

**SCHEDULE 11  
CHANGES**

<b>PART 1 MINOR WORKS .....</b>	<b>1</b>
1.1 Procedure for Minor Works .....	1
1.2 Minor Works Initiated by Province .....	1
1.3 Minor Works Initiated by Project Co.....	2
1.4 Consequential Amendments .....	3
<b>PART 2 PROVINCE CHANGES.....</b>	<b>3</b>
2.1 Notice of Province Change .....	3
2.2 Preliminary Estimate.....	3
2.3 Preparation of Change Report.....	4
2.4 Valuation of Change in Costs .....	8
2.5 Consequences of Province Change.....	11
2.6 Agreement or Disagreement Regarding Change Report.....	11
2.7 Change Certificate .....	12
2.8 Effect of Change Certificate .....	12
2.9 Costs of Preparing Change Report.....	12
<b>PART 3 VALUE ENGINEERING PROPOSALS.....</b>	<b>13</b>
3.1 Notice of Value Engineering Proposal .....	13
3.2 Evaluation of Value Engineering Proposal.....	14
3.3 Change Certificate for Value Engineering Proposal.....	14
3.4 Sharing Benefits of Value Engineering Proposal .....	14
3.5 Costs of Value Engineering Proposal .....	14
<b>PART 4 GENERAL PROVISIONS .....</b>	<b>15</b>
4.1 Modification of Processes and Procedures .....	15
4.2 Project Co Objection.....	15
4.3 Project Co Delay in Responding.....	17
4.4 Requirement to Undertake Competition .....	18
4.5 Changes Not to Correct Errors in Cost Estimates.....	18
4.6 Disputes .....	18

**PART 1  
MINOR WORKS**

**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 Project Co pursuant to Section 7.3 [Minor Works] of this Agreement. 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.

**1.2 Minor Works Initiated by Province**

- (a) Upon receipt by Project Co of a request by the Province for Minor Works pursuant to Section 7.3(a) of this Agreement, then subject only to Project Co within:
  - (i) five Business Days; or
  - (ii) 24 hours if the Minor Work is to be carried out within five Business Days,of the receipt of such request, delivering a notice to the Province's Representative objecting to such Minor Works pursuant to Section 4.2 [Project Co Objection ] of this Schedule (in which case, the terms of Section 4.2 [Project Co Objection ] of this Schedule will apply), Project Co shall proceed to perform the Minor Works to completion as soon as reasonably practicable.
- (b) 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 proposals, bids or tenders in respect of any contract in connection with or relating to the Minor Works, the Province may, in the notice delivered under Section 7.3(a), require Project Co to seek and evaluate competitive proposals, bids or tenders for the Minor Works in accordance with Section 4.4 [Requirement to Undertake Competition] of this Schedule.
- (c) The Province shall, subject to Section 4.3 [Project Co Delay in Responding] of this Schedule, at its discretion, as the sole compensation to which Project Co is entitled to in respect of such Minor Works, pay to Project Co, in accordance Section 0 [Consequences of Province Change] of this Schedule on the same basis as payment for a Province Change:
  - (i) the amount of the Minor Works Valuation agreed between the parties;
  - (ii) an amount calculated following the methodology set out in Sections 2.3 [Preparation of Change Report] and 2.4 [Valuation of Change in Costs] of this Schedule with respect to valuation of Change Reports; or
  - (iii) if competitive proposals, bids or tenders are obtained 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 Project Co for any such Minor Works, within 30 days of the receipt of an invoice from Project Co,

the amount of the proposal, bid or tender which best satisfies the requirements of the competitive process undertaken pursuant to Section 4.4(a) of this Schedule, plus any Mark-up contemplated in Sections 2.4(c) of this Schedule.

- (d) The Province may due to schedule or urgency of work instruct Project Co to carry out a change to the Minor Works based upon actual records of the time of labour and equipment, together with the quantities of materials necessary to carry out the work required to complete the change. Project Co shall provide notice of the actual period the work will be carried out to the Province in sufficient time to allow a representative of the Province to monitor and record the work carried out, and such records shall be agreed between the Province and Project Co as the change to the Minor Works is completed. The evaluation of the change to the Minor Works will be based upon the agreed records and evaluated in the same manner as all other Minor Works changes. No Minor Work shall be carried on this basis without the instruction and approval of the Province.
- (e) A single Change Certificate as set out in Section 2.7 [Change Certificate] of this Schedule will be issued for all Minor Works, this Change Certificate will be prepared and issued for the first agreed Minor Work change and up-dated with the current total cost of Minor Works changes on a monthly basis to include all Minor Works changes carried out within each month.

### **1.3 Minor Works Initiated by Project Co**

Upon receipt by the Province's Representative of a Project Co Proposal to carry out Minor Works pursuant to Section 7.3(b) of this Agreement, Project Co may proceed to perform the Minor Works at Project Co's sole risk and expense unless the Province, within 14 days of the receipt of such Project Co Proposal, delivers a notice to Project Co 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 7.3(b) of this Agreement;
- (b) if such Minor Works had been initiated by the Province, Project Co would have been able to object to implementing such Minor Works on any of the grounds set out in Section 4.2(a) 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 Project Requirements;
- (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 Project Requirements prior to such Minor Works, or the residual value of the Project Infrastructure would be negatively affected;
- (e) the conduct of the Project Work in accordance with the proposed Minor Works would be less likely to achieve compliance with the Project Requirements or would be likely to provide for compliance to a lower standard or quality than the conduct of the Project Work in accordance with the Project Requirements 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 to in respect of the Project; or
- (h) such Minor Works would require any amendment to any Design Data in respect of the Construction, thereby requiring the submission of such amendment of Design Data to the Design and Construction Certification Procedure.

#### **1.4 Consequential Amendments**

The Province and Project Co shall each use all reasonable efforts to reach agreement as to the amendments to the Project 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 1. If the Province and Project Co are unable to reach agreement on such matters within 14 days, then either party may refer the matter for resolution under the Dispute Resolution Procedure.

### **PART 2 PROVINCE CHANGES**

#### **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 7.3 [Minor Works] of this Agreement, issue to Project Co a request for a Province Change under Section 7.1 [Province Changes] of this Agreement setting out the nature, extent and timing of the relevant Province Change with sufficient detail and information to permit Project Co 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 seek competitive proposals, bids or tenders in respect of any contract in connection with or relating to the Province Change such that Project Co 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 Project Co to provide a preliminary estimate of the impacts of the Province Change in accordance with Section 2.2 [Preliminary Estimate] of this Schedule.

#### **2.2 Preliminary Estimate**

- (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 [Project Co Objection] of this Schedule, within 10 Business Days (or such later date as the Province may specify) of the receipt by the Project Co of a request for a Province Change under Section 2.1 [Notice of Province

Change] of this Schedule Project Co shall, at its sole cost and expense, deliver to the Province's Representative a written summary of the following:

- (i) a description of the scope of engineering and design, if any, required to implement the Province Change;
- (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 Project Co 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 Project Co 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 Project Co in writing whether or not the Province desires to proceed with such Province Change.

- (b) Project Co shall promptly provide the Province's Representative with such further or additional details and other information as the Province may request with respect to any preliminary estimate delivered by Project Co 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.

### **2.3 Preparation of Change Report**

- (a) Subject to Section 4.2 [Project Co Objection] of this Schedule:
  - (i) in circumstances where Section 2.2 [Preliminary Estimate] of this Schedule applies, within 35 Business Days of receipt of notification from the Province pursuant thereto that the Province desires to proceed with a Province Change; or
  - (ii) in all other circumstances, within 45 Business Days of:
    - (A) the receipt of a request for a Province Change under Section 2.1 [Notice of Province Change] of this Schedule; or
    - (B) where a Project Co Objection is received under Section 4.2 [Project Co Objection] of this Schedule, the receipt by Project Co of a notice of disagreement from the Province in accordance with Section 4.2(b) of this Schedule;

Project Co 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 and the Project, and otherwise on the performance of the Project Work, and shall prepare and submit to the Province's Representative pursuant to the

Consent Procedure (subject to the specific time periods set out in 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 Project Work and this Agreement including, without limitation:

- (iii) an estimate in accordance with 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 Principal Contractors, Subcontractors, financiers and professional advisors as reasonably requested and necessary for the Province to be able to understand and evaluate the estimate;
  - (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;
  - (C) any resulting lump sum payment which Project Co proposes is required to be made pursuant to Section 2.5 of this Schedule to reflect the Change in Costs estimated by Project Co under Section 2.3(a)(iii) of this Schedule, together with all supporting information, including any resulting update of the Financial Model required in accordance with this Agreement;
- (iv) any impact on any other amounts payable by one party to another party as a result of the implementation of the Province Change;
- (v) Project Co’s proposal for how any payments related to the Province Change will be invoiced and processed;
- (vi) 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 milestone dates set out in the Project Schedule, including any adjustment to the Substantial Completion Target Date or the Total Completion Target Date, which Project Co shall require as a result of the implementation of the Province Change (including details of any corresponding adjustments required by any Principal Contractors or Subcontractors);
- (vii) any changes to the Design Data in respect of the Construction required to be submitted to the Design and Construction Certification Procedure in order to implement such Province Change;
- (viii) any other amendments required to this Agreement, the Project Requirements or any Project Document as a result of such Province Change;

- (ix) Project Co'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;
  - (x) any required additional Permits or amendments to existing Permits or Permits that are in the course of being obtained;
  - (xi) any additional Land Rights necessary for the purpose of implementing the Province Change;
  - (xii) the extent to which the Province Change would interfere with Project Co's ability to comply with any of its obligations under this Agreement, any Project Document or any Permits;
  - (xiii) the identity of any Principal Contractors and Subcontractors, which Project Co intends to engage for the purposes of implementing the Province Change; and
  - (xiv) any further effects (including benefits and impairments) which Project Co foresees as being likely to result from the Province Change.
- (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 Project Co 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 Principal Contractors and 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 Project Co's management and oversight of the Project Work that should reasonably be included in the Province Change.

The Change Report shall 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) except as otherwise specified in this Agreement, including pursuant to the BCIB-Contractor Agreement or any BCIB-Subcontractor Agreement, 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 3.0 (or such lower rate as may have been agreed by the Project Co, a Principal Contractor or a Subcontractor for Design services pursuant to a Principal Contract or a Subcontract). If the Province requests to review the calculation of design or engineering costs under a Principal Contract or Subcontract as part of its review and evaluation, the Project Co 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 Project Co, a Principal Subcontractor or Subcontractors and equipment suppliers, or, if no such agreed rates exist, at the then current rates set out in the 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 Project Co, a Principal 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 Project Co 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 Project Co, a Principal Contractor or relevant Subcontractor;

- (xi) appropriate allowances shall be made for warranty obligations; and
  - (xii) Mark-ups in accordance with Section 2.4(c) of this Schedule.
- (c) Without limiting any other rights of the Province to request further or additional information pursuant to Section 2.2(b) of this Schedule or any other provision of this Agreement, Project Co shall promptly provide the Province's Representative with such further or additional details and other information as the Province may request with respect to any Change Report submitted by Project Co 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.

#### **2.4 Valuation of Change in Costs**

Project Co shall estimate and provide to the Province's Representative in the Change Report pursuant to Section 2.3(a)(iii) of this Schedule, the Change in Costs and 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 may reasonably 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, and sufficient additional information (including a statement of Project Co confirming such matters) to demonstrate to the satisfaction of the Province, acting reasonably, that:

- (a) Project Co has used all reasonable efforts, including where required in accordance with Section 4.4(a) of this Schedule or by the Competitive Procurement Requirements, or where otherwise reasonably appropriate, the use of competitive proposals, bids or tenders, to oblige its Principal Contractors and Subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (b) all costs of Project Co, its Principal Contractors and Subcontractors are limited to actual amounts 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 Project Co, its Principal Contractors or Subcontractors; or
  - (ii) paid by Project Co, its Principal Contractors or Subcontractors,

all without addition of any Mark-ups except as otherwise expressly provided for in this Section 2.4;

- (c) all Mark-ups on additional costs attributable to the implementation of the Province Change are, subject to Section 2.4(e) of this Schedule, 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, the entity actually undertaking the Construction may be entitled to include, subject to Section 2.4(j) of this Schedule, a Mark-up of up to 15% of the net additional direct costs incurred in such Construction actually undertaken by such entity (excluding costs referred to in Section 2.3(b)(v) of this Schedule); and
  - (iii) Subcontracts: regarding costs of management and supervision, for certainty, to the extent that any Change in Costs estimated by Project Co includes additional management and supervision costs to be incurred by a Principal Contractor or Subcontractor, such costs shall be included in the breakdown of costs referred to in Section 2.3(b)(x) of this Schedule, and Principal Contractors or Subcontractors shall not be entitled to include a Mark-up of the net additional price to be charged to the Principal Contractor or Subcontractor by a lower tier Subcontractor for work undertaken by such lower tier Subcontractor;
- (d) the change evaluation includes an estimate, without any Mark-up, of:
  - (i) all additional amounts, that is the additional costs less all credits and savings in costs attributable to a change that would be payable by Project Co to the Province under Schedule 10 [Payment and Performance Mechanism] as a result of the implementation of the Province Change;
  - (ii) any reduced amounts that would be payable by the Province to Project Co under Schedule 10 [Payment and Performance Mechanism] as a result of the implementation of the Province Change; and
  - (iii) if the Province Change causes a delay in the Substantial Completion Date, the amount needed to ensure that Project Co is placed in a no better and no worse position taking into account any Payment that would otherwise have been payable to Project Co but for the delay in such dates;
- (e) such estimate fairly and appropriately reflects such change in overall risk allocation, and to the extent that the Province Change would directly result in a material adverse change to Project Co in the overall risk allocation (which may include for such purpose where Project Schedule delays resulting from such Province Change have a material adverse impact on Project Co's site overhead costs) under this Agreement as at the date of the delivery of the notice of the Province Change to Project Co, taking into account any other factors mitigating the effect of the Province Change on the overall risk allocation (including any changes in this Agreement or the Project Requirements arising out of the Province Change), confirming that the amount of any Mark-ups included in the

calculation of such estimate (in excess of the Mark-up for profit and overhead referred to in Section 2.4(j) of this Schedule) fairly and appropriately reflects such change in overall risk allocation;

- (f) all costs included in such estimate reflect:
  - (i) labour and material rates applying in the open market to providers of services similar to those required in connection with the implementation of the Province Change;
  - (ii) equipment rates in accordance with the current rates set out in the Blue Book;
  - (iii) any and all changes in this Agreement or the Project Requirements arising out of the Province Change; and
  - (iv) any and all changes in risk allocation;
- (g) any costs of preparing the Change Report included in such estimate are recoverable by Project Co 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;
- (i) Project Co 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 Project Co would apply if all costs incurred were to its own account without recourse to the Province; and
- (j) confirming that:
  - (i) the amounts of profit and overhead included in the calculation of such estimated costs do not exceed the amounts referred to in Sections 2.4(c)(ii) and (iii);
  - (ii) the aggregate amount of:
    - (A) all Mark-ups for profit and overhead included by the Principal Contractors and Subcontractors; and
    - (B) The Mark-up for profit and overhead included on amounts charged directly by Project Co,included in the calculation of such estimated costs does not exceed 15% of the Change in Costs; and
  - (iii) no other Mark-ups (except for any Mark-up referred to in Section 2.4(e) of this Schedule) are included,

and with the Mark-up so incorporated in such estimate reflecting the principles that overhead costs are not necessarily a linear geometric function of direct and indirect costs, and that the rate of profit should be commensurate with the risks and the commitment of capital that the Province Change requires of Project Co.

## **2.5 Consequences of Province Change**

If it has been agreed or determined in accordance with this Part 2 that, as a result of a Province Change, a party is required to make a payment to another party, such payment will be made by a lump sum payment of the relevant party, calculated in accordance with Section 10.2 [Additional Payments and Financing] of this Agreement or at such other times and in such other manner as may be set out in the Change Certificate for such Province Change.

## **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 Project Co shall each use all reasonable efforts to reach agreement on the matters described in Section 0 [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 Project Co with respect to the Province Change in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule.
- (b) If the Province and Project Co are unable to agree on the resolution of all matters referred to in the Change Report within 21 days of its receipt by the Province's Representative, the Province:
  - (i) may elect not to proceed with the relevant Province Change by notice to Project Co; or
  - (ii) otherwise shall issue to Project Co a Change Certificate stating the determination of the Province of the matters referred to in the Change Report.
- (c) If Project Co disagrees with all or any of the determinations set out in a Change Certificate issued by the Province pursuant to Section 2.6(b)(ii) of this Schedule, then Project Co may deliver to the Province's Representative within 21 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 Project Co. The Province and Project Co shall cooperate to have such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure. Pending the resolution of any such dispute, Project Co shall proceed with the implementation of the Province Change as directed by the Province in the Change Certificate and in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule, provided that any amounts reasonably expended, and any delay reasonably established, by Project Co 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.

**2.7 Change Certificate**

A Province Change shall be authorized by the Province issuing to Project Co a certificate (the “**Change Certificate**”), which shall set out:

- (a) the extent to which such Province Change applies to vary any of the Project Work, the Project Schedule, the Project Requirements, this Agreement or the other Project Documents;
- (b) the amount and timing of any payment to be made in accordance with Section 0 [Consequences of Province Change] of this Schedule; and
- (c) the resolution of any other matters contained in the Change Report.

**2.8 Effect of Change Certificate**

- (a) A Change Certificate shall have the effect of varying the Project Work, the Project Schedule, the Project Requirements and 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 any dispute resolution process initiated by Project Co pursuant to Section 2.6(c) of this Schedule.
- (b) Unless otherwise agreed in writing or unless otherwise directed by the Province in writing, Project Co 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 as otherwise agreed or directed by the Province in writing, Project Co shall implement the Province Change as directed in the Change Certificate or as otherwise agreed or directed by the Province in writing, and shall, subject to the resolution of any dispute initiated by Project Co in accordance with Section 2.6(c) of this Schedule be bound by this Agreement in so doing as if the Province Change formed part of the Project Requirements.
- (c) Subject only to a dispute initiated by Project Co in accordance with Section 2.6(c) of this Schedule, once issued a Change Certificate shall be binding upon the Province and Project Co with respect to the Province Change and may not be reopened by any party, and the relief and compensation, if any, to which Project Co is entitled in accordance with such Change Certificate shall be the only relief and compensation to which Project Co shall be entitled in respect of such Province Change.

**2.9 Costs of Preparing Change Report**

- (a) The costs incurred by Project Co in preparing a Change Report shall be paid for as follows:
  - (i) all costs of Project Co’s own staff and employees, and the staff and employees of a Principal Contractor, or any of their Affiliates, which would normally be part of the general management, administration, and supervision of the Project Work and

general construction estimating shall be paid for by Project Co and such costs shall not form part of the Change in Costs; and

- (ii) Project Co 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 Change pursuant to Section 2.6(b)(i) of this Schedule, by separate payment to Project Co by the Province, for any out of pocket costs that Project Co reasonably and necessarily incurs, directly or indirectly, to prepare such Change Report and that are approved by the Province in writing prior to being incurred by Project Co.

### **PART 3 VALUE ENGINEERING PROPOSALS**

#### **3.1 Notice of Value Engineering Proposal**

Project Co may submit to the Province's Representative pursuant to the Consent Procedure a Value Engineering Proposal under Section 7.4 [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, apply to vary the Project Work, the Project Requirements and 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 and, in connection therewith, set out any lump sum payment to be made pursuant to Section 10.2 [Additional Payments and Financing] of this Agreement as a result;
- (d) specify Project Co's reasons and justification for proposing the Value Engineering Proposal, including:
  - (i) the comparative advantages to Project Co and the Province of each variation to the Project Work, the Project Requirements and this Agreement referred to in Section 3.1(a) of this Schedule;
  - (ii) confirmation that the financial strength of Project Co is sufficient to implement the Value Engineering Proposal;
  - (iii) confirmation that, if such Value Engineering Proposal had been initiated by the Province, Project Co 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 Project Co as a Minor Works, the Province could potentially have been able to

reject such Value Engineering Proposal on any of the grounds set out in Section 1.3 [Minor Works Initiated by Project Co] of this Schedule, together with Project Co'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.

### **3.2 Evaluation of Value Engineering Proposal**

- (a) In accordance with the Consent Procedure, the Province shall consider any Value Engineering Proposal received from Project Co, including:
  - (i) requesting any clarification or additional information or documentation regarding the Value Engineering Proposal as required by the Province to fully evaluate and consider the Value Engineering Proposal; and
  - (ii) requesting modifications of the Value Engineering Proposal if required by the Province.
- (b) The Province may accept or reject any Value Engineering Proposal in its discretion.

### **3.3 Change Certificate for Value Engineering Proposal**

If the Province 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 Project Co and issued by the Province in the same manner as a Province Change under Section 2.7 [Change Certificate] of this Schedule.

### **3.4 Sharing Benefits of Value Engineering Proposal**

If the Value Engineering Proposal causes or shall cause the costs of Project Co or of a Principal Contractor or Subcontractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs of the Value Engineering Proposal incurred by Project Co or any Principal Contractor or Subcontractor, and taking into account any other uses of the Value Engineering Proposal by Project Co, the net savings in the costs of Project Co and any such Principal Contractor or Subcontractor shall be shared equally by Project Co and the Province in the manner agreed to by the Province and set out in the relevant Change Certificate in response to Project Co's proposal therefor provided under Section 3.1(c) of this Schedule.

### **3.5 Costs of Value Engineering Proposal**

- (a) Project Co 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 Project Co, including that Project Co 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 charged to the Province and the Province's reasonable internal administrative and personnel costs. At the time of Project Co'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 to object or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in respect of which any such submission is made, Project Co shall pay to the Province the sum of \$50,000 to be held by the Province on account of Project Co's obligations to pay under this Section 3.5(b) in respect of such submission. After the relevant decision of the Province is rendered, the Province shall either refund any overpayment by Project Co on account of amounts payable by Project Co under this Section 3.5(b), or invoice Project Co for any additional amounts payable by Project Co under this Section 3.5(b), which additional amounts Project Co shall pay within 14 days after receipt of such invoice.

**PART 4  
GENERAL PROVISIONS**

**4.1 Modification of Processes and Procedures**

Nothing in this Schedule or Part 7 [Province Changes and Project Co 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 Project Co Proposals, including Minor Works and Value Engineering Proposals.

**4.2 Project Co Objection**

- (a) With the exception of Required Province Changes, Project Co may, acting reasonably, in response to a request for a Province Change or Minor Works, as the case may be, object to providing a preliminary estimate, providing a Change Report, or implementing a Minor Works, as the case may be, 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 Project Co's ability to perform its obligations under this Agreement, 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 Project Co from all sources,



including debt, equity and any payments to be made to Project Co 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 be contrary to Laws;
- (v) to implement the Province Change would be unsafe;
- (vi) Project Co 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;
  - (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 Project Co would be unable to comply in relation to any existing Permit occurring as a result of the Province Change;
- (vii) Project Co 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, directly or indirectly, such Land Rights;
- (viii) in the case of Minor Works, the Minor Works fail to meet the applicable requirements set out in Section 7.3(a) of this Agreement; or
- (ix) if the Province Change relates to the BSP ATC System, Thales refuses to implement such Province Change in accordance with Section 11.1 of the ATC Supply Contract;

provided that Project Co shall deliver to the Province's Representative, within 14 days after the receipt by Project Co of the request for such Province Change, written notice of such objection together with an explanation of Project Co's reasons therefore in sufficient detail to permit a considered review thereof by the Province. If Project Co does not deliver to the Province's Representative any such written notice of objection within such time period, Project Co 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 of this Schedule or the preparation of a preliminary estimate under Section 2.2 [Preliminary Estimate] of this Schedule or the preparation a Change Report under Section 2.3

[Preparation of Change Report] of this Schedule for such other Province Change, as the case may be.

- (b) If the Province disagrees with Project Co's objection delivered under Section 4.2(a) of this Schedule, then the Province may notify Project Co of such disagreement within 14 days of the receipt of Project Co's objection, failing which the request for such Province Change shall be deemed to have been cancelled. Upon receipt of a notice of disagreement by the Province, 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, Project Co shall, unless otherwise agreed in writing by the Province, proceed with the performance of such Minor Works under Section 1.2 of this Schedule or the preparation of a preliminary estimate under Section 2.2 [Preliminary Estimate of Impacts of Province Change] of this Schedule, or the preparation of a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for such other Province Change, as the case may be, provided that:
  - (i) any amounts reasonably incurred and any delay reasonably established by Project Co 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) any claims for costs incurred or suffered by Project Co as a result of proceeding despite Project Co's objection, will be addressed as part of any Dispute Resolution Procedure invoked pursuant to this Section 4.2(b) unless otherwise addressed through a Province Change or the provisions of this Schedule.

#### **4.3 Project Co Delay in Responding**

In the event that Project Co fails to:

- (a) commence the performance of any Minor Works requested by the Province in accordance with the terms provided for in this Schedule;
- (b) prepare a preliminary estimate of impacts, if required by the Province, within the applicable time period set out in Section 2.2(a) of this Schedule;
- (c) prepare a Change Report within the applicable time period set out in Section 2.3(a) of this Schedule; or
- (d) meet any other time period required in respect of any Minor Works or other Province Change under either Part 7 [Province Changes and Project Co Proposals] or this Schedule,

then, without limiting any rights of the Province under this Agreement in respect of such failure, Project Co shall bear the sole risk and expense of any increase in the amount that the Province would be required to pay to Project Co pursuant to Part 7 [Province Changes and Project Co 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 Project Co.

**4.4 Requirement to Undertake Competition**

- (a) If the Province gives notice of the requirement for Project Co to undertake a competition for any Minor Works or other Province Change pursuant to Section 1.2(a) or Section 2.1(a) of this Schedule then, subject to the Competitive Procurement Requirements, Project Co shall obtain or cause its Principal Contractors or Subcontractors 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, and at least one of such proposals, bids or tenders shall, subject to any contrary Competitive Procurement Requirements, be from a third party at arm's length from Project Co, its Principal Contractor and 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(a) of this Schedule, make payment for such Minor Works in accordance with Section 1.2(c) 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(a) of this Schedule, plus any Mark-up contemplated in Sections 2.4(c) of this Schedule.

**4.5 Changes Not to Correct Errors in Cost Estimates**

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

**4.6 Disputes**

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