of the Project Company and risk taking participants and sub-contractors, including an assessment of security instruments (parent company guarantees, letters of credit, etc)	
	Level of certainty of the funding including the level of commitment, suitability of the funding structure, and approvals obtained from all providers of debt, equity and other forms of finance	
	Robustness and accuracy of the Base Case financial model, including a review of assumptions relating to construction costs, lifecycle maintenance costs, facilities management costs, service costs, taxation and financing	

The results of the evaluations against these weighted criteria were then compared with the Net Present Value of the payments to be made to the private sector parties under each Detailed Proposal, adjusted for the risk allocations in the relevant Proposal, to obtain an overall “value for money” assessment.

3.2 Cost benefit analysis and value for money assessment – original scope

The cost benefit analysis of the private sector delivery of the Orange PPP was conducted by applying the value for money assessment. The net benefit was reflected in the estimated cost savings of \$70.1 million, in net present value terms. Value for money was assessed through:

- Comparisons with a “public sector comparator”, a risk-adjusted benchmark costing of a hypothetical “reference project” representing the most efficient likely method of public sector delivery of the specified services.
- Analyses of the financial and risk consequences of each Detailed Proposal.

Table 3 provides a summary of the value for money analysis between the Public Sector Comparator and the Pinnacle Healthcare contract.

Table 3: Value for money comparison between public sector and private sector project delivery

	“Public sector comparator” (PSC) (hypothetical, risk-adjusted estimate of the cost of the most efficient likely method of public sector delivery)			
	“PSC best case” (95% probability that PSC cost would be higher than this)	“PSC most likely case” (mean of PSC cost estimates)	“PSC worst case” (95% probability that PSC cost would be lower than this)	Private sector delivery (as contracted)
Estimated net present value of the financial cost of the project (over 28 years) to the NSW Department of Health	\$582.9 m	\$600.9 m	\$627.1 m	\$530.8 m
Estimated saving achieved through private sector delivery	\$52.1 m	\$70.1 m	\$96.3 m	

Note:

The “most likely” cost estimate for the “public sector comparator” (PSC) of \$600.9 million includes a “raw” capital cost estimate with a present value (@6.07% pa) of \$154.4 million, a capital risk adjustment of \$19.4 million, a “raw” operational cost of \$386.1 million, an operational risk adjustment of \$38.9 million and a competitive neutrality adjustment of \$2.0 million.

The present value of the cost of private sector delivery of \$530.8 million is estimated on the basis of an evaluation discount rate including a systemic risk premium of 0.9% in accordance with Treasury’ policy on assessment of complying proposals.

Over 90 separate risks were evaluated to determine the various risk adjustments for the project. The most significant components of the capital risk adjustment related to:

- Risk of changes to the service outputs required from the private party as specified by NSW Health
- Risk that the client materially changes the specified design of the works
- Risk that the construction cost estimates materially change between bid and implementation due to changes in underlying costs (labour or materials)
- Risk that the design and workmanship is not fit for purpose in terms of functionality
- Risk that output specification is not sufficiently well defined
- Risk that additional capital expenditure required to give effect to the output specifications
- Risk that the costs and timetable associated with the mobilisation of support services equipment, staff and management to new hospital exceed the budgeted level
- Risk that the planning approval (DA, Heritage, Environmental, Aboriginal and Artefacts) process is longer than anticipated arising from delays in obtaining approvals (government, planning or service issues) or requires further approvals associated with the detailed design phase.

The most significant components of the operating risk adjustment related to:

- Risk of the contracted service and its method of delivery not keeping pace, from a technological perspective, with service requirements
- Risk of additional costs associated with clinical services change management
- Risk of failure of maintenance service to achieve specification standards
- Risk of changes in operational practices / policies at the hospital change the anticipated operating costs
- Risk of state changes impacting on service provisions
- Risk that the lifecycle and other operating costs in relation to support services are underestimated
- Risk that demand for support services differs from the expected level, e.g. maintenance works are higher than expected due to unanticipated increase in clinical activity (Volume element)
- Risk of failure of the Cleaning services to achieve specifications standards
- Risk of additional costs resulting from Conservation Management Plan
- Risk of failure of FF&E maintenance services to achieve specification standards
- Risks of strikes, industrial action or civil commotion causing delay and cost to the services
- Risk that the Bathurst design and construction works do not easily interface with the Orange / TMH works
- Risk of failure of the management services to achieve specification standard

- Risk that costs in relation to insurances are underestimated
- Risk that Goods and Services and Management Costs materially change to forecasts over the operating period
- The risk that latent conditions of the existing buildings result in higher maintenance costs than anticipated.

3.3 Value for money assessment – extended works to expand the Orange facilities

In assessing the capital cost effect proposal, the Technical Advisers reviewed a range of cost implications including the basis of pricing, increase in floor areas, cost impact of site mobilization and program changes and average cost under the original and extended scope. In August 2009, the Technical Adviser confirmed that the proposed cost effect settlement value as at that time represented value for money. The final construction cost effect is \$40.94M, which is consistent with the proposed settlement value.

As a result of the Orange Hospital extended works, there will be additional PPP operating costs including support services, recurrent maintenance and life cycle capital maintenance for buildings.

The additional PPP operating cost is assessed as value for money. The annualised PPP cost of \$1.177M is below the risk adjusted annualised cost of \$1.391M under public sector delivery. The value for money comparison showed that the present value of additional PPP service (\$16.1M) is lower than the risk adjusted PSC (\$19.6M). The potential savings under PPP delivery is estimated at \$3.4M over the concession term to 2035.

4 PARTICIPANTS IN THE PROJECT

The public sector parties to the Project Documents are as follows:

- a) Health Administration Corporation (ABN 45 100 538 161), a corporation sole constituted under section 9 of the Health Administration Act 1982 (NSW) which has entered into various project documents for the purpose of achieving the provision of the facilities and its related services. HAC is the corporate entity of the NSW Department of Health with power to enter into contractual arrangements (HAC).
- b) The Minister for Health, on behalf of the State of New South Wales (State).
- c) Director-General of the NSW Department of Health (Director-General).

At the time of the PPP tender process, the private sector consortium was made up of the following organisations:

- Babcock & Brown (finance and consortium leader)
- Hansen Yuncken Pty Limited (design and construction)
- Spotless Group (facilities management, maintenance and non-core support services)

In June 2009, Babcock and Brown Public Partnerships Limited's investment advisory and management arrangements were transferred to the Amber Infrastructure Group and the name of Babcock and Brown Public Partnership Limited changed to International Public Partnerships Limited.

NSW Health understands that the relationship of the main private sector parties to the amended Project Documents are:

- a) Pinnacle Healthcare (OAHS) Pty Ltd (ABN 120 747 588) as trustee of the Pinnacle Healthcare (OAHS) Trust (Project Company).
The Project Company was established for this Project and which may not conduct any other business.
The Pinnacle Healthcare (OAHS) Trust was established by a deed poll declared by Pinnacle Healthcare (OAHS) Pty Ltd on 13 August 2007 and is ultimately owned by International Public Partnerships Limited. The address of Pinnacle HealthCare is: Suite 4, Level 11, 14 Martin Place, Sydney 2000, Australia.
- b) Hansen Yuncken Pty Limited (ABN 38 063 384 056) (Construction Contractor)
The Construction Contractor is obliged to design, construct and commission the facilities for the Project Company, thereby enabling the Project Company to meet its design, construction and commissioning obligations to HAC under the Project Deed.
- c) Spotless P&F Pty Limited (ABN 83 072 293 880) (Facilities Manager)
The Facilities Manager is obliged to deliver specified facilities management and non core services for the Project Company, thereby enabling the Project Company to meet its service obligations to HAC under the Project Deed.
- d) Spotless Group Limited (ABN 77 004 376 514) (Facilities Manager Guarantor).
The Facilities Manager Guarantor has given the Project Company a guarantee of the performance of the Facilities Manager's obligation to the Project Company.

(e) Savills (Aust) Pty Limited (ABN 94 056 426 834) (Independent Certifier)
The Independent Certifier is obliged to carry out specified inspection and certification obligations in relation to completion of construction and commissioning of the facilities.

(f) BNY Trust (Australia) Registry Limited (ACN 000 334 636)

BNY Trust (Australia) Pty Limited is the security trustee for the transaction and is a party to the Amending Deed.

(g) Ancora (OAHS) Pty Limited (ACN 127 920 647)

Ancora is the securitisation vehicle for the financing structure. It is party to the Amending Deed solely for the purpose of amending the licence in the securitisation Deed and to give the representation and warranty that all consents required under the Financing Agreements to give effect to the Amending Deed have been obtained.

Wayne Burgess of Health Infrastructure is the Project Director for this Project from February 2010.

Advisory services were provided by:

- NSW Treasury Corporation (financial adviser)
- KPMG (financial adviser)
- Blake Dawson (legal adviser)
- Capital Insight (design and construction)
- Davis Langdon (adviser on capital cost)
- Milliken Berson Madden (technical advisers)
- Marsh (adviser on insurance matters)
- Deloitte (probity auditor).

The following advisers were engaged to assist in the Variation 8 evaluation:

- Lamond Advisory (all capital cost variation issues)
- Davis Langdon Associates (DLA) (review of capital cost)
- Chris Jones Construction Programming (review of construction program)
- Milliken Berson Madden (MBM) (assessment of PPP support services changes)
- Advisers on health planning architecture and engineering – Sutera and Department of Commerce.

Artistic view of the new Orange Hospital



VIEW NORTH FROM PUBLIC CARPARK

5 CONTRACT STRUCTURE AND OVERVIEW

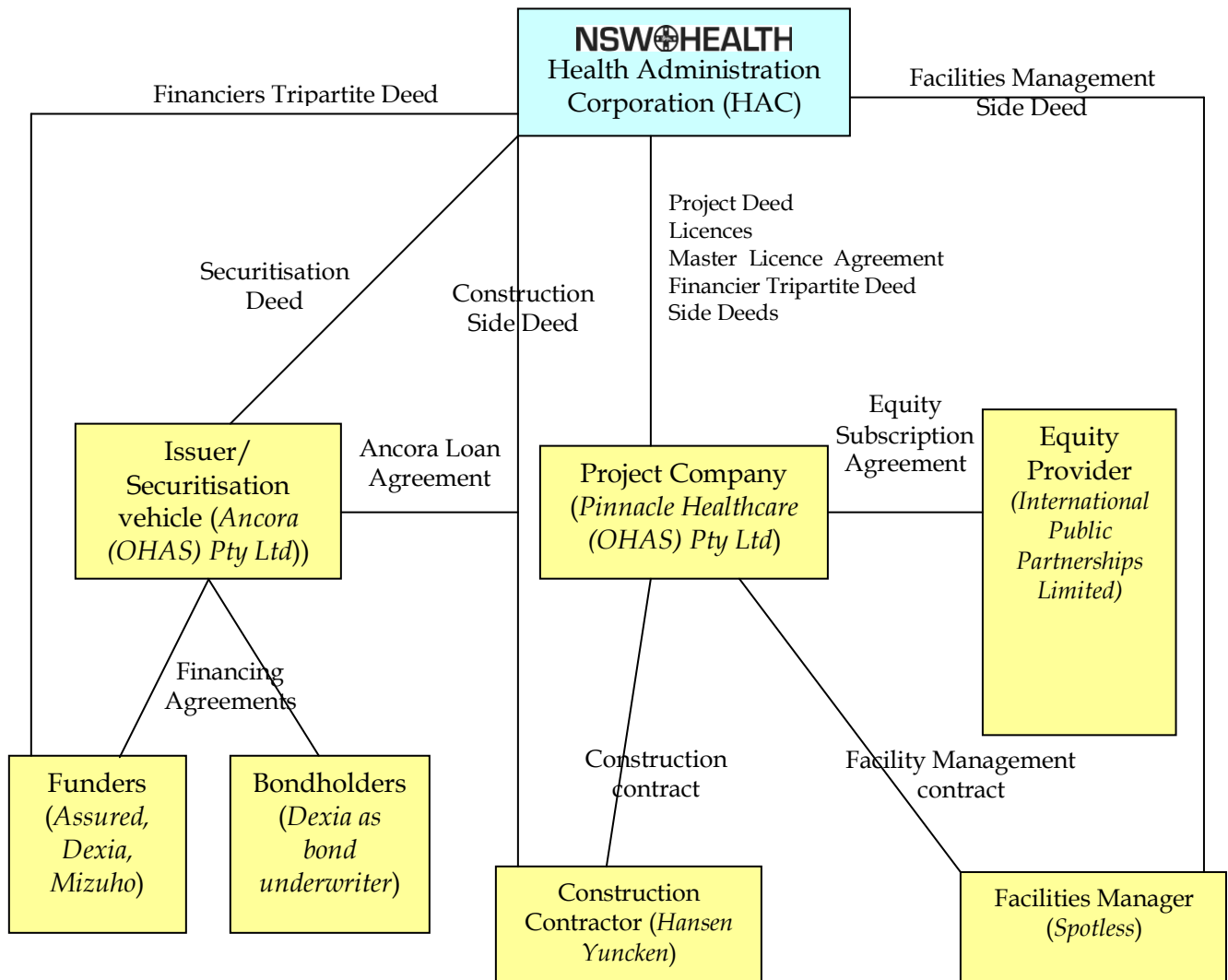
5.1 Project Company structure

The Treasurer’s approval was granted under the Public Authorities (Financial Arrangements) Act 1987 in regard to HAC entering into a Joint Financing Arrangement and to the Minister’s execution of the Deed of Guarantee on behalf of the Treasurer. The Deed provides for the Government’s guarantee of the due performance of HAC’s obligations under the joint financing arrangement.

Between the date of the original Project Deed and the Amending Deed there was a change to the Project Company ownership structure (which was consented to by HAC). International Public Partnerships Limited is now the ultimate owner of Pinnacle Healthcare (OHAS) Holdings Pty Ltd. The current Project Company ownership structure is included in the Amending Deed Schedule 8.

For illustrative purpose, the contractual structure is summarised as follows.

Overview of Contract Structure



5.2 Project documents

The principal Project Documents to which HAC and the NSW Department of Health are parties include:

a) Project Deed

The Project Deed between HAC and the Project Company encompasses the bulk of the rights and obligations of the parties in relation to the Project. It provides for:

- the carrying out of construction in accordance with an agreed works program and milestones
- commissioning and completion tests
- the commencement of Services for each hospital (in accordance with a detailed services specification and Key Performance Indicator regime)
- the regime for payment for the services
- the return of the facilities in an agreed condition at the end of the Term.

b) PAFA Guarantee

Under this deed between the State, HAC, the Project Company and the Security Trustee, the State guarantees the performance by HAC of its obligations under the Project Documents.

c) Licences and Master Licence Agreement

HAC grants the Project Company (together with its agents, employees and contractors) a non-exclusive licence to enter each of the relevant sites in order to perform its obligations under the Project Deed.

For each licence the Project Company is required to pay a Licence Fee to HAC in accordance with the Master Licence Agreement.

d) Financiers Tripartite Deed

This deed governs the relationship between HAC, the Project Company, Ancora, the Security Trustee, the Bond Trustee and the Financial Guarantor. It also governs the legal security arrangements between the parties and the ability of Financiers to step in and cure Project Company defaults.

e) Project Security

HAC has a fixed and floating charge over the assets, undertakings and rights of the Project Company to secure the Project Company's obligations under the Project Documents.

c) Independent Certifier Deed

This deed governs the relationship between HAC, the Project Company and the Independent Certifier. Under this Deed, the independent certifier is appointed in order to verify compliance with certain aspects of the design and construction obligations of the Project Company under the Project Deed and to certify completion and commissioning of the facilities.

d) Construction Side Deed

This deed governs the relationship between HAC, the Construction Contractor and the Project Company. The Deed has two main purposes:

- Firstly it allows HAC to “step in” to the shoes of the Project Company under the Construction Contract where the Construction Contractor is proposing to terminate the Construction Contract for Project Company default, where the Project Company is in default under the Project Deed or where HAC may exercise certain of its step in rights under the Project Deed; and
- If the Project Deed has been terminated, it allows HAC to ‘novate’ the Construction Contract to its nominee, so that the design and construction work can continue.

e) Facilities Management Side Deed

This deed governs the relationship between HAC, the Facilities Manager, the Facilities Manager Guarantor and the Project Company.

The Deed has two main purposes:

- Firstly it allows HAC to “step in” to the shoes of the Project Company under the Facilities Management Contract where the Facilities Manager is proposing to terminate the Facilities Management Contract for Project Company default, where the Project Company is in default under the Project Deed or where HAC may exercise certain of their step in rights under the Project Deed; and
- If the Project Deed has been terminated, it allows HAC to ‘novate’ the Facilities Management Agreement (and associated guarantees) to its nominee, so that the operation and maintenance of the facilities may continue.

f) Labour Services Agreement

This agreement between the Director-General, HAC, and the Project Company provides for the management by the Project Company of certain non-clinical staff of Area Health Service. These staff will remain employees of GWAHS.

g) Securitisation Deed and Payment Directions Deed

Under the Securitisation Deed, Ancora agrees to purchase the Licence Fees payable by the Project Company under the Licences from HAC. Under the Project Deed, NSW Health is required to pay a Construction Payment to the Project Company on the full service commencement date. The Construction Payment is to be the same amount, and is dependent on NSW Health receiving, the securitisation payment.

The payment structure for the capital component of the variation implemented by Amending Deed was kept separate from the payment structure for the capital component of the original project. The capital component of the variation implemented by the Amending Deed is paid by the State making milestone payments to Pinnacle Trust for the purpose of meeting Design & Construct (D&C) variation costs as they fall payable, with Pinnacle Trust in turn paying the amounts to the construction contractor (Hansen Yuncken). A new licence of the expansion works areas was granted that is only subject to nominal licence fees and not subject to the securitisation arrangements.

h) Design Development Independent Expert Deed

Under this deed between HAC, the Project Company and Mr Peter Quigley, Mr Quigley is appointed as an expert to resolve certain disputes relating to design development under the Project Deed.

i) Interface Deed

This deed between HAC, the Project Company and John Holland governs the respective obligations of the parties and assists in achieving the transition of the New Bathurst Hospital to the Project Company.

j) Early Services Deed

This Deed which was entered into on 28 November 2007 between HAC and the Facilities Manager governs the provision of certain services to be provided by the Facilities Manager independently of the Project Deed.

k) Deed of Amendment No 1

The Amending Deed was entered into on 28 June 2010 between HAC, Pinnacle Healthcare (OAHS) Pty Ltd, BNY Trust (Australia) Registry Limited and Ancora (OAHS) Pty Ltd. The Amending Deed became effective on 30 June 2010. The Amending Deed provides for:

- the Variation 8, including amendments to the payment schedules, project program, payment mechanism to deal with the capital and PPP service cost effects;
- corresponding changes to the key subcontracts;
- consequential changes to the Financing Agreements (specifically the Accounts Agreement), securitization and licence documentation;
- a number of other variations approved since contract execution and the cost effect on the PPP service payments; and
- provision for the Base Case Model to be updated in accordance with the Project Deed at the time of construction completion.

5.3 Term

The Project Term is 28 years from Financial Close. The commencement date of contract is 21 December 2007 and concludes on 21 December 2035. Renewal following the term will be subject to negotiation between the parties. There is no provision for extension of the Project

Term. The provision of the other contracted services will revert to HAC upon expiry of the contract.

5.4 Risk Sharing

The risk sharing arrangement is in accordance with Working with Government Guidelines as follows.

Construction phase

Pinnacle Healthcare bears the risk of:

- Site risk (existing ground conditions and contamination on the construction site)
- Condition of existing buildings to the extent that contamination identified in a condition report provided to the proponents during the bidding process
- Development approval risks
- Design, construction and commissioning risks.

Operational phase

Pinnacle Healthcare bears the risk of:

- Failures in availability of the facility or levels of performance (eg failure to provide maintenance or cleaning services by the time specified in the Services Specification) which will result in deductions to the monthly service fee.
- Providing non core services so as not to disrupt the clinical services.
- Actual operating costs being higher than anticipated.

6 DESCRIPTION OF SERVICES

In order to provide the contracted services, Pinnacle Healthcare designs, builds and finances the new Orange Hospital, refurbishes some existing facilities, and provides certain facilities management services in both the new facilities and existing buildings.

The Amending Deed impacts the design, construction and timing of completion of Orange Health facilities, as well as the Lifecycle maintenance and Facilities Management services. Additional or amended services will be provided by the Project Company as detailed in Deed of Amendment 1. The Orange PPP work Program is revised as per amended Table 4 below:

Amended Table 4: Orange PPP – Work Program

Health Facility	Target Completion Date
New Orange Hospital	July 2011
New Orange Forensic Mental Health Facility	July 2011
New Orange Acute Mental Health Facility	July 2011
Ward 19 (Bloomfield)	June 2010
Ward 18	May 2011
Canbolas Building (Bloomfield)	November 2011
Amaroo Building (Bloomfield)	March 2012

The services comprise:

- General services (management services, performance monitoring and reporting and audit services, helpdesk services and employee and training services).
- Specific services including:
 - Building maintenance and facilities management of the health facilities including new Bathurst Hospital.
 - Provision of the following “soft” support services at the new Orange campus at Bloomfield and for the new Bathurst Hospital:
 - management services
 - cleaning
 - linen handling / distribution
 - domestic and waste management
 - materials distribution
 - portering / wardspersons
 - security
 - grounds maintenance / pest control
 - utility management.
 - Management and maintenance of furniture, fixtures, fittings and equipment (FF&FE)
 - Biomedical engineering and sterilised supplies services for the Eastern Cluster within GWAHS.
 - Catering Services at specified Bloomfield Mental Health inpatient facilities.

The Project Deed provides for features and standards required of the facilities in order to satisfy clinical requirements and statutory obligations of HAC.

Benchmarking and market testing provisions are included in the Project Deed for the delivery of security services, cleaning services, catering services and materials handling and general services as far as specifically related to the above services.

7 PAYMENT AND TOTAL NET PRESENT VALUE

The Project Deed provides for a service payment to be made on a monthly basis, linked to factors such as performance of specified service standards, adjustment for Consumer Price Index (CPI) and wage price movements and certain volume adjustments relating to catering, clinical waste and a portion of usage of utilities.

It was estimated that the net present value of the financial costs of the project over 28 years to NSW Health is \$530.8m. Additional PPP services due to Variation 8 will add \$16.1M over the concession period to 2035. The Variation 8 construction cost effects are paid in accordance with a payment schedule in the Amending Deed (see section 7.3).

7.1 Payment mechanism

The monthly service payment is based on a formula which allows for abatement of the service fee for failures to achieve performance standards and certain volume and energy adjustments. The formula refers to values for the quarterly service payments and volume and energy adjustments.

All Service Payments are subject to meeting Key Performance Indicators (KPI) as set out in the Service Specification. The KPIs must be met in order to receive the full Monthly Service Payment. Any failure to provide the Facility Services in accordance with the KPIs will constitute a Service Failure. There are two types of Service Failure:

- Area Failures (where failure affects one or more particular and identifiable areas of a facility)
- Quality Failures (failures that are not specifically linked to areas e.g. security and reporting).

Deductions due to Area Failures will be calculated based upon the area within the Facilities that is affected by the Area Failure, the severity of the failure, and the time for which the relevant KPIs are not met. Deductions due to Quality Failures are calculated based upon the points for Quality Failures accumulated over each Operating Month with points reflecting the importance of the KPIs that have been failed and duration of the failure.

The payment mechanism is specified in Schedule 5 of the Project Deed. This has been amended as per amendments to Service Payments as detailed in schedule 3 of Amending Deed.

7.2 Service payment escalation factors

Two price adjustment factors are used in calculating the Monthly Payments payable by HAC:

- Wage Rate, which is the salary inflation rate for the Health Employees, as determined by applicable Industrial Instruments. The Wage Rate is applied to the labour elements of the Monthly Payment which are covered under the Labour Services Agreement.
- CPI, which is applied to those components of the Monthly Payment which are related to the hard and soft facilities management costs (excluding Health Employee Costs), insurances, CPI-linked bonds and equity service.

7.3 Payment arrangements under Amending Deed

Under the Amending Deed, changes to the payment arrangements are:

- Revised Expansion Work Payment in relation to the new radiotherapy and oral health units. The change related to timing of payment and the total amount remained unchanged. The expanded Blood bank Unit was excluded from the scope.
- Additional payment for the construction cost in relation to the extended works (i.e. the expansion of the PPP facilities). A provisional sum for the Group 1 equipment is allowed for. The process and mechanism to review and finalise the equipment requirements are also set out in the Amending Deed.
- Payment to the Project Company for its overhead costs and certain external costs associated with its extended work obligations.
- Maintaining the PPP capital financing payment schedule for the original scope to minimise impacts on financing costs under the PPP financing structure. This is referred to as Delay Payment in the Amending Deed and will be paid commencing the original Target Completion Date and ending on the earlier of 27 July 2011 and the last Commencement Date for the new facilities.
- Revised PPP service payments due to Variation 8 and a number of other variations approved by NSW Health.
- The Project Company will pay NSW Health the relevant construction delay interest amount earned during the construction phase. Payment will be made within 10 business days of the project construction completion. Under clause 7.9 of the Amending Deed the Project Company undertakes to use best endeavours (including by exercising any rights it may have against the Construction Contractor) to ensure that the balance of the construction delay account is maintained (given the right for Pinnacle to apply the account to meet Hansen Yuncken's liquidated damages obligations).

The revised PPP service payment schedule does not include the impact in connection with the costs of providing the Group 1 Equipment Services and Baseline energy usage for Construction Health Facility. They will be dealt with a separate Contract Variation and such amendments will be incorporated in Part B of Schedule 5 and the Variation Base Case Model.

7.4 Contingent liabilities of the Crown

HAC's liability to pay the capital and financing component is based on the Project Company's financing arrangement involving CPI-linked finance. An adjustment will be made as appropriate for the CPI-linked interest component over the project term. The estimated value of the contingent liability cannot be measured with sufficient reliability.

8 PUBLIC INTEREST EVALUATION

During the planning and definition phase, a Public Interest report was prepared for the Orange Hospital Redevelopment Project. Public interest criteria related to effectiveness, impact on key stakeholders, accountability and transparency, public access and equity, consumer rights, security and privacy. The evaluation report was completed in May 2006. It was concluded that there were no issues identified that would preclude PPP procurement of the Project. The results of the evaluation were included in the submission to the Budget Committee of Cabinet prior to approval of the Project to proceed as a Privately Financed Project.

The Public Interest Report was reviewed and updated throughout the procurement process. This included following the: inclusion of a new Tertiary Mental Health facility; evaluation of the three short listed proposals; the change to the catering services, Oberon and Blayney facilities, inclusion of radiotherapy and oral dental health facilities; and prior to entering into contracts.

The summary of the public interest evaluation is as follows:

Table 4: Overview of Public Interest Evaluation Results

Criteria	Findings
Whether the project is effective in meeting Government's objectives	The Project was approved after development of the business case. The Project has defined project objectives, scope and the location of the new facilities through the service procurement planning and project definition plan (PDP) process. The gateway review has confirmed public interest is protected in terms of economic, social, regional and environmental issues. The Project is consistent with the Government and Area Health Service's objectives.
Value for money	The net present cost of the Project Company's proposal is less than the Public Sector Comparator.
Community consultation	The main affected groups are non-clinical support staff managed by the private sector and the unions. The issue of employee protection has been addressed through the adoption of the Labour Services Agreement (LSA) and change management plan for this Project. Under the LSA, Health Service employees will remain employed by Area Health Services. Consultation with the affected staff members and the Health Services Union was conducted. Senior area health executives were involved in briefing meetings to non-clinical support staff and Union Groups. There has been extensive community involvement and stakeholder consultation in the planning for this project, including user groups, local council, unions, community liaison groups and Aboriginal communities. Ongoing consultation with staff/users groups will continue during the PPP procurement and implementation phase.

Criteria	Findings
	<p>A communication and consultation plan was developed for the project and managed by the Area's Public Relations Unit. Processes included media briefs, interviews, presentations at public meetings and meetings with community and benevolent action groups. Meetings were also held with community action groups.</p>
Consumer rights	<p>The successful Proponent is required to comply with relevant statutory requirements and Government policies including safety and security of patients, visitors, and staff, as required under the Building Code of Australia and the Disability Discrimination Act, plus a detailed specification with quick response times by professional staff. The environment for consumers with special needs will be significantly improved over the current facilities, due to improved off-street parking, circulation and quality of buildings.</p> <p>The Project provides sufficient safeguards for the people who receive the services, including the requirement for periodic customer satisfaction surveys and service performance standards.</p>
Accountability and transparency	<p>There are comprehensive probity plan and measures to ensure transparency of the procurement process.</p> <p>Clear responsibility and accountability for project reporting was put in place in the planning phase.</p>
Public access	<p>Users include patients, visitors, clinical, support service and maintenance staff and other community members, including volunteer workers. The requirements of these users are to be addressed through a variety of means such as ramps, lifts with appropriate controls, signage, design etc.</p>
Health and safety	<p>The design of the facilities will permit effective, appropriate, safe and dignified use by all people, including those with disabilities and will be in accordance with NSW Health Facility Guidelines and Australian Standards AS1428 and Building Code of Australia.</p> <p>Contractual framework will provide for remedies and incentives to address deficiencies eg performance penalties, default, termination and step-in rights.</p>
Privacy	<p>Hospital management, health and welfare services, and information systems management are provided by NSW Health, limiting access to private information in terms of both patient information and confidential NSW Health information.</p> <p>NSW Health and its contractors are required to comply with the Privacy Act and the inclusion of contractual obligations regarding the disclosure of information.</p>

9 KEY TERMS AND CONDITIONS OF THE CONTRACT

9.1 The Sites

Access to Sites

HAC must grant by the Site Access Date for all the Sites (other than the Project Company Facility Site) a licence to enter, occupy and use that Site, as may be reasonably necessary for the performance of the Works and Services. The form of licence is set out in schedule 11.

The Master Licence Agreement sets out the fees payable in respect of the licences (referred to as the "Licence Payment Amount").

Site conditions

The Project Company accepts entire responsibility, in relation to each Site, in its current location, state and physical condition and Site Conditions, including any existing Contamination or Artefacts, Existing Infrastructure and other things on or adjacent to the Sites, including the existence, location, condition and availability of Utilities, and the suitability of otherwise of any Existing Infrastructure on or in the Sites for use in the Project.

The Project Company must comply with Environmental Laws. All Artefacts discovered at the Site will be the property of HAC.

The Project Company is generally responsible for environmental matters and site conditions. However, the Project Company has the benefit of certain Compensation Events (which provide both time and financial relief) in respect of the following:

- a) Native Title Applications
- b) the direction by HAC in respect of the discovery of an Artefact which causes significant delay
- c) Environmental Notices served in respect of Unidentified Pre-existing Contamination
- d) any Defect or latent defect in the condition of Existing Infrastructure in respect of certain Health Facilities discovered during the carrying out of the Works or Services which was not identified in Condition Survey Report
- e) any material deterioration in the condition of the Existing Buildings to which the Condition Survey Report relates between the date of the Condition Survey Report and the Commencement Date for the relevant Health Facility
- f) the presence of friable asbestos in an Existing Building that is required to be removed or remediated other than as part of the Works.

9.2 Development approvals

HAC is required to provide to the Project Company a copy of each NSW Health Development Approval and where an application in relation to the same can only be lodged with the consent of a third party as owner of the relevant Site, procure that such consent is obtained within sufficient time to enable the Project Company to meet its obligations.

The Project Company must apply for, and obtain by the Target DA Approval Date for a Health Facility, all Project Company Development Approvals for that Health Facility. The Project Company must also apply for and obtain any Development Approvals with respect to any subdivision required for the Project and ensure that all Project Company Development Approvals comply with Law, the Project Company Proposals and are prepared by the dates set out in schedule 12 (Development Programs) and are consistent with the Health Facilities satisfying or exceeding the Specifications.

The relevant Target DA Approval Dates for the Construction Health Facilities are set out in part F of schedule 3. The same may be extended in the event of the occurrence of a Relief Event or a Compensation Event or a Contract Variation (as set out in schedule 17).

9.3 The Works

New Bathurst Hospital

HAC is responsible for procuring the completion of the New Bathurst Hospital by the relevant Completion Dates. HAC has entered into a construction contract with John Holland for construction of the New Bathurst Hospital. Details relating to that contract are outside the scope of this summary.

HAC and the Project Company have entered into an interface agreement with John Holland to govern the respective obligations of the parties and assist in achieving the transition of the New Bathurst Hospital to the Project Company.

Construction Health Facilities

The Project Company is responsible for the design and construction of the Construction Health Facilities. The Project Company is responsible for delivering each of the Milestones and the Health Facilities by the relevant dates set out in schedule 3 as amended by Schedule 2 of the Amending Deed (Site Access and Timelines) (see section 6 of this report). Failure to meet Milestones under the Works Program will lead to the Project Company having to submit a Construction Milestone Failure Report to explain the status of the Works and in the event that the Project Director does not believe that timely completion will be achieved, the Project Company must prepare and submit a Corrective Action Plan.

The Independent Certifier has been appointed under the Independent Certifier Deed to certify completion of Works.

Termination

There is a right of termination in the event that Completion of the Works for a Construction Health Facility has not occurred (or HAC reasonably forms the view that such completion will not occur) by the Longstop Date for the relevant Construction Health Facility.

9.4 Furniture, fixtures, fittings and equipment

There are five groupings of furniture, fittings and fixtures, equipment:

Group 1 - Generally Building Services and Fittings

This includes equipment such as air conditioning equipment, lighting fixtures and so forth.

Group 2 - Generally Minor Clinical Equipment (new and existing)
This is clinical equipment such as IV poles and diagnostic sets.

Group 3 - Generally Office and Major Clinical Equipment (new and existing)
This is generally office equipment or large specialised clinical equipment such as dialysis machines.

Group 2T - Relocated equipment supplied by HAC, installed by HAC
Group 3T - Relocated equipment supplied by HAC, installed by HAC.

These groups are further categorised depending on the maintenance and replacement responsibilities:

Classification A - Maintained by the Project Company, replaced by the Project Company

Classification B - Maintained by the Project Company, replaced by HAC

Classification C - Maintained by HAC, replaced by HAC.

NSW Health understands that the responsibilities are summarised as follows:

Responsibility	Building Services - Group 1	Minor Clinical Equipment - Group 2	Office and Major Clinical Equipment - Group 3
Procure	PH	HAC	HAC
Install	PH	PH	HAC
Commission	PH	PH	HAC
Maintain	PH	PH	HAC
Replace	PH	PH/HAC	HAC

Note:

HAC - Health Administration Corporation, PH - Pinnacle Healthcare

HAC has agreed to transfer certain items of equipment (clause 11).

The Project Company is responsible for the procurement, provision, installation, commissioning, maintenance, refurbishment and periodic replacement of the Group 1 Equipment. A provisional sum has been included for the Group 1 Equipment, which will be adjusted based on the actual cost which will be paid in accordance with the Amending Deed.

HAC must make the Group 2TA and Group 2TB Equipment available to the Project Company on the relevant dates nominated in the Works Program. Until such time as it is made available, HAC must maintain the Group 2T Equipment in the condition as at the date of the deed subject to fair wear and tear.

The Project Company may, but is not obliged to install, commission and utilise the Group 2A Equipment to satisfy requirements of the Specifications. Similarly, the Project Company may, but is not obliged to install, commission and utilise the Group 2 TA Equipment to satisfy the Specifications.

HAC must maintain the Group 3T Equipment in the condition at the date of the deed, subject to fair wear and tear, until the date on which it is relocated to, installed and commissioned by HAC or a relevant specialist contractor at a Health Facility.

9.5 Provision of services

Interim services

During the Interim Services Phase (the period of 11 months from Financial Close) the Project Company must provide the Interim Services, the Mobilisation Activities and the Interim Hard FM Services.

Services

Following completion of the relevant works for each Health Facility, the Project Company is required to provide the following Services:

- a) Hard FM Services
 - i. Maintenance and Refurbishment Service – maintenance and refurbishment of the Health Facilities
 - ii. Clinical Equipment management services
 - iii. Ground and Gardens Maintenance Service – maintenance of lawns, gardens, plants, roads, pathways and any other outside areas
 - iv. Utility Management Services – ensuring continuous supply and metering of electricity, gas, water and sewerage.

- b) Soft FM Services
 - i. Pest Control Services – comprehensive pest control service including eradication of targeted species and routine inspection and treatment
 - ii. Security Services – education and training, access and key control, security patrols, management of security systems
 - iii. Cleaning, Domestic and Waste Management Service – cleaning, inspections, waste management, collection and disposal
 - iv. Internal Laundry and Linen Services – provision, storage and cleaning of linen
 - v. Kiosk/Coffee Shop Management Services – management of the kiosk/coffee shops
 - vi. Portering and Wardspersons Services – movement of patients, deceased persons, furniture, equipment and pathology items
 - vii. Sterile Supplies Department Service – collection, transportation, cleaning, sterilisation and storage of reusable medical and surgical instruments and equipment
 - viii. Materials Management Service – receipt, custody and distribution of materials.
 - ix. Catering Services at specified Bloomfield Mental Health inpatient facilities.

Requirements for provision of the interim services and the services

The Project Company is required to provide the above Interim Services and the Services:

- a) in accordance with:
 - i. the Support Services Specifications;
 - ii. Good Industry Practice;
 - iii. all applicable Consents and Law;
 - iv. the Operations Manuals and plans it is required to prepare; and
- b) so that each Health Facility remains Fit for Intended Purpose and is available for use by HAC (subject to programmed maintenance).

Benchmarking and market testing of services

If either the Project Company or the Project Director requires, the Project Company must undertake a benchmarking exercise at the times and in respect of the Services specified in the relevant notice, in accordance with the procedure set out in schedule 20 (see in particular, paragraph 2).

The relevant Services subject to benchmarking are as follows:

- (a)
 - (i) Clinical Equipment management services;
 - (ii) Pest Control Services;
 - (iii) Security Services;
 - (iv) Cleaning, Domestic and Waste Management Service;
 - (v) Internal Laundry and Linen Services;
 - (vi) Porterage / Wardspersons Service;
 - (vii) Sterile Supplies Department Service;
 - (viii) Materials Management Service.each as defined in the Support Services Specification;
- (b) any other service to the extent it is specifically related to the services listed in paragraph (a) above; and
- (c) any other "soft" facilities management Services nominated by the Project Director.

The rates for key inputs to the Services to be benchmarked, (where prices are calculated by reference to rates per hour, volume or quantity) and a reconciliation to the total cost for each of those Services was provided by the Project Company as a condition precedent to Financial Close.

Further, the Project Company must carry out any market testing exercise in the circumstances, at the times and in accordance with the procedure set out in schedule 20 (paragraph 3.5 of schedule 20).

Adjustments resulting from the benchmarking or market testing of Services are addressed in section 9.7 (Payments) of this Report.

9.6 Performance assessment

Overview

The Support Services Specifications contain key performance indicators against which the Project Company's performance is measured. Failure to achieve the key performance indicators may result in deductions to the payments made to the Project Company in accordance with Schedule 5 and ultimately to HAC having a right to terminate the contract (as set out below).

Service failures

A Service Failure occurs where the Service is not provided in accordance with the relevant service specification. Service Failures are categorised as Area Failures and Quality Failures. There are also Reporting Failures where the Project Company incorrectly reports any Service Failure or incorrectly calculates the Deduction payable in relation to such Service Failure.

Failure points and deductions

The Project Company incurs Failure Points in respect of any Services Failure or Reporting Failure. HAC is entitled to make specified Deductions against the Project Company's Monthly Payment for each Failure Point.

Termination

Ultimately, if the Project Company incurs Deductions in relation to more than a specified number of Area Failures over a specified period, then HAC has the right to terminate the Project Deed.

9.7 Payments

Construction payment

On the Full Services Commencement Date, HAC will pay the Construction Payment to the Project Company. The Construction Payment is to be the same amount as the Securitisation Payment under the Securitisation Deed (calculated under schedule 3 of that deed). HAC is only obliged to make such payment to the extent it receives the corresponding amount from Ancora. The Project Company must pay a Licence Payment Amount in respect of each Licence, in accordance with the Master Licence Agreement. Under the Securitisation Deed, Ancora agreed to purchase the Licence Fees from HAC.

The Construction Payment for the original scope will not be changed under the Amending Deed payment arrangements.

Pursuant to the Amending Deed HAC will pay the Extended Works Construction Price (being the aggregate capital cost component of the Estimated Cost Effect of the Extended

Works). As at the date of the Amending Deed, HAC had already made prior payments on account of the Extended Works. The Project Company is entitled to make claims for payment at the same time as, and in proportion to, the construction contractor's progress claims under the construction contract.

Service payment

The payment arrangements are structured to reflect the phasing of the Project.

HAC must pay the Project Company the Monthly Service Payment for each Operating Month. The same is calculated in accordance with Schedule 5, whereby the Monthly Service Payment is equal to the Monthly Payment plus the Volume Adjustment plus the Energy Adjustment plus any Additional Payment plus the Insurance Component less any Deductions for poor service provision. Each of the elements of the Monthly Service Payment is similarly addressed in Schedule 5 (including the circumstances in which deductions may be made).

In particular, the Monthly Payment (which is calculated pursuant to Part B of Schedule 5) takes into consideration that there is an "Incremental Quarterly Services Payment" prior to the Full Service Commencement Date and thereafter, a "Quarterly Services Payment" (to reflect full service provision). In both instances, a life cycle maintenance fee is also payable.

Table 1 of Part B of Schedule 5 sets out the various Quarterly Service Payments together with an indexation factor. This has now been amended in accordance with Schedule 3 of the Amending Deed.

On or about the 15th day of each Operating Month, the Project Company must submit an invoice in the form of the Pro Forma Invoice and HAC must pay the amount of the same within 20 Business Days of its submission (subject to its right to dispute certain amounts in certain circumstances).

Any adjustments to the Service Payment must be made in accordance with Schedule 19 (Estimated Cost Effect) which stipulates the circumstances in which Compensation Events or certain Contract Variations may lead to a price adjustment, and a proposed revised base case must be submitted by the Project Company to the Project Director for approval.

Adjustments may be made to reflect the benchmarking or market testing of Services. If the Benchmarked Services Cost Difference determined in accordance with Part A of schedule 20 is:

- a) five per cent or less (whether upwards or downwards) there will be no adjustment to the Quarterly Service Payment;
- b) greater than five per cent but less than fifteen per cent, the Quarterly Service Payment will be adjusted in accordance with Part C of schedule 20; and
- c) greater than fifteen per cent, the benchmarked Services will be market tested and the Quarterly Service Payment will be adjusted to reflect the outcome of the market testing exercise.

Payments in respect of Health Staff Members

The Project Company must pay to HAC, monthly in arrears, the amount paid or incurred by HAC in respect of each Health Staff Member during the Management Period under the Labour Services Agreement. The calculation is set out in Part D of Schedule 5.

9.8 Employees

Under the Labour Services Agreement, NSW Health staff members are provided to the Project Company and its sub-contractors for the term for the purpose of the provision of defined non-clinical services.

The Project Company nominates from the existing workforce of staff members in the relevant division of the NSW Health Service, currently providing the Services, those staff members that it requires to provide the Services, and requests that the Director-General make those staff members available.

A health staff member whose services are not required by the Project Company will be redeployed by the Director-General in accordance with the Applicable Workplace Policies. Health staff members remain the staff members in the NSW Health Service and are not employees of the Project Company.

The Project Company is responsible for the health staff members' training and development, for determining their rostering and working arrangements and ensuring they have access to those things required to enable them to perform their work including uniforms, protective clothing, vehicles, equipment and materials.

Each health staff member is subject to the direction and control of the Project Company on a day to day basis including as to management, discipline and performance.

The terms and conditions of employment of the staff members are determined by the Industrial Instrument, Industrial Law and the Applicable Workplace Policies applying to the employment of the staff members. The Project Company must comply with the Applicable Workplace Policies in respect of the staff members.

9.9 Refinancing

The Project Company must not effect any Refinancing without the prior written consent of the Project Director and must submit to the Project Director a report in respect of any proposed Refinancing.

The Project Director must not unreasonably withhold or delay consent to a proposed Refinancing if the purpose is to cure an actual or potential event of default under the Financing Agreement; to enable the Security Trustee to exercise its rights under the Financiers Tripartite Deed; or to enable the Financiers to waive a cash lockup or funding restriction. Any additional funding raised is not to be taken into account in the determination of Senior Debt for the purposes of the compensation on termination provisions in schedule 21.

The Project Company must pay or account to HAC for 50% of any Refinancing Gains.

A "Refinancing" is defined as:

- a) any amendment to any Financing Agreement;
- b) the exercise of any right, or the request for any waiver or consent, under any Financing Agreement;
- c) any step or arrangement that has a substantially similar effect to (a) or (b); or
- d) any new contractual or financing arrangements entered into in relation to the Project,
- e) but excluding any action set out in (a) to (d) above that is assumed in the Base Case at Financial Close, which is likely to:
- f) give rise to a Refinancing Gain;
- g) increase or change the profile of the liabilities of HAC under a Project Agreement; or
- h) in the case of any new financing arrangement entered into in relation to the Project, adversely affect any of NSW Heath's rights or obligations under a Project Agreement.

A "Refinancing Gain" is broadly defined as an amount equal to the greater of zero and $(A - B) - C$, where:

A = NPV of Distributions to be made to each Equity Investor over the Term;

B = NPV of Distributions (without taking into account the effect of the Refinancing) to be made to each Equity Investor over the Term; and

C = any adjustment required to raise the Pre-Refinancing Equity Return to the Base Case Equity Return.

9.10 Additional undertakings

There is an undertaking provided by each of the parties to comply with the provisions of the Partnering Protocol.

In accordance with the Financiers Tripartite Deed, each of the Project Company and the Security Parties undertakes that no Refinancing will be effected except in accordance with clause 9 of the Project Deed and it may not otherwise terminate, amend, waive or make any material amendment to the terms of the Financing Agreements without the prior written consent of HAC. HAC similarly undertakes it will not agree to or permit any material amendment to a Project Document to which it is a party (other than amendments which would not reasonably be expected to affect the interests of the Financiers) without the Security Trustee's prior consent.

The Bond Trustee, the Security Trustee, Ancora and the Financial Guarantor each undertakes to provide to HAC copies of material notices which relate to the Financing Agreements (and the Security Trustee). Ancora also undertakes to seek the prior written approval of NSW Treasury to the fixing of the Interest Rate by Ancora and the Lender in respect of Interest Periods occurring on or after the Full Service Commencement Date and to keep HAC updated in a timely manner as to the progress of discussions with NSW Treasury.

9.11 Intervening events

Compensation events

The Project Deed includes certain events as Compensation Events. The majority of these are typical of those associated with social accommodation projects but there are also events intended to address specific issues such as Unidentified Pre-existing Contamination.

If a Compensation Event:

- a) affects the ability of the Project Company to perform any of its obligations (including meeting any specified deadlines) or
- b) causes the Project Company to incur additional costs or to lose revenue,

the Project Company may apply for an extension of time, relief from the affected obligations and/or claim compensation.

Schedule 17 sets out a detailed procedure and requirements for the Project Company to be entitled to relief and/or compensation (including an obligation on the Project Company to mitigate the effects of the Compensation Event).

Any compensation is to be calculated in accordance with the Estimated Cost Effect procedure in Schedule 19.

Relief events

The Project Deed includes a number of events as Relief Events which are typical of those associated with social accommodation projects.

If a Relief Event affects the ability of the Project Company to perform any of its obligations (including meeting any specified deadlines), the Project Company may apply for relief from the affected obligations.

Schedule 18 sets out a detailed procedure and requirements for the Project Company to be entitled to relief (including an obligation on the Project Company to mitigate the effects of the Relief Event).

No compensation is payable for Relief Events and HAC may continue to make Deductions (other than for the purpose of termination) in relation to any reduction in the Services provided.

Force majeure

A 'Force Majeure Event' is a Relief Event which exists or the consequences of which exist or can be reasonably expected to exist or occur for 180 days and which causes either party to be unable to comply with all or a material part of its obligations under the Project Deed.

On the occurrence of a Force Majeure Event, the affected party is relieved of its obligations.

No compensation is payable for a Force Majeure Event (unless the Project Deed is terminated) and HAC may continue to make Deductions (other than for the purposes of termination) in relation to any reduction in the Services provided.

Subject to the following paragraph, either party may terminate the Project Deed on the basis of Force Majeure if the relevant Relief Event is continuing, the parties are unable to agree on how to mitigate the effects of the Force Majeure by the date falling 180 days after the commencement of the relevant Relief Event, and the affected party is unable to comply with a material part of its obligations during that 180 day period.

If the Project Company issues a notice to terminate on the basis of Force Majeure, HAC may elect for the Project Deed to continue, in which case:

- a) HAC must pay the full service payment as if the services were being fully provided, less the Project Company's cost savings as a result of not providing the services; and
- b) the Project Deed will continue unless HAC subsequently elects to terminate by giving 30 Business Days notice.

Change in law

The Project Company has a general obligation to comply with law including any Change of Law, unless such Change of Law is:

- a) a Discriminatory Changes in Law (broadly changes which affect the Project, the Sites, the Works, the Health Facilities or the Project Company rather than projects generally); or
- b) a Qualifying Change in Law (broadly, changes requiring capital expenditure in respect of a Health Facility, during the relevant Operations Phase).

Discriminatory Changes in Law and Qualifying Changes in Law constitute Compensation Events, entitling the Project Company to relief and compensation.

9.12 Variations

Right to propose variations

Either party may propose changes to the Works or Services at any time during the term by following the detailed procedure set out in Schedule 16 of the Project Deed.

Variations proposed by HAC

Where HAC proposes any such change, it will bear the cost of the change. Where the parties are unable to agree on the cost the matter may be referred to an independent expert for determination, following which HAC may either elect to proceed with, or withdraw, the proposed change.

Variations proposed by Project Company

Where the Project Company proposes any such change, HAC will have complete discretion as to whether and on what basis it accepts the proposed change.

Costs of variations

The Estimated Cost Effect of any variation is calculated in accordance with the detailed provisions set out in Schedule 19.

9.13 Loss or damage to site or facilities

9.13.1 Risk of loss or damage

The Project Company bears the risk of loss or damage to:

- a) the Works relating to each Construction Health Facility and its relevant Site during the applicable Construction Phase
- b) each Health Facility and its relevant Site during the applicable Operations Phase
- c) each Project Company Facility and its relevant Site, at all times.

9.13.2 Repair and reinstatement

Obligations to repair or reinstate

Subject to the uninsurability provisions, the Project Company is responsible (at its cost) for the reinstatement and repair or any loss or damage to the facilities.

If any facility suffers loss or damage, the Project Company is required to promptly:

- a) repair or reinstate the affected facilities;
- b) notify the Project Director of such loss or damage and any required replacement, reinstatement or repair; and
- c) provide a detailed report of all action to be taken to effect the replacement, reinstatement or repair and an estimate of the time such action will take and consult with the Project Director as to its programming.

The Project Company is required to:

- a) minimise the impact of the relevant replacement, reinstatement or repair works and keep the Project Director informed as to their progress; and
- b) apply all insurance proceeds received in respect of such loss or damage (including any amounts representing insurance proceeds paid by HAC where the event was uninsurable) towards the cost of replacement, reinstatement or repair.

HAC may repair or reinstate

If the Project Company fails to comply with its obligations to reinstate or repair any loss or damage, HAC may elect to do so in which case the costs incurred by HAC will be reimbursed by the Project Company.

Direction not to repair or reinstate

HAC may, in its discretion, direct the Project Company not to repair or reinstate the damage. If such notice is given:

- a) the Project Company waives in favour, and for the benefit, of HAC its right to make a claim under a required insurance policy (other than for the Project Company's or its subcontractor's own losses);
- b) the Project Company must pay HAC any insurance proceeds it receives (other than for the Project Company's or its subcontractor's own losses);
- c) the Project Company will be relieved of its obligations to perform the works or services to the extent reasonable in the context of the damage; and
- d) HAC will issue a variation proposal to reflect the Project Company's reduced obligations.

Insurance proceeds

All insurance proceeds in relation to reinstatement are paid into a reinstatement insurance account and may only be used to comply with the above requirements. The financiers undertake not to exercise any right or take any step that would prevent amounts in the reinstatement insurance account being applied in accordance with the above.

9.14 Indemnities

Project Company's indemnity

The Project Company provides a wide indemnity to HAC, GWAHS and the State (and their officers, employees and agents) against:

- a) any Claim or Loss in respect of:
 - i. death/personal injury;
 - ii. loss or damage to property; and
 - iii. 3rd party claims,
 - iv. in consequence of the Project Company carrying out its activities; and
- b) any Claim or Loss suffered in connection with the Project Company or any Project Company Related Party:
 - i. breaching any of the Project Documents; or
 - ii. committing any negligent or unlawful act or omission or wilful misconduct.

Exclusions

The following Claims and Losses are excluded from the above indemnity:

- a) any Claim or Loss caused by:
 - i. negligent, fraudulent or unlawful acts or omissions of HAC or a HAC's Related Party (this includes patients and visitors);
 - ii. wilful misconduct of HAC;
 - iii. breach by HAC or the Director General of its obligations;
 - iv. the Project Company following express directions of HAC or the project Director; or
 - v. failure by the Director General to comply with any Industrial Law or Instrument;
- b) any indirect or unforeseeable Loss suffered by the indemnified parties.

9.15 Insurance

9.15.1 Required types of insurance

The Project Company is required to maintain the following types of insurance:

- a) general and products liability insurance, with a limit of indemnity of not less than \$100 million for any one occurrence;
- b) insurance with a limit of indemnity of not less than \$20 million for any one occurrence covering third party property damage relating to any plant or vehicles;
- c) asbestos removalists liability insurance;
- d) compulsory third party motor vehicle insurance;
- e) workers compensation insurance covering claims under statutory schemes and with a limit of indemnity of not less than \$50 million for any one occurrence in respect of claims outside a statutory scheme;
- f) professional indemnity insurance with a limit of indemnity of not less than \$20 million for any one claim and in the aggregate (during the construction phase the aggregate limit is \$40 million);
- g) during the construction phase only:
 - i. contract works all risks insurance; and
 - ii. advance consequential loss insurance to cover increased costs of completion and financing costs arising from a delay in achieving completion of at least two years;
- h) during the services phase only:
 - i. industrial special risks insurance for the full replacement or reinstatement value; and
 - ii. business interruption insurance for loss of profit and increased cost based on a 2 year interruption.

9.15.2 Requirements in relation to insurance

All required insurances must be:

- a) maintained with reputable insurers with a minimum Standard & Poor claims paying rating of "A-"; and
- b) on terms approved by the Project Director, acting reasonably

In addition, the Project Company is required to ensure that certain specified policies include:

- a) a provision requiring the policy to operate as a separate policy covering HAC and Project Company for their respective rights and interests;
- b) a waiver of subrogation against the insured;

- c) a provision that failure by any insured to observe the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured.

The Project Company must provide evidence that required insurances are in effect.

9.15.3 Insurance costs

The Project Company is responsible for paying all premiums and deductibles in relation to the required insurances.

The Project Company's risk of increasing insurance premiums is mitigated by undertaking a benchmarking exercise every 3 years in relation to the general public and product liability and professional indemnity (in so far as they relate to the services) and the industrial special risks policies, which result in adjustments to the service payment. In the case of extreme premium increases there is ultimately the possibility of uninsurability protection.

9.15.4 Uninsurability

General provisions regarding uninsurability

The Project Company is not required to procure insurance against that risk for so long as that risk remains Uninsurable.

If the Project Company considers that a risk which is covered by the required insurances becomes Uninsurable then it must notify HAC.

In this context, a risk is Uninsurable if:

- a) insurance is not available in the international insurance market with reputable insurers of good standing and is not available under the Terrorism Insurance Act 2003; or
- b) the premium payable for insuring that risk is so high that the risk is generally not being insured against in the international insurance market with reputable insurers of good standing by prudent providers of services similar to the services being provided by Project Company.

If the parties agree, or it is determined through the dispute resolution procedure that the relevant risk is Uninsurable, and the fact that the risk is Uninsurable is not attributable to the actions of the Project Company or a Sub-contractor, the parties are required to meet and discuss how to manage such risk.

Where a risk is Uninsurable, the Project Company must approach the insurance market on a regular basis to establish whether that risk remains Uninsurable and advise HAC accordingly. If the insurance becomes available again, the Project Company must effect that insurance.

Additional provisions where a Material Risk becomes uninsurable

If a Material Risk (those risks covered by the industrial special risks policy during the services phase – i.e. risk of loss damage or destruction of the facilities) becomes Uninsurable,

HAC will deduct from the Quarterly Service Payment an amount equal to the premium that was payable for the Material Risk immediately prior to the it becoming Uninsurable. If the Material Risk materialises, HAC must (at its option):

- a) pay to the Project Company an amount equivalent to the insurance proceeds that would have been payable if the relevant insurance was available and the Project Company will be required to repair or reinstate the affected facility; or
- b) if some but not all of the Sites or Health Facilities are affected, implement a HAC initiated variation to remove the affected Site or Health Facility from the project. If HAC elects this option it will continue to pay the full Quarterly Service Payment as if the Material Risk had not occurred, less the costs saved by Project Company as a result of the variation; or
- c) if all of the Sites or Health Facilities are affected, terminate the Project Deed, in which case compensation will be payable on the same basis as termination for Force Majeure.

9.16 Project default and persistent breach

Project Default

Each of the following is deemed to be a Breach:

- a) a representation or warranty given by the Project Company proves to be untrue;
- b) fraud, collusive, misleading or deceptive conduct on the part of the Project Company or a Subcontractor;
- c) the Project Company commits a material breach of any of its obligations;
- d) during the construction phase, the Project Company fails to comply with the terms of a Corrective Action Plan;
- e) an obligation to provide funding under the Financing Facilities is terminated, withdrawn or cancelled due to the application of the breach, event of default or drawstop (or analogous) provisions under the Financing Agreements;
- f) ASIC publishes an interim or final report to the effect that
- g) a serious contravention of the Corporations Act relating to the Project Company or a Material Subcontractor has occurred;
- h) a breach of applicable Law involving management, fraud or dishonesty relating to the relevant Project Company or Material Subcontractor has occurred; or
- i) action should be taken or proceedings commenced in relation to the issue of financial products, fraud or other serious misconduct to which the investigation related; or
- j) the Project Company incurs Deductions above certain specified thresholds.

Upon receipt of a breach notice from the project Director, the Project Company must:

- a) If the Breach is capable of being remedied within 5 Business Days, remedy the breach;

- b) If the Breach is capable of being remedied but is not remedied within 5 Business Days, submit and implement a detailed Cure Plan to remedy the Breach; or
- c) If the Breach is not capable of being remedied, submit and implement a detailed Prevention Plan to prevent the recurrence of such Breach.

Failure to remedy a Breach or to submit or implement a Cure or Prevention Plan as required above is deemed to constitute a Project Default, which entitles HAC to terminate the Project Deed.

Persistent breach

The Project Company will be deemed to have committed a Persistent Breach if:

- a) the Project Company commits a certain type of breach more than once and after receipt of a Warning Notice and Final Warning Notice the relevant breach occurs four times with the six months period following the Final Warning Notice; or
- b) the Project Company commits frequent breaches which together frustrate the Project Deed or impair HAC to provide health services and the Project Company commits another breach within six months of receiving a Frequent Breach Notice.

9.17 Termination rights

9.17.1 Project Company defaults

Right to terminate

Subject to the provisions of the Financiers Tripartite Deed (discussed below), HAC may terminate the Project Deed by giving 20 business Days notice if:

- a) Completion of the Works for a Construction Health Facility has not occurred (or HAC reasonably forms the view that such completion will not occur) by the Longstop Date for the relevant Construction Health Facility;
- b) the Project Company Abandons the Project;
- c) an Insolvency Event (any of a specified list of events relating to solvency) occurs in relation to the Project Company;
- d) an Insolvency Event occurs in relation to the Construction Contractor, Facilities Manager or the Facilities Manager Guarantor and that party is not replaced within 90 days by a reputable party able to perform its obligations
- e) an Illegality Event occurs (the Project Company or a Key Subcontractor breaches any law, ceases to hold a required consent or it becomes unlawful for that party to perform its obligations under the Project Documents);
- f) the Project Company breaches the contractual restrictions in relation to assignment or change of control
- g) the Project Company incurs a specified number of Deductions in relation to failure events over a specified period
- h) a Persistent Breach occurs or

- i) a Project Default occurs.

Financiers Tripartite Deed

Under the Financiers Tripartite Deed, HAC undertakes not to issue a termination notice under the Project Deed without giving the Security Parties notice of its intention to do so, the proposed termination date and details of the relevant circumstances entitling HAC to terminate the Project Deed.

At any time prior to the proposed termination date, the Security Parties may elect to step in for a specified period and assume the rights and obligations of the Project Company under the Project Deed and/or novate the Project Company's rights and obligations under the Project Deed to a Suitable Substitute Project Company in order to cure the relevant default.

9.17.2 Voluntary termination

HAC may elect at any time to terminate the Project Deed without cause by providing 120 days notice.

9.17.3 HAC default

The Project Company may terminate the Project Deed by providing 120 days notice if:

- a) there is an expropriation of a material part of the assets or shares of the Project Company
- b) HAC fails to make a payment under the Project Deed within 20 Business Days of a formal demand (disregarding disputed amounts)
- c) HAC commits a breach of its obligation which renders it impossible for the Project Company to perform its obligation or exercise its rights for a continuous two months period,

and such event is not remedied within the 120 day notice period.

9.17.4 Force majeure

As discussed in section above, subject to HAC's right to require the Project Deed to continue, either party may terminate the Project Deed on the basis of Force Majeure if the relevant Relief Event is continuing, the parties are unable to agree on how to mitigate the effects of the Force Majeure by the date falling 180 days after the commencement of the relevant Relief Event, and the affected party is unable to comply with a material part of its obligations during that 180 day period (see section 9.15 above).

9.17.5 Uninsurability

HAC may terminate the Project Deed if certain risks become Uninsurable as discussed in paragraph 9.15.4.

9.18 Compensation on termination

9.18.1 Compensation on termination for Project Company default

Where the Project Deed is terminated for Project Company Default (other than for Abandonment of the Project), HAC is required to pay the Project Company a termination payment equal to the market value of the Project Deed.

HAC may elect to determine the market value of the Project Deed by:

- a) retendering the provision of the services according to a specified retendering process, but only if:
 - i. the financiers have not transferred the Project Company's rights and obligation to a suitable substitute contractor and have failed to use reasonable efforts to do so; and
 - ii. there is a liquid market (at least two independent parties in the market for PPP or similar contracts for the provision of services; or
- b) requiring an expert to determine of the fair value of the Project Deed.

Where the Project Deed is terminated for Abandonment of the Project, the Project Company is not entitled to any termination payment.

9.18.2 Compensation on termination for HAC default and voluntary termination

Where the Project Deed is terminated for HAC Default or where NSW Health exercises its right to voluntarily terminate the Project Deed, NSW Health is required to pay a termination payment, the amount of which depends on whether termination occurs before or after completion of the last Construction Health Facility.

Termination before completion of the last Construction Health Facility

If termination occurs before completion of the last Construction Health Facility, the termination payment is an amount equal to:

- a) the costs properly expended by the Project Company directly relating to design and construction up to the termination date;
- b) plus any costs reasonably incurred by the Project Company that are associated with amending or terminating the Project Documents (including redundancy payments for the Project Company's employees);
- c) plus reasonable and proper costs payable by the Project Company as a result of terminating the Financing Agreements;
- d) minus any amounts owing by the Project Company to HAC;
- e) minus any gains which will accrue to the Project Company as a result of the termination;

- f) minus the net amount the Project Company is entitled to recover under any insurance policy; and
- g) plus any amounts owing by HAC to the Project Company.

Termination after completion of the last Construction Health Facility

If termination occurs after completion of the last Construction Health Facility, the termination payment is an amount equal to:

- a) amounts payable by the Project Company under the Financing Agreement;
- b) plus an amount which gives an internal rate of equity return (on both share capital and shareholder subordinated debt) equal to the weighted average base case equity return;
- c) plus reasonable and proper break costs payable by the Project Company to its subcontractors;
- d) minus any amounts owing by the Project Company to HAC;
- e) minus any gains which will accrue to the Project Company as a result of the termination;
- f) minus the net amount the Project Company is entitled to recover under any insurance policy; and
- g) plus any amounts owing by HAC to the Project Company.

9.18.3 Compensation on termination for force majeure and uninsurability

Where the project deed is terminated on the basis of force majeure on uninsurability of a risk, HAC is required to pay a termination payment equal to:

- a) amounts payable by the Project Company under the Financing Agreement;
- b) plus any gains which will accrue to the project Company as a result of the termination;
- c) minus any amounts owing by the Project Company to HAC;
- d) minus the net amount the project Company is entitled to recover under any insurance policy;
- e) plus an amount equal to half of equity as shown in the balance sheet at the time of termination at par; and
- f) plus any amounts owing by HAC to the Project Company.

9.19 Step in rights

HAC's step in rights

HAC may step-in and assume all or some or the service delivery obligations of the Project Company if:

- a) there is an emergency, a serious risk to the environment, the public or users of the facility or a serious risk of material damage to public or private property; or
- b) it is necessary to discharge a statutory duty.

Costs of step in

Where HAC has stepped in as a result of a breach or termination event, it must continue to pay the full service payment less:

- a) HAC's reasonable estimate of the costs not incurred by the Project Company as a result of it not providing the contracted services; and
- b) the costs incurred by HAC in exercising that step-in right, including all reasonable and proper costs incurred by HAC in taking the required action.

If the aggregate amount to be deducted under paragraphs (a) and (b) is greater than the service payment, the difference will be a debt due and payable from the Project Company to HAC.

Step in under side deeds

Under the Construction Side Deed and the Facilities Management Side Deed, each subcontractor undertakes not to terminate the Construction Contract or the Facilities Management Contract for Project Company default, unless it gives notice to HAC of its intention to do so and an opportunity for HAC to step in for a specified period and assume the rights and obligations of the Project Company under the Project Deed and/or novate the Project Company's rights and obligations under the Project Deed to a Suitable Substitute Project Company in order to cure the relevant default.

9.20 End of term arrangements

Condition of assets at the end of term

The Project Company must (at its own cost) ensure that the facilities, equipment and sites meet specified conditions at the expiration date. HAC is entitled to arrange for an independent expert to conduct an audit approximately three years and one year prior to the expiration date to ensure those requirements are being met, to identify any rectification work to be undertaken by Project Company to meet those requirement, and to determine what amount if any the Project Company will need to expend for the balance of the term to meet those requirements.

The Project Company is required to provide HAC with a bank guarantee to secure its obligation to undertake any identified rectification work.

Obligations re transition at end of term

During the final three months prior to the Expiration Date or during any period after any termination notice, the Project Company is required to fully cooperate to transfer responsibility for the services to HAC or a new contractor.

Title to assets at the end of the term

In all circumstances, title in the facilities, equipment and sites will transfer to HAC or any new contractor at the end of the contract term at no cost.

9.21 Dispute resolution

Disputes are referred initially to the Project Coordination Group. If the dispute is not resolved within a specified period it is elevated to the Director General and the CEO of the Project Company. If the dispute remains unresolved the Project Coordination Group will refer the dispute to expert determination, arbitration or some other form of dispute resolution.

If the parties are unable to agree on the process for resolving the dispute or the identity of the expert or arbitrator then the President of the Institute of Arbitrators and Mediators Australia may select the process of resolution and nominate a panel of 3 experts or arbitrators, from whom the expert or arbitrator is to be selected.

The decision of the expert or arbitrator is binding on the parties.

9.22 Assignment, change of ownership/control

Assignment

Subject to the following exceptions, neither party may assign or otherwise deal with its interests under the Project Documents without the prior consent of the other party.

The exceptions to the above rule are:

- a) HAC may assign its interest to another governmental body supported, if necessary, by a guarantee from the State (such as another PAFA Act Guarantee); and
- b) the Project Company may grant security interests in accordance with the Financing Agreements,

in each case without the consent of the other party.

Change of control

The Project Company undertakes to HAC that the legal and beneficial ownership of each owner of the Project Company Group structure will remain as set out in schedule 2 until the Commencement Date of the New Orange Hospital.

Except for the circumstances listed below, the Project Company must not permit any change to the legal or beneficial ownership of the Project Company or any member of the Project Company Group without HAC's prior consent.

HAC's consent is not required for transfers:

- a) of any listed equity interests (shares or units);
- b) of any equity interests by a party to a related body corporate of that party; or

- c) of any equity interests in any member of the Project Company Group to any related body corporate of Babcock & Brown Australia Pty Ltd or to a managed fund, trust or other entity that is either managed by, or in which more than 50% of the equity interests are owned by, a related body corporate of Babcock & Brown Australia Pty Ltd.

9.23 Records and audit

The Project Company must maintain and provide HAC with all financial and other records, statements and documentation necessary to enable HAC to monitor and assess the Project Company's financial capacity and the Project Company's performance of its obligations under the Project Deed and to allow for transparency of costs.

The parties acknowledge that the Project Documents will be made available to the Auditor-General in accordance with the Public Finance and Audit Act 1983, and the Project Documents and any related documents and information may be tabled in Parliament by or on behalf of HAC and will be published in accordance with the Guidelines, and HAC and the Project Director may make the Project Documents (other than the Subcontracts) or any of them available to any party, subject to the deletion of Commercially Sensitive Information.

10 PAFA APPROVAL AND GUARANTEE

The Treasurer granted an approval under s20(1) of the *Public Authorities Financial Arrangements Act 1987* (PAFA) to the arrangements involving the parties as a "joint financing arrangement" and, on the recommendation of the Minister for Health, of HAC entering into such arrangements.

The State agreed to guarantee the due performance by HAC of its obligations under the joint financing arrangement pursuant to s22B of the PAFA Act. The guarantee takes the form of the "Deed of Guarantee" under s22B of the PAFA Act between the State, the Project Company, the Security Trustee and HAC. The term of the Deed of Guarantee continues until the date seven months after the date upon which HAC has fully discharged all Guaranteed Obligations (including any payment of termination payments and interest thereon) under the last of the Project Documents to remain in force.

The Treasurer granted an approval under s22 of the PAFA Act to the guarantee being in the agreed form and appointed the Minister for Health to sign the guarantee on his behalf. The relevant Project Documents to which the approvals relate are set out in the schedules to the approvals.

On 18 June 2010, the Treasurer granted approval to include the Amending Deed in the Schedule of Relevant Project Documents for the purposes of the PAFA approval and the Deed of Guarantee.