

Schedule 26 – Termination Payments

(clause 49.10)

1. Definitions

For the purposes of this Schedule 26 (*Termination Payments*), the following definitions will apply:

Actual Proceeds has the meaning given in clause 2.3(b).

Additional Amount has the meaning given in clause 2.3(b).

Base Case Project Return means the percentage set out as the "Base Case Project Return" in the cell H555 of the Model Outputs Schedule.

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

Compensation Date means either:

- (a) if clause 3.2 applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Termination Payment payable to OpCo has been agreed or determined under clause 3.6; or
- (b) if clause 3.3 applies, the date on which the Estimated Fair Value has been agreed or determined.

Compensation Month means each calendar month from the Termination Date until the Compensation Date, provided that if the Termination Date falls part way through a calendar month, the first Compensation Month begins on the Termination Date and ends at the end of that calendar month, and the last Compensation Month will begin on the first day of the calendar month in which the Compensation Date falls and end on the Compensation Date. Each other Compensation Month will begin on the first day of each calendar month and end on the last day of that calendar month.

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

Compliant Tenderer means a tenderer who submits a Compliant Tender.

Deemed New Contract means an agreement on the same terms and conditions as this deed as at the Termination Date, but with the following amendments:

- (a) if this deed is terminated during the Delivery Phase, then the Date for Completion shall be extended by such period as would have been granted to allow a New OpCo (had one been appointed) to achieve Completion in accordance with this deed;
- (b) any accrued Default Notices, Persistent Breach Notices and Final Persistent Breach Notices, Frequent Breaches Notices and Final Frequent Breaches Notices shall be cancelled;
- (c) the term of such contract shall be equal to the period from the Termination Date to and including the Expiry Date; and
- (d) the New OpCo only being required to pay a nominal fee to the Principal under clause 28A(a) of the Operative Provisions in consideration for the licence granted by the Principal in accordance with clause 12.2 of the Operative Provisions.

Estimated Fair Value or EFV means the amount determined in accordance with clause 3.3 and clauses 3.4 or 3.5 (as applicable), which a third party would pay to the Principal as the Fair Value of the Deemed New Contract.

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

Financing Facilities means the facilities, financial arrangements or accommodation provided, or to be provided from time to time, in accordance with the Debt Financing Documents, to any OpCo Group Member or Finance Co Group Member for the purposes of carrying out the SSTOM PPP.

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Independent Expert means the independent expert appointed under clause 8.

Instalment Amount has the meaning in clause 2.1(d).

Instalment Date means the date on which a Project Entity would have been required to pay debt service payments or repayments to the Debt Financiers under the Debt Financing Documents had this deed not been terminated by the Principal and there was no default under the Debt Financing Documents.

Liquid Market means that there are at least two parties (other than any party controlled by the Debt Financiers) in the prevailing market willing to competitively tender to undertake or acquire public private partnership contracts or similar contracts for the provision of services (in each case the same as or similar to this deed), such that the result of that tender process would provide a reasonably likely indicator of Fair Value.

Management Services Deed means the deed titled 'Management Services Deed' between OpCo and Plenary Asset Management Pty Ltd ACN 161 527 466 dated on or around the date of this deed.

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

- (a) if this deed is terminated during the Delivery Phase, then the Date for Completion shall be extended by a period to allow a New OpCo to achieve Completion in accordance with this deed;
- (b) any accrued Default Notices, Persistent Breach Notices, Final Persistent Breach Notices, Frequent Breaches Notices and Final Frequent Breaches Notices shall be cancelled;
- (c) the term of such contract shall be equal to the period from the Compensation Date to and including the Expiry Date;
- (d) the New OpCo will pay a Capital Sum to the Principal on entering into the New Contract;

- (e) any other amendments that do not materially reduce the Capital Sum which a tenderer would be prepared to pay in consideration for the Principal entering into the New Contract; and
- (f) the New OpCo only being required to pay a nominal fee to the Principal under clause 28A(a) of the Operative Provisions in consideration for the licence granted by the Principal in accordance with clause 12.2 of the Operative Provisions.

New OpCo means the person who has entered or who will enter into the New Contract with the Principal.

OpCo Additional Amount has the meaning given in clause 2.3(c)(i).

Post Termination Service Payment means, for a Compensation Month, an amount equal to the Service Payment which would have been payable in respect of that Compensation Month under this deed had this deed not been terminated, less an amount equal to the aggregate of (without double counting);

- (a) all cost components of the Service Payment relating to the performance of OpCo's Activities and insurance; and
- (b) any Rectification Costs incurred by the Principal during the Compensation Month, which, for the avoidance of doubt, can be an amount that is less than zero.

Principal's Date for Completion has the meaning given in clause 3.4.

Provisional Proceeds has the meaning given in clause 2.3(a).

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

- (a) criteria having substantially the same effect as the criteria applied by the Principal in assessing OpCo's detailed proposal and any other final offers under the procurement process used in the selection of OpCo to deliver the SSTOM PPP to the extent, as at the Termination Date, they remain relevant;
- (b) the financial ability of the tenderers to pay the Capital Sum;
- (c) the technical ability of the tenderers to deliver the SSTOM Works and/or Operations Activities;
- (d) the independence of the tenderer from OpCo and the Principal; and
- (e) any other relevant tender criteria selected by the Principal acting reasonably.

Receivables Refund Payment has the meaning given to that term in the Securitisation Agreement, save that for the purposes of clauses 3, 4 and 5, a reference to the Receivables Refund Payment is a reference to the Receivables Refund Amount prior to the deduction of any negative Termination Payment as contemplated by clause 6.

Rectification Costs means an amount equal to the aggregate of the reasonable and proper costs incurred or reasonably anticipated to be incurred by the Principal in:

- (a) curing, rectifying or remedying OpCo defaults; and
- (b) procuring alternative performance of OpCo's Activities to the extent such costs exceed the cost components of the Service Payment relating to the performance of OpCo's Activities and insurance deducted as part of the Post Termination Service Payment.

Senior Debt means the lower of:

- (a) the principal amounts properly drawn down by any Project Entity under the Financing Facilities to finance OpCo's Activities, including accrued interest and fees payable in respect of those principal amounts, and any net amounts payable under any hedging arrangements relevant to those principal amounts deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of any Project Entity or any Debt Financier and related to the SSTOM PPP but does not include default interest, equity shareholder loans, or amounts in the nature of Equity; or

- (b) amounts that would have been outstanding under the Financing Facilities had OpCo received the Service Payment as outlined in the Financial Model and had each Project Entity complied with all of its obligations under the Debt Financing Documents as shown in the "Senior Debt drawdown and repayment schedule" in the Model Outputs Schedule plus the amount (if any) owing to the Debt Financiers in respect of the Debt Service Reserve Facility (as defined in the Debt Financing Documents).

Senior Debt Interest Rate means, in respect of each element of Senior Debt, the interest rate payable on that element of Senior Debt as provided in the "Senior Debt drawdown and repayment schedule" in the Model Outputs Schedule.

Services Provider means Plenary Asset Management Pty Ltd ACN 161 527 466, in its capacity as a counterparty to the Management Services Deed.

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

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

Tender Process means the process by which the Principal request tenders from any parties interested in entering into a New Contract, evaluates and negotiates the responses from those interested parties and enters into a New Contract with a New OpCo, in accordance with clause 3.2.

Termination Date means the date of termination of this deed in accordance with clause 49 of the Operative Provisions.

Termination Senior Debt means an amount equal to the sum of:

- (a) all amounts of Senior Debt outstanding at the Termination Date; and
- (b) where the Principal elects to pay for the Termination Payment via lump sum, all amounts, including costs of early termination of interest rate hedging arrangements, payable by an OpCo Group Member or a Finance Co Group Member to the Debt Financiers as a result of prepayment of principal outstanding under the Debt Financing Documents, subject to the OpCo Group Member or Finance Co Group Member and the Debt Financiers mitigating all such costs to the extent reasonably possible,

less:

- (c) all credit balances on any bank accounts held by the Debt Financiers or any of them for or on behalf of any Project Entity on the Termination Date (but not including any funds standing to the credit of the Insurance Proceeds Account to which the Principal is entitled pursuant to clause 45.15(f) of the Operative Provisions or any funds standing to the credit of the Principal Capital Contribution Account); and
- (d) where the Principal elects to pay for the Termination Payment via lump sum, all amounts, including receipts or benefits of early termination of hedging arrangements and other refunds, rebates or like amounts, payable by the Debt Financiers to any Project Entity as a result of prepayments of principal outstanding under the Debt Financing Documents.

Voluntary Termination Equity Value means the amount calculated in accordance with clause 4.2.

2. Payment of Termination Payment

2.1 Timing of payment and instalment option

- (a) If this deed is terminated under clause 49 of the Operative Provisions, the Principal must pay to OpCo the Termination Payment on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 49.4 of the Operative Provisions, 30 days after the Compensation Date if this is later) unless the Principal elects, in its absolute discretion, to pay in instalments in accordance with clause 2.1(b)
- (b) If OpCo is entitled to a Termination Payment in accordance with clause 49.10 of the Operative Provisions and this Schedule 26 (*Termination Payments*):
 - (i) subject to clause 2.1(b)(ii), the Principal shall, at its sole discretion, elect to pay by:
 - (A) lump sum; or
 - (B) where the Principal has not elected to assume (or have its nominee assume) some or all of any OpCo Group Member's or Finance Co Group Member's rights and liabilities under the Debt Financing Documents pursuant to clause 49.12(a) of the Operative Provisions, instalments (in amounts determined in accordance with clause 2.1(d)) on the Instalment Dates; and
 - (ii) where the Principal determines to re-tender for the provision of OpCo's Activities and receives a lump sum payment, it will in turn pay OpCo by way of a lump sum (but not until it is in receipt of the lump sum payment from the re-tender for the provision of OpCo's Activities).
- (c) If the Principal elects to pay by instalments, it must pay:
 - (i) the Instalment Amounts described in clause 2.1(d)(i) or clause 2.1(d)(ii)(A) (as applicable) on the Instalment Dates for those Instalment Amounts; and
 - (ii) where clause 2.1(d)(ii)(B) applies, the Instalment Amount described in that clause on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 49.4 of the Operative Provisions, 30 days after the Compensation Date if this is later).
- (d) The instalment amounts (each an **Instalment Amount**) will be:
 - (i) if the Termination Payment is less than or equal to the Senior Debt at the Termination Date, amounts equivalent to the repayments or payments that are payable by the Project Entities (or either of them) under the Debt Financing Documents on the Instalment Dates until the sum of the amounts paid is equal to the sum of the Termination Payment and interest accrued on the Termination Payment under clause 2.2; or
 - (ii) if the Termination Payment is greater than the Senior Debt at the Termination Date:
 - (A) amounts equivalent to the repayments or payments that are payable under the Debt Financing Documents on the Instalment Dates until the sum of the Senior Debt and interest accrued on the Termination Payment under clause 2.2 has been fully paid; and
 - (B) a lump sum equal to the difference between the Senior Debt at the Termination Date and the Termination Payment.
- (e) If the Principal has elected to pay the Termination Payment by instalments, it may (within 30 days of written notice to OpCo) pay any outstanding amount of the Termination Payment (plus any additional costs incurred under the Debt Financing Documents as a result of breaking any interest hedging arrangements provided the Project Entities (singularly or together) and the Debt Financiers mitigate all such costs to the extent reasonably possible) on the next Instalment Date.
- (f) If the Principal fails to make a payment to OpCo in accordance with clause 2.1(e) within the time period specified in clause 2.1(e), OpCo may issue a notice to the Principal setting

out (including calculations) the amount of the Termination Payment outstanding to be paid by the Principal and the Principal must pay that amount within 20 Business Days of receipt of such notice.

2.2 Payment of interest

Interest shall accrue on any unpaid element of the Termination Payment (calculated daily and compounded quarterly):

- (a) at the Senior Debt Interest Rate in respect of a Termination Payment calculated under clause 3 from the 31st day after the Compensation Date up to (but excluding) the date on which the Termination Payment is paid;
- (b) in respect of Termination Payments calculated under clause 4 or clause 5, at the Senior Debt Interest Rate:
 - (i) on each unpaid portion of the Termination Payment comprising Termination Senior Debt from and including the Termination Date up to (but excluding) the date on which the Termination Payment is made; and
 - (ii) on any part of the unpaid portion of the Termination Payment that does not comprise Termination Senior Debt from the 91st day after the Termination Date until (but excluding) the date on which the Termination Payment is made; and
- (c) at the Default Rate in respect of Termination Payments calculated under clause 7, from the 91st day after the Termination Date until (but excluding) the date on which the Termination Payment is made,

and is payable on the date on which the Termination Payment is paid.

2.3 Treatment of insurance proceeds

- (a) Notwithstanding any term of this deed, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by OpCo, then receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment and instead the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that OpCo is reasonably likely to recover assuming that OpCo has complied with its insurance obligations under clause 45 of the Operative Provisions (**Provisional Proceeds**) taking into account all information that is then available to the parties.
- (b) If following the calculation of the Termination Payment, the insurance proceeds that OpCo actually recovers (**Actual Proceeds**) are less than the Provisional Proceeds, the Principal shall, immediately on notification of the Actual Proceeds by OpCo, pay to OpCo an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). For the avoidance of doubt, the Principal will not be required to pay any interest on this Additional Amount. References in this clause to insurance proceeds are to insurance proceeds that OpCo is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations.
- (c) If following the calculation of the Termination Payment, the Actual Proceeds are more than the Provisional Proceeds, the Principal may, in its sole discretion:
 - (i) direct OpCo to immediately on receipt of the Actual Proceeds, pay to the Principal an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**OpCo Additional Amount**); or
 - (ii) if the Principal has not paid the Termination Payment in full at that time, reduce the outstanding Termination Payment by the OpCo Additional Amount,

and OpCo will not be required to pay any interest on any OpCo Additional Amount.
- (d) The Principal shall not be required to make any payment under clause 2.3(b) to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by OpCo of its obligations under this deed.

2.4 General obligations

- (a) The parties must use all reasonable endeavours to mitigate and minimise any losses or costs forming part of any Termination Payment. OpCo must use (and must procure that Finance Co uses) all reasonable endeavours to maximise receipts and gains forming part of any Termination Payment.
- (b) Any Termination Payment payable to OpCo must be calculated in accordance with this Schedule 26 (*Termination Payments*) without any double counting.

2.5 CDPD Payment Amount

If this deed is terminated under clause 49 of the Operative Provisions at any time prior to the issue of the CDPD Satisfaction Notice, the Termination Payment and each amount that is determined by reference to the Financial Model, will be determined on the basis that the CDPD Conditions have not been, and will not be, satisfied or waived by the Principal.

3. Termination for OpCo Termination Event

3.1 Principal's election

If the Principal terminates this deed following an OpCo Termination Event in accordance with clause 49.4 of the Operative Provisions (regardless of whether the Principal otherwise has the right to terminate for any other reason), the Principal shall, at its sole discretion, elect to:

- (a) subject to the conditions in clause 3.2(a) being satisfied, re-tender the provision of OpCo's Activities in accordance with clause 3.2(c); or
- (b) require determination by an Independent Expert in accordance with clause 3.3.

3.2 Re-tendering process

- (a) The Principal shall be entitled to elect to re-tender the provision of OpCo's Activities in accordance with clause 3.1(a) if:
 - (i) the Principal notifies OpCo on or before the date falling 20 Business Days after the Termination Date; and
 - (ii) there is a Liquid Market and either:
 - (A) the Debt Financiers have not exercised their rights to step in under clause 4 of the Financier's Tripartite Deed; or
 - (B) OpCo or the Debt Financiers in accordance with the Financier's Tripartite Deed have not procured the transfer of OpCo's rights and liabilities under this deed to a suitable substitute contractor and have failed to use all reasonable efforts to do so,
 in which case the amount of compensation payable by the Principal shall be agreed or determined in accordance with clause 3.2(c) and clause 3.6.
- (b) Any Dispute in relation to whether a Liquid Market exists may be referred by either party for dispute resolution in accordance with clause 63 of the Operative Provisions.
- (c) If the Principal elects to re-tender the provision of OpCo's Activities in accordance with clause 3.2(a), the following provisions shall apply:
 - (i) the objective of the Tender Process shall be to identify a new project company and the highest Capital Sum offered by a Compliant Tenderer;
 - (ii) the Principal shall use its reasonable endeavours to complete the Tender Process as soon as practicable having regard to the assistance given by OpCo in connection with the Tender Process;
 - (iii) the Principal's Representative shall notify OpCo of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms;

- (iv) for each Compensation Month during the period from the Termination Date until the Compensation Date the Principal shall pay to OpCo the Post Termination Service Payment. Each Post Termination Service Payment shall be payable monthly in arrears on or before the date falling 20 Business Days after the end of each Compensation Month or after the Compensation Date (as the case may be). If any Post Termination Service Payment is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Payments. If any such Post Termination Service Payment has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Termination Payment;
- (v) as soon as practicable after tenders have been received, the Principal's Representative shall determine the Compliant Tenders and shall notify OpCo of:
 - (A) the highest Capital Sum offered by a Compliant Tenderer; and
 - (B) the Tender Costs;
- (vi) if the Principal receives less than two Compliant Tenders in response to the Tender Process, it will be deemed that there is no Liquid Market, the Tender Process will cease and the provisions of clause 3.3 shall apply;
- (vii) the Principal may elect at any time to follow the procedure for determination by an Independent Expert under clause 3.3 by notifying OpCo that this election has been made and upon the making of such an election, the Tender Process will cease and the provisions of clause 3.3 shall apply;
- (viii) in the event that the Tender Process is not completed within 12 months from the date of issue of the Tender Documentation, the Tender Process will cease and the provisions of clause 3.3 shall apply; and
- (ix) the Principal 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.

3.3 Expert determination

If the Principal elects to require determination by an Independent Expert pursuant to clauses 3.1(b) or 3.2(c)(vii), the provisions of clauses 3.2(c)(vi) or 3.2(c)(viii) are satisfied, or the conditions set out in clause 3.2(a) are not satisfied, the following provisions apply:

- (a) for each Compensation Month during the period from the Termination Date until the Compensation Date (and any part of a Compensation Month prior to the Compensation Date), the Principal shall pay to OpCo the Post Termination Service Payment, in accordance with clause 3.2(c)(iv);
- (b) the parties will procure the services of an Independent Expert in accordance with clause 8 to determine the Estimated Fair Value of the Deemed New Contract in accordance with clauses 3.4 and 3.5 (as applicable); and
- (c) all forecast amounts of revenues and costs must be calculated by the Independent Expert on a nominal basis as at the Termination Date, whereby future amounts are indexed at the indexation rates in the Financial Model.

3.4 Estimated Fair Value before Completion

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

EFV equals the lower of:

- (a) the actual costs (including capitalised interest and fees) properly incurred by OpCo referable to the Delivery Activities up to and including the Termination Date and being no more than the costs forecast to be incurred in the Financial Model and excluding the sum of all Capital Contributions, Early Handover Payments and any Pre-Agreed Option Construction Payments paid by the Principal to OpCo in accordance with this deed up to and including the Termination Date and which have been applied towards performing the Delivery Activities; and

- (b) the following amount:
- (i) the sum of the total costs forecast to be incurred in respect of all of the Delivery Activities (as set out in the Financial Model and the Delivery Program) calculated as at the Termination Date on the basis that:
 - (A) costs up to and including the Termination Date will include capitalised interest and fees forecast to be incurred in the Financial Model up to and including the Termination Date;
 - (B) costs forecast in the Financial Model at that time to be incurred in respect of the Delivery Activities (excluding capitalised interest and fees) after the Termination Date until the Principal's Date for Completion are discounted back from the dates the Independent Expert has determined they were forecast to be incurred to the Termination Date at the Base Case Project Return; and
 - (C) capitalised interest and fees forecast to be incurred (as set out in the Financial Model) after the Termination Date will be excluded,
 less
 - (ii) the Independent Expert's determination of the costs to be incurred by the Principal (including a reasonable assessment of the risk of costs overruns) from the Termination Date to achieve Completion by the Principal's Date for Completion discounted back from the dates the Independent Expert has determined that they will be incurred back to the Termination Date at the Base Case Project Return; and
 - (iii) the sum of all Capital Contributions, Early Handover Payments and any Pre-Agreed Option Construction Payments paid by the Principal to OpCo in accordance with this deed up to and including the Termination Date and which have been applied towards performing the Delivery Activities.

In this clause 3.4, **Principal's Date for Completion** means:

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

3.5 Estimated Fair Value after Completion

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

$$EFV = A - B$$

Where:

EFV = Estimated Fair Value;

- A = the total of all payments of the Service Payments forecast to be made over the term of the Deemed New Contract calculated and discounted as at the Termination Date by the Base Case Project Return;
- B = the total of all costs reasonably forecast to be incurred by the Principal as a direct result of termination of this deed, discounted back from the dates the Independent Expert determines that they will be incurred back to the Termination Date at the Base Case Project Return, such costs to include (without double counting):

- (i) the costs reasonably forecast to be incurred by the Principal over the term of the Deemed New Contract in connection with the provision of OpCo's Activities in accordance with the Deemed New Contract;
- (ii) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the Financial Model; and
- (iii) any rectification costs required to deliver services under the Deemed New Contract in accordance with the Deemed New Contract and any additional operating costs required to restore operating service standards.

3.6 Termination for OpCo Termination Event

If this deed is terminated pursuant to clause 49.4 of the Operative Provisions, the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

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

Where:

- A = the highest Capital Sum offered by a Compliant Tenderer if clause 3.2 applies, or the Estimated Fair Value if clause 3.3 applies;
- B = any Post Termination Service Payments paid by the Principal;
- C = the Tender Costs;
- D = amounts that the Principal is entitled to set off or deduct under this deed including, for the avoidance of doubt, the costs of carrying out any works to ensure that the SSTOM Works or Sydney Metro – Western Sydney Airport is in accordance with the requirements of this deed and all other reasonable costs incurred by the Principal in connection with the relevant OpCo Termination Event and as a direct result of terminating this deed;
- E = any amounts owing by OpCo to the Principal under the Project Agreements as at the Termination Date;
- F = any net gains which have or will accrue to the Project Entities as a result of the termination of this deed and any other Project Agreements;
- G = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) OpCo is entitled to retain, or would be entitled to retain had OpCo complied with the requirements of clause 45 of the Operative Provisions and the relevant insurance policy, under any insurance policy;
- H = any amounts due and payable by the Principal to OpCo in accordance with the terms of the Principal Project Agreements as at the Termination Date;
- I = the total of all cash on deposit or otherwise held to the benefit of the Project Entities (but not including any funds standing to the credit of the Insurance Proceeds Account to which the Principal is entitled pursuant to clause 45.15(f) of the Operative Provisions or any funds standing to the credit of the Principal Capital Contribution Account) and any other amounts owing to the Project Entities as at the Termination Date;
- J = any amounts paid to OpCo by the Principal (including as a component of the Service Payment) for maintenance, refurbishment or capital replacement where that maintenance, refurbishment or capital replacement has not been carried out by OpCo; and
- K = the Receivables Refund Payment.

In calculating and aggregating items A to K, there will be no double counting.

If the Termination Payment as calculated above is zero or a negative number, the Principal shall have no obligation to make any payment to OpCo and the Principal shall be released from all liability to OpCo for breaches and/or termination of this deed and any other Project Agreements.

4. Voluntary Termination by the Principal or in Connection with Extensions

4.1 Calculation

Subject to clause 7.2, if this deed is terminated pursuant to clause 49.5 or clause 49.7 of the Operative Provisions, the Termination Payment shall be determined by the Independent Expert as follows, unless the sum of such Termination Payment and the Receivables Refund Payment is calculated to be less than the Termination Senior Debt, in which case the Termination Payment will be taken to be the amount necessary in order to ensure that the sum of the Termination Payment and the Receivables Refund Payment is equal to the Termination Senior Debt:

Termination Payment or TP means:

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

Where:

- A = an amount equal to the Termination Senior Debt;
- B = the Voluntary Termination Equity Value;
- C = an amount equal to the Subcontractor Breakage Costs limited to the amount calculated in accordance with clause 4.3;
- D = any amounts owing by OpCo to the Principal, under the Principal Project Agreements as at the Termination Date (including all amounts in respect of which the Principal is entitled to exercise a right of set off against OpCo under the Principal Project Agreements);
- E = any net gains which have or will accrue to the Project Entities as a result of the termination of this deed and any other Project Agreements, not included in the definition of Termination Senior Debt;
- F = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) OpCo is entitled to retain, or would be entitled to retain had OpCo complied with the requirements of clause 45 of the Operative Provisions and the relevant insurance policy, under any insurance policy;
- G = any amounts due and payable by the Principal to OpCo in accordance with the terms of the Principal Project Agreements as at the Termination Date;
- H = the total of all cash on deposit or otherwise held to the benefit of OpCo as at the Termination Date (but not including any funds standing to the credit of the Insurance Proceeds Account to which the Principal is entitled pursuant to clause 45.15(f) of the Operative Provisions or any funds standing to the credit of the Principal Capital Contribution Account) and any other amounts owing to OpCo as at the Termination Date;
- I = the total of all redundancy payments for employees of;
 - (i) OpCo which have been or will be reasonably and properly incurred by OpCo; and
 - (ii) the Services Provider that have been or will be reasonably and properly incurred by the Services Provider (but only to the extent that OpCo can demonstrate to the Principal that such employees were primarily engaged in performing services for the SSTOM PPP and cannot reasonably be redeployed to other activities),
 and arise as a direct result of the termination of this deed;
- J = the costs (if any) which are required to be incurred by the Principal to rectify any failure by OpCo and the Core Contractor to ensure that the Relevant Infrastructure and the Site complied with the Handback Condition as at the Termination Date; and
- K = the Receivables Refund Payment.

In calculating and aggregating items A to K, there will be no double counting.

4.2 Voluntary Termination Equity Value

- (a) The Voluntary Termination Equity Value will be determined by the Independent Expert through a discounted cash flow valuation of the project cashflows to equity for the period from the Termination Date to the Expiry Date. The valuation must apply clauses 4.2(a)(i) to 4.2(a)(iv) below, and apply generally accepted principles and practices for cash flow valuations of assets. The Independent Expert must take into account:
- (i) the projected revenue to an incoming OpCo reasonably expected assuming:
 - (A) the provisions of Schedule 2 (*Service Payment calculation*) continue to apply; and
 - (B) the arrangements for any Commercial Opportunities (if any) the subject of a Modification described in clause 26(b) of the Operative Provisions and not retained by Equity Investors following termination, including any revenue-sharing with the Principal, continue to apply;
 - (ii) the projected capital and operating costs reasonably expected to be incurred by an incoming OpCo in connection with delivering OpCo's Activities, and assuming OpCo's Activities are delivered in accordance with, and to the standards set out in, the SSTOM Specification and otherwise in accordance with this deed;
 - (iii) the financing costs of the Project Entities under the Debt Financing Documents as calculated in the Financial Model but adjusted where those costs are reasonably expected to change because the Debt Financing Documents require refinancing after the Termination Date; and
 - (iv) to the extent there are any amounts owing to the Debt Financiers in respect of the Debt Service Reserve Facility (as defined in the Facility Agreement) as at the Termination Date, the projected reduced distributions to the Equity Investors as a result of the Project Entities having to service the repayment of the Debt Service Reserve Facility (as defined in the Facility Agreement).
- and in each case on the basis that the Project Agreements, as amended in accordance with this deed, continue in full force and effect from the Termination Date to the Expiry Date.
- (b) To prepare the projections referred to in clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(a)(iv) above, the Independent Expert is not constrained by values in the Financial Model, and should apply reasonable contingency to cash flows to account for SSTOM PPP risks.
 - (c) The Independent Expert must discount cash flows using a rate per annum discounted to the Termination Date.
 - (d) In determining the discount rate used by the Independent Expert in clause 4.2(c), the Independent Expert must take into account the prevailing market discount rate of return to equity for availability type public private partnership projects with a similar risk profile to the SSTOM PPP (and for the avoidance of doubt, not utilising structured equity products).

4.3 Limit on Subcontractor Breakage Costs

The Principal's liability to OpCo for Subcontractor Breakage Costs for each Core Contractor must not exceed the aggregate of:

- (a) for work carried out prior to the date of termination, the amount which would have been payable if the Core Contract had not been terminated and the Core Contractor had submitted a payment claim in accordance with the relevant Core Contract for work carried out in accordance with the Core Contract to the Termination Date;
- (b) the cost of the plant and equipment and other items reasonably ordered by the Core Contractor for OpCo's Activities, that cannot be cancelled without payment provided that:
 - (i) the value of the plant and equipment and other items has not been previously paid to the Core Contractor or otherwise included in an amount payable under this clause 4.3; and
 - (ii) title in the plant and equipment and other items will vest in the Principal upon payment;

- (c) the reasonable cost of complying with the handback and transition out obligations in clause 24.13 and clause 50 of the Operative Provisions that the Core Contractor is required to meet under the Core Contract adjusted (as applicable) to the extent the Principal has exercised its rights under clause 49.5(b) or clause 49.7(b) of the Operative Provisions to self perform those obligations; and
- (d) in respect of the D&C Contractor, the lesser of:
 - (i) [REDACTED] of the unpaid balance of the contract sum that would have been payable to the D&C Contractor in accordance with the D&C Contract (after deducting the amounts payable in accordance with clauses 4.3(a), 4.3(b) and 4.3(c)) but for the termination; and
 - (ii) [REDACTED] of the unpaid balance of the contract sum that would have been payable to the D&C Contractor in accordance with the D&C Contract (after deducting the amounts payable in accordance with clauses 4.3(a), 4.3(b) and 4.3(c)) but for the termination, for the 12 month period from the date of the termination; and
- (e) in respect of the O&M Contractor:
 - (i) where the Termination Date occurs prior to the Date of Completion, [REDACTED] of the O&M Service Payment (as that term is defined in the O&M Contract) that would have been payable to the O&M Contractor in accordance with the O&M Contract but for the termination, for the 3 month period from the Date of Completion; and
 - (ii) where the Termination Date occurs after the Date of Completion, [REDACTED] of the O&M Service Payment (as that term is defined in the O&M Contract) that would have been payable to the O&M Contractor in accordance with the O&M Contract but for the termination, for the 3 month period from the Termination Date.

5. Termination For Force Majeure Or Uninsurable Risks

Subject to clause 7.3, if this deed is terminated pursuant to clause 49.6 or clause 49.8 of the Operative Provisions the Termination Payment shall be calculated as follows:

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

Where:

- A = Termination Senior Debt;
- B = any net gains which have or will accrue to the Project Entities as a result of the termination of this deed and any other Project Agreements, not included in the definition of Termination Senior Debt;
- C = any amounts owing by OpCo to the Principal under the Principal Project Agreements as at the Termination Date (including all amounts in respect of which the Principal is entitled to exercise a right of set off against OpCo under the Principal Project Agreements);
- D = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) OpCo is entitled to retain, or would be entitled to retain had OpCo complied with the requirements of clause 45 of the Operative Provisions and the relevant insurance policy, under any insurance policy;
- E = [REDACTED] of the Voluntary Termination Equity Value;
- F = any amounts due and payable by the Principal to OpCo in accordance with the terms of the Principal Project Agreements as at the Termination Date;
- G = the total of all cash on deposit or otherwise held to the benefit of the Project Entities as at the Termination Date (but not including any funds standing to the credit of the Insurance Proceeds Account to which the Principal is entitled pursuant to clause 45.15(f) of the Operative Provisions or any funds standing to the credit of the Principal Capital

Contribution Account) and any other amounts owing to the Project Entities as at the Termination Date;

- H = an amount equal to the Force Majeure Subcontractor Breakage Costs; and
I = the Receivables Refund Payment.

In calculating and aggregating items A to I, there will be no double counting.

6. Negative Termination Payment

If the Termination Payment calculated under this Schedule 26 (*Termination Payments*) is a negative amount, the Termination Payment will be deemed to be zero and OpCo shall have no obligation to make any payment of that amount to the Principal.

7. Termination During Term Extension Period

7.1 Termination for OpCo Termination Event

If this deed is terminated during the Term Extension Period pursuant to clause 49.4 of the Operative Provisions:

- (a) except to the extent necessary for the interpretation of clause 7.1(b), clause 3 will not apply;
- (b) where that termination arises other than as a result of an OpCo Termination Event referred to in clause 49.1(j) of the Operative Provisions, the Termination Payment or TP shall be calculated as follows (where H, D, E, F, G, I and J each have the meaning given in clause 3.6):

Termination Payment or TP means:

$$TP = H - D - E - F - G - I - J$$

and the Principal must pay to OpCo the Termination Payment on or before the date which is 90 days after the Termination Date; and

- (c) where that termination arises as the result of an OpCo Termination Event referred to in clause 47.1(j) of the Operative Provisions, OpCo will be entitled to no compensation.

7.2 Voluntary Termination by Principal

If this deed is terminated during the Term Extension Period pursuant to clause 49.5 or clause 49.7 of the Operative Provisions, the Termination Payment shall be calculated as follows (where C, D, E, F, G, H, I and J each have the meaning given in clause 4):

Termination Payment or TP means:

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

7.3 Force Majeure and Uninsurable Risks

If this deed is terminated during the Term Extension Period pursuant to clause 49.6 or clause 49.8 of the Operative Provisions, the Termination Payment shall be calculated as follows (where F, B, C, D, G and H each have the meaning given in clause 5):

Termination Payment or TP means:

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

8. Independent Expert

8.1 Appointment

- (a) The parties will appoint an Independent Expert to act as an expert calculator of the relevant Termination Payment within 7 Business Days of:
- (b) where clause 3.3 applies, the date on which the Principal elects to require expert determination by an Independent Expert; and
- (c) in the case of expert determination by an Independent Expert pursuant to clause 4 or clause 5, the Termination Date,

and the expert determination (including the appointment of the Independent Expert) will be conducted in accordance with clause 63.6 of the Operative Provisions, modified to the extent set out below:

- (d) to reflect that the Independent Expert is acting as an expert calculator of the Termination Payment and not determining a Dispute under that clause; and
- (e) the Independent Expert must give its determination in relation to the calculation of the Termination Payment:
 - (i) within 20 Business Days of the last of the steps set out in clauses 8.2(b) to 8.2(f); or
 - (ii) within 30 Business Days of the date of his or her appointment,
 whichever is the earlier.

8.2 Process for calculation

- (a) 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 26 (*Termination Payments*) and calculate the Termination Payment as an expert calculator.
- (b) 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 (the **Disclosing Party**) to the other party provided that the Independent Expert must have reasonable regard to any request from the Disclosing Party to withhold information specifically identified as commercial in confidence.
- (c) 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.
- (d) The parties may be legally represented at any conference under this clause 8.
- (e) All conferences under this clause 8 must be held in private.
- (f) The Independent Expert may, if he or she considers it necessary, visit the Sydney Metro Site, the SSTOM Works, the Assets or Sydney Metro – Western Sydney Airport (as the case may be), and the parties must facilitate the Independent Expert's access to any of those areas.

8.3 Status of Independent Expert and determination

- (a) 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.
- (b) The cost of the Independent Expert will be borne by the Principal, but without limiting the Principal's right to recover those costs as Tender Costs in calculating any Termination Payment.
- (c) The Termination Payment as determined by the Independent Expert will be final and binding except to the extent of manifest error including if the Independent Expert's

calculation does not substantially comply with the requirements of clauses 3.6, 4.1 or 4.2 (as applicable).