

Schedule 6 — Termination Payments Schedule

1. Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of this Agreement and:

Compensation Date means:

- (a) for a tender conducted under Section 3.3 of this Schedule:
 - (i) where Section 3.3(k)(ii) of this Schedule applies, the date on which the Territory notifies Project Co under Section 3.3(k)(ii) of this Schedule; or
 - (ii) otherwise the date on which the New Contract is entered into or is anticipated to be entered into; and
- (b) for an Independent Expert valuation under Section 2 of this Schedule:
 - (i) where it is deemed under Section 3.3(g) of this Schedule that there is no Liquid Market, 40 Business Days after the date on which the Territory notifies Project Co that it has received fewer than two Compliant Tenders under Section 3.3(g) of this Schedule;
 - (ii) where Section 3.3(j) of this Schedule applies, the later of the date on which the Territory notifies Project Co in accordance with Section 3.3(j) of this Schedule and the date which is 40 Business Days after the Expiry Date; or
 - (iii) otherwise the date which is 60 Business Days after the Expiry Date.

Compliant Tender means any tender submitted that meets the qualification criteria notified under Section 3.3(b) of this Schedule.

Compliant Tenderer means the party who submits a Compliant Tender.

Discount Rate means the rate determined in accordance with the following formula:

$$R = (1 + PIRR + CB_b - CB_a) \times (1 + i) - 1$$

where:

R = the discount rate;

PIRR = the real pre-tax Project internal rate of return as shown in the Financial Model;

CB_b = the real yield to maturity as at the Compensation Date on a benchmark Commonwealth bond traded in the Australian bond markets with a modified duration closest to that of the weighted average life of any outstanding Project Debt as shown in the Financial Model;

CB_a = the real yield to maturity as at the date of Financial Close on a benchmark Commonwealth bond traded in the Australian bond markets with a modified

duration closest to that of the weighted average life of any outstanding Project Debt as shown in the Financial Model; and

i = the assumed long term CPI (or equivalent) indexation rate using the rates of indexation forecast in the most recently published Territory Budget papers.

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

Highest Compliant Tender Price means the highest tender price offered by a Compliant Tender.

Independent Expert means an independent expert appointed under Section 2 of this Schedule.

Liquid Market means where there are at least two contractors (in addition to any party controlled by the Financiers) in the prevailing market prepared to competitively tender for the undertaking of, or acquisition of, projects which are the same or of a similar type to the Project on the same or substantially similar terms and conditions to those of this Agreement and each of whom has agreed with the Territory to submit a Compliant Tender (even if a Compliant Tender is subsequently not received), such that the result of that tender process would provide a reasonably likely indicator as to Fair Market Value.

New Contract means a contract that replaces this Agreement, but without imposing on the new contracting party any Liability for any breach of this Agreement by Project Co prior to the date of that contract, and that assumes that:

- (a) if the New Contract is entered into prior to the Date of Final Completion, the Assets are to be designed, built, commissioned and tested to achieve Final Completion in accordance with this Agreement;
- (b) the O&M Activities are to be delivered in accordance with, and to the standards set out in, the SPR and otherwise in accordance with this Agreement;
- (c) the term of the New Contract will be the period from the Compensation Date to the Final Expiry Date;
- (d) the provisions with respect to payment of the Territory Contribution and Monthly Service Payment continue to apply as set out in this Agreement, noting that the Operating Phase may be shorter than is contemplated in the Financial Model as a result of delay or forecast delay to the achievement of Services Completion; and
- (e) all other provisions of this Agreement continue to apply.

Post Termination Monthly Amount means for the whole or any part of a Month or Months for the period from the Expiry Date to the Compensation Date, an amount equal to the Monthly Service Payment, assuming no adjustment in accordance with the Performance Regime, which would have been payable in respect of that Month or those Months under this Agreement had this Agreement not been terminated less an amount equal to the aggregate of (without double counting):

- (a) the greater of all cost components related to the provision of the O&M Activities and the reasonable costs to the Territory of alternative provision of the O&M Activities in accordance with, and to the standards set out in, the SPR and otherwise in accordance with this Agreement (whether or not any O&M Activities are delivered);
- (b) all cost components related to the provision of insurance; and

- (c) Rectification Costs incurred by the Territory.

For the avoidance of doubt, the Post Termination Monthly Amount can be an amount that is less than zero.

Receivables Refund Payment means the Receivables Refund Payment to be made by the Territory to Finance Co under clause 7 (*Termination of Project Agreement*) of the Receivables Purchase Deed.

Rectification Costs means an amount equal to the reasonable and proper costs incurred or reasonably anticipated to be incurred by the Territory in curing or otherwise addressing any default by Project Co and procuring performance of Project Co's obligations in accordance with the Project Documents.

Tender Costs means the reasonable and proper internal and external costs incurred by or on behalf of the Territory in carrying out the Tender Process (if any) and calculating the relevant Termination Payment (including engaging an Independent Expert).

Tender Process means the process by which the Territory requests tenders from persons interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a Compliant Tenderer.

Tender Process Monitor has the meaning given to that term in Section 3.3(e) of this Schedule.

2. Independent Expert

- (a) **(Calculation of relevant Termination Payment):** If this Agreement is terminated and an Independent Expert is required to administer this Schedule, the parties will appoint an Independent Expert to act as an expert calculator of the relevant Termination Payment within 7 Business Days of:
- (i) in the case of Section 4 of this Schedule, the date on which that Section commences to apply; and
 - (ii) in the case of Sections 5 and 6 of this Schedule, the Expiry Date,
- and the following provisions of clause 44 of this Agreement will apply:
- (iii) clause 44.2 of this Agreement, as if:
 - A. the reference in paragraphs (a) and (b) to "*the date on which a Dispute is referred to an expert for determination in accordance with clause 44*" were a reference to the time referred to in paragraphs (a)(i) and (ii) of this Section 2(a) of this Schedule;
 - B. the references in paragraphs (a) and (b) to "*determine the Dispute*" were references to "*calculate the Termination Payment*" and all references to "*the Dispute*" were references to "*the calculation*";
 - C. paragraph (d) required, if no person appeared on both lists, both parties to procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 44.2(b) of this Agreement;

- D. the reference in paragraph (h) to "*the terms of the Expert Determination Agreement*" were a reference to "*the terms of the Expert Determination Agreement amended as contemplated by Section 2 of the Termination Payments Schedule*";
- (iv) clause 44.4 of this Agreement; and
- (v) clause 44.6(a) of this Agreement, as if the reference to "*party to the Dispute*" were a reference to "*party affected by the calculation of the Termination Payment*".
- (b) **(Act as expert calculator)**: In calculating a Termination Payment, the Independent Expert may have regard to submissions and information provided by the parties, but must have regard to the matters set out in this Schedule and calculate the Termination Payment as an expert calculator.
- (c) **(Request for further information)**: If the Independent Expert decides that further information is required, the Independent Expert may call for further submissions, documents or information from either or both parties and the Independent Expert must provide any information received from one party to the other party.
- (d) **(Conduct of conferences by Independent Expert)**: The Independent Expert may call and conduct one or more conferences between the parties as the Independent Expert sees fit, but must give the parties reasonable notice of the matters to be addressed at any such conference.
- (e) **(Legal representation of parties at conference)**: The parties may be legally represented at any conference under this Section 2 of this Schedule.
- (f) **(Conferences to be held in private)**: All conferences under this Section 2 of this Schedule must be held in private.
- (g) **(Independent Expert may visit)**: The Independent Expert may, if he or she considers it necessary, visit the Site and the Relevant Assets (as the case may be), and the parties must facilitate the Independent Expert's access to any of those areas.
- (h) **(Timing of determination by the Independent Expert)**: The Independent Expert must make his or her determination in relation to the calculation of the Termination Payment:
- (i) within 20 Business Days of the last of the steps set out in paragraphs (c) to (g); or
- (ii) within 30 Business Days of the date of his or her appointment,
- whichever is the earliest. If the Independent Expert fails to make a determination within this time, either party may, by notice to the other party, refer the matter to arbitration in accordance with clause 45 of this Agreement.
- (i) **(Independent Expert to act as expert)**: The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.
- (j) **(Cost of Independent Expert to be borne by Territory)**: The cost of the Independent Expert will be borne by the Territory, but without limiting the Territory's right to deduct Tender Costs in calculating any Termination Payment.

3. Termination for Default Termination Event

3.1 The Territory's election

- (a) **(Territory's right to elect):** If the Territory terminates this Agreement due to the occurrence of, or during the subsistence of, a Default Termination Event (whether any other basis for termination then applies), the Territory may, subject to Section 3.1(c) of this Schedule, elect (in its sole and absolute discretion) to either:
- (i) conduct a tender for the New Contract in accordance with Section 3.3 of this Schedule; or
 - (ii) require the Independent Expert to undertake an expert determination in accordance with Section 4 of this Schedule.
- (b) **(Territory to notify Project Co):** The Territory will notify Project Co of its election on or before the day falling 20 Business Days after the Expiry Date and if the Territory fails to notify Project Co of its election by that date, then:
- (i) if Section 3.1(c) of this Schedule does not apply, Section 3.1(a)(i) of this Schedule will apply; or
 - (ii) if Section 3.1(c) of this Schedule applies, Section 3.1(a)(ii) of this Schedule will apply.
- (c) **(Circumstances Territory not entitled to conduct a tender):** The Territory is not entitled to elect to conduct a tender for the New Contract:
- (i) where Project Co or the Financiers have demonstrated to the reasonable satisfaction of the Territory that:
 - A. the Financiers have used best efforts to procure the transfer of Project Co's rights and liabilities under this Agreement in accordance with the Finance Direct Deed but have not done so; and
 - B. the reason for the failure to effect a transfer of Project Co's rights and liabilities under this Agreement is that there is no Liquid Market; or
 - (ii) where either the Territory agrees, or it is determined in accordance with clauses 42 to 45, that no Liquid Market exists.
- (d) **(Disputes):** Any Dispute in relation to whether a Liquid Market exists may be referred by either party for resolution in accordance with clauses 42 to 45.
- (e) **(Territory to pay Post Termination Monthly Amount):** With respect to all or any part of a Month falling within the period from the Expiry Date to the Compensation Date (each inclusive), the Territory will pay to Project Co the Post Termination Monthly Amount at the same time that the Territory would have been required to pay to Project Co the Monthly Service Payment in respect of that Month had this Agreement not been terminated.
- (f) **(Set off of Post Termination Monthly Amount):** If any Post Termination Monthly Amount is less than zero then it will be carried forward and will be set off against any future positive Post Termination Monthly Amount or other elements of the Termination Payment.

3.2 Payment on tender

- (a) **(Territory elects to conduct a tender):** If the Territory elects to conduct a tender for the New Contract in accordance with Section 3.1(a)(i) of this Schedule, Sections 3.2 and 3.3 of this Schedule will apply.
- (b) **(Object of Tender Process):** The objective of the tendering procedure is to establish by way of the Tender Process a Highest Compliant Tender Price.
- (c) **(Calculation of Termination Payment):** The Termination Payment will be calculated as follows:

$$TP = A - C - D - E - F - G - H + J - M - S$$

where:

TP = the Termination Payment;

A = the Highest Compliant Tender Price. In determining item A, the Tender Process must:

(i) assume:

- (A) a Compensation Date determined under paragraph (a)(ii) of that definition (which will be subject to adjustment to reflect the actual date on which the Compensation Date occurs);
- (B) that the Project Activities are delivered in accordance with, and to the standards set out in, the SPR and otherwise in accordance with this Agreement;
- (C) that the provisions with respect to payment of the Territory Contribution, Construction Price and Monthly Service Payments continue to apply as provided for in this Agreement;
- (D) that any breach of this Agreement and any adjustments under the Performance Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and
- (E) that the Project Documents will be amended as required to reasonably allow for an incoming provider to deliver the Project Activities in accordance with, and to the standards set out in, the SPR and otherwise in accordance with this Agreement; and

(ii) take into account:

- (A) the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Agreement and to achieve Final Completion;
- (B) the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, which are required to be incurred with respect to the Relevant Assets and the Site, to enable carrying out of the Project Activities until the Final Expiry Date, in accordance with

and to the standards set out in the SPR and otherwise in accordance with this Agreement; and

- (C) any costs, and their timing, required to be incurred to enable the entity (who is to become the new "Project Co") to carry out the Project Activities in accordance with, and to the standards set out in, the SPR and otherwise in accordance with this Agreement and otherwise to perform Project Co's obligations under the Project Documents but excluding any costs in relation to which the Territory will retain the benefit of a Retention Amount or Defects Retention Amount;

C = the Tender Costs;

D = any amount owing by Project Co or Finance Co (or both) to the Territory under the Territory Project Documents, including all amounts in respect of which the Territory is entitled to exercise a right of set-off under this Agreement, but subject to clauses 38.14(c) and 38.14(d) (other than clause 38.14(d)(viii)(I)) of the Agreement;

E = to the extent not deducted from the Post Termination Monthly Amount, any additional costs reasonably incurred by the Territory as a direct result of the Default Termination Event, but subject to clauses 38.14(c) and 38.14(d) (other than clause 38.14(d)(viii)(I)) of the Agreement;

F = to the extent the aggregate of all Post Termination Monthly Amounts equates to a negative number, the absolute value of the aggregate of all such amounts calculated under this Agreement. For the avoidance of doubt the Termination Payment is reduced where the aggregate of all Post Termination Monthly Amounts equates to a negative number;

G = any net gains which have accrued, or will accrue, to Project Co or Finance Co (or both) as a result of the termination of this Agreement or any other Project Documents;

H = the aggregate of the following amounts:

- (i) insurance proceeds (excluding insurance proceeds representing insurance indemnification of Project Co or Finance Co (or both) against liabilities to third parties);
- (ii) any other amounts owing to Project Co or Finance Co (or both); and
- (iii) any credit balances standing in accounts held by or for the benefit of Project Co or Finance Co (or both) on the Expiry Date (other than those amounts which Project Co or Finance Co (or both) holds on trust for a subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent it has not otherwise been taken into account in the determination of the Termination Payment;

J = any amounts owing by the Territory to Project Co or Finance Co (or both) under the Territory Project Documents as at the Expiry Date (including amounts of any Territory Contribution, Construction Price or Monthly Service Payments which have accrued but not been paid as at the Expiry Date);

M = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the date of payment; and

S = the Receivables Refund Payment.

In calculating items A to S, there will be no double counting of amounts. Without limitation, the value of any unpaid Territory Contribution may be taken into account in paragraph (i)(C) of Item A as an amount payable under the New Contract, or in Item J as an amount payable to Project Co, but not both.

3.3 Tender Process

If the Territory elects to conduct a Tender Process for the New Contract, the following provisions will apply.

- (a) **(Territory to use reasonable endeavours):** The Territory will (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.
- (b) **(Territory to notify Project Co of qualification criteria and other requirements of Tender Process):** The Territory will notify Project Co of the qualification criteria, the other requirements and the terms of the Tender Process, including the timing of the Tender Process, but will act reasonably in setting such requirements and terms. If the tenderer is required to engage sub-contractors, qualification criteria will include a requirement that the tenderer engage sub-contractors with the requisite technical and financial capabilities to undertake the Project.
- (c) **(Territory to ensure appropriate methodology):** The Territory, in setting the qualification criteria and the other requirements and terms of the Tender Process, must ensure that there is in place an appropriate methodology for comparing tenders.
- (d) **(Project Co authorises release of information by Territory under Tender Process):** Project Co authorises the release of any information by the Territory under the Tender Process that would otherwise be prevented under this Agreement that is reasonably required as part of the Tender Process.
- (e) **(Project Co may appoint Tender Process Monitor):** Project Co may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Financiers on the Territory's compliance with the Tender Process and making representations to the Territory. The Tender Process Monitor will not disclose any confidential information in relation to tenders submitted as part of the Tender Process to Project Co or any other person (and will provide an undertaking to the Territory to such effect as a condition of its appointment) except:
 - (i) where permitted to do so by the terms of the confidentiality agreement referred to in Section 3.3(f) of this Schedule; or
 - (ii) to advise Project Co and the Financiers as to whether it considers that the Territory has acted in accordance with the Tender Process and correctly determined the Highest Compliant Tender Price and to provide details of any representations that the Tender Process Monitor makes to the Territory regarding the Tender Process.
- (f) **(Tender Process Monitor to enter into confidentiality agreement):** Project Co will procure the Tender Process Monitor to enter into a confidentiality agreement with the Territory in a form acceptable to the Territory, and the Tender Process Monitor will be entitled to attend all meetings relating to the Tender Process, inspect

copies of the tender documentation and proposals and is entitled to make written representations to the Territory regarding compliance with the Tender Process. Project Co will procure the Tender Process Monitor to make any representations it has in relation to the Tender Process to the Territory in a timely manner as the Tender Process proceeds. The Territory will not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute relating to the Highest Compliant Tender Price for resolution in accordance with clauses 42 to 45 of this Agreement.

- (g) **(Territory to determine Compliant Tenders):** As soon as practicable after tenders have been received, the Territory will (acting reasonably) determine the Compliant Tenders. Subject to the Territory receiving at least two Compliant Tenders, it will notify Project Co of the Highest Compliant Tender Price. If fewer than two Compliant Tenders are received, the Territory must promptly notify Project Co accordingly and it will be deemed that there is no Liquid Market and the tendering process pursuant to this Section 3 of this Schedule will cease and the 'no tendering' procedure under Section 4 of this Schedule will automatically apply.
- (h) **(Discretion of Territory following Tender Process):** The Territory is not obliged to enter into any contract with any person, resulting from the Tender Process. It may enter into a contract in its sole and absolute discretion.
- (i) **(Dispute Resolution):** If Project Co refers a Dispute relating to the Highest Compliant Tender Price or the Termination Payment for resolution in accordance with clauses 42 to 45 of this Agreement, the Territory will still be entitled to enter into a contract replacing this Agreement (whether or not a New Contract).
- (j) **(Territory may elect to follow 'no tendering' procedure):** The Territory may elect at any time prior to the receipt of two Compliant Tenders to follow the 'no tendering' procedure under Section 4 of this Schedule by notifying Project Co that this election has been made.
- (k) **(Calculation of Termination Payment if Liquid Market exists):** If a Liquid Market exists, the Termination Payment is determined in accordance with Section 3.2 and this Section 3.3 of this Schedule and where the Termination Payment is a positive amount and Project Co has complied with clause 41.7(b) of this Agreement:
 - (i) the Termination Payment calculated in accordance with Section 3.2 and this Section 3.3 of this Schedule will be payable within 20 Business Days of the date of the New Contract; or
 - (ii) if the Territory chooses not to enter into any contract with any person resulting from the Tender Process, it must notify Project Co accordingly in which case the Termination Payment calculated in accordance with Section 3.2 and this Section 3.3 of this Schedule will be payable within 20 Business Days of such notification; and
 - (iii) the Receivables Refund Payment will be payable in accordance with clause 7 (*Termination of Project Agreement*) of the Receivables Purchase Deed.

4. No tendering

If the Territory terminates this Agreement due to the occurrence of, or during the subsistence of, a Default Termination Event (whether any other right of termination then applies) and Section 3.1(a)(ii) of this Schedule applies, or a Liquid Market does not or is deemed not to exist under Section 3.3(g) of this Schedule, or where Section 3.3(j) of this Schedule applies, the Termination Payment will be calculated as follows:

$$TP = A - C - D - E - F - G - H + J - M - N - S$$

where:

TP = the Termination Payment;

A = means:

(a) prior to Services Completion, the lower of:

- (i) the costs (including capitalised interest and fees) properly incurred by Project Co (being no more than the costs forecast in the Financial Model to be incurred), referable to the Delivery Activities up to and including the Expiry Date; and
- (ii) the following amount:
 - A. the sum of the total costs (including capitalised interest and fees) forecast to be incurred in respect of the Delivery Activities in the period from Financial Close to Services Completion (as set out in the Financial Model), discounted back from the dates on which they are forecast to be incurred in the Financial Model to the Expiry Date at the Discount Rate;

less:

- B. the Independent Expert's determination of the costs (excluding capitalised interest and fees) to be incurred by the Territory (including a reasonable assessment of the risk of cost overruns) from the Expiry Date to achieve Services Completion by the Territory's Date for Services Completion, discounted back from the dates the Independent Expert has determined that they will be incurred to the Expiry Date at the Discount Rate.

In Section 4(a) of this Schedule, **Territory's Date for Services Completion** means:

- (iii) if the Independent Expert determines that, with a reasonable provision for acceleration, Services Completion can be achieved by the Date for Services Completion, the Date for Services Completion; or
 - (iv) if the Independent Expert determines that, even with a reasonable provision for acceleration, Services Completion cannot be achieved by the Date for Services Completion, the Independent Expert's determination of the earliest possible date by which Services Completion can be achieved (including a reasonable provision for acceleration and a reasonable assessment of the risk of time overruns); and
- (b) on or after Services Completion, the Fair Market Value of the Project as at the Compensation Date determined by the Independent Expert on the basis that this Agreement and each of the other Territory Project Documents as existing immediately prior to the Expiry Date had continued until the Final Expiry Date (but for the earlier termination).

In determining item A, the Independent Expert must determine the net present value of the projected cash flows for the period between the Compensation Date and the Final Expiry Date

calculated on a nominal pre-tax basis using the rate of indexation forecast in the most recently published Territory Budget papers and otherwise by:

- (a) assessing the market value as though the willing buyer was bidding in a public tender process for the right to enter into a New Contract;
 - (b) assuming that:
 - (i) the Project Activities are carried out in accordance with, and to the standards set out in, the SPR and in accordance with this Agreement;
 - (ii) the provisions with respect to payment of the Territory Contribution and Monthly Service Payments continue to apply as provided for in this Agreement;
 - (iii) any breach of this Agreement and any adjustments under the Performance Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and
 - (iv) the Project Documents will be amended as required to reasonably allow for an incoming provider to carry out the Project Activities in accordance with, and to the standards set out in, the SPR and in accordance with this Agreement;
 - (c) taking into account:
 - (i) the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Agreement and to achieve Services Completion;
 - (ii) the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, required to be incurred with respect to the Relevant Assets and the Site to enable the carrying out of the Project Activities until the Final Expiry Date in accordance with and to the standards set out in the SPR and otherwise in accordance with this Agreement; and
 - (iii) any costs, and their timing, required to be incurred to enable the buyer (who is to become the new "Project Co") to carry out the Project Activities in accordance with, and to the standards set out in, the SPR and otherwise in accordance with this Agreement and to perform Project Co's obligations under the Project Documents but excluding any costs in relation to which the Territory will retain the benefit of a Retention Amount or Defects Retention Amount; and
 - (d) using a discount rate to calculate the net present value of the cashflows based on the Discount Rate, having regard to the risk profile and nature of the cashflows of the Project;
- C =** the Tender Costs (if any) and the Territory's reasonable forecast internal and external costs of tendering a form of contract(s) for the Project Activities to replace this Agreement after termination of this Agreement;
- D =** any amount owing by Project Co or Finance Co (or both) to the Territory under the Territory Project Documents, including all amounts in respect of which the Territory is entitled to exercise a right of set-off under this Agreement, but subject to clauses 38.14(c) and 38.14(d) (other than clause 38.14(d)(viii)(I)) of the Agreement;

- E =** to the extent not deducted from the Post Termination Monthly Amount, any additional costs reasonably incurred by the Territory as a direct result of the Default Termination Event, but subject to clauses 38.14(c) and 38.14(d) (other than clause 38.14(d)(viii)(I)) of the Agreement;
- F =** to the extent the aggregate of all Post Termination Monthly Amounts equates to a negative number, the absolute value of the aggregate of all such amounts calculated under this Agreement. For the avoidance of doubt the Termination Payment is reduced where the aggregate of all Post Termination Monthly Amounts equates to a negative number;
- G =** any net gains which have accrued, or will accrue, to Project Co or Finance Co (or both) as a result of the termination of this Agreement or termination of any other Project Document;
- H =** the aggregate of the following amounts:
- (i) insurance proceeds (excluding insurance proceeds representing insurance indemnification of Project Co or Finance Co (or both) against its liabilities to third parties);
 - (ii) any other amounts owing to Project Co or Finance Co (or both) (excluding any amount payable to it in compensation for the loss of the benefit of the Project Documents as a result of the relevant default); and
 - (iii) any credit balances standing in accounts held by or for the benefit of Project Co or Finance Co (or both) (other than those amounts which Project Co or Finance Co (or both) holds on trust for a subcontractor in those accounts in accordance with the Finance Documents),
- in each case only to the extent it has not otherwise been taken into account in calculating the Termination Payment;
- J =** any amounts owing by the Territory to Project Co under the Territory Project Documents as at the Expiry Date (including amounts of any Territory Contribution, Construction Price or Monthly Service Payments which have accrued but not been paid as at the Expiry Date);
- M =** any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date;
- N =** the costs incurred by the Territory of engaging the Independent Expert to administer this Schedule; and
- S =** the Receivables Refund Payment.

In calculating items A to S, there will be no double counting of amounts. Without limitation, the value of any unpaid Territory Contribution may be taken into account in paragraph (b)(ii)(B) of Item A as an amount payable under the New Contract, or in Item J as an amount payable to Project Co, but not both.

5. Termination for Convenience

If this Agreement is terminated for a 'Termination for Convenience' under clause 41.2 of this Agreement, the Termination Payment will be calculated as follows:

Termination Payment or TP means the greater of:

$$TP = A + B - D +/- G - H - I + J + K + L - M - R - S$$

and

$$TP = A +/- G - H - I + J - M - R$$

where:

TP = the Termination Payment;

A = the Project Debt and, if drawn, the amount outstanding under the Debt Service Reserve Facility (as defined in the Finance Documents) as at the Expiry Date (but disregarding the impact of any modelled payment of the Territory Contribution on the amount forecast in the Financial Model to be owing to the Financiers as at that date, where such Territory Contribution is due and payable under this Agreement but has not been paid to Project Co);

B = means:

(a) prior to the Original Expiry Date, the Fair Market Value of the equity as reasonably assessed by the Independent Expert. In making such a determination, the Independent Expert will apply the Discount Rate to the forecast Project cash flows over the period from the Expiry Date to the Final Expiry Date. This assessment of Project cash flows should take into account:

- (i) the forecast revenue assuming the provisions of the Payment Schedule and those relating to payment of the Territory Contribution continue to apply;
- (ii) projected operating costs of Project Co reasonably expected to be incurred in connection with the provision of the O&M Activities and assuming the O&M Activities are delivered in accordance with, and to the standards set out, in the SPR and otherwise in accordance with this Agreement; and
- (iii) the financing costs of Project Co or Finance Co (or both) under the Finance Documents as set out in the Financial Model,

and in each case on the basis that the Project Documents, as amended in accordance with this Agreement, continue in full force and effect from the Expiry Date to the Final Expiry Date; and

(b) after the Original Expiry Date (if the Term has been extended in accordance with clause 4.3 of the Agreement), an amount representing an allowance for loss of profit from this Agreement equal to 50% of the sum of the amounts that would otherwise be payable to Project Co in the 2 years after the date of termination had the Agreement not been terminated.

D = any amounts owing by Project Co or Finance Co (or both) to the Territory under the Territory Project Documents as at the Expiry Date, including all amounts in respect of which the Territory is entitled to exercise a right of set-off under this Agreement;

G = the amount of costs incurred or gains realised by Project Co or Finance Co (or both) (acting reasonably) as a direct result of terminating the Finance Documents, including as a result of terminating or reversing any derivative position, in each case arising from the Territory's election to terminate for convenience under clause 41.2 of this Agreement. If the net amount is a gain, it should be a deduction from, and if it is a cost, it should be an addition to, this Termination Payment;

H = the aggregate of the following amounts:

- (i) any other amounts owing to Project Co or Finance Co (or both); and
- (ii) any credit balances standing in accounts held by or for the benefit of Project Co or Finance Co (or both) (other than those amounts which Project Co or Finance Co (or both) holds on trust for a subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent it has not otherwise been taken into account in calculating the Termination Payment;

I = any insurance proceeds:

- (i) that would have been received before the Expiry Date if Project Co had complied with its obligations under this Agreement and which if so received would have been, or would have been required to be, applied towards any component of the Termination Payment otherwise payable under this Section 5 of this Schedule; and
- (ii) received or receivable by Project Co or Finance Co (or both) at any time during the period between the Expiry Date and the date on which the Termination Payment is made, except for Insurance proceeds:
 - A. that are being held to be applied to repairing or rebuilding the Relevant Assets; or
 - B. representing Insurance indemnification of Project Co or Finance Co (or both) against Liabilities to third parties;

J = any amounts owing by the Territory to Project Co or Finance Co (or both) under the Territory Project Documents as at the Expiry Date (including the amount of any Construction Price or Monthly Service Payment that has accrued but not been paid as at the Expiry Date) but, excluding any Territory Contribution which is owing as at the Expiry Date;

K = redundancy payments for employees of Project Co that have been or will be reasonably and properly incurred by Project Co as a direct result of the termination of this Agreement and which would not have been otherwise incurred if this Agreement was not terminated under clause 41.2;

L = amounts reasonably and properly incurred by Project Co and payable to:

- (i) the Delivery Contractor or the O&M Contractor in accordance with the relevant Subcontract;
- (ii) Pacific Partnerships Pty Ltd in accordance with the Technical Assistance and Management Services Agreement; and
- (iii) the Independent Certifier in accordance with the Independent Certifier Deed of Appointment;
- (iv) the Sub-Independent Certifier in accordance with the Sub-Independent Certifier Deed of Appointment; and
- (v) the Financiers' Certifier in accordance with the Financiers' Certifier Deed,

as a direct result of the termination of this Agreement to the extent Project Co had used its best endeavours to minimise such costs including amounts payable to the Delivery Contractor, the O&M Contractor, Pacific Partnerships Pty Ltd, the

Independent Certifier, the Sub-Independent Certifier and Financiers' Certifier or for termination for convenience under the relevant Subcontract, Technical Assistance and Management Services Agreement, Independent Certifier Deed of Appointment, Sub-Independent Certifier Deed of Appointment and Financiers' Certifier Deed (as applicable);

- M =** all sums due and payable to Project Co or Finance Co (or both) from the Financiers as a result of any prepayment of debt or interest and any third party amounts paid to Project Co or Finance Co (or both) at any time during the period between the Expiry Date and Termination Payment Date;
- R =** if the Territory has elected to relieve Project Co from its obligation to carry out any of the Final Refurbishment Works under clause 30.7(a)(iv), the costs (if any) of carrying out such Final Refurbishment Works as set out in the Outstanding Matters Report prepared by the Handover Reviewer upon termination of this Agreement (to the extent not funded from the Handover Escrow Account or the Handover Bond); and
- S =** the Receivables Refund Payment.

In calculating items A to S, there will be no double counting of amounts.

6. Termination for Force Majeure Termination Event

6.1 Termination - No Default Termination Event subsisting

Subject to Section 6.2 of this Schedule, if the Territory or Project Co terminates this Agreement due to a Force Majeure Termination Event and a Default Termination Event is not then subsisting, the Termination Payment will be the greater of:

- (a) an amount calculated as though a Termination Payment was due and the Termination Payment was calculated in accordance with the provisions of Section 4 of this Schedule; and
- (b) an amount calculated in accordance with Section 6.3 of this Schedule.

6.2 Termination - Default Termination Event subsisting

If the Territory or Project Co terminates this Agreement due to a Force Majeure Termination Event and a Default Termination Event is then subsisting, this Section 6 of this Schedule will not apply and the Termination Payment will be an amount calculated in accordance with the provisions of Section 3 of this Schedule or (if required by Section 3 of this Schedule) the provisions of Section 4 of this Schedule.

6.3 Termination Payment

Subject to Sections 6.1 and 6.2 of this Schedule, the Termination Payment where this Agreement is terminated as a consequence of the occurrence of a Force Majeure Termination Event will be calculated as follows:

$$TP = A - D +/- G - H - I + J - M - O + P - R - S$$

where:

- TP =** the Termination Payment;
- A =** the Project Debt as at the Expiry Date (but disregarding the impact of any modelled payment of the Territory Contribution on the amount forecast in the Financial Model

to be owing to the Financiers as at that date, where such Territory Contribution is due and payable under this Agreement but has not been paid to Project Co);

- D =** any amount owing by Project Co or Finance Co (or both) to the Territory under the Territory Project Documents, including all amounts in respect of which the Territory is entitled to exercise a right of set-off under this Agreement;
- G =** the amount of costs incurred or gains realised by Project Co or Finance Co (or both) (acting reasonably) as a direct result of terminating the Finance Documents, including as a result of terminating or reversing any derivative position, in each case arising from the Territory's or Project Co's election to terminate this Agreement as a consequence of the occurrence of a Force Majeure Termination Event. If the net amount is a gain it should be a deduction from, and if it is a cost it should be an addition to, the Termination Payment;
- H =** the aggregate of the following amounts:
- (i) any amounts owing to Project Co or Finance Co (or both); and
 - (ii) any credit balances standing in accounts held by or for the benefit of Project Co or Finance Co (or both) on the Expiry Date (other than those amounts which Project Co or Finance Co (or both) holds on trust for a subcontractor in those accounts in accordance with the Finance Documents),
- in each case only to the extent that it has not otherwise been taken into account in calculating the Termination Payment;
- I =** any Insurance proceeds:
- (i) that would have been received before the Expiry Date if Project Co had complied with its obligations under this Agreement and which if so received would have been, or would have been required to be, applied towards any component of the Termination Payment otherwise payable under this Section 6 of this Schedule; and
 - (ii) received or receivable by Project Co or Finance Co (or both) at any time during the period between the Expiry Date and the date on which the Termination Payment is made, except for insurance proceeds:
 - A. that are being held to be applied to repairing or rebuilding the Relevant Assets; or
 - B. representing Insurance indemnification of Project Co or Finance Co (or both) against Liabilities to third parties;
- J =** any amounts owing by the Territory to Project Co or Finance Co (or both) under the Territory Project Documents as at the Expiry Date (including the amount of any Construction Price or Monthly Service Payments which has accrued but not been paid as at the Expiry Date) but excluding any Territory Contribution which is owing as at the Expiry Date;
- M =** all sums due and payable to Project Co or Finance Co (or both) from the Financiers as a result of any prepayment of debt or interest and any third party amounts paid to Project Co or Finance Co (or both) at any time during the period between the Expiry Date and the date of payment;
- O =** to the extent such amounts are outstanding at the Expiry Date, any amounts included in item A that are intended (as described in the Financial Model) to be

refinanced in the form of equity or subordinated debt treated as equity, such amount including any accrued, deferred or rolled up interest;

- P =** amounts reasonably and properly incurred by Project Co and payable to the Delivery Contractor or the O&M Contractor in accordance with the relevant Subcontract as a direct result of the termination of this Agreement to the extent Project Co had used its best endeavours to minimise such costs;
- R =** if the Territory has elected to relieve Project Co from its obligation to carry out any of the Final Refurbishment Works under clause 30.7(a)(iv), the costs (if any) of carrying out such Final Refurbishment Works as set out in the Outstanding Matters Report prepared by the Handover Reviewer upon termination of this Agreement (to the extent not funded from the Handover Escrow Account or the Handover Bond); and
- S =** the Receivables Refund Payment.

In calculating items A to S, there will be no double counting of amounts.

7. Interest

In respect of Termination Payments calculated under this Schedule only, interest accrues:

- (a) in respect of a Termination Payment calculated under Section 3 or Section 4 of this Schedule, from the 21st Business Day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest accrues on that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid; and
- (b) in respect of any Termination Payment calculated under Section 5 or Section 6 of this Schedule, from and including the Expiry Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Actual Debt portion of that Termination Payment accrues at the rate provided in the relevant Finance Document from and including the day after the Expiry Date to and including the 20th Business Day after the Expiry Date and thereafter on the whole of that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid.

8. Insurance

If any proceeds of Insurance are received by Project Co after this Agreement is terminated (other than those Insurance proceeds representing Insurance indemnification of Project Co against Liabilities to third parties) and those proceeds:

- (a) were not taken into account in calculating the Termination Payment that has already been made on the basis that the amounts were not "owing to Project Co", "received" or "received or receivable" by Project Co at the relevant time;
- (b) would have been so taken into account had they been owing, received or receivable at the time of calculating the Termination Payment; and
- (c) apply to the period up to and including the date of payment of the Termination Payment,

then those proceeds are held on trust by Project Co for the Territory, and Project Co must pay those proceeds, or cause those proceeds to be paid, to the Territory for the Territory's retention promptly on receipt. If the proceeds are not yet received then, to the maximum

extent legally possible, the Territory will be subrogated to the rights of Project Co in respect of those proceeds, and entitled to recover and retain the proceeds accordingly. The rights and obligations in this Section 8 of this Schedule survive the expiry or early termination of this Agreement.

9. Mitigation

Each party must use all reasonable endeavours to mitigate and minimise losses or costs to be included in the calculation of the relevant Termination Payment. Project Co must use all reasonable endeavours to maximise receipts and gains which are to be calculated within any Termination Payment.