

## SCHEDULE 23

## Compensation on Termination

## Part 1

## Definitions

In each part of this Schedule the following expressions (in addition to those specified in Schedule 1) shall have the following meanings:

**“Adjusted Estimated Fair Value of the Contract”** means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) the Tender Costs; and
- (b) amounts that HPTE is entitled to set off or deduct under the Contract,

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the Estimated Fair Value of the Contract is calculated; and
- (ii) any insurance proceeds and other amounts owing to the Concessionaire to the extent not included in (i) above;

save to the extent that:

- (1) (i) and (ii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- (2) HPTE has received such amounts in accordance with this Contract or such amounts are standing to the credit of the Joint Insurance Account;

**“Agent”** means the financial institution acting in the capacity as agent for the Senior Lenders or the TIFIA Lender under the Senior Funding Agreements;

**“Base Senior Debt Termination Amount”** means:

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Concessionaire to the Senior Lenders and in respect of Permitted Borrowing; and
- (b) all amounts payable by the Concessionaire to the Senior Lenders (including costs of early termination of interest rate hedging arrangements and other breakage costs) as a result of a prepayment in respect of Permitted Borrowing, or in the case of early termination of interest rate hedging arrangements only (subject to the definition of Permitted Borrowing), as a result of termination of this Contract, subject to the Concessionaire and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Concessionaire on the Termination Date which are pledged as security for payment of Senior Debt;

- (ii) any amounts lawfully recoverable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts payable by the Senior Lenders to the Concessionaire (including, subject to the definition of Permitted Borrowing, sums arising as a result of early termination of interest rate hedging arrangements and other breakage amounts) as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by HPTE to the Concessionaire as a result of enforcing any other rights they may have;

**“Committed Standby Facility”** means a standby facility committed to by the Senior Lenders at the date of this Contract for the purposes of funding any unforeseen cost overruns, increased expenses or loss of revenues to be incurred by the Concessionaire;

**“Compensation Date”** means the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

**“Contingent Funding Liabilities”** means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of the:

- (a) Shareholders; and/or
- (b) the Subordinated Lender; and/or
- (c) any other parties providing equity or subordinated debt,

owed under any of the Funding Agreements to the Concessionaire and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

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

- (a) if this Contract is terminated prior to the Full Services Commencement Date, then the Full Services Commencement Date shall be extended by such period as would have been granted to allow a New Concessionaire to achieve the issue of the Notice of Phase 2 Work Completion;
- (b) any accrued Noncompliance Points and/or warning notices shall be cancelled, for the purposes of termination only, and without prejudice to the rights of HPTE to make financial deductions;
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiration Date; and
- (d) in the event that any rectification works are required to enable the new Concessionaire to provide the Services to the full specification and standards required by this Contract then provided that the new Concessionaire complies with the a reasonable plan for the performance of those rectification works, HPTE shall not exercise its rights to terminate the Contract under Section 50 by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during such reasonable period solely as a consequence of such rectification works being required. Such provision shall for the avoidance of doubt not affect HPTE’s entitlement to make adjustments and/or deductions in

accordance with Schedule 10 as a result of failure to achieve the specification and/or standards required by this Contract during the such period.

**“Demobilization Costs”** means Losses that have been or will be reasonably and properly incurred by the Concessionaire, or by the Construction Sub-Contractor or by the Operating Sub-Contractor as a direct result of the termination of this Contract, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of services or completion of works, including:
  - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred;
  - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
  - (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project; and
  - (iv) severance payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Concessionaire and the relevant Sub-Contractor has each used its reasonable endeavors to mitigate the Losses;

excluding the Concessionaire’s noncontractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates and excluding amounts due in respect of the Subordinated Funding Agreements, the Phase 2 TIFIA Loan and the Senior Funding Agreements and/or under any agreement through which Contributed Investment is provided to the Concessionaire and excluding amounts due to any Finco.

**“Estimated Fair Value of the Contract”** means the amount determined in accordance with paragraph 1 of Part 3 that a third party would pay to HPTE as the market value of the Deemed New Contract;

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

**“Force Majeure Termination Sum”** means the sum calculated in accordance with paragraph 1.2 of Part 5 of this Schedule;

**“Installment Dates”** has the meaning given to it in paragraph 4.2(a)(i) of Part 6;

**“Notice Date”** means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value is agreed between the parties pursuant to paragraph 3 of Part 3;

**“Outstanding Principal”** means the principal amount outstanding (including the Outstanding TIFIA Loan Balance, as it is defined in the applicable loan agreement), at the Termination Date of each borrowing under the Senior Funding Agreements and in respect of the Phase 2 TIFIA Loan, as applicable;

**“Permitted Borrowing”** means:

- (a) without double counting, any advance to the Concessionaire under the Senior Funding Agreements in the form in which those Senior Funding Agreements are in place at Financial Close (disregarding any amendments or replacements to such Senior Funding Agreements) provided that such advance is not made under any Committed Standby Facility;

- (b) to avoid doubt if the Senior Funding Agreements are amended or replaced after Financial Close, then the amount of Permitted Borrowing outstanding at the Termination Date shall be deemed to be the amount outstanding as shown in the Adjusted Proposal Financial Model;
- (c) in relation to any Senior Funding Agreement which is an interest rate hedging agreement the calculation of Base Senior Debt Termination Amount shall be made on the basis that the amount due to the relevant Senior Lender or payable by the Senior Lender to the Concessionaire (as the case may be) as a result of early termination of interest rate hedging arrangements shall be that amount which would have been due or payable on the basis of the interest rate hedging arrangements in place at Financial Close, irrespective of any interest rate hedging arrangements which may in fact have been put in place.

Amounts due under hedging instruments or swap agreements in each case which are not entered into for the purpose of hedging variable rate debt shall not be included as Permitted Borrowing for any purpose.

**“Phase 2 TIFIA Debt Termination Amount”** means all amounts outstanding at the Termination Date, including interest and default interest accrued as of that date, from the Concessionaire to the TIFIA Lender in respect of the Phase 2 TIFIA Loan, less all reserves and credit balances held by the TIFIA Lender on behalf of the Concessionaire on the Termination Date (save to the extent that such reserves and credit balances are taken into account in the calculation of Base Senior Debt Termination Amount or the Phase 1 TIFIA Loan);

**“Phase 1 TIFIA Debt Rate”** means the non-default interest rate as defined in the loan agreement with respect to the Phase 1 TIFIA Loan Agreement or such lower rate as the Concessionaire and the US Department of Transportation may agree;

**“Phase 2 TIFIA Debt Rate”** means the non-default interest rate as defined in the loan agreement with respect to the Phase 2 TIFIA Loan Agreement or such lower rate as the Concessionaire and the US Department of Transportation may agree;

**“Prime Rate”** means the prime rate of interest announced publicly by the Wall Street Journal (or its successors) as the “prime rate”;

**“Prohibited Act Termination Amount”** shall have the meaning ascribed to it in Part 4 in this Schedule;

**“Rectification Costs”** means for the purposes of any Termination Date that occurs during the Services Period, an amount equal to the reasonable and proper costs incurred by HPTE in a particular Month or part of a Month in providing the Services;

**“Senior Debt Rate”** means the non-default interest rate as defined in the Senior Funding Agreements or such other lower rate as the parties may agree;

**“Subordinated Debt Termination Amount”** means all amounts outstanding at the Termination Date, including interest and default interest accrued as of that date, from the Concessionaire to the lenders of Subordinated Debt, less all reserves and credit balances held by on behalf of the Concessionaire on the Termination Date over which the lenders of Subordinated Debt have a lien (save to the extent that such reserves and credit balances are taken into account in the calculation of Base Senior Debt Termination Amount or the Phase 1 TIFIA Loan or the Phase 2 Debt Termination Amount);

**“Tender Costs”** means the reasonable and proper costs of HPTE incurred and anticipated to be incurred in carrying out the tender process which would be required to realize the Estimated Fair Value of the Contract and/or in connection with any calculation of the Estimated Fair Value of the Contract;

## EXECUTION VERSION

**“Termination Date Discount Rate”** means a discount rate equivalent to the weighted average cost of capital of the Concessionaire as shown in the Adjusted Proposal Financial Model;

**“Termination Sum”** means any compensation payable by HPTE to the Concessionaire on an early termination of this Contract under Part 2, Part 3, Part 4 or Part 5;

## SCHEDULE 23

## Compensation on Termination

## Part 2

## Compensation following HPTE Default or HPTE Voluntary Termination

## 1. Calculation of Payment

1.1 On termination of this Contract pursuant to:

(a) Section 53; or

(b) Section 54

HPTE shall pay the Concessionaire the “**HPTE Default Termination Sum**” in accordance with paragraph 4 of Part 6 of this Schedule 23.

1.2 Subject to paragraph 1.3, HPTE Default Termination Sum shall be an amount equal to the aggregate of:

(a) the Base Senior Debt Termination Amount;

(b) the Phase 2 TIFIA Debt Termination Amount;

(c) the Subordinated Debt Termination Amount;

(d) any Demobilization Costs; and

(e) an amount which when taken together with Distributions paid by the Concessionaire on its share capital on or before the Termination Date taking account of the actual timing of all such payments, gives an internal rate of return on the share capital subscribed equal to the Initial Equity IRR.

1.3 If, in response to an enquiry made by HPTE prior to exercising its right of Voluntary Termination pursuant to Section 53 the Concessionaire has willfully or through gross negligence failed to provide accurate information, and in particular if there has been an overstatement of the cash balances by the Concessionaire as at that date which has caused HPTE to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this paragraph 1, then HPTE Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of HPTE Default Termination Sum will never be less than the Base Senior Debt Termination Amount.

## SCHEDULE 23

## Compensation Termination

## Part 3

## Compensation on Termination for Concessionaire Default

The following provisions of this Part 3 (Compensation on Termination for Concessionaire Default) shall apply on termination of the Contract pursuant to Section 50 and Section 51 and any compensation payable by HPTE to the Concessionaire shall be determined accordingly.

**1. Expert determination**

- 1.1 Within 30 Days after the Termination Date HPTE and the Concessionaire will confer in good faith to jointly appoint an independent third-party appraiser to determine the Estimated Fair Value of the Contract by written appraisal. This expert must be nationally recognized and experienced in appraising similar assets.
- 1.2 If the parties are unable to agree upon such a single expert within such 30-Day period, then within ten Days thereafter either party may apply to the president of the American Arbitration Association to select a third independent third-party expert who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above.
- 1.3 HPTE and the Concessionaire will pay in equal shares the reasonable costs and expenses of the expert and each party will diligently cooperate with the expert, including promptly providing the appraiser with data and information regarding the Project, asset condition, historical cost and revenue data, and other information the expert may request that is in the possession of or reasonably available to the party.
- 1.4 Once appointed, the expert will conduct an appraisal of the Project Value and deliver to both parties a draft appraisal report and draft valuation. Before issuing a draft appraisal report, the expert will afford reasonable and comparable opportunity to each party to provide the appraiser with information, data, analysis and reasons supporting each party's views on the Estimated Fair Value of the Contract.
- 1.5 The parties will have 15 Days after receipt of the draft appraisal report to provide comments to the expert. After the opportunity to comment has expired, the independent third-party appraiser will consider and evaluate all comments, prepare a final appraisal report and deliver the final appraisal report to both parties.
- 1.6 If either party disagrees with the Estimated Fair Value of the Contract, either party may refer the matter to be resolved under the Dispute Resolution Procedure.
- 1.7 In agreeing or determining the Estimated Fair Value of the Contract, the parties and the expert shall be obliged to follow the principles set out below:
  - (a) all forecast amounts shall be calculated in nominal terms at current prices, and then an adjustment shall be applied for forecast inflation between the date of calculation and the forecast payment date;
  - (b) the total of all future Toll Revenues shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;
  - (c) the total of all costs forecast to be incurred by HPTE as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 3.3(b), such costs to include (without double counting):

- (i) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
- (ii) the costs forecast to be incurred by HPTE in providing the Services to the standards required;
- (iii) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by HPTE to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the maximum amount of Toll Revenues and to deliver a level of service which will give rise to no Noncompliance Points.

1.8 Subject to paragraph 4.2 of Part 6 HPTE shall pay to the Concessionaire a Termination Sum being the lower of:

- (a) an amount equal to the Adjusted Estimated Fair Value of the Contract; and
- (b) the sum of:
  - (i) 80% of the Phase 2 TIFIA Debt Termination Amount;
  - (ii) 80% of the part of the Base Senior Debt Termination Amount attributable to all Senior Lenders apart from the TIFIA Lender in respect of the Phase 1 TIFIA Loan; and
  - (iii) from the Assignment Effective Date (as defined in the Phase 1 TIFIA Loan AAR Agreement), 80% of the part of the Base Senior Debt Termination Amount attributable to the TIFIA Lender in respect of the Phase 1 TIFIA Loan (without prejudice to HPTE's obligations under the Exhibit to the Phase 1 TIFIA Loan AAR Agreement).

on the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this paragraph 1.

1.9 The discharge by HPTE of its obligation in paragraph 1.8 is in full and final settlement of all the Concessionaire's claims and rights against HPTE for breaches and/or termination of this Contract or other Project Document however so arising, save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.

1.10 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Concessionaire to HPTE on the Compensation Date.



**SCHEDULE 23**

**Compensation on Termination**

**Part 4**

**Compensation following Prohibited Act**

1. On termination of this Contract in accordance with Section 52 then HPTE shall pay the Concessionaire an amount equal to the Base Senior Debt Termination and the Phase 2 TIFIA Debt Termination Amount.
2. Such amount shall be determined and paid in accordance with paragraph 4 of Part 6.

SCHEDULE 23

Compensation on Termination

Part 5

Compensation on Termination for Force Majeure or Uninsurability

1. **Amount**

1.1 On termination of this Contract pursuant to:

(a) Section 43; or

(b) Section 39,

HPTE shall pay to the Concessionaire the Force Majeure Termination Sum in accordance with this Part 5.

1.2 Subject to paragraph 1.4 below the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

(a) the Base Senior Debt Termination Amount;

(b) the Phase 2 TIFIA Debt Termination Amount;

(c) the Subordinated Debt Termination Amount;

(d) any Demobilization Costs; and

(e) all amounts paid to the Concessionaire by way of subscription for shares in the capital of the Concessionaire less Distributions paid to the shareholders of the Concessionaire.

1.3 If the amounts referred to in paragraph 1.2(e) are less than zero, then, for the purposes of the calculation in paragraph 1 they shall be deemed to be zero.

1.4 If the Concessionaire has willfully or through gross negligence failed to respond to a reasonable enquiry made by HPTE prior to the Termination Date and there has been an overstatement of the cash balances by the Concessionaire as at that date which has caused HPTE to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 5 (Compensation on Termination for Force Majeure or Uninsurability), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the sum of the Base Senior Debt Termination Amount, and the Phase 2 TIFIA Debt Termination Amount.

2. **Payment**

The Force Majeure Termination Sum payable pursuant to this paragraph 2 of Part 5 shall be paid in accordance with paragraph 4 of Part 6.

## SCHEDULE 23

## Compensation on Termination

## Part 6

## General

**1. Gross up of Termination Payments**

If any amount of compensation payable by HPTE under Part 2, Part 4, Part 5, and Part 6 is subject to Tax payable to a Relevant Authority, then HPTE shall pay to the Concessionaire such additional amount as will put the Concessionaire in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Concessionaire to reduce the Tax to which the payment is subject.

**2. Set off on Termination**

Except where expressly stated otherwise, HPTE is not entitled to set off any amount against any payment of termination compensation under Part 2, Part 4, Part 5, and Part 6, as applicable, save to the extent that after such an amount has been set off, the termination payment made would be an amount greater than or equal to the sum of the Base Senior Debt Termination Amount, and the Phase 2 TIFIA Debt Termination Amount.

**3. Exclusivity of Remedy**

Any payment of compensation shall be in full satisfaction of any claim which can be made against HPTE by the Concessionaire in relation to termination of this Contract or any Project Document. Without prejudice to the rights of both Parties in existence at the Termination Date arising out of matters unconnected with the termination of the Contract, the compensation payable under Part 2, Part 4, Part 5 and Part 6 shall be the sole remedy of the Concessionaire against HPTE in respect of termination of the Contract.

**4. Method of Payment of Compensation on Termination****4.1 Termination Sum**

Subject to paragraph 4.2, HPTE shall pay to the Concessionaire the Termination Sum together with interest in accordance with paragraph 4.3 on or before the date falling forty (40) Business Days after the Notice Date.

**4.2 Deferral of Payment**

HPTE may defer payment of all or part of the Termination Sum for an additional 270 days if it, in consultation with CDOT, reasonably determines that such additional period is necessary in order to obtain funds to pay such sum.

**4.3 Interest**

From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum as follows:

- (a) In the case of termination compensation payable under Part 2, Part 4 and Part 5:
- (b) in relation to any element of the Termination Sum corresponding to the Base Senior Debt Termination Amount excluding the Phase 1 TIFIA Loan at a rate equal to the Senior Debt Rate;

- (c) in relation to any element of the Termination Sum in relation to the Phase 1 TIFIA Loan at a rate equal to the Phase 1 TIFIA Debt Rate;
- (d) in relation to any element of the Termination Sum corresponding to the Phase 2 TIFIA Debt Termination Amount at a rate equal to the Phase 2 TIFIA Debt Rate; and
- (e) in relation to any element of the Termination Sum not dealt with by paragraphs (i) – (iii) at a rate equal to the Prime Rate;
- (f) In the case of termination compensation payable under Part 3 at a rate equal to the State Treasurer's Reinvestment Rate.

**4.4 Certificate of Agent**

HPTE shall be entitled to rely on the certificate of the Security Trustee as conclusive as to the amount of the Base Senior Debt Termination Amount and the TIFIA Debt Termination Amount outstanding at the relevant time. The receipt of the Security Trustee of the Base Senior Debt Termination Amount, the Phase 1 TIFIA Debt Termination Amount, the Phase 2 TIFIA Debt Termination Amount or elements thereof as relevant shall discharge HPTE's obligations to pay such sums to the Concessionaire.