Schedule 7 – Termination Payments

1 INTERPRETATION AND DEFINITIONS

1.1 Interpretation

In this Schedule 7, references to a “Section” or to an “Annexure” are references to sections and annexures of this Schedule 7 and references to “Clause” and “Schedule” are references to clauses and schedules of this Deed.

1.2 Definitions

In this Schedule 7:

(a) any word, expression, reference or term which is defined in this Deed and is not specifically defined in Section 1.2 will, unless the context otherwise requires, have the same meaning in this Schedule 7; and

(a) these terms have the following meanings:

Compensation Date means the earlier of:

(a) for a tender conducted under Section 3.3;

(i) where Section 3.3(k)(ii) applies, the date on which the State notifies Project Co under Section 3.3(k)(ii); 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 4:

(i) where it is deemed under Section 3.3(g)(i) that there is no Liquid Market, 40 Business Days after the date on which the State notifies Project Co that it has received fewer than two Compliant Tenders under Section 3.3(g);

(ii) where Section 3.3(j) applies, the later of the date on which the State notifies Project Co in accordance with Section 3.3(j) 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 a tender for the New Contract submitted to the State that meets, in all material respects, the qualification criteria, notified by the State under Section 3.3(b).

Compliant Tenderer means the party who submits a Compliant Tender.

Default Termination Payment means a termination payment arising from the termination of this Deed by the State as a result of a Default Termination Event in accordance with either Sections 3 or 4 (as applicable).

Fair Market Value means the amount at which an asset (including, for the avoidance of doubt and as the circumstances require, financial or economic assets or interests such as the right to receive a series of payments through a contractual arrangement), equity or liability could be exchanged in an arm’s length transaction between informed and willing parties and excludes a forced or liquidation sale.

Force Majeure Termination Payment means a termination payment arising from the termination of this Deed by the State as a result of a Force Majeure Termination Event in accordance with Section 6.

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

Independent Expert means an independent expert appointed under Section 2.

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 Deed and each of whom has agreed with the State in writing to submit a Compliant Tender (whether or not a Compliant Tender is subsequently 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 Deed, but without imposing on the new party any Liability for any breach of this Deed by Project Co prior to the date of that New Contract, and that assumes:

(a) if the New Contract is entered into prior to the Date for Commercial Acceptance for a Stage, that the School Facilities are to be designed, built, commissioned and tested to achieve Commercial Acceptance for a Stage in accordance with this Deed;

(b) the Services are to be delivered in accordance with, and to the standards set out in, Schedule 27 (Services Specifications) and otherwise in accordance with this Deed;

(c) all other provisions of this Deed continue to apply;

(d) the term of the New Contract being:

  (i) for a tender conducted under Section 3.3, a period equal to the period from the Compensation Date (determined under paragraph (a) of that definition) to the Expiry Date; and

  (ii) for an Independent Expert valuation under Section 4, a period equal to the period from the Compensation Date (determined under paragraph (b) of that definition) to the Expiry Date; and

(e) the provisions with respect to payment of the Quarterly Services Payment continue to apply as set out in this Deed, noting that the Operating Phase may be shorter than is contemplated in the Financial Close Financial Model as a result of delay or forecast delay to the achievement of Commercial Acceptance for a Stage.

Partial Termination Payment means a partial termination payment in accordance with Section 10.

Performance Measure Regime means the regime, in respect of an Incident, against which Project Co’s performance is to be assessed, as described in Schedule 3 (Payment).

Post Termination Quarterly Amount means for the whole or any part of a Quarter or Quarters for the period from the Expiry Date to the Compensation Date, an amount equal to the Quarterly Services Payment, assuming no adjustment in accordance with the Performance Measure Regime, which would have been payable in respect of that Quarter or those Quarters under this Deed had this Deed not been terminated less an amount equal to the aggregate of:

(a) the greater of all cost components related to the provision of the Services and the reasonable costs to the State of alternative provision of the Services in accordance with, and to the standards set out in, Schedule 27 (Services Specifications) and otherwise in accordance with this Deed (whether or not any Services are delivered);

(b) all cost components related to the provision of insurance; and

(c) Rectification Costs incurred by the State.

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

Rectification Costs means an amount equal to the reasonable and proper costs incurred, or reasonably anticipated to be incurred, by the State 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 (having regard to the nature, requirements, policies and processes of State tendering) incurred by, or on behalf of, the State 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 State:

(a) requests tenders from persons interested in entering into a New Contract;

(b) evaluates the responses from those interested parties; and

(c) negotiates to enter into a New Contract with a Compliant Tenderer.

Tender Process Monitor has the meaning given to it in Section 3.3(e).

Termination for Convenience Payment means a termination payment arising from the termination of this Deed by the State for convenience in accordance with Section 5.

Termination Payment means a termination payment in accordance with any of Sections 3, 4, 5 or 6.

2 INDEPENDENT EXPERT

(a) If this Deed is terminated and an Independent Expert is required by a provision of this Deed to administer this Schedule 7:

(i) the parties will appoint an Independent Expert in accordance with Clause 43.3; and

(ii) the provisions of Clause 43.3 will apply as if the Independent Expert was determining a Dispute.

(b) In carrying out its functions under Clause 43.3, 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 7.

3 TERMINATION FOR DEFAULT TERMINATION EVENT

3.1 The State's election

(a) If the State terminates this Deed as a result of a Default Termination Event in accordance with Clause 40.7, whether or not any other basis for Termination then applies, the State may, subject to Section 3.1(c), elect to either:

(i) conduct a Tender Process in accordance with Section 3.3; or

(ii) adopt the “no Tender Process” procedure in accordance with Section 4.

(b) The State must notify Project Co of its election on or before the day falling 20 Business Days after the Expiry Date. If the State fails to notify Project Co of its election by that date, the State will be deemed to have elected that Section 3.1(a)(i) applies.

(c) The State must not elect (and may not be deemed under Section 3.1(b) to have elected) to conduct a tender for the New Contract:

(i) where, and for the period within which, the Financiers (or the Security Trustee on their behalf) are validly exercising their right to step-in of this Deed under the Finance Direct Deed;

(ii) if the Financiers have not procured the transfer of Project Co's rights and liabilities under this Deed in accordance with the Finance Direct Deed, provided that:

(A) the Financiers (or the Security Trustee on their behalf) have used their best efforts to do so; or

(B) the reason for the failure to transfer Project Co's rights and liabilities under this Deed is that there is no Liquid Market; or

(iii) where the State and Project Co agree, or it is determined in accordance with the Dispute resolution procedures in Clause 43 (Dispute resolution procedure), that no Liquid Market exists.

(d) Any Dispute in relation to whether a Liquid Market exists may be referred by either party for determination by an Independent Expert in accordance with Clause 43 (Dispute resolution procedure).

(e) If the State elects to conduct a tender for the New Contract in accordance with Section 3.1(a)(i), Sections 3.2 and 3.3 will apply.

(f) With respect to all or any part of a Quarter falling within the period from the Expiry Date to the Compensation Date (each inclusive), the State will pay to Project Co the Post Termination Quarterly Amount at the same time that the State would have been required to pay to Project Co the Quarterly Services Payment in respect of that Quarter had this Deed not been terminated.

(g) If any Post Termination Quarterly Amount is less than zero then it will be carried forward and will be set off against any future positive Post Termination Quarterly Amount or other elements of the Default Termination Payment.

3.2 Tender Process procedure

(a) The objective of the tendering procedure conducted for a New Contract is to establish by way of the Tender Process a Highest Compliant Tender Price.

(b) The Default Termination Payment will be calculated as follows:

$\mathbf{DTP_{TP} = A - C - D - E - F - G - H + J - M - N}$

Where:

DTP_{TP} = the Default Termination Payment where the State has elected to conduct a Tender Process in accordance with Section 3.3;

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

(i) assume:

(A) a Compensation Date determined under paragraph (a) of that definition (which, in the event that an anticipated date is used, is subject to adjustment to reflect the actual date on which the Compensation Date occurs);

(B) that the Services are delivered in accordance with, and to the standards set out in Schedule 27 (Services Specifications) and otherwise in accordance with this Deed;

(C) that the provisions with respect to payment of the Quarterly Services Payments continue to apply as provided for in this Deed;

(D) that any breach of this Deed and any adjustments under the Performance Measure 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 Services in accordance with, and to the standards set out in, Schedule 27 (Services Specifications) and otherwise in accordance with this Deed; and

(ii) take into account:

(A) the costs (if any), including the timing of the costs, which are required to be incurred to complete the Works and achieve Commercial Acceptance for a Stage in accordance with this Deed;

(B) to the extent not covered in Section 3.2(b)(ii)(A), the costs (if any), including the timing of the costs, which are required to be incurred to resupply any unfixed plant and equipment not incorporated into the Works at the Expiry Date which are required for the Works to achieve Commercial Acceptance for a Stage in accordance with this Deed and which the State does not have title to, and possession of;

(C) the reinstatement costs (if any) and the timing of these costs, including a reasonable contingency against the risks of the Project, which are required to be incurred with respect to the

School Facilities 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 Schedule 27 (Services Specifications) and otherwise in accordance with this Deed; and

(D) any costs, and their timing, required to be incurred to enable the entity (who is to become the new "Project Co") to replace Project Co under the New Contract to carry out the Project Activities in accordance with, and to the standards set out in, Schedule 27 (Services Specifications) and otherwise in accordance with this Deed and otherwise to perform Project Co's obligations under the Project Documents;

C = the Tender Costs;

D = any Liability of a Project Entity to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed;

E = to the extent not deducted from the Post Termination Quarterly Amount, any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (excluding Indirect or Consequential Loss under Clause 38.14);

F = the absolute value of all Post Termination Quarterly Amounts calculated under this Deed, to the extent such amounts equate to a negative number and remain outstanding at the Compensation Date. For the avoidance of doubt the Default Termination Payment is reduced where the aggregate of all Post Termination Quarterly Amounts equates to a negative number;

G = any net gains which have accrued, or will accrue, to a Project Entity as a result of the termination of this Deed or any other Project Documents;

H = to the extent it has not been taken into account in the determination of the Termination Payment:

(A) insurance proceeds (excluding insurance proceeds representing insurance indemnification of Project Co against liabilities to third parties);

(B) any other amounts owing to a Project Entity; and

(C) any credit balances standing in accounts held by, or for the benefit of, a Project Entity on the Expiry Date, other than those amounts which a Project Entity holds:

(1) on trust for a subcontractor in those accounts in accordance with the Finance Documents; or

(2) as retention monies of the D&C Subcontractor or the Services Subcontractor to the extent that a Project Entity is not entitled to retain those monies at the time of termination of the Project Deed;

J = any amounts owing as at the Expiry Date by the State to a Project Entity under the State Project Documents (including amounts of any Quarterly Services Payments which have accrued but not been paid as at the Expiry Date);

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

N = the Receivables Refund Payment.

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

3.3 Tender Process

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

(a) (**State's reasonable endeavours**): The State will (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable, taking into account the requirements of any applicable State approval process or procurement policies.

(b) (**Qualification criteria**): The State must determine (acting reasonably), and notify Project Co of, the qualification criteria and other requirements and terms of the Tender Process (including timing of the Tender Process). If the tenderer is required to engage contractors or subcontractors, the qualification criteria must include a requirement that the tenderer engage contractors or subcontractors with appropriate technical and financial capabilities to undertake the Project, taking into account their obligations under those contracts and subcontracts.

(c) (**Appropriate methodology for comparing tenders**): The State, in setting the qualification criteria and other requirements and terms of the Tender Process, must ensure that an appropriate methodology for comparing tenders is in place.

(d) (**Project Co authorises release of information by State under Tender Process**): Project Co authorises the release of any information by the State under the Tender Process that would otherwise be prevented under this Deed that is reasonably required as part of the Tender Process.

(e) (**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 State's compliance with the Tender Process and making representations to the State regarding the Tender Process. The Tender Process Monitor must:

(i) not disclose any confidential information in relation to tenders submitted as part of the Tender Process to Project Co or any other person, except:

(A) where permitted to do so by the terms of the confidentiality agreement referred to in Section 3.3(f);

(B) to advise Project Co and the Financiers as to whether it considers that the State has acted in accordance with the Tender Process and correctly determined the Highest Compliant Tender Price; and

(C) to provide details of any representations which the Tender Process Monitor makes to the State regarding the Tender Process; and

(ii) as a condition of its appointment, must provide an undertaking to the State that it will not disclose any confidential information in relation to tenders submitted as part of the Tender Process to Project Co or any other person, except as permitted by Sections 3.3(e)(i)(A) to 3.3(e)(i)(C).

(f) (**Confidentiality agreement**):

(i) Project Co will procure the Tender Process Monitor to:

(A) enter into a confidentiality agreement with the State in a form acceptable to the State 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

(B) make any representations it has in relation to the Tender Process to the State in a timely manner as the Tender Process proceeds.

(ii) The State is not bound to consider or act upon representations made by the Tender Process Monitor, 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 to the Dispute resolution procedures in Clause 43 (Dispute Resolution Procedure).

(g) (**Compliant Tenders**): As soon as practicable after tenders have been received, the State must (acting reasonably) determine the Compliant Tenders. Subject to the State receiving at least two Compliant Tenders, it must notify Project Co of the Highest Compliant Tender Price. If only one Compliant Tender is received:

(i) it shall be taken that no Liquid Market exists, any Highest Compliant Tender Price will be disregarded and there will be deemed to be no Liquid Market;

(ii) the Tender Process pursuant to this Section 3 will cease; and

(iii) the “no Tender Process” procedure under Section 4 will automatically apply.

(h) (**No obligation of State to enter into contract**): The State may enter into a contract in its sole and absolute discretion and is not obliged to enter into any contract with any person, resulting from the Tender Process.

(i) (**Dispute**): If Project Co refers a Dispute relating to the Highest Compliant Tender Price or the Default Termination Payment for resolution in accordance with Clause 43.3 (Expert Determination), notwithstanding that referral, the State will still be entitled to enter into a contract replacing this Deed, whether or not the contract is a New Contract.

(j) (**Election of “no Tender Process” procedure**): The State may elect, at any time prior to the receipt of two Compliant Tenders, to follow the “no Tender Process” procedure under Section 4 by notifying Project Co that this election has been made.

(k) (**Notification of decision not to enter into contract**): If a Liquid Market exists, the Default Termination Payment is determined in accordance with Section 3.2 and (where the Default Termination Payment is a positive amount) Project Co has complied with Clause 41.7 (Payment on Termination):

(i) the Default Termination Payment calculated in accordance with Section 3.2 will be payable within 20 Business Days of the date of the New Contract; or

(ii) if the State 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 Default Termination Payment calculated in accordance with Section 3.2(b) will be payable within 20 Business Days of such notification.

4 NO TENDER PROCESS PROCEDURE

If the State terminates this Deed due to the occurrence of, or during the subsistence of, a Default Termination Event in accordance with Clause 40.7 (Default Termination Event) (whether or not there is any other basis for termination) and either elects (or is deemed to have elected) that this Section 4 will apply or Sections 3.3(g)(i) or 3.3(j) applies, the Default Termination Payment will be calculated as follows:

$$\mathbf{DTP_{NTP} = A - C - D - E - F - G - H + J - M - N - P}$$

Where:

DTP_{NTP} = the Default Termination Payment where the State has elected to adopt the “no Tender Process” procedure in accordance with Section 4;

A = the Fair Market Value of the Project as at the Compensation Date determined by the Independent Expert on the basis that this Deed and each of the other State 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 State Budget papers and otherwise by:

(i) 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;

(ii) assuming that:

(A) the Project Activities are carried out in accordance with, and to the standards set out in, Schedule 27 (Services Specifications) and in accordance with this Deed;

(B) the provisions with respect to payment of the Quarterly Services Payments continue to apply as provided for in this Deed;

(C) any breach of this Deed and any adjustments under the Performance Measure Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract;

(D) 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, Schedule 27 (Services Specifications) and in accordance with this Deed;

(iii) taking into account:

(A) the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Deed and to achieve Commercial Acceptance;

(B) the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, required to be incurred with respect to the School Facilities and the Site to enable the carrying out of the Project Activities until the Expiry Date in accordance with and to the standards set out in Schedule 27 (Services Specifications) and otherwise in accordance with this Deed; and

(C) 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 Schedule 27 (Services Specifications) and otherwise in accordance with this Deed and to perform Project Co's obligations under the Project Documents; and

(iv) using a discount rate to calculate the net present value of the cash flows based on the following formula, having regard to the risk profile and nature of the cash flows of the Project:

$$\mathbf{R = (1 + PIRR + CB_b - Cb_a) \times (1 + i) - 1}$$

where:

R = the discount rate;

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

i = the assumed long term CPI (or equivalent) indexation rate using the rates of indexation forecast in the most recently published State Budget papers as at the date of calculation of the Default Termination Payment under this section 4;

C = the Tender Costs (if any) and the State's reasonable forecast internal and external costs of tendering a form of contract(s) for the Project Activities to replace this Deed after termination of this Deed;

D = any Liability of a Project Entity to the State under the Project Documents to which the State is party as at the Expiry Date, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed;

E = to the extent not deducted from the Post Termination Quarterly Amount, any additional costs reasonably incurred by the State as a direct result of the Default Termination Event, excluding any amounts payable by a party under this Schedule 7, subject to Clause 38.14 (Indirect or Consequential Loss);

F = the absolute value of all Post Termination Quarterly Amounts calculated under this Deed, to the extent such amounts equate to a negative number and remain outstanding at the Compensation Date. For the avoidance of doubt the Termination Payment is reduced where the aggregate of all Post Termination Quarterly Amounts equates to a negative number;

G = any net gains which have accrued, or will accrue, to a Project Entity as a result of the termination of this Deed or of any other Project Document, provided that, if the aggregate of gains and losses so accrued is a negative number, G will be deemed to be zero;

H = the aggregate of the following amounts:

(i) insurance proceeds (excluding insurance proceeds representing insurance indemnification of Project Co against its liabilities to third parties);

(ii) any other amounts owing to a Project Entity; and

(iii) any credit balances standing in accounts held by or for the benefit of a Project Entity, other than those amounts which a Project Entity holds:

(A) on trust for a subcontractor in those accounts in accordance with the Finance Documents; or

(B) as retention monies in respect of the D&C Subcontractor or the Services Subcontractor to the extent that a Project Entity is not entitled to retain those monies at the time of termination of the Project Deed,

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 State to a Project Entity under the State Project Documents as at the Expiry Date (including amounts of Quarterly Services Payments which have accrued but not been paid as at the Expiry Date);

M = any third party amounts paid to a Project Entity at any time during the period between the Expiry Date and the Compensation Date;

N = the costs incurred by the State of engaging the Independent Expert to administer this Schedule 7; and

P = the Receivables Refund Payment.

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

5 TERMINATION FOR CONVENIENCE

If this Deed is terminated in accordance with Clause 41.2 (Termination for Convenience), the Termination Payment will be calculated as follows:

TP = A + B - D +/- G - H - I + J + K + L – M – N

where:

TP = the Termination Payment;

A = the Project Debt as at the Expiry Date;

B = the Fair Market Value of the equity as reasonably assessed by the Independent Expert. In making such a determination, the Independent Expert will have regard to prevailing market rates of return to equity for projects with a similar risk profile to this Project, and apply those 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 Schedule 3 (Payment);

(ii) projected operating costs of Project Co reasonably expected to be incurred in connection with the provision of the Services and assuming the Services are delivered in accordance with, and to the standards set out in Schedule 27 (Services Specifications) and otherwise in accordance with this Deed; and

(iii) the financing costs of the Project Entities 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 Deed, continue in full force and effect from the Expiry Date to the Final Expiry Date;

D = any amounts owing by a Project Entity to the State under the State Project Documents as at the Expiry Date, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed;

G = the amount of costs incurred or gains realised by a Project Entity (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 State's election to terminate for convenience under Clause 41.2 (Termination for Convenience). 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 a Project Entity; and

(ii) any credit balances standing in accounts held by or for the benefit of a Project Entity, other than those amounts which a Project Entity holds:

(A) on trust for a subcontractor in those accounts in accordance with the Finance Documents; or

(B) as retention monies in respect of the D&C Subcontractor or the Services Subcontractor to the extent that a Project Entity is not entitled to retain those monies at the time of termination of the Project Deed,

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 Deed 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; and

(ii) received or receivable by a Project Entity 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 Works or the School Facilities; or

(B) representing Insurance indemnification of Project Co against Liabilities to third parties;

J = any amounts owing by the State to a Project Entity under the State Project Documents as at the Expiry Date (including the amount of any Quarterly Services Payment that has accrued but not been paid 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 Deed and which would not have been otherwise incurred if this Deed was not terminated under Clause 41.2 (Termination for Convenience);

L = amounts reasonably and properly incurred by Project Co and payable to the D&C Subcontractor, the Services Subcontractor in accordance with the relevant Subcontract as a direct result of the termination of this Deed to the extent Project Co had used its best endeavours to minimise such costs including amounts payable to the D&C Subcontractor, the Services Subcontractor for termination for convenience under the relevant Subcontract;

M = all sums due and payable to a Project Entity from the Financiers as a result of any prepayment of debt or interest and any third party amounts paid to a Project Entity at any time during the period between the Expiry Date and Compensation Date; and

N = the Receivables Refund Payment.

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

6 TERMINATION FOR FORCE MAJEURE TERMINATION EVENT

6.1 Termination – No Default Termination Event subsisting

If this Deed is terminated 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 Default Termination Payment was due and the Termination Payment was calculated in accordance with the provisions of Section 4; and

(b) an amount calculated in accordance with Section 6.3.

6.2 Termination – Default Termination Event subsisting

If this Deed is terminated due to a Force Majeure Termination Event and a Default Termination Event is then subsisting, the Termination Payment will be the greater of:

(a) an amount calculated as though a Default Termination Payment was due and the Termination Payment was calculated in accordance with the provisions of Section 3; and

(b) an amount calculated in accordance with Section 4.

6.3 Force Majeure Termination Payment

Subject to Sections 6.1 and 6.2, the Termination Payment where this Deed 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

where:

TP = the Termination Payment;

A = the Project Debt as at the Expiry Date;

D = any Liability of a Project Entity to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed;

G = the amount of costs incurred or gains realised by a Project Entity (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 State's or a Project Entity's election to terminate this Deed 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 a Project Entity; and

(ii) any credit balances standing in accounts held by or for the benefit of a Project Entity on the Expiry Date, other than those amounts which a Project Entity holds:

(A) on trust for a subcontractor in those accounts in accordance with the Finance Documents; or

(B) as retention monies in respect of the D&C Subcontractor or the Services Subcontractor to the extent that a Project Entity is not entitled to retain those monies at the time of termination of the Project Deed,

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 Deed 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; and

(ii) received or receivable by a Project Entity 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 Works or the School Facilities; or

(B) representing Insurance indemnification of Project Co against Liabilities to third parties;

J = any amounts owing by the State to a Project Entity under the State Project Documents as at the Expiry Date (including the amount of any Quarterly Services Payment which has accrued but not been paid as at the Expiry Date);

M = all sums due and payable to a Project Entity from the Financiers as a result of any prepayment of debt or interest and any third party amounts paid to a Project Entity 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 Close 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; and

P = the Receivables Refund Payment.

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

7 PAYMENT AND INTEREST

In respect of Termination Payments calculated under this Schedule 7 only, interest accrues:

(a) in respect of a Termination Payment calculated under Sections 3 or 4, 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 Sections 5 or 6, 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 a Project Entity after this Deed 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 the State has already 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 taken into account as deductions from the termination payment had they been owing, received or receivable at that time; 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 the Project Entity for the State and the Project Entity must pay those amounts to the State for the State's retention promptly on receipt. If the proceeds are not yet received, then, to the maximum extent legally possible, the State will be subrogated to the rights of the Project Entity in respect of those proceeds, and entitled to recover and retain the proceeds accordingly. The rights and obligations in this Section 8 survive the expiry or early termination of this Deed.

9 MITIGATION

Each party must use all reasonable endeavours to mitigate any losses and any costs to be included in the calculation of the relevant termination payment. Project Co must use (and must procure that each other Project Entity uses) all reasonable endeavours to maximise receipts and gains which are to be calculated within any termination payment.

10 AMOUNTS TO BE CONSIDERED IN PARTIAL TERMINATION PAYMENT CALCULATIONS

(a) On Partial Termination of this Deed under Clause 42.1 or 42.4, a Partial Termination Payment will be applicable, based on the principles set out in:

   (i) Sections 3 and 4 in the case of a Default Termination Event;

   (ii) Section 5 in the case of a 'Termination for Convenience' under Clause 41.2; and

   (iii) Section 6 in the case of a Force Majeure Termination Event (where a Default Termination Event is not then subsisting),

   in each case, adapted to take account of the termination of the relevant Site, School Facility or Stage rather than the whole of the Project and having regard to the other paragraphs of this Section 10 and of Clause 42 (Partial Termination).

(b) If, on Partial Termination of this Deed, an Independent Expert is required to administer this Schedule 7, the parties will appoint an Independent Expert to act as an expert calculator of the relevant Partial Termination Payment under Section 2 as if a reference in Section 2 to a “Termination Payment” is a reference to a “Partial Termination Payment”.

(c) In determining the amounts to be taken account of in the calculation of a Partial Termination Payment, the Independent Expert must have regard to the Base Case Financial Model to the extent that relevant revenues and costs (or proportions of revenues or costs) that are referable to the Site, School Facility or Stage the subject of Partial Termination can be directly obtained or inferred from the Base Case Financial Model.

(d) Where the calculation of a Partial Termination Payment requires determination of an amount which cannot be directly obtained, calculated or inferred from the Base Case Financial Model, the Independent Expert must use the most appropriate method of determining the amount having regard to the relevant Site, School Facility or Stage, or Sites, School Facilities or Stages, and the nature of the revenue or cost and should give regard to any relevant percentage split in Schedule 3 (Payment Schedule) for the relevant component.

This may include, but is not limited to, the proportion of:

(i) capital costs for the Site, School Facility or Stage that is the subject of Partial Termination as a proportion of the original total capital cost for all the Sites, School Facilities or Stages;

(ii) whole of life costs for the Site, School Facility or Stage that is the subject of Partial Termination as a proportion of the original total whole of life costs for all the Sites, School Facilities or Stages;

(iii) service costs for the Site, School Facility or Stage that is the subject of Partial Termination as a proportion of the original total service costs for all the Sites, School Facilities or Stages; or

(iv) Project Debt, financing and any other costs not referred to in Sections 10(d)(i) to 10(d)(iii) that relate to the Site, School Facility or Stage or Sites, School Facilities or Stages.