

Schedule 16 – Activity Schedule

1. The Annual Notice

- (a) Without limiting section 8 of this Schedule 16, at least three months prior to the anticipated commencement of the Operating Term and then at least three months prior to the commencement of each Operating Year during the Operating Term, the Client Representative will provide the Operator with the final Annual Notice for the coming Operating Year, provided that if the State fails to issue the final Annual Notice by the date specified in this section 1(a):
- 1) it will not prejudice the State's ability to issue an Annual Notice for the relevant Operating Year at any stage after that date, which Annual Notice will apply from the date specified in the Annual Notice (being not less than three months following the issue of that Annual Notice); and
 - 2) the previous Operating Year's Annual Notice will be deemed to have been re-issued as the Annual Notice for that Operating Year until the date on which the new Annual Notice will commence its application as set out in subparagraph 1(a)(1).
- (b) The Annual Notice will specify, for the upcoming Operating Year:
- 1) the Activity Profile;
 - 2) the NWAUs for the Services as set out in the Activity Profile;
 - 3) subject to paragraph (c) below, the State Price;
 - 4) the Maximum Payment Amount;
 - 5) changes in the Role Delineation that impact on the Facility, and the date from which those changes must be implemented in relation to the Services;
 - 6) templates and reporting requirements, counting and coding rules and guidelines for the Monthly Performance Reports, Monthly Activity Reports and other reports required under the Reporting Schedule;
 - 7) without limiting section 1(a) of the Performance Schedule, any changes to the KPIs;
 - 8) the current State strategic priorities;
 - 9) the current list of restricted Services (**Restricted Services**);
 - 10) capped volumes within certain Service Categories or elements of Service Categories (**Capped Services**) as contemplated by section 2.4 of the Payment Schedule;
 - 11) the JMO Minimum Number for that Operating Year; and
 - 12) any other matter which the State deems relevant, acting reasonably, for inclusion in the Annual Notice.
- (c) If the State Price for the upcoming Operating Year has not been published at the time of the issue by the State of the Annual Notice pursuant to section 1(a), then:
- 1) the Activity Profile will be issued on the basis of the then-current Operating Year's State Price and corresponding NWAU cost weights, indexed by the same

indexation factor applied to determine the State Price for the Operating Year immediately preceding the then current Operating Year (the **Interim State Price**);

- 2) once the actual State Price is published , it will (subject to section 3.2 of the Payment Schedule, if applicable) be the State Price for the balance of that Operating Year; and
- 3) if the actual State Price (once adjusted in accordance with section 3.2 of the Payment Schedule (if applicable), and after taking into account any changes in the underlying NWAU cost weights from the previous Operating Year) is:
 - (A) higher than the Interim State Price, then the actual State Price will apply from 1 July in the relevant Operating Year, and any under-payment will be reconciled with the next Monthly Service Payment; or
 - (B) lower than the Interim State Price, then the actual State Price will apply from the later of 1 July or 3 months after the publication of the State Price by the State.
- (d) For the avoidance of doubt, notwithstanding the inclusion of the Activity Profile in the Annual Notice for an Upcoming Operating Year, that Activity Profile may be adjusted in accordance with any provision of this Schedule 16 that expressly provides or allows for (whether or not subject to any condition, occurrence, event, circumstance or exercise of discretion) an adjustment to that Activity Profile.

2. Upcoming Operating Year and Current Operating Year

- (a) Where the expression “**Upcoming Operating Year**” is used in this Schedule 16 or Schedule 40, it denotes a reference to the Operating Year to which a Demand Management Plan, Activity Profile or Annual Notice (as the context may require) is to apply.
- (b) Where the expression “**Current Operating Year**” is used in this Schedule 16 or Schedule 40, it denotes the Operating Year immediately preceding the Upcoming Operating Year to which it relates.

3. The Activity Profile

- (a) The Activity Profile for an Upcoming Operating Year:
 - 1) will provide the profile and volume of Clinical Services the State expects to purchase from the Operator in the Upcoming Operating Year by reference to Service Category or elements within a Service Category;
 - 2) will be expressed both in terms of funding units of measure, and volume and type of Service; and
 - 3) will be issued in accordance with the process set out in section 8 of this Schedule.
- (b) In determining the Activity Profile for the Upcoming Operating Year, the State must, amongst other things, in good faith, take account of the following:
 - 1) the estimated total Actual Service Volume for the Current Operating Year, provided that this will be deemed to have been reduced to take into account any actual or estimated Actual Service Volume that the State determines (acting reasonably):
 - (A) was, or would be treated at the Facility; but

- (B) would not be or would not have been, or will not or was not required to be, treated at the Facility if the Operator complies or had complied with the then-applicable Demand Management Obligations, also having regard to the Operator's performance of the Demand Management Obligations to that point;
- 2) other changes in the need for Clinical Services;
- 3) the Operator's performance in the provision of Services to the Catchment Area;
- 4) the Operator's performance in providing Services in accordance with the Role Delineation, the Quality Standards, the Demand Management Obligations, the Performance Schedule and the Services Specification in the previous and Current Operating Year, provided that, despite:
 - (A) the absence of any Failure Points or Failure Abatement attributable to the Operator's failure to satisfy the Conversion KPI; and
 - (B) the Operator's best endeavours obligation in clause 52.11(f) of the Project Deed,

the State may (acting reasonably) also take into account any additional volume that presents or is likely to present in the Current Operating Year as a result of the Operator's failure to satisfy the Conversion KPI (as amended or replaced from time to time in accordance with the Performance Schedule);
- 5) movement in funding by the Commonwealth or the NSW Treasury;
- 6) objectively quantifiable, verifiable and data-based changes in the incidence and nature of private health insurance for those Patients presenting to the Facility, relative to the Patient's clinical needs, having application in the Upcoming Operating Year:
 - (A) having regard to prevailing trends in the public health system; and
 - (B) disregarding any changes to the extent they arise as a result of the Operator's failure to comply with the Demand Management Obligations for the Upcoming Operating Year
- 7) if the Annual Notice is issued later than 1 July in the Upcoming Operating Year, then, the State must also take into account any Actual Service Volume that has been treated within the then-current Operating Year, but excluding any additional volume which was treated in the relevant period as a result of the Operator's non-compliance with the Demand Management Obligations;
- 8) any abnormal occurrences in the Current Operating Year, with the intent that these be normalised;
- 9) changes in the NSLHD Service Agreement that will apply in the Upcoming Operating Year;
- 10) changes in the Role Delineation that will apply in the Upcoming Operating Year;
- 11) the Hospital Licence; and
- 12) any changes arising from the process set out in section 8 of this Schedule 16.
- (c) There must not be any double-counting in the State's consideration of the factors set out in section 3(b)1) and (b)4) above.
- (d) In preparing the Activity Profile:

- 1) for the first Operating Year, the State must ensure that the MPA is not less than the MPA that would be derived from the activity volumes set out for that Operating Year in the Projected Activity Schedule; and
- 2) for the second and subsequent Operating Years, the State must ensure that the MPA is not less than 95% of the MPA for the previous Operating Year.

4. Service Categories

- (a) The Activity Profile contains volumes of activity by Service Category. These are aggregated within the Patient service types as set out below:

Patient Service Type	Service Category	Unit of Measure (subject to section 3(b))
Admitted Services	General Admitted Activity	NWAU
	Mental Health Activity	NWAU
Emergency Department Services	Emergency Department Activity	NWAU
Non-Admitted Services	Outpatient Activity	NWAU

- (b) If any Service Category or element within a Service Category is not measured in NWAUs as at the Date of Operational Readiness, then:
- 1) the State must give the Operator written notice to that effect; and
 - 2) the unit of measure for that Service Category or element within a Service Category will, for the purposes of this Schedule, the Reporting Schedule and the Payment Schedule, be as directed by the State in that written notice, applying the same unit of measure as is used to determine the State Price for that Service Category or element within that Service Category.

5. Volume Management

- (a) The Operator is responsible for managing:
- 1) activity levels within all Service Categories throughout each Operating Year taking into account seasonal variations;
 - 2) activity levels throughout an Operating Year in such a manner as to not exceed the Maximum Payment Amount; and
 - 3) activity in accordance with both the levels specified within the Activity Profile and actual Patient presentations and referrals.
- (b) The Operator must promptly notify the State:
- 1) if it anticipates (acting reasonably and diligently) that the total of all monthly Actual Services Volumes will not meet the volume of Services set out in the Activity Profile within that Operating Year;
 - 2) if the Actual Service Volume in respect of any Service Category for an Operating Month is less than of the anticipated total volume of Services for that

Operating Year as set out in the Activity Profile, which notification must set out (to the State's satisfaction):

- (A) the reasons for the shortfall in activity;
 - (B) evidence (including methodology and risk management strategies) that the Operator will not compromise future patient safety and quality in complying with the Activity Profile for that Operating Year; and
 - (C) all supporting data and other information reasonably required by the State; or
- 3) if a notice has previously been issued under section 5(b)(2), once the shortfall in that particular Service has been made up.

(c) If in either party's reasonable opinion:

- 1) demand for Emergency Department Services and/or Non-Elective Activity within an Operating Year causes or is anticipated to cause the relevant volume or quantity of that Service to be significantly greater than the volume provided for in the Annual Notice for that Operating Year (**Additional Volume**); and
- 2) the Operator has complied with the Demand Management Obligations with the effect that the anticipated forecast demand could not be avoided through such compliance,

then:

- 3) the State must, at the request of the Operator, meet with the Operator; and
- 4) the State may, in its discretion:
 - (A) adjust the Activity Profile for that Operating Year in a manner that ensures that the payment amount will not exceed the MPA for that Operating Year (**a Demand Variation**) (in which case the Operator must comply with the adjusted Activity Profile for the balance of the relevant Operating Year as if it was the Activity Profile issued within the then-current Annual Notice);
 - (B) purchase Further Services from the Operator; or
 - (C) direct the Operator to continue to provide the Services in that Operating Year in accordance with this document; and
- 5) the parties must (at the request of either of them) meet and (acting reasonably and expeditiously) attempt to agree an action plan (including reasonable variations to the Demand Management Plan) to minimise the occurrence of the scenario referred to in section 5(c)(1), and the Operator must comply with any such agreed action plan (including any variations to the Demand Management Plan for that Operating Year) and, failing either an action plan being agreed, or the Operator complying with an agreed action plan:
 - (A) the State may stipulate any actions which it deems reasonably necessary for the Operator to undertake to avoid the scenario referred to in paragraph (c)(1) from occurring provided that such actions do not cause the Operator to contravene any of its obligations under the Project Deed and are:
 - reflective of those actions undertaken by similar hospitals in the NSW Health public system but having regard to the unique position of the Facility and of the Project including the location of the integrated Private Patient Portion; or;

- reasonably required by the State in order to give full effect to the Demand Management Plan, having regard to the anticipated effect that certain actions within the Demand Management Plan would have had on Service volumes (as set out in the Demand Management Plan) had they been properly and appropriately implemented; and
 - (B) the Operator must comply with any actions as stipulated by the State pursuant to paragraph (c)(5)(A).
- (d) For the avoidance of doubt, irrespective of whether or not:
 - 1) the State elects to implement a Demand Variation or purchase Further Services from the Operator;
 - 2) the parties agree to an action plan under section 5(c)(5); or
 - 3) the State requires the Operator to undertake certain actions under section 5(c)(5)(A),the Operator must continue to provide the Services in accordance with this document (including the Performance Regime) and comply with clause 52 of the Project Deed.
- (e) In respect of Capped Services:
 - 1) the Operator must not exceed _____ of the NWAUs for those Capped Services for that Operating Year in any Operating Month without first receiving permission from the State;
 - 2) if it wishes to exceed the limit set out in section 5(e) (1), the Operator must submit a request to the State detailing the variations it seeks to make to the Activity Profile, the reasons for these variations and how it will manage the Activity Profile for the remainder of the Operating Year;
 - 3) permission for any modifications to the Activity Profile following an Operator request under section 5(e) (2) may be given solely at the discretion of the State; and
 - 4) where written permission has not been given by the State, the Operator will not be entitled to receive payment for any volume of the relevant Capped Service provided above the cap as specified in the Annual Notice.
- (f) The Operator will have no entitlement to payment in respect of the performance of any Service within an Operating Year which is not specified in both the Services Specification and the Activity Profile, or is purchased as a Further Service, for that Operating Year.

6. Further Services

- (a) The State may from time to time request to procure further services from the Operator separate from the Activity Profile and the MPA (the **Further Services**), in which case the State will provide to the Operator a notice detailing the type and volume of Further

Services required as well as the State's proposed Further Services Fee, which will be determined in accordance with section 4 of the Payment Schedule.

- (b) The Operator must provide the Further Services during the relevant Operating Year in accordance with its obligations under this document as if they were the Services.
- (c) Within the Monthly Performance Report and Monthly Activity Report, Further Services are to be reported separately from those Services within the MPA.
- (d) Further Services and the Further Services Fee will not be included for the purposes of any of the calculations or determinations related to the volume targets set in the Activity Profile and the associated Maximum Payment Amount.

7. Reversal of Patient election

- (a) Subject to sections 7(b) and 7(c), the Operator may only claim payment for an Episode of Care which relates to a reversal of Patient election from being a Compensable Patient to a Public Patient in relation to Admitted Services, provided that, in relation to that reversal and Episode of Care, the Operator:
 - 1) complies at all times with the NHRA; and
 - 2) certifies to the State that the relevant reversal and resulting Episode of Care resulted from 'unforeseen circumstances' (as defined in the NHRA).
- (b) Where a claim for payment is made by the Operator under section 7(a), this will be subject to review and approval by the State, and will only be paid for by the State to the extent that the Operator has complied with its obligations under section 7(a).
- (c) Episodes of Care that incorporate a change in Patient election from being a Public Patient to a Compensable Patient in the same or next day cannot be charged to the State.

8. Activity Profile Process

- (a) The draft Activity Profile for an Upcoming Operating Year shall be prepared by the State and shall be provided in a form materially consistent with the table provided for the Operating Year commencing 1 July 2023, as amended to reflect contemporary practices and circumstances.
- (b) The State will use reasonable endeavours to issue a draft Activity Profile to the Operator by 31 January (but must do so by no later than 28 February) in the Current Operating Year:
 - 1) taking into account the State's reasonable assessment of the criteria set out in section 3(b) at that point; and
 - 2) using the Current Operating Year's State Price and corresponding NWAU cost weights.
- (c) The State will consult with the Operator in relation to that draft Activity Profile and, in good faith, take into account any reasonable issues which have been expeditiously raised in good faith by the Operator having regard only to the criteria in section 3(b).
- (d) If, after the parties have consulted in accordance with section 8(c), the Operator:
 - 1) remains of the reasonable opinion that the volume of Services for the Upcoming Operating Year will be higher than that set out in the draft Activity Profile for

reasons that cannot be addressed by the Operator's compliance with its Demand Management Obligations under the corresponding Demand Management Plan; and

- 2) has complied and continues to comply with all of the then-current Demand Management Obligations, with the effect that the anticipated forecast demand could not have been avoided through such compliance,

and the State (acting in good faith) agrees:

- 3) with the Operator's reasonable opinion under section 8(d)(1); and
- 4) that paragraph (d)(2) has been satisfied,

then the State must elect to either (in its discretion):

- 5) purchase additional volume as Further Services and increase the Activity Profile (including the MPA) for the Upcoming Operating Year to the extent required to address any corresponding increase in volume estimated by the Operator and agreed in accordance with this paragraph (d) (but without limiting the State's ability to consider that additional volume in the context of section 3(b)(6) when setting the Upcoming Operating Year's Activity Profile);
 - 6) subject to paragraph (f), wholly or partially relieve the Operator from its obligations to comply with relevant KPIs and other appropriate Project Deed obligations to the extent required to enable the Operator to implement further or different demand management strategies to address the demand differential, but only to the extent that doing so would not cause the Operator to contravene any Law or to breach the Hospital Licence or reasonably prejudice Good Operating Practice; or
 - 7) apply a combination of subparagraphs (d)(5) and (d)(6).
- (e) Any Operator relief from KPI performance which has been allowed under section 8(d)(6) during the Upcoming Operating Year will be contingent on:
- 1) the additional volume estimated by the Operator:
 - (A) actually presenting during that Upcoming Operating Year; or
 - (B) reasonably and properly appearing on the Operator's current booking system as projected to require care during that Upcoming Operating Year; and
 - 2) the Operator's continued compliance with the Demand Management Obligations.
- (f) Both parties must act reasonably and expeditiously in performing their obligations under this section 8, with the object of arriving at the Activity Profile for the Upcoming Operating Year by no later than 30 June in the Current Operating Year.

9. Measuring performance under the Demand Management Plan

- (a) Without limiting clause 13, the Operator must continue to comply with the previous Operating Year's Demand Management Plan until the Demand Management Plan for the Upcoming Operating Year has been finalised in accordance with that clause.
- (b) The minimum standard of demand management performance to be achieved by the Operator in an Operating Year shall be calculated as the total aggregate of Target NWAU Reductions across all Service Categories and Service Category Strategies to be implemented under the Demand Management Plan for that Operating Year (as adjusted or

modified pursuant to Demand Management Forum held in the course of that Operating Year), collectively construed as a whole and not according or by reference to any Service Category or Service Category Strategy, and constituting and expressed as one total number of NWAUs (**Performance Standard**).

- (c) When assessing the Operator's performance under the Demand Management Plan for the Current Operating Year, the State shall (acting reasonably) have regard to, amongst other things:
- 1) matters of the type referred to in section 3.6(a)(3) of Schedule 19 as discussed at any Demand Management Forum; and
 - 2) any other relief the Operator has been granted pursuant to clause 62 of the Project Deed as it relates to any non-compliance of the Operator's Demand Management Obligations by the Operator.
- (d) Subject to section 9(e), any adjustment that the State may make to the Activity Profile for the Upcoming Operating Year in accordance with section 3(b) of the Activity Schedule will be the only monetary consequence for the Operator in respect of the Operator's failure to meet the Target NWAU Reductions under the Demand Management Plan for the Current Operating Year (a **DMP Failure**).
- (e) Section 9(d) does not affect or limit:
- 1) the State's rights to make a Claim against the Operator (including making a claim for money) whether under the Project Documents or otherwise for any death, disease, illness or injury to any person for which the State or a State Related Party is liable;
 - 2) any other right or remedy under a Project Document or at Law (other than, subject to this paragraph (e), for monetary compensation for a DMP Failure);
 - 3) the State's right to recover under clause 72 in respect of loss or damage caused by a DMP Failure, to the extent that the State has not been fully compensated for that loss or damage;
 - 4) the State's rights under clause 19.16;
 - 5) the State's entitlement to recover any costs, expenses or Liabilities incurred by the State as a consequence of exercising its rights under clause 60;
 - 6) the State's rights under the Project Documents in respect of the event, omission or set of circumstances that caused or contributed to the DMP Failure (as opposed to the DMP Failure itself);
 - 7) any payment on termination of the State Project Documents (including a Termination Payment);
 - 8) any Liability of the Operator to the State or a State Related Party suffered or incurred by the State or a State Related Party as a result of any:
 - (A) fraudulent, unlawful or criminal act or omission; or
 - (B) any wilful breach of a Project Document,by the Operator or any of the Operator Related Parties where the State has not been completely compensated for that Liability by the adjustment referred to in paragraph (d) above; or

- 9) any of the State's other rights or remedies under the State Project Documents upon the occurrence of a DMP Failure which are not rights or remedies for monetary compensation.
- (e) To avoid doubt, the Target NWAU Reductions are a minimum standard, and the Operator must continue to implement Service Category Strategies and comply with its Demand Management Obligations in an Operating Year even after the Target NWAU Reductions has been achieved.
 - (f) Any adjustment that the State may make in its determination of volumes of Services for the Activity Profile for the Upcoming Operating Year by reason of the Operator's failure to meet the Target NWAU Reductions for the Current Operating Year:
 - 1) does not limit the State's ability to determine volumes of Services for the Activity Profile for the Upcoming Operating Year having regard to the Operator's performance of its other Demand Management Obligations (other than those set out in the Demand Management Plan against which the Target NWAU Reductions are calculated);
 - 2) must apply only to that Upcoming Operating Year, and not be taken into account by the State in respect of its determination of the Activity Profile for any Operating Year after the Upcoming Operating Year; and
 - 3) must be a proper, fair and reasonable reflection only of that particular failure to meet the Target NWAU Reductions for that Current Operating Year and not be compounded or otherwise combined with any failure to satisfy the Target NWAU Reductions in any Operating Year before the Current Operating Year.