

# Schedule 8 – Step-In Procedure (clause 60)

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1. If clause 60.3 of this document applies and the Client Representative wishes to exercise the State's Step-In Rights, the Client Representative must notify the Operator in writing of the following:
  - (a) the action it wishes to take;
  - (b) the reason for such action;
  - (c) the date it wishes to commence such action, if such action has not already been taken;
  - (d) the time period which it believes may be necessary for such action (which must be only so long as is reasonably necessary to overcome the consequences of the Step-In Event); and
  - (e) to the extent practicable, the effect on the Operator and its obligation to provide the Services, undertake the Project Works, operate the Facility or otherwise undertake the Operator's Activities during the period such action is being taken.
  
2. The Client Representative and/or its representatives may take such action as notified in section 1 and any consequential additional action as it reasonably believes is necessary (together, the **Required Action**) and the Operator must:
  - (a) grant such access rights to the Site and the Facility as are necessary;
  - (b) suspend the Project Works, the Services, the operation of the Facility or otherwise the Operator's Activities (in whole or in part) where directed to do so by the State in accordance with clause 60.1, clause 60.3(a) or clause 60.3(b);
  - (c) assist the State as reasonably requested by the State, including:
    - (i) permitting the State to take possession and control of any documents, information, and materials in the possession or control of the Operator or which are kept at the Site or at the Facility, that the State reasonably considers necessary for the proper exercise of the State's Step-In Rights;
    - (ii) to the extent required by the State, enforcing or making available to the State or its nominees all rights and benefits of the Operator under the Project Documents or any Subcontract. The State will use reasonable endeavours to comply with the obligations of the Operator under each such contract but is not liable to the Operator for any failure to comply to the extent set out in section 7;
    - (iii) providing all reasonable assistance to the State or its nominees to take possession and control of the Site, the provision of Services, the Facility, the Project Works or otherwise of the Operator's Activities, any equipment and supplies, and otherwise in the exercise of the State's Step-In Rights; and
    - (iv) to the extent required by the State, providing the State access to and use of the IM&T Systems which are used directly or indirectly in relation to the provision of the Services until such time as the State has deployed its own replacement IM&T;
  - (d) undertake such actions and provide such Services as required in the circumstances of a Step-In Event and taking into account any suspension under section 2(b), and in any case in accordance with this document;
  - (e) not do anything (whether by act or omission) which prejudices or frustrates the State's exercise of Step-In Rights; and

- (f) rectify any failure to comply with its obligations under this section 2 within:
  - (i) 3 days in the case of an Emergency Step-In Event; or
  - (ii) a reasonable period of no more than 10 Business Days in respect of any other Step-In Event,after receipt of a written notice from the Client Representative identifying such non-compliance.
- 3. If the Required Action is not taken as a result of a breach of the obligations of the Operator under this document, then for so long as, and to the extent that, the Required Action is taken, the Operator will be entitled to relief and compensation in accordance with clause 61 of this document.
- 4. If the Required Action is taken as a result of a breach of the obligations of the Operator under this document (which may include a failure by the Operator to meet one or more Clinical KPIs), then for so long as, and to the extent that, the Required Action is taken, and this prevents the Operator from providing any part of the Services, the Project Works, operating the Facility or otherwise undertaking the Operator's Activities:
  - (a) the Operator will be relieved of its obligations to provide such part of the Services, the Project Works, operating the Facility or otherwise undertaking the Operator's Activities (as applicable); and
  - (b) in respect of the period in which the Client Representative is taking the Required Action, Failure Abatements will be applied in respect of any Monthly Service Payment to the extent that the Services are not being provided in accordance with and to the standards specified in the Services Specification, the Services Plans, the KPIs and the Quality Standards, and the Operator must pay to the State an amount equal to all the State's costs and expenses incurred as a result of taking the Required Action, and if the Monthly Service Payment is a negative amount, such amount will be a debt due and payable to the State by the Operator.
- 5. The Client Representative shall give the Operator reasonable notice of its intent to complete or cease the Required Action and shall complete or cease the Required Action in accordance with such notice and the Operator shall recommence provision of the Services or the Project Works, operating the Facility or otherwise undertaking the Operator's Activities (as applicable), where such provision has been prevented by the exercise of the Step-In Rights immediately upon the completion or cessation of the Required Action.
- 6. The State shall use its reasonable endeavours to complete the Required Action promptly upon cessation of the relevant Step-In Event which gave rise to the exercise of the Step-In Rights.
- 7. The Operator acknowledges and agrees that:
  - (a) the State and its officers, agents, contractors, advisers and employees have no liability for any Loss or Claim which the Operator suffers or incurs as a result of the exercise of Step-In Rights or the taking of any Required Action;
  - (b) unless expressly provided to the contrary in this document, the Operator will not be entitled to any relief from obligations, nor any compensation in respect of the exercise of Step-In Rights or the taking of any Required Action; and
  - (c) the Operator releases and indemnifies the State and its officers, agents and employees in respect of any Loss or Claim which the Operator suffers or incurs as a result of the exercise of such Step-In Rights or the taking of Required Action,

except to the extent that:

- (d) such Claim or Loss is caused by any fraudulent act or omission of the State, where the State has acted in bad faith or where it arises from the gross negligence of the State; or
- (e) the exercise of Step-In Rights, taking of Required Action or the consequences of either constitutes a Compensation Event or a Relief Event, in which case clauses 61 or 62 of this document applies.

8. The Operator irrevocably:

- (a) appoints the State, and the State's nominees from time to time, jointly and severally as the Operator's attorney with full power and authority to exercise the State's rights in respect of the taking of Required Action; and
- (b) agrees to ratify and confirm whatever action is taken in accordance with the power of attorney under section 8(a) by the attorney appointed by the Operator under section 8(a).