Schedule 5 - Termination Payments

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Execution version

1. Definitions

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

Compensation Date means:

(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) that there is no Liquid Market, 60 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 60 Business Days after the Expiry Date; or

(iii) otherwise the date which is 60 Business Days after the Expiry Date.

Compliant Tender means any tender submitted that meets the qualification criteria notified under section 3.3(b).

Compliant Tenderer means the party who submits a Compliant Tender.

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

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

Independent Expert means an independent expert appointed under section 2.

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

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

(a) if the New Contract is entered into prior to the Date of Stage One Completion, the Works are to be designed, built, commissioned and tested to achieve Stage One Completion in accordance with this Agreement;

(b) the O&M Activities are to be carried out in accordance with, and to the standards set out in, the PSR and otherwise in accordance with this Agreement;

(c) the term of the New Contract will be the period from the Compensation Date to the Final Expiry Date;

(d) the provisions with respect to payment of the State Contributions, Floating Rate Component and Quarterly Services Payment continue to apply as set out in this Agreement, noting that the O&M Phase may be shorter than is contemplated in the Financial Model as a result of delay or forecast delay to the achievement of Stage One Completion; and

(e) all other provisions of this Agreement continue to apply.

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 Abatement, plus or minus the Floating Rate Component, which would have been payable in respect of that Quarter or those Quarters under this Agreement had this Agreement not been terminated less an amount equal to the aggregate of (without double counting):

(a) the greater of all cost components related to the carrying out of the O&M Activities and the reasonable costs to the State of alternative provision of the O&M Activities in accordance with, and to the standards set out in, the PSR and otherwise in accordance with this Agreement (whether or not any O&M Activities are carried out);

(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.

Securitisation Refund Payment means the payment to be made by the State to Finance Co under the Receivables Purchase Deed.

Tender Costs means the reasonable and proper internal and external costs 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 requests tenders from persons interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a Compliant Tenderer.

Tender Process Monitor has the meaning given to that term in section 3.3(e).

2. Independent Expert

(a) (**Calculation of relevant Termination Payment**): If this Agreement is terminated and an Independent Expert is required to administer this Schedule, the parties will appoint an Independent Expert to act as an expert calculator of the relevant Termination Payment within 7 Business Days of:

(i) in the case of section 4, the date on which that section commences to apply; and

(ii) in the case of sections 5 and 6, the Expiry Date,

and the following provisions of clause 41 of this Agreement will apply:

(iii) clause 41.4 of this Agreement, as if:

A. the reference in paragraph (a) to "*(i) the date on which the parties agree to refer a Dispute to an expert for determination under clause 41.3; or (ii) the notice issued under clause 10.13(d)*" were a reference to the time referred to in paragraphs (a)(i) and (ii) of this section 2(a);

B. the reference in paragraph (b) to "*determine a Dispute*" were reference to "*calculate a Termination Payment*" and the reference to "*the party that gave the notice under clause 41.2(a) or clause 10.13(d)*" were reference to "*the State*";

C. paragraph (c) required both parties to procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under paragraph (a);

D. the reference in paragraph (d) to "*determine a Dispute*" were reference to "*calculate a Termination Payment*"; and

E. the reference in paragraph (g) to "*the terms of the Expert Determination Agreement*" were a reference to "*terms consistent with section 2 of the Termination Payments Schedule*";

(iv) clause 41.6 of this Agreement; and

(v) clause 41.7(a) of this Agreement, as if the reference to "*any person who is party to the Dispute*" were a reference to "*the parties*".

(b) (**Independent Expert to consider**): In calculating a Termination Payment, the Independent Expert may have regard to submissions and information provided by the parties, but must have regard to the matters set out in this Schedule and calculate the Termination Payment as an expert calculator.

(c) (**Request for further information**): If the Independent Expert decides that further information is required, the Independent Expert may call for further submissions, documents or information from either or both parties and the Independent Expert must provide any information received from one party to the other party.

(d) (**Conduct of conferences by Independent Expert**): The Independent Expert may call and conduct one or more conferences between the parties as the Independent Expert sees fit, but must give the parties reasonable notice of the matters to be addressed at any such conference.

(e) (**Legal Representation of parties at conference**): The parties may be legally represented at any conference under this section 2.

(f) (**Conferences to be held in private**): All conferences under this section 2 must be held in private.

(g) (**Independent Expert may visit**): The Independent Expert may, if he or she considers it necessary, visit the Site, the Works, or Stage One (as the case may be), and the parties must facilitate the Independent Expert's access to any of those areas.

(h) (**Timing of determination by the Independent Expert**): The Independent Expert must make his or her determination in relation to the calculation of the Termination Payment:

(i) within 20 Business Days of the last of the steps set out in paragraphs (c) to (g); or

(ii) within 30 Business Days of the date of his or her appointment,

whichever is the earliest. If the Independent Expert fails to make a determination within this time, either party may refer the matter to dispute resolution in accordance with clauses 41 to 42 of this Agreement.

(i) **(Independent Expert to act as expert)**: The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.

(j) **(Cost of Independent Expert to be borne by State)**: The cost of the Independent Expert will be borne by the State, but without limiting the State's right to deduct Tender Costs in calculating any Termination Payment.

3. Termination for Default Termination Event

3.1 The State's election

(a) (**State's right to elect**): If the State terminates this Agreement due to the occurrence of, or during the subsistence of, a Default Termination Event (whether any other basis for termination then applies), the State may, subject to section 3.1(c), elect (in its sole and absolute discretion) to either:

(i) conduct a tender for the New Contract in accordance with section 3.3; or

(ii) require the Independent Expert to undertake an expert determination in accordance with section 4.

(b) (**State to notify Project Co**): The State will notify Project Co of its election on or before the day falling 20 Business Days after the Expiry Date and if the State fails to notify Project Co of its election by that date, then:

(i) if section 3.1(c) does not apply, section 3.1(a)(i) will apply; or

(ii) if section 3.1(c) applies, section 3.1(a)(ii) will apply.

(c) (**Circumstances State not entitled to conduct a tender**): The State is not entitled to elect to conduct a tender for the New Contract:

(i) where Project Co or the Financiers have demonstrated to the reasonable satisfaction of the State that:

A. the Financiers have used best efforts to procure the transfer of Project Co's rights and liabilities under this Agreement in accordance with the Finance Direct Deed but have not done so; and

B. the reason for the failure to effect a transfer of Project Co's rights and liabilities under this Agreement is that there is no Liquid Market; or

(ii) where either the State agrees, or it is determined in accordance with clauses 41 to 42 of this Agreement, that no Liquid Market exists.

(d) (**Disputes**): Any Dispute in relation to whether a Liquid Market exists may be referred by either party for resolution in accordance with clauses 41 to 42 of this Agreement.

(e) (**State to pay Post Termination Quarterly Amount**): 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 or that any Floating Rate Component would have been payable (as applicable) in respect of that Quarter had this Agreement not been terminated.

(f) (**Set off of Post Termination Quarterly Amount**): 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 Payment on tender

(a) (**State elects to conduct a tender**): 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.

(b) (**Object of Tender Process**): The objective of the Tender Process is to establish a Highest Compliant Tender Price.

(c) (**Calculation of Default Termination Payment**): The Default Termination Payment will be calculated as follows:

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

where:

TP = the Default Termination Payment.

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

(i) assume:

A. a Compensation Date determined under paragraph (a)(ii) of that definition (which will be subject to adjustment to reflect the actual date on which the Compensation Date occurs);

B. that the Project Activities are carried out in accordance with, and to the standards set out in, the PSR and otherwise in accordance with this Agreement;

C. that the provisions with respect to payment of the State Contributions, Floating Rate Component and Quarterly Services Payments continue to apply as provided for in this Agreement;

D. that any breach of this Agreement and any deductions under the Abatement 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 carry out the Project Activities in accordance with, and to the standards set out in, the PSR and otherwise in accordance with this Agreement; and

(ii) take into account:

A. the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Agreement and to achieve Stage One Completion;

B. the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, which are required to be incurred with respect to Stage One (excluding the Tolling Services Works) and the Site, to enable carrying out of the Project Activities until the Final Expiry Date, in accordance with and to the standards set out in the PSR and otherwise in accordance with this Agreement; and

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

C = the Tender Costs;

D = any Liability of Project Co 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 Agreement (but subject to clauses 37.15(c) and (d) (other than clause 37.15(d)(xi)) of this Agreement);

E = any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (but subject to clauses 37.15(c) and (d) (other than clause 37.15(d)(xi)) of this Agreement);

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

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

H = the aggregate of the following amounts:

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

(ii) any other amounts owing to Project Co; and

(iii) 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 the Project Entity holds on trust for a subcontractor in those accounts in accordance with the Finance Documents), in each case only to the extent it has not otherwise been taken into account in the determination of the Termination Payment;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including amounts of any State Contribution, Floating Rate Component or Quarterly Services Payments which have accrued but not been paid as at the Expiry Date);

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

P = the Securitisation Refund Payment.

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

3.3 Tender Process

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

(a) (**State to use 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.

(b) (**State to notify Project Co of qualification criteria and other requirements of Tender Process**): The State will notify Project Co of the qualification criteria, the other requirements and the terms of the Tender Process, including the timing of the Tender Process, but will act reasonably in setting such requirements and terms. If the tenderer is required to engage sub-contractors, qualification criteria will include a requirement that the tenderer engage sub-contractors with the requisite technical and financial capabilities to undertake the Project.

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

(d) (**Project Co authorises release of information by 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 Agreement that is reasonably required as part of the Tender Process.

(e) (**Project Co may appoint Tender Process Monitor**): Project Co may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Financiers on the State's compliance with the Tender Process and making representations to the State. The Tender Process Monitor will not disclose any confidential information in relation to tenders submitted as part of the Tender Process to Project Co or any other person (and will provide an undertaking to the State to such effect as a condition of its appointment) except:

(i) where permitted to do so by the terms of the confidentiality agreement referred to in section 3.3(f); or

(ii) 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 to provide details of any representations that the Tender Process Monitor makes to the State regarding the Tender Process.

(f) (**Tender Process Monitor to enter into confidentiality agreement**): Project Co will procure the Tender Process Monitor to enter into a confidentiality agreement with the 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 is entitled to make written representations to the State regarding compliance with the Tender Process. Project Co will procure the Tender Process Monitor to make any representations it has in relation to the Tender Process to the State in a timely manner as the Tender Process proceeds. The State will not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute relating to the Highest Compliant Tender Price for resolution in accordance with clauses 41 to 42 of this Agreement.

(g) (**State to determine Compliant Tenders**): As soon as practicable after tenders have been received, the State will (acting reasonably) determine the Compliant Tenders. Subject to the State receiving at least two Compliant Tenders, it will notify Project Co of the Highest Compliant Tender Price. If fewer than two Compliant Tenders are received, the State must promptly notify Project Co accordingly and it will be deemed that there is no Liquid Market and the tendering process pursuant to this section 3 will cease and the 'no tendering' procedure under section 4 will automatically apply.

(h) (**Discretion of State following Tender Process**): The State is not obliged to enter into any contract with any person, resulting from the Tender Process. It may enter into a contract in its sole and absolute discretion.

(i) (**Dispute Resolution**): If Project Co refers a Dispute relating to the Highest Compliant Tender Price or the Termination Payment for resolution in accordance with clauses 41 to 42 of this Agreement, the State will still be entitled to enter into a contract replacing this Agreement (whether or not a New Contract).

(j) (**State may elect to follow 'no tendering' procedure**): The State may elect at any time prior to the receipt of two Compliant Tenders to follow the 'no tendering' procedure under section 4 by notifying Project Co that this election has been made.

(k) (**Calculation of Default Termination Payment if Liquid Market exists**): If a Liquid Market exists, the Default Termination Payment is determined in accordance with section 3.2 and this section 3.3 and (where the Default Termination Payment is a positive amount) Project Co has complied with clause 40.7 of this Agreement:

   (i) the Default Termination Payment, calculated in accordance with section 3.2 and this section 3.3 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 and this section 3.3 will be payable within 20 Business Days of such notification; and

   (iii) the Securitisation Refund Payment will be payable in accordance with clause 8 of the Receivables Purchase Deed.

4. No tendering

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

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

where:

TP = the Default Termination Payment;

A = the Fair Market Value of the Project as at the Compensation Date determined by the Independent Expert on the basis that this Agreement and each of the other 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, the PSR and in accordance with this Agreement;

B. the provisions with respect to payment of the State Contribution, Floating Rate Component and Quarterly Services Payments continue to apply as provided for in this Agreement;

C. any breach of this Agreement and any deductions under the Abatement Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and

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, the PSR and in accordance with this Agreement;

(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 Agreement and to achieve Stage One Completion;

B. the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, required to be incurred with respect to Stage One (excluding the Tolling Services Works) 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 the PSR and otherwise in accordance with this Agreement; 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, the PSR and otherwise in accordance with this Agreement and to perform Project Co's obligations under the Project Documents but excluding any costs in relation to which the State will retain the benefit of a Retention Amount or Defect Retention Amount; and

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

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

where:

R = the discount rate;

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

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

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

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

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 Agreement after termination of this Agreement;

D = any Liability of Project Co 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 Agreement (but subject to clauses 37.15(c) and (d) (other than clause 37.15(d)(xi)) of this Agreement));

E = any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (but subject to clauses 37.15(c) and (d) (other than clause 37.15(d)(xi)) of this Agreement));

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

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

H = the aggregate of the following amounts:

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

(ii) any other amounts owing to Project Co; and

(iii) any credit balances standing in accounts held by or for the benefit of a Project Entity (other than those amounts which the Project Entity holds on trust for a subcontractor in those accounts in accordance with the Finance Documents), in each case only to the extent it has not otherwise been taken into account in calculating the Termination Payment;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including amounts of any State Contribution, Floating Rate Component or Quarterly Services Payments which have accrued but not been paid as at the Expiry Date);

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

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

P = the Securitisation Payment Refund.

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

5. Termination for Convenience

5.1 General

Subject to section 5.2, if this Agreement is terminated for a Termination for Convenience under clause 40.2 of this Agreement, the Termination for Convenience Payment will be calculated as follows:

Termination Payment or TP means the greater of:

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

and

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

where:

TP = the Termination for Convenience Payment;

A = the Project Debt as at the Expiry Date less the Securitisation Refund Payment;

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 the Payment Schedule and those relating to payment of the Floating Rate Component and the State Contribution continue to apply;

(ii) projected operating costs of Project Co reasonably expected to be incurred in connection with the carrying out of the O&M Activities and assuming the O&M Activities are carried out in accordance with, and to the standards set out, in the PSR and otherwise in accordance with this Agreement; 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 Agreement, continue in full force and effect from the Expiry Date to the Final Expiry Date;

D = any Liability of Project Co 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 Agreement;

G = the amount of costs incurred or gains realised by a Project Entity (in either case, 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 40.2 of this Agreement. If the net amount is a gain, it should be a deduction from, and if it is a cost, it should be an addition to, this Termination Payment;

H = the aggregate of the following amounts:

(i) any other amounts owing to Project Co; and

(ii) any credit balances standing in accounts held by or for the benefit of a Project Entity (other than those amounts which the Project Entity holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents), in each case only to the extent it has not otherwise been taken into account in calculating the Termination Payment;

I = any Insurance proceeds:

(i) that would have been received before the Expiry Date if Project Co had complied with its obligations under this Agreement and which if so received would have been, or would have been required to be, applied towards any component of the Termination Payment otherwise payable under this section 5; and

(ii) received or receivable by Project Co 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 Stage One (excluding the Tolling Services Works); or

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

J = any amounts owing by the State to Project Co 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) but, excluding any State Contribution which is owing as at the Expiry Date;

K = redundancy payments for employees of Project Co that have been or will be reasonably and properly incurred by Project Co as a direct result of the termination of this Agreement and which would not have been otherwise incurred if this Agreement was not terminated under clause 40.2 of this Agreement;

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

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 Project Co at any time during the period between the Expiry Date and the Compensation Date.

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

5.2 Specific circumstances

[not disclosed – could disadvantage parties in future projects]

6. Termination for Force Majeure Termination Event

6.1 Termination - No Default Termination Event subsisting

Subject to section 6.2, if the State or Project Co terminates this Agreement due to a Force Majeure Termination Event and a Default Termination Event is not then subsisting, the Force Majeure 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 the State or Project Co terminates this Agreement due to a Force Majeure Termination Event and a Default Termination Event is then subsisting, this section 6 will not apply and the Termination Payment will be an amount calculated in accordance with the provisions of section 3 or (if required by section 3) the provisions of section 4.

6.3 Force Majeure Termination Payment

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

TP = A - D +/- G - H - I + J - M - O

where:

TP = the Force Majeure Termination Payment;

A = the Project Debt as at the Expiry Date less the Securitisation Refund Payment;

D = any Liability of Project Co 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 Agreement;

G = the amount of costs incurred or gains realised by a Project Entity (in either case, 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 Project Co's election to terminate this Agreement as a consequence of the occurrence of a Force Majeure Termination Event. If the net amount is a gain it should be a deduction from, and if it is a cost it should be an addition to, the Termination Payment;

H = the aggregate of the following amounts:

(i) any amounts owing to Project Co; 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 the Project Entity holds on trust for a subcontractor in those accounts in accordance with the Finance Documents) in each case only to the extent that it has not otherwise been taken into account in calculating the Termination Payment;

I = any Insurance proceeds:

(i) that would have been received before the Expiry Date if Project Co had complied with its obligations under this Agreement and which if so received would have been, or would have been required to be, applied towards any component of the Termination Payment otherwise payable under this section 6; and

(ii) received or receivable by Project Co 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 Stage One (excluding the Tolling Services Works); or

B. representing Insurance indemnification of Project Co against liabilities to third parties;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including the amount of any Quarterly Services Payments or Floating Rate Component which has accrued but not been paid as at the Expiry Date) but excluding any State Contribution which is owing as at the Expiry Date; and

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 Project Co at any time during the period between the Expiry Date and the date of payment; and

O = to the extent such amounts are outstanding at the Expiry Date, any amounts included in item A that are intended (as described in the Financial Model) to be refinanced in the form of equity or subordinated debt treated as equity, such amount including any accrued, deferred or rolled up interest.

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

7. Interest

In respect of Termination Payments calculated under this Schedule 5 only, interest accrues:

(a) in respect of a Termination Payment calculated under section 3 or section 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 section 5 or section 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 Project Co after this Agreement is terminated (other than those Insurance proceeds representing Insurance indemnification of Project Co against Liabilities to third parties) and those proceeds:

(a) were not taken into account in calculating the Termination Payment that has already been made on the basis that the amounts were not "owing to Project Co", "received" or "received or receivable" by Project Co at the relevant time;

(b) would have been so taken into account had they been owing, received or receivable at the time of calculating the Termination Payment; and

(c) apply to the period up to and including the date of payment of the Termination Payment,

then those proceeds are held on trust by Project Co for the State, and Project Co must pay those proceeds, or cause those proceeds to be paid, 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 Project Co 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 Agreement.

9. Mitigation

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