

**Royal North Shore Hospital
and Community Health Services
Public Private Partnership**

**Summary of contracts
as at 28 October 2008**

Artistic view of the new Royal North Shore Hospital Acute Services Building



A copy of the Royal North Shore Hospital and Community Health Services PPP Project Deed is available on:

<http://www.health.nsw.gov.au>

Inquiries should be directed to:

Stuart Suthern-Brunt (stuart.sb@hinfra.health.nsw.gov.au)

Elsie Choy (elsie.choy@hinfra.health.nsw.gov.au)

Health Infrastructure
Level 8,
77 Pacific Highway
North Sydney NSW 2060
Phone: 61 2 9978 5429
Fax: 61 2 8904 1377

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1 INTRODUCTION

This report has been prepared by NSW Health Infrastructure in accordance with the *Working with Government Guidelines for Privately Financed Projects, December 2006* and the *Premier's Memorandum No. 2007-01 Public Disclosure of Information Arising from NSW Government Tenders and Contracts*. It provides a high level summary of key features of the Project Deed and related documents dated 23 October 2008 which have been entered into for the delivery of the Royal North Shore Hospital and Community Health Services Project (the Project). Financial close occurred on 28 October 2008.

The Project Deed, less any commercial-in-confidence material has been released on the government tender website in accordance with Government policy and the *Freedom of Information Act 1989*.

This 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 28 October 2008. 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 Royal North Shore Hospital ("RNSH"), including:

- the construction of a new acute hospital facility;
- the construction of a new Community Health Facility;
- the refurbishment of the Douglas Building;
- construction of a new multi-storey car park facility; and
- retail facilities.

RNSH, a NSW Department of Health facility, will be managed by the Northern Sydney and Central Coast Area Health Service (NSCCAHS). All clinical, clinical support and related administration functions for the care, treatment and rehabilitation of patients will be provided and managed by NSCCAHS's staff.

Following investigations, the NSW Government decided that the Royal North Shore Hospital and Community Health Services Project would be redeveloped as a "public private partnership". This was announced by the Minister for Health on 13 September 2006.

1.2 Project Description

The Royal North Shore Hospital and Community Health Services Project involves:

- The private sector undertaking the design, construction and commissioning of the new acute health facility, Community Health Facility and multi-storey car park.
- The refurbishment of "Building No. 53", commonly known as the Douglas Building .
- The financing of the new acute health facility, Community Health Facility and multi-storey car park and refurbishment of the Douglas Building.
- Mobilisation and transitioning of support services from the existing RNSH buildings to the new facilities constructed and refurbished by the private sector.
- Private sector facilities management and delivery of ancillary non-clinical services for these hospital facilities and the R&E Facility until 22 October 2036 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.

There are Commercial components within the Project, including:

- Private sector management and operation of the car park facilities at RNSH in return for payment of an annual licence fee and a share in the revenue generated.
- A lease to the private sector of the retail premises located at RNSH in return for payment of base rent and turnover rent.
- Commercial development within the Health precinct.

The private sector parties' services at RNSH will be delivered by NSCCAHS's employees, who will continue to be employed by NSCCAHS but will be managed by the private sector parties under a Labour Services Agreement.

Artistic view of the interior of the new acute hospital facility



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 Project Deed and related documents
- Section 10 summarises the key terms and conditions of the Car Park Licence Agreement and related documents
- Section 11 summarises the key terms and conditions of the Agreement for Retail Services and the Retail Head Lease
- Section 12 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

On 16 October 2006, the NSW Department of Health issued a Call for Expressions of Interest for the redevelopment of RNSH as a privately financed project.

Expressions of Interest were received by the closing date of 14 November 2006 from 5 consortia:

- Plenary Health, comprising the Plenary Group, Deutsche Bank, Laing O'Rourke, Honeywell, Medirest, PTW, Suters, Nightingale and Premier Parking;
- Pinnacle Healthcare, comprising Babcock & Brown, Bovis Lend Lease, Spotless, Rice Daubney, McConnel Smith and Johnson and Interpark;
- InfraCare (later renamed InfraShore), comprising ABN AMRO, Thiess, Thiess Services, ISS, Blighvollerneild, Cox Richardson and Wilson Parking;
- Lanceley Partnership, comprising Leighton Contractors, Transfield Services, Jackson Architecture, Metroparking and Westpac; and
- H³ Partnership, comprising Macquarie Bank, John Holland, United Group Services, S&K Car Park Management, Hassell and Silver Thomas Hanley and Delaware North Companies.

These Expressions of Interest were evaluated by an Evaluation Panel comprising John Armstrong (NSW Health Infrastructure Project Director), Stephen Brady (NSW Treasury), Mary Bonner (Northern Sydney and Central Coast Area Health Service) and Jo Thorley (Burns Bridge). The Evaluation Panel was assisted by PricewaterhouseCoopers (financial matters), NSW Treasury Corporation (financing matters), Clayton Utz (legal matters), Sinclair Knight Merz and Milliken Berson Madden (technical matters) and BurnsBridge (design and construction matters).

Its activities were overseen by a Project Executive Committee, comprising David Gates (NSW Department of Health's Chief Procurement Officer), Danny Graham (NSW Treasury's Director, Private Projects Branch), Stephen Christley (former Chief Executive, NSCCAHS) and by an independent probity auditor Warwick Smith of Procure Consulting .

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

2.2 Request for Detailed Proposals

On 31 May 2007, the Department of Health issued a Request for Detailed Proposals to Plenary Health, Pinnacle Healthcare and InfraShore after each of them signed a Deed of Disclaimer.

All three short listed consortia submitted proposals by the closing date, 16 November 2007.

The Detailed Proposals were evaluated by an Evaluation Panel comprising John Armstrong (NSW Health Infrastructure Project Director) as Chair, John Taylor (Office of Co-ordinator General), Tony Morgan (NSW Treasury), Deb Stewart (NSCCAHS), Jo Thorley (BurnsBridge), Martin Locke (PricewaterhouseCoopers), John Shirbin (Clayton Utz) and Dougal Spork (Milliken Berson Madden).

The Evaluation Panel was assisted by four (4) Evaluation Sub Panels comprising Technical Facilities Design & Construction, Support Services, Legal and Commercial, and Financial. The Sub Panels were assisted by Clayton Utz (legal matters), PricewaterhouseCoopers and the NSW Treasury Corporation (financial matters), Tony Morgan (NSW Treasury), Milliken Berson Madden (costing and services matters), BurnsBridge (technical 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 Chief Procurement Officer), Danny Graham (NSW Treasury's Director, Private Projects Branch), Matthew Daly (Chief Executive, NSCCAHS) and Robert Rust (Chief Executive Health Infrastructure) and by the independent probity auditor, Warwick Smith of Procure Consulting.

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 InfraShore achieved the highest overall score against the evaluation criteria and the highest value for money.

2.3 Pre-selection negotiation process

In May 2008 the Project Executive Committee endorsed the Evaluation Panel's recommendations that Plenary Health be notified that its proposal would not be considered further and InfraShore and Pinnacle Healthcare be notified that NSW Health would enter into the pre-selection negotiation process with InfraShore (with Pinnacle Healthcare as the reserve proponent) in accordance with the provisions of the RDP Evaluation Plan. In particular the negotiation process was split into two distinct phases. Initially, there was a clarification phase to address the key commercial issues arising from InfraShore's bid. Upon the resolution of the key commercial issues to NSW Health's satisfaction, NSW Health would enter into a period of negotiations with a view to resolving all outstanding deficiencies with InfraShore. If a key commercial issue could not be resolved to NSW Health's satisfaction during the clarification phase, NSW Health reserved the right to invite Pinnacle Healthcare to enter into a clarification phase with NSW Health.

In May 2008 the Budget Committee of Cabinet endorsed the pre-selection process being entered into with InfraShore and Pinnacle Healthcare. Following endorsement, a Pre-Selection negotiation process was commenced with InfraShore to resolve their commercial departures and deficiencies.

During the pre-selection clarification phase, InfraShore was required to confirm its acceptance of NSW Health's proposed positions in respect of the key issues identified by NSW Health during its evaluation of InfraShore's proposal.

InfraShore addressed the key commercial issues and advised its position on the key commercial issues nominated for resolution during the pre-selection clarification phase in a letter dated 20 June 2008.

In its letter of 26 June 2008, NSW Health elected to enter into the pre-selection negotiation phase with InfraShore to resolve the key issues that were not resolved during the pre-selection clarification phase and other issues arising from InfraShore's proposal.

On 16 and 22 July InfraShore responded to these issues. NSW Health extended the pre-selection negotiation phase with InfraShore on 7 August 2008 by four weeks in order to resolve the outstanding pre-selection negotiation issues. Subsequently all outstanding issues were satisfactory resolved.

On 26 September 2008, NSW Health notified InfraShore that it had been formally confirmed as preferred proponent.

Following negotiation and resolution of issues to the satisfaction of NSW Health on 22 October 2008, the Evaluation Panel recommended InfraShore be selected as the preferred proponent and the PPP Contract being entered into with InfraShore as negotiated for the Project.

2.4 Execution of the contracts

Following a recommendation from the Health Minister, Mr John Della Bosca, the Treasurer approved on 22 October 2008 a PPP contract being entered into with InfraShore.

A Deed of Guarantee under the *Public Authorities (Financial Arrangements) Act (NSW)* was executed on 23 October 2008.

The Project reached contract execution on 23 October 2008 and financial close on 28 October 2008.

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>Respondent details and probity.</i> The Respondent's organisation details, whether a related company of a Respondent or Participant may be in the future involved as a Participant or provider for a different Respondent and compliance with the EOI Brief. | Assessed on a pass / fail basis |
| 2 | <i>Structure, Finance and Management of Project Risks.</i> The Respondent's business structure, an assessment of the Respondent's financial standing and strength and that of its Participants, the Respondent's acceptance and management of Project Risks and the Respondent's understanding and acceptance of the performance-related payment mechanism proposed by NSW Health. | 15% |
| 3 | <i>Social Infrastructure Experience and Overall Strategy.</i> The extent of understanding (by the Respondent and by the relevant Participants) of social infrastructure PPPs (in particular Hospital PPPs) and provision of carparking infrastructure and operations, and the Respondent's structure and management strategies to deliver the Project objectives. | 15% |
| 4 | <i>Design and Construction</i> The extent of the Respondent and Participant's experience and that of their key personnel in the design and construction of projects of this type and size and their understanding of the design and construction requirements of the Project and strategies to procure and manage the design and construction of the facilities at the RNSH site. | 25% |
| 5 | <i>Facilities Management and Handover</i> The extent of the Respondent's experience in the facility management, maintenance and handover requirements of projects of this type and size and its understanding of the facility management, maintenance and hand-over requirements of the Project and strategies to procure and manage the maintenance and hand-over of the facilities. | 25% |
| 6 | <i>Project Finance</i> The extent of the Respondent's experience in the financing of projects of this type and size and their understanding of the financial requirements of the Project and appropriate strategies to provide certainty of delivery of the financial requirements. | 15% |
| 7 | <i>Project Delivery</i> The level of commitment by the Respondent and Participants in delivering the Project within the required timeframe. | 5% |

The Detailed Proposals for the Hospital development were evaluated in terms of:

Table 2: RDP – Evaluation Criteria

| | Evaluation Criteria | Weighting |
|-----------|---|------------------|
| 1. | Design, construction and commissioning | 35% |
| | 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 NSCCAHS 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 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 RNSH Site during a Construction Phase. | |
| | Environmental sustainability and energy efficiency of the design and building elements used. | |
| 2 | Service delivery | 35% |
| | 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 KPIs and applicable laws, codes and Government policies.) • demonstration of comprehensive and appropriate Mobilisation | |

Summary of Contracts – RNSH PPP

| | Evaluation Criteria | Weighting |
|----------|--|------------|
| | <p>Services and Interim Service Proposals;</p> <ul style="list-style-type: none"> demonstration of robust, comprehensive and effective change management processes and transition arrangements for introduction of new systems, policies and procedures and work practices; | |
| | <p>Certainty of delivery of Management Services including:</p> <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; | |
| | <p>Certainty of delivery of Support Services including:</p> <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; | |
| | <p>Certainty of delivery of the requirements of the Labour Services Agreement including:</p> <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 | 15% |
| | Compliance with the terms of the Project Documents | |
| | 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); | |

Summary of Contracts – RNSH PPP

| | Evaluation Criteria | Weighting |
|---|---|-----------|
| | 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; and | |
| | 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 | |
| 5 | Other considerations | |
| | Any other criteria that NSW Health considers in its absolute discretion to be relevant to the evaluation of the Proposals. | |
| | Any matters revealed as a result of NSW Health's probity and security investigations. | |

Table 3: Commercial Opportunities – Evaluation Criteria

| Commercial Opportunities - Evaluation Criteria | | |
|--|--|--------|
| A | RETAIL | |
| | Technical <ul style="list-style-type: none"> • Robustness and certainty of delivery of technical proposals for Retail Development; • Robustness of interface and management arrangements for the Retail Development with the Project Company, NSW Health and Stakeholders; and • Suitability of the retail development for inclusion within a health campus, including image and identity, appropriateness of service, future flexibility and compliance with Laws and Policy. | 33.33% |
| | Commercial <ul style="list-style-type: none"> • Compliance with the terms of the Retail Head Lease and the Agreement for Retail Services (including any associated requirements of the Retail Leases Act), with proposed departures from the Retail Head Lease and the Agreement for Retail Services; and • Certainty of delivery of the commercial arrangements including consistency between legal, financial and technical aspects of the Retail Development Proposal and appropriate allocation of risks to consortium participants. | 33.33% |
| | Financial <ul style="list-style-type: none"> • Assessment of the Net Present Value of the net rental cash flows to NSW Health for the retail development and financial and risk consequences of the Proponent's Proposal; | 33.33% |

Summary of Contracts – RNSH PPP

| Commercial Opportunities - Evaluation Criteria | | |
|--|---|--------|
| | <ul style="list-style-type: none"> Rentals payable to NSW Health, and the financial and risk consequences of the Proponent's Proposal including the stipulation of any base or generated minimum rental; Financial strength of the Head-Lessee and sub-lessees, including an assessment of security instruments (bank guarantees, parent company guarantees); and Financial robustness of the projected net rental cashflow, including assumptions relating to fit-out costs, facilities management costs, service costs and the terms of sub-leases. | |
| B | CAR PARK | |
| | <p>Technical</p> <ul style="list-style-type: none"> Certainty of delivery and robustness of Proponents technical solution for car park management, car parking equipment and interface, during Construction and Operations, with PPP Project Company, NSW Health and Stakeholders. | 33.33% |
| | <p>Commercial</p> <ul style="list-style-type: none"> Compliance with the terms of the Car Park Licence Agreement; 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. | 33.33% |
| | <p>Financial</p> <ul style="list-style-type: none"> Assessment of the Net Present Value of the Annual Base Licence Fee to NSW Health for the car park operations and the financial and risk consequences of the Proponent's Proposal; Upside revenue sharing arrangements proposed, and financial and risk consequences of the Proponent's Proposal; Financial strength of the car park operating company, risk taking participants, and sub contractors, including an assessment of security instruments (parent company guarantees, letters of credit etc); and Robustness and accuracy of the Car Park financial model, including a review of assumptions relating to construction costs, utilisation, revenue, operating and service costs, taxation and financing. | 33.33% |
| C | COMMERCIAL TENANCY | |
| | <p>Technical</p> <ul style="list-style-type: none"> Robustness and deliverability of Commercial Tenancy; Robustness of interface arrangements with Hospital Functions, NSW Health, PPP Contractor and Stakeholders; Certainty of minimising disruption to the Hospital Functions during Construction; and Certainty of minimising disruption of Hospital Functions during Operations. | 33.33% |

| Commercial Opportunities - Evaluation Criteria | |
|--|---|
| Commercial | <ul style="list-style-type: none"> • Acceptability of the contractual structure of the proposed commercial development of the upper levels of Building 2 and compatibility of this contractual structure with the risk allocation in the Project Documents; and • 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. |
| Financial | <ul style="list-style-type: none"> • Assessment of the Net Present Value of the cash flows to NSW Health associated with the Building 2 development and financial and risk consequences of the Proponent’s Proposal; • Financial strength of the risk taking participants and sub contractors, including an assessment of security instruments (parent company guarantees, letters of credit etc); and • Financial robustness of projected cashflows. |

In evaluating the commercial opportunities NSW Health considered the net present value of the proposals and the reduction in the NPC of the project as a result of the Commercial proposals. There are specific evaluation criteria that must be met for each of the Retail, Car Park and Commercial Tenancy. The evaluation criteria in each of the commercial opportunities are; Technical, Commercial and Financial.

The results of the evaluations against these 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

The cost benefit analysis of the private sector delivery of the RNSH PPP was conducted by applying the value for money assessment. The net benefit was reflected in the estimated cost savings of \$13.4 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 InfraShore 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 (including commercial opportunities) (over 28 years) to the NSW Department of Health | 1,119.9 | 1,129.0 | 1,138.2 | 1,115.6 |
| Estimated saving achieved through private sector delivery | 4.3 | 13.4 | 22.6 | |

Note:

The “most likely” cost estimate for the “public sector comparator” (PSC) of \$1,129.0 million includes a “raw” capital cost estimate with a present value (@ 6.62% pa) of \$429.6 million, a capital risk adjustment of \$45.0million, a “raw” operational cost of \$676.3 million, an operational risk adjustment of \$58.8 million, the removal of utilities costs of \$39.1 million (for comparison with the private sector project delivery), a competitive neutrality adjustment of \$3.3 million and a total net benefit from commercial opportunities of \$44.9 million.

The present value of the cost of private sector delivery of the Project of \$1,115.6 million (including the net benefit from commercial opportunities) 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 120 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 that the actual scope of the refurbishment will exceed the planned refurbishment scope.
- Risk of environmental contamination exists on the Site (includes asbestos, PCB, fuel).
- Risk that adverse weather conditions will cause delays to the work program.
- Risk that the demand for sub trades exceeds supply which will result in additional premiums to be paid.
- Risk that construction costs increase due to higher than expected building cost escalation rates.
- Risk that the construction program will take longer than expected (not related to adverse weather conditions outlined above).
- Risk of unidentified issues relating to the structure of existing buildings.
- Risk that additional staff, including trades people, are required during the construction phase to implement the work program.
- Risk that the output specifications are not sufficiently defined.

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

- Risk of fluctuations in underlying operating cost assumptions.
- Risk that the condition of existing buildings is not fully compatible with the service specifications resulting in additional operating cost.
- Risk that the design and or construction quality is inadequate resulting in higher than anticipated refurbishment costs in order to ensure delivery of maintenance services to standard.
- Risk that lifecycle and maintenance costs are underestimated.
- Risks relating to quality failures or cost increases regarding catering services, cleaning & waste services and portering/wardspersons services.
- Risks of strikes, industrial action or civil commotion causing delay and cost to the services.

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).

The private sector consortium is made up of the following organisations:

- ABN AMRO (finance and consortium leader);
- Thiess (design and construction);
- Thiess Services (hard facilities management and maintenance);
- ISS Health Services (soft facilities management and non-core support services);
- Wilson Parking (car park services); and
- Zouki (retail)

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

- a) InfraShore Pty Ltd (ABN 71 124 557 008). The address is Level 22, ABN AMRO Tower, 88 Phillips Street Sydney 2000.
The Project Company was established for this Project and which may not conduct any other business.
- b) Thiess Pty Ltd (ABN 87 010 221 486) (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) Thiess Services Pty Ltd (ABN 69 010 725 247) (Hard Facilities Manager)
The Hard Facilities Manager is obliged to deliver specified hard 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) ISS Health Services Pty Ltd (ABN 98 109 689 223) (Soft Facilities Manager)
The Soft Facilities Manager is obliged to deliver specified soft 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.
- e) Leighton Holdings Limited (ABN 59 004 482 982) (Construction Guarantor and Hard Facilities Manager Guarantor).
The Construction Guarantor and Hard Facilities Manager Guarantor has given the Project Company a guarantee of the performance of the Construction Contractor and the Hard Facilities Manager's obligation to the Project Company.

Summary of Contracts – RNSH PPP

- f) ISS Facility Services Australia Limited (ABN 87 001 827 041) and ISS Global A/S (Soft Facilities Manager Guarantors)
The Soft Facilities Manager Guarantors have given the Project Company a guarantee of the performance of the Soft Facilities Manager's obligation to the Project Company.
- (g) WT Partnership Aust Pty Ltd (ABN 99 006 040 768) (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.
- (h) InfraShore Parking Pty Ltd (ABN 34 124 564 521) (InfraShore Parking)
InfraShore Parking will manage and operate the car park facilities at RNSH and will pay an annual base licence fee and a share of the revenue derived from the car park facilities to HAC.
- (i) Wilson Parking Australia 1992 Pty Ltd (ABN 67 052 475 911) (Car Park Operator)
The Car Park Operator will operate the car park facilities at RNSH for InfraShore Parking.
- (j) InfraShore Developments Retail Pty Ltd (ACN 133 618 881) (InfraShore Retail)
InfraShore Retail is the lessee under the Agreement for Retail Services and responsible for carrying out the necessary Fit Out Works in relation to the retail premises prior to entry into the lease. InfraShore Retail will enter into the Retail Head Lease with NSW Health.
- (k) Zouki Enterprise Pty Ltd (ABN 30 096 515 472) (Cafeteria and Retail)
Zouki will be engaged as the operator of the main cafeteria and as head sub-lessee of InfraShore Retail for all of the retail activities within the retail precinct.

Advisory services were provided by:

- NSW Treasury Corporation (financial adviser)
- PricewaterhouseCoopers (financial adviser)
- Clayton Utz (legal adviser)
- BurnsBridge Sweett (design and construction)
- Milliken Berson Madden (technical support services adviser)
- Marsh (adviser on insurance matters)
- Procure Consulting (probity auditor)
- Sabar (Car Park Specialist)
- Arcadia (Retail Specialist)
- Department of Commerce (Energy adviser)

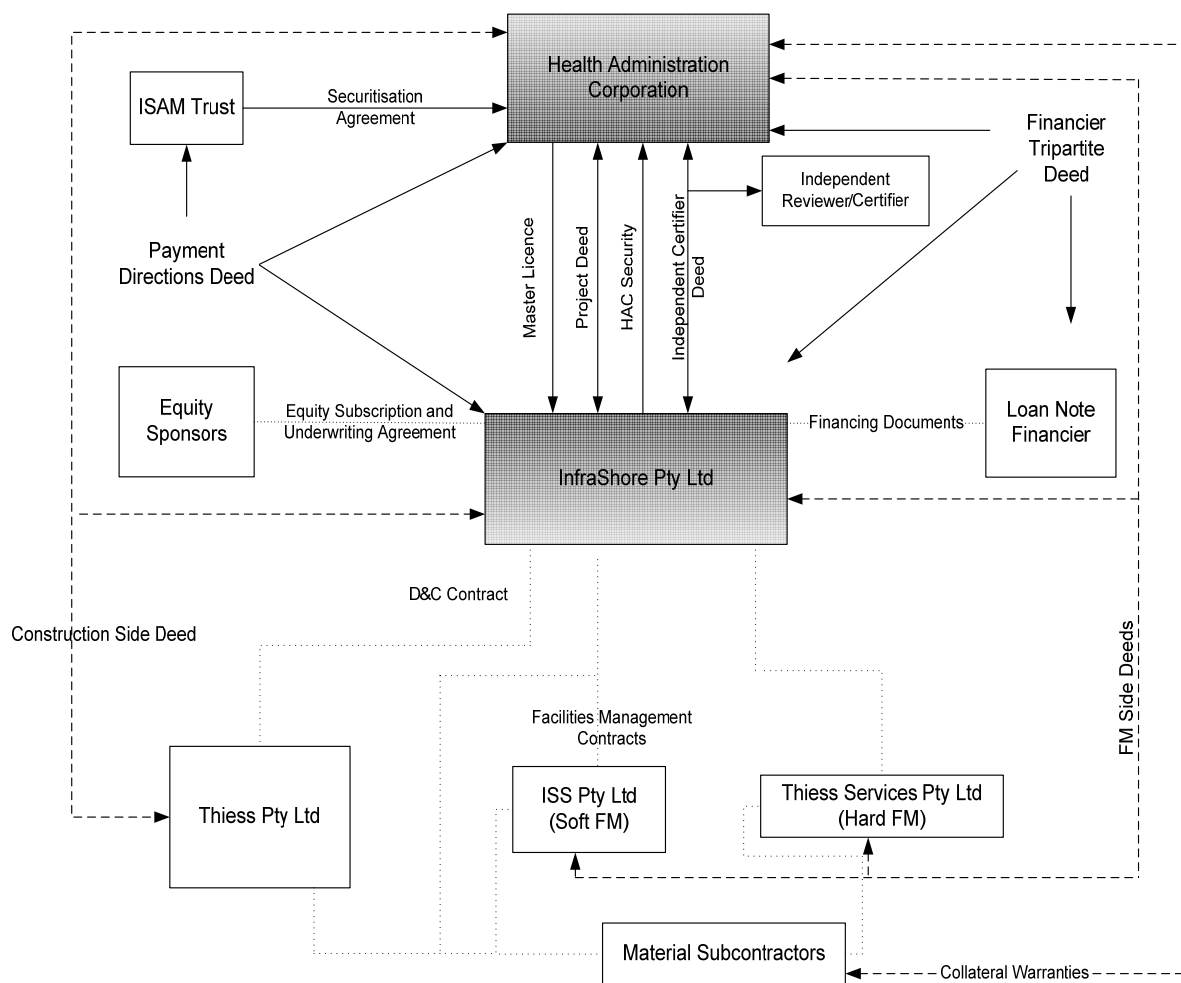
5 CONTRACT STRUCTURE AND OVERVIEW

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.

For illustrative purpose, the contractual structure is summarised in Figures 1.

Figure 1: Overview of Contract Structure – RNS Hospital and Community Health.



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 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.

Under the Master Licence Agreement the Project Company undertakes to pay the Licence Payment Amount, and to issue Promissory Notes, to HAC.

d) Financiers Tripartite Deed

This deed governs the relationship between HAC, the Project Company and the Security Trustee. 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.

f) 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, including, to certify completion and commissioning of the facilities.

g) 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.

h) Facilities Management Side Deeds

These deeds govern the relationship between HAC, the Facilities Managers, the Facilities Manager Guarantors and the Project Company.

The Deeds have two main purposes:

- Firstly they allows HAC to “step in” to the shoes of the Project Company under the Facilities Management Contracts where a Facilities Manager is proposing to terminate its 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 Agreements (and associated guarantees) to its nominee, so that the operation and maintenance of the facilities may continue.

i) 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 NSCCAHS.

j) Securitisation Agreement and Payment Directions Deed

Under the Securitisation Agreement ISAM Trust agrees to pay the Purchase Price to HAC and HAC assigns to ISAM Trust the Promissory Notes issued by the Project Company under the Master Licence Agreement. Under the Project Deed, HAC is required to pay Construction Payments to the Project Company throughout the construction phase. The Construction Payments are to be in the same amount as, and are dependent on HAC receiving, the Purchase Price under the Securitisation Agreement.

The Payment Directions Deed provides directions so that all payments necessary for the securitisation structure are made between the Project Company and ISAM Trust.

k) Car Park Licence Agreement

This agreement between InfraShore Parking Pty Ltd and HAC provides for InfraShore Parking Pty Ltd to manage and operate the car parking facilities located at RNSH in return for payment of an annual base licence fee to HAC. If actual revenue is above the projected base case revenue, InfraShore will make additional payments reflecting the upside revenue.

l) Car Park Financiers Tripartite Agreement

This deed governs the relationship between HAC, InfraShore Parking Pty Ltd and the Security Trustee. It also governs the legal security arrangements between the parties and the ability of Financiers to step in and cure InfraShore Parking's default.

m) Car Park Securitisation Agreement and Car Park Payment Directions Deed

The Car Park Securitisation Agreement is between ISAM Trust and HAC. By way of an upfront payment, ISAM Trust purchases the Promissory Notes which represent the annual licence fee payable by InfraShore Parking to HAC under the Car Park Licence Agreement.

The Car Park Payment Directions Deed between HAC, ISAM Trust and InfraShore Parking directs that payments by InfraShore under the Promissory Notes are made to, or as directed by, ISAM Trust instead of to HAC. HAC will not receive periodic annual licence fees but, by way of its sale of the Promissory Notes to ISAM Trust, will receive an upfront payment at the commencement of the car park licence term under the Car Park Licence Agreement.

n) Agreement for Retail Services

This agreement between NSW Health and InfraShore Developments Pty Ltd (**Lessee**) provides the framework for the development of the retail components and the requirements for entering into the Retail Head Lease (**Lease**). A draft of the Lease is attached to the agreement. Under the agreement, NSW Health agrees to grant the Lease to the Lessee provided the Lessee carries out the necessary Fit Out Works at the Lessee's cost in accordance with the agreement. The Lessee is required to complete the Fit Out Works for the Community Health Facility and the Acute Hospital Facility before the Lease is to commence. The agreement also sets out the initial Base Rent and Base Turnover which is to be inserted into the Lease on its execution.

5.3 Term

The Project Term is 28 years from the date of the Project Deed. The effective date of contract is 23 October 2008 and concludes on 22 October 2036. 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

InfraShore bears the risk of:

- Site risk (existing ground conditions and contamination on the construction site)
- Condition of existing buildings to the extent that contamination is identified in a condition report provided to the proponents during the bidding process
- Obtaining Development Approvals and consents required for the Project (except for modifications to NSW Health's Concept Plan and certain conditions of approval unrelated to the redevelopment of the Health Facilities) Design, construction and commissioning risks.

Operational phase

InfraShore 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, InfraShore designs, builds and finances the new acute health facility, Community Health Facility and multi-storey car park, refurbishes some existing facilities, and provides certain facilities management services in both the new facilities and existing buildings.

The work program is summarised in Table 4.

Table 4: RNSH PPP – Work Program

| Health Facility | Target completion date |
|--|-------------------------------|
| Stage 1 - Community Health Facility | March 2011 |
| Stage 2 - Acute hospital facility | December 2012 |
| Stage 3 - Douglas Building Refurbishment | October 2013 |
| Stage 4 - New Car Park facilities, Building 2 demolition etc | July 2014 |

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 the new Research and Education Facility, the refurbished Douglas Building, the Chapel.
 - Provision of the following “soft” support services:
 - 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 certain furniture, fixtures, fittings and equipment (FF&FE)
- Car Park facilities and Retail 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 CPI and wage price movements and certain volume adjustments relating to catering and a portion of usage of utilities.

It is estimated that the net present value of the financial costs of the project over 28 years to NSW Health is \$1,115.6m.

7.1 Payment mechanism

The payment mechanism is specified in Schedule 5 of the Project Deed. 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 service payments.

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.

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 financing.
- 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 is unable to be fully determined because of uncertain future events.

7.3 Commercial Revenues

Car Parking Facilities

The capital component of the Car park is recovered through the QSP under the Project Deed. InfraShore Parking will pay a licence fee for the operation and management of the car park business under the Car Park Licence Agreement and the Car Park Licence Securitisation Agreement. HAC will receive upside revenue sharing if the actual revenue is above the projected base revenue.

Retail

InfraShore have committed to a retail rental payment (indexed at CPI) to HAC. In addition there is upside sharing of gross retail revenue.

8 PUBLIC INTEREST EVALUATION

During the planning and definition phase, a Public Interest Evaluation report was prepared for the Royal North Shore Hospital and Community Health Services Project (RNS Redevelopment). 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 updated in October 2008. 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.

In addition, the proposed PPP contractual framework will be consistent with the approach for current health PPP projects (Newcastle Mater Hospital, Long Bay Forensic Hospital and Orange Hospital) and the NSW *Working With Government Guidelines for Privately Financed Projects*.

The RNS Redevelopment project will result in a range of positive benefits to the NSW economy, community and relevant stakeholders. Key outcomes will be significant improvements in facilities, a more efficient and integrated hospital and health services, a dedicated research and education precinct and the release of surplus land for associated commercial, retail and residential development.

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 | Project planning and definition were prepared in accordance with NSW Health and Area Health Service's service objectives and requirements. The Gateway review supported the capital investment in the Project. The procurement of the Project has been in compliance with the NSW Health procurement policies. The procurement process was in accordance with the Working with Government (WWG) Guidelines. Appropriate risk allocation developed in accordance with WWG Guidelines. |
| Value for money | The net present cost of the Project Company's proposal is less than the Public Sector Comparator. |
| Community consultation | NSW Area Health Service and the RNSH Redevelopment team have undertaken extensive staff consultation since 2002 in relation to all aspects of the project. Unions have been involved in the development of the Labour Services Agreement (LSA) and have been consulted on a regular basis during the past 18 months. The LSA has been developed by NSW Health to protect employees under a PPP project. Specific consultations include Workshops with Councillors, staff |

Summary of Contracts – RNSH PPP

| Criteria | Findings |
|---------------------------------|--|
| | <p>and residents of Lane Cove, North Sydney, Mosman and Willoughby Councils and meetings with the Heritage Office, Department of Planning. A number of committees have been established to give key stakeholders ongoing input into the project including the Executive User Group, which comprises membership from NSCCAHS Executive and senior medical nursing and allied health clinicians.</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>Consumer rights under existing legislation, policies and regulations will continue to apply and will be addressed by current operational policies and procedures for NSW Health and the Area Health Service.</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 PROJECT DEED

9.1 The Sites

Access to Sites

HAC grants the Project Company a licence to enter, occupy and use each Construction Site in accordance with the Site Access Schedule, to the extent necessary for performance of the Works, and the Hospital to the extent necessary for the performance of the Project Company's decanting and commissioning obligations and provision of support services.

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 in the condition of subsurface utility infrastructure or latent defect in the condition of an Existing Health Facility discovered during the carrying out of the Works or Services which was not identified in Condition Survey Report
- e) the presence of friable asbestos in an Existing Health Facility that is required to be removed or remediated other than as part of the Works or the Support Services.

NSW Health will bear the risk of any Environmental Notice being served in respect of the RNSH site unless the contamination the subject of the Environmental Notice is caused or contributed to by the Project Company, the Project Company is obliged by the Project Deed to remediate the contamination or compliance with the Project Deed requires remediation of the contamination. NSW Health also bears the risk of Hazardous Materials encountered in an Existing Health Facility causing a delay or disruption to the Works or an increase to the cost of carrying out the Works.

9.2 Development approvals

The Project Deed provides for the responsibility for obtaining the necessary development approvals and consents to be split between HAC and NSW Health. 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. HAC must also carry out certain assessments, apply for and obtain Consents referred to in, and carry out certain activities allocated to it in, the Applications Resources Schedule attached to the Project Deed and bears the risk of obtaining any Development Approvals required for any subdivision required for the Project.

The Project Company must apply for, and diligently pursue the processing of the application in order to obtain by the Target DA Approval Date, all Project Company Development Approvals and Consents required for the Project. The Project Company must 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 and the Works satisfying or exceeding the Specifications.

The relevant Target DA Approval Dates for the Works are set out in schedule 3 to the Project Deed. 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 schedules 16, 17 and 18 of the Project Deed).

9.3 The Works

The Works

The Project Company is responsible for the design and construction of the Community Health Facility, acute health facility and the multi-storey car park. The Project Company will also be responsible for refurbishing part of the Douglas Building. The Project Company is responsible for delivering each of the Milestones and the Health Facilities by the relevant dates set out in schedule 3 to the Project Deed (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 reason that the Milestone was not achieved, the date by which the Milestone will be achieved and the impact of the delay on achieving Completion, 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 to the Project Director for approval

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 a Stage has not occurred (or the Independent Certifier reasonably forms the view that such completion will not occur) by the Target Completion Date for that Stage.

9.4 Furniture, fixtures, fittings and equipment

Furniture, fixtures, fittings and equipment ("FF&FE") have been categorised in the Project Deed into Groups and Classes based on the parties' responsibilities for procuring, installing, maintaining and replacing the FF&FE generally consistent with previous allocation within Health PPP projects.

Group 1A Equipment: This category of equipment includes tables, chairs, beds, workstations, roller doors, chilled water units, pendants etc. The Project Company must supply, commission, install, maintain, repair and replace the Group 1A Equipment and warrants that the Group 1A Equipment is fit for its ordinary purpose.

Group 1B Equipment: This category of equipment includes major medical equipment such as gamma camera imaging units, linear accelerators, Image intensifiers etc. The Project Company must supply the Group 1B Equipment, and the supplier of the Group 1B Equipment will install the equipment and the Project Company will maintain, or procure that the supplier of the equipment will maintain, the Group 1B Equipment. The supply and maintenance contracts for the Group 1B Equipment will be novated to NSW Health following Completion of the relevant Stage.

Group 1TA Equipment: This category of existing equipment includes tables, chairs, beds etc. The Project Company may, but is not obliged to, elect to use the Group 1TA Equipment. If the Project Company elects to use the Group 1TA Equipment, it must decommission, relocate, install, commission, maintain and replace the Group 1TA Equipment. If an item of Group 1TA Equipment is not available for use or cannot be commissioned to the Project Director's satisfaction, the Project Company must replace that item of equipment.

The Project Company will be responsible for maintaining, repairing and replacing Group 1TA Equipment located in the R&E Facility, the Douglas Building and the Chapel. If an item of Group 1TA Equipment is not located at the R&E Facility on the Hard FM Start Date or Group 1TA Equipment located at the R&E Facility, Douglas Building or Chapel cannot be commissioned, NSW Health may elect to provide a replacement item of equipment. The Project Company will not be liable for any abatement or deduction if NSW Health elects not to provide a replacement item of equipment.

Group 1TB Equipment: This category of equipment includes existing major medical equipment. The Project Company will be responsible for and will engage any specialist subcontractors required for decommissioning, relocating, installing and commissioning the Group 1TB Equipment .

Group 2A Equipment: This category of equipment includes wall brackets for suction bottles and sharps etc, and dispensers for disposable gloves, soap and masks etc. NSW Health will be responsible for ensuring that each item of Group 2A Equipment is supplied new and delivered. The Project Company will store the equipment, test it for physical damage and defects, install, commission, maintain, repair and replace the equipment.

Group 2B Equipment: This category of equipment includes ECG monitor brackets, denture processing unit etc . NSW Health will be responsible for ensuring that each item of Group 2B Equipment is supplied new and delivered to the Project Company. The Project Company will inspect the Group 2B Equipment for physical damage and will install and commission

the Group 2B Equipment. NSW Health will be responsible for maintaining, repairing and replacing the Group 2B Equipment.

Group 2TB Equipment: This category of existing equipment includes existing Group 2B equipment. The Project Company will inspect and test the equipment. NSW Health will be responsible for decommissioning the equipment and the Project Company will relocate, install and commission the equipment. NSW Health will be responsible for maintaining, repairing and replacing the Group 2TB Equipment.

Group 3B Equipment: This category of equipment includes dialysis machines, defibrillators etc, and all active network equipment such as routers, switches, bridges, hubs etc. NSW Health must make the Group 3B Equipment available to be relocated, procure the installation and commissioning of and maintain, repair and replace the Group 3B Equipment.

Group 3TB Equipment: This category of existing equipment includes existing Group 3B equipment. NSW Health must decommission, make available for relocation, procure the installation and commissioning of and maintain, repair and replace the Group 3B Equipment.

Group 4 Equipment: This category of existing equipment comprises the residual equipment left in Buildings 1 and 2 prior to their demolition. The Project Company may elect to take possession of and utilise any item of Group 4 Equipment.

9.5 Provision of services

Interim services

During the Interim Services Phase (the period of 12 months from Financial Close) the Project Company must provide the Interim R&E Hard FM Services, backlog maintenance and refurbishment of the Douglas Building, Interim Hard FM Services and Interim Soft 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, including the car park facilities and the retail facilities (other than the shops themselves)
 - ii. Ground and Gardens Maintenance Service – maintenance of lawns, gardens, plants, roads, pathways and any other outside areas
 - iii. Utility Management Services – ensuring continuous supply and metering of electricity, gas, water and sewerage.
- b) Soft FM Services

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- 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. Internal Materials Distribution Services - distribution of materials within the hospital
- vi. Catering Production and Distribution Services - provision of and distribution of patient meals
- vii. Portering and Wardspersons Services - movement of patients, deceased persons, furniture, equipment and pathology items

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 PPP As-Built Health Facility, the refurbished parts of the Douglas Building and the R&E Facility remain Fit for Intended Purpose and available for use by HAC.

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) Pest Control Services;
 - (ii) Security Services;
 - (iii) Cleaning and Domestic Services;
 - (iv) Waste Management Services;
 - (v) Internal Linen Distribution Services;
 - (vi) Portering / Wardspersons Service;

- (vii) Internal Materials Distribution Services;
- (viii) Catering Distribution Services;
- (ix) Catering Production Services; and
- (x) any other service related to these services or nominated by the Project Director.

The rates for key inputs to the Services to be benchmarked, 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

HAC will pay Construction Payments to the Project Company periodically throughout the construction phase at dates specified in the Model Output Schedule. The Construction Payment is to be the same amount as the Securitisation Payment payable by ISAM Trust under the Securitisation Agreement. HAC is only obliged to make the Construction Payment to the extent it receives the corresponding amount from ISAM Trust. The Project Company must pay a Licence Payment Amount, in respect of the licence granted under the Master Licence Agreement, to HAC. Under the Securitisation Agreement, ISAM Trust agreed to purchase from HAC the Promissory Notes which represent the payment of the Licence Payment Amount. The Purchase Price paid by ISAM Trust for the Promissory Notes is the Securitisation Payment referred to above.

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 Lifecycle Refurbishment Component, Volume Adjustment, Energy Adjustment, any Additional Payment and the Insurance Component, less any Deductions for poor service provision and the Reserve Release. 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.

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 (except a Refinancing which does not result in the Senior Debt exceeding the Maximum Debt Profile) 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.

9.10 Additional undertakings

The Project Company and NSW Health undertake to comply with the provisions of the Partnering Protocol, which provides for cooperation between the Project Company and its related parties and NSW Health and its related parties. The Project Company also undertakes to enter into Interface Protocols with the North Shore Private Hospital, the R&E Facility contractor and Energy Australia.

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 Security Trustee also undertakes to give NSW Health notice of any Finance Event of Default and whether the Security Trustee intends to exercise its rights under the Financing Documents with respect to that default.

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 the law and will not be entitled to relief from its obligations under the Project Deed for 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 or operating expenditure in respect of a Health Facility, during the relevant Operations Phase or a change to an Environmental Law which occurs after the third anniversary of Financial Close and impacts on the Works).

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.

Cost 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 Stage, any Health Facility forming part of that Stage (including the new car park and retail facilities to be constructed by the Project Company and the relevant Construction Site during the applicable Construction Phase; and
- b) each Health Facility and the RNS PPP Footprint during the applicable Operations Phase,

and must make good any loss or damage to the Works, the Construction Sites or the Health Facilities.

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.

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

- a) HAC may, in its discretion, direct the Project Company not to repair or reinstate the damage.

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, NSCCAHS 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 Consequential Loss not covered by insurance proceeds.
- c) loss or damage to a Residual Facility, Divested Facility, Vacated Facility or, prior to the Hard FM Start Date, the R&E Facility.

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) if asbestos is to be removed, 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 \$50 million for any one claim and in the aggregate;
- 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 30 months interruption (for the period from the Hard FM Start Date until Completion of Stage 2) and 48 months interruption (for the period from Completion of Stage 2) .

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

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, except for deductibles payable under any of the insurances required to be effected which arise out of a Claim that is the result of NSW Health's conduct.

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.

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 and the parties cannot agree how to manage the risk, HAC will deduct from the Monthly 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 has option to :

- 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 monthly payment of the Project Deed 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 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;
- f) any matter relating to the Project Company or a Material Subcontractor becomes subject to a direction under s.14 of the *Australian Securities and Investments Commission Act* or to an investigation under that Act;
- g) the Project Company incurs Deductions above certain specified thresholds; or
- h) during the period that the Project Company is providing "Transitional Help Desk Services", more than 15% of the responses to the Transitional Customer Surveys report an unsatisfactory response.

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 a Stage has not occurred by the Target Completion Date for that Stage or the Independent Certifier reasonably forms the view and certifies that the Project Company will not achieve Completion of a Stage by the Longstop Date of that Stage;
- b) the Project Company abandons the Project or displays an intention to permanently abandon 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, Construction Contractor Guarantor, 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 equity of the Project Company or ISAM Trust by the State
- 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 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.

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. on or before the date falling 20 Business Days after the Termination Date;
 - iii. 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 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 which will be the sum of:

- a) an amount equal to the Termination Senior Debt; plus
- b) an amount which, when taken together with dividends or other distributions paid, interest paid and principal repaid, gives an internal rate of return on Equity equal to the Weighted Average Base Case Equity Return; plus
- c) an amount equal to Subcontractor Breakage Costs; less
- d) any amounts owing by the Project Company to NSW Health; less
- e) any gains accruing to the Project Company as a result of the termination; less
- f) the net amount the Project Company is entitled to retain under any insurance policy; plus
- g) any amounts due and payable by NSW Health to the Project Company in accordance with the terms of the Project Documents; less
- h) an amount equal to the Securitisation Refund Payment.

9.18.3 Compensation on termination for force majeure and uninsurability

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

- a) Termination Senior Debt; less
- b) any gains accruing to the Project Company as a result of termination of the Project Deed; less
- c) any amounts owing by the Project Company to NSW Health; less

- d) the net amount the Project Company is entitled to retain under any insurance policy; plus
- e) 50% of the amount which, when taken together with dividends or other distributions paid, interest paid and principal repaid, gives an internal rate of return on Equity equal to the Weighted Average Base Case Equity Return; plus
- f) any amount due and payable by NSW Health to the Project Company; less
- g) an amount equal to the Securitisation Refund Payment; plus
- h) any Force Majeure Subcontractor Breakage Costs.

9.19 Step in rights

HAC's step in rights

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

- a) the Project Company fails to promptly remedy a breach which has given rise to an Emergency Event and the Project Director reasonably believes that action must be taken;
- b) the Project Company is unable or unwilling to provide additional services requested by NSW Health;
- c) the Project Director reasonably believes that the Project Company must suspend provision of the Support Services, or NSW Health must take action in response to an Emergency Event or to discharge a statutory duty; or
- d) the Project Company's breaches cause NSW Health to be in breach of the Car Park Licence Agreement, the Agreement for Retail Services or the Retail Head Lease.

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 Deeds, each subcontractor undertakes not to terminate the Construction Contract or the Facilities Management Contracts 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

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 ensure that the facilities, equipment and sites meet specified conditions at the expiration date 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. If the Project Company fails to provide a bank guarantee, NSW Health may deduct an amount from the Service Payments to hold as a security instead.

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 three years after Financial Close.

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) or equity interests in a managed fund, trust or other entity that are managed by a related body corporate of ABN AMRO or any change in the direct or indirect interest in a member of the Project Company Group by such entities;
- 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 ABN AMRO 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 ABN AMRO 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.

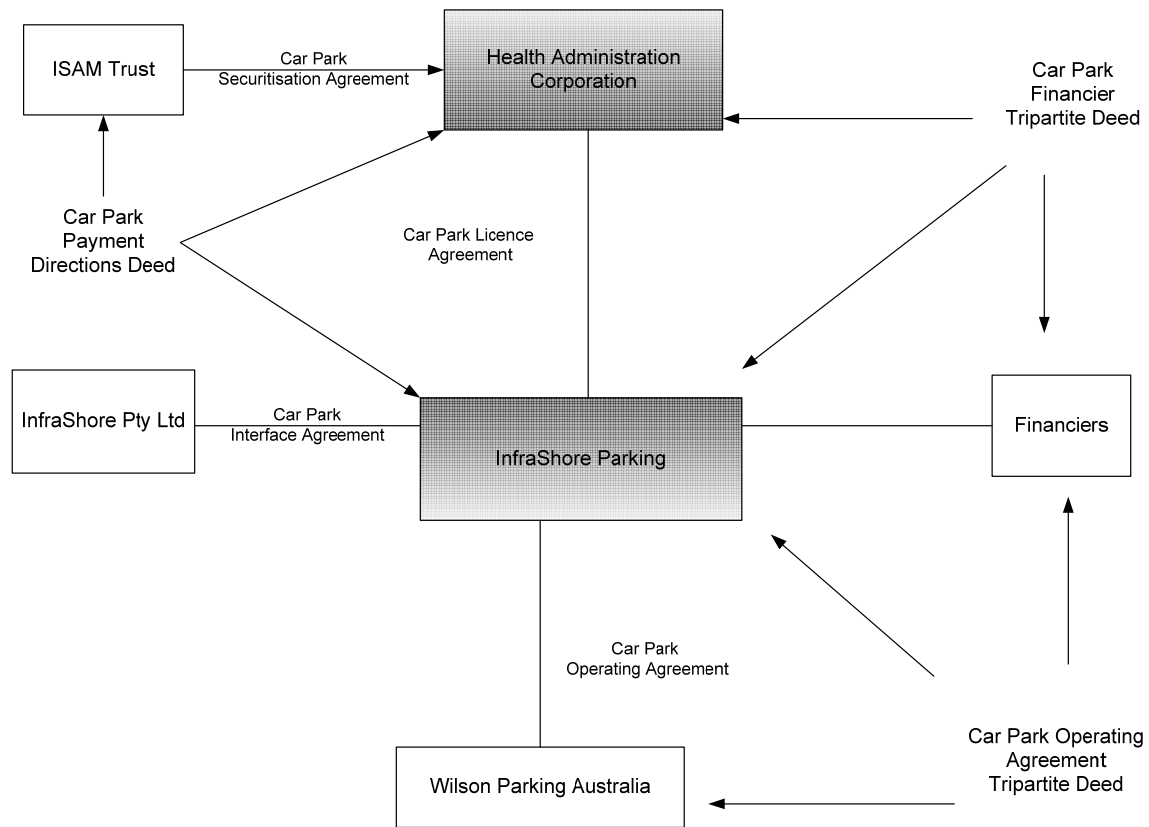
The parties acknowledge that the Project Documents will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983*, and the Project Documents and any related documents and information may be tabled in Parliament by or on behalf of HAC and will be published in 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 KEY TERMS AND CONDITIONS OF THE CAR PARK LICENCE AGREEMENT

InfraShore Parking Pty Ltd and HAC are party to the Car Park Licence Agreement, which provides for InfraShore Parking to provide services in relation to the Car Park Facilities located at RNSH. InfraShore Parking has entered into a Car Park Operating Agreement with Wilson Parking, which will operate the Car Park Facilities.

For illustrative purpose, the contractual structure is summarised in Figures 2.

Figure 2: Overview of car park document structure



10.1 Term

The term of the Licence Agreement is 28 years to match the Project Deed term, comprising:

- An 18-months Interim Period from the date of Financial Close.
- Full operational period form the expiry date of the interim period to 22 Oct 2036.

10.2 Operations

During the Interim Period of 18 months, InfraShore Parking will undertake operational planning activities, including developing plans and strategies and developing an understanding of the operation of the Car Park Facilities. During the Interim Period, HAC will pay an Interim Management Fee to InfraShore Parking.

For the remainder of the Term (26.5 years), InfraShore Parking will, under its licence, manage and operate the Car Park Facilities.

10.3 Licence Fee and Securitised Structure

Under the Car Park Licence Agreement, HAC grants a licence of the Car Park Facilities for the purposes of managing and operating the Car Park Facilities in return for payment to HAC of an Annual Base Licence Fee.

A securitisation structure has been utilised for the Car Park Licence Agreement. Under the Car Park Securitisation Agreement, HAC receives an up front payment that represents the NPV of the Annual Base Licence Fee for the term from ISAM Trust. In exchange, NSW Health assigns to ISAM Trust its right, title and interest in the Promissory Notes representing the monthly licence fee during the term. Under the Car Park Payment Directions Deed HAC directs payment of the Annual Base Licence Fee (the amounts under each Promissory Note) to, or at the direction of, ISAM Trust.

HAC is entitled to a share of revenue calculated at 70% of the additional revenue where the Gross Proceeds exceed the Projected Revenue.

10.4 Demand Risk

InfraShore Parking bears the risk of the Car Park Facilities generating sufficient income; and expenditure connected with operating and managing the Car Park Facilities.

10.5 Operating Requirements

InfraShore Parking must comply with the Operating Requirements for the Car Park Facilities, install any Operational Equipment necessary for the operation of the Car Park Facilities, identify and procure the rectification of any defects in the Car Park Facilities, ensure that the Car Park Facilities are not used for any improper purpose, charge any person using the Car Park Facilities a tariff, carry out customer satisfaction surveys, prepare and submit to NSW Health a Car Park Operations Manual and ensure that sufficient car park spaces are available for use by Hospital Campus Staff up to a maximum of 1200 spaces (with an additional 200 spaces made available during shift changeover).

NSW Health may vary the car park spaces available to InfraShore Parking from time to time but if this results in an overall change in the number of spaces. NSW Health will compensate InfraShore Parking in accordance with Schedule 7 of the Car Park Licence Agreement.

NSW Health will be responsible for cleaning and repairing the Car Park Facilities (other than the Operational Equipment) and will provide utilities and maintain utility infrastructure to the Car Park Facilities.

10.6 Liability for Insurance

InfraShore Parking must also procure and maintain public and products liability insurance, insurance against loss of revenue, industrial special risk insurance, worker's compensation insurance and any other insurance reasonably required by NSW Health.

10.7 Default and Termination

Subject to the terms of the Car Park Financier's Tripartite Deed, if InfraShore defaults under the Car Park Licence Agreement, NSW Health may require it to rectify its default or show cause. If InfraShore fails to do so, NSW Health may require it to terminate the Car Park Operating Agreement or novate the Car Park Licence Agreement. If InfraShore fails to novate the Car Park Licence Agreement within 9 months, subject to any cure rights of the financiers under the Car Park Financiers Tripartite Deed, NSW Health may terminate the Car Park Licence Agreement without compensating InfraShore Parking.

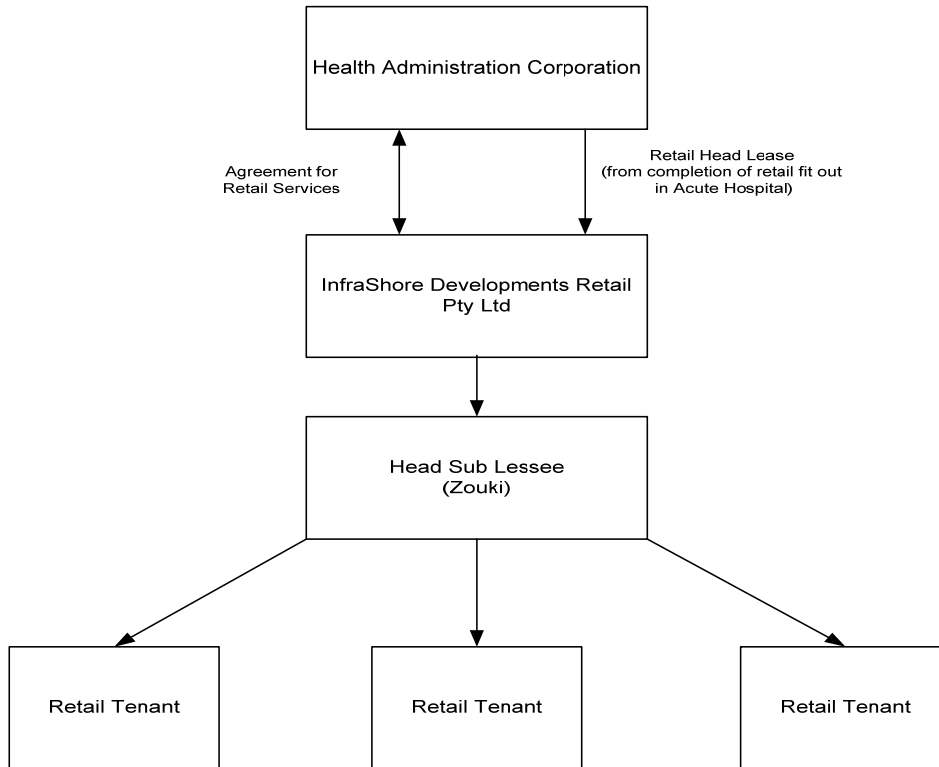
If the Car Park Facilities are destroyed or extensively damaged and NSW Health and InfraShore Parking do not agree to rebuild the facilities, the Car Park Licence Agreement will terminate. NSW Health may also voluntarily terminate the Car Park Licence Agreement.

In the event of termination of the Car Park Licence Agreement on any basis other than breach by InfraShore Parking, InfraShore Parking will be entitled to a compensation payment calculated in accordance with the Car Park Licence Agreement and the Car Park Securitisation Agreement.

11 AGREEMENT FOR RETAIL SERVICES AND RETAIL HEAD LEASE

For illustrative purpose, the contractual structure is summarised in Figures 3.

Figure 3: Overview of retail document structure



11.1 Development of Retail Precinct

Retail spaces are constructed within the redeveloped Hospital pursuant to the Project Deed as part of the scope of works for the redevelopment of the Hospital. A minimum level of retail fit out (so to provide a cafeteria and basic banking, newsagency and postal services from the time that the new acute Hospital is operational) is also required to be carried out pursuant to the Project Deed and the Agreement for Retail Services.

11.2 Entry into the Lease and term of the Lease

From completion of the new hospital and during the operating phase, a lease is in place from NSW Health to a separate retail SPV, InfraShore Developments Retail Pty Ltd (**Lessee**). The lease contains the terms which govern the relationship between NSW Health, as the lessor, and the Lessee. The term of the lease is the same as with the operating term of the Project Deed and NSW Health has a right to terminate the lease when the Project Deed is terminated voluntarily by NSW Health.

11.3 Rental Structure

The lease provides for both a Base Rent and a Turnover Rent to be paid to NSW Health for the term. The Base Rent is subject to annual adjustment by reference to the CPI (or 3% whichever is greater) and a periodic review to market every five years. Following a market review, any increase of the Base Rent is capped at 4% while any decrease of the Base Rent cannot result in the amount of Base Rent payable falling below the level at the previous review date five years prior. The retail shops will be maintained by the lessee and its subtenants.

11.4 Tenancies

The Lease further stipulates a base tenancy mix to be preserved throughout the term of the Lease and the terms and conditions on which the Lessee will provide various ancillary services, for example vending machines. The Lease also contains common commercial leasing terms, for example in respect of demolition, relocation or other interferences by the lessor.

12 PAFA APPROVAL AND GUARANTEE

The Treasurer granted an approval under s20(1) of the *Public Authorities Financial Arrangement 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.