
SCHEDULE 26**COMPENSATION ON TERMINATION****1. DEFINITIONS**

1.1 Definitions. The following terms shall have the following meanings:

(a) "Adjusted Estimated Fair Value" means the Estimated Fair Value adjusted as follows:

- (i) where in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set against and shall reduce the Estimated Fair Value (whether or not such amounts have been set-off by Health Co pursuant to Section 3.3(g) of this Schedule);
- (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value:
 - (A) the Post Termination Service Amounts actually paid by Health Co to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) Direct Losses suffered, sustained or incurred by Health Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination; and
- (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),

to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) Health Co has received (or is entitled to receive from parties other than Project Co) such amounts in accordance with this Agreement.

- (b) “Adjusted Highest Qualifying Tender Price” means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set against and shall reduce such highest tender price (whether or not such amounts have been set-off by Health Co pursuant to Section 3.3(g) of this Schedule);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Service Amounts actually paid by Health Co to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) Direct Losses suffered, sustained or incurred by Health Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),

to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
 - (D) Health Co has received such amounts in accordance with this Agreement.
- (c) “Base Case Equity IRR” means **[*DELETION*]**.
- (d) “Compensation Date” means either:
- (i) if Section 3.3 of this Schedule applies, the earlier of:
 - (A) the date that the New Agreement is entered into; and
 - (B) the date on which Health Co pays the Adjusted Highest Qualifying Tender Price to Project Co; or

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- (ii) if Section 3.4 of this Schedule applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (e) “Deemed New Agreement” means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:
- (i) if this Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co (had one been appointed) to achieve the Substantial Completion Date prior to such extended Longstop Date;
 - (ii) any accrued Service Failure Points shall be cancelled;
 - (iii) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; and
 - (iv) there shall be no outstanding defaults thereunder.
- (f) “Discount Rate” means a discount rate equal to the Project Risk Premium plus the Benchmark Canada Bond, where:
- (i) “Project Risk Premium” means **[*DELETION]**; and
 - (ii) “Benchmark Canada Bond” means the yield to maturity on a benchmark Government of Canada Bond of the same maturity as the average life of the outstanding debt on which Senior Debt Amounts are calculated on the Termination Date.
- (g) “Employee Termination Payments” means termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of terminating this Agreement (provided that Project Co shall take all reasonable steps to mitigate its loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of Project Co arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment or other agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm’s length terms save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (h) “Estimated Fair Value” means the amount determined in accordance with Section 3.4 of this Schedule that a third party would pay to Health Co as the market value of a Deemed New Agreement.

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- (i) "Fair Value" means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidated sale.
- (j) "Force Majeure Termination Sum" has the meaning given in Section 4.1(b) of this Schedule.
- (k) "Health Co Default Termination Sum" has the meaning given in Section 2.1(b) of this Schedule.
- (l) "Invoice Date" means, in respect of the Health Co Default Termination Sum, the Force Majeure Termination Sum or the Prohibited Acts Termination Sum (as applicable), the date that is the later of:
- (i) the date on which Health Co receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which Health Co receives the supporting evidence required pursuant to Section 7.1(a) of this Schedule.
- (m) "Junior Debt" means any or all of the debt of Project Co to the extent properly incurred by Project Co pursuant to the Subordinated Funding Agreements and which is subordinated to the Senior Debt Amount, provided however that where such debt is provided to Project Co by any Affiliate of Project Co "Junior Debt" shall exclude the amount of:
- (i) all amounts not actually paid to Project Co by cash advance;
 - (ii) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co; and
 - (iii) capitalized interest, and interest on overdue interest.
- (n) "Liquid Market" means that there are sufficient willing parties (each of whom is capable of being a Suitable Substitute Contractor and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services to healthcare facilities under public private partnerships (where such agreements are the same as or similar to this Agreement) such that the retendering process in Section 3.3 of this Schedule can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Agreement.
- (o) "Market Value" means the value of the consideration payable by the New Project Co to Health Co in consideration for the entering into of the New Agreement.
- (p) "Market Value Availability Deduction Amount" means for any Payment Period or part of a Payment Period, an amount equal to the deductions for Failure Events that were made to the Periodic Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to deductions for Failure Events that were made for Functional Units which have subsequently been rectified whether as a result of Health Co incurring Rectification Costs or otherwise.

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- (q) "Maximum Service Payment" means the Periodic Service Payments payable at any time before any deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (r) "New Agreement" means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:
- (i) if this Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
 - (ii) any accrued Service Failure Points shall be cancelled;
 - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (iv) any other amendments which do not adversely affect Project Co.
- (s) "New Project Co" means the person who has entered or who will enter into the New Agreement with Health Co.
- (t) "Post Termination Service Amount" means for the purposes of Section 3.3 of this Schedule, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:
- (i) the reasonable and proper cost to Health Co of procuring the Services to the extent they are not being performed by Project Co;
 - (ii) the Market Value Availability Deduction Amount for that Payment Period; and
 - (iii) the Rectification Costs incurred by Health Co in that Payment Period.
- (u) "Prohibited Acts Termination Sum" has the meaning given to it in Section 5.1(b) of this Schedule.
- (v) "Qualification Criteria" means the criteria that Health Co requires tenderers to meet as part of the Tender Process, which (subject to compliance with all Applicable Laws) shall include the following:
- (i) that the tenders confirm acceptance of the New Agreement terms;
 - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
 - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
 - (iv) that the tenderer is experienced in providing the Project Operations or similar services;

- (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and
- (vi) any other tender criteria established by Health Co, acting reasonably, which shall include (if the same reflects then current market practice) a requirement for a letter of credit to support the submission of a Qualifying Tender or any other such similar commitment or security from tenderers as then reflects current market practice.
- (w) “Qualifying Tender” means a tender that meets all of the Qualification Criteria.
- (x) “Qualifying Tenderer” means a tenderer who submits a Qualifying Tender.
- (y) “Rectification Costs” means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by Health Co in a particular Payment Period or part of a Payment Period in ensuring that the Services are available.
- (z) “Senior Debt Amount” means, subject to Section 7.3 of this Agreement, the aggregate of (without double-counting):
 - (i) the applicable Bond Payout Amount (as defined in the trust indenture made on or about the date hereof between the BNY Trust Company of Canada, as indenture trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager) and as calculated in the manner set forth in the fully amortizing fixed indexing annuity bonds, Series A Supplemental indenture made on or about the date hereof between BNY Trust Company of Canada, as trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager;
 - (ii) the applicable Bond Payout Amount (as defined in the trust indenture made on or about the date hereof between the BNY Trust Company of Canada, as indenture trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager) and as calculated in the manner set forth in the fully amortizing fixed indexing annuity bonds, Series B Supplemental indenture made on or about the date hereof between BNY Trust Company of Canada, as trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager;
 - (iii) the applicable payout amounts set out and defined in any supplemental indenture that is not an Initial Funding Agreement under the trust indenture made on or about the date hereof between the BNY Trust Company of Canada, as indenture trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager to the extent entered into and funds raised thereunder are approved by Health Co and are used to finance Variations;
 - (iv) the applicable payout amounts set out and defined in any supplemental or replacement bond indenture or any alternate Senior Debt raised to the extent entered into as a Refinancing that is approved by Health Co and funds raised thereunder are used to refinance existing Senior Debt Amounts or are in addition to existing Senior Debt Amounts; and

- (v) the amount advanced under the letter of credit agreement made on or about the date hereof between Project Co and ABN AMRO Bank N.V., Canada Branch to the extent used to pay other Senior Debt Amounts,

LESS:

- (vi) all other amounts received by the Senior Funders in relation to Project Co or the Project on or after the Termination Date and before the date on which any compensation is payable by Health Co to Project Co as a result of enforcing any other rights they may have.
- (aa) "Senior Funder's Agent" means the person appointed as agent for the Senior Funders under the Senior Funders Agreements and authorized to act on behalf of the Senior Funders.
- (bb) "Senior Funders Agreements" means the trust indenture made on or about the date hereof between the BNY Trust Company of Canada, as indenture trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager.
- (cc) "Subcontractor Losses" means, subject to Project Co's obligations under this Agreement to limit any compensation to Subcontractors:
- (i) in the period prior to the Substantial Completion Date the amount reasonably and properly payable by Project Co to the Constructor under the terms of the Construction Contract and to the Service Providers under their respective contracts with Project Co, in each case as a direct result of the termination of this Agreement (including any reasonable commercial breakage fee) provided that such amount shall be reduced to the extent that Project Co or Subcontractors fail to take all reasonable steps to mitigate such amount; and
- (ii) in the period from the Substantial Completion Date the amount reasonably and properly payable by Project Co to the Service Providers under their respective Service Contracts with Project Co (as the case may be) as a direct result of the termination of this Agreement (including any reasonable commercial breakage fee) provided that such amount shall be reduced to the extent that Project Co or Subcontractors fail to take all reasonable steps to mitigate such amount,

provided that in both cases no account should be taken of any liabilities and obligation of Project Co to the Subcontractors arising out of:

- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
- (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
- (v) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in the

ordinary course of business and on commercial arm's length terms save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.

- (dd) "Subordinated Funding Agreement" means any agreement or agreements, on normal commercial terms, entered into by Project Co and any other parties for the funding of the Project Operations in excess of and subordinate to the funding to be obtained pursuant to the Initial Funding Agreements or any replacement thereof.
- (ee) "Suitable Substitute Contractor" is as defined in the Funders' Direct Agreement.
- (ff) "Tender Costs" means the reasonable and proper costs of Health Co incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (gg) "Tender Process" means the process by which Health Co requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Service Provider, in accordance with Section 3.3 of this Schedule.
- (hh) "Tender Process Monitor" has the meaning given in Section 3.3(f) of this Schedule.

2. COMPENSATION ON TERMINATION FOR HEALTH CO DEFAULT OR NON-DEFAULT TERMINATION**2.1 Compensation**

(a) If Project Co terminates this Agreement pursuant to Section 46 of this Agreement or Health Co terminates this Agreement pursuant to Section 47.2 of this Agreement, including where Health Co serves a Viability Statement in accordance with Schedule 28-2 arising from an event occurring prior to the date that is five years prior to the Expiry Date or termination of the Agreement in accordance with Section 6.4(d)(ii)(2) of Schedule 28-1, Health Co shall pay to Project Co the Health Co Default Termination Sum as set out in Section 2.1(b).

- (b) The "Health Co Default Termination Sum" shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount;
 - (ii) Employee Termination Payments and Subcontractor Losses;
 - (iii) an amount which if paid on the Termination Date and which when taken together with all:
 - (A) dividends (or other Distributions) paid by Project Co on its share capital on or before the Termination Date and other Distributions made on or before the Termination Date and taking account of the actual timing of all such payments; and
 - (B) interest paid and principal repaid by Project Co on Junior Debt on or before the Termination Date and taking account of the actual timing of all such payments,

but in any event excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Base Case Equity IRR on the amount of cash paid to Project Co for share capital subscribed and for Junior Debt advanced (to the extent that such Junior Debt and share capital proceeds have been applied by Project Co for the purposes of the Project or Business Opportunities); and

- (iv) Direct Losses properly incurred by Project Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination (save for any amounts already accounted for in (i) to (iii) above or specifically excluded from the calculation of the amounts in (i) to (iii) above);

LESS, the aggregate of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are to be applied in reinstatement, restoration or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Health Co is

required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Agreement) to Health Co and, at no additional cost to Project Co, give Health Co reasonable assistance in prosecuting such claims; and

- (vi) the market value of any other assets and rights of Project Co (other than those transferred to Health Co pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date to the extent realized before the Invoice Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (c) To the extent that such assets and rights referred to in Section 2.1(b)(vi) are not realized and applied pursuant to that Section, Project Co shall on payment of the Health Co Default Termination Sum assign such assets and rights to Health Co.
- (d) Health Co shall pay the Health Co Default Termination Sum in accordance with Section 7 of this Schedule.

3. COMPENSATION FOR PROJECT CO DEFAULT**3.1 Compensation**

- (a) Save and except where Sections 5 or 6 apply, if Health Co terminates this Agreement pursuant to Section 45 of this Agreement Health Co shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure pursuant to Section 3.3 of this Schedule or the Adjusted Estimated Fair Value according to the no retendering procedure pursuant to Section 3.4 of this Schedule, as applicable.

3.2 Retendering Election

- (a) Health Co shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule and the provisions of that Section shall apply if:
- (i) Health Co notifies Project Co on or before the date falling 30 days after the Termination Date; and
 - (ii) there is a Liquid Market,

but otherwise Health Co shall require a determination in accordance with the no retendering procedure pursuant to Section 3.4 of this Schedule and the provisions of that Section shall apply. Until it is determined that the no retendering procedure pursuant to Section 3.4 of this Schedule will be the basis for determining the compensation to Project Co, Project Co shall continue to provide the Services and Health Co shall pay Project Co in accordance with Section 3.3(e).

3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) Health Co shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use all reasonable endeavours to complete the Tender Process as soon as practicable.
- (c) Health Co shall as soon as reasonably practicable notify Project Co 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.
- (d) Project Co authorizes the release of any information by Health Co under the Tender Process which would otherwise be prevented under Section 52 of this Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to provide the Services, and for all or any part of a Payment Period, falling within the period from the Termination Date to the Compensation Date, Health Co shall pay to Project Co:

- (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 14 days after the end of that Payment Period; and
 - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) 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 Senior Funders on Health Co’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with Health Co in a form acceptable to Health Co and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to Health Co as to compliance with the Tender Process. Health Co shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Senior Funders but shall be entitled to advise Project Co and the Senior Funders on whether it considers that Health Co has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (g) If any Post Termination Service Amount is negative then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts and the Adjusted Highest Qualifying Tender Price or Adjusted Estimated Fair Value, as applicable.
- (h) As soon as practicable after tenders have been received, Health Co shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure, Health Co shall irrespective of such Dispute be entitled to enter into a New Agreement.
- (j) Health Co shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 7 of this Schedule.
- (k) Health Co may elect, by notice to Project Co at any time prior to Health Co ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure in accordance with Section 3.4 of this Schedule. In addition, Health Co shall follow such no retendering procedure if a New Agreement has not been entered into on or before the date falling two years after the Termination Date unless Health Co has already determined the Adjusted Highest Qualifying Tender Price.
- (l) Project Co may give written notice to Health Co at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If Health Co is in agreement with such notice or does not respond in writing within 14 days of receipt of the notice stating whether or not it is in agreement, the provisions of Section 3.4 of this Schedule 26 shall apply. If Health Co provides a written response within 14 days of receipt of such notice stating that it is in disagreement with that notice, the matter shall be referred for determination under the Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) If Health Co elects to require a determination in accordance with this Section 3.4 and to the extent Health Co requires Project Co to continue to provide the Services, then Health Co shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date, in accordance with Section 3.3.
- (b) In determining the Estimated Fair Value the parties shall be obliged to follow the principles set out below:
- (i) all forecast amounts should be calculated in nominal terms. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement will be made and if made will use an assumed inflation rate of 2% per annum;
 - (ii) the total of:
 - (A) the discounted values, discounting at the Discount Rate, of all future payments of the Periodic Service Payments forecast to be made from the Termination Date to the Expiry Date, assuming that no deductions and no Bonus Payments will be made over that period, but excluding from all such forecast amounts the part of each Periodic Service Payment equal to the before-tax cash flows forecast to be available for payment of taxes, dividends (or other Distributions) on its share capital, or debt service of Junior Debt; plus
 - (B) the discounted values, discounting at the Base Case Equity IRR, of all parts of payments of the Periodic Service Payments forecast to be made from the Termination Date to the Expiry Date that were excluded from the calculation in Section 3.4(b)(ii)(A) above that are equal to the before-tax cash flows forecast to be available for payment of taxes, dividends (or other Distributions) on its share capital, or debt service of Junior Debt; plus
 - (C) the value to a third party, projecting to the Expiry Date, of the Business Opportunities pursued by Project Co pursuant to Section 4.1(d) of the Agreement based, to the extent possible, on actual historic financial performance of the respective Business Opportunity, a 12% discount rate, and assumptions that the then current investment will be maintained but that no incremental investment or business development will occur, that operating costs and revenues will not grow at more than the rate of inflation, and no residual value; plus
 - (D) the amount indicated in the table in Appendix "A" of this Schedule, if any, adjacent to the date closest to the Termination Date in the column titled "Health Co payments to Project Co (\$)",

shall be calculated;

- (iii) The total of the discounted values of all costs and liabilities reasonably forecast to be incurred by Health Co as a result of termination shall be calculated, such costs and liabilities to include:
- (A) a contingency amount, discounted at the Discount Rate plus 1.06%, based on a reasonable risk assessment of any cost overruns or liabilities that may reasonably arise (including in respect of any matter referred to in this Section 3.4(b)(iii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of this Agreement; plus
 - (B) the costs of obtaining or providing the Services, discounted at the Discount Rate, reasonably forecast to be incurred by Health Co from the Termination Date to the Expiry Date to the standard required; plus
 - (C) the total of the discounted values, discounting at the Discount Rate plus 1.06%, of any and all costs, liabilities, and expenses of any nature whatsoever incurred or anticipated to be incurred in any way arising out of the circumstances giving rise to the termination, and any rectification costs, (including Rectification Costs) required to deliver the Project Operations to the standard required, including to complete the Works (except that remaining costs to complete the Works shall be discounted at the Discount Rate without addition of 1.06%) and any costs reasonably forecast to be incurred by Health Co for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred and to complete the Works, and additional operating and other costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this Section 3.4(b)(iii)(C)), the aggregate of:
 - (1) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 28 - Insurance Requirements of this Agreement; and
 - (2) amounts payable by Health Co in respect of Capital Expenditures under this Agreement which have not been paid; plus
 - (D) any transaction, tendering or other costs in obtaining or providing the Project Operations all discounted at the Discount Rate plus 1.06%, where applicable,

in each case such costs to be forecast at a level that will deliver the Services and other Project Operations to the standards required by this Agreement and to achieve the full Periodic Service Payments (without deductions);

- (iv) the Estimated Fair Value shall be equal to the total of the discounted values of the payments calculated pursuant to Section 3.4(b)(ii) less the total of the discounted values of the costs and liabilities calculated pursuant to Section

3.4(b)(iii) and less the amount indicated in the table in Appendix "A" of this Schedule, if any, adjacent to the date closest to the Termination Date in the column titled "Project Co payments to Health Co (\$)"; and

- (v) the calculation will take into consideration the obligations of the Parties with respect to allowances and payments under the Agreement, including the RHD Funding.
- (c) If the parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with the Dispute Resolution Procedure.
- (d) Health Co shall pay the Adjusted Estimated Fair Value in accordance with Section 7 of this Schedule.

4. CONSEQUENCES OF TERMINATION FOR FORCE MAJEURE

4.1 Consequences

- (a) If Project Co or Health Co terminates this Agreement pursuant to Section 47.1 of this Agreement, including where Health Co serves a Viability Statement in accordance with Schedule 28-2 arising from an event occurring after the date that is five years prior to the Expiry Date, Health Co shall pay to Project Co the Force Majeure Termination Sum.
- (b) The “Force Majeure Termination Sum” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount;
 - (ii) Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit);
 - (iii) an amount equal to the Junior Debt advanced (where such Junior Debt has been approved in writing by Health Co) less an amount equal to the aggregate of payments of interest on such Junior Debt, provided that where such Junior Debt less aggregate payments of interest is negative, it shall be deemed instead to be zero;
 - (iv) an amount equal to all cash amounts paid to Project Co by way of subscription for shares in the capital of Project Co less dividends and other Distributions paid to the Shareholders, or other shareholders of Project Co, if any, provided that where such amount is negative, it shall be deemed instead to be zero; and
 - (v) to the extent permitted pursuant to Section 49.2(a) of this Agreement, Direct Losses properly incurred by Project Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination (save for any amounts already accounted for in (i) to (iv) above, or specifically excluded from the calculation of the amounts in (i) to (iv) above and any other claim for loss of profit or overhead or other margin);

LESS, the aggregate of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are to be applied in reinstatement, restoration or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Health Co is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project

and this Agreement) to Health Co and, at no additional cost to Project Co, give Health Co reasonable assistance in prosecuting such claims;

- (vii) the market value of any other assets and rights of Project Co (other than those transferred to Health Co pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date, to the extent such assets, rights or liabilities are realized before the Invoice Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
 - (viii) Direct Losses suffered, sustained or incurred by Health Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination.
- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) are not realized and applied pursuant to that Section, Project Co shall on payment of the Force Majeure Termination Sum assign such assets and rights to Health Co.
 - (d) Health Co shall pay the Force Majeure Termination Sum in accordance with Section 7 of this Schedule.

5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS

5.1 Consequences

- (a) If Health Co terminates this Agreement pursuant to Section 60 of this Agreement Health Co shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "Prohibited Acts Termination Sum" shall be an amount equal to the aggregate of:
 - (i) an amount equal to the Senior Debt Amount; and
 - (ii) the following amounts calculated in respect of the Constructor, if the Constructor is not responsible for a Prohibited Act, and any of the Service Providers that are not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
 - (A) Employee Termination Payments; and
 - (B) as applicable, the Constructor's and Service Provider's out of pocket costs incurred as a direct result of termination of this Agreement (excluding any breakage fees and overhead and profit of the Constructor and Service Providers, as applicable), to the extent such costs cannot be recovered from Project Co, the Constructor or another Service Provider;

LESS, the aggregate of the following, to the extent it is a positive amount:

- (iii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are to be applied in reinstatement, restoration or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Health Co is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Agreement) to Health Co and, at no additional cost to Project Co, give Health Co reasonable assistance in prosecuting such claims; and
- (iv) the market value of any other assets and rights of Project Co (other than those transferred to Health Co pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date to the extent realized before the Invoice Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co where such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(iv) are not realized and applied pursuant to that Section, Project Co shall on payment of the Prohibited Acts Termination Sum assign such assets and rights to Health Co.
- (d) Health Co shall pay the Prohibited Acts Termination Sum in accordance with Section 7 of this Schedule.

6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

6.1 Consequences

- (a) If Health Co terminates this Agreement pursuant to a Project Co Event of Default for failing to comply with Section 7.3 or Schedule 31 - Refinancing or the Senior Funder assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Funders' Direct Agreement, Health Co shall pay to Project Co a termination sum equivalent to, and calculated and payable in accordance with, the Prohibited Acts Termination Sum less, Direct Losses suffered, sustained or incurred by Health Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination.
- (b) Health Co shall pay such termination sum in accordance with Section 7 of this Schedule.

7. GENERAL**7.1 Payment and Interest following Health Co Default, Force Majeure, Prohibited Acts or Breach of Refinancing**

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5 or 6 of this Schedule, as soon as practicable after, and in any event within 30 days after, the Termination Date, Project Co shall give to Health Co an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Health Co, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) Health Co shall pay to Project Co:
- (i) the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:
 - (A) at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
 - (B) thereafter, at the Default Interest Rate.
- (c) If the applicable termination sum is negative, Health Co shall have no obligation to make any payment to Project Co and Project Co shall within 60 days after the Invoice Date pay to Health Co the amount by which such termination sum is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

7.2 Payment and Interest following Project Co Default - Retendering Procedure

- (a) Following the retendering procedure under Section 3.3 of this Schedule, Health Co shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
- (i) the date on which Health Co enters into the New Agreement with the New Project Co; and
 - (ii) if Project Co has pursuant to Section 3.3(i) of this Schedule referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with the Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that Health Co shall pay the undisputed amount no later than 30 days after the date referred to in Section 7.2(a)(i),

together with interest thereon at the No Default Interest Rate from the date on which Health Co entered into the New Agreement until the date that such payment is due and payable, and thereafter with interest at the Default Interest Rate.

- (b) If the Adjusted Highest Qualifying Tender Price is negative, Health Co shall have no obligation to make any payment to Project Co and Project Co shall on the date of the New Agreement pay Health Co the amount by which such termination sum is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

7.3 Payment and Interest following Project Co Default – No Retendering Procedure

- (a) If Health Co follows the no retendering procedure under Section 3.4 of this Schedule, Health Co shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule together with interest on such amount calculated in accordance with Section 7.1(b)(ii) above save where and to the extent Health Co has paid Post Termination Service Amounts pursuant to Section 3.4(a) above.
- (i) If the Adjusted Estimated Fair Value is negative, Health Co shall have no obligation to make any payment to Project Co and Project Co shall on the Compensation Date pay Health Co the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

7.4 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

7.5 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 7 and the disputed amount shall be dealt with in accordance with the Dispute Resolution Procedure.

7.6 Outstanding Senior Debt Amount

- (a) Health Co shall be entitled to rely on a certificate of the Senior Funders' Agent as conclusive as to the amount of the Senior Debt Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Senior Funders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount (and where appropriate any accrued interest or breakage costs as certified in accordance with Section 7.6(a) above), such receipt or other acknowledgement shall discharge Health Co's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

7.7 Set-off

- (a) Health Co shall be entitled to set off against the relevant termination sum otherwise payable pursuant to this Schedule 26, such amounts that Health Co is entitled to set off pursuant to Section 49.2 of this Agreement.

APPENDIX "A"

TERMINATION PAYMENT ADJUSTMENT

Date	Project Co payments to Health Co (\$)	Health Co payments to Project Co (\$)
30-Nov-04	*DELETION]	*DELETION]
28-Feb-05	*DELETION]	*DELETION]
31-May-05	*DELETION]	*DELETION]
31-Aug-05	*DELETION]	*DELETION]
30-Nov-05	*DELETION]	*DELETION]
28-Feb-06	*DELETION]	*DELETION]
31-May-06	*DELETION]	*DELETION]
31-Aug-06	*DELETION]	*DELETION]
30-Nov-06	*DELETION]	*DELETION]
28-Feb-07	*DELETION]	*DELETION]
31-May-07	*DELETION]	*DELETION]
31-Aug-07	*DELETION]	*DELETION]
30-Nov-07	*DELETION]	*DELETION]
29-Feb-08	*DELETION]	*DELETION]
31-May-08	*DELETION]	*DELETION]
31-Aug-08	*DELETION]	*DELETION]
30-Nov-08	*DELETION]	*DELETION]
28-Feb-09	*DELETION]	*DELETION]
31-May-09	*DELETION]	*DELETION]
31-Aug-09	*DELETION]	*DELETION]
30-Nov-09	*DELETION]	*DELETION]
28-Feb-10	*DELETION]	*DELETION]
31-May-10	*DELETION]	*DELETION]
31-Aug-10	*DELETION]	*DELETION]
30-Nov-10	*DELETION]	*DELETION]
28-Feb-11	*DELETION]	*DELETION]
31-May-11	*DELETION]	*DELETION]
31-Aug-11	*DELETION]	*DELETION]
30-Nov-11	*DELETION]	*DELETION]
29-Feb-12	*DELETION]	*DELETION]
31-May-12	*DELETION]	*DELETION]
31-Aug-12	*DELETION]	*DELETION]
30-Nov-12	*DELETION]	*DELETION]
28-Feb-13	*DELETION]	*DELETION]

Date	Project Co payments to Health Co (\$)	Health Co payments to Project Co (\$)
31-May-13	*DELETION	*DELETION
31-Aug-13	*DELETION	*DELETION
30-Nov-13	*DELETION	*DELETION
28-Feb-14	*DELETION	*DELETION
31-May-14	*DELETION	*DELETION
31-Aug-14	*DELETION	*DELETION
30-Nov-14	*DELETION	*DELETION
28-Feb-15	*DELETION	*DELETION
31-May-15	*DELETION	*DELETION
31-Aug-15	*DELETION	*DELETION
30-Nov-15	*DELETION	*DELETION
29-Feb-16	*DELETION	*DELETION
31-May-16	*DELETION	*DELETION
31-Aug-16	*DELETION	*DELETION
30-Nov-16	*DELETION	*DELETION
28-Feb-17	*DELETION	*DELETION
31-May-17	*DELETION	*DELETION
31-Aug-17	*DELETION	*DELETION
30-Nov-17	*DELETION	*DELETION
28-Feb-18	*DELETION	*DELETION
31-May-18	*DELETION	*DELETION
31-Aug-18	*DELETION	*DELETION
30-Nov-18	*DELETION	*DELETION
28-Feb-19	*DELETION	*DELETION
31-May-19	*DELETION	*DELETION
31-Aug-19	*DELETION	*DELETION
30-Nov-19	*DELETION	*DELETION
29-Feb-20	*DELETION	*DELETION
31-May-20	*DELETION	*DELETION
31-Aug-20	*DELETION	*DELETION
30-Nov-20	*DELETION	*DELETION
28-Feb-21	*DELETION	*DELETION
31-May-21	*DELETION	*DELETION
31-Aug-21	*DELETION	*DELETION

Date	Project Co payments to Heath Co (\$)	Health Co payments to Project Co (\$)
30-Nov-21	*DELETION*	*DELETION*
28-Feb-22	*DELETION*	*DELETION*
31-May-22	*DELETION*	*DELETION*
31-Aug-22	*DELETION*	*DELETION*
30-Nov-22	*DELETION*	*DELETION*
28-Feb-23	*DELETION*	*DELETION*
31-May-23	*DELETION*	*DELETION*
31-Aug-23	*DELETION*	*DELETION*
30-Nov-23	*DELETION*	*DELETION*
29-Feb-24	*DELETION*	*DELETION*
31-May-24	*DELETION*	*DELETION*
31-Aug-24	*DELETION*	*DELETION*
30-Nov-24	*DELETION*	*DELETION*
28-Feb-25	*DELETION*	*DELETION*
31-May-25	*DELETION*	*DELETION*
31-Aug-25	*DELETION*	*DELETION*
30-Nov-25	*DELETION*	*DELETION*
28-Feb-26	*DELETION*	*DELETION*
31-May-26	*DELETION*	*DELETION*
31-Aug-26	*DELETION*	*DELETION*
30-Nov-26	*DELETION*	*DELETION*
28-Feb-27	*DELETION*	*DELETION*
31-May-27	*DELETION*	*DELETION*
31-Aug-27	*DELETION*	*DELETION*
30-Nov-27	*DELETION*	*DELETION*
29-Feb-28	*DELETION*	*DELETION*
31-May-28	*DELETION*	*DELETION*
31-Aug-28	*DELETION*	*DELETION*
30-Nov-28	*DELETION*	*DELETION*
28-Feb-29	*DELETION*	*DELETION*
31-May-29	*DELETION*	*DELETION*
31-Aug-29	*DELETION*	*DELETION*
30-Nov-29	*DELETION*	*DELETION*
28-Feb-30	*DELETION*	*DELETION*

Date	Project Co payments to Health Co (\$)	Health Co payments to Project Co (\$)
31-May-30	*DELETION	*DELETION
31-Aug-30	*DELETION	*DELETION
30-Nov-30	*DELETION	*DELETION
28-Feb-31	*DELETION	*DELETION
31-May-31	*DELETION	*DELETION
31-Aug-31	*DELETION	*DELETION
30-Nov-31	*DELETION	*DELETION
29-Feb-32	*DELETION	*DELETION
31-May-32	*DELETION	*DELETION
31-Aug-32	*DELETION	*DELETION
30-Nov-32	*DELETION	*DELETION
28-Feb-33	*DELETION	*DELETION
31-May-33	*DELETION	*DELETION
31-Aug-33	*DELETION	*DELETION
30-Nov-33	*DELETION	*DELETION
28-Feb-34	*DELETION	*DELETION
31-May-34	*DELETION	*DELETION
31-Aug-34	*DELETION	*DELETION
30-Nov-34	*DELETION	*DELETION
28-Feb-35	*DELETION	*DELETION
31-May-35	*DELETION	*DELETION
31-Aug-35	*DELETION	*DELETION
30-Nov-35	*DELETION	*DELETION
29-Feb-36	*DELETION	*DELETION
31-May-36	*DELETION	*DELETION
31-Aug-36	*DELETION	*DELETION
30-Nov-36	*DELETION	*DELETION
28-Feb-37	*DELETION	*DELETION
31-May-37	*DELETION	*DELETION
31-Aug-37	*DELETION	*DELETION
30-Nov-37	*DELETION	*DELETION
28-Feb-38	*DELETION	*DELETION
31-May-38	*DELETION	*DELETION