

Schedule 40A (Compensation for lost Third Party Income)

In the event that, in the circumstances set out in this Schedule 40a, the Authority is required to compensate the Contractor for lost Third Party Income, the level of compensation payable shall be assessed on the basis set out below:

1. POST-TERMINATION SERVICE AMOUNT

- 1.1. Third Party Income actually received by the Authority or any Authority Related Party must be added to the Unitary Charge, and (without double counting) the costs of generating such Third Party Income deducted.

2. COMPENSATION EVENTS

- 2.1. The standard “no better/no worse” test applies to the amount of compensation under the Compensation Event regime for lost Third Party Income
- 2.2. However the Authority shall only be required to compensate for lost Third Party Income at the lower of actual and Base Case levels.

3. QUALIFYING CHANGE OF LAW

- 3.1. Compensation should be capped at the lower of recent/current performance and Base Case level net (without double counting) of related costs.

4. AUTHORITY CHANGE

- 4.1. The standard “no better/no worse” test should be applied to include the additional or lost revenue and the (without double counting) cost of Third Party Income generation.

5. FORCE MAJEURE EVENT

- 5.1. If the Authority chooses to continue the Contract following a Termination Notice from the Contractor then the ongoing payments of Unitary Charge will be adjusted to take account of the lost Third Party Income at the lower of recent/current performance or Base Case level net of related costs (without double counting).

6. AUTHORITY STEP-IN

- 6.1. In circumstances where the Contractor is not in breach, the Contractor’s compensation for lost Third Party Income should be the higher of (i) the amount received by the Authority and (ii) at the lower of recent/current performance and Base Case level net (without double counting) of related costs.