

# Schedule 12 – Termination Payments

---

## 1. Definitions used in this Schedule

For the purposes of this Schedule 12, the following definitions will apply:

**Additional Beds** means any additional Beds that the Operator provides within the Facility or on the Site in accordance with this document, that exceed 423 Beds (including any additional Beds built after Operational Readiness as a result of Change or Expansion funded by the Operator).

**Base Case Project Return** means the internal rate of return on the Operator's cash flows before tax and financing as stated in the Whole Project Base Case.

**Capital Sum** means the capital sum offered by each Compliant Tenderer under the State Tender Process or the capital sum which the New Operator is to pay to the State, in each case in consideration for the State entering into the New Contract, as the context permits or requires.

**Compensation Date** means either:

- (a) if section 3.2 applies, the earlier of:
  - (i) the date that the New Contract is entered into; and
  - (ii) if section 3.2(d) applies, the date on which the Termination Payment payable to the Operator has been agreed or determined under section 3.5; or
- (b) if section 3.3 applies, the date on which the Estimated Fair Value has been agreed or determined.

**Compliant Tender** means a tender which meets all of the Qualification Criteria.

**Compliant Tenderer** means a tenderer who submits a Compliant Tender.

**Equity** means all amounts in the nature of equity capital in, or the subordinated debt which is, in substance, equivalent to ordinary equity of or equity shareholder loans of, the Operator as set out in the:

- (a) Whole Project Base Case, where the Termination Date occurs in relation to (as applicable) the Project Works or both the State Asset and the Private Patient Portion in the Pre State Capital Payment Phase;
- (b) Base Case – State Asset where the Termination Date occurs in relation to the State Asset during the Operating Term; and
- (c) Base Case – Private Business where the Termination Date occurs in relation to the Private Patient Portion during the period from the commencement of the Operating Term up to and including the Private Patient Portion Expiration Date.

**Estimated Fair Value** or **EFV** means the amount determined in accordance with section 3.4.

**Fair Value** means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

**Force Majeure Subcontractor Breakage Costs** means the amount reasonably and properly payable by the Operator to the Material Subcontractors under the Material Subcontracts on termination of this document in respect of offsite materials, plant and equipment procured under the Material Subcontracts and which cannot be readily substituted for materials, plant and equipment under other contracts to which the relevant Material Subcontractor is a party provided such amounts are:

- (a) incurred under arrangements and / or agreements on arms length commercial terms entered into:
  - (i) prior to the relevant Relief Event or Material Risk (as applicable) occurring; or
  - (ii) if after that date, then with the consent of the Client Representative prior to the Termination Date; and
- (b) both the Operator and relevant Material Subcontractor have used reasonable efforts to mitigate such amounts.

**Independent Expert** means (as applicable):

- (a) the expert appointed by the agreement of the parties under this Schedule 12; or
- (b) nominated by the President of the Australian Institute of Chartered Accountants and appointed by the parties.

**Liquid Market** means that there are parties (being at least two parties, each of whom is capable of being a suitable substitute contractor) in the market for public private partnership contracts or outsourced health care services contracts or, in each case, similar contracts for the provision of services (the same as or similar to those set out in this document) for a price that is likely to be achieved through a tender to be a reliable indicator of Fair Value.

**New Contract** means a contract on the same terms and conditions as this document as at the Compensation Date, but with the following amendments:

- (a) each Date for Completion shall be extended by a period to allow a New Operator to complete the Project Works and achieve Final Completion (provided that the Termination Payment determined under this Schedule 12 will not take the effect of this extension of time on the Monthly Service Payment into account);
- (b) any accrued Default Notices, Persistent Breach Notices and Final Persistent Breach Notices shall be cancelled;
- (c) the term of such contract shall be equal to the period from the Compensation Date until the Private Patient Portion Expiration Date;
- (d) the New Operator will pay the relevant Capital Sum to the State on entering into the New Contract;
- (e) any other amendments which do not materially reduce the Capital Sum which a tenderer would be prepared to pay in consideration for the State entering into the New Contract; and
- (f) the New Operator only being required to pay a nominal fee to the State under the Operating Term Private Patient Portion Lease and Post-Operating Term Private Patient Portion Lease.

**New Operator** means the person who has entered or who will enter into the New Contract with the State.

**Post State Capital Payment Phase** means the period commencing from the time the State Capital Payment is received by the Operator and ending at the end of the Operating Term.

**Pre State Capital Payment Phase** means the period commencing on Financial Close and ending at the time the State Capital Payment is received by the Operator.

**Qualification Criteria** means the criteria which the State requires tenderers to meet as part of the State Tender Process, which shall be:

- (a) criteria having substantially the same effect as the criteria applied by the State when selecting those to be invited to submit detailed proposals and any other final offers under the procurement process used in the selection of the Operator to deliver the Project;
- (b) the financial ability of the tenderers to pay the Capital Sum;
- (c) the technical ability of the tenderers to deliver the Public Patient Portion Works, the Private Patient Portion Works, Services and services provided to Compensable Patients;
- (d) the independence of the tenderer from the Operator, the Debt Financiers and the State; and
- (e) any other relevant tender criteria selected by the State acting reasonably.

**Relevant Private Opportunity Payment** for each period identified in the table in section 4.5, means the amount applicable to that period set out in that table.

**Reserve Account** has the meaning given to it in Schedule 22.

**Senior Debt** means the lower of:

- (a) amounts outstanding under the Financing Agreements by the Operator or the Borrower to the Debt Financiers (other than amounts which are Equity); and

- (b) amounts that would have been outstanding under the Financing Agreements by the Operator or the Borrower to the Debt Financiers (other than amounts which are Equity) had:
  - (i) [not used]; and
  - (ii) the Operator and the Borrower complied with all of their scheduled payment obligations under the Financing Agreements.

**Senior Debt Interest Rate** means the total interest rate payable on Senior Debt as provided in the Base Case.

**State Tender Process** means the process by which the State request tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a New Operator, in accordance with section 3.2.

**Subcontractor Breakage Costs** means the amount reasonably and properly payable by the Operator to the Material Subcontractors under the relevant Material Subcontracts on termination of this document or exclusion or removal of the State Asset or Private Patient Portion from the Project Documents (as applicable) provided that such amounts are incurred under arrangements and / or agreements entered into on arms length commercial terms prior to the Termination Date or the date on which the State Asset or Private Patient Portion is excluded or removed from the Project Documents (as applicable) and both the Operator and relevant Material Subcontractor have used reasonable efforts to mitigate such amounts.

**Tender Costs** means the internal and external costs reasonably incurred or reasonably expected to be incurred by the State in carrying out the State Tender Process and / or in connection with any calculation of the Estimated Fair Value (including the cost of the Independent Expert appointed pursuant to section 3.3).

**Tender Documentation** means the documentation issued by the State to request tenders from any parties interested in entering into a New Contract in accordance with section 3.2.

**Termination Payment** means the relevant amount calculated in accordance with this Schedule 12.

**Termination Senior Debt** means:

- (a) all amounts of Senior Debt at the Termination Date; plus
- (b) all amounts, including costs of early termination of hedging arrangements and other breakage costs, payable by the Operator or the Borrower to the Debt Financiers as a result of prepayment of amounts outstanding in accordance with the Financing Agreements (other than Equity), subject to the Operator, the Borrower and the Debt Financiers mitigating all such costs to the extent reasonably possible;

less:

- (c) all credit balances on any bank accounts held by the Debt Financiers or any of them for or on behalf of the Operator or the Borrower on the Termination Date; and
- (d) all amounts, including benefits of early termination of hedging arrangements and other breakage benefits, payable by the Debt Financiers to the Operator or the Borrower as a result of prepayments of amounts outstanding in accordance with the Financing Agreements.

**Voluntary Termination Equity Value** means the amount which when taken together with dividends (or other distributions) paid, interest paid and principal repaid and any other monies

paid by the Operator on the Equity on or before the Termination Date, taking account of the actual timing of all such payments, gives an internal rate of return on Equity equal to that in:

- (a) the Whole Project Base Case where the Termination Date occurs in relation to (as applicable) the Project Works or both the State Asset and the Private Patient Portion in the Pre State Capital Payment Phase;
- (b) the Base Case – State Asset where the Termination Date occurs in relation to the State Asset during the Operating Term; and
- (c) the Base Case – Private Business where the Termination Date occurs in relation to the Private Patient Portion during the period from the commencement of the Operating Term up to and including the Private Patient Portion Expiration Date.

**Written Down Value of the Additional Beds** has the meaning given in the Base Case – Private Business and only applies with respect to the Additional Beds, as adjusted to take account of any Change or Expansion funded by the Operator and undertaken in accordance with the Project Deed.

**Written Down Value of the Operator's Shared Portion** has the meaning given in the Whole Project Base Case.

**Written Down Value of the Private Patient Portion (Total Beds)** is the sum of the Written Down Value of the Private Patient Portion (423 Beds) and the Written Down Value of the Additional Beds.

**Written Down Value of the Private Patient Portion (423 Beds)** has the meaning given in the Whole Project Base Case.

## 2. Payment of Termination Payment

- (a) Without limiting section 7(c)(ii), if this document is terminated under clause 78 (including where only the State Asset or Private Patient Portion is removed or excluded in accordance with clause 81), the State must pay to the Operator the Termination Payment on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 78.2, 30 days after the Compensation Date if this is later).
- (b) If the Operator is entitled to a Termination Payment in accordance with this Schedule 12:
  - (i) subject to section 2(b)(ii), the State shall pay by lump sum;
  - (ii) where the State determines to retender for the Project, subject to section 3.2(d), the State is under no obligation to make any payment to the Operator under this section 2(b) until it is in receipt of the lump sum payment from the retender for the Project; and
  - (iii) the State may exercise its rights under clause 80.7.
- (c) From the Termination Date (or 90 days after the Termination Date in the case of a Termination Payment made under section 3) until the date on which the Termination Payment is made, interest shall accrue (calculated daily and compounded quarterly) on any unpaid element of the Termination Payment at the Senior Debt Interest Rate.
- (d) Notwithstanding any term of any Project Document, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by the Operator, then:

- (i) receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment; and
  - (ii) the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that the Operator is reasonably likely to recover (on the basis that the Operator is assumed to have complied with its insurance obligations under clause 73 and the relevant Project Insurances, regardless of whether or not this is the case) (**Provisional Proceeds**) taking into account all information that is then available to the parties.
- (e) If following the calculation of the Termination Payment, the insurance proceeds that the Operator actually recovers (**Actual Proceeds**):
- (i) are less than the Provisional Proceeds, the State shall, immediately on notification of the Actual Proceeds by the Operator, pay to the Operator an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). The State will not be required to pay any interest on this Additional Amount;
  - (ii) are more than the Provisional Proceeds, the Operator shall immediately on receipt of the Actual Proceeds, hold the amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**Operator Additional Amount**) on trust for the State and the Operator must pay the excess amount to the State promptly on receipt for the State's retention. The Operator will not be required to pay any interest on the Operator Additional Amount;
  - (iii) the State shall not be required to make any payment under this section 2(e) to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by the Operator of its insurance obligations under this document or any Project Insurance; and
  - (iv) references to insurance proceeds in sections 2(d) and 2(e) are to insurance proceeds to which the Operator is entitled to retain and which it has not applied and it is not holding to be applied in respect of its reinstatement obligations or to any of its third party liabilities.
- (f) The parties must use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.
- (g) Any Termination Payment payable to the Operator must be calculated in accordance with this Schedule 12 without any double counting.

### 3. Operator Termination Event

- (a) Sections 3.1 to 3.6 (inclusive) apply only in respect of termination during the Pre State Capital Payment Phase.
- (b) Sections 3.7 to 3.8 (inclusive) apply only in respect of termination during the Post State Capital Payment Phase.
- (c) Section 3.9 applies in respect of termination of the Private Patient Portion in the period between the end of the Operating Term and the end of the Private Patient Portion Term.

### 3.1 Right to re-tender or seek expert determination

- (a) If the State terminates this document due to the occurrence of, or during the subsistence of, an Operator Termination Event pursuant to clause 78.2 (regardless of whether a party has the right to terminate for any other reason), the State may elect to:
  - (i) subject to the conditions in section 3.1(b) being satisfied, re-tender the provision of the Operator's Activities in accordance with section 3.2; or
  - (ii) require an expert determination in accordance with section 3.3.
- (b) The State may only elect to retender the provision of the Operator's Activities in accordance with section 3.1(a)(i) if:
  - (i) the State notifies the Operator on or before the date falling 20 Business Days after the Termination Date that it will retender the provision of the Operator's Activities; and
  - (ii) there is a Liquid Market,in which case the amount of compensation payable by the State shall be determined in accordance with sections 3.2 and 3.5.

### 3.2 Re-tendering process

If the State elects to re-tender the provision of the Operator's Activities:

- (a) the following provisions shall apply in respect of the tendering process:
  - (i) the objective of the State Tender Process shall be to identify a New Operator and the highest Capital Sum offered by a Compliant Tenderer;
  - (ii) the Client Representative shall use its reasonable endeavours to complete the State Tender Process as soon as practicable having regard to the assistance given by the Operator in connection with the State Tender Process;
  - (iii) the Client Representative shall notify the Operator of the Qualification Criteria and the other requirements and terms of the State Tender Process, including the timing of the State Tender Process, and shall act reasonably in setting such requirements and terms;
  - (iv) if the tenderer is required to engage sub-contractors, the Qualification Criteria will include a requirement that the tenderer engage sub-contractors with the requisite technical and financial capabilities to undertake the Project;
  - (v) the State Tender Process will be carried out in accordance with the NSW Government Tendering Guidelines current as at the Termination Date; and
  - (vi) the Operator authorises the disclosure of any information by the State under the State Tender Process which would otherwise be subject to clause 85.1 but only to the extent reasonably required to be disclosed during the State Tender Process;
- (b) as soon as practicable after tenders have been received in response to the State Tender Process, the Client Representative shall determine which of those tenders are Compliant Tenders and:
  - (i) if the State has received two or more Compliant Tenders, the Client Representative shall notify the Operator of the highest Capital Sum offered by a Compliant Tenderer and the Termination Payment will be calculated in accordance with section 3.5; or

- (ii) if the State has received one or no Compliant Tender, the expert determination provisions in sections 3.3 and 3.6 will apply;
- (c) after tenders have been received in response to the State Tender Process:
  - (i) the State is not obliged to enter into any contract with any person in connection with the State Tender Process, and may enter into any such contract in its sole and absolute discretion; and
  - (ii) the State's right to enter into a contract with any person in connection with the State Tender Process will not be limited or otherwise affected by any party referring any Dispute in connection with the State Tender Process or the Termination Payment to dispute resolution under clause 87;
- (d) if the Termination Payment is determined in accordance with section 3.5 and the State elects not to enter into any contract with any person following completion of the State Tender Process, the Termination Payment determined in accordance with section 3.5 will be payable as if the State had entered into such a contract following the State Tender Process on the date of that election; and
- (e) notwithstanding this section 3.2, the expert determination provisions in section 3.3 apply:
  - (i) in the event that the State Tender Process is not completed within 12 months from the date of issue of the Tender Documentation; or
  - (ii) upon the Client Representative notifying the Operator, at any time prior to completion of the State Tender Process, that the State elects to follow the expert determination procedure in section 3.3.

### **3.3 Expert determination**

- (a) This section 3.3 applies if:
  - (i) the State elects to require expert determination pursuant to section 3.1(a)(ii);
  - (ii) sections 3.2(b)(ii) or 3.2(e) so provides; or
  - (iii) if the conditions set out in section 3.1(b) are not satisfied.
- (b) If this section 3.3 applies:
  - (i) as a consequence of the application of sections 3.2(b)(ii) or 3.2(e), then on or before the date which is 10 Business Days after the referral to the independent expert; or
  - (ii) in all other cases, then on or before the date which is 30 Business Days after the Termination Date,

the parties must appoint an independent expert to determine the Estimated Fair Value of this document based on the formula set out in section 3.4.

- (c) If the parties fail to agree on the identity of that independent expert within the relevant period referred to in section 3.3(b), a party must request the President of the Australian Institute of Chartered Accountants to nominate that independent expert. The parties will be deemed to have appointed the person so nominated as the independent expert.
- (d) Clauses 87.5(d) to (h) will apply to the appointment of that Independent Expert and his or her determination of the Estimated Fair Value subject to the following adjustments:
  - (i) in clauses 87.5(d) and (e), ignore the words "to the Dispute";



- (ii) references to the "expert" are to the "Independent Expert" appointed under this Schedule 12;
- (iii) in clause 87.5(e)(i), references to "this clause 87" are to "clauses 87(d) to (h) and sections 3.3, 3.4 and 3.6"; and
- (iv) replace clause 87.5(h) with the following;
 

"Subject to section 3.3(e) of Schedule 12, to the extent permitted by law, the determination of the Estimated Fair Value by that Independent Expert is to be final and binding on the parties."
- (e) Where the Independent Expert's determination contains:
  - (i) a clerical mistake or an error arising from an accidental slip or omission;
  - (ii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (iii) a defect of form,

that Independent Expert may correct the determination by written notice to the parties.

- (f) If this section 3.3 applies, all forecast amounts of revenues and costs must be calculated by the Independent Expert on a nominal basis as at:
  - (i) if this section 3.3 applies as a consequence of the application of section 3.2(b)(ii) or 3.2(e), the date of referral to the Independent Expert; or
  - (ii) in all other cases, the Termination Date,

whereby future amounts are indexed at the indexation rates specified in the Whole Project Base Case.

### 3.4 Estimated Fair Value

The Estimated Fair Value shall be determined by the Independent Expert, based on the following formula:

EFV = the lower of:

- (a) the actual costs (including capitalised interest and fees) properly incurred by the Operator (being no more than the costs forecast to be incurred in the Whole Project Base Case), referable to the Development Activities up to and including the Termination Date; and
- (b) the following amount:
  - (i) total costs forecast to be incurred in respect of all of the Development Activities from Financial Close to the Date of Operational Readiness (as set out in the Whole Project Base Case at Financial Close) on the basis that:
    - (A) such costs include capitalised interest and fees (being no more than the capitalised interest and fees forecast to be incurred in the Whole Project Base Case) up to and including the Termination Date and exclude any return on Equity;
    - (B) costs forecast to be incurred in respect of the Development Activities after the Termination Date until the State's Date for Operational Readiness are discounted back from the dates the Independent Expert has determined they will be incurred back to the Termination Date at the Base Case Project Return; and

- (C) capitalised interest and fees forecast to be incurred (as set out in the Whole Project Base Case) after the Termination Date will be excluded,

less

- (ii) the Independent Expert's determination of the costs to be incurred by the State (including a reasonable assessment of the risk of costs overruns) from the Termination Date to achieve Operational Readiness by the State's Date for Operational Readiness, discounted back from the dates the Independent Expert has determined they will be incurred back to the Termination Date at the Base Case Project Return.

In this section 3.4, the **State's Date for Operational Readiness** means:

- (a) if the Independent Expert determines that, with a reasonable provision for acceleration, Operational Readiness can be achieved by the Date for Operational Readiness, the Date for Operational Readiness; or
- (b) if the Independent Expert determines that, even with a reasonable provision for acceleration, Operational Readiness cannot be achieved by the Date for Operational Readiness then the Independent Expert's determination of the earliest possible date by which Operational Readiness can be achieved (including a reasonable provision for acceleration and a reasonable assessment of the risk of time overruns).

### 3.5 Pre State Capital Payment Phase - Termination Payment following State Tender Process

- (a) This section 3.5 applies if the State has the right to re-tender in accordance with section 3.1 and:
  - (i) the State has carried out the State Tender Process in accordance with section 3.2; and
  - (ii) the State has not elected, or is not required, to carry out the expert determination process in accordance with section 3.3.
- (b) Subject to section 3.5(c), if this section 3.5 applies, the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

$$TP = A - B - C - D + E - F - G$$

Where:

A = the highest Capital Sum offered by a Compliant Tenderer;

B = the Tender Costs;

C = any amount owing by the Operator to the State under the Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document, including for the avoidance of doubt (but without double counting) the costs of carrying out any works to ensure that the Project Works, the Facility and the Site are in a condition which meets the requirements of this document and (other than amounts which would be Indirect Loss but for paragraph (s) of that definition) all other reasonable costs incurred by the State in connection with the relevant Operator Termination Event and as a direct result of terminating this document;

- D = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance;
- E = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date and remained unpaid at the Termination Date;
- F = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document; and
- G = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower and any other amounts owing to the Operator (other than by the State) as at the Termination Date.
- (c) Where the TP calculated pursuant to section 3.5(b) is greater than the amount of Termination Senior Debt, the TP calculated pursuant to section 3.5(b) shall be further reduced by the amount of the \_\_\_\_\_ but only to the extent that such reduction does not reduce that TP below the amount of the Termination Senior Debt.
- (d) In calculating and aggregating each of Items A to G and the amount referred to in section 3.5(c), there must be no double counting.

### **3.6 Pre State Capital Payment Phase - Termination Payment following calculation of Estimated Fair Value**

- (a) This section 3.6 applies if the State elected, or is required, to carry out the expert determination process in accordance with section 3.3.
- (b) Subject to section (c), if this section 3.6 applies, the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

$$TP = A - B - C - D + E - F - G$$

Where:

A = the Estimated Fair Value;

B = the Tender Costs;

C = any amount owing by the Operator to the State under the Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document, including for the avoidance of doubt (but without double counting) the costs of carrying out any works to ensure that the Project Works, the Facility and the Site are in a condition which meets the requirements of this document and (other than amounts which would be Indirect Loss but for paragraph (s) of that definition) all other reasonable costs incurred by the State in connection with the relevant Operator Termination Event and as a direct result of terminating this document;

D = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or

would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance;

E = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date and remained unpaid at the Termination Date;

F = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document; and

G = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower and any other amounts owing to the Operator (other than by the State) as at the Termination Date.

- (c) Where the TP calculated pursuant to section 3.6(b) is greater than the amount of Termination Senior Debt, the TP is calculated pursuant section 3.6(b) shall be further reduced by the amount of the but only to the extent that such reduction does not reduce that TP below the amount of the Termination Senior Debt.
- (d) In calculating and aggregating each of Items A to G and the amount referred to in section 3.6(c), there must be no double counting.

### 3.7 Post State Capital Payment Phase – Operator Default Termination (whole of Project termination)

- (a) If this document is terminated pursuant to clauses 78.2 and 81.1(a) during the Post State Capital Payment Phase, Termination Payment or TP means:

$$TP = A + B - C - D + E - F - G - H$$

Where:

A = of the Written Down Value of the Private Patient Portion (423 Beds) and of the Written Down Value of the Operator's Shared Portion plus:

- (i) only where the act, fact matter or event upon which the relevant termination of this document relates solely to the State Asset, 100% of the Written Down Value of the Additional Beds; or
- (ii) in all other cases, of the Written Down Value of the Additional Beds;

B = 80% of the aggregate amount payable for FF&E and Consumables which the State acquires in accordance with clauses 92.2(g) and 92.2(h), calculated in accordance with those clauses;

C = any amount owing by the Operator to the State under the Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document, including, for the avoidance of doubt, the costs of carrying out any works to ensure that the State Asset and Private Patient Portion, the Facility and the Site are in a condition which meets the requirements of this document and (other than amounts which would be Indirect Loss but for paragraph (s) of that definition) all other reasonable costs incurred by the State in connection with the relevant Operator Termination Event and as a direct result of terminating this document;

- D = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance;
- E = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date and remained unpaid at the Termination Date;
- F = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document; and
- G = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower (including the amount standing to the credit of the Reserve Accounts) and any other amounts owing to the Operator (other than by the State) as at the Termination Date; and
- H = the

(b) In calculating and aggregating Items A to H, there must be no double counting.

### **3.8 Post State Capital Payment Phase – Operator Default Termination (State Asset only)**

- (a) If the State elects to exercise its rights under clauses 78.2 and 81.1(b) to remove or exclude only the State Asset during the Post State Capital Payment Phase, Termination Payment or TP means:

$$TP = A - B - C - D - E + F - G$$

Where:

- A = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date and remained unpaid at the Termination Date;
- B = any amounts owing by the Operator to the State under the Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document including, for the avoidance of doubt, the costs of carrying out any works to ensure that the State Asset and the Site is in accordance with the requirements of this document and (other than amounts which would be Indirect Loss but for paragraph (s) of that definition) all other reasonable costs incurred by the State in connection with the relevant Operator Termination Event and as a direct result of terminating this document;
- C = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance, in each case excluding any insurance proceeds which are referable to repairing or rebuilding any part of the Private Patient Portion and are being held or will be held to be applied by the Operator for that purpose;

- D = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document;
- E = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower (including the amount standing to the credit of the Lifecycle Payment Account) and any other amounts owing to the Operator (other than by the State) in relation to the State Asset, in each case as at the Termination Date; and
- F = of the Written Down Value of the Operator's Shared Portion.

(b) In calculating and aggregating Items A to G, there must be no double counting.

### 3.9 Post Operating Term - Operator Default Termination (Private Patient Portion only)

(a) If this document is terminated pursuant to clause 78.1 at any time following the end of the Operating Term, Termination Payment or TP means:

$$TP = A - B - C + D - E - F$$

Where:

- A = of the Written Down Value of the Private Patient Portion (Total Beds);
- B = any amounts owing by the Operator to the State under the Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document including, for the avoidance of doubt, the costs of carrying out any works to ensure that the Private Patient Portion is in accordance with the requirements of this document and (other than amounts which would be Indirect Loss but for paragraph (s) of that definition) all other reasonable costs incurred by the State in connection with the relevant Operator Termination Event and as a direct result of terminating this document;
- C = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance;
- D = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- E = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document; and
- F = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower (including the amount standing to the credit of the Reserve Accounts) and any other amounts owing to the Operator (other than by the State) in relation to the Private Patient Portion, in each case as at the Termination Date.

(b) In calculating and aggregating Items A to F, there must be no double counting.

## 4. Voluntary Termination by the State

### 4.1 Pre State Capital Payment Phase – Project Works

- (a) If this document is terminated pursuant to clause 78.5 in the Pre State Capital Payment Phase, Termination Payment or TP means:

$$TP = A + B + C - D + E - F + G - H - I$$

Where:

A = the amount equal to the Termination Senior Debt;

B = the amount of the Voluntary Termination Equity Value;

C = an amount equal to the Subcontractor Breakage Costs;

D = any amounts owing by the Operator to the State under the Project Documents as at the Termination Date, including any amount that the State is entitled to set off or deduct under any Project Document, including for the avoidance of doubt the costs of carrying out any works to ensure that the Project Works and the Facility are in accordance with the requirements of this document;

E = payments for employees of the Operator at the Site who are no longer required by the Operator or the State that:

- (i) the Operator is legally liable to pay under the *Fair Work Act 2009* (Cth);
- (ii) do not exceed the Operator's legal liability to pay under the *Fair Work Act 2009* (Cth);
- (iii) have been or will be reasonably and properly incurred by the Operator as a direct result of the termination of this document;
- (iv) would not have been otherwise incurred if the termination of this document had not occurred;
- (v) have been minimised by the Operator using its best endeavours (including by seeking suitable alternative employment for the employees);
- (vi) have not as yet been otherwise paid by the State;
- (vii) without limitation to sub-paragraph (i), do not include any amount for notice of termination of employment; and
- (viii) do not include any accrued entitlements,

provided that any redundancy amounts payable under this item 'E' shall be reduced by any amount expended or incurred by the State as a direct result of the failure of the Operator to comply with clause 92.5;

F = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance;

G = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;

H = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document; and

I = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower and any other amounts owing to the Operator (other than by the State) in relation to the Project Works, in each case as at the Termination Date.

(b) In calculating and aggregating Items A to I, there must be no double counting.

#### 4.2 Post State Capital Payment Phase – State Asset

(a) If the State elects to exercise its rights under clause 78.5 to remove or exclude only the State Asset during the Post State Capital Payment Phase, Termination Payment or TP means:

$$TP = A + B + C - D - E + F - G - H + I$$

Where:

A = the amount of the Voluntary Termination Equity Value;

B = an amount equal to the Subcontractor Breakage Costs;

C = payments for employees of the Operator who are employed only at the State Asset and who are no longer required by the Operator or the State that:

- (i) the Operator is legally liable to pay under the *Fair Work Act 2009* (Cth);
- (ii) do not exceed the Operator's legal liability to pay under the *Fair Work Act 2009* (Cth);
- (iii) have been or will be reasonably and properly incurred by the Operator as a direct result of the removal or exclusion of the State Asset in accordance with clause 81.1;
- (iv) would not have been otherwise incurred if the removal or exclusion of the State Asset in accordance with clause 81.1 had not occurred;
- (v) have been minimised by the Operator using its best endeavours (including by seeking suitable alternative employment for the employees);
- (vi) have not as yet been otherwise paid by the State;
- (vii) without limitation to sub-paragraph (i), do not include any amount for notice of termination of employment; and
- (viii) do not include any accrued entitlements,

provided that any redundancy amounts payable under this item 'C' shall be reduced by any amount expended or incurred by the State as a direct result of the failure of the Operator to comply with clause 92.5;

D = any amounts owing by the Operator to the State under the Project Documents as at the date on which the State Asset is removed or excluded under clause 78.5 including all amounts in respect of which the State is entitled to exercise a right of set-off or deduct under any Project Document;

E = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds in respect of the State Asset to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive



and retain under each relevant Project Insurance, in each case excluding any insurance proceeds which are referable to repairing or rebuilding any part of the Private Patient Portion and are being held or will be held to be applied by the Operator for that purpose.

F = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the date on which the State Asset is removed or excluded under clause 78.5, but only to the extent that such amounts relate to the State Asset and should have been paid prior to that date but remained unpaid at that date;

G = any gains which have accrued, or will accrue, to the Operator as a result of the removal or exclusion of the State Asset under clause 78.5;

H = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower (including the amounts standing to the credit of the Lifecycle Payment Account) and any other amounts owing to the Operator (other than by the State) in relation to the State Asset in each case as at the date on which the State Asset is removed or excluded under clause 78.5; and

I = the Written Down Value of the Operator's Shared Portion.

(b) In calculating and aggregating Items A to I, there must be no double counting.

#### 4.3 Post State Capital Payment Phase and post Operating Term – Private Patient Portion

(a) If the State elects to exercise its rights under clause 78.5 to remove or exclude only the Private Patient Portion during the Post State Capital Payment Phase or at any time from the end of the Operating Term to the end of the Private Patient Portion Term, Termination Payment or TP means:

$$TP = A + B + C + D - E - F + G - H - I + J$$

Where:

A = the Written Down Value of the Private Patient Portion (Total Beds) and (during the Post State Capital Payment Phase only) the Written Down Value of the Operator's Shared Portion;

B = subject to section 7, the lesser of:

- (i) the amount of the Voluntary Termination Equity Value; and
- (ii)

C = an amount equal to the Subcontractor Breakage Costs;

D = payments for employees of the Operator who are employed only at the Private Patient Portion and who are no longer required by the Operator or the State that:

- (i) the Operator is legally liable to pay under the *Fair Work Act 2009* (Cth);
- (ii) do not exceed the Operator's legal liability to pay under the *Fair Work Act 2009* (Cth);
- (iii) have been or will be reasonably and properly incurred by the Operator as a direct result of the removal or exclusion of the Private Patient Portion under clause 81.1;

- (iv) would not have been otherwise incurred if the removal or exclusion of the Private Patient Portion in accordance with clause 81.1 had not occurred;
- (v) have been minimised by the Operator using its best endeavours (including by seeking suitable alternative employment for the employees);
- (vi) have not as yet been otherwise paid by the State;
- (vii) without limitation to sub-paragraph (i), do not include any amount for notice of termination of employment; and
- (viii) do not include any accrued entitlements,

provided that any redundancy amounts payable under this item 'D' shall be reduced by any amount expended or incurred by the State as a direct result of the failure of the Operator to comply with clause 92.5 (insofar as it applies in respect of the Private Patient Portion pursuant to clause 92, Schedule 22, Part D);

- E = any amounts owing by the Operator to the State under the Project Documents as at the date on which the Private Patient Portion is removed or excluded under clause 78.5 including any amount that the State is entitled to set-off or deduct under any Project Document;
- F = the net amount (including net of any deductible under each relevant Project Insurance) of any insurance proceeds in respect of the Private Patient Portion to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance, in each case excluding any insurance proceeds which are referable to repairing or rebuilding any part of the State Asset and are being held or will be held to be applied by the Operator for that purpose;
- G = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the date on which the Private Patient Portion is removed or excluded under clause 78.5, and only to the extent that such amounts relate to the Private Patient Portion and should have been paid prior to that date but remained unpaid at that date;
- H = any gains which have accrued, or will accrue, to the Operator as a result of the removal or exclusion of the Private Patient Portion under clause 78.5;
- I = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower (including the amounts standing to the credit of the Reserve Accounts) and any other amounts owing to the Operator (other than by the State) in relation to the Private Patient Portion in each case as at the date on which the Private Patient Portion is removed or excluded under clause 78.5; and
- J = the Relevant Private Opportunity Payment.

(b) In calculating and aggregating Items A to J, there must be no double counting.

#### **4.4 Post State Capital Payment Phase – State Asset and Private Patient Portion**

(a) If this document is terminated pursuant to clause 78.5 in the Post State Capital Payment Phase, Termination Payment or TP means:

$$TP = A + B$$

Where:

A = the amount equal to 'TP' as calculated in accordance with section 4.2.

B = the amount equal to 'TP' as calculated in accordance with section 4.3.

(b) In calculating and aggregating Items A and B, there must be no double counting.

#### 4.5 Relevant Private Opportunity Payment

For the purposes of this Schedule 12, the 'Relevant Private Opportunity Payment' is

### 5. Force Majeure and Uninsurable Risks

This section 5 applies if:

- (a) this document is terminated pursuant to clause 78.6 (*Termination for Force Majeure Event*) or 75.3 (*Uninsurable Material Risk*); and
- (b) a Operator Termination Event has not occurred and is not subsisting as at the Termination Date.

#### 5.1 Pre State Capital Payment Phase

- (a) If this section 5 applies, in respect of termination during the Pre State Capital Payment Phase, the Termination Payment shall be calculated (subject to section 5.3) as follows:

$$TP = A + B + C - D - E + F - G - H$$

Where:

A = an amount equal to the Termination Senior Debt;

B = of the amount of the Voluntary Termination Equity Value;

C = an amount equal to the Force Majeure Subcontractor Breakage Costs.

D = any amounts owing by the Operator to the State under the Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document;

E = any net amount (including net of any amount deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance.

F = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;

G = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document; and

H = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower and any other amounts owing to the Operator (other than by the State) as at the Termination Date.

- (b) In calculating and aggregating Items A to H, there must be no double counting.

## 5.2 Post State Capital Payment Phase and post Operating Term

- (a) If this section 5 applies in respect of termination during the Post State Capital Payment Phase and from the end of the Operating Term to the end of the Private Patient Portion Term, the Termination Payment shall be calculated (subject to section 5.3) as follows:

$$TP = A + B + C - D - E + F - G - H + I$$

Where:

- A = of the Written Down Value of the Private Patient Portion (423 Beds) and (during the Post State Capital Payment Phase only) 80% of the Written Down Value of the Operator's Shared Portion;
- B = of the amount of the Voluntary Termination Equity Value;
- C = an amount equal to the Force Majeure Subcontractor Breakage Costs;
- D = any amount owing by the Operator to the State under the State Project Documents as at the Termination Date including any amount that the State is entitled to set-off or deduct under any Project Document;
- E = any net amount (including net of any amount deductible under each relevant Project Insurance) of any insurance proceeds to which the Operator is entitled to retain or would have been entitled to retain (in each case) under any Project Insurance had the Operator complied with the requirements of clause 73 and the relevant Project Insurance or which it will be entitled to receive and retain under each relevant Project Insurance;
- F = any amounts due and payable by the State to the Operator in accordance with the terms of the State Project Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- G = any gains which have accrued, or will accrue, to the Operator as a result of the termination of this document and any other Project Document;
- H = the total of all cash on deposit or otherwise held to the benefit of the Operator or the Borrower (including the amount standing to the credit of the Reserve Accounts) and any other amounts owing to the Operator (other than by the State) in each case as at the Termination Date; and
- I = the Relevant Private Opportunity Payment.

- (b) In calculating and aggregating Items A to I, there must be no double counting.

## 5.3 Termination for Force Majeure and Uninsurable Risk where Operator Terminator Event is Subsisting

If an Operator Termination Event has occurred and is subsisting as at the Termination Date, the Termination Payment calculated in accordance with sections 5.1(a) and 5.2(a) (as applicable) must, upon written notice by either party to the other, be adjusted to be equal the lower of:

- (a) the Termination Payment calculated in accordance with sections 5.1(a) and 5.2(a) (as applicable); and
- (b) the Termination Payment which would be payable if the Termination Amount were calculated in accordance with section 3.

## 6. Negative Termination Payment

- (a) If any Termination Payment calculated under this Schedule 12 is a negative amount, the Operator must pay that amount to the State.
- (b) If any Termination Payment calculated in accordance with this Schedule 12 is zero or a negative number, the State shall have no obligation to make any payment to the Operator and the State shall be released from all liability to the Operator for breaches and/or termination of this document and any other Project Documents.

