

PORT MANN/HIGHWAY 1 PROJECT

SCHEDULE 13  
COMPENSATION ON TERMINATION

**PART 1 AUTHORITY DEFAULT OR TERMINATION FOR CONVENIENCE**  
**BY AUTHORITY.....1**  
1.1 Compensation on Termination for Authority Default or Termination for  
Convenience by Authority ..... 1

**PART 2 CONSTRUCTOR DEFAULT.....2**  
2.1 Compensation on Termination for Constructor Default.....2

**PART 3 SUPERVENING EVENTS.....3**  
3.1 Consequences of Termination for Damage or Destruction Event or Event  
of Force Majeure ..... 3

**PART 4 GENERAL .....3**  
4.1 Payment and Interest .....3  
4.2 Full and Final Settlement .....3  
4.3 Costs.....4  
4.4 Undisputed Amounts.....4  
4.5 Sole Remedy .....4

**PORT MANN/HIGHWAY 1 PROJECT**

**SCHEDULE 13: COMPENSATION ON TERMINATION**

**PART 1**

**AUTHORITY DEFAULT OR TERMINATION FOR CONVENIENCE BY AUTHORITY**

**1.1 Compensation on Termination for Authority Default or Termination for Convenience by Authority**

- (a) If:
  - (i) the Constructor terminates this Agreement pursuant to Section 13.3 [Remedies of Constructor for Authority Default]; or
  - (ii) the Authority terminates this Agreement pursuant to Section 8.7(a)(iii)(B) or Section 14.2(a);

the Authority shall pay to the Constructor the Authority Default Termination Sum as set out in Section 1.1(b).

- (b) The “**Authority Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) all sums that are payable on account of the Contract Price or otherwise due and payable from the Authority to the Constructor under this Agreement, which have accrued and remain unpaid as at the Termination Date, irrespective of the Maximum Payment Curve, to the extent that such sums have not subsequently been paid; and
  - (ii) Constructor Breakage Costs;LESS, to the extent it is a positive amount, the aggregate of:
  - (iii) the market value of any assets and rights of the Constructor procured for the purpose of, and used principally in connection with, the performance of its obligations under this Agreement; and
  - (iv) amounts which the Authority is entitled to set off pursuant to this Agreement.
- (c) The Authority Default Termination Sum shall be payable in accordance with the provisions of this Schedule.
- (d) In no circumstances shall the liability of the Authority to the Constructor at any time exceed the unpaid portion of the Contract Price, together with any other amounts due and payable from the Authority to the Constructor under this Agreement as at the Termination Date to the extent that such sums have not subsequently been paid.

**PORT MANN/HIGHWAY 1 PROJECT**  
**SCHEDULE 13: COMPENSATION ON TERMINATION**

- 2 -

**PART 2**  
**CONSTRUCTOR DEFAULT**

**2.1 Compensation on Termination for Constructor Default**

- (a) If the Authority terminates this Agreement pursuant to Section 8.7(a)(iii)(A), Section 12.3 [Remedies of Authority for Constructor Default] or Section 12.4 [Termination for Failure to Remedy According to Program], the Constructor shall pay to the Authority the Constructor Default Termination Sum.
- (b) The “**Constructor Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
  - (i) all costs and expenses incurred by the Authority associated with the termination of this Agreement including the cost of appointment, mobilisation and installation of a replacement contractor (or procuring the performance of the obligations of the Constructor by the Authority);
  - (ii) any amounts in excess of the unpaid portion of the Contract Price payable by the Authority to an alternative contractor for the performance of obligations equivalent to the unfulfilled obligations of the Constructor under this Agreement (for greater certainty, the DB Work to be provided by any alternative contractor shall be minimally designed to satisfy the requirements of this Agreement using commonly available equipment) and/or the Authority’s costs and expenses of procuring the performance of the DB Work, including for the avoidance of doubt the cost of remedying any DB Work Defects;
  - (iii) the Authority’s costs in reinstating any of its assets or other equipment required for the performance of its obligations under the Agreement, to the extent that such reinstatement is required as a result of a breach by the Constructor of its obligations under this Agreement;
  - (iv) any sums owing from the Constructor to the Authority under this Agreement or any of the other Authority Project Documents as at the Termination Date, to the extent that such sums have not subsequently been paid; and
  - (v) all other Direct Losses incurred by the Authority associated with the termination of this Agreement or any prior breach by the Constructor of its obligations under this Agreement;

LESS, to the extent it is a positive amount, all sums that are payable on account of the Contract Price or otherwise due and payable from the Authority to the Constructor under this Agreement, which have accrued and remain unpaid as at the Termination Date, irrespective of the Maximum Payment Curve, to the extent that such sums have not subsequently been paid.

- (c) The Constructor Default Termination Sum shall be payable in accordance with the provisions of this Schedule and shall be subject to Section 9.4B [Certain Limitations on Constructor Liability].

**PORT MANN/HIGHWAY 1 PROJECT**  
**SCHEDULE 13: COMPENSATION ON TERMINATION**

- 3 -

**PART 3**  
**SUPERVENING EVENTS**

**3.1 Consequences of Termination for Damage or Destruction Event or Event of Force Majeure**

- (a) If this Agreement is terminated pursuant to any of Section 8.6(a), Section 8.7(a)(iv) or Section 8.7(b)(ii), the Authority shall pay to the Constructor an amount equal to the aggregate of:
- (i) all sums that are payable on account of the Contract Price from the Authority to the Constructor under this Agreement for DB Work performed which have accrued and remain unpaid as at the Termination Date irrespective of the Maximum Payment Curve, to the extent that such sums have not subsequently been paid; and
  - (ii) Constructor Breakage Costs;
- LESS, to the extent it is a positive amount, the aggregate of:
- (iii) the market value of any assets and rights of the Constructor procured for the purpose of, and used principally in connection with, the performance of its obligations under this Agreement; and
  - (iv) amounts which the Authority is entitled to set off under this Agreement;
- (the "**Force Majeure Termination Sum**").
- (b) The Force Majeure Termination Sum shall be payable in accordance with the provisions of this Schedule.
- (c) In no circumstances shall the liability of the Authority to the Constructor at any time exceed the unpaid portion of the Contract Price.

**PART 4**  
**GENERAL**

**4.1 Payment and Interest**

In respect of termination payments to be made pursuant to this Schedule in respect of a termination of this Agreement, as soon as practicable after, and in any event within 20 Business Days after the Termination Date, the Authority or, as the case may be, the Constructor, shall give to the other party an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to the recipient, justifying in the amount of the relevant termination sum including a breakdown of each individual element of each sum.

**4.2 Full and Final Settlement**

Payment in full of the Authority Default Termination Sum, the Constructor Default Termination Sum or the Force Majeure Termination Sum, as the case may be, under this Schedule will be in full and

**PORT MANN/HIGHWAY 1 PROJECT**  
**SCHEDULE 13: COMPENSATION ON TERMINATION**

- 4 -

final settlement of each party's right and claims against the other for breaches and/or termination of this Agreement and any other Authority Project Agreement whether in contract, tort, restitution, equity or otherwise but without prejudice to:

- (a) any antecedent liability of the Constructor to Authority which Authority has been unable to set off pursuant to this Agreement;
- (b) 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); and
- (c) any liabilities arising in respect of any breach by either party of their obligations which survive pursuant to Sections 3.5 [Survival of Representations and Warranties], 4.23 [Survival of Representations and Warranties], 9.15 [Survival] and 15.7 [Survival] or any other provision of this Agreement intended to survive termination which arise or continue after the Termination Date.

**4.3 Costs**

The costs and/or expenses to be taken into account in the calculation of the termination payments under this Schedule shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

**4.4 Undisputed Amounts**

If the calculation of any termination payment payable under this Schedule is disputed, then any undisputed element shall be paid in accordance with this Schedule and the disputed element shall be dealt with in accordance with Schedule 16 [Dispute Resolution Procedure].

**4.5 Sole Remedy**

The compensation, if any, to be paid pursuant to this Schedule shall be:

- (a) the sole remedy of the Constructor and in full and final settlement of any claim, demand and proceedings of the Constructor in relation to a termination of this Agreement except as otherwise provided in this Schedule and, except as set forth in this Schedule, the Constructor shall be excluded from all other rights and remedies in respect of such termination whether in contract, tort, statute, at common law, in equity or otherwise; and
- (b) the sole remedy of the Authority and in full and final settlement of any claim, demand and proceedings of the Authority in relation to a termination of this Agreement except as otherwise provided in this Schedule and, except as set forth in this Schedule, the Authority shall be excluded from all other rights and remedies in respect of such termination whether in contract, tort, statute, at common law, in equity or otherwise;

irrespective of whether paid by the Authority, the Constructor, the issuer of a letter of credit or a guarantor.