

SCHEDULE 12

COMPENSATION ON TERMINATION

1. DEFINITIONS

In this Schedule, in addition to the definitions set out in Section 1.1 of this Agreement:

- (a) **"Employee Payments"** means all amounts which Project Co at Law, under the common law or pursuant to employment agreements is required to pay to its employees as a direct result of the termination of the Agreement;
- (b) **"Invoice Date"** means the date of receipt by VCHA of an invoice from Project Co under Section 5.1 of this Schedule;
- (c) **"Outstanding Debt"** means all amounts of principal and interest (including accrued interest, prepayment interest and breakage costs) outstanding from Project Co to the Lenders under the Lending Agreements;
- (d) "Project Co Equity" **DELETED**
- (e) **"Project Co Expenses"** means, without duplication:
 - (1) Sub-Contractor Losses; and
 - (2) all direct arm's length expenses reasonably incurred by or on behalf of Project Co as a direct result of the event in question;
- (f) **"Project Co FMV"** means an amount equal to the fair market value of the shares of Project Co and any shareholder loans that are not included under Lending Agreements if sold as a going concern immediately prior to the Termination Date, as determined by the Valuator;
- (g) **"Project Co Residual Assets"** means (without duplication) as of the Termination Date:
 - (1) all credit balances in any bank account held by Project Co;
 - (2) the amount of any insurance proceeds received by Project Co in respect of the loss of assets by Project Co pertaining to the Facility;
 - (3) an amount equal to the fair market value of any other assets or rights of Project Co that will remain with Project Co (including all amounts due and payable to Project Co from third parties which Project Co does not assign to VCHA) less the liabilities of Project Co as at the Termination Date properly incurred by Project Co in carrying out this Agreement, excluding any liabilities or obligations of Project Co not incurred;

- (A) in connection with the Project;
 - (B) in the ordinary course of the business of Project Co; or
 - (C) on arm's length terms;
- (h) **"Termination Payment"** means the amount owing by VCHA to Project Co under Section 2,3 or 4 of this Schedule;
- (i) **"Valuator"** means an independent firm of chartered accountants, as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators, appointed jointly by VCHA and Project Co (or failing agreement appointed pursuant to the Dispute Resolution Procedure); and
- (j) **"VCHA Expenses"** means all costs, liabilities and expenses of any kind suffered or incurred or to which VCHA is subject as a result of the event in question, including (without duplication):
- (1) costs of Works;
 - (2) costs to perform Operation and Maintenance Services in excess of the payments VCHA would otherwise have had to make in respect of the Operation and Maintenance Services;
 - (3) costs of procuring alternate contractors, including the costs of re-tendering the Project Agreement;
 - (4) legal, accounting, consulting and other third party costs;
 - (5) the present value of any increased payments required to be made by VCHA to obtain equivalent outcomes to those contemplated in this Agreement for the balance of the Term.

2. TERMINATION FOR VCHA DEFAULT OR CONVENIENCE DELETED

3. TERMINATION FOR PROJECT CO DEFAULT DELETED

4. TERMINATION FOR FORCE MAJEURE DELETED

5. INVOICING AND PAYMENT

5.1 Project Co Invoice

As soon as practicable, but not later than 60 days after the Termination Date, Project Co will deliver to VCHA an invoice for the termination payment payable under this Schedule, together with supporting evidence reasonably satisfactory to VCHA including a breakdown of each of the individual elements of the termination payment.

5.2 Payment

VCHA will pay the Termination Payment to Project Co:

- (a) if the Termination Payment is due under Section 3 or 4 of this Schedule and VCHA gives notice under this Section 5.2(a) to Project Co within 30 days after the Invoice Date, by four equal instalments, together with accrued but unpaid interest at the Prime Rate from the Termination Date, on the first Business Day occurring six months, 12 months, 18 months and 24 months, respectively, after the Invoice Date; or
- (b) otherwise, no later than 30 days after the Invoice Date.

5.3 Full Settlement

Any and all amounts paid by VCHA to Project Co under this Schedule will be in full and final settlement of each party's rights and claims against each other for breaches and termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of Project Co to VCHA which VCHA has been unable to set off pursuant to this Agreement; and
- (b) any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Payment.

5.4 Outstanding Debt

VCHA will be entitled to rely on one or more certificates of officers of the Lenders or their agent(s) as conclusive of the amount of the Outstanding Debt. The receipt of this amount by the Lenders or their agent(s) will discharge VCHA's obligation to pay any element of compensation due to Project Co that is equal to the Outstanding Debt.