

Orange and Associated Health Services PPP Collateral Warranty Deed

Silver Thomas Hanley DesignInc Pty Ltd

ABN 53 128 293 916

Hansen Yuncken Pty Ltd

ABN 38 063 384 056

**Pinnacle Healthcare (OAHS) Pty Limited as
trustee of the Pinnacle Healthcare (OAHS) Trust**

ACN 120 747 588

Health Administration Corporation

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ORANGE AND ASSOCIATED HEALTH SERVICES PPP
COLLATERAL WARRANTY DEED

DATE 13.12.07

PARTIES

Health Administration Corporation, a corporation sole constituted under section 9 of the Health Administration Act 1982 (NSW) (NSW Health)

Pinnacle Healthcare (OAHS) Pty Ltd as trustee of the Pinnacle Healthcare (OAHS) Trust
ACN 120 747 588 (Project Company)

Hansen Yuncken Pty Ltd ABN 38 063 384 056 (Construction Contractor)

Silver Thomas Hanley DesignInc Pty Ltd ABN 53 128 293 916 (Consultant)

RECITALS

- A. NSW Health and the Project Company have agreed on the terms and conditions pursuant to which the Project Company will finance, design, construct, manage and maintain the Health Facilities, and provide certain other Services in connection with the Health Facilities, in accordance with the terms and conditions of the Project Deed.
- B. The Project Company has or will engage the Construction Contractor under the Construction Contract to undertake *the Works* in relation to the Health Facilities.
- C. The Construction Contractor has or will engage the Consultant under the Consultancy to undertake *professional architectural design services* identified in their Consultancy in relation to the Health Facilities.
- E. NSW Health and the Consultant have agreed that the Consultant will, in addition to its obligations to the Construction Contractor under the Consultancy, owe obligations directly to NSW Health, as set out in this deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

Project Deed means the deed entitled "Orange and Associated Health Services PPP Project Deed" dated on or about the date of this deed between NSW Health and the Project Company.

Services means the professional architectural design services referred to in recital C of this deed.

Consultancy means the document entitled "Formal Instrument of Agreement Engagement of Consultants" dated on or about the date of this deed between the Construction Contractor and the Consultant.

1.2 Definitions in Project Deed

Subject to clause 1.1, terms used in this deed that are defined in the Consultancy have the same meaning in this deed.

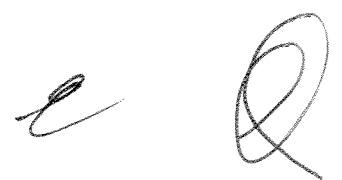
1.3 Rules for interpreting this deed

Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) Legislation is to that Legislation as amended, re-enacted or replaced;
 - (ii) a deed or agreement, or a provision of a deed or agreement, is to that deed, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this deed or to any other deed or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.

1.4 Business Days

If the day on or by which a person must do something under this deed is not a Business Day:



- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.5 Multiple parties

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.6 Contra proferentum

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this document or any provision in it.

1.7 The Project Company

The Project Company is a party to this deed for the purposes only of acknowledging that the Construction Contractor and Consultant will not be in breach of the Construction Contract or Consultancy respectively by complying with its obligations under this deed.

1.8 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising as between NSW Health and the Consultant under or in relation to this deed howsoever such rights, obligations or liabilities are sought to be enforced.

2. CONSULTANT'S UNDERTAKINGS

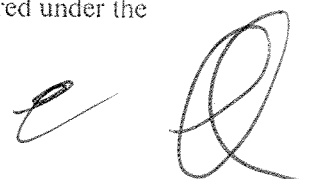
2.1 Undertakings

The Consultant undertakes and warrants for the benefit of NSW Health as follows:

- (a) it will fully comply with all of its obligations under the Consultancy and this deed;
- (b) it is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by the Consultancy;



- (c) it has exercised and will continue to exercise, in accordance with Good Industry Practice, the level of skill, care and diligence in performing its duties under the Consultancy which may reasonably be expected of a professional architectural design consultant experienced in the performance of the same or similar services to the Services, provided that, other than as expressly set out in this deed, the Consultant will have no greater obligations to NSW Health by virtue of this deed than it would have had if NSW Health had been named as the Construction Contractor under the Consultancy;
- (d) the Services will be carried out and completed:
- (ii) in accordance with the Consultancy and this deed;
 - (iii) in accordance with the Consents and applicable Law;
 - (iv) in a good and workmanlike manner;
 - (v) using (including installing) materials, equipment and goods, that will be to the quality and standard specified in the Construction Contract, but if no standard is specified, new and of merchantable quality and which are and will remain at all relevant times fit for their purpose; and
 - (vi) so that the *Services*, when completed, will be and will remain at all relevant times *Fit for Intended Purpose*;
- (e) it has exercised and will continue to exercise reasonable skill, care and diligence in connection with the selection and supervision of its employees, agents, sub contractors, sub consultants and suppliers;
- (f) if at any time called upon to do so by NSW Health, it must:
- (ii) extend to NSW Health any guarantee of the performance by the Consultant or any warranty provided to the Construction Contractor;
 - (ii) provide NSW Health, or any person authorised by NSW Health, with such information related to the Services as NSW Health may reasonably require; and
 - (iii) allow NSW Health, or any person authorised by NSW Health, on reasonable notice, to inspect the Services as NSW Health may reasonably require;
- (g) the copy documents annexed to this deed confirm the substance of the relevant professional indemnity and liability insurances required to be taken out by the Consultant, that such insurances are valid and the premiums for the current periods of insurance have been duly paid, that the Consultant is not aware (after having made due and careful enquiry) of any circumstances likely to give rise to any claim under such insurances, and that the Consultant will maintain such insurances for so long as is required under the Consultant and this deed;



- (h) it will not knowingly or recklessly do anything that may invalidate any insurance policy held by NSW Health or the State in relation to the Health Facilities or the Sites, or any indemnity to which NSW Health or the State may be entitled from the New South Wales Treasury Managed Fund; and
- (i) it will promptly inform NSW Health of any material default by the Construction Contractor under the Consultancy.


2.2 Reliance on representations and warranties

The Consultant acknowledges and agrees that NSW Health entered into this deed in reliance on the undertakings and warranties made in clause 2.1.

2.3 Indemnities

The Consultant indemnifies and holds harmless NSW Health and its respective officers, employees, agents and representatives from and against all Claims and Losses and arising out of, or in connection with, a breach by the Consultant of any of the representations and warranties given by it under clause 2.1 or a failure by the Consultant to comply with any of its other obligations under this deed.

3. LIABILITY OF CONSULTANT

- (a) The liability of the Consultant under this deed is not affected by NSW Health exercising or refraining from exercising any or all of its rights against the Project Company under the Project Deed or under any other Project Document or at Law or in equity.
- (b) Any information provided to, and any inspection undertaken by, NSW Health or any person authorised by NSW Health under clause 2.1(f)(ii) and (iii) will not limit or discharge the obligations of the Consultant under the Consultancy nor will it relieve the Consultant from any liability which it may have in respect of any defect or default in or relating to the Services.
- (c) For the avoidance of doubt, and notwithstanding any other provision of this deed:
 - (i) the Consultant will have no greater or more onerous (whether in terms of quantum or character) obligations or liabilities to NSW Health under, arising out of, or in connection with, this deed, than it would have had if NSW Health had been named as the Client under the Consultancy; 
 - (ii) the liability of the Consultant under, arising out of, or in connection with, this deed, will not exceed the difference between the maximum liability of the Consultant under the Consultancy and the liability incurred (from time to time) by the Consultant to the Construction Contractor under the Consultancy; and
 - (iii) the liability of the Consultant under, arising out of, or in connection



with, this deed, will be contingent upon the effectiveness of and performance by the Construction Contractor of its obligations under Clause B2.7 (especially (c) and (d)) of the Consultancy.

4. **TERMINATION OF PROJECT DEED OR ASSIGNMENT/NOVATION OF PROJECT COMPANY'S RIGHTS AND OBLIGATIONS**

If the Project Deed is terminated or the right and obligations of the Project Company are assigned or novated pursuant to the terms of any of the Project Documents, if required by NSW Health:

- (a) the Project Company and the Construction Contractor must transfer, assign, novate or otherwise convey its respective interest in the Consultancy to NSW Health or NSW Health's nominee at NSW Health's election;
- (b) the Consultant agrees to perform the Consultancy for the benefit of NSW Health or the relevant assignee or novatee; and
- (c) the Consultant will enter into any document with NSW Health or the relevant assignee or novatee and the Project Company and Construction Contractor to formalise this arrangement.

5. **NOTICES**

5.1 **How to give a notice**

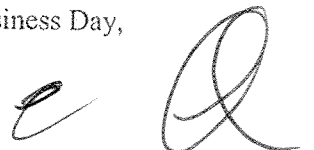
A notice, consent or other communication under this deed is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

5.2 **When a notice is given**

A notice, consent or other communication that complies with this clause 5 is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day,

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or on a day that is not a Business Day, on the next Business Day;
and

(b) if it is sent by mail within Australia, 3 Business Days after posting.

5.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

Consultant

Address: 3 Glenarm Road, Glen Iris, Victoria 3146
Fax number: (03) 9885 2455
Attention: Ernest Girardi

Project Company

Address: Level 23, The Chifley Tower
2 Chifley Square,
Sydney NSW 2000
Fax number: (02) 9223 2907
Attention: Company Secretary

Construction Contractor

Address: Level 4, 5 Rosebery Avenue
Rosebery NSW 2018
Fax number: (02) 9770 7601
Attention: David Beslich and John Hunt

NSW Health

Address: 73 Miller Street
North Sydney, NSW 2000
Fax number: (02) 9391 9831
Attention: Director, Asset Services

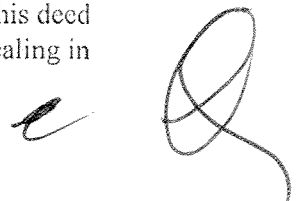
with a copy to:

Address: 73 Miller Street
North Sydney, NSW, 2000
Fax number: (02) 9391 9831
Attention: NSW Health Representative (Orange and Associated Health
Services PPP Project)

6. GENERAL

6.1 Amendment and assignment

- (a) This deed can only be amended, supplemented, replaced or novated by another document signed by the parties.
- (b) The Consultant must not assign, transfer or otherwise deal with this deed unless NSW Health has approved such assignment, transfer or dealing in



writing.

6.2 Liability of NSW Health and the State

The Consultant acknowledges to NSW Health that nothing contained in this deed is intended to, nor will it render NSW Health or the State in any way liable to the Consultant in relation to any matters arising out of, or in connection with, this deed or otherwise.

6.3 Cumulative rights and remedies

- (a) The rights and remedies of the parties under this deed are cumulative and not exclusive to any rights and remedies provided by Law.
- (b) The warranties under this deed are in addition to and do not derogate from any warranty implied by Law.

6.4 Indemnities

- (a) No indemnity in this deed limits the effect or operation of any other indemnity in this deed.
- (b) Unless expressly provided otherwise, each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (c) Each indemnity in this deed survives the expiry or termination of this deed.
- (d) A party may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.

6.5 Governing law

- (a) This deed is governed by the Law in force in State of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in State of New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

6.6 Expenses

The Construction Contractor must indemnify NSW Health against, and must pay NSW Health on demand the amount of all reasonable expenses incurred in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this deed;
- (b) the transactions that this deed contemplates; and

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- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

6.7 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other parties may reasonably require to give full effect to this deed.

6.8 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

6.9 Operation of this deed

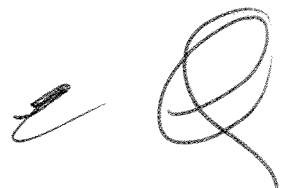
- (a) This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

6.10 Counterparts

This deed may be executed in counterparts.

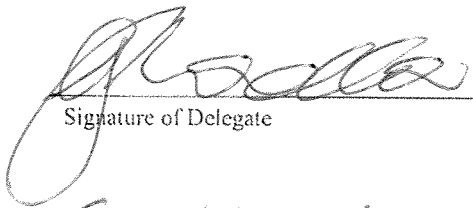
6.11 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

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EXECUTED as a deed

SIGNED, SEALED and DELIVERED by
DAVID GATES as delegate of the HEALTH
ADMINISTRATION CORPORATION
pursuant to section 21 of the Health Administration Act
1982 (NSW) under delegation
dated 20/11/07 in the presence of:



Signature of Delegate



Name of Delegate



Signature of witness

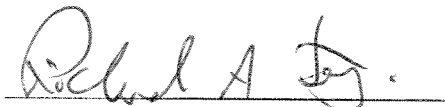


Name

SIGNED, SEALED and DELIVERED for
PINNACLE HEALTHCARE (OAHs) PTY LIMITED
ACN 120 747 588 as trustee of the PINNACLE HEALTHCARE (OAHs) TRUST under
power
of attorney in the presence of:



Signature of witness



Signature of attorney



Name



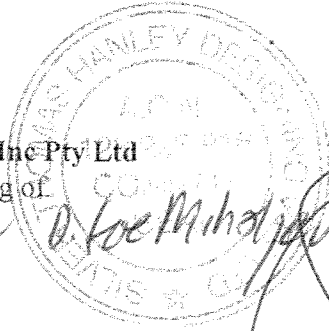
Name



Date of power of attorney



THE COMMON SEAL of
Silver Thomas Hanley Design Inc Pty Ltd
ABN 53 128 293 916 , the fixing of
which was witnessed by:



E. Girardi

Signature of director

Chislain M. Bourdon

Signature of director/secretary

ERNEST GIRARDI

Name

Chislain M. Bourdon

Name

SIGNED, SEALED and DELIVERED for
HANSEN YUNCKEN PTY LIMITED ABN 38 063 384 056 under power of attorney in
the presence of:

Thien Foo Ko

Signature of witness

John G. Nixon

Signature of Attorney

Thien Foo Ko

Name

John G. Nixon

Name

3 April 2007

Date of power of attorney

As attorney for the affixing of
the Hansen Yuncken
NSW Company Seal
Book 4514 No. 587

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