

SCHEDULE 9

COMPENSATION ON TERMINATION

TABLE OF CONTENTS

1. INTERPRETATION	1
1.1 Definitions.....	1
2. TERMINATION FOR OWNER EVENT OF DEFAULT OR AT OWNER’S OPTION.....	1
2.1 Calculation.....	1
2.2 Notice to the Owner.....	2
3. PROJECT CO EVENT OF DEFAULT.....	3
3.1 Calculation.....	3
3.2 Notice to Project Co.....	3
4. NO-FAULT TERMINATION.....	3
4.1 Calculation.....	3
4.2 Notice to the Owner.....	4
5. ADJUSTMENTS AND DISPUTES	5
5.1 [Intentionally Deleted].....	5
5.2 Time Related Adjustments	5
5.3 Senior Debt.....	5
5.4 Disputes.....	5
6. PAYMENTS.....	5
6.1 Termination Payment Date.....	5
6.2 Tax Allocations	6
6.3 Liability for Sales Taxes.....	6
6.4 GST Filings.....	6
6.5 Full Settlement.....	6

SCHEDULE 9

COMPENSATION ON TERMINATION

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“Employee Information” means written details related to employees employed by Project Co, the Design-Builder or any Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (d) any other information that the Owner may reasonably require in relation to the calculation of Employee Payments in respect of Project Co or the Design-Builder or any relevant Sub-Contractors; and

“Senior Debt Termination Amount” has the meaning set out in Section 2.1(a) of this Schedule.

2. TERMINATION FOR OWNER EVENT OF DEFAULT OR AT OWNER’S OPTION

2.1 Calculation

If either the Owner or Project Co terminates this Agreement pursuant to Section 2.1(a) (Term and Termination), Section 6.6 (Owner Election Not to Reinstate), Section 6.7(d) (Insufficient Insurance) or Section 13 (Owner Events of Default), the Owner will pay to Project Co on the Termination Payment Date a Termination Payment equal to the aggregate amount, without duplication, of:

- (a) the Senior Debt as at the Termination Date with per diem interest on amounts falling within paragraph 2.1(a) of the definition of Senior Debt calculated at the non default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date (the **“Senior Debt Termination Amount”**);
- (b) the Employee Payments and the Design-Builder Breakage Costs;
- (c) any reasonable costs properly incurred by Project Co to wind up its operations;
- (d) any accrued but unpaid amounts owing and payable by the Owner to Project Co under this Agreement; and
- (e) any Insurance Receivables, if and to the extent Project Co has assigned them to the Owner,

LESS, to the extent it is a positive amount, the aggregate of without double counting:

- (f) the aggregate of all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favour of the Senior Lenders;
- (g) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under the Design-Build Agreement 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 will assign any such rights and claims under the Design-Build Agreement or claims against other third parties to the Owner and give the Owner reasonable assistance in prosecuting such claims;
- (h) [Intentionally Deleted];
- (i) the market value of any other assets and rights of Project Co (other than those transferred to the Owner 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 realised before the Termination Payment Date provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (1) 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
 - (2) agreements or arrangements entered into by Project Co 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.
- (j) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to Project Co as a result of a prepayment under the Senior Financing Agreements;
- (k) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
- (l) any other amounts that the Owner is entitled to set-off or deduct under this Agreement.

To the extent that the assets and rights referred to in Section 2.1(i) above are not realised and applied pursuant to that Section, Project Co will on payment of the amount due under this Section 2.1 assign such assets and rights to the Owner.

2.2 Notice to the Owner

As soon as practicable after termination of this Agreement pursuant to Section 2.1(a) (Term and Termination), Section 6.6 (Owner Election Not to Reinstate), Section 6.7(d) (Insufficient Insurance) or Section 13.3 (Project Co's Options) Project Co will, acting reasonably, notify the Owner of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and certificates from the Senior Lenders as to the amounts owed to them. Project Co will provide to the Owner all such documents and information as may be reasonably required by the Owner to confirm the amount of the Termination Payment including Employee Information.

3. PROJECT CO EVENT OF DEFAULT

3.1 Calculation

If the Owner terminates this Agreement in accordance with Section 12.4 (Owner Termination Right), the Owner will pay to Project Co on the Termination Payment Date a Termination Payment equal to,

- (a) the Contract Price, as adjusted in accordance with this Agreement;

LESS, to the extent it is a positive amount, the aggregate of without double counting:

- (b) any amounts in respect of the Contract Price paid by the Owner to Project Co on or before the Termination Date;
- (c) the Owner's estimate of the cost to complete the Design and Construction, including the cost to remedy any defective or deficient work determined on a reasonable basis in consultation with the Independent Certifier and the Owner's other consultants and including all reasonable and proper costs incurred by the Owner in re-tendering the Design and Construction or any portion thereof;
- (d) the Owner's estimate of the aggregate of all Direct Losses suffered, sustained or incurred by the Owner as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Design and Construction, including any warranty obligations in place and to be performed, on substantially the same terms and conditions as this Agreement; and
- (e) any other amounts that the Owner is entitled to set off or deduct under this Agreement.

If the foregoing calculation results in a Termination Payment that is a negative amount, Project Co will pay to the Owner the absolute value of that amount.

3.2 Notice to Project Co

As soon as practicable after termination of this Agreement as contemplated by this Section 3, the Owner will, acting reasonably, notify Project Co of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Project Co will provide to the Owner all such documents and information as may be reasonably required by the Owner to assist the Owner in determining the amount of the Termination Payment.

4. NO-FAULT TERMINATION

4.1 Calculation

If Project Co or the Owner terminates this Agreement pursuant to Section 6.7(e), 6.8., 6.14, 8.4 or 8.5 of this Agreement, the Owner will pay to Project Co on the Termination Payment Date a Termination Payment equal to the aggregate of:

- (a) the Senior Debt Termination Amount;
- (b) the Employee Payments and the Design-Builder Breakage Costs;
- (c) any accrued but unpaid amounts owing and payable by the Owner to Project Co under this Agreement; and

- (d) any Insurance Receivables, if and to the extent Project Co has assigned them to the Owner,

LESS, to the extent it is a positive amount, the aggregate of without double counting:

- (e) the aggregate of all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favour of the Senior Lenders;
- (f) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under the Design-Build Agreement 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 will assign any such rights and claims under the Design-Build Agreement or claims against other third parties to the Owner and give the Owner reasonable assistance in prosecuting such claims;
- (g) [Intentionally Deleted];
- (h) the market value of any other assets and rights of Project Co (other than those transferred to the Owner 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 realised before the Termination Payment Date provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (1) 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
 - (2) agreements or arrangements entered into by Project Co 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;
- (i) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to Project Co as a result of a prepayment under the Senior Financing Agreements;
- (j) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
- (k) any other amounts that the Owner is entitled to set off or deduct under this Agreement.

To the extent that the assets and rights referred to in Section 4.1(h) above are not realised and applied pursuant to that Section, Project Co will on payment of the amount due under this Section 4.1 assign such assets and rights to the Owner.

If the aggregate of the amount calculated above is less than the Senior Debt Termination Amount plus the amount referred to in 4.1(b) above, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt Termination Amount plus the amount referred to in 4.1(b) above.

4.2 Notice to the Owner

As soon as practicable after termination of this Agreement as contemplated by this Section 4, Project Co will, acting reasonably, notify the Owner of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including

a revised and up to date Financial Model and certificates from the Senior Lenders as to the amounts owed to them and will also provide to the Owner all such documents and information reasonably required by the Owner to confirm the amount of the Termination Payment including Employee Information.

5. ADJUSTMENTS AND DISPUTES

5.1 [Intentionally Deleted]

5.2 Time Related Adjustments

It is understood that the calculations of the Termination Payment pursuant to Sections 2, 3 and 4 of this Schedule are as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons including the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.3 Senior Debt

The Owner will be entitled to rely on one or more certificates of officers of the Senior Lenders or their agent(s) as conclusive evidence of the amount of the Senior Debt Termination Amount. The receipt of this amount by Project Co, the Senior Lenders or their agent(s) will discharge the Owner's obligation to pay any portion of compensation due to Project Co that is attributable to the Senior Debt.

5.4 Disputes

If:

- (a) the Owner does not agree with Project Co's determination of the Termination Payment under Section 2 or Section 4 of this Schedule, the Owner may, within 20 Business Days of the notice referred to in Section 2.2 or Section 4.2 of this Schedule as the case may be, refer the matter to the Dispute Resolution Procedure; or
- (b) Project Co does not agree with the Owner's determination of the Termination Payment under Section 3 of this Schedule, Project Co may, within 20 Business Days of the notice referred to in Section 3.2 of this Schedule, refer the matter to the Dispute Resolution Procedure.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in 5.4(a) or 5.4(b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

The Termination Payment Date will be determined as follows:

- (a) if the amount thereof is agreed to or deemed agreed to by the Owner and Project Co on the earliest of:
 - (1) the date advised by the Owner; and
 - (2) 60 days after such agreement or deemed agreement, as the case may be; or

- (b) if the amount thereof is the subject of a Dispute, 45 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure.

6.2 Tax Allocations

The Owner and Project Co will:

- (a) act reasonably and will co-operate with each other to determine the Income Tax treatment resulting from a Termination Payment and to allocate the Termination Payment to each of the non-fixed assets transferred to the Owner pursuant to Section 14.2 (Transfer to Owner of Assets, Contracts, etc.) so as to minimize the amount of Taxes payable on such transfer;
- (b) failing agreement on such treatment or allocation, use the treatment or allocation determined by the Owner unless and until such time as a different treatment or allocation is determined under the Dispute Resolution Procedure or by Canada Revenue Agency (after all appeals have been exhausted); and
- (c) use the allocation agreed to in 6.2(a) above or determined in accordance with 6.2(b) above in their respective Tax filings and returns.

6.3 Liability for Sales Taxes

The Owner will be responsible for all applicable sales Taxes payable in connection with the transfers referred to in Section 14.2 (Transfer to the Owner of Assets, Contracts, etc.) of this Agreement and will either pay all such sales Taxes directly or reimburse Project Co for such sales Taxes if Project Co is required to and does remit such sales Taxes.

6.4 GST Filings

If Section 182 of the Excise Tax Act (Canada) applies to a Termination Payment, the Owner and Project Co will submit their respective GST filings in respect of any period in which a Termination Payment was made on the basis that Section 182 of the Excise Tax Act (Canada) will apply to any such Termination Payment.

6.5 Full Settlement

Any and all amounts paid by the Owner to Project Co under this Schedule or any agreement or determination that the Owner has no obligations to make any payment to Project Co under this Schedule will be in full and final settlement of each party's rights and claims against each other for termination of this Agreement and the Design-Build Agreement, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Payment; and
- (b) any liability of either party to the other that may arise after the date of termination of this Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Agreement which are intended by Section 17.11 (Survival) to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.