

Sydney International Convention, Exhibition and
Entertainment Precinct (“SICEEP”) – Contracts
Summary

PPP Contracts Summary

11 April 2014

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Introduction

This summary of the Sydney International Convention, Exhibition and Entertainment Precinct ("SICEEP") PPP Project Documents has been prepared in accordance with the NSW Public Private Partnership Guidelines dated August 2012 ("Guidelines").

Copies of the Project Documents, with confidential information redacted, are available on the contracts register located on the Infrastructure NSW website at www.siceep.com.

This summary 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 11 April 2014. Subsequent amendments of or additions to these contracts, if any, are not reflected in this summary.

Part A: Background

The Sydney International Convention, Exhibition and Entertainment Precinct Project (the "Project") is a major project to redevelop the convention, exhibition and entertainment facilities at Darling Harbour. It has been structured as a Public Private Partnership ("PPP") project.

The Project includes the following elements to be constructed at Darling Harbour in Sydney in accordance with a Project Deed entered into between Infrastructure NSW ("INSW") as procuring agency, Sydney Harbour Foreshore Authority ("SHFA") as landowner and the Darling Harbour Live Partnership ("Project Company") as the private sector Project Company:

- A new Convention Centre, new Exhibition Halls and a new 8,000 seat red carpet Entertainment Theatre (together the "Core Facilities");
- Associated retail and car parking facilities; and
- a renewed and upgraded public realm, including an outdoor event space for 20,000+ people in Tumbalong Park.

A new hotel and a major commercial development will also be constructed at Darling Harbour under separate Project Delivery Agreements. These developments are not addressed in this contract summary as they have not been procured by way of a Public Private Partnership and are not covered by the Guidelines.

The Project incorporates a number of key innovations, including:

- procurement of the PPP in combination with a major commercial development opportunity to revitalise the entire Darling Harbour precinct;

- a unique contracting strategy for the operator. The operations contract will be re-let three times over the term of the Project, providing flexibility to change the operator if necessary (without incurring break costs). Profit sharing mechanisms will provide appropriate incentives for the operator to maximise revenues and reduce costs; and
- Conditional Debt Pay Down (CDPD) involving a lump sum payment by INSW subject to an objective test, which may be satisfied after two years of successful operations. The Project Company must apply the entire payment to reduce the outstanding private debt. The purpose of the CDPD is to reduce the cost of private sector debt once the Project has reached stable operation, and to reduce the refinancing risk over the concession period.

Further details of the Project can be found at www.siceep.com.

1. *Rationale for the Project*

The expansion and rejuvenation of Sydney's premier convention, exhibition and entertainment venues at Darling Harbour will provide a vital boost to NSW's competitive advantage as a major global venue for business events.

The existing convention, exhibition and entertainment centre facilities at Darling Harbour were constructed in the 1980s and have served Sydney well. However, the industry has shifted since in the past 20 to 30 years – delegates want a different kind of conference nowadays, more flexible spaces and better technology – and this has led to Sydney missing out on business because the current facilities are not as modern as a lot of others that it competes with. Over the past five years, Sydney Harbour Foreshore Authority advises that the existing facilities have been unable to accommodate about 27 international conventions, 142 national conventions and 12 exhibitions.

Business events are a very important source of direct and indirect revenue for the NSW and Sydney economy; but even more importantly they facilitate innovation and the exchange of intellectual capital which builds our economy in the long term. Both Melbourne and Brisbane have already significantly improved their facilities and Sydney needs to as well.

Without new investment, Sydney will be unable to match its global and domestic competitors or to capture a share of the rapidly growing market for international conventions, with the substantial economic benefits that these will bring to the State.

The Project will therefore upgrade and expand the existing facilities to:

1. deliver world-class convention, exhibition and entertainment facilities that establish Sydney as the preferred destination for events in the Asia Pacific region - attracting intellectual capital and providing substantial economic stimulus for the State; and
2. ensure that Darling Harbour is recognised as Sydney's premier gathering place and as a leading urban entertainment precinct - ensuring that Darling Harbour is regarded as a must-see destination for both tourists and Sydneysiders alike.

2. *History of the Project*

On 30 September 2011 INSW issued an Invitation for Expressions of Interest in relation to the Project. Expressions of Interest were received in response to the Invitation from three consortia.

On 17 April 2012 INSW issued a Request for Detailed Proposals for the Project. Detailed proposals were received from two consortia on 31 August 2012.

On 11 December 2012, the NSW Premier Barry O'Farrell announced that the Destination Sydney Consortium (now known as the Darling Harbour Live Partnership) had been selected as the preferred proponent for the Project.

The Project Deed and ancillary Project Documents were signed on 22 March 2013 and were amended on 4 December 2013 to make a number of minor amendments and to give effect to clause 52B of the Project Deed, which provided for the parties to agree the terms on which a photovoltaic array would be installed on the roof of the Facilities to generate energy for the Facilities. Financial Close was achieved on 5 December 2013 and construction commenced in December 2013. The Core Facilities are expected to be completed and commence operation in December 2016.

INSW is party to the Project Deed and the ancillary Project Documents (in its capacity as procuring agency), with SHFA (in its capacity as owner of the Project Site) and the Darling Harbour Live Partnership (as the private sector Project Company). SHFA will provide the Project Company with access to the Project Site and do all other things required of the owner of the Project Site and INSW will be responsible for the procurement and management of the Project. The Project Company will design, construct, finance, maintain, provide services to and operate the Facilities and the Public Realm in accordance with the Project Deed and Project Documents.

The Project Company has subcontracted the performance of its design and construction obligations under the Project Deed to Lend Lease Building Pty Ltd ABN 97 000 098 162 (the "Construction Contractor"), its facility management obligations to Spotless Facility Services Pty Ltd ABN 83 072 293 880 (the "Facility Manager") and its operational obligations to ICC Sydney Pty Ltd ABN 66 154 180 748 (a subsidiary of AEG Ogden Holdings Pty Ltd ABN 61 010 543 398) (the "Operator").

3. *Value of the Project*

The estimated nominal capital cost of the new Facilities is approximately \$1.1 billion, excluding financing costs. INSW will make Service Payments to the Project Company over the operational period of 25 years to cover the capital cost of the Facilities, finance costs and ongoing maintenance costs of the Facilities. In the event that the Facilities or part of the Facilities are not available, the Service Payments will be abated. The estimated net present value of the Service Payments is \$1.4 billion (see section 8 for more details).

4. *Private Party and its Sponsors*

The Project Company is the Darling Harbour Live Partnership ABN 90 967 257 971, in which Lend Lease Corporation Ltd ACN 000 226 228 has a 50% interest and Host-Plus Pty Limited ABN 79 008 634 704 (in its capacity as trustee of the HOSTPLUS Superannuation Fund ABN 68 657 495 890) has a 50% interest.

The Project Company's address is Level 31, 50 Bridge Street, Sydney, NSW 2000.

5. *Contracts*

INSW, SHFA and the Project Company have entered into the following documents in connection with the Project:

- **Project Deed:** The Project Deed provides for SHFA to grant the Project Company access to the Project Site and to do all other things required of the owner of the Project Site, the Project Company to design, construct, maintain, provide services to and operate the Core Facilities and associated retail and car parking facilities, upgrade and maintain the surrounding Public Realm, and INSW to procure and manage the Project and pay the Project Company the Service Payments upon completion of the new Facilities.
- **Construction Side Deed:** The Project Company has subcontracted its design and construction obligations under the Project Deed to the Construction Contractor. INSW, SHFA, the Project Company, the Construction Contractor and Lend Lease Corporation Ltd (as the parent company of the Construction Contractor) have entered into the Construction Side Deed, which regulates the exercise of the parties' rights and obligations in connection with the Construction Contract.
- **Facility Manager Side Deed:** The Project Company has subcontracted its facility maintenance obligations under the Project Deed to the Facility Manager. INSW, SHFA, the Project Company, the Facility Manager and Spotless Group Limited (as the parent company of the Facility Manager) have entered into the Facility Manager Side Deed, which regulates the exercise of the parties' rights and obligations in connection with the Facility Manager Contract.
- **Operator Side Deed:** The Project Company has subcontracted its operating obligations under the Project Deed to the Operator. INSW, SHFA, the Project Company, the Operator and AEG Ogden Holdings Pty Ltd ABN 61 010 543 398 (as parent company of the Operator) have entered into the Operator Side Deed, which regulates the exercise of the parties' rights and obligations in connection with the Operator Agreement.
- **Independent Verifier Deed:** INSW, SHFA and the Project Company have entered into the Independent Verifier Deed to engage Savills Project Management Pty Ltd ABN 59 129 012 700 in respect of the verification of the design and construction of the Facilities and the Public Realm under the Project Deed.

- **Financiers' Tripartite Deed:** INSW, SHFA, the Project Company, Stella SICEEP Finance Pty Limited ACN 156 361 214 (as "Finance Co") and CBA Corporate Services (NSW) Pty Limited ABN 25 072 765 434 (as "Security Trustee") have entered into the Financiers' Tripartite Deed to regulate their respective rights and obligations under the Project Documents, the Project Securities and the Finance Securities.
- **Project Securities:** Under the Project Securities, the Project Company and Finance Co each grant a charge in favour of INSW and SHFA to secure the performance of their respective obligations under the Project Documents to which they are party.
- **PAFA Guarantee:** The Premier of NSW, INSW, SHFA, the Project Company, Finance Co and the Security Trustee are party to the PAFA Guarantee, under which the NSW Government guarantees the performance of INSW and SHFA's obligations under the Project Documents to the Project Company and the Security Trustee.
- **Receivables Purchase Deed and Payment Directions Deed:** INSW has entered into the Receivables Purchase Deed and the Payment Directions Deed with the Project Company, Finance Co and the Security Trustee to give effect to the financing structure implemented under the Project Deed.

6. *Confidential information*

The Project Deed and Independent Verifier Deed have been published on the SICEEP website at www.siceep.com in accordance with Part 3 of the Government Information (Public Access) Act 2009.

A register of the provisions of those contracts which have not been published pursuant to Part 3 of the Act is available at <http://siceep.com/home/news-resources/contract-documents.aspx>.

7. *Cost-benefit analysis*

A Business Case for the Project was prepared which indicated a project annual economic benefit of around \$200 million per annum or \$5 billion over the 25 year concession period stemming from the following economic benefits:

- increased tourism.
- increased trade, investment and migration.
- knowledge transfer, professional development, and opportunities for networking and research collaboration, as well as cultural exchange.
- enhanced status of Sydney as a truly global city, and of NSW as a gateway to Asia.
- significant social dividend and legacy, contributing to the positioning of Sydney as an attractive city in which to live and work.

The Business Case estimated the Benefit Cost Ratio to be 1.31.

8. Comparison of PSC against private sector proposal

The PSC provides a hypothetical estimate of the risk-adjusted cost of the Project if it were to be designed, built and operated by the State. To develop the estimate, the PSC was based on a Reference Project developed by INSW, consistent with the output specification for the Project.

The PSC performs the following central roles:

- provides a benchmark for the State to assess the cost of private sector bids;
- determines whether the State is receiving financial value for money from the procurement of the Project; and
- acts as a key management tool during the procurement process.

The Raw PSC is the base cost of delivering the Project before any valuation of the delivery risks. Items included in the Raw PSC included:

- capital cost of constructing the Facilities and Public Realm works (including demolition and site preparation);
- FM, maintenance and lifecycle; and
- associated Project delivery costs such as insurance and planning approval costs.

The Raw PSC excludes venue revenues and venue operating costs, and government project management, delivery, finance, environmental, legal and safety costs.

The Risk-Adjusted PSC includes an adjustment for delivery and operating risks. The value of itemised delivery and operating risks was determined via statistical simulation using “@RISK” software.

The PSC used a discount rate of 5.84%, determined consistent with the National PPP Guidelines, which require the discount rate to be the jurisdiction specific long-term borrowing rate, taken as the 10-year average of the 10 year NSW T-Corp bond rate as advised by Treasury at the commencement of procurement.

The present value of private sector delivery was evaluated using a discount rate that incorporates a systemic risk premium of 1.56%, in accordance with Treasury policies on the assessment of complying proposals.

Cost Category	PSC (NPC \$ millions)	PPP (NPC \$ millions)	Difference (NPC \$ millions)
Raw D&C Costs	864.1	1,153.9	
Raw FM, Maintenance and Lifecycle Costs	359.2	235.5	
Total Raw PSC	1,223.2		
Risk adjustment	230.7		
Total NPC	1,453.9	1,389.4	64.5

The comparison of the net present cost of the PSC versus the PPP shows a benefit of \$64.5 million or 4.4%.

9. Evaluation criteria and weightings

The Expressions of Interest were evaluated using criteria falling into seven categories:

- Project Team Structure and Capability;
- Appreciation and understanding of the Project;
- Financial capacity, commercial structure and funding;
- Demonstrated ability to manage and operate convention, exhibition and entertainment facilities to world's best practice standards;
- Demonstrated experience in delivery of world class convention, exhibition and entertainment facilities;
- Demonstrated experience in asset management and maintenance of convention, exhibition and entertainment facilities; and
- Demonstrated experience in precinct integration and commercial development.

The Detailed Proposals received in response to the Request for Detailed Proposals were evaluated using criteria falling into eleven categories:

- Precinct Master Plan
- Vision and Business Plan
- Design
- Delivery Strategy
- Operations
- Facilities Management
- Stakeholder and Community Involvement
- Commercial
- Hotel solution
- Major Commercial Development solution
- Financial

The weighting between price and non-price criteria was 60% price and 40% non-price.

10. Risk sharing

The risk allocation for the PPP contract is generally in line with the National PPP Commercial Principles for Social Infrastructure and the Guidelines. The major risks are summarised in Attachment 1.

11. State and Project Company obligations during the construction period

During the construction period, SHFA will, in its capacity as owner of the Project Site and the Temporary Areas:

- grant a licence to the Project Company to enter, occupy and use the Project Site and the Temporary Areas; and

- provide authorisations, consents and approvals to allow the Project Company to lodge any required applications for consents.

INSW must appoint a Project Director to exercise INSW's rights under the Project Documents and a representative of INSW must participate in the Operational Readiness Group, which will be responsible for certifying that Operational Readiness has been achieved. INSW may also:

- review and comment on the Design Documentation and Development Program prepared by the Project Company;
- audit the Project Company's compliance with its Quality Management Plan;
- enter and inspect the Project Site, Temporary Areas, Project Works and Temporary Works;
- require the Independent Verifier to determine the status and progress of the Project Works;
- require the Project Company to prepare and implement a corrective action plan in the event that Technical Completion or Final Completion is not achieved by the relevant Date for Completion; and
- direct the Project Company to accelerate the Project Works if they are delayed;

INSW will pay the Project Company Service Payments during the operating phase. The Service Payments will include an amount on account of the Project Company's design and construction costs.

During the construction period, the Project Company will (among other things):

- comply with its obligations under the Project Deed during the construction phase without payment of service payments by the State until after the latter of the Date for Final Completion and the Date of Final Completion ;
- procure for itself any additional rights to access land beyond that which SHFA is required to grant to the Project Company;
- comply with environmental and emissions reporting laws and minimise interference with adjacent property;
- arrange and pay for Utilities to the Project Site and the Temporary Areas which are required for the Project Company's Activities;
- enter into interface protocols with adjacent property owners;
- remediate contamination in, on or under, or any contamination that has originated from, the Project Site;
- take precautions to prevent artefacts from being removed or damaged and comply with any directions of authorities or the court in relation to artefacts;
- bear site condition risk in respect of the Project Site;
- obtain all consents required for the Project and comply with the conditions of those consents;
- prepare and submit project plans to INSW which detail how the Project Company will achieve the performance outcomes specified in the Project Deed;
- prepare and update a development plan for the Project Works which sets out the critical path timeline, milestones and interdependencies for the Project Works;
- design, construct and achieve completion of the Project Works by the Date for Technical Completion and the Date for Final Completion in accordance with the requirements set out in the Project Deed, including by carrying out the tests required by the Project Deed;
- purchase and install furniture, fixtures and equipment; and
- remedy and make safe all defects in the Project Works as soon as reasonable.

12. Crown liabilities

The State of New South Wales has provided a guarantee under section 22B of the *Public Authorities (Financial Arrangements) Act 1987* (NSW) of the obligations of INSW and SHFA to the Project Company and the Security Trustee.

INSW, SHFA and the Project Company provide various representations, warranties and undertakings in relation to the performance of their obligations. These are detailed in the Project Deed.

The Project Deed also provides for INSW to compensate the Project Company and/or grant the Project Company relief from its obligations in the event that a Compensation Event arises, except to the extent that the Compensation Event has arisen as a result of the Project Company's act or omission and is within the Project Company's reasonable control.

A Compensation Event will arise if:

- INSW or SHFA breaches its obligations under a Project Document in a manner which adversely affects the Project Company's ability to perform its obligations or exercise its rights;
- INSW or SHFA fails to grant access to the Project Site or a Temporary Area as required by the Project Deed;
- certain Changes in Law occur;
- INSW exercises certain step-in rights under the Project Deed;
- INSW carries out certain additional works on the Project Site;
- the Project Company is required to cease to perform or change its manner of performing the Project Company's Activities as a consequence of a native title claim;
- certain third party rights are created over the Project Site;
- certain changes are made to the development consent, certain legal proceedings are commenced to challenge the validity of the development consent or INSW gives the Project Company a direction to contest a condition or requirement of a consent;
- the Project Company is required to remediate contamination caused by INSW;
- INSW reschedules the Project Works;
- a contractor appointed by INSW or SHFA prevents or substantially interferes with the Project Company's Activities or causes loss or damage;
- the Project Company suffers loss as a result of the discovery or removal of an unexploded object from military operations or war;
- an Act of Prevention by INSW or SHFA occurs;
- certain utility works are required to be carried out or certain utility providers undertake work on or adjacent to the Project Site;
- certain defects in the existing facilities are required to be rectified;
- the Project Company is required to cease to perform or change its manner of performing the Project Company's Activities as a consequence of an artefact being discovered during the operating phase; or
- the Project Company's costs of demolishing certain structures exceed a prescribed allowance for those works.

The Project Deed also apportions liability between the Project Company and INSW for the cost of remediating certain contamination and the cost incurred by the Project Company in the event that it is

directed to cease to perform or change the manner in which it performs the Project Company's Activities following the discovery of an artefact on the Project Site prior to Final Completion.

13. Public Interest Evaluation

The public interest evaluation concluded that there are no significant issues identified that would preclude PPP procurement for the Project, and that PPP procurement would provide value for money. The Project has had community and stakeholder involvement and input into the planning and procurement processes. In addition, the proposed PPP contractual framework is consistent with the approach for current infrastructure PPP projects in NSW as well as in Australia in general.

The Project will also result in a range of positive benefits to the NSW economy, community and relevant stakeholders, including:

- bringing leading business groups to the State and converting intellectual capital into additional economic activity;
- enhancing Sydney's position as Australia's truly global city and highlighting NSW's unique position as a gateway to Asia; and
- providing a significant social dividend and legacy by reinforcing Darling Harbour as Sydney's premier public gathering space.

Part B: Elements of the Project Deed

14. Term

The term of the Project Deed commenced on 22 March 2013 and will expire 25 years after Final Completion of the Project Works (which is expected to be December 2041). The Project Deed also provides for the financing, design and construction of the Public Realm and maintenance of the Public Realm for 3 years after completion of the Core Facilities (with the Project Company's maintenance obligations expected to expire in December 2019).

The Project Company will operate the Core Facilities from Final Completion until the date which is 7 years after Final Completion. At the end of that period, INSW may agree the terms on which the Project Company will operate the Core Facilities for a further 10 year period with the Project Company or, if the parties are unable to agree, INSW may assume responsibility for operating the Core Facilities itself or appoint a new operator. If INSW requires the Project Company to operate the Core Facilities for a further 10 years, this process will be repeated at the end of that 10 year period with respect to the operation of the Core Facilities until the end of the term.

At approximately 5 years and 1 year prior to the expiry of the Project Deed, INSW may require an independent assessor to conduct a Handover Audit of the project, who will assess whether the facilities have been maintained according to the Project Company's obligations and whether any rectification,

maintenance or remediation works are required. If such works are required, the Project Company will be obliged to carry these out. During the final three month prior to the expiry of the Project Deed, the Project Company is required to transfer, at no cost, all title, interests and rights in and to the Project, free from any security interest, and in the condition required under the Project Deed, to INSW or any new Project Company. All documents and information concerning the Project which is required for the efficient transfer of responsibility will also need to be handed over.

15. Change in Control

INSW, SHFA and the Project Company must not assign or grant a security interest over any of their rights, benefits or interests under the Project Deed without the prior written consent of the other party (other than an assignment by INSW or SHFA to a governmental body, agency or department which is supported by a guarantee no less favourable than the PAFA Guarantee, which will not require the Project Company's consent).

The Project Company has undertaken that the legal ownership of each member of the Project Company group structure will remain as specified in the Project Deed until expiry of the defects liability period. The Project Company may not permit any change in control of the Project Company or change to the Project Company's group structure without INSW's consent, which must not be unreasonably withheld. INSW will be deemed to be acting reasonably if it withholds its consent on the basis that:

- the Project Company has not provided it with full details of the proposed change in control;
- the change in control will take place prior to expiry of the defects liability period;
- the new equity investors are not solvent and reputable or a sufficient level of financial or technical capacity or have a conflict of interest; or
- the change in control is against the public interest, would materially adversely affect the Project Company's ability to perform its obligations, the Core Facilities, customers, delegates or visitors, would increase INSW's liability or would give rise to a conflict of interest.

Changes to the ownership of equity interests which are listed on a prescribed financial market and certain transfers of equity interests will be disregarded for the purposes of the restrictions on changes in control.

INSW will also have the right to consent to changes in control of Material Subcontractors (other than certain changes in control specified in the Project Deed) as follows:

- if INSW withholds consent to a change in control because the person exercising control is not reputable, does not have sufficient expertise or ability or a sufficiently high commercial or financial standing or is unsuitable or incompatible with the Material Subcontractor's obligations or the change in control would result in a conflict of interest, the Project Company must replace that Material Subcontractor at its own cost; and
- if INSW withholds consent to a change in control for any other reason, INSW will bear the cost of the Project Company replacing that Material Subcontractor.

16. Service delivery

The Project Company must provide Operator Services and Facility Management Services to the Facilities from Final Completion to the end of the Term (subject to INSW's right to assume responsibility for the Operator Services or appoint a new operator during the Term as described above at section 14). These services include operating, maintaining and refurbishing the Facilities. The Project Company will also maintain the Public Realm for a period of 3 years after Final Completion.

The Project Company must provide the Operator Services and the Facility Management Services in accordance with all applicable laws and consents and in accordance with good industry practice in an appropriate, effective and efficient manner. The Project Company will be responsible for the allocation of all staff and resources required for the Services and for ensuring that the Services are provided such that the Facilities remain fit for purpose and comply with sustainability requirements specified in the Project Deed.

The Project Deed provides for the Service Payments to be abated if an Availability Failure, Service Failure or System Failure occurs which is not rectified by the Project Company within the relevant rectification time. Abatements which are made as a direct result of a Relief Event or a Force Majeure Event will be capped at an amount which enables the Project Company to make scheduled principal and interest payments under the Financing Agreements.

An Event of Default or Termination Event may also arise if the Project Company incurs abatements above specified thresholds.

17. Assets to be transferred to the Project Company

The Project Company will be granted a licence to occupy and use the Project Site and the Facilities for the purposes of carrying out the Project Company's Activities under the Project Deed. This licence does not operate as a demise of any part of the Project Site or the Facilities, confer any rights as tenant of the Project Site or the Facilities on the Project Company or entitle the Project Company to any estate, right or interest in the Project Site or the Facilities. The licence is non-exclusive and may be varied by INSW at any time.

18. Operation and maintenance

The Project Deed provides for the Project Company to:

- provide Operator Services and Facility Manager Services in accordance with the requirements set out in the Project Deed and the Project Brief;
- maintain the Public Realm for a period of 3 years after Final Completion;
- consult with, and not hinder, the Commercial Developer in carrying out its obligations on the Public Realm;
- install and maintain way-finding infrastructure on the Public Realm;

- implement a programmed maintenance plan for the maintenance and refurbishment of the Facilities;
- undertake delegate satisfaction surveys at 6 monthly intervals;
- obtain and maintain a liquor licence and comply with the requirements of the Liquor Act and the liquor licence;
- collect revenue derived from the operation of the Facilities and deposit that revenue into the Revenue Account established by the State;
- deposit all Refundable Deposits into the Holding Account established by the State for later refund to the promoter of events or transferred to revenue as applicable;
- prepare an annual plan which sets out the budget and business plan for each operating year;
- promote the Facilities to the public and coordinate with relevant authorities with respect to the events to be held in the Core Facilities;
- operate and maintain certain Associated Business Outlets located within the Facilities, the car parks servicing the Facilities, the Licensed Public Realm, the Event Deck, Harbourside Place and Tumbalong Place; and
- install and generate energy using a photovoltaic array to be installed on the roof of the Facilities.

The Project Deed also provides for:

- the Project Company to replace, and INSW to require the replacement of, the Operator in certain circumstances; and
- INSW to negotiate the terms on which the Project Company will continue to operate the Core Facilities during the term, assume responsibility for operating the Core Facilities or require the Operator to be replaced as described above at section 14.

19. Price

As described above in Part A, the facilities will be maintained as part of the PPP contract arrangements for a period of 25 years and the Public Realm for 3 years from completion. INSW will make Service Payments to the Project Company over the 25 year period to cover the cost of the facilities, finance costs and ongoing maintenance costs. These amounts correspond to the NPC shown in Section 8 above. The Service Payments will also include an incentive payment based on the number of delegates attending the Core Facilities and the level of delegate satisfaction, a fixed management fee for operating the Facilities and a percentage of net operating profits (with the balance of operating profits retained by INSW). The State is entitled to all revenue derived from the facilities and car park.

The amount payable to the Project Company may vary as a result of a number of factors. The nature of these factors are described further below:

- The Service Payments have been predominantly predetermined (through the tender process) but may change as a result of, for example, abatement due to unavailability of areas within the facilities, excessive energy usage or fluctuations in the number of international and interstate convention delegates.
- Two years after the Original Date for Final Completion, a component of the Service Payments relating to debt repayments will “float” with base interest rates.
- The component of the Service Payments relating to payment for lifecycle indexes with CPI.

- Provisions are included within the Project Deed for the remediation of the site and some of the existing structures with an allowance for the work and a sharing of cost arrangement.
- The Project Company may also be entitled to compensation upon the occurrence of certain Compensation Events. Some of these events relate to breaches by INSW of its obligations and the sharing of certain risks including risks associated with some changes in law.
- The Project Deed also provided for the amount payable to the Project Company to be varied if the development consent is granted subject to an Unacceptable Condition (defined in the Project Deed).
- Provision is included within the contract for INSW to pay down the lesser of 70% of the debt and equity outstanding at Final Completion, 80% of the debt outstanding at the CDPD payment date, and 80% of the debt outstanding at the CDPD payment date as identified in the Base Case financial model once the Core Facilities have been operating successfully for at least two years.
- There are provisions in the Project Deed which permit INSW to instruct variations to the contract (and compensate the Project Company accordingly).
- In the event that the Project Company refinances its project debt and certain conditions are met, the Project Company must pay to INSW a defined proportion of any gain realised as a result of the refinancing.
- The Project Deed also provides for the Service Payments payable to the Project Company to be adjusted following benchmarking of the Project Company's insurance premiums and energy costs.

As described below, the amount payable to the Project Company may also be increased following renegotiation of the terms on which the Project Company operates the Core Facilities or following the occurrence of an "External Event".

20. Renegotiation

The Project Deed may be renegotiated if:

- a Compensation Event or Relief Event arises (in respect of which see sections 12 and 25);
- a "Force Majeure Event" prevents the Project Company from carrying out its obligations in respect of some, but not all, of the Core Facilities;
- the Project Company is required to remediate contamination or change the way in which it carries out its works following discovery of an artefact on the site;
- the development consent is granted subject to an Unacceptable Condition;
- a variation to the Project Deed and/or the Project Brief is implemented in accordance with the Change Procedure detailed in clauses 57 and 58 of the Project Deed (which may include Changes to implement new car parking facilities in accordance with clause 52 of the Project Deed or urban jungle facilities in accordance with clause 52A of the Project Deed);
- the Core Facilities are damaged or destroyed and INSW elects not to reinstate them; or
- an "Uninsurable Material Risk" occurs.

The Project Deed also provides for INSW to renegotiate the terms on which the Project Company operates the Core Facilities at certain intervals and either require the Project Company to cease to operate the Core Facilities (but continue to provide facility management services to the Core Facilities) or continue to operate the Core Facilities on terms agreed between the parties.

Certain provisions of the Project Deed may also be varied if an "External Event" occurs which affects the number of delegates attending the Core Facilities.

21. Guarantees and undertakings

INSW, SHFA and the Project Company provide various guarantees and undertakings consistent with PPP precedent in relation to the performance of their obligations. These are detailed in the Project Deed.

Significant warranties:

- SHFA warrants that it has full and proper right to use and license the relevant sites and facilities.
- Project Company warrants that the facilities will be fit for Intended Purposes throughout the Operating Phase.

22. Audit by Auditor-General

The Public Finance and Audit Act 1983 confers broad rights on the Auditor-General to carry out audits of statutory bodies. The Auditor-General's ability to carry out such audits is not diminished by the Project Deed as the Project Deed expressly provides for INSW and SHFA to disclose information to any department, office or agency of the NSW Government or which is required to be disclosed by Law.

23. Events of Default

An Event of Default will arise under the Project Deed if:

- the Project Company fails to regularly and diligently progress its design and construction activities;
- the Project Company fails to submit or comply with a corrective action plan;
- a representation or warranty given by the Project Company is untrue and has a material adverse effect;
- there is fraud, collusive, misleading or deceptive conduct by the Project Company or a subcontractor;
- the Project Company materially breaches a Project Document;
- an obligation of a Debt Financier or Equity Investor to provide funding under the Financing Agreements is cancelled due to an event of default under those Agreements, or a Debt Financier or Equity Investor fails to provide funding;
- ASIC forms an opinion that the Project Company or a Material Subcontractor has seriously contravened the Corporations Act or breached a Law involving management, fraud or dishonesty or that action should be taken or proceedings commenced in relation to the issue of financial products, fraud or other serious misconduct;
- the Project Company incurs abatements above specified thresholds;
- a specified number of Failure Events occur over a specified period; or
- an Insolvency Event occurs in relation to the Construction Contractor or Construction Contractor Guarantor between Final Completion and the later of the first anniversary of that date and the

date the defects liability bond is released, and the Project Company fails to make a demand for the full value of the defects liability bond or notify the State and provide the State with a plan for raising any funds required to rectify defects.

If an Event of Default arises, INSW may give the Project Company a notice requiring it to remedy the Event of Default or prepare and implement a cure plan or a prevention plan. If the Project Company fails to do so, a Termination Event will be deemed to have occurred and INSW may terminate the Project Deed.

INSW will also be entitled to give a notice to the Project Company if a material breach of the same obligation occurs more than once in any 12 month period, provided that breach was not caused by any act or omission of the Operator. If the breach recurs after the date of the notice, INSW may issue a second notice and, if the breach recurs, terminate the Project Deed.

The Project Deed also includes an Operator Failure Event regime, which provides for INSW to require the Project Company to procure that the Operator implements a cure plan or prevention plan upon the occurrence of certain Operator Failure Events. If the Operator fails to do so, an Operator Replacement Event will be deemed to have occurred and INSW may direct the Project Company to replace the Operator.

24. Termination rights

A Termination Event entitling INSW to terminate the Project Deed will arise if:

- the Project Company fails to submit the development consent application to the relevant authority for consent within the period required by the Project Deed;
- Final Completion does not occur by the Sunset Date;
- the Project Company abandons or displays an intention to abandon the Project;
- an Insolvency Event occurs with respect to the Project Company;
- an Insolvency Event occurs with respect to the Operator, Operator Guarantor, Facility Manager or Facility Manager Guarantor at any time or the Construction Contractor or Construction Contractor Guarantor prior to Final Completion and that party is not replaced within 90 days;
- the Project Company fails to commence the Project Company's Activities within 60 Business Days of Financial Close;
- the Project Company fails to provide INSW with a bond required by the Project Deed;
- the Project Company fails to effect insurances required by the Project Deed;
- an illegality event occurs;
- the Project Company breaches its obligations with respect to assignment or changes in control;
- the Project Company incurs abatements over a specified threshold; or
- a specified number of Failure Events occur over a specified period.

INSW may also terminate the Project Deed:

- if an appeal is commenced in relation to the granting of the development consent after the period allowed under the EP&A Act where Financial Close has not been achieved;

- if the development consent is granted subject to an Unacceptable Condition or any other condition which would prevent the Project Company from carrying out the Project in accordance with the Project Brief;
- for convenience;
- if the parties cannot agree on appropriate terms to mitigate the effects of a force majeure event and that force majeure event is continuing; or
- if an uninsurable risk occurs and all of the Facilities are affected by that uninsurable risk.

The Project Company may terminate the Project Deed:

- for State Default if:
 - the NSW Government requisitions a material part of the Project Company's assets or shares;
 - INSW fails to make a payment of an amount specified in a tax invoice or any other amount in excess of \$100,000 that is due and payable by INSW within 20 Business Days of service of a formal written demand by the Project Company; or
 - INSW or SHFA breach their obligations under the Project Deed in a manner which substantially frustrates or renders it impossible for the Project Company to perform its obligations or exercise its rights for a continuous period of 2 months; or
- if the parties cannot agree on appropriate terms to mitigate the effects of a force majeure event and that force majeure event is continuing where the Project Company is unable to recover under its advance consequential loss or business interruption insurance policies.

The Project Deed also provides for INSW to direct the Project Company to replace the Operator upon the occurrence of certain "Operator Replacement Events".

25. *Contractual remedies*

If the Project Company breaches the Project Deed, INSW may:

- if that breach would prevent the performance of the Project Company's Activities, pose a threat to health, safety or property, require additional or alternative Services or require INSW to exercise its functions at Law, suspend the performance of the Project Company's Activities and step in to perform the Project Company's Activities;
- if certain conditions are met, perform or comply with the Project Company's obligations and recover the costs of doing so from the Project Company;
- claim under the indemnities given by the Project Company under the Project Deed, which provide for the Project Company to release and indemnify INSW and SHFA against any Claim or Loss suffered or incurred in connection with any breach or negligent or unlawful act or omission or wilful misconduct of the Project Company;
- if the breach gives rise to an Event of Default, issue a notice to the Project Company requiring the Project Company to remedy or implement a cure plan or prevention plan in respect of the Event of Default; and
- if the breach gives rise to a Termination Event, terminate the Project Deed.

The Project Company may claim compensation and relief from its obligations from INSW if:

- a Compensation Event described above in section 12 occurs and delays an activity on the critical path or an activity which becomes critical as a result of that Compensation Event in a manner which gives rise to a delay to Technical Completion or Final Completion, affects the Project Company's ability to exercise its rights or comply with its obligations or causes the Project Company to incur additional costs or lose revenue; or
- a Relief Event occurs and delays an activity on the critical path or an activity which becomes critical as a result of that Relief Event in a manner which gives rise to a delay to Technical Completion or Final Completion or affects the Project Company's ability to exercise its rights or comply with its obligations.

A Relief Event will arise if any of the following occurs:

- a fire, explosion, storm, lightning, cyclone, hurricane, tempest, mudslide, landslide, flood, ionising radiation, earthquake, drought declared as a state of emergency or high sea inundation;
- a natural disaster which occurs prior to Final Completion and causes loss or damage to the Project Site or Project Works;
- war, riot, civil commotion, act of sabotage or public enemy or like activity;
- a terrorist act;
- a nuclear, chemical, biological or ionising contamination or infectious disease outbreak.
- a failure by a utility provider to carry out works or provide services which it is obliged to provide;
- a shortage of certain utilities;
- an event which occurs after Final Completion and causes loss or damage to the Project Site, Core Facilities or car park;
- a blockade or embargo;
- certain industrial action; or
- an event which deprives a party of possession or access to the Project Site which is outside of the parties' control, except to the extent the Relief Event could have been prevented by exercising the standard of care and diligence of a prudent person, is caused or contributed to by the Project Company or is within the Project Company's reasonable control.

Liability for certain costs of remediating certain contamination and costs incurred in suspending the Project Company's Activities following the discovery of an artefact will also be borne by INSW as described above in section 12.

If a State Default occurs (as described above in section 24) the Project Company may terminate the Project Deed and INSW must pay the Project Company a termination payment (as described below in section 26).

26. *Exit/disengagement arrangements*

The parties may terminate the Project Deed as described above in section 24.

If the Project Deed is terminated by INSW prior to Financial Close, INSW must pay the Project Company the sum of:

- 50% of the Project Company's reasonable costs of preparing and submitting and carrying out due diligence in respect of the development application (capped at a specified amount); and
- a contribution to the Project Company's direct costs and expenses of preparing its proposal and participating in the procurement process; and
- 95% of the Project Company's reasonable costs of carrying out early works (capped at a specified amount).

If the Project Deed is terminated by INSW because:

- an appeal is commenced in relation to the granting of the development consent after the period allowed under the EP&A Act where Financial Close has not been achieved; or
- the development consent is granted subject to an Unacceptable Condition or any other condition which would prevent the Project Company from carrying out the Project in accordance with the Project Brief,

INSW must also pay 50% of the Project Company's reasonable costs of negotiating and executing the Project Documents and Financing Agreements (capped at a specified amount);

If INSW terminates the Project Deed for a Termination Event, INSW will pay the Project Company the highest capital sum offered by a compliant tenderer (if the Project has been retendered) or the estimated fair value of the Project (if an independent expert has determined that value) and any amounts due and payable by INSW to the Project Company, less tender costs, amounts which the State is entitled to set off or deduct, amounts owed by the Project Company, gains accruing to the Project Company, insurance proceeds, amounts held in bank accounts, amounts paid by INSW on account of maintenance or refurbishment which has not been carried out and the securitisation refund payment.

If:

- INSW terminates the Project Deed after Financial Close because the development consent is granted subject to an Unacceptable Condition or any other condition which would prevent the Project Company from carrying out the Project in accordance with the Project Brief,
- either party terminates the Project Deed after Financial Close because an appeal of the development consent results in the Project Company being ordered to stop work for a period of more than 2 years;
- the Project Company terminates the Project Deed after Financial Close because an appeal of the development consent has not been exhausted or resolved within 7 years of Financial Close;
- INSW terminates the Project Deed for convenience; or
- the Project Company terminates the Project Deed for State Default,

INSW will pay the Project Company an amount equal to the sum of the senior debt at termination (less the securitisation refund payment), an amount giving a rate of return on equity equal to the base case equity return, subcontractor breakage costs and any amounts due and payable by INSW to the Project Company, less amounts owed by the Project Company to INSW, gains accruing to the Project Company, insurance proceeds, amounts held in bank accounts and redundancy payments.

If the Project Deed is terminated for force majeure or uninsurable risk, INSW will pay the Project Company an amount equal to the sum of the senior debt at termination (less the securitisation refund

payment), 50% of equity at par as at the termination date, amounts owed by INSW to the Project Company and certain subcontractor breakage costs, less gains accruing to the Project Company, amounts owed by the Project Company to INSW, insurance proceeds and amounts held in bank accounts.

27. *Step-in*

INSW may step in if:

- an event or circumstance occurs which prevents the Project Company from performing the Project Company's Activities, poses a serious threat to health, safety or the environment, would require the provision of services or alternate services materially greater than required by the Project Brief or requires the State to exercise any of its responsibilities or functions at law;
- the Project Company fails to remedy or implement a cure plan or prevention plan following an Event of Default;
- the Project Company fails to comply with its obligation to reinstate loss or damage to the Project Site or Facilities; or
- the Project Company fails to perform an obligation where the expected cost of the State performing that obligation is less than \$500,000, it would not take more than 5 Business Days for the State to perform that obligation, the Project Company is not complying with its obligations to rectify and the State agrees to perform the obligation to the standard required by the Project Deed.

28. *Dispute resolution procedure*

Disputes in relation to the Project will be referred to executive negotiation between the relevant parties' chief executive officers. If the executive negotiators have not resolved the dispute within 20 Business Days after notice of the dispute has been given, the dispute will be referred to expert determination (if the dispute falls within the categories of dispute specified in the Project Deed) or arbitration.

Where a dispute is referred to expert determination, the determination made shall be final and binding unless a party to the dispute lodges an appeal within 20 business days after the determination. If an appeal is made, the dispute will then be referred to arbitration. The award of the arbitration tribunal will be final and binding upon the parties.

29. *Insurance proceeds*

If loss or damage to the Project Site, Project Works or Facilities occurs, the Project Company must apply all insurance proceeds (other than the proceeds of delay in startup insurance or business interruption insurance) towards the cost of repairing, remediating, replacing or reinstating the Project Site, Project Works and Facilities.

If the Project Deed is terminated for convenience, State Default, force majeure or uninsurable risk, the Project Company must pay any insurance proceeds or amounts that are not used by the Project Company towards repairing or remedying the relevant loss or damage to INSW.

30. *Other key elements of the Project Deed*

In addition to the provisions of the Project Deed summarised in sections 1 to 29 above, the Project Deed also includes the process by which the Project Company will apply for and obtain development consent for the Project after contract close. In particular, the Project Deed provides that:

- the risk of the development consent being granted subject to an Unacceptable Condition will be shared between INSW and the Project Company;
- if the development consent is granted subject to an Unacceptable Condition, INSW may direct the Project Company to implement a change or contest the imposition of the relevant condition or requirement or terminate the Project Deed;
- either party may terminate the Project Deed if an appeal is commenced in relation to the granting of development consent and, as a result, the Project Company is directed to stop work;
- the parties will take the actions specified in the Project Deed in the event that an appeal against the development consent is successful; and
- the Project Company may terminate the Project Deed if an appeal is not resolved within 7 years of Financial Close.

The Project Deed also includes:

- provisions for the payment of a conditional debt pay down amount by INSW to the Project Company after completion;
- the process by which the Project Company will achieve, and the Independent Verifier will certify, Technical Completion;
- the process by which the Project Company will achieve, and the Operational Readiness Group (comprising representatives of the Independent Verifier, INSW and the Project Company) will certify, Operational Readiness;
- the terms on which the Project Company will operate the associated business outlets located within the Facilities, those parts of the Public Realm that will be licensed to the Project Company (including the event deck, Harbourside Place and Tumbalong Place) and the car parks servicing the Facilities;
- the terms on which the Project Company will install a photovoltaic array on the roof of the Facilities and generate energy;
- details of the accounts in which revenue from the operation of the Facilities will be deposited;
- provisions governing refinancing of the project debt, noting the State is protected from refinancing loss and shares in any refinancing gain; and
- the terms on which the Project Company will prepare and implement business plans and annual plans.

Attachment 1 – Risk Allocation for PPP Contract

The table below summaries the general risk allocation under the PPP Project Deed.

No.	Risk	General allocation of Risk	
		State	Project Company
A.	DELIVERY OF THE PROJECT		
	<i>Planning and environmental approvals</i>		
1.	Risk of obtaining development consent for the Project under the <i>Environmental Planning and Assessment Act 1979 (Development Consent)</i>	✓	✓
2.	Risk of challenges to the Development Consent	✓	
3.	Risk of challenges to other approvals		✓
4.	Risk of obtaining all other consents and approvals required for the Project		✓
5.	Risk of complying with the requirements of all consents and approvals		✓
6.	Risk that the necessary approvals (other than the Development Consent) may only be obtained subject to conditions which have adverse cost consequences or cause prolonged delay		✓
	<i>Site Conditions and contamination</i>		
7.	Risk that the Existing Facilities and other existing structures on the Premises are inadequate to support new improvements	✓	✓
8.	Risk of defects in the existing Utility infrastructure or latent defect in the structural condition of an Existing Facility	✓	✓
9.	Risk that unanticipated adverse ground conditions are discovered which cause construction costs to increase or cause construction delays		✓
10.	Risk that contamination on the Project Site migrates to adjacent land prior to Financial Close	✓	
11.	Risk that contamination on the Project Site migrates to adjacent land after Financial Close	✓	✓
12.	Risk of Environmental Notices issued in relation to contamination at the Project Site during the Term	✓	✓
13.	Risk that the Project Site is not otherwise suitable for the Project		✓

No.	Risk	General allocation of Risk	
		State	Project Company
14.	Risk of any loss, delay or damage arising from the discovery, removal or defusal of identified or unidentified unexploded objects from military operations or war	✓	
	Native Title and Artefacts		
15.	Risk of native title applications and claims in respect of the Project Site	✓	
16.	Risk that an Artefact is discovered at the Project Site	✓	✓
	Site access		
17.	Risk of obtaining access to the Project Site	✓	
18.	Risk of obtaining access to the monorail and light rail corridors	✓	✓
19.	Risk of obtaining access to any additional land (including road access and possessions and other offsite temporary areas) required to carry out the Project		✓
20.	Risk that third party access rights affect the Project Company's access to the Project Site or interfere with the Project Company's Activities	✓	✓
21.	Risk that the Project Works will affect the safety of people and property		✓
22.	Risk that the Project Works will interfere with the passage of people and vehicles and operations carried out adjacent to the Project Site		✓
23.	Risk that the Project Works will cause nuisance or unreasonable noise, dust, vibration and disturbance to areas adjacent to the Project Site		✓
24.	Risk of availability and location of utility services	✓	✓
25.	Interface Risk with the Interim Operator (i.e. AEG Ogden)		✓
	Design		
26.	Risk that the Facilities as designed will not be fit for purpose		✓
27.	Risk that the Facilities as designed do not comply with the Project Brief or the Project Deed		✓
28.	Risk that the Project Brief is not fit for purpose		✓
29.	Risk of errors in the Project Brief or design		✓

No.	Risk	General allocation of Risk	
		State	Project Company
	documentation		
30.	Risk that the Facilities as designed will not satisfy the Operator's requirements for the Facilities		✓
31.	Risk that the Facilities as designed are incapable of being operated at the anticipated cost		✓
32.	Risks associated with Work Health and Safety arising in connection with construction of the Project Works		✓
33.	Risk that the design life of the Facilities proves to be shorter than anticipated		✓
	Construction and Completion		
34.	Risk that the Facilities as constructed are not fit for purpose		✓
35.	Risk that the Project Company's construction methods are not fit for purpose or of the standard required by the Project Brief or Project Deed		✓
36.	Risk that the materials used to construct the works are of merchantable quality and fit for purpose		✓
37.	Risk that the Facilities as constructed do not comply with the Project Brief or the Project Deed		✓
38.	Risk that Project Brief is not fit for purpose		✓
39.	Risk of errors in the Project Brief or design documentation		✓
40.	Risk of delays to Final Completion	✓	✓
41.	Risk that INSW requires a re-scheduling of the Project Works set out in the Works Program or a Site Access Date set out in the Site Access Schedule	✓	
42.	Risk that the tests required for the operation of the Facilities to commence cannot be successfully completed		✓
43.	Risk of defects in the Facilities		✓
44.	Risk that the Facilities as constructed will not satisfy the Operator's requirements for the Facilities		✓
45.	Risk that any early works procured by INSW are fit for the Project Company's purpose		✓
46.	Risk of delays	✓	✓
47.	Risk that a party does not agree that the	✓	✓

No.	Risk	General allocation of Risk	
		State	Project Company
	Operational Readiness has been achieved		
	Facility Management Equipment		
48.	Risk that Facility Management Equipment is not fit for purpose		✓
49.	Risk that Facility Management Equipment does not meet the requirements set out in the Project Deed and Project Brief		✓
50.	Risk of technical obsolescence or innovation in Facility Management Equipment		✓
	Operator Equipment		
51.	Risk that Operator FF&E is not fit for purpose	✓	✓
52.	Risk that Operator FF&E does not meet the requirements set out in the Project Deed and Project Brief	✓	✓
53.	Risk of technical obsolescence or innovation in Operator FF&E	✓	✓
B.	OPERATION OF FACILITIES AND PROVISION OF SERVICES		
	Provision of Facility Manager Services to the Facilities		
54.	Risk that the Facility Manager Services satisfy the requirements of the Project Brief or Project Deed		✓
55.	Risk that Facility Manager Services are provided in accordance with industry best practice, relevant policies and procedures, Laws, approvals and standards		✓
56.	Risk that the Facility Manager Services are provided so that the Facilities remain fit for purpose		✓
57.	Risk of connection to utility services and availability of utility services		✓
58.	Energy volume risk	✓	✓
59.	Risk that maintenance or refurbishment of the Facilities is required to comply with the requirements of the Project Brief		✓
60.	Risk of higher than expected maintenance costs		✓
	Operation of Facilities		
61.	Risk that the Operator's Services satisfy the requirements of the Operator Specification or Project Deed (prior to handover to the State		✓

No.	Risk	General allocation of Risk	
		State	Project Company
	Appointed Operator)		
62.	Risk that the Operator's Services are provided in accordance with good industry practice, relevant policies and procedures, Laws, approvals and standards (prior to handover to the State Appointed Operator)		✓
63.	Risk that the Operator's Services are provided so that the Facilities remain fit for purpose (prior to handover to the State Appointed Operator)		✓
64.	Interface risk between Operator, the Project Company and other Subcontractors (prior to handover to the State Appointed Operator)		✓
65.	Risk that, prior to handover to the State Appointed Operator, the Operator may fail financially or fail to provide the contracted services.		✓
66.	Risk that the Operator Services do not represent good industry practice or represent good value for money over time.	✓	✓
67.	Risks in connection with demand for Facilities (including market downturn and increased competition for the Facilities)	✓	✓
68.	Risk of changes to State's output requirements and other requirements for the Project	✓	
69.	Risk of defaults by the Operator	✓	✓
	End of term arrangements		
70.	Risk that the Facilities and other assets are not in the condition required by the Project Deed at the end of the Term or on early termination of the Project Deed		✓
C.	ADVERSE EVENTS AND CHANGE		
	Compensation Events		
71.	Risk of INSW breaching the Project Deed in a way that adversely affects the ability of the Project Company to exercise its rights or perform its obligations	✓	
72.	Risk of INSW exercising its Step-In Rights (where the action was not taken as a result of the Project Company's negligence or breach)	✓	
	Relief Events		

No.	Risk	General allocation of Risk	
		State	Project Company
73.	Risk of fire, explosion, storm, lightning, cyclone, hurricane, tempest, mudslide, flood, ionising radiation, earthquakes, war, armed conflict, terrorism, riot, civil commotion, droughts declared as a state of an emergency or high sea inundation	✓	✓
74.	Risk of nuclear, chemical or biological contamination or infectious disease outbreak	✓	✓
75.	Risk of failure by any Relevant Authority or provider of a utility service to provide that service	✓	✓
76.	Risk of a shortage of water, power, fuel or transport	✓	✓
77.	Risk of an event or occurrence which causes loss or damage to a Facility	✓	✓
78.	Risk of a blockade or embargo	✓	✓
79.	Risk of industrial action	✓	✓
80.	Risk of an event which causes a deprivation of possession of or access to the Project Site or the Facilities	✓	✓
	<i>Force Majeure</i>		
81.	Risk of a Force Majeure Event (being a Relief Event exists or occurs (or can reasonably be expected to exist or occur) for a continuous period exceeding 180 days and which directly causes either the Project Company or INSW to be unable to comply with a material part of their contractual obligations)	✓	✓
	<i>Change in Law</i>		
82.	Risk of (Project Specific) Changes in Law that apply to the Project, the Project Company, the Project Works, the Project Site, a Facility or PPP projects but not to other projects, works, sites or people (other than a change in a Commonwealth tax law)	✓	
83.	Risk of Changes in Law in respect of a Facility during the operation of that Facility that requires the Project Company to incur: <ul style="list-style-type: none"> • additional Capital Expenditure • additional Facility Management Expenditure in respect of that Facility. 	✓	✓
84.	Risk of all other Changes in Law	✓	✓

No.	Risk	General allocation of Risk	
		State	Project Company
	<i>Reinstatement and repair</i>		
85.	Risk that the Project Works or Facilities are damaged, destroyed or cannot be used or occupied		✓
86.	Risk that insurance proceeds are insufficient for the cost of repairing and reinstating	✓	
87.	Risk that damage or destruction was caused by INSW's fraudulent, unlawful or negligent act or breach	✓	
	<i>Insurance</i>		
88.	Responsibility for effecting insurances required for construction and operation of the Facilities		✓
89.	Risk of increases in insurance costs in respect of general and products liability insurance, employer's liability insurance and industrial special risks insurance effected in respect of operation of the Facilities	✓	✓
90.	Risk of increases in other insurance costs	✓	✓
91.	Risk that uninsurable risks will materialise	✓	
D.	FUTURE DEVELOPMENT		
	<i>Future developments</i>		
92.	Risk that INSW procures or approves other venues	✓	✓
	<i>Third Party Works</i>		
93.	Risk that INSW carries out works within, over or adjacent to the Project Site	✓	✓
E.	FINANCIAL MATTERS		
	<i>Taxes and rates</i>		
94.	Risk that land tax will be payable in connection with the Project	✓	
95.	Risk that council rates will be payable in connection with the Project	✓	
96.	Risk that stamp duty will be payable in connection with the Project Documents and Financing Documents	✓	
97.	Risk that any other taxes will be payable in connection with the Project		✓

No.	Risk	General allocation of Risk	
		State	Project Company
	<i>Interest rates and financing</i>		
98.	Risk of movements in interest rates between Contract Close and Financial Close	✓	
99.	Risk of movements in interest rates after Financial Close	✓	✓
100.	Risk of changes in margins, tenor, facility fees, terms and other financing costs	✓	✓
101.	Risk that finance is unavailable for modifications to the Project directed by INSW	✓	
102.	Risk that the Project Company's financing can be restructured to reduce the Project's financing costs.	✓	✓
F.	GENERAL		
	<i>Information documents</i>		
103.	Reliance on Information Documents provided by INSW to the Project Company for information and guidance purposes		✓
104.	Loss suffered by the Project Company in connection with the Information Documents		✓
	<i>Other risks</i>		
105.	Risk that after execution of the Project Deed, the Project Company is found to be an improper person for involvement in the Project	✓	✓
106.	Risk that the Project Company becomes insolvent	✓	✓
107.	Risk that a Key Subcontractor becomes insolvent	✓	✓
108.	Risk that a change in the Project Company's ownership results in a weakening of the Project Company's financial standing or ability to carry out the Project	✓	✓
109.	Risk that the value of the Service Payments is eroded by inflation	✓	✓
110.	Risk that the Project infringes a third party's intellectual property or moral rights	✓	✓
111.	Risk that INSW incurs Indirect Loss	✓	✓

No.	Risk	General allocation of Risk	
		State	Project Company
112.	Securitized Site Licenses		✓
113.	Risk that the Project Company's obligations have not been passed through appropriately to its Key Subcontractors	✓	✓