

Example of:

Backward looking calculation of equity compensation
on termination

**PROJECT AGREEMENT
EXECUTION VERSION**

HIGHWAY 407 EAST EXTENSION

Ontario

CONFIDENTIAL – ECONOMIC INTERESTS OF ONTARIO

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46.4 No Other Rights to Terminate

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

47. RELIEF EVENT AND NON-DEFAULT TERMINATION**47.1 Termination for Relief Event**

- (a) Subject to Section 47.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 43.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 47.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with all Monthly OM&R Payments for the relevant Payment Period or Payment Periods, is equal to or greater than the Senior Debt Service Amount and the Junior Debt Service Amount for the relevant Payment Period or Payment Periods.

47.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 44.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

47.3 Termination for Convenience

6. (a) [HMQ shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co.]
- (b) In the event of notice being given by HMQ in accordance with this Section 47.3, HMQ shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the OM&R Work, or any element of the OM&R Work, where such Works or OM&R Work have not yet been commenced.

provided that, in both cases, no account should be taken of any liabilities and obligations 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 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 agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (dd) **"Tender Costs"** means the reasonable and proper costs of HMQ incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (ee) **"Tender Process"** means the process by which HMQ 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 Project Co, in accordance with Section 3.3 of this Schedule 23.
- (ff) **"Tender Process Monitor"** has the meaning given in Section 3.3(g) of this Schedule 23.
- (gg) **"Trust Indenture"** means the trust indenture dated on or about Financial Close between Project Co, [REDACTED] and Computershare Trust Company of Canada, as indenture trustee thereunder.

2. COMPENSATION ON TERMINATION FOR HMQ DEFAULT OR CONVENIENCE

2.1 Compensation

6(b)^(a) If Project Co terminates this Project Agreement pursuant to Section 46 of this Project Agreement or HMQ terminates this Project Agreement pursuant to Section 47.3 of this Project Agreement, HMQ shall pay to Project Co the HMQ Default Termination Sum.

- (b) The "HMQ Default Termination Sum" shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by HMQ to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and

- 6(b) (vi) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital 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 paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

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

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project 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 Project 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 Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination 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 other than 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
- (ix) amounts which HMQ is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement,