

## SCHEDULE 13

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## **SCHEDULE 13**

### **COMPENSATION ON TERMINATION**

#### **1. TERMINATION FOR RAVCO DEFAULT OR ELECTION NOT TO REINSTATE**

##### **1.1 Calculation**

If RAVCO or the Concessionaire terminate this Agreement pursuant to Section 11.6 or 24.3 of this Agreement, RAVCO will pay to the Concessionaire on the Termination Payment Date a Termination Payment equal to the greater of:

- (a) the amount which would be determined under Section 4.1 of this Schedule if it applied; and
- (b) the aggregate amount, without duplication, of:
  - (1) the Senior Debt;
  - (2) any accrued but unpaid amounts owing and payable by RAVCO to the Concessionaire under this Agreement, including, without duplication, Payments;
  - (3) the Employee Payments;
  - (4) the Project Contractor Losses (excluding any Indirect Losses, as such term is defined in the Project Contracts as of the date hereof); and
  - (5) Concessionaire FMV,

less any amount which RAVCO is entitled to set-off or deduct under Section 5.3(b) of this Agreement.

The above determined amount will be adjusted upward or downward to the extent required under Sections 7.1 and 7.2 of this Schedule.

##### **1.2 Notice to RAVCO**

As soon as practicable after termination of this Agreement pursuant to Section 11.6 or 24.5, the Concessionaire will, acting reasonably, determine the Termination Payment as of an estimated Termination Payment Date and will notify RAVCO of the Termination Payment 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 Lenders as to the amounts owed to them. On written request, the Concessionaire will provide to RAVCO all such documents and information as may be reasonably required by RAVCO to confirm the Concessionaire's determination of the Termination Payment.



## 2. TERMINATION FOR CONCESSIONAIRE DEFAULT: RE-LETTING PROCESS

### 2.1 RAVCO Election

If RAVCO terminates this Agreement in accordance with Section 23.5 of this Agreement after Service Commencement, RAVCO may within 14 days of such termination, on notice to the Concessionaire, elect to have this Section 2 of this Schedule apply and if RAVCO so elects, Section 3 of this Schedule will have no force or effect. RAVCO may not elect to have the provisions of Section 2 of this Schedule apply if:

- (a) there is no Liquid Market as at the date of such termination; or
- (b) the Senior Lenders have:
  - (1) exercised their rights under the Lenders' Remedies Agreement as a result of the Concessionaire Event of Default; and
  - (2) demonstrated to RAVCO's satisfaction, acting reasonably, that they have used commercially reasonable efforts to transfer the Concessionaire's rights and obligations under this Agreement to a Suitable Substitute Contractor but have failed to achieve such transfer,

and for the avoidance of doubt, the option to elect to have this Section 2 of this Schedule apply will not be available to RAVCO prior to Service Commencement.

### 2.2 Re-letting Process

RAVCO will:

- (a) use all commercially reasonable efforts to:
  - (1) conduct the Re-letting Process so as to obtain the maximum Highest Compliant Bid Price; and
  - (2) implement and complete the Re-letting Process as soon as practicable after making the election under Section 2.1 of this Schedule; and
- (b) notify, as soon as practicable and acting reasonably, the Concessionaire of the requirements and terms of the Re-letting Process, including the timing of the Re-letting Process and the Qualification Criteria and other matters which will be required to be taken into account by a Compliant Bid. Information provided to bidders during the Re-letting Process will include similar information to that provided to bidders in the original procurement process for the Project taking into consideration the relevance of such information and the status of the Project at the time of the Re-letting Process.

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### 2.3 Release of Information

The Concessionaire hereby authorizes RAVCO to release any information that is reasonably required under the Re-letting Process which would otherwise be subject to the restrictions in Section 26 of this Agreement.

### 2.4 Determination and Payment of Termination Payment

If the provisions of Section 2 of this Schedule apply and:

- (a) the Adjusted Highest Compliant Bid Price is a positive amount, RAVCO will pay to the Concessionaire on the Termination Payment Date a Termination Payment equal to the Adjusted Highest Compliant Bid Price; or
- (b) the Adjusted Highest Compliant Bid Price is less than zero, an amount equal to the Adjusted Highest Compliant Bid Price (adjusted to be stated as the equivalent positive number) will be due and payable by the Concessionaire to RAVCO on the date of execution of the New Concession Agreement.

### 2.5 Notice to Concessionaire

As soon as practicable after receipt of the bids, RAVCO will, acting reasonably, determine the Compliant Bids and will notify the Concessionaire of the Adjusted Highest Compliant Bid Price and include in such notice the details and calculations of each component thereof.

### 2.6 New Concession Agreement

Notwithstanding any dispute relating to the Highest Compliant Bid Price, the Adjusted Highest Compliant Bid Price or the Re-letting Process, RAVCO will be entitled to enter into a New Concession Agreement with the New Concessionaire in accordance with the Re-letting Process.

### 2.7 Subsequent RAVCO Election

At any time with the consent of the Concessionaire, acting reasonably, or prior to receipt by RAVCO of a Compliant Bid, RAVCO may, by notice to the Concessionaire, elect for the provisions of Section 3 of this Schedule to apply and on receipt of such notice by the Concessionaire:

- (a) the provisions of Section 3 of this Schedule will apply;
- (b) the provisions of Section 2 of this Schedule will cease to have effect; and
- (c) RAVCO will have no liability to the Concessionaire in respect of any breach of such provisions or in respect of making such election.

### 2.8 Time Limit For Re-Letting Process

If RAVCO has not signed a New Concession Agreement with a New Concessionaire within 18 months after termination of this Agreement in accordance with Section 23.5:



- (a) the provisions of Section 3 of this Schedule will apply;
- (b) the provisions of Section 2 of this Schedule will cease to have effect; and
- (c) RAVCO will have no liability to the Concessionaire in respect of any breach of the provisions of Section 2 of this Schedule.

## **2.9 Appointment of Re-letting Process Monitor**

The Concessionaire may, at its own cost, appoint a Re-letting Process Monitor for the purpose of monitoring and reporting to the Concessionaire and the Lenders on RAVCO's compliance with the Re-letting Process.

## **2.10 Role of Re-letting Process Monitor**

The Re-letting Process Monitor will be entitled to attend all meetings relating to the Re-letting Process, inspect copies of all bid documentation and make submissions to RAVCO as to compliance with the Re-letting Process. RAVCO will not be bound to consider or act upon such submissions but acknowledges that such submissions may be put to the Referee under the Dispute Resolution Procedure in the event of a disagreement as to the Adjusted Highest Compliant Bid Price. The Re-letting Process Monitor will not disclose Confidential Information to the Concessionaire or the Lenders or take any action which might materially delay or interfere with the Re-letting Process but will be entitled to advise the Concessionaire and the Lenders on whether it considers that RAVCO has acted in accordance with the Re-letting Process and determined the Highest Compliant Bid Price.

## **3. CONCESSIONAIRE DEFAULT: NO RE-LETTING PROCESS**

### **3.1 Application for No Re-letting Process**

If RAVCO terminates this Agreement in accordance with Section 23.5 of this Agreement:

- (a) prior to Service Commencement; or
- (b) after Service Commencement and does not, or is not entitled to, make the election referred to in Section 2 of this Schedule,

then the provisions of Section 3 of this Schedule will apply and the provisions of Section 2 of this Schedule will be of no force or effect.

### **3.2 Determination of Adjusted Estimated Market Value**

The Concessionaire and RAVCO will act reasonably in agreeing on the Adjusted Estimated Market Value as of an estimated Termination Payment Date, provided that in determining the Estimated Market Value of this Agreement:

- (b) all forecast amounts will be calculated on a Nominal basis;
- (c) each of the following will be calculated and discounted at the Base Case Project IRR:
  - (1) all future Payments which according to the Financial Model the Concessionaire expected to receive from the Termination Payment Date to the Expiry Date;
  - (2) all future Ancillary Activities Revenue the Concessionaire reasonably expected to receive, having regard to past performance, from the Termination Payment Date to the Expiry Date; and
  - (3) all amounts payable by RAVCO to the Concessionaire in respect of a Compensation Event pursuant to Section 14.1 of this Agreement and all other payments, other than Payments as set out in (1) above, which RAVCO is required to make to the Concessionaire prior to the Expiry Date which the Concessionaire has not been paid in accordance with this Agreement;
- (d) subject to (e) below, the total of all costs forecast to be reasonably incurred by RAVCO as a result of termination and related to keeping the System in service from the Termination Payment Date to the Expiry Date will be calculated and discounted at the Base Case Project IRR, such costs to include (without double counting):
  - (1) all reasonable costs required to put the System in the condition required by this Agreement (including, in the case of termination prior to System Acceptance, the reasonable costs required to be expended to complete the Work) and to meet the level of performance that will deliver the Payments referred to in Section 3.2(c)(1) of this Schedule;
  - (2) an amount equal to all Taxes deemed paid by the Concessionaire to achieve the Base Case Project IRR; and
  - (3) the projected cost of operating and maintaining the System from the date of termination of this Agreement in accordance with Section 23.7 of this Agreement to the Expiry Date, such costs to be determined on the basis that:
    - (A) the costs referred to in Section 3.2(d)(1) of this Schedule put the System in the condition required by this Agreement and that the System meets the said level of performance; and
    - (B) in the case of termination prior to Service Commencement, operating and maintenance costs will be in amounts contemplated by the Base Case in the Financial Model,



in each case such costs to be in substantially similar categories to those set out in the Financial Model, but not (subject to Section 3.2(d)(3)(B) of this Schedule) necessarily of the same amounts as those costs set out in the Financial Model at the date of this Agreement, and to be forecast at a level that will deliver the Payments referred to in Section 3.2(c)(1) of this Schedule, with such costs to include a reasonable risk margin to cover a realistic and reasonable risk assessment of likely cost overruns;

- (e) in the case of termination prior to Service Commencement, if and to the extent the Adjusted Estimated Market Value otherwise determined is less than the Senior Debt, the costs, if any, attributable to either (i) rectification of Work in respect of which the Independent Engineer has certified that the relevant Rectification Milestone has been achieved (other than costs attributable to the rectification of defects identified at the time of the certification and in respect of which RAVCO has not held back amounts from payments made to the Concessionaire) and (ii) costs arising out of the consequential effects of such rectification work in respect of a certified Rectification Milestone on the time required and costs of achieving subsequent Milestones, will not be deducted in determining Adjusted Estimated Market Value. For the avoidance of doubt, in no case will the application of this Section (e) result in the Adjusted Estimated Market Value being greater than the Senior Debt; and
- (f) if applicable, GST payable by the Concessionaire pursuant to Section 182 of the *Excise Tax Act* (Canada), and if Section 182 of the *Excise Tax Act* (Canada) is not applicable but GST is otherwise payable on the Termination Payment, the amount of GST will be added to the Termination Payment.

The above determined amount will be adjusted upward or downward to the extent required under Sections 7.1 and 7.2 of this Schedule.

### 3.3 Determination by Valuator

If RAVCO and the Concessionaire cannot agree on the Adjusted Estimated Market Value within 30 days after the date on which RAVCO elected for the provisions of Section 3 of this Schedule to apply or they were deemed to apply, then either party may require, by notice to the other party, that the Adjusted Estimated Market Value be determined by a Valuator as of an estimated Termination Payment Date. If the parties cannot agree on the appointment of a Valuator within 5 Business Days of such notice, the Valuator will be appointed pursuant to the Dispute Resolution Procedure.

### 3.4 Determination and Payment of Termination Payment

If Section 3 of this Schedule applies and:

- (a) the Adjusted Estimated Market Value is a positive amount, RAVCO will pay to the Concessionaire on the Termination Payment Date a Termination Payment equal to the Adjusted Estimated Market Value; and



- (b) the Adjusted Estimated Market Value is less than zero, an amount equal to the Adjusted Estimated Market Value (adjusted to be stated as the equivalent positive number) will be due and payable by the Concessionaire to RAVCO within 20 Business Days of receipt of an invoice from RAVCO.

#### **4. TERMINATION FOR FORCE MAJEURE**

##### **4.1 Calculation**

If the Concessionaire or RAVCO terminate this Agreement pursuant to Section 11.7, 11.8, 11.9 or 16.7 of this Agreement, RAVCO will pay to the Concessionaire on the Termination Payment Date a Termination Payment equal to the aggregate of:

- (a) the Senior Debt;
  - (b) the Employee Payments;
  - (c) the Project Contractor Losses (excluding any Indirect Losses, as such term is defined in the Project Contracts as of the date hereof);
  - (d) any accrued but unpaid amounts owing and payable by RAVCO to the Concessionaire under this Agreement, including, without duplication, Payments;
  - (e) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt; and
  - (f) the amount, if any, by which the amount of capital contributed to the Concessionaire by the Partners exceeds the amount of Distributions made by the Concessionaire to its Partners;
- less
- (g) any amount which RAVCO is entitled to set-off or deduct under Section 5.3(b) of this Agreement,

The above determined amount will be adjusted upward or downward to the extent required under Sections 7.1 and 7.2 of this Schedule. Upon payment the Concessionaire will turn over to RAVCO all bank accounts, receivables, insurance proceeds and other assets related to the Project.

##### **4.2 Notice to RAVCO**

As soon as practicable after termination of this Agreement pursuant to Section 16.7 (or Section 11.6 if, under Section 1.1 of this Schedule, this Section 4 will apply to calculation of the Termination Payment), the Concessionaire will, acting reasonably, determine the Termination Payment as of an estimated Termination Payment Date and will notify RAVCO thereof 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 Lenders as to the amounts owed to them. On written request, the Concessionaire will provide to RAVCO all such documents and

information as may be reasonably required by RAVCO to confirm the Concessionaire's determination of the Termination Payment.

## 5. TERMINATION ON EXPIRY DATE

### 5.1 Expiry of Agreement

If the Termination Date is the Expiry Date, RAVCO will pay to the Concessionaire on the Termination Payment Date a Termination Payment of \$1.

## 6. TERMINATION PAYMENT DEFEASANCE

### 6.1 Deposit into Escrow of Estimated Termination Payment Amounts

Notwithstanding the Concessionaire's right to continued operation and control of the System and right under Section 25.2 of this Agreement to receive Payments after termination of this Agreement, RAVCO may elect to require transfer under Section 25.3 of this Agreement of the assets comprising, and operation and control of, the System prior to the Termination Payment Date on the date (the "**Early Termination Payment Date**") that it deposits in escrow, on terms acceptable to the Concessionaire, acting reasonably, an amount (the "**Escrowed Amount**") in Cash and Cash Equivalents not less than 120% of the aggregate of:

- (a) the Payments net of Avoidable Costs which the Concessionaire would reasonably be expected to have received, having regard to past performance, between the date of the transfer pursuant to Section 25.3 of this Agreement referred to above and an estimated Termination Payment Date;
- (b) the Ancillary Activities Revenues net of Avoidable Costs which the Concessionaire would reasonably be expected to have received, having regard to past performance, between the date of the transfer pursuant to Section 25.3 of this Agreement referred to above and the estimated Termination Payment Date; and
- (c) a reasonable estimate of the Termination Payment as of the estimated Termination Payment Date;

(collectively, the "**Estimated Termination Payment Amounts**")

If at any time, and from time to time, after the Early Termination Payment Date a party is of the opinion that the Escrowed Amount reflects either an insufficient or an excessive estimate of Estimated Termination Payment Amounts, the parties will act reasonably in recalculating the requirements under this Section 6.1 and, if the Escrowed Amount is insufficient, RAVCO will contribute the appropriate additional Cash and Cash Equivalents, and if excessive, the Concessionaire will agree to a release of the appropriate additional Cash and Cash Equivalents.



## 6.2 RAVCO Responsibilities

After the Early Termination Payment Date and the transactions contemplated in Section 25.3 of this Agreement, RAVCO will:

- (a) if this Agreement is terminated before the Service Commencement Date, use commercially reasonable efforts to protect and prevent deterioration to the Work; or
- (b) if this Agreement is terminated after the Service Commencement Date, use commercially reasonable efforts to maintain the System to a standard and in a condition that is no worse than that which existed on the Early Termination Payment Date,

from the Early Termination Payment Date until the Termination Payment Date.

## 6.3 Use Of Estimated Termination Payment Amounts

On each Payment Date, the Concessionaire may receive from the Escrowed Amount payment of the amounts referred to in Section 6.1(a) of this Schedule attributable to such Payment Date, until full payment of the balance of the Termination Payment payable under this Schedule has been received by the Concessionaire from RAVCO, after which any remaining Escrowed Amount will be returned to RAVCO in accordance with the terms of such escrow.

## 7. ADJUSTMENTS AND DISPUTES

### 7.1 Income Tax Gross-Up

If a Termination Payment is payable by RAVCO under Section 1 or Section 4 of this Schedule, and:

- (a) the Income Tax that would be payable by the Deemed Corporate Concessionaire for the year in which the Termination Payment is paid; exceeds
- (b) the Income Tax that would be payable by the Deemed Corporate Concessionaire for such year if the Termination Payment had not been paid (but all other income for that year was as actually earned by the Concessionaire),

then RAVCO will pay to the Concessionaire the Taxable Shareholder Portion of the additional amount that would be required to be paid to the Deemed Corporate Concessionaire to put it in the same position after Income Tax as it would have been in had the Termination Payment (or portion thereof) not been subject to any such Income Tax, taking account of any exemption, relief, allowances deduction, setting off or credit in respect of Income Tax (whether available by choice or not) which would be available to the Deemed Corporate Concessionaire to reduce the Tax to which the Termination Payment, or any portion thereof, would be subject.

For the purpose of this Section 7.1:



**"Deemed Corporate Concessionaire"** means a fictional fully taxable single purpose British Columbia resident corporation that: (i) is, and has since the date of this Agreement been, a subsidiary of a public corporation carrying on an active business with the same fiscal year end as the Concessionaire, and (ii) has had the same revenues and expenses as the Concessionaire and has taken the same amount of exemptions, relief, allowances deductions, set offs and credits permitted under Income Tax Laws as has the Concessionaire since the date of this Agreement; and

**"Taxable Shareholder Portion"** means that percentage, measured as at the time of the event that led to the termination of this Agreement, of the total equity interests of the Concessionaire that are not owned, directly or indirectly, by persons described in Section 149 of the *Income Tax Act* (Canada), or the equivalent section if there are changes to the *Income Tax Act* (Canada).

## 7.2 Time Related Adjustments

It is understood that the calculations of the Termination Payment pursuant to Sections 1, 2, 3 and 4 of this Schedule and Estimated Termination Payment Amounts under Section 6 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.

## 7.3 Senior Debt

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

## 7.4 Disputes

If:

- (a) RAVCO does not agree with the Concessionaire's determination of the Termination Payment under Sections 1 or 4 of this Schedule, RAVCO may, within 20 Business Days of receiving the notice referred to in Sections 1.2 or 4.2 of this Schedule, refer the matter to the Dispute Resolution Procedure;
- (b) the Concessionaire does not agree with RAVCO's determination of the Adjusted Highest Compliant Bid Price under Section 2 of this Schedule or the Valuator's determination of the Adjusted Estimated Market Value under Section 3 of this Schedule, the Concessionaire may, within 20 Business Days of receiving the notice referred to in Section 2.5 of this Schedule or the Valuator's determination under Section 3.3 of this Schedule, refer the matter to the Dispute Resolution Procedure; or

- (c) the parties cannot agree on the Estimated Termination Payment Amounts under Section 6 of this Schedule, either party may forthwith 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 Section 7.4(a) or 7.4(b), 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.

## 8. PAYMENTS

### 8.1 Termination Payment Date

Subject to Section 7.3 of this Schedule, the Termination Payment Date will be determined as follows:

- (a) if the Termination Payment is determined pursuant to Section 1, Section 3 or Section 4 of this Schedule, the Termination Payment Date will be:
  - (1) if the amount thereof is agreed to or deemed agreed to by RAVCO and the Concessionaire under Section 7.4 of this Schedule, the earlier of:
    - (A) the date advised by RAVCO; and
    - (B) 45 days after such agreement or deemed agreement, as the case may be; or
  - (2) if the amount thereof is the subject of a Dispute, 30 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure;
- (b) if the Termination Payment is determined pursuant to Section 2 of this Schedule, the Termination Payment Date will be the earliest of:
  - (1) 30 days after the Adjusted Highest Compliant Bid Price has been agreed or determined pursuant to the Dispute Resolution Procedure; and
  - (2) 20 days after the New Concessionaire has executed and delivered the New Concession Agreement.
- (c) if the Termination Payment is determined pursuant to Section 5 of this Schedule, the Termination Payment Date will be the Expiry Date.

### 8.2 Tax Allocations

RAVCO and the Concessionaire 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 RAVCO pursuant to section 25.3 of this Agreement 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 RAVCO 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 Section 8.2(a) or determined in accordance with Section 8.2(b) in their respective Tax filings and returns.

### **8.3 Liability for Sales Taxes**

RAVCO will be responsible for all applicable Sales Taxes payable in connection with the transfers referred to in Section 25.3 of this Agreement and will indemnify and save the Concessionaire harmless in respect of any such Sales Taxes.

### **8.4 GST Filings**

If Section 182 of the *Excise Tax Act* (Canada) applies to a Termination Payment, RAVCO and the Concessionaire 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.

### **8.5 Termination Payment**

Any Termination Payment payable pursuant to this Schedule will be subject to Section 7 of this Schedule and net of any amounts received by the Concessionaire under Section 6.3 of this Schedule.

### **8.6 Full Settlement**

Any and all amounts paid by RAVCO to the Concessionaire 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 any Project Contract, 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 29.13 of this Agreement to survive termination, to the extent



any such liability has not already been taken into account in determining the Termination Payment.