

**SCHEDULE 28**  
**REFINANCING**

**1. DEFINITIONS**

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
  - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
  - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.

- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
  - (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
  - (iii) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
  - (iv) any Qualifying Bank Transaction;

- (v) any Rescue Refinancing;
  - (vi) any Refinancing that was approved by the Region prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
  - (vii) any amendment, variation or supplement of any agreement approved by the Region as part of any Variation under this Project Agreement; or
  - (viii) any Permitted Borrowing.
- (d) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
  - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or indirectly through its affiliates, funds in excess of \$500,000,000.00,

provided such institution is not a Restricted Person or a person whose standing or activities (1) are inconsistent with the Region’s role (in the Region’s reasonable opinion) in the Province of Ontario, or (2) may compromise the reputation or integrity of the Region and/or any Region Party, or (3) may compromise the nature of the Region’s transit system, so as to affect public perception of that system or the Project.

- (e) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
  - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
  - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (f) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (g) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
  - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;

- (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
  - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions of this definition.
- (h) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to the Region, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of this Project Agreement;
  - (iii) the performance of the Project Operations to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (i) **“Refinancing Gain”** means an amount equal to the greater of zero and (A - B), where:
- A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- (j) **“Refinancing Notice”** has the meaning given in Section 2.8.
- (k) **“Rescue Refinancing”** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of the Region, whether actual or potential.

**2. REFINANCING**

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of the Region, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a notice of such Refinancing to the Region before five (5) Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Senior Debt Amount and/or Junior Debt Amount.

2.2 The Region may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of the Region, whether actual or contingent, present or future, known or unknown.

2.3 The Region shall be entitled to receive:

- (a) a 50% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$2,000,000;
- (b) a 60% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$2,000,000 and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$5,000,000; and
- (c) a 70% share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide the Region with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. The Region shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the

Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from the Region, provide any information in relation to a proposed Refinancing as the Region may reasonably require. Project Co shall keep the Region informed as to any changes to the material terms of the Refinancing. Both the Region and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6 of this Schedule 28, the Region shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
- (b) a reduction in the Monthly Service Payments over the remaining Project Term,

such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal the Region's share of the Refinancing Gain.

2.6 The Region and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of the Region's share of the Refinancing Gain (taking into account how the Region has elected to receive its share of the Refinancing Gain under Section 2.5 of this Schedule 28 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of the Region's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both Region and Project Co shall work together collaboratively to establish the rate setting process to complete the Refinancing.

2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse the Region for all such reasonable out-of-pocket costs incurred by the Region. Project Co and the Region shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee or similar amount that is incurred by either Party in relation to a Qualifying Refinancing outside of the ordinary course.

2.8 If the Region considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, the Region may, by notice in writing to Project Co (a "**Refinancing Notice**"), require Project Co to request potential funders to provide terms for a potential Refinancing.

2.9 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Region believes such funding terms to be available. Project Co and the Region shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The Region shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.

2.10 If the Region serves a Refinancing Notice which is not withdrawn pursuant to Section 2.9, then Project Co shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
- (c) either:
  - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Region (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Region that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.10(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
  - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.10(b), provide evidence to the reasonable satisfaction of the Region for such belief and evidence to the reasonable satisfaction of the Region that Project Co has complied with its obligations in Sections 2.10(a) and (b) above.

2.11 Following receipt of the information referred to in Section 2.10(c)(i), the Region shall acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing

provided that if the Region reasonably considers that the requirements of Sections 2.10(c)(i) or (ii) have not been satisfied, the Region may require Project Co to satisfy its obligations under Sections 2.10(c)(i) or (ii).

2.12 If the Region instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;

- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.13 If:

- (a) the Region instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.11(b); or
- (b) the requirements of Section 2.10(c)(ii) are satisfied,

then, the Region shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by the Region within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of the Region that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) the Region has, by prior written agreement, approved the use of such internal management resource.

2.14 The Region shall be entitled to issue a Refinancing Notice under Section 2.8 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.9 has been issued for the purpose of this Section 2.14.