

**SCHEDULE 10
CHANGES**

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Part 1

MINOR WORKS

Part 1.1 Procedure for Minor Works

The procedure set out in this Part 1 of this Schedule shall apply to any Minor Works initiated by either the Province or the Primary Contractor pursuant to Section 8.3 [Minor Works]. No Change Report or Change Certificate shall be required for any such Minor Works, and neither the Review Procedure nor the Consent Procedure shall apply to the consideration of any such Minor Works.

Part 1.2 Minor Works Initiated by Province

- (a) Upon receipt by the Primary Contractor of a request by the Province for Minor Works pursuant to Section 8.3 [Minor Works], then subject only to the Primary Contractor, within 10 Business Days of the receipt of such request, delivering a notice to the Province's Representative objecting to such Minor Works:
- (i) pursuant to Section 4.2 [Primary Contractor Objection] of this Schedule; or
 - (ii) alleging that such Minor Works fail to meet the applicable requirements set out in Section 8.3 [Minor Works],
- (any such objection to be resolved in accordance with the Dispute Resolution Procedure if the parties otherwise fail to resolve such objection within ten Business Days of receipt of such notice by the Province's Representative), the Primary Contractor shall proceed to perform the Minor Works to completion as soon as reasonably practicable.
- (b) Prior to performing Minor Works initiated by the Province, unless otherwise agreed by the Province, the Primary Contractor shall prepare an estimate of the Change in Costs of carrying out the Minor Works, following the principles set out in Section 2.4 [Valuation of Change in Costs] of this Schedule. Upon agreement by the Province with the estimate of the costs between the Province and the Primary Contractor, such agreed cost shall become the Minor Works Valuation. The determination of the Minor Works Valuation shall not delay the carrying out of the Minor Works, and the Minor Works Valuation may be determined prior to, during or following the completion of the Minor Works.
- (c) If, in the opinion of the Province, the Province is or would be likely to be required by the Competitive Procurement Requirements to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Minor Works, the Province's Representative may, in the notice delivered under Section 8.3(a), require the Primary Contractor to seek and evaluate proposals, bids or competitive tenders for the Minor Works in accordance with Section 4.4 [Requirement to Undertake Competition] of this Schedule.
- (d) The Province shall, subject to Section 4.3 [Primary Contractor Delay in Responding] of this Schedule, at its discretion, as the sole compensation to which the Primary Contractor is entitled in respect of such Minor Works:
- (i) if a competitive process is undertaken pursuant to Section 4.4 [Requirement to Undertake Competition] of this Schedule for any Minor Works performed pursuant to Section 1.2(a) of this Schedule, pay to the Primary Contractor for such Minor Works the amount of the lowest compliant proposal, bid or tender received pursuant to Section 4.4(b) of this Schedule plus the reasonable out of

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pocket costs that the Primary Contractor reasonably and necessarily incurs in undertaking such competitive process and that are approved by the Province's Representative prior to being incurred by the Primary Contractor, such amount to be payable by the Province as Additional Progress Payments for Additional Work completed within Payment Periods in accordance with Section 12.2(e)B, unless otherwise agreed; or

- (ii) pay the Primary Contractor for any Minor Works performed pursuant to Section 1.2(a) of this Schedule the amount, if any, of the Minor Works Valuation for such Minor Works as set out in the request delivered by the Province's Representative pursuant to Section 8.3(a) as Additional Progress Payments for Additional Work completed within Payment Periods in accordance with Section 12.2(e)B, unless otherwise agreed.

Part 1.3 Minor Works Initiated by Primary Contractor

Upon receipt by the Province's Representative of a Primary Contractor Proposal to carry out Minor Works pursuant Section 8.3(b), then, unless the Province's Representative, within 10 Business Days of the receipt of such Primary Contractor Proposal, delivers a notice to the Primary Contractor objecting to the proposed Minor Works on any of the following grounds:

- (a) the proposed Minor Works fail to meet the requirements set out in Section 8.3(b);
- (b) if such Minor Works had been initiated by the Province, the Primary Contractor would have been able to object to such Minor Works on any of the grounds set out in Section 4.2 [Primary Contractor Objection] of this Schedule;
- (c) such Minor Works would result in a material departure from, material failure to comply with or material variation to any of the Design-Build Requirements or the Proposal Extracts;
- (d) following such Minor Works the Project Infrastructure would not be of a quality or standard of performance or value (to the Province) equal to or better than that required under the Design-Build Requirements and the Proposal Extracts prior to such Minor Works, or the residual value of the Project Infrastructure would be negatively affected;
- (e) the conduct of the Work in accordance with the proposed Minor Works would be less likely to achieve compliance with the Design-Build Requirements and the Proposal Extracts or would be likely to provide for compliance to a lower standard or quality than the conduct of the Work in accordance with the Design-Build Requirements and the Proposal Extracts prior to such Minor Works;
- (f) such Minor Works would interfere with the relationship of the Province with third parties, or would require the Province to obtain any permission, consent, approval, certificate, permit, licence, statutory agreement or authorization from any Governmental Authority, including the Province, or any other third party;
- (g) such Minor Works would otherwise materially affect the risks or costs to which the Province is exposed in respect of the Project; or

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- (h) such Minor Works would require any amendment to any Design Data in respect of the Construction or any other construction activities, thereby requiring the submission of such amendment of Design Data to the Design and Construction Certification Procedures,

the Primary Contractor may proceed to perform the Minor Works at the Primary Contractor's sole risk and expense.

Part 1.4 Consequential Amendments

The parties shall use their reasonable efforts to reach agreement as to any amendments to the Design-Build Requirements and any other consequential non-material amendments to this Agreement necessary as a consequence of any Minor Works carried out in accordance with this Part. If the parties are unable to reach agreement within 10 Business Days, then either party may refer the matter for resolution under the Dispute Resolution Procedure.

Part 2

PROVINCE CHANGES

Part 2.1 Notice of Province Change

The Province may, subject to the Province's ability to initiate a Province Change as a Minor Works under Section 8.3 [Minor Works], issue to the Primary Contractor a request for a Province Change under Section 8.1 [Province Changes] setting out the nature, extent and timing of the relevant Province Change with sufficient detail and information to permit the Primary Contractor to prepare and deliver to the Province's Representative a Change Report, and including whether:

- (a) in the opinion of the Province, the Province is or would be likely to be required by the Competitive Procurement Requirements to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Province Change such that the Primary Contractor shall be required to seek and evaluate competitive proposals, bids or tenders for the Province Change under Section 4.4 [Requirement to Undertake Competition] of this Schedule; and
- (b) the Province requires the Primary Contractor to provide a summary of the impacts of the Province Change in accordance with Section 2.2 [Summary of Impacts of Province Change] of this Schedule.

Part 2.2 Summary of Impacts of Province Change

- (a) When required by the Province for any Province Change pursuant to Section 2.1(b) of this Schedule, but subject to Section 4.2 [Primary Contractor Objection] of this Schedule, within 10 Business Days (or such later date as the Province's Representative may specify) of the receipt by the Primary Contractor of a request for a Province Change under Section 2.1 [Notice of Province Change] of this Schedule the Primary Contractor shall, at its sole cost and expense, deliver to the Province's Representative a written preliminary estimate of the impacts of such Province Change determined in accordance with this Schedule and including a brief written summary of the following:
 - (i) a description of the scope of engineering and design, if any, required to implement the Province Change;

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- (ii) a breakdown of the scope of construction or Systems work, if any, required to implement the Province Change;
- (iii) an estimate of the time the Primary Contractor will reasonably require to complete the engineering and design, if any, and to prepare the Change Report; and
- (iv) an estimate of the costs, if any, that the Primary Contractor will reasonably incur to prepare the Change Report.

Within 10 Business Days of the delivery of such a summary, the Province's Representative shall notify the Primary Contractor in writing whether or not the Province desires to proceed with such Province Change.

- (b) The Primary Contractor shall promptly provide the Province's Representative with such further or additional details and other information as the Province's Representative may request with respect to any summary delivered by the Primary Contractor pursuant to Section 2.2(a) of this Schedule, and in the case of any such request the 10 Business Day period referred to in the last sentence of Section 2.2(a) of this Schedule shall not commence to run until such further details and other information have been provided to the Province's Representative.

Part 2.3 Preparation of Change Report

- (a) Subject to Section 4.2 [Primary Contractor Objection] of this Schedule:
 - (i) in circumstances where Section 2.2 [Summary of Impacts of Province Change] of this Schedule applies, within 35 Business Days of receipt of notification from the Province's Representative confirming that the Province desires to proceed with a Province Change; or
 - (ii) in all other circumstances, within 45 Business Days of the receipt of a request for a Province Change under Section 2.1 [Notice of Province Change] of this Schedule,

the Primary Contractor shall consider how to accommodate a proposed Province Change in a cost effective manner so as to minimize the cost of such Province Change and its impact on the Project Schedule, the Construction Schedule and the Project, and otherwise on the performance of the Work, and shall prepare and submit to the Province's Representative pursuant to the Consent Procedure for acceptance by the Province's Representative acting reasonably (subject to Section 2.6 [Agreement or Disagreement Regarding Change Report] of this Schedule) a written report (a "**Change Report**") identifying all aspects of the Province Change as they relate to the Project, the Work and this Agreement including:

- (iii) an estimate in accordance with this Section and Section 2.4 [Valuation of Change in Costs] of this Schedule of the Change in Costs arising from the implementation of the Province Change, and providing with such estimate:
 - (A) all necessary supporting calculations and information, including particulars of additional sums to be paid to Subcontractors, financiers and professional advisers, as requested and necessary for the Province to

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- be able to understand and evaluate the estimate (including unless agreed otherwise by the Province, acting reasonably, a revised version of the Financial Model reflecting the implementation of the Province Change);
- (B) any time periods after which such estimated prices or parts thereof shall no longer be valid, which periods shall be of sufficient length to allow the Province a reasonable time to consider the Change Report and arrive at an initial evaluation; and
 - (C) a breakdown of the costs included in such estimate between those costs that are Eligible Costs and those costs that are not Eligible Costs (unless the Province, in its discretion, agrees that the Primary Contractor is not required to provide such a breakdown);
- (iv) the impact on any amounts payable by either the Province or the Primary Contractor to the other as a result of the implementation of the Province Change;
 - (v) any adjustments required to any of the dates set out in the Project Schedule due to the effect of carrying out such Province Change on any events set out in the Project Schedule, which the Primary Contractor believes are reasonably required as a result of the implementation of the Province Change, and any adjustments required to the Construction Schedule;
 - (vi) any changes to the Design Data in respect of the Construction required to be submitted to the Design and Construction Certification Procedures in order to implement such Province Change;
 - (vii) any other amendments required to this Agreement (including to the Financial Model), the Design-Build Requirements or any Project Document as a result of such Province Change;
 - (viii) the Primary Contractor's requirements for any other assistance and resources from the Province or any other requirements of the Province reasonably required to implement the Province Change;
 - (ix) any required additional Permits or amendments to existing Permits or Permits that are in the course of being obtained;
 - (x) any additional Land Rights necessary for the purpose of implementing the Province Change;
 - (xi) the extent to which the Province Change would interfere with the Primary Contractor's ability to comply with any of its obligations under this Agreement, any Project Document or any Permit;
 - (xii) the identity of any Subcontractors or other subcontractors (if any) which the Primary Contractor intends to engage for the purposes of implementing the Province Change; and
 - (xiii) any further effects (including benefits and impairments) which the Primary Contractor foresees as being likely to result from the Province Change.

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- (b) A Change Report shall set out the estimate of costs in sufficient detail to allow evaluation of such costs by the Province, including a demonstration that the position of the Primary Contractor will be no better and no worse than had the Province Change not been implemented. The Change Report shall set out the major elements and components of the additional costs and scope of work involved in implementing the Province Change and shall include:
- (i) all costs reasonably necessary for and directly associated with the implementation of the Province Change, including the cost of labour, material and equipment, together with any quotations from Subcontractors and suppliers;
 - (ii) estimated Design costs based on the estimated number of hours reasonably required to perform any additional Design required to implement the Province Change; and
 - (iii) estimated additional costs of site management, including the supervision of trade foremen, site overheads and site establishment including, without duplication, any costs related to the Primary Contractor's management and oversight of the Work that should reasonably be included in the Province Change.

The cost breakdown provided shall be of sufficient detail as required by the Province to evaluate the Province Change and to understand the magnitude of the cost of the Province Change. The estimated costs will be based and evaluated on the following principles:

- (iv) construction labour costs, except labour associated with design and engineering, regardless of whether in operations, management or administration roles, shall be based on the hourly rate paid including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pension funds, statutory payments, workmen's compensation insurance, union dues, tool money, medical insurance and any other payments directly paid in the ordinary course;
- (v) costs of Design (excluding design and engineering comprised in the cost of supply of Equipment and Systems) shall be determined based on the number of hours reasonably estimated to be required to perform the work multiplied by the net estimated hourly amount (based on base salary) paid to design and engineering staff, multiplied by 2.5 (or such lower rate as may have been agreed by the Primary Contractor or a Subcontractor for Design services pursuant to a Subcontract). If the Province requests to review the calculation of design or engineering costs under a Subcontract as part of its review and evaluation, the Primary Contractor shall make available all contractual provisions that are relevant to such calculation;
- (vi) costs of supply and delivery of materials, consumables and Equipment, including associated costs such as costs of associated testing (including any laboratory and testing fees), any wastage as a direct result of the implementation of the Province Change, commissioning, spare parts, manuals and software, and including the design and engineering related thereto, shall be based on the estimated price to be charged by the supplier;
- (vii) costs of construction equipment shall be calculated using the rates as may have been agreed between the Primary Contractor or Subcontractors and equipment suppliers, or, if no such agreed rates exist, at the then current rates set out in the

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- B.C. Road Builders and Heavy Construction Association Equipment Rental Rate Guide (or any successor guide) where applicable, or as are reasonably commercially available, and the number of hours such equipment is estimated to be required to implement the Province Change, together with appropriate amounts for delivering such equipment to and from the place of Construction;
- (viii) the cost of any other rental, fabrication facility or factory costs directly associated with the implementation of the Province Change shall be calculated based on the reasonable direct costs estimated to be paid by the Primary Contractor or a Subcontractor to the supplier;
 - (ix) if a Province Change involves information that is proprietary such that detailed costs are confidential in the normal course of business (for example, in some of the Systems elements), then the Primary Contractor shall provide all necessary evidence that can be made available and also, where requested by the Province, arrange meetings with the relevant suppliers and Subcontractors, to explain and substantiate the costs;
 - (x) all other associated costs attributable to the implementation of the Province Change, such as but not limited to costs of additional site establishment, disposal, traffic management, quality control, insurance, bonding, Permits, reasonable and appropriate disbursements and import duties, shall be calculated based on the estimated direct cost (using hourly rates, material costs and equipment costs calculated in accordance with Sections 2.3(b)(iv), (vi), (vii) and (viii) of this Schedule, quotations from Subcontractors and suppliers or other appropriate methods to ascertain costs) attributable to the Province Change that will be payable by the Primary Contractor or relevant Subcontractor;
 - (xi) appropriate allowances shall be made for warranty obligations; and
 - (xii) Mark-ups in accordance with Section 2.3(c) of this Schedule.
- (c) Mark-ups on additional costs attributable to the implementation of a Province Change shall be calculated as follows:
- (i) Design Personnel: the entity actually undertaking the Design shall not be entitled to add a Mark-up for its Design personnel (for certainty, the multiplier referred to in Section 2.3(b)(v) of this Schedule shall be deemed not to be a Mark-up);
 - (ii) Construction: regarding the costs of Construction involved in the implementation of the Province Change, if the entity actually undertaking the Construction is either the Primary Contractor or a Principal Subcontractor, such entity may include, subject to Section 2.4(d) of this Schedule, a Mark-up of 7.5% of the net additional direct costs incurred in such Construction (excluding costs referred to in Section 2.3(b)(v) of this Schedule);
 - (iii) Subcontracts: regarding costs of management and supervision:
 - (A) the Primary Contractor shall be entitled to charge, subject to Section 2.4(d) of this Schedule, a Mark-up of 7.5% of the net additional price to be charged to the Primary Contractor for the implementation of the Province Change or part thereof by a Principal Subcontractor;

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- (B) any Subcontractor that it is proposed will carry out work arising from the implementation of the Province Change shall be entitled to charge, subject to Section 2.4(d) of this Schedule, a Mark-up of 7.5% of the net additional price to be charged to the Subcontractor for the implementation of a Province Change or part thereof by a lower tier Subcontractor (except in respect of any Design costs referred to in Section 2.3(b)(v) of this Schedule). For certainty, to the extent that any Change in Costs estimated by the Primary Contractor includes additional management and supervision costs to be incurred by a Subcontractor, such costs shall be included in the breakdown of costs referred to in Section 2.3(b)(x) of this Schedule.
- (d) Without limiting any other rights of the Province to request further or additional information pursuant to Section 2.2(b) [Summary of Impacts of Province Change] of this Schedule or any other provision of this Agreement, the Primary Contractor shall promptly provide the Province's Representative with such further or additional details and other information as the Province's Representative may request with respect to any Change Report submitted by the Primary Contractor pursuant to Section 2.3(a) of this Schedule, and in the case of any such request any time period within which the Province is required to provide any response in respect of such Change Report shall not commence to run until such further details and other information have been provided to the Province's Representative.

Part 2.4 Valuation of Change in Costs

The Primary Contractor shall estimate and provide to the Province's Representative in the Change Report prepared pursuant to Section 2.3(a) of this Schedule the Change in Costs on the basis that the Primary Contractor is to be in no better and no worse position had the Province Change not been implemented. The Primary Contractor shall, subject to Section 4.4 [Requirement to Undertake Competition] of this Schedule, incorporate in such estimate all such information, including quantities, as the Province's Representative may require to enable it to properly evaluate such estimate, including a detailed summary of the prices, costs, charges and Mark-ups used to calculate such estimate in accordance with Sections 2.3(b) and 2.3(c) of this Schedule, and sufficient additional information (including a statement of the Primary Contractor confirming such matters) to demonstrate to the satisfaction of the Province's Representative that:

- (a) the Primary Contractor has used all reasonable efforts, including, when appropriate, the use of competitive quotations or tenders, to oblige its Subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (b) all costs of the Primary Contractor and its Subcontractors are limited to the extent such amounts relate specifically to the Province Change and would not otherwise have been incurred and are:
- (i) paid or to be paid or invoiced to the Primary Contractor or its Subcontractors; or
 - (ii) paid by the Primary Contractor or its Subcontractors,
- all without addition of any Mark-ups except as otherwise expressly provided for in this Section;
- (c) the amount of:

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- (i) all Mark-ups included by the Subcontractors; and
- (ii) the Mark-up included on amounts charged directly by the Primary Contractor,
do not exceed the amount permitted by this Schedule, and no other Mark-ups are included;
- (d) all cost savings and other credits arising as a result of the implementation of the Province Change are taken into account in the calculation of such estimate, including all Mark-ups on such savings and credits that were included in the Contract Price, and that all such savings, credits and Mark-ups have been deducted from the additional direct costs prior to the application of the Mark-ups permitted to be included in the estimate in accordance with Sections 2.3(c) and 2.4(c) of this Schedule;
- (e) the estimate includes an estimate, without any Mark-up, of all additional or reduced amounts that would be payable by the Primary Contractor to the Province under Schedule 9 [Performance Mechanism] as a result of the implementation of the Province Change;
- (f) all costs included in such estimate reflect:
 - (i) labour rates applying in the open market to providers of services similar to those required in connection with the implementation of the Province Change; and
 - (ii) any and all changes in this Agreement or the Design-Build Requirements arising out of the Province Change;
- (g) any costs of preparing the Change Report included in such estimate are recoverable by the Primary Contractor pursuant to Section 2.9 [Costs of Preparing Change Report] of this Schedule;
- (h) the estimated costs will provide good overall value to the Province and take into account any reasonably foreseeable changes in Laws; and
- (i) the Primary Contractor has obtained or will obtain the best value for money when procuring any work, services, supplies, materials or equipment required in connection with the implementation of the proposed Province Change and has complied or will comply with Good Industry Practice in relation to any such procurement, to a standard no less than the Primary Contractor would apply if all costs incurred were to its own account without recourse to the Province.

Part 2.5 Consequences of Province Change

If it has been agreed or determined in accordance with this Part that the implementation of a Province Change will result in a Change in Costs, the Contract Price shall be increased or decreased, as applicable, by an amount equal to the Change in Costs. Unless otherwise agreed, any such increase in the Contract Price shall be payable by way of Additional Progress Payments in accordance with the provisions of Part 12 [Payments]. Any such decrease in the Contract Price attributable to a reduction in Eligible Costs shall reduce the Eligible Amount(s) affected by the Province Change as determined by the Province and set forth in the Change Certificate issued pursuant to Section 2.7 [Change Certificate] of this Schedule in respect of the Province Change.

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Part 2.6 Agreement or Disagreement Regarding Change Report

- (a) Following receipt by the Province's Representative of a Change Report prepared in accordance with Section 2.3 [Preparation of Change Report] of this Schedule in respect of a proposed Province Change, the Province and the Primary Contractor shall use reasonable efforts to reach agreement on the matters described in Section 2.5 [Consequences of Province Change] of this Schedule and all other information contained in the Change Report, and any agreement so reached in writing shall, if recorded in a Change Certificate issued in accordance with Section 2.7 [Change Certificate] of this Schedule, be binding upon the Province and the Primary Contractor with respect to the Province Change in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule.
- (b) If the parties are unable to agree on the resolution of all matters referred to in the Change Report within 15 Business Days of its receipt by the Province's Representative, the Province's Representative may at any time thereafter:
 - (i) elect not to proceed with the relevant Province Change by notice to the Primary Contractor; or
 - (ii) issue to the Primary Contractor a Change Certificate stating the determination of the Province's Representative of the matters referred to in the Change Report.
- (c) If the Primary Contractor disagrees with all or any of the determinations set out in a Change Certificate issued by the Province's Representative pursuant to Section 2.6(b)(ii) of this Schedule, then the Primary Contractor may deliver to the Province's Representative within 15 Business Days of the issuance of such Change Certificate notice that it disputes such determinations, failing which such Change Certificate shall be deemed to have been accepted by the Primary Contractor. The Province and the Primary Contractor shall cooperate to have any such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure. Pending the resolution of any such dispute, if directed to do so by the Province issuing an interim notice to proceed, the Primary Contractor shall proceed with the implementation of the Province Change in accordance with the Change Certificate and in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule, provided that any amounts reasonably expensed and any delay reasonably established by the Primary Contractor in proceeding to implement such Province Change pending resolution pursuant to the Dispute Resolution Procedure shall be dealt with as part of such Province Change.

Part 2.7 Change Certificate

A Province Change shall be authorized by the Province's Representative issuing to the Primary Contractor a certificate (the "**Change Certificate**") which shall set out:

- (a) the extent to which such Province Change applies to vary any of the Work, the Project Schedule, the Construction Schedule, the Design-Build Requirements, this Agreement or the other Province Project Documents;
- (b) any payment to be made in accordance with Section 2.5 [Consequences of Province Change] of this Schedule and the procedure for the making of such payment; and
- (c) the resolution of any other matters contained in the Change Report.

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Part 2.8 Effect of Change Certificate

- (a) A Change Certificate shall have the effect of varying the Work, the Project Schedule, the Construction Schedule, the Design-Build Requirements and/or this Agreement to the extent provided therein with effect from the date of issuance of the Change Certificate or as otherwise provided in the Change Certificate, subject only to the contrary resolution of a dispute initiated by the Primary Contractor pursuant to Section 2.6(c) of this Schedule.
- (b) Unless otherwise agreed, or unless directed otherwise by an interim notice to proceed issued by the Province's Representative in accordance with Section 2.6(c) of this Schedule or for any other reason, the Primary Contractor shall not proceed with the performance of any Province Change prior to the issuance of a Change Certificate or as otherwise provided in the Change Certificate. With effect from the date of issuance of a Change Certificate or as otherwise provided in the Change Certificate or such an interim notice to proceed, the Primary Contractor shall implement the Province Change as directed in the Change Certificate or interim notice to proceed, or as otherwise agreed, and shall, subject to the resolution of any dispute initiated by the Primary Contractor in accordance with Section 2.6(c) of this Schedule in respect of such Change Certificate, be bound by this Agreement in so doing as if the Province Change formed part of this Agreement.
- (c) Subject only to resolution of a dispute initiated by the Primary Contractor in accordance with Section 2.6(c) of this Schedule, once issued a Change Certificate shall be binding upon the Province and the Primary Contractor with respect to the Province Change and may not be reopened by either party, and the relief and/or compensation, if any, to which the Primary Contractor is entitled in accordance with such Change Certificate shall be the only relief and/or compensation to which the Primary Contractor shall be entitled in respect of such Province Change.

Part 2.9 Costs of Preparing Change Report

The costs incurred by the Primary Contractor in preparing a Change Report shall be paid for as follows:

- (a) all costs of the Primary Contractor's own staff and employees and the staff and employees of the Subcontractors, or any of their Affiliates, which would normally be part of the general management, administration and supervision of the Work and general construction estimating shall be paid for by the Primary Contractor or the Subcontractor and such costs shall not form part of the Change in Costs; and
- (b) the Primary Contractor shall be entitled to receive payment from the Province, as part of the Change in Costs or, if the Province elects not to proceed with the relevant Province Changes pursuant to Section 2.6(b)(i) of this Schedule, by separate payment to the Primary Contractor by the Province, for any out of pocket costs that the Primary Contractor reasonably and necessarily incurs, directly or indirectly, to prepare such Change Report and that are approved by the Province's Representative prior to being incurred by the Primary Contractor.

Part 3

VALUE ENGINEERING PROPOSALS

Part 3.1 Notice of Value Engineering Proposal

The Primary Contractor may submit to the Province's Representative pursuant to the Consent Procedure a Value Engineering Proposal under Section 8.4 [Value Engineering Proposal], which Value Engineering Proposal shall:

- (a) set out the extent to which such Value Engineering Proposal would, if accepted by the Province's Representative, apply to vary the Work, the Project Schedule, the Construction Schedule, the Design-Build Requirements and/or this Agreement;
- (b) set out all the applicable information required in a Change Report;
- (c) provide sufficient information to the Province's Representative to enable it to consider the sharing of benefits under Section 3.4 [Sharing Benefits of Value Engineering Proposal] of this Schedule;
- (d) specify the Primary Contractor's reasons and justification for proposing the Value Engineering Proposal, including:
 - (i) the comparative advantages to the Primary Contractor and the Province of each variation to the Work, the Project Schedule, the Construction Schedule, the Design-Build Requirements and/or this Agreement referred to in Section 3.1(a) of this Schedule;
 - (ii) confirmation that the Primary Contractor has the financial capacity to implement the Value Engineering Proposal;
 - (iii) confirmation that, if such Value Engineering Proposal had been initiated by the Province, the Primary Contractor would not have been able to refuse to implement such Value Engineering Proposal on any of the grounds set out in Section 4.2(a) of this Schedule; and
 - (iv) confirmation whether, if such Value Engineering Proposal had been initiated by the Primary Contractor as a Minor Works, the Province could have rejected such Value Engineering Proposal on any of the grounds set out in Section 1.3 [Minor Works Initiated by Primary Contractor] of this Schedule, together with the Primary Contractor's rationale for why the Value Engineering Proposal is nevertheless recommended to the Province notwithstanding the applicability of any such grounds for rejection; and
- (e) indicate if there are any dates by which a decision by the Province is requested.

Part 3.2 Evaluation of Value Engineering Proposal

- (a) In accordance with the Consent Procedure, the Province's Representative shall consider any Value Engineering Proposal received from the Primary Contractor, including:

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- (i) requesting any clarification or additional information or documentation regarding the Value Engineering Proposal as required by the Province's Representative to fully evaluate and consider the Value Engineering Proposal; and
 - (ii) requesting modifications to the Value Engineering Proposal if required by the Province's Representative.
- (b) The Province may accept or reject any Value Engineering Proposal in its discretion.

Part 3.3 Change Certificate for Value Engineering Proposal

If the Province's Representative accepts a Value Engineering Proposal pursuant to Section 3.2(b) of this Schedule, with or without modification, the relevant Value Engineering Proposal shall be documented and evidenced by a Change Certificate prepared by the Primary Contractor and issued by the Province's Representative in the same manner as a Province Change under Section 2.7 [Change Certificate] of this Schedule.

Part 3.4 Sharing Benefits of Value Engineering Proposal

If the Value Engineering Proposal causes or shall cause the costs of the Primary Contractor or of any Subcontractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs of the Value Engineering Proposal incurred by the Primary Contractor or any Subcontractor, and taking into account any other uses of the Value Engineering Proposal by the Primary Contractor, the net savings in the costs of the Primary Contractor and any such Subcontractor (including after taking into account the costs and expenses of the Province paid by the Primary Contractor or pursuant to Section 3.5(b) of this Schedule) shall be shared equally by the Primary Contractor and the Province in the manner agreed to by the Province's Representative and set out in the relevant Change Certificate in response to the Primary Contractor's proposal therefore provided under Section 3.3 [Change Certificate for Value Engineering Proposal] of this Schedule.

Part 3.5 Costs of Value Engineering Proposal

- (a) The Primary Contractor may deliver to the Province's Representative preliminary information with respect to a proposed Value Engineering Proposal and the Province may, at its discretion, agree in advance to pay all or any portion of the costs of developing such Value Engineering Proposal.
- (b) Subject only to an agreement of the Province otherwise in accordance with Section 3.5(a) of this Schedule, all costs of a Value Engineering Proposal shall be borne solely by the Primary Contractor, including that the Primary Contractor shall pay to the Province promptly after receipt of an invoice therefor all costs and expenses reasonably incurred by the Province in connection with reviewing such Value Engineering Proposal and making a determination as to the acceptance or rejection of such Value Engineering Proposal, whether or not such Value Engineering Proposal is accepted and whether or not the proposed Value Engineering Proposal takes place, such costs and expenses to include professional costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses incurred by the Province, and the Province's reasonable internal administrative and personnel costs. At the time of the Primary Contractor's submission of a Value Engineering Proposal pursuant to Section 3.1 [Notice of Value Engineering Proposal] of this Schedule, and as a condition precedent to the commencement of any time period specified for the Province's Representative to object or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in

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respect of which any such submission is made, the Primary Contractor shall pay to the Province the sum of \$35,000.00 to be held by the Province on account of the Primary Contractor's obligations to pay under this Section in respect of such submission. After the relevant decision of the Province is rendered, the Province shall either refund any overpayment by the Primary Contractor on account of amounts payable by the Primary Contractor under this Section, or invoice the Primary Contractor for any additional amounts payable by the Primary Contractor under this Section, which additional amounts the Primary Contractor shall pay within 10 Business Days after receipt of such invoice.

Part 4

GENERAL PROVISIONS

Part 4.1 Modification of Processes and Procedures

Nothing in this Schedule or Part 8 [Province Changes and Primary Contractor Proposals] shall limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule or such Part in respect of Province Changes or Primary Contractor Proposals, including Minor Works and Value Engineering Proposals.

Part 4.2 Primary Contractor Objection

- (a) The Primary Contractor may, acting reasonably, object to providing a Change Report or implementing a Province Change (including Minor Works but excluding Required Province Changes) on the basis that:
 - (i) to implement the Province Change would not be technically feasible;
 - (ii) the Province Change would, if implemented, materially and adversely affect the Primary Contractor's ability to perform its obligations under this Agreement or any other Province Project Document or any Senior Lending Agreement, after having taken into account any amendments to any provision thereof contemplated under this Schedule and the sufficiency of funds available to the Primary Contractor from all sources, including debt, equity and any payments to be made to the Primary Contractor by the Province in respect of such Province Change under this Schedule;
 - (iii) to implement the Province Change would be contrary to Good Industry Practice;
 - (iv) to implement the Province Change would expose the Primary Contractor to liability for breach of any Laws;
 - (v) to implement the Province Change would be unsafe;
 - (vi) the Primary Contractor would be unable (using all reasonable efforts in respect thereof) to obtain any new Permit or any amendment or revision to an existing Permit (other than any new or amended Permit that would be the responsibility of the Province) that is:
 - (A) necessary to implement the Province Change;

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- (B) necessary otherwise to allow compliance with the provisions of this Agreement as a consequence of implementation of such Province Change having regard to the provisions of this Agreement (as amended, where appropriate, to take account of or make provision for the Province Change); or
 - (C) necessitated by the revocation or cancellation of any existing Permit or the imposition of any additional conditions with which the Primary Contractor would be unable to comply in relation to any existing Permit occurring as a result of the Province Change;
- (vii) the Primary Contractor would be unable (using all reasonable efforts in respect thereof) to obtain any Land Rights necessary for the purpose of implementing the Province Change except where the Province obtains or agrees to obtain, directly or indirectly, such Land Rights; or
- (viii) if the Province Change relates to the Evergreen ATC System, Thales refuses to implement such Province Change based on either:
- (A) valid technical grounds; or
 - (B) the proposed Province Change being a material deviation from the design of the automatic train control system for the Existing SkyTrain System,

provided that the Primary Contractor shall deliver to the Province's Representative, within 20 Business Days (or within 10 Business Days in the case of Minor Works) after the receipt by the Primary Contractor of the request for such Province Change, written notice of such objection together with an explanation of the Primary Contractor's reasons therefor in sufficient detail to permit a considered review thereof by the Province's Representative. If the Primary Contractor does not deliver to the Province's Representative any such written notice of objection within such time period, the Primary Contractor shall be deemed to have agreed to such Province Change and shall either proceed with the performance of such Minor Works under Section 1.2(a) of this Schedule or the preparation of a summary under Section 2.2 [Summary of Province Change], if required, or a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for, and the implementation of, such other Province Change, as the case may be.

- (b) If the Province's Representative disagrees with the Primary Contractor's objection delivered under Section 4.2(a) of this Schedule, then the Province's Representative may notify the Primary Contractor of such disagreement within 15 Business Days of the receipt of the Primary Contractor's objection, failing which the request for such Province Change shall be deemed to have been cancelled. The parties shall cooperate to have any such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure and, pending the resolution of such dispute (other than any dispute as to the validity of the Primary Contractor's objection in circumstances where such objection was made on either of the grounds set out in Section 4.2(a)(viii) of this Schedule), the Primary Contractor shall proceed with the performance of such Minor Works under Section 1.2(a) of this Schedule or the preparation of a summary under Section 2.2 [Summary of Province Change] of this Schedule, if required, or of a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for, and the implementation of, such other Province Change, as the case may be, provided that:

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- (i) any amounts reasonably incurred and any delay reasonably established by the Primary Contractor in proceeding to implement such Province Change pending resolution pursuant to the Dispute Resolution Procedure shall be dealt with as part of such Province Change; and
- (ii) if the Primary Contractor's objection is upheld by agreement or determination under the Dispute Resolution Procedure, any amounts reasonably incurred by the Primary Contractor in proceeding to prepare such summary or Change Report as required by this Section 4.2(b) shall be reimbursed to the Primary Contractor by the Province and the undoing of any Minor Works or other Province Change that the Primary Contractor has proceeded to implement as required by this Section 4.2(b) shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply.

Part 4.3 Primary Contractor Delay in Responding

In the event that the Primary Contractor fails to:

- (a) commence the performance of any Minor Works requested by the Province or deliver a notice to the Province's Representative objecting to such requested Minor Works within the time period set out in Section 1.2(a) of this Schedule;
- (b) prepare a summary under Section 2.2 [Summary of Impacts of Province Change], if required, or a Change Report in respect of any other Province Change requested by the Province within the time periods set out in Section 2.2 [Summary of Impacts of Province Change] or Section 2.3 [Preparation of Change Report], all of this Schedule or deliver a notice to the Province's Representative objecting to such other Province Change within the time period set out in Section 4.2(a) of this Schedule; or
- (c) meet any other time period required in respect of any Minor Works or other Province Change under Part 8 [Province Changes and Primary Contractor Proposals] and this Schedule,

then, without limiting any rights of the Province under this Agreement in respect of such failure, the Primary Contractor shall bear the sole risk and expense of any increase in the amount that the Province would be required to pay to the Primary Contractor pursuant to Part 8 [Province Changes and Primary Contractor Proposals] and this Schedule in respect of such Minor Works or other Province Change as a result of such delay. The onus for establishing that no such increase has resulted from such delay shall be on the Primary Contractor.

Part 4.4 Requirement to Undertake Competition

- (a) If the Province's Representative gives notice of the requirement for the Primary Contractor to undertake a competition for any Minor Works or other Province Change, or any aspect of either thereof, pursuant to Section 1.2(b) or Section 2.1(a) of this Schedule then, subject to the Competitive Procurement Requirements, unless the Province's Representative waives such requirement by notice to the Primary Contractor, the Primary Contractor shall obtain, or cause its Subcontractors to endeavour to obtain, as appropriate, at least three competitive proposals, bids or tenders that would (if the Province were procuring such work directly) meet the Competitive Procurement Requirements for the work involved in such Minor Works or other Province Change, at least one of which such proposals, bids or tenders shall, subject to any contrary

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Competitive Procurement Requirements, be from a third party at arm's length from each of the Primary Contractor, any Principal Subcontractors or their respective Affiliates.

- (b) In the case of Minor Works the Province shall, notwithstanding the receipt of proposals, bids or tenders pursuant to Section 4.4(b) of this Schedule, make payment for such Minor Works in accordance with Section 1.2(d) of this Schedule.
- (c) In the case of any Province Change in respect of which competitive proposals, bids or tenders are required, the Change in Costs for such Province Change (or relevant portion thereof) shall be the amount obtained pursuant to the proposal, bid or tender which best satisfies the requirements of the competitive process undertaken pursuant to Section 4.4(b) of this Schedule, plus any Mark-up contemplated in Sections 2.3(c) and 2.4(c) of this Schedule.

Part 4.5 Changes Not to Correct Errors in Cost Estimates

Neither the Primary Contractor nor the Province shall use a Primary Contractor Proposal or a Province Change, respectively, to correct or derive benefit from any errors or omissions in the cost estimates provided by the Primary Contractor for any Work forming part of this Agreement.

Part 4.6 Disputes

Any dispute between the parties arising in connection with any matter in respect of a Province Change or Primary Contractor Proposal, including any Minor Works, shall be resolved in accordance with the Dispute Resolution Procedure.