

DESIGN BUILD FINANCE AGREEMENT

BETWEEN

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
(the “Province”)**

- and -

**BC TRANSPORTATION FINANCING AUTHORITY
 (“BCTFA”)**

- and -

**EVERGREEN RAPID TRANSIT HOLDINGS INC.
(the “Primary Contractor”)**

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DESIGN BUILD FINANCE AGREEMENT

THIS DESIGN BUILD FINANCE AGREEMENT dated as of December 11, 2012 is entered into:

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**

(the “**Province**”)

AND: **BC TRANSPORTATION FINANCING AUTHORITY**

(“**BCTFA**”)

AND: **EVERGREEN RAPID TRANSIT HOLDINGS INC.**

(the “**Primary Contractor**”)

WHEREAS:

- A. The Primary Contractor has been retained by the Province to carry out the Project and the Work at a price not greater than the aggregate of the Contract Price and on the terms and conditions herein set out; and
- B. The rights and obligations among the parties with respect to the Project shall be governed by the terms and conditions set forth in this Agreement.

NOW THEREFORE in consideration of the covenants and agreements of the parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties, the parties covenant and agree as follows:

**PART 1
INTERPRETATION**

1.1 Definitions and Interpretation

This Agreement shall be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.2 Governing Law

This Agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia, and the laws of British Columbia and the laws of Canada applicable in British Columbia are the proper law of this Agreement.

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1.3 Submission to Jurisdiction

Where, in accordance with this Agreement, including the Dispute Resolution Procedure, a particular matter is referred to Court or a party may initiate a proceeding in Court, the Court, subject to applicable Laws, has exclusive jurisdiction to entertain and determine such matter or proceeding and each of the parties irrevocably submits to the exclusive jurisdiction of the Court.

1.4 No Fettering of Rights, Powers and Authority

- (a) Nothing in this Agreement fetters or otherwise interferes with or limits, or shall be construed to fetter or otherwise interfere with or limit, the rights, powers and authority of the Province or BCTFA or of any minister (including the Minister), ministry (including the Ministry), agency, board, commission, corporation or other entity of the Province, including with respect to the development or application of government policy and including any right, power or authority:
 - (i) to enact, amend, repeal or replace any enactment or regulation made under any enactment;
 - (ii) to exercise or refrain from exercising any power, authority, duty, function or discretion conferred under Laws; or
 - (iii) to administer, apply and enforce Laws.
- (b) Except as expressly provided for in this Agreement, the Primary Contractor is not entitled to claim or receive any compensation or other relief whatsoever as a result of anything described in any of Sections 1.4(a)(i) to (iii) inclusive.

1.5 Schedules

The Schedules to this Agreement are incorporated into and form part of this Agreement. Obligations of the parties set out in the Schedules are included in the obligations of the parties under this Agreement.

1.6 Language

The language of this Agreement is English. All communications, documents and information provided pursuant to or in connection with this Agreement must be entirely in English.

**PART 2
GENERAL PROJECT TERMS**

2.1 The Project

- (a) Subject to and in accordance with the provisions of this Agreement, the Primary Contractor shall:
 - (i) provide, perform and carry out the Work:

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(A) in accordance with and subject to the terms and conditions of this Agreement; and

(B) in accordance with the Proposal Extracts (provided that the Primary Contractor acknowledges that the Proposal Extracts shall be in addition to and not in substitution for any terms, conditions, requirements, criteria and specifications set out in this Agreement, including Schedule 4 [Design and Construction] or any other Design–Build Requirements);

(ii) perform and observe all of its other obligations under this Agreement; and

(iii) obtain sufficient financing to enable the Primary Contractor to perform and observe its obligations under this Agreement;

(collectively, the “**Project**”), all at its own cost and risk and without recourse to the Province, BCTFA, public funds or guarantees by the Province or any other Governmental Authority, except as expressly provided otherwise in this Agreement.

(b) The Province confirms, and the Primary Contractor acknowledges such confirmations, that (i) the Evergreen Line is intended upon completion to operate as part of the “regional transportation system” as defined in the *South Coast British Columbia Transportation Authority Act* (British Columbia) and (ii) the Project and the Work are being carried out as part of a provincial project at the behest of the Province for transportation purposes and comprise a “provincial public undertaking” as defined in the *Transportation Act* (British Columbia).

2.2 Term

This Agreement shall take effect on the Effective Date and, except as expressly provided otherwise in this Agreement, shall expire and terminate at the end of the Term.

2.3 Assumption of Risk and Responsibility

Except to the extent provided otherwise pursuant to the express provisions of this Agreement, all risks, costs and expenses related to or arising out of or in connection with the performance by the Primary Contractor of its obligations under this Agreement are allocated to, and accepted by, the Primary Contractor as its entire and exclusive responsibility. As among the parties, the Primary Contractor shall be solely responsible for the selection, pricing and performance of all Subcontractors and any other persons for whom the Primary Contractor is in law responsible, and for the acts, defaults, omissions, breaches and negligence of all Subcontractors and any other persons for whom the Primary Contractor is in law responsible, as fully as if such acts, defaults, omissions, breaches and negligence were those of the Primary Contractor.

2.4 Financial Administration Act

The Primary Contractor acknowledges that it is aware of the provisions of the *Financial Administration Act* (British Columbia).

2.5 Access to and Responsibility for the Site

- (a) For the duration of the Access Period in respect of each part of the Site:
 - (i) subject to and in accordance with the terms and conditions of this Agreement, including the provisions of Schedule 7 [Lands], and the Site Requirements (including the Conditions of Access) and subject to Section 2.5(d), the Province agrees to make such part available to the Primary Contractor, on a non-exclusive basis in common with all persons identified in Section 4.7 [Access to Site and Project Infrastructure by Others] as having the right to access, for the Primary Contractor and the persons for whom the Primary Contractor is in law responsible engaged or involved in the performance of the Work to enter upon and use such part and the infrastructure located on such part as may be reasonably required from time to time to permit the Primary Contractor to carry out the Work; and
 - (ii) the Primary Contractor shall assume all risk and responsibility for, and custody and control of, such part, save to the extent expressly provided otherwise in this Agreement.
- (b) Without prejudice to any rights of the Province or BCTFA that may have accrued during, or may accrue in respect of, the Access Period in respect of any part of the Site as a result of or in connection with the Primary Contractor's obligations under this Agreement (including under Section 2.5(a)(ii)), on the date of expiry or termination of the Access Period in respect of such part, the Primary Contractor's risk and responsibility for, and custody and control of, such part shall cease, provided that such cessation shall not relieve the Primary Contractor of any obligations that relate to the Site or the performance of Work on the Site (or the part thereof that was subject to such cessation) that are, notwithstanding such cessation, applicable to the performance of Work on the Site (or such part) by the Primary Contractor at such times as it has access thereto pursuant to Section 2.5(c).
- (c) To the extent permitted by, and subject to and in accordance with, the Site Requirements (including the Conditions of Access) and subject to Section 2.5(d), after the date of expiry or termination of the Access Period in respect of any part of the Site, the Province shall, on terms and conditions determined by the Province, acting reasonably, (including any terms and conditions that are necessary to permit TransLink to operate or maintain the Operational Evergreen Line, any of which shall be deemed to have been determined by the Province acting reasonably), provide access to such part to the Primary Contractor and the persons for whom the Primary Contractor is in law responsible engaged or involved in the performance of the Work, to the extent necessary to enable the Primary Contractor to perform any of its obligations under this Agreement after such date that are required to be carried out after such date.
- (d) Without prejudice to any other provisions of this Agreement:
 - (i) Article 18.4.1(b), Part 2 of Schedule 4 shall apply in relation to access to the Existing Millennium Line, in addition to the provisions of Sections 2.5(a), (b) and (c); and

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- (ii) Article 18.10 [Operations and Maintenance Centre], Part 2 of Schedule 4 shall apply in relation to access to the part of the Site on which the OMC is located and to the OMC itself, in addition to the provisions of Sections 2.5(a), (b) and (c).

2.6 Municipal Lands and Municipal Infrastructure

- (a) In carrying out the Work, including the Municipal Works, and in performing all of its other obligations under this Agreement, the Primary Contractor shall observe, comply with and perform, and cause all persons for whom the Primary Contractor is in law responsible to observe, comply with and perform, the terms, requirements and conditions set out in the Municipal Requirements, and the Primary Contractor shall not take or omit to take or permit to be taken or omitted any action that would breach, or result in the breach of, any of the terms of or requirements contained in the Municipal Requirements.
- (b) The Primary Contractor shall be responsible for liaising with the Municipalities and GVRD from time to time in the course of carrying out the Municipal Works in accordance with the processes and requirements contained in the Municipal Requirements, including in connection with the development of design and construction specifications, drawings and plans applicable to the Municipal Works and the establishment of work schedules for carrying out the Municipal Works.
- (c) The Primary Contractor shall provide the Province with copies of all design and construction specifications, drawings and plans and work schedules applicable to the performance of the Municipal Works from time to time in accordance with the Municipal Requirements.
- (d) The Primary Contractor shall be responsible for all costs and expenses incurred in connection with the Municipal Works, including all costs and expenses incurred in complying with the Municipal Requirements.
- (e) Without limiting any terms of the Municipal Requirements or the Municipal Agreements, the Primary Contractor shall take all necessary steps to ensure that neither the Primary Contractor nor any person for whom the Primary Contractor is in law responsible adversely affects the condition, use and operation of any Municipal Infrastructure or the condition of any Municipal Lands except to the extent permitted by and in accordance with this Agreement.
- (f) If the Primary Contractor is unable (without obtaining assistance from the Province or without the Province joining in the exercise of such right) to exercise any right of the Province under the Relevant Municipal Agreement Provisions that it is necessary or expedient be exercised in connection with the performance by the Primary Contractor of its obligations under this Agreement, the Province, to the extent that it has the legal ability to do so under existing Laws and to the extent reasonably requested by the Primary Contractor, shall:
 - (i) provide or cause to be provided such assistance as the Province may reasonably be able to provide; and/or
 - (ii) if required to enable such right to be exercised, join in the exercise of such right,

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in the case of either Section 2.6(f)(i) or (ii), to assist the Primary Contractor in exercising such right.

Notwithstanding the foregoing provisions of this Section 2.6(f), and without prejudice to the Province's rights to dispute what is reasonable on any other grounds, the Province may, in its discretion, determine that it is not reasonable for any assistance requested by the Primary Contractor pursuant to this Section 2.6(f) to involve the Province initiating or participating in formal legal proceedings with any Municipality.

The Province and the Primary Contractor shall each bear their own costs and expenses in connection with the performance of their respective obligations under this Section 2.6(f) or the exercise of any right under the Relevant Municipal Agreement Provisions.

- (g) Without limiting any other provision of this Agreement, any and all Municipal Works by or on behalf of the Primary Contractor shall be carried out in accordance with Good Industry Practice, in conformity with all Laws and in accordance with the Municipal Requirements.

2.7 CPR Lands and CPR Lands Works

- (a) In carrying out the Work, including the CPR Lands Works, and in performing all of its other obligations under this Agreement, the Primary Contractor shall observe, comply with and perform, and cause all persons for whom the Primary Contractor is in law responsible to observe, comply with and perform, the terms, requirements and conditions set out in the CPR Requirements, and the Primary Contractor shall not take or omit to take or permit to be taken or omitted any action that would breach any of the terms of or requirements contained in the CPR Requirements.
- (b) The Primary Contractor shall be responsible for liaising with CPR from time to time in the course of carrying out the CPR Lands Works in accordance with the processes and requirements contained in the CPR Requirements, including in connection with the development of design and construction specifications, drawings and plans applicable to the CPR Lands Works and the establishment of work schedules for carrying out the CPR Lands Works.
- (c) The Primary Contractor shall provide the Province with copies of all design and construction specifications, drawings and plans and work schedules applicable to the performance of the CPR Lands Work from time to time in accordance with this Agreement, including the CPR Requirements.
- (d) The Primary Contractor shall be responsible for all costs and expenses incurred in connection with the CPR Lands Works, including:
 - (i) all costs and expenses incurred in connection with the CPR Requirements; and
 - (ii) any reimbursement or compensation payable to CPR under or pursuant to the CPR Agreements in connection with the CPR Lands Works and the CPR Own Work.

- (e) Without limiting any terms of the CPR Requirements or the CPR Agreements, the Primary Contractor shall take all necessary steps to ensure that neither the Primary Contractor nor any person for whom the Primary Contractor is in law responsible adversely affects the condition, use and operation of any CPR Facilities, the CPR Operations or the condition of the CPR Lands except to the extent permitted by and in accordance with this Agreement.

- (f) If the Primary Contractor is unable (without obtaining assistance from the Province or BCTFA or without the Province or BCTFA joining in the exercise of such right) to exercise any right of the Province or BCTFA under the CPR Agreements (other than any right under any of the provisions of the CPR Agreements specified in Article 5.2 [CPR Agreements], Part 1 of Schedule 4) that it is necessary or expedient be exercised in connection with the performance by the Primary Contractor of its obligations under this Agreement, each of the Province and BCTFA, to the extent that it has the legal ability to do so under existing Laws and to the extent reasonably requested by the Primary Contractor, shall:
 - (i) provide or cause to be provided such assistance as the Province or BCTFA may reasonably be able to provide; and/or
 - (ii) if required to enable such right to be exercised, join in the exercise of such right,in the case of either Section 2.7(f)(i) or (ii), to assist the Primary Contractor in exercising such right.

Notwithstanding the foregoing provisions of this Section 2.7(f), and without prejudice to the Province's or BCTFA's rights to dispute what is reasonable on any other grounds, the Province or BCTFA may, in its discretion, determine that it is not reasonable for any assistance requested by the Primary Contractor pursuant to this Section 2.7(f) to involve the Province or BCTFA, as the case may be, initiating or participating in formal legal proceedings with CPR.

The Province and the Primary Contractor shall each bear their own costs and expenses in connection with the performance of their respective obligations under, or the exercise of any right under the CPR Agreements referred to in, this Section 2.7(f).

- (g) Without limiting any other provision of this Agreement, any and all CPR Lands Works by or on behalf of the Primary Contractor shall be carried out in accordance with Good Industry Practice, in conformity with all Laws and in accordance with the CPR Requirements.

2.8 Limited Use

The Primary Contractor shall not make any use of, or allow or authorize the Subcontractors or any other person engaged or involved in the performance of the Work, or any other person for whom the Primary Contractor is in law responsible, to make any use of the Site or the Project Infrastructure or any part thereof except for the purposes of carrying out the Work in accordance with this Agreement.

2.9 Location of Province Infrastructure

The Primary Contractor covenants and agrees that no part of the Province Infrastructure to be constructed or installed by the carrying out of the Work shall be constructed, installed or located on any lands that are not Permanent Project Lands and, in particular, will not be constructed, installed or located on Temporary Project Lands, except that (without prejudice to Section 3.9 [Other Lands] of Schedule 7) the Primary Contractor shall be entitled to construct or prefabricate components of the Work in locations other than the Project Lands for subsequent incorporation into the Province Infrastructure required to be constructed or located on Permanent Project Lands in accordance with this Section 2.9.

2.10 Title to Infrastructure and Improvements

Except for any Project Intellectual Property or Background Technology that is owned by the Primary Contractor and licensed to the Province in accordance with Section 17.3 [Ownership of Project Intellectual Property and Records and Licenses to the Province]:

- (a) the Primary Contractor shall not acquire or have any interest in land or any other property or proprietary interest in or title to the Site or any Project Infrastructure, or any other improvements on or to the Site from time to time; and
- (b) as among the Province, BCTFA and the Primary Contractor, title to and ownership of the Site and the Project Infrastructure and all other improvements on or to the Site from time to time shall vest in the Province, BCTFA, such other person as the Province may direct or the owner of the relevant lands, as applicable.

2.11 No Registration

Subject to the Primary Contractor's rights pursuant to the Builders Lien Act, the Primary Contractor shall not register or attempt to file in the Land Title Office this Agreement or any rights under this Agreement or any instrument, claim or notice in respect thereof.

2.12 Transfer of Title

- (a) As among the Province, BCTFA and the Primary Contractor, title to all Plant shall pass to and vest absolutely in the Province or BCTFA or such other person as the Province may direct, as applicable, at the earlier of:
 - (i) title to the Plant being acquired by the Primary Contractor; and
 - (ii) the Plant being affixed to or incorporated into the Project Lands or the Project Infrastructure.

The Primary Contractor covenants that each of the Subcontracts shall contain a provision that title to all Plant shall pass to the Province or BCTFA (or such other person as the Province may designate, as applicable, under this Section 2.12(a)) at the earlier of title to the Plant being acquired by the Subcontractor and the Plant being affixed to or incorporated into the Project Lands or the Project Infrastructure.

- (b) Title to any property (whether real or personal, tangible or intangible) not referred to in Section 2.12(a) that is or is to be transferred to or acquired by the Province or BCTFA or

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any other person from the Primary Contractor pursuant to the terms of this Agreement shall pass to the Province or BCTFA or such other person, as applicable, at the time of the transfer or acquisition as contemplated by this Agreement.

- (c) Without limiting the provisions of Section 19.7 [Further Assurances], the Primary Contractor shall, at the written request of the Province's Representative from time to time, execute and deliver to the Province or to BCTFA or such other person as the Province may direct, and cause the Subcontractors (or, in the case of Thales, use reasonable efforts (without any obligation to incur any material expenditure in using such efforts) to cause Thales) to execute and deliver to the Province or to BCTFA or such other person as the Province may direct, all such bills of sale and other documents as the Province's Representative shall request for transferring rights in or title to property (whether real or personal, tangible or intangible) or confirming the transfer of rights in or title to any such property as contemplated by this Section 2.12 [Transfer of Title].
- (d) The Primary Contractor covenants that all Subcontracts to which the Primary Contractor is a party (other than the ATC Supply Contract) shall contain a provision imposing on the Subcontractor thereunder the same obligation to execute and deliver bills of sale and other documents as is imposed on the Primary Contractor under Section 2.12(c).
- (e) Notwithstanding the passage to the Province or to BCTFA or such other person as the Province may direct of rights in or title to Plant as provided above in this Section 2.12 [Transfer of Title], the Primary Contractor and the Subcontractors shall be entitled to make use of such Plant for the purposes of carrying out the Work, subject to and in accordance with this Agreement.

2.13 Review, Approval, Inspection and Audit by the Province

- (a) If any review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection is provided, performed or made by or on behalf of the Province, BCTFA or the Province's Representative under, pursuant to or in respect of this Agreement or any other Project Document, whether pursuant to the Review Procedure or the Consent Procedure or otherwise, or if no comment or objection is made by the Province, BCTFA or the Province's Representative pursuant to the Review Procedure or the Consent Procedure or otherwise:
 - (i) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, shall be for assessment by the Province, BCTFA or the Province's Representative of general compliance by the Primary Contractor only with its obligations under this Agreement or the other Project Documents to which it is a party;
 - (ii) notwithstanding any other provisions of this Agreement or any other Project Document (but subject always to Section 2.13(b)), no such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, now or in the future, and whether or not involving any negligent act or

negligent omission or error on the part of the Province, BCTFA or the Province's Representative or any person for whom the Province is in law responsible:

- (A) shall relieve or exempt or be deemed to relieve or exempt the Primary Contractor or any other person for whom the Primary Contractor is in law responsible from any of its obligations and liabilities under this Agreement or any other Province Project Document or at law or in equity;
 - (B) shall constitute a waiver or release by the Province or BCTFA of any duty or liability owed by the Primary Contractor or any other person for whom the Primary Contractor is in law responsible to the Province or BCTFA, or of any indemnity given by the Primary Contractor or any other person for whom the Primary Contractor is in law responsible to the Province or BCTFA under this Agreement or any other Province Project Document;
 - (C) shall create or impose any requirement, liability, covenant, agreement, duty or obligation on the Province or BCTFA except to the extent expressly set out in this Agreement as a consequence of the review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection; or
 - (D) shall entitle the Primary Contractor or any other person for whom the Primary Contractor is in law responsible to make any Claim against the Province or BCTFA for, or to recover from the Province or BCTFA, any Losses; and
- (iii) any such review, acceptance, comment, objection or rejection, or lack of comment, objection or rejection, made by the Province's Representative under the Review Procedure or the Consent Procedure shall, once all disputes arising in respect thereof have where applicable been resolved in accordance with Schedule 2 [Representatives, Review Procedure and Consent Procedure], be final, subject only to being subsequently opened up, reviewed or revised by the Province in its discretion if errors or further relevant facts are revealed.

At the request of the Province's Representative from time to time, the Primary Contractor shall obtain from Subcontractors, the Key Individuals and any other person identified by the Province, prior to any such party carrying out any part of the Work, waivers of liability substantially on the terms of this Section 2.13 [Review, Approval, Inspection and Audit by the Province] in favour of the Province, BCTFA and the Province's Representative and in form and substance satisfactory to the Province.

- (b) If any consent, approval, acceptance, certification, determination or other permission of or review, inspection, examination, audit or testing by, the Province or BCTFA or the Province's Representative is expressly required under this Agreement or any of the other Province Project Documents in order for any specific act or conduct of the Primary Contractor to be in compliance with (or not in breach of) any provision of this Agreement

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or any other Project Document and, if such consent, approval, acceptance, certification, determination or other permission is given by, or review, inspection, examination, audit or testing is carried out by, the Province or BCTFA or the Province's Representative (as the case may be) in any particular circumstance, the Primary Contractor shall be relieved of the obligation under this Agreement or the other Province Project Document to obtain the specific consent, approval, acceptance, certification, determination or other permission given, or to have the review, inspection, examination, audit or testing carried out, but only for the purposes and in the particular circumstances in which it was given or carried out and to which it applied.

2.14 Site Inspection and Investigations

The Primary Contractor represents and warrants to the Province and BCTFA and agrees with the Province and BCTFA as follows:

- (a) that the Primary Contractor shall be deemed to have been afforded the opportunity prior to executing this Agreement to inspect and examine the entire Site and its surroundings, and all existing structures, improvements, infrastructure and works in, on, over, under or in the vicinity of the Site, and that the Primary Contractor shall be deemed to have inspected and examined the same and has satisfied itself with respect thereto;
- (b) that the Primary Contractor shall be deemed to have satisfied itself prior to executing this Agreement as to the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Site and all structures, improvements, infrastructure and works in, on, over, under or in the vicinity of the Site, the form and nature thereof, and the nature of the ground and subsoil thereof, the risk of injury or damage to property adjacent to or in the vicinity of the Site, and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, plant and materials necessary for the execution of the Work;
- (c) that the Primary Contractor shall be deemed to have satisfied itself prior to executing this Agreement as to:
 - (i) the adequacy of the Project Lands and the Land Rights in the Project Lands for the performance of the Work and the performance by the Primary Contractor of all of its other obligations under this Agreement;
 - (ii) the means and methods of communication with the various parts of, and access to and through, the Site, the accommodation it may require and the adequacy and sufficiency of the rights of access and use and occupation provided by Section 2.5 [Access to and Responsibility for the Site] and Schedule 7 [Lands] for the purposes of performing the Work, including the means and methods of coordination and implementation of such communication, access, use and occupation;
 - (iii) the possibility of interference by third parties, including members of the public and users of the Existing SkyTrain System, with access to or use of the Site and the infrastructure and improvements thereon, with particular regard to the Requirements of Interested Parties;

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- (iv) the precautions and times and methods of working necessary to minimize any nuisance or interference, whether public or private, being caused to any third parties in the performance of the Work; and
 - (v) any other contingencies, restrictions, conditions or constraints which would or might interfere with, limit or affect the ability of the Primary Contractor to carry out the Work in accordance with the terms of this Agreement;
- (d) that the Primary Contractor shall be deemed to have reviewed and satisfied itself, prior to executing this Agreement, with respect to:
- (i) the terms of the EA Application, the Environmental Assessment Certificate and the Primary Contractor's Environmental Obligations;
 - (ii) the First Nations Requirements;
 - (iii) the Design-Build Requirements; and
 - (iv) the nature and extent (and that such nature and extent is adequate having regard to the Primary Contractor's obligations under this Agreement) of the Advance Work and all other work (including the Concurrent Work) carried out or to be carried out by, or by other contractors on behalf of, the Province, BCTFA, TransLink, Utility Suppliers, Municipalities, CPR or others in connection with the Project or the Project Infrastructure or otherwise on or in the vicinity of the Site, and the impact of the conduct of such Advance Work and such other work on the carrying out of the Work;
- (e) that the Primary Contractor shall be deemed to have examined, checked and satisfied itself, prior to executing this Agreement, as to the adequacy, correctness and suitability of all Design Data made available to the Primary Contractor by or on behalf of the Province or BCTFA prior to the date of execution of this Agreement, including all Design Data which the Primary Contractor has relied upon, adopted or made use of or intends to rely upon, adopt or make use of in carrying out the Work;
- (f) that the Primary Contractor shall be deemed to have obtained for itself prior to executing this Agreement all necessary information as to the performance, provision and carrying out of the Work in accordance with this Agreement, including as to:
- (i) the risks, contingencies and all other circumstances which may influence or affect the Design-Build Requirements, the Primary Contractor's Environmental Obligations or the First Nations Requirements or its obligation to carry out the Work in accordance with the provisions of this Agreement; and
 - (ii) all other factors which would affect its decision to enter into this Agreement or the terms on which it would do so;
- (g) that the Primary Contractor shall be deemed to have reviewed and satisfied itself prior to executing this Agreement that the Design-Build Requirements are in compliance with the requirements of Sections 4.1(a) (save to the extent that the Design-Build Requirements impose obligations on the Primary Contractor to carry out and perform the Work to a

higher standard than would be required to enable the Primary Contractor to carry out and perform the Work in accordance with Good Industry Practice), (b), (c), (e) and (f);

- (h) that:
 - (i) the Primary Contractor accepts and will accept the Site and all existing structures, improvements, infrastructure and works in, on, over, under or in the vicinity of the Site on an “as is, where is” basis;
 - (ii) neither the Province nor BCTFA has made or hereby makes any representation or warranty with respect thereto; and
 - (iii) the Province and BCTFA shall have no responsibility or liability for the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Site and all structures, improvements, infrastructure and works in, on, over, under or in the vicinity of the Site, and the Primary Contractor assumes and will assume any and all risk with respect to the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition thereof and any and all risk that all or any part or parts thereof may not be suitable for any Project Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Work) or any Work;
- (i) that the Primary Contractor shall be deemed to have satisfied itself as to the track and Guideway tolerances over the design life of each of the components of the Evergreen Line as specified or required in Schedule 4 [Design and Construction] and as to any effect the condition of soils, including the presence of weak and compressible soils underlying the Alignment, may have on the performance of the Design and the achievement of the design life of the Province Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Work), including the Guideway, Tunnel and Stations, as contemplated by Schedule 4 [Design and Construction]; and
- (j) that the Primary Contractor shall be deemed to have satisfied itself in all respects, including with respect to the completeness, accuracy, correctness, suitability, adequacy, fitness for purpose and sufficiency of the provisions and requirements of the ATC Supply Contract.

Without limiting the rights and remedies of the Province and BCTFA under or in respect of any other provision of this Agreement, the representations, warranties and agreements of the Primary Contractor in this Section 2.14 [Site Inspection and Investigations] shall not constitute an actionable representation, warranty or agreement by the Primary Contractor in favour of the Province or BCTFA or give rise to a right of termination on the part of the Province or BCTFA, but the Province and BCTFA may rely on such representations, warranties and agreements for the purpose of defending any action brought against the Province or BCTFA, or either of them, or any Claim by the Primary Contractor for damages, Losses, extensions of time, compensation, additional payments or any other relief, provided that no such representation, warranty or agreement shall prejudice an otherwise valid Claim by the Primary Contractor:

- (A) pursuant to any other express provision of this Agreement; or

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- (B) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.

The provisions of any of subsections (a) to (j) inclusive of this Section 2.14 [Site Inspection and Investigations] do not limit the provisions of any other subsection of this Section 2.14.

2.15 Disclosed Data

- (a) Except as otherwise expressly provided in any other provision of this Agreement (including Section 2.15(d)) or as a result of any breach of any express obligation of the Province or BCTFA under this Agreement, neither the Province nor BCTFA shall have any liability to the Primary Contractor (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- (b) Neither the Province nor BCTFA gives, has given or shall be deemed to have given any representation, warranty or undertaking that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of execution of this Agreement) relevant or material to the Project, the Project Infrastructure, the Site or the obligations undertaken by the Primary Contractor under this Agreement. Without limiting the generality of the foregoing, neither the Province nor BCTFA shall have any liability to the Primary Contractor (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Primary Contractor any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform the Primary Contractor (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data, except for an otherwise valid Claim by the Primary Contractor:
 - (i) pursuant to any other express provision of this Agreement; or
 - (ii) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.
- (c) The Primary Contractor acknowledges, represents, warrants and confirms that, without prejudice to its rights under Section 2.15(d):
 - (i) the Primary Contractor shall be deemed to have conducted prior to executing this Agreement its own investigations, examinations, interpretations, analysis and review of the Disclosed Data and has satisfied itself as to the accuracy, completeness and adequacy of all such Disclosed Data upon which it places reliance; and
 - (ii) the Primary Contractor shall not be entitled to make, and shall not make, any Claim against the Province, BCTFA, any other person for whom the Province is

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in law responsible, CPR, TransLink, a Municipality or any other Governmental Authority whether in damages or for Losses or for extensions of time, compensation or additional payments or other relief, and whether under this Agreement or otherwise, and shall not be released from any risks or obligations imposed on or undertaken by it under this Agreement, on any grounds relating to the Disclosed Data, including:

- (A) on the grounds of any misrepresentation, misunderstanding or misapprehension in respect of or reliance upon the Disclosed Data or any of the matters referred to in Section 2.14 [Site Inspection and Investigations] or Section 2.15(c)(i); or
- (B) on the grounds that incorrect or insufficient or incomplete information relating to the Disclosed Data or to the Site or the structures, improvements, infrastructure and works in, on, over, under or in the vicinity of the Site was given to it by any person (whether or not in the employ of the Province or BCTFA) including any person for whom the Province is in law responsible, CPR, TransLink, a Municipality or any other Governmental Authority, except for an otherwise valid Claim by the Primary Contractor:
 - (1) pursuant to any other express provision of this Agreement; or
 - (2) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.
- (d) Notwithstanding the foregoing provisions of this Section 2.15 [Disclosed Data] or any other provision of this Agreement, if a delay is caused to the progress of Construction prior to the Substantial Completion Date or any net additional costs are incurred by the Primary Contractor in performing Construction prior to the Substantial Completion Date that in either case would not otherwise have been experienced or incurred by the Primary Contractor in performing its obligations under this Agreement, and such delay or costs are a direct result of a factual error (as at the currency date of the relevant bore hole or test pit log or survey data) in any of the Borehole and Test Pit Log Data upon which the Primary Contractor has reasonably and in accordance with Good Industry Practice relied in the Design and Construction of the Project Infrastructure, then such factual error in the Borehole and Test Pit Log Data shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply. For greater certainty, the Primary Contractor shall not be entitled to relief under this Section 2.15 [Disclosed Data] if and to the extent that it was not, in all the relevant circumstances and having regard to any other information known to the Primary Contractor at the relevant time, reasonable in accordance with Good Industry Practice for the Primary Contractor to rely on the Borehole and Test Pit Log Data containing the factual error or to rely on such Borehole and Test Pit Log Data without further investigation or site examination.

2.16 [Intentionally Not Used]

2.17 Project Name, Project Marks, Etc.

(a) Without limiting Section 17.4(a)(iii) or the right of each of the Primary Contractor and any Subcontractor to identify itself and its role in the Project using its names, marks and logos reasonably and in accordance with standard industry practice, the Primary Contractor:

(i) shall, in association with the Project and all Work performed with respect to the Project, Use only the names, branding, logos, domain names and other marks associated with the Project, the Stations and other components of the Integrated SkyTrain System and the Evergreen Line as designated by the Province from time to time (collectively, the “**Project Marks**”) and shall not Use any other names, branding, logos, domain names or other marks in association with the Work, the Project, the Stations or other components of the Integrated SkyTrain System and the Evergreen Line without the prior written consent of the Province in its discretion;

(ii) agrees that its Use of the Project Marks will at all times be under the control of the Province;

(iii) acknowledges the validity of the Project Marks and the Province’s or, as the case may be, TransLink’s ownership, of the Project Marks and all goodwill associated with or appurtenant to the Project Marks, and the Primary Contractor further acknowledges and agrees that all Use of the Project Marks by the Primary Contractor will be deemed to be Use by the Province and all the benefit and goodwill associated with such Use will at all times enure entirely to the Province or, as the case may be, TransLink;

(iv) will not do anything or omit to do anything that might impair, jeopardize, violate or infringe the Project Marks or the Province’s or, as the case may be, TransLink’s interest in the Project Marks or any other marks owned by the Province or TransLink, including:

(A) opposing, contesting or in any other manner challenging the validity of the Project Marks or the Province’s or, as the case may be, TransLink’s interest in the Project Marks; and

(B) claiming, using, displaying, reproducing or applying to register any trade-mark, trade name, copyright or design that is identical to or confusing with any of the Project Marks, or that is derived from or based on any of the Project Marks;

and the Primary Contractor will not assist, permit or encourage any other person or entity to do any of the foregoing; and

(v) will not use, display, reproduce, register or attempt to register any of the Project Marks, or any words, designs, characters or symbols that are confusing with or are derived from the Project Marks, as part of any internet domain name,

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universal resource locator, telephone number, address, firm name, corporate name or any other designator.

- (b) The Stations shall have the names set out in the definition of “Stations” in Section 1.1 [Definitions] of Schedule 1, provided that the Province, in its discretion, may within 45 Business Days after the Effective Date, by written notice to the Primary Contractor, change the name of any Stations, and any such change of name shall not constitute a Province Change. The Province, acting reasonably, may at any time and from time to time, by written notice to the Primary Contractor, add words to the name of any Station or change any words so added, to include specific identification, such as local features, amenities and landmarks, and any such addition and/or change shall not constitute a Province Change, provided that it is made before the fabrication of permanent signs for such Station.

2.18 Execution and Delivery of Project Documents

- (a) On or before the Effective Date:
 - (i) the Primary Contractor shall deliver to the Province and BCTFA the documents described in Part 1 of Schedule 21 [Closing Deliveries] executed and delivered by the signatories specified or contemplated in such Part;
 - (ii) the Province and BCTFA shall deliver to the Primary Contractor the documents described in Part 2 of Schedule 21 [Closing Deliveries] executed and delivered by the signatories specified or contemplated in such Part.
- (b) Promptly after receipt thereof by SLCW, the Primary Contractor shall deliver certified copies of the Performance Securities (as defined in the ATC Supply Contract) to the Province.

2.19 Financial Model

- (a) A print of the outputs of the Financial Model as at the Effective Date, certified by a senior officer or director of the Primary Contractor having knowledge of the facts as being a true, complete and correct copy, is attached as Part 2 of Schedule 11 [Financial Model] and a CD containing the Financial Model as at the Effective Date in digital form is attached as Part 1 of Schedule 11 [Financial Model].
- (b) The Primary Contractor hereby unconditionally grants to each of the Province and BCTFA a non-exclusive, perpetual, irrevocable, worldwide, royalty free, fully-paid, sublicensable, transferable and assignable license to use, both during and after the Term, the Financial Model, and any updated Financial Model, for any purpose (including the carrying out of any statutory, public or other powers, authorities, discretions, duties or functions) in connection with this Agreement, the Project, the Work, the Site, the Project Infrastructure, or any part of any of them. The license granted by this Section 2.19(b) shall not be sublicensable, transferable or assignable by the Province or BCTFA, except as provided in Section 18.4(a).
- (c) Without prejudice to the Primary Contractor’s obligations under Part 9 [Supervening Events] and Schedule 10 [Changes] to provide revised versions of the Financial Model to

the Province's Representative, the Primary Contractor shall, subject to the provisions of this Section 2.19 [Financial Model], deliver to the Province's Representative an update of the Financial Model (certified by a senior officer or director of the Primary Contractor having knowledge of the facts as being a true and correct copy of the updated Financial Model) to reflect the occurrence of any Province Change, agreed Primary Contractor Proposal or Supervening Event promptly (and in any event no later than 10 Business Days) after agreement by the parties, or determination pursuant to the Dispute Resolution Procedure, of the terms of such Province Change or Primary Contractor Proposal or the effects of such Supervening Event or in such other circumstances as the Province, acting reasonably, may require.

- (d) The Primary Contractor covenants that:
 - (i) the Financial Model reflects now and as from time to time updated hereafter will reflect the Project (including financial outputs in respect of the Project) as defined by this Agreement and the other Project Documents; and
 - (ii) each update of the Financial Model shall be prepared in accordance with the methodology used in the Financial Model as at the Effective Date and shall reflect only changes to financial inputs that have been agreed by the parties or determined pursuant to the Dispute Resolution Procedure.
- (e) Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Province], any receipt or review of the Financial Model or any update of the Financial Model by or on behalf of the Province or BCTFA or the Province's Representative shall not constitute an acceptance of, approval of or consent to the Financial Model or such update and shall not constitute a waiver or release by the Province or BCTFA of any rights of the Province or BCTFA or of any of the obligations of the Primary Contractor under this Agreement.
- (f) The Primary Contractor will not make any change, update or amendment to the Financial Model unless full particulars of the relevant proposed change, update or amendment to the Financial Model has been submitted to the Province's Representative pursuant to the Consent Procedure and been accepted by the Province's Representative, in its discretion, in accordance with the Consent Procedure.

2.20 No Agency

- (a) The Primary Contractor acknowledges that no provision of this Agreement shall be construed as a delegation or sub-delegation to the Primary Contractor by the Province, BCTFA, the Minister or any other person to whom a power, discretion or right has been conferred by Law to make a decision deciding or prescribing the legal rights, powers, privileges, duties or liabilities of a person, or the eligibility of a person to receive or to continue to receive a benefit or license (whether or not the person is legally entitled to it), of any power, authority, duty, function, right or discretion conferred under Laws.
- (b) Except to the extent (if any) that any provision in this Agreement expressly constitutes the Primary Contractor the "agent" of the Province or BCTFA, the Primary Contractor shall not be or be deemed to be or hold itself out as being an agent of the Province or BCTFA and the Primary Contractor shall not hold itself out as having authority or power to bind the Province or BCTFA in any way.

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- (c) The Primary Contractor acknowledges and agrees that neither the Province nor BCTFA has made any representation or warranty that the Primary Contractor or any Subcontractor shall have the benefit of any Crown immunity.
- (d) Subject to Sections 2.20(a), (b) and (c) and the other provisions of this Agreement, the parties acknowledge that the Primary Contractor is carrying out the Work at the request of the Province and BCTFA.

2.21 Province's Representative and Primary Contractor's Representative

- (a) The parties acknowledge that the Province has appointed the Province's Representative as set out in Section 1.1(a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] and that the Primary Contractor shall, no later than five Business Days after the Effective Date, appoint the Primary Contractor's Representative in accordance with Section 3.1(a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].
- (b) The Province's Representative may, in connection with any of its duties and functions, including in the exercise of any of its duties and functions:
 - (i) refer any matter to the Province, BCTFA or TransLink or to any of their respective employees, agents, advisors, consultants or contractors or subcontractors of any tier, and any review, consideration, decision, belief, opinion or determination referred to herein in relation to the Province's Representative may be that of the Province's Representative or any such person upon whose review, consideration, decision, belief, advice, opinion or determination the Province's Representative relies;
 - (ii) rely on any advice that the Province's Representative considers necessary or appropriate in the circumstances;
 - (iii) by written notice to the Primary Contractor from time to time, designate any person to conduct or attend any inspection or test or to take any other action that is to be conducted, attended or taken, or that is permitted to be conducted, attended or taken, by the Province's Representative under the terms of this Agreement; and
 - (iv) by written notice to the Primary Contractor from time to time, designate an employee, advisor, consultant or contractor of the Province, BCTFA or TransLink or any other person to receive any specific submission or class of submissions to be delivered by the Primary Contractor under this Agreement and the Primary Contractor shall comply with any such designation in making such specific submission or class of submission, as applicable, and, where a submission is delivered in accordance with any such designation, shall provide the Province's Representative with a copy of the transmittal of the submission to the designated person at the same time as the submission is delivered to that person.

2.22 Limited Notice to Proceed Agreement

The parties acknowledge and agree that:

- (a) the Limited Notice to Proceed Agreement ended effective as of the Effective Date and the terms of this Agreement supersede the Limited Notice to Proceed Agreement;
- (b) all Approved Activities (as defined in the Limited Notice to Proceed Agreement) undertaken under the Limited Notice to Proceed Agreement in advance of the Effective Date are deemed to have been undertaken by the Primary Contractor as Work pursuant to this Agreement and the Primary Contractor accepts and assumes the risk, responsibility and liability for such Approved Activities as Work in accordance with the terms of this Agreement;
- (c) no party shall be entitled to make any Claim against another party or such other party's respective advisors, consultants, contractors or agents nor (in the case of the Province and BCTFA) against SLI or SNC Group:
 - (i) under the Limited Notice to Proceed Agreement; or
 - (ii) in connection with, or arising out of, the Limited Notice to Proceed Agreement;(whether for damage, Loss, extensions of time, compensation, additional payment or any other benefit) unless such Claim is permitted under this Agreement; and
- (d) any dispute in connection with or arising out of the Limited Notice to Proceed Agreement existing at the Effective Date shall, unless otherwise agreed in writing between the parties, be resolved in accordance with the Dispute Resolution Procedure.

2.23 Upgrade Contracts

In the event that:

- (a) final acceptance of the replacement project for the remote control interface unit for the Existing SkyTrain System is not complete by May 1, 2013 pursuant to the agreement between Thales and TransLink dated December 20, 2007 and entitled "SkyTrain Remote Control Interface Unit System Replacement Contract, Schedule C, Technical Specifications"; or
- (b) there are any technical changes to the agreement referred to in Section 2.23(a) which materially adversely affect the performance of the Work by the Primary Contractor,

then the Province's Representative shall issue a Province Change and the provisions of Part 8 [Province Changes and Primary Contractor Proposals] shall apply accordingly.

**PART 3
GENERAL OBLIGATIONS OF PROVINCE**

3.1 Mitigation by Province

- (a) In all cases where the Province or BCTFA is entitled under this Agreement to receive from the Primary Contractor any compensation (including pursuant to Schedule 12 [Compensation Termination]), costs, damages or other Direct Losses incurred by the Province or BCTFA (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, but not in any other case, each of the Province and BCTFA shall have a duty to use all reasonable efforts to mitigate and reduce the amount required to be paid by the Primary Contractor to the Province or BCTFA, as the case may be, provided that such duty shall not require the Province or BCTFA to:
 - (i) take any action which is contrary to the public interest, as determined by the Province or BCTFA in its discretion;
 - (ii) exercise or refrain from exercising any power, authority, duty, function, right or discretion conferred under Laws;
 - (iii) undertake any mitigation measure that might be available arising out of its status as the Crown, Crown agent or Crown corporation or as a legislative or public body that would not normally be available to a private commercial party;
 - (iv) alter the amount of any Performance Incentive Payments determined in accordance with Schedule 9 [Performance Mechanism]; or
 - (v) breach or act in a manner that could be inconsistent with the obligations of the Province or BCTFA under this Agreement.
- (b) Neither the Province nor BCTFA shall be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Province or BCTFA, as the case may be, or those parts of any extensions of time or other relief from performance, that the Province or BCTFA, as the case may be, could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts, to the extent of the duty of the Province or BCTFA, as the case may be, to do so in accordance with the provisions of Section 3.1(a).
- (c) The Primary Contractor shall not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Province Indemnified Person (other than BCTFA, to which Section 3.1(b) applies) failing to mitigate to the same standard as is required of the Province under this Section 3.1 [Mitigation by Province].

3.2 Representations and Warranties of the Province and BCTFA

- (a) The Province represents and warrants to the Primary Contractor, and acknowledges that the Primary Contractor is relying upon such representation and warranty in entering into this Agreement, that, at the date of this Agreement, this Agreement has been duly

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authorized, executed and delivered on behalf of the Province by an authorized representative of the Minister of Transportation and Infrastructure.

- (b) BCTFA represents and warrants to the Primary Contractor, and acknowledges that the Primary Contractor is relying upon such representations and warranties in entering into this Agreement, that, at the date of this Agreement:
 - (i) all necessary corporate action has been taken by BCTFA to execute and deliver this Agreement; and
 - (ii) this Agreement has been duly authorized, executed, and delivered on behalf of BCTFA by an authorized representative of BCTFA.

3.3 Without Prejudice

Any covenant, representation, warranty or undertaking made or given by the Province or BCTFA under any provision of this Agreement is without prejudice to or limitation of any covenant, representation, warranty or undertaking made or given by the Province or BCTFA under any other provision of this Agreement.

3.4 Survival of Representations and Warranties

The representations and warranties made or given by the Province under Section 3.2(a) and by BCTFA under Section 3.2(b) are given at the date of execution of this Agreement and shall, unless expressly provided otherwise, survive the execution and delivery of this Agreement and are not mitigated or affected by any investigation by or on behalf of the Primary Contractor.

PART 4 GENERAL OBLIGATIONS OF PRIMARY CONTRACTOR

4.1 Primary Contractor to Carry Out Work

The Primary Contractor shall carry out and perform the Work, and cause the Work to be carried out and performed:

- (a) in an efficient, effective, safe and good and workmanlike manner, and in accordance with Good Industry Practice;
- (b) in a manner that is not injurious to health and does not cause damage to property or the environment, provided that damage to property or the environment, to the extent such damage is a reasonable and unavoidable consequence of performing the Work in accordance with this Agreement and in compliance with all other obligations of the Primary Contractor hereunder, will not constitute a breach of the obligation in this Section 4.1(b);
- (c) in compliance with all Requirements of Interested Parties, Municipal Requirements and CPR Requirements; and
- (d) in accordance with all Design-Build Requirements;

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in each case subject to and in accordance with the provisions of this Agreement, and otherwise:

- (e) in a manner so as not to prevent the Province from exercising rights, powers and discretions and discharging duties and functions as a transportation authority, and so as not to prevent the Province, BCTFA or any other Governmental Authority from exercising any other rights, powers and discretions or discharging any other lawful duties and functions; and
- (f) in compliance with all applicable Laws and Permits, all lawful and other proper instructions of the Police and all lawful and other proper requirements of Relevant Authorities and other Governmental Authorities.

4.2 Compliance with Builders Lien Act and Payments to Subcontractors

- (a) The Primary Contractor shall comply with and cause all Subcontractors to comply with any applicable provisions of the Builders Lien Act with respect to Work carried out, and materials supplied, in accordance with the terms of this Agreement and shall provide evidence of such compliance to the Province upon request.
- (b) Without limiting any of its other obligations under this Agreement or any Laws, the Primary Contractor shall pay or provide for the payment when due, and shall ensure that all of the Subcontractors pay or provide for the payment when due, of all accounts in connection with the performance of the Work (including all accounts for the supply of labour, materials and services in connection with any works carried out in the course of the Work).
- (c) The Primary Contractor shall provide to the Province's Representative a monthly certificate addressed to the Province and certified by the Primary Contractor's Representative, certifying that all wages, salaries and other amounts due to its employees and Subcontractors have been paid in full up to the last payment, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and, if applicable, the Builders Lien Act. If the Primary Contractor is unable to obtain from any Subcontractor a representation, warranty or covenant sufficient to enable the Primary Contractor to provide such monthly certificate to the Province's Representative, the Primary Contractor shall provide the Province's Representative with full particulars of any matter which precludes the Primary Contractor from providing such certificate to the Province's Representative.

4.3 No Adverse Reflection

Without limiting the Primary Contractor's obligations under Section 4.1 [Primary Contractor to Carry Out Work], the Primary Contractor in the performance of the Work shall not knowingly do or omit to do, or suffer or permit to be done or omitted, anything that might reasonably be expected to detract, or that the Province gives notice to the Primary Contractor would detract, from the image and reputation of the Province as a transportation authority or otherwise or the reputation of the Province, BCTFA or TransLink provided that any action taken or not taken in the course of performing the Work that is expressly required to be taken or not taken pursuant to this Agreement, a direction or instruction issued by the Province's Representative or a specific provision of the Design-Build Requirements will not constitute a breach of the Primary Contractor's obligations under this Section 4.3 [No Adverse Reflection], and provided that this Section shall not prejudice an otherwise valid Claim by the Primary Contractor:

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- (a) pursuant to any other express provision of this Agreement; or
- (b) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.

4.4 No Conflicts of Interest

- (a) The Primary Contractor shall ensure that no conflict of interest arises between any other matter in which it or any of the Shareholders may be interested, whether directly or indirectly, and the Primary Contractor's performance of the Project, the Work and the obligations of the Primary Contractor under this Agreement.
- (b) The Primary Contractor:
 - (i) shall not knowingly admit to any share or part of this Agreement or any benefit to arise herefrom any member of the Senate, the House of Commons of Canada or the Legislature of British Columbia;
 - (ii) shall use all reasonable efforts to ensure that no person for whom the Primary Contractor is in law responsible is a current or former public servant or public office holder or reporting public office holder to whom the Conflict of Interest Act (Canada), the Federal Government's Values and Ethics Code for the Public Service and/or the Federal Government's Conflict of Interest and Post-employment Code for Public Office Holders (in this Section 4.4(b)(ii), the "**Relevant Acts and Codes**") apply shall derive any direct benefit from this Agreement unless such individual is in compliance with the applicable provisions of the Relevant Acts and Codes; and
 - (iii) shall inform the Province, in writing, should any real and/or apparent conflict of interest exist or arise that could have a direct impact on the Federal Government's contribution to the Project pursuant to the Federal Contribution Agreement.

4.5 Prohibited Acts

- (a) The Primary Contractor covenants that neither the Primary Contractor nor any of its agents or Subcontractor nor the employees of any of the aforementioned persons, nor any person for whom the Primary Contractor is in law responsible, shall offer or give or agree to give any person in the service of the Province or BCTFA any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour in relation to this Agreement.
- (b) The Primary Contractor covenants that neither the Primary Contractor nor any Subcontractor shall enter into this Agreement or any other agreement with the Province or BCTFA in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by the Primary Contractor or a Subcontractor or on behalf of the Primary Contractor or a Subcontractor or to the knowledge of the Primary Contractor or a Subcontractor, other than to any person for whom the Primary Contractor is in law responsible, to the Senior Lenders or to any person in the service of the Senior Lenders,

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unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province's Representative.

- (c) Without limiting Section 4.5(b), the Primary Contractor covenants that no person for whom the Primary Contractor is in law responsible shall enter into any agreement with the Province or BCTFA in relation to the Project in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by such person or on its behalf or to its knowledge, other than to any person for whom the Primary Contractor is in law responsible, to the Senior Lenders or to any person in the service of the Senior Lenders, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province's Representative.

4.6 Public Roads and Transit Facilities and Operations

- (a) The Primary Contractor shall keep open for use by the public (which term, as used in this Section 4.6 [Public Roads and Transit Facilities and Operations], includes users of public streets, roads and highways, pedestrian facilities and users of transit facilities and users of transit services, including users of Existing Transit Facilities and the Existing SkyTrain System and invitees of TransLink and other Transit Operators), at all times they are made available to the Primary Contractor pursuant to Section 2.5(a)(i) or Section 2.5(c), as the case may be, all parts of the public streets, roads, highways, Existing Transit Facilities and the Existing SkyTrain System that are open and available or otherwise scheduled for such use as at the date they are made available to the Primary Contractor pursuant to Section 2.5(a)(i) or Section 2.5(c), as the case may be, except for temporary or permanent lane closures or diversions of traffic flow instituted:
- (i) by the Primary Contractor in accordance with the provisions of the Traffic Management Plan or any other provision of Schedule 4 [Design and Construction];
 - (ii) by the Minister or any Governmental Authority under the *Transportation Act* (British Columbia), the *Motor Vehicle Act* (British Columbia), the *Community Charter* (British Columbia) or any other Laws;
 - (iii) by the Police or fire, ambulance or other emergency services authorities and any other Emergency Response Agencies or CPR in connection with a CPR Emergency Situation; or
 - (iv) by any other Governmental Authority pursuant to any Law;

and, except as otherwise expressly provided in this Agreement, the Primary Contractor shall not have any Claim whatsoever against the Province, BCTFA, the Police, any fire, ambulance or other emergency services authority and any other Emergency Response Agencies or any other Governmental Authority or CPR for or in respect of the exercise of any rights or powers or the discharge of any other duties or functions by any such authority affecting all or any part of the Site or the Project Infrastructure at any time.

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- (b) Subject to closures or diversions of traffic flow with respect to public streets, roads and highways permitted by Sections 4.6(a)(i) to (iv) and subject to the provisions of Articles 13 [Systems] and 18 [Integration with Transit Facilities], Part 2 of Schedule 4 [Design and Construction], including with respect to Existing Transit Facilities and the Existing SkyTrain System, the Primary Contractor shall cause all Work to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with the convenience of the public in respect of, and the access of the public to and use of, any public or private streets, roads and highways and the Existing Transit Facilities and Existing SkyTrain System, or any part thereof, whether under the control or in the possession of the Province, BCTFA, TransLink, a Transit Operator, a Municipality or any other person.
- (c) The Primary Contractor shall not in the course of performing the Work disrupt the operation of or the delivery of services in connection with any of the Existing Transit Facilities, the Existing SkyTrain System and the Integrated SkyTrain System except as permitted by and in accordance with the provisions of Articles 13 [Systems] and 18 [Integration with Transit Facilities], Part 2 of Schedule 4 [Design and Construction].

4.7 Access to Site and Project Infrastructure by Others

The Primary Contractor shall, subject to and in accordance with the health and safety procedures established by the Primary Contractor pursuant to Section 4.11(d) [Health and Safety Program] for the time being in force in relation to the relevant parts of the Site, ensure that, at all times during the Access Period in respect of any part of the Site and any period referred to in Section 4.11(c)(i)(B) in respect of such part of the Site:

- (a) the Province, BCTFA and the Province's Representative and any employees, contractors, consultants or other persons authorized by any of them, including Third Party Contractors, have access to such part of the Site and the Project Infrastructure located on such part in accordance with Section 13.1 [Province Access] and generally for purposes of inspecting and monitoring the progress of the Work and otherwise exercising their rights and performing their obligations under this Agreement, provided that nothing in this Section 4.7 [Access to Site and Project Infrastructure by Others] shall be construed so as to impede the proper performance of the roles, functions and duties of the Province and BCTFA as set out in this Agreement and under Laws;
- (b) the Province and BCTFA and other Governmental Authorities have access to such part of the Site and the Project Infrastructure located on such part to fulfil any statutory, public or other powers, authorities, discretions, duties or functions;
- (c) the Independent Certifier has access to such part of the Site and the Project Infrastructure located on such part for the purpose of performing its duties under the Independent Certifier Contract;
- (d) the Independent Engineer has access to such part of the Site and the Project Infrastructure located on such part for the purpose of performing its duties under the Independent Engineer Contract;
- (e) the Federal Government and any member of the Management Committee (as defined in the Federal Contribution Agreement) and their designates have access to such part of the

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Site and the Project Infrastructure located on such part in accordance with the Federal Contribution Agreement, subject to reasonable notice being given to the Primary Contractor;

- (f) inspectors and other persons authorized to act on behalf of TransLink, the Municipalities, GVRD and CPR have access to such part of the Site for inspection and acceptance purposes in connection with the Work, subject to notice being given by such persons to the Primary Contractor in accordance with (in the case of the Municipalities) the terms of the Municipal Agreements, (in the case of GVRD) the terms of the GVRD Utility Works Agreement and (in the case of CPR) the terms of the CPR Agreements;
- (g) the owners or operators of any Third Party Facilities and their employees, agents and contractors have unrestricted access to such part of the Site and the Project Infrastructure located on such part at all reasonable times, subject, where applicable, to notice being given by such persons in accordance with the terms of the agreements referred to in Section 4.7(f) and otherwise subject to reasonable notice being given by such persons to the Primary Contractor, to install, operate, manage, maintain, repair, rehabilitate or reconstruct such Third Party Facilities, provided that, subject to the applicable requirements of Laws, the requirements of this Agreement and where applicable the requirements of such other agreements, the Primary Contractor may limit such access so as to not unnecessarily impede or restrict any Work being carried out by the Primary Contractor;
- (h) all Relevant Authorities and Utility Suppliers have access to such part of the Site and the Project Infrastructure located on such part in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Laws or the agreements referred to in Section 4.7(f), subject, where applicable, to notice being given by such persons in accordance with the terms of the agreements referred to in Section 4.7(f) and otherwise subject to reasonable notice being given by such Relevant Authority or Utility Supplier to the Primary Contractor, and provided that, subject to the applicable requirements of the Relevant Authority, Utility Supplier or Laws and the requirements of this Agreement and where applicable the requirements of such other agreements, the Primary Contractor may limit such access so as to not unnecessarily impede or restrict any Work being carried out by the Primary Contractor;
- (i) TransLink, the Municipalities, GVRD, CPR and Utility Suppliers and their employees, agents and contractors have access to such part of the Site and the Project Infrastructure located on such part, subject, where applicable, to notice being given by such persons in accordance with the terms of the agreements referred to in Section 4.7(f) and otherwise subject to reasonable notice being given at all reasonable times, subject, where applicable, to the provisions of this Agreement and where applicable the requirements of such other agreements, for purposes of carrying out works and activities relating to or in connection with the Work, and for purposes of operating and maintaining their own facilities and infrastructure on, in or in the vicinity of the Site and activities in connection therewith; and
- (j) without prejudice to any access rights of any such person as a member of the general public, the Province, BCTFA and any other Governmental Authority, Third Party

Contractors, owners or operators of Third Party Facilities, Relevant Authorities, Utility Suppliers and CPR are permitted to enter upon such part of the Site and the Project Infrastructure located on such part for the purposes of access to and from any other lands or facilities adjacent to or in proximity to the Site and the Project Infrastructure (including any street, road or highway) owned or operated by such person or in which such person has any interest, provided that, subject to the applicable requirements of Laws and the requirements of this Agreement and where applicable the requirements of the agreements referred to in Section 4.7(f), the Primary Contractor may limit such access so as to not unnecessarily impede or restrict any Work being carried out by the Primary Contractor.

4.8 Activity on and Improvements to Site and Project Infrastructure

The Primary Contractor shall not carry on any activity on, or make any changes or improvements to, all or any part of the Site or the Project Infrastructure or make any change in use of all or any part of the Site or the Project Infrastructure, except for the purposes of the Work as expressly required or permitted by, and subject to and in accordance with, the provisions of this Agreement.

4.9 Primary Contractor Plans

Without limiting the obligations of the Primary Contractor to comply with any other Design-Build Requirements, including the preparation and delivery to the Province's Representative of any plans, submittals, programs, drawings, reports and other material, documents and information referred to in the Design-Build Requirements, or any other obligations of the Primary Contractor under this Agreement, the Primary Contractor shall prepare, submit and comply with any and all plans, submittals, programs, drawings, reports and other material, documents and information set out or referred to in this Agreement or in any Schedule to this Agreement, provided that, where the Primary Contractor is required in accordance with this Agreement to submit any such plan, submittal, program, drawing, report or other material, document or information to the Province's Representative pursuant to the Review Procedure or the Consent Procedure or otherwise for the consent, approval or acceptance of the Province or the Province's Representative, such compliance shall, notwithstanding any other provision of this Agreement, be with such plan, submittal, program, drawing, report or other material, documents or information to which there has been no objection under the Review Procedure or which has been accepted under the Consent Procedure or which has otherwise been consented to, approved or accepted in writing by the Province or the Province's Representative, as the case may be.

4.10 Mitigation by Primary Contractor

- (a) Without limiting and in addition to all other obligations to mitigate required by this Agreement or at law, in all cases where the Primary Contractor is entitled under this Agreement to receive from the Province any compensation (including for any Supervening Event or pursuant to Schedule 12 [Compensation on Termination]) or any other costs, damages or other Direct Losses incurred by the Primary Contractor (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, the Primary Contractor shall have a duty to use all reasonable efforts to mitigate and reduce (which reasonable efforts may include by way of competitive procurement for expenditures (where appropriate in accordance with Good Industry Practice or otherwise required by Laws), rescheduling of works and deliveries, and reallocation or redeployment of labour forces and equipment, and pursuing recourse

against insurers and third parties) the amount required to be paid by the Province to the Primary Contractor, the length of the extension of time or the relief to be provided.

- (b) The Primary Contractor shall not be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Primary Contractor, or those parts of any extensions of time or other relief from performance, that the Primary Contractor could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts as required in accordance with the provisions of Section 4.10(a).
- (c) Upon request from the Province, the Primary Contractor shall promptly submit a detailed description, supported by all such documentation as the Province may require, of the measures and steps taken by the Primary Contractor to meet its obligations under Section 4.10(a).
- (d) The Primary Contractor shall require all Subcontractors with which the Primary Contractor contracts directly to assume and carry out the same duty to mitigate as is required of the Primary Contractor under Section 4.10(a), *mutatis mutandis*.
- (e) The Province shall not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Subcontractor or other Primary Contractor Indemnified Person failing to mitigate to the same standard as is required of the Primary Contractor under this Section 4.10 [Mitigation by Primary Contractor].

4.11 Health and Safety

(a) Defined Terms

For purposes of this Section 4.11 [Health and Safety]:

- (i) “**Health and Safety Program**” means an occupational health and safety program as described in Section 4.11(d);
- (ii) “**Notice of Project**” means the notice of project described in the OHS Regulation;
- (iii) “**OLA**” means the *Occupiers Liability Act* (British Columbia); and
- (iv) “**Qualified Coordinator**” means an employee of the Primary Contractor who is qualified within the contemplation of the WCA and the OHS Regulation to discharge the responsibilities of a “qualified coordinator” as described in the WCA and the OHS Regulation.

(b) Site Safety and Security

- (i) The Primary Contractor shall at all times have full regard for the safety of all persons (including users of any Project Infrastructure) on the Site (whether lawfully or not) and shall, during the Access Period (and any period during which access is made available to the Primary Contractor pursuant to Section 2.5(c) or the Primary Contractor otherwise has access) in respect of any part of the Site,

keep such part of the Site in a manner and in an orderly state that ensures the safety of such persons and that is appropriate to the avoidance of danger to such persons, notwithstanding that works may be being carried out thereon by any person to whom the Primary Contractor is required to grant or ensure access to the Site in accordance with Section 4.7 [Access to Site and Project Infrastructure by Others].

- (ii) Without limiting Section 9.8 [Responsibility for Participants and Trespassers] or any other provision of this Agreement, during the Access Period (and any period during which access is made available to the Primary Contractor pursuant to Section 2.5(c) or the Primary Contractor otherwise has access) in respect of any part of the Site, the Primary Contractor shall, in respect of such part of the Site, at all times take such measures as are reasonably required (including hoarding and fencing where appropriate) in respect of the Work being carried out by it to prevent the trespass and access onto such part of the Site of any persons not entitled to be there or of any creatures, objects or things.
- (iii) Without limiting any other provision of this Agreement, during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i) for any part of the Site, the Primary Contractor shall take such care in respect of such part of the Site as, in all relevant circumstances, is reasonable to ensure that persons who enter such part of the Site will be reasonably safe in using the premises pursuant to section 3(1) of the OLA.

(c) Occupational Health and Safety

- (i) Subject to Article 18.4.1(b) and Article 18.10 [Operations and Maintenance Centre], both of Part 2 of Schedule 4, by entering into this Agreement, the Primary Contractor agrees that:
 - (A) during the Access Period in respect of any part of the Site; and
 - (B) subject to Section 4.11(h), during any period during which access to any part of the Site is made available to the Primary Contractor pursuant to Section 2.5(c) or the Primary Contractor otherwise has access for the purposes of performing any Work in accordance with Part 6 [Work and Warranties],

it shall be the Prime Contractor for such part of the Site and that it shall take all steps or measures necessary, through such arrangements as are appropriate, to fulfill its obligations, functions and duties as the Prime Contractor.

- (ii) By not later than 10 Business Days after the Effective Date, the Primary Contractor shall submit to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure a copy of the form of Notice of Project the Primary Contractor proposes for delivery in accordance with the WCA and the OHS Regulation.

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- (iii) Without limiting the Primary Contractor's obligations to fulfill, as of and from the Effective Date all functions and duties of the Prime Contractor, by not later than 30 days after the Effective Date in the case of the matters referred to in Sections 4.11(c)(iii)(A), 4.11(c)(iii)(B) and 4.11(c)(iii)(C) and not later than 60 days after the Effective Date in the case of the matter referred to in Section 4.11(c)(iii)(D), and in any event before the commencement of any of the Work, the Primary Contractor shall:
 - (A) designate a Qualified Coordinator;
 - (B) deliver to the Province written notice of the Qualified Coordinator;
 - (C) deliver to the Province a copy of the Notice of Project required under the WCA and the OHS Regulation; and
 - (D) deliver to the Province written notice confirming that the Health and Safety Program has been initiated and is readily available in accordance with the WCA and the OHS Regulation.

- (d) Health and Safety Program
 - (i) Notwithstanding any limitation in the OHS Regulation regarding the number of workers in any work force, the Primary Contractor shall prepare and submit to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure prior to mobilization by the Primary Contractor to the Site and shall at all times implement and maintain a formal written health and safety program in respect of the Site and updates thereof as appropriate from time to time that:
 - (A) complies with Good Industry Practice and all applicable Laws, including all applicable specifications and standards in the WCA and the OHS Regulation;
 - (B) satisfies the requirements of Section 3.3 of Part 3 of the OHS Regulation;
 - (C) is designed to prevent injuries and occupational diseases within the contemplation of the WCA and the OHS Regulations;
 - (D) provides for the establishment and maintenance of a system or systems and a process or processes to ensure compliance with the WCA and the OHS Regulation and to satisfy the Primary Contractor's obligations in respect of occupational health and safety under this Agreement;
 - (E) without limiting any of the foregoing, deals specifically with controlling the hazards of the Site, including such hazards as may be identified in hazard identifications provided in the Disclosed Data, and as such hazard identifications are updated by the Primary Contractor from time to time;
 - (F) satisfies and addresses all health and safety requirements contained in the Site Requirements; and

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- (G) includes a Tunnel safety plan that, at a minimum, complies with Section 02406 [Tunnel Excavation by TBM], Appendix C [Minimum Considerations for Construction Specifications] of Schedule 4.
- (ii) The Primary Contractor shall prepare and submit to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure updates to the Health and Safety Program as required from time to time to ensure that the Health and Safety Program at all times complies with the requirements of this Agreement, including Section 4.11(d)(i).
- (e) General
 - (i) The Primary Contractor shall at all times during which it is the Prime Contractor for any part of the Site in accordance with Section 4.11(c)(i), in respect of such parts of the Site:
 - (A) post the name of the Qualified Coordinator, and a site drawing showing the boundaries of such parts of the Site with project layout, first aid locations, emergency transportation provisions (including distance to, location of and directions to the closest medical facility) and the evacuation marshalling points relating to such parts of the Site;
 - (B) implement and maintain the Health and Safety Program;
 - (C) ensure that a copy of the Health and Safety Program, the written construction procedures designed to protect the health and safety of workers at such parts of the Site and the WCA and OHS Regulation are readily available at convenient locations within the Site;
 - (D) deliver to the Province's Representative and post within such parts of the Site any and all Notices of Project as may be required by the WCA and the OHS Regulation;
 - (E) when conditions or activities at any location or locations in such parts of the Site affect the workers of more than one employer or where there are overlapping or adjoining work activities by two or more employers, ensure that the Qualified Coordinator coordinates the occupational health and safety activities throughout such parts of the Site and that the Qualified Coordinator alerts all workers to all reasonably foreseeable hazards to which they are likely to be exposed;
 - (F) immediately notify all employers, workers, suppliers and subcontractors and any other persons throughout such parts of the Site of any hazard created by the Work or by overlapping or adjoining work activities of two or more employers and ensure that the hazards are addressed throughout the duration of such activities;
 - (G) immediately deliver to the Province the name of any employer who does not cooperate with, assist or comply with the requirements of the

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Qualified Coordinator regarding coordination of health and safety activities throughout such parts of the Site;

- (H) ensure that no person, including any person employed or otherwise engaged directly or indirectly by the Primary Contractor or any Subcontractor or any other person for whom the Primary Contractor is in law responsible, is permitted to enter upon or otherwise allowed access (other than as a user of any Project Infrastructure) to any part or parts of the Site in respect of which there is for the time being any part of the Work being carried out unless such person complies with the requirements of the Health and Safety Program and all applicable health and safety requirements under applicable Laws; and
 - (I) be and fulfill all functions and duties of the Prime Contractor in compliance with all Laws, including the WCA and the OHS Regulation and the OLA.
- (ii) The Primary Contractor shall, during the periods indicated in this Section 4.11(e)(ii):
- (A) during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i), ensure that the Qualified Coordinator is qualified to discharge the responsibilities thereof, as described in the WCA and the OHS Regulation, including by having knowledge of the Work, the hazards involved and the means to control such hazards and by a combination of training, education and experience, and such a Qualified Coordinator is designated in respect of any parts of the Site for which the Primary Contractor agrees to be the Prime Contractor in accordance with Section 4.11(c)(i);
 - (B) at all times, observe and comply with, and ensure that the performance of the Work (including by conducting worker safety orientations, health and safety meetings, safety inspections and accident and incident investigations) complies with, all Laws relating to occupational health and safety, including the WCA and the OHS Regulation;
 - (C) at all times, ensure that, in relation to the Work, all assessments, levies, penalties, fees and fines which may be made under any and all Laws relating to occupational health and safety, including the WCA and the OHS Regulation, are punctually paid as they become due;
 - (D) during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i), be qualified to fulfill all functions and duties of the Prime Contractor as required under all Laws including the WCA and the OHS Regulation;
 - (E) during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i), establish and maintain a joint health and safety committee and ensure that such committee fulfils its functions under the WCA and the OHS Regulation;

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- (F) at all times, ensure that the activities of employers, workers and other persons relating to occupational health and safety in respect of the Work are coordinated;
- (G) at all times, in the event of an accident or incident arising from performance of the Work that requires notification to the Workers' Compensation Board or to any other applicable body, department or agency, ensure that a copy of such notification is provided to the Province at the same time as the notification is delivered to the Workers' Compensation Board or other applicable body, department or agency, and provide ongoing information to the Province on the progress of any investigation resulting from such notice, accident or incident;
- (H) at all times (save as expressly provided in Section 4.11(e)(ii)(H)(2)), record, collect and retain all occupational health and safety records and documentation, including notices, reports, directives and penalty assessments in respect of the Work, and, on request of the Province, make these available, including by providing copies of such records and documentation, to the Province. Such records and documentation shall include the following:
 - (1) notices which the Primary Contractor is required to provide to the Workers' Compensation Board or to any other federal or provincial applicable body, department or agency;
 - (2) during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i), monthly summaries of remedial actions taken by the Primary Contractor to reduce occupational health and safety hazards within the Site;
 - (3) directives and inspection reports issued by or through the Workers' Compensation Board or any other federal or provincial applicable body, department or agency to the Primary Contractor in connection with the Site, the Project or the performance of the Work;
 - (4) reports and investigations on incidents and accidents which are required from the Primary Contractor by the Worker's Compensation Board or any other federal or provincial applicable body, department or agency under any Laws relating to health and safety, including the WCA and the OHS Regulation, to be investigated;
 - (5) records, including minutes, of safety meetings and tailgate meetings involving the Primary Contractor; and
 - (6) evidence that instruction and health and safety orientation and training for workers within the Site for whom the Primary Contractor is in law responsible is being conducted in

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accordance with any Laws relating to health and safety, including the WCA and the OHS Regulation;

- (I) upon the request of the Province's Representative from time to time:
 - (1) deliver to the Province's Representative evidence of the implementation and maintenance of the Health and Safety Program in accordance with Section 4.11(d) and that a system or systems or a process or processes have been put into place to ensure compliance with the WCA and the OHS Regulation and to satisfy the Primary Contractor's obligations in respect of occupational health and safety under this Agreement;
 - (2) provide the Province's Representative with evidence satisfactory to the Province of compliance by the Primary Contractor with the WCA and the OHS Regulation and its obligations in respect of occupational health and safety pursuant to this Agreement, including where applicable the compliance by the Primary Contractor and its Subcontractors and all other persons for whom the Primary Contractor is in law responsible with all applicable Laws relating to health and safety, including the WCA and the OHS Regulation, including being registered, in good standing and current in respect of all assessments, levies, penalties, fees and fines thereunder; and
 - (3) make available to the Province's Representative access to and copies of any records and documentation maintained by the Primary Contractor pursuant to Section 4.11(e)(ii)(H).
- (f) Health and Safety Programs of Others

For any period in respect of which the Primary Contractor is not the Prime Contractor in respect of any part of the Site, the Primary Contractor shall familiarize itself with the health and safety program of the owner or operator of the Site or any part thereof to which the Primary Contractor has access, or of such owner or operator's Prime Contractor, and the Primary Contractor shall ensure that each person for whom the Primary Contractor is in law responsible, including any person employed or otherwise engaged directly or indirectly by the Primary Contractor or any Subcontractor or any other person engaged or involved in the performance of the Work and their respective representatives, agents, employees and contractors, complies with such health and safety program in accordance with Section 4.11(h) [Other Prime Contractors].

- (g) Refusal to Recognize Primary Contractor as Prime Contractor

If the Workers' Compensation Board or any other federal or provincial applicable body, department or agency refuses to recognize or accept the Primary Contractor at any time as the Prime Contractor for any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i), including by making a declaration to that effect, then:

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- (i) the Primary Contractor shall not be relieved of any such obligations, duties and liabilities as Prime Contractor but shall be responsible to the Province and BCTFA and to those for whom the Primary Contractor would have been responsible if the Primary Contractor had been accepted or recognized by the Workers' Compensation Board or such other federal or provincial body, department or agency as the Prime Contractor for fulfilling all obligations, duties and liabilities imposed on the Province or BCTFA or any contractor or subcontractor of any tier of the Province or BCTFA pursuant to the WCA and the OHS Regulation or any other Laws relating to health and safety in the same manner and to the same extent and for the same purposes as if the Primary Contractor undertook the obligations of a Prime Contractor for any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i); for greater certainty, the liabilities for which the Primary Contractor is in law responsible under this Section 4.11 [Health and Safety] include the liability for any assessments, levies, penalties, fees or fines assessed, levied or charged from time to time against the Primary Contractor or against the Province or BCTFA based on the number of employees employed in relation to the Project, or otherwise; and

- (ii) if, for any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i), the Workers' Compensation Board recognizes or accepts, including by making a determination to that effect, any Subcontractor as the Prime Contractor, or if any other federal or provincial applicable body, department or agency makes a similar decision or determination, then the Primary Contractor shall not be considered to be in breach of this Agreement solely by reason of such refusal or determination by the Workers' Compensation Board or such decision or determination by such other federal or provincial body, department or agency, provided that and only to the extent that:
 - (A) the Primary Contractor has not failed to observe, abide by or comply with any term of this Section 4.11 [Health and Safety] or any other provision of this Agreement;
 - (B) such refusal to recognize or accept, or other determination, of the Workers' Compensation Board or such decision or determination of such other federal or provincial body, department or agency was for a reason other than a failure by any person, including for greater certainty by the Primary Contractor, to discharge the duties as a Prime Contractor under the WCA or the OHS Regulation or under any other Laws relating to health and safety;
 - (C) the Primary Contractor has not entered into a contract with any person, including any Subcontractor, under which that person has agreed to be the Prime Contractor in connection with the Work or any part of the Site and, for greater certainty, nothing in this subsection prevents the Primary Contractor from entering into such arrangements as are appropriate to fulfill its obligations as the Prime Contractor;

- (D) the Primary Contractor indemnifies and holds harmless the Province and BCTFA, and each of them, in connection with any and all Direct Losses or Claims arising in connection with any refusal or declaration contemplated in this Section 4.11(g), including any acceptance, recognition, determination or decision contemplated in this Section 4.11(g)(ii), any failure contemplated under Section 4.11(g)(ii)(A) and Section 4.11(g)(ii)(B), or any contract contemplated under Section 4.11(g)(ii)(C) (including, for greater certainty, any assessments, levies, penalties, fees or fines assessed or charged against the Province or BCTFA based on the number of employees employed in relation to the Project or otherwise); and
 - (E) the Primary Contractor shall make, do, execute and cause to be made, done and executed all further and other acts, deeds, instruments, agreements and assurances as the Province or BCTFA may require for the performance of the Prime Contractor obligations at all times and from time to time.
- (iii) At the Province's request from time to time, the Primary Contractor shall provide the Province with evidence satisfactory to the Province of compliance by the Primary Contractor with its obligations under this Section 4.11 [Health and Safety], including where applicable compliance of the Primary Contractor and its agents and all Subcontractors and its or their directors, officers, employees and workers in relation to the Project with the WCA and the OHS Regulation, including being registered, in good standing and current in respect of all assessments, levies, penalties, fees and fines thereunder.
- (h) Other Prime Contractors
- (i) Notwithstanding Section 4.11(c)(i), there may (in the case of Section 4.11(h)(i)(A)) or shall (in the case of Section 4.11(h)(i)(B)) be circumstances (including following Substantial Completion) in which the Primary Contractor will be required to perform parts of the Work under the direction of another Prime Contractor (in this Section, the "**Other Prime Contractor**"), who:
 - (A) may have been appointed by the Province, BCTFA or TransLink; or
 - (B) in the case of the OMC, Lougheed Town Centre Station and the Existing Millennium Line and, after the Substantial Completion Date, the Integrated Sky Train System, shall be TransLink;

(in this Section 4.11(h), the lands and/or premises upon which the relevant parts of the Work are to be performed are referred to as the "**Separate Site**").

Except where TransLink is the Other Prime Contractor, the Province shall provide prior written notice of any such circumstances and shall notify the Primary Contractor of the identity of the Other Prime Contractor, the location or locations of the Separate Site, the period of time in question and reasonable

particulars of the work for which the Other Prime Contractor is in law responsible.

- (ii) The Primary Contractor agrees that, on receipt of such written notice or where TransLink is the Other Prime Contractor, the Primary Contractor shall not be the Prime Contractor for the specified period or in respect of such Separate Site and shall at all times in good faith and at the cost of the Primary Contractor:
 - (A) coordinate with and comply with the occupational health and safety requirements of the Other Prime Contractor, including requirements of the Other Prime Contractor to coordinate health and safety activities;
 - (B) ensure compliance with the health and safety program of the Other Prime Contractor by the Primary Contractor and all Subcontractors, including by developing a system to ensure such compliance; and
 - (C) upon the request of the Province, deliver to the Province evidence that the system referenced in Section 4.11(h)(ii)(B) is in place and is being adhered to.
- (iii) Except where TransLink is the Other Prime Contractor, the Province may on conclusion of the works and activities referenced in Section 4.11(h)(i) deliver written notice to the Primary Contractor of the conclusion of such works and activities (if prior to the Substantial Completion Date) and the Primary Contractor agrees that, upon receipt of such notice, the Primary Contractor shall be and shall fulfill the responsibilities of the Prime Contractor as set out in this Section 4.11 [Health and Safety] at the Separate Site.

(i) Notice of Failure to Comply

- (i) In this Section 4.11 [Notice of Failure to Comply], the terms “**employer**” and “**workers**” do not include the Primary Contractor or any Subcontractors or the employees of any of them.
- (ii) If the Primary Contractor determines in its reasonable discretion that any employer or its workers has created an unsafe or harmful condition or has done or omitted to do something that constitutes an unsafe or harmful act, or has failed to comply with the WCA, the OHS Regulation or the Health and Safety Program, and that on written notice from the Primary Contractor to the employer of such condition, act or failure, the employer has failed or refused to take action to correct the condition, act or failure, including any condition, act or failure of a worker, the Primary Contractor may issue a notice (in this Section, a “**Notice of Failure to Comply**”) to the applicable employer, stipulating in reasonable detail the basis for the issuance of the Notice of Failure to Comply, and the Primary Contractor shall deliver a copy of the Notice of Failure to Comply to the Province.
- (iii) On receipt of the Primary Contractor’s Notice of Failure to Comply referenced in Section 4.11(i)(ii), the Province may take whatever action the Province deems necessary, including in accordance with Section 13.5 [Province’s Other Step-in

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Rights], to ensure that any risk to workers is eliminated or minimized, and such action may include suspension of work at the location specified in the Notice of Failure to Comply, and suspension of any payment due by the Province to any person, including to the Primary Contractor.

- (iv) The Province shall be deemed to have relied on the terms of and the reasons set out in the Notice of Failure to Comply, notwithstanding any subsequent investigation or inquiry of the matter by the Province, which the Province may but will not be obligated to undertake, and the Primary Contractor shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in connection with any and all Direct Losses or Claims (except only to the extent such Direct Losses or Claims are caused directly by a Province Non-Excusable Event) arising in connection with the issuance of any Notice of Failure to Comply by the Primary Contractor and any acts or omissions of the Province in reliance on such Notice of Failure to Comply.
- (v) On rectification of the condition, act or failure set out in a Notice of Failure to Comply issued by the Primary Contractor, the Primary Contractor shall withdraw the Notice of Failure to Comply by endorsing on a copy thereof confirmation of the rectification, and the Primary Contractor shall deliver a copy of the endorsed Notice of Failure to Comply to the applicable employer and to the Province.
- (vi) On receipt of a copy of the endorsed Notice of Failure to Comply referenced in Section 4.11(i)(v), the Province will, if the Province suspended work or payments under Section 4.11(i)(iii), issue an order to resume work or release any payments, as the case may be.

4.12 Permits

- (a) The Primary Contractor shall, or shall cause the Subcontractors, as the case may be, at its or their sole cost, to:
 - (i) obtain all Permits (excluding Province Permits), subject to Article 3.2 [Permits and Fees], Part 1 of Schedule 4 [Design and Construction], and to do so by the time required or contemplated by the terms of this Agreement to permit it to perform its relevant obligations hereunder;
 - (ii) renew, amend or extend, as applicable, all Permits (excluding Province Permits), and to do so by the time required or contemplated by the terms of this Agreement to permit it to perform its relevant obligations hereunder;
 - (iii) maintain in good standing all Permits (excluding Province Permits); and
 - (iv) comply with each Permit in accordance with its terms, including complying with all requirements and obligations in respect of all Province Permits.
- (b) Where Permits that are the Primary Contractor's obligation to obtain, renew, amend or extend under Section 4.12(a) have requirements that may impose any conditions, liabilities, obligations or costs on the Province or BCTFA or on any person other than the Primary Contractor, the Subcontractors and other persons for whom the Primary

Contractor is in law responsible, the Primary Contractor shall, prior to obtaining, renewing, amending or extending such Permits, seek the acceptance of the Province's Representative, acting reasonably, pursuant to the Consent Procedure, provided, however, that, except as provided in Section 2.2(d)(i) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], neither the Province nor BCTFA shall be responsible for obtaining or for any delay in obtaining or failure to obtain any such Permit, renewal, amendment or extension.

- (c) Where the Primary Contractor or any Subcontractor, as the case may be, is unable to apply for or to obtain, renew, amend or extend any Permit that it is the Primary Contractor's obligation to obtain, renew, amend or extend under this Section without obtaining information or administrative assistance from the Province or BCTFA or without submitting the application for such Permit or renewal or extension in the name of the Province or BCTFA, each of the Province and BCTFA shall, at the Primary Contractor's cost and expense, provide or cause to be provided such information and administrative assistance as the Primary Contractor may reasonably request and the Province or BCTFA may reasonably be able to provide and, if requested, shall execute or cause to be executed such applications as are required to be in its name, to assist the Primary Contractor or such Subcontractor, as the case may be, in obtaining, renewing, amending or extending such Permit.
- (d) The Primary Contractor at its expense shall provide or cause to be provided such information, documentation and administrative assistance as may be requested by the Province's Representative and as the Primary Contractor may be reasonably able to provide and, if requested, shall execute such applications as are required to be in its name, to enable the Province, BCTFA or TransLink to apply for, obtain and (without limiting the Primary Contractor's obligations under Section 4.12(a)) renew, amend or extend, and comply with and demonstrate compliance with requirements and obligations under, Province Permits.
- (e) The Primary Contractor shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims that the Province and the Province Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of:
 - (i) the satisfaction and performance of all conditions, liabilities and obligations imposed on the Province or BCTFA by Permits obtained, renewed or extended by the Primary Contractor in accordance with Section 4.12(b) or Section 4.12(c) and the payment of all costs in respect thereof;
 - (ii) the provision of information or administrative assistance by the Province or BCTFA, and the execution of any applications by the Province or BCTFA, in accordance with Section 4.12(c) and the payment of all costs in respect thereof, regardless of whether or not the Primary Contractor ultimately is able to obtain, renew, amend or extend the relevant Permit as a result of the provision of such assistance or the execution of such applications by the Province or BCTFA;
 - (iii) any inability of the Province, BCTFA or TransLink to obtain or, as applicable, renew or extend any Province Permit, or any increased cost to the Province or

BCTFA of obtaining or, as applicable, renewing or extending any Province Permit, as a result of any act or omission of the Primary Contractor or any Subcontractor or any other person for whom the Primary Contractor is in law responsible; or

- (iv) any cost to the Province, BCTFA or TransLink of complying with any condition included in any Province Permit to the extent that such condition was included in the Province Permit as a result of any act or omission of the Primary Contractor or any Subcontractor or any other person for whom the Primary Contractor is in law responsible.

4.13 Agreements with Governmental Authorities

- (a) The Primary Contractor, subject to Section 4.13(b) but without limiting any other provision of this Agreement, shall enter into or cause to be entered into any agreement with any Governmental Authority or other person required in connection with the Work or to enable the Primary Contractor to perform the Work in accordance with the terms of this Agreement, provided that, if either or both of the Province and BCTFA will be bound or affected in any way by any such agreement, the Primary Contractor shall seek the acceptance of the Province's Representative, in its discretion, to the terms of such agreement pursuant to the Consent Procedure before entering into the agreement.
- (b) If the Province's Representative consents to either or both of the Province and BCTFA being a party or parties to any agreement referred to in Section 4.13(a), the Primary Contractor shall assist either or both of the Province and BCTFA (as the case may be) in entering into such agreement; provided, however, that the Primary Contractor shall not be relieved of any of its obligations under Section 4.13(a) or any other provision of this Agreement as a result of any such consent of the Province's Representative or assistance provided by the Primary Contractor; and provided further that, if either or both of the Province or BCTFA incurs or shall incur any liability or obligation under any such agreement, the form and substance of the agreement shall be subject to the prior approval of either or both of the Province and BCTFA (as the case may be) (which approval may be granted or withheld by the Province or BCTFA in its discretion) and, as between the Province and BCTFA and the Primary Contractor, unless otherwise agreed in writing by the parties, the Primary Contractor shall discharge such liabilities and perform such obligations and shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any failure of the Primary Contractor to discharge such liabilities or perform such obligations.

4.14 Archaeological and Heritage Objects

- (a) The Primary Contractor shall carry out all archaeological surveys, inspections, impact assessments and other archaeological works specified as part of, and shall consult with archaeologists specified by the Province as required by, the Design-Build Requirements.
- (b) As between the parties, all fossils, remains, coins, articles of value or antiquity and other objects having archaeological, artistic, historic or monetary interest or value, including all heritage objects (as defined in the *Heritage Conservation Act* (British Columbia)), that may be found on, at or in the Site or otherwise during the carrying out of the Work are

and shall be, as between the Primary Contractor and any Subcontractor on the one hand, and the Province on the other, the sole and absolute property of the Province.

- (c) Upon the discovery of any object referred to in Section 4.14(b) on, at or in the Site or otherwise during the carrying out of the Work, the Primary Contractor shall:
- (i) immediately inform the Province's Representative;
 - (ii) take all steps not to disturb the object and, if necessary, cease any Work in so far as performing such Work would or is reasonably likely to endanger the object or prevent or impede its excavation;
 - (iii) take all necessary steps to preserve the object in the same position and condition in which it was found; and
 - (iv) comply with all Laws and requirements of Governmental Authorities with respect to the discovery of such item, including pursuant to the *Heritage Conservation Act* (British Columbia),

and the discovery of such object and compliance by the Primary Contractor with its obligations under this Section 4.14(c) shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply.

- (d) If the Province wishes the Primary Contractor to perform procedures which are in addition to those required pursuant to Section 4.14(c) in respect of any object referred to in Section 4.14(b), then the Province's Representative shall request a Province Change pursuant to Section 8.1 [Province Changes] in respect of such additional procedure.

4.15 Primary Contractor's Representations and Warranties

The Primary Contractor represents and warrants to the Province and BCTFA, and acknowledges that the Province and BCTFA are relying upon such representations and warranties in entering into this Agreement and the other Province Project Documents, that at the date of this Agreement:

- (a) the Primary Contractor is a corporation duly incorporated under the laws of Alberta, is extra-provincially registered to conduct business in British Columbia and has full power and capacity to enter into and to carry out the transactions contemplated by, and to duly observe and perform all its obligations contained in, this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by the Primary Contractor pursuant to this Agreement or such other Project Documents, and to carry out the Work;
- (b) the execution and delivery by the Primary Contractor of this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by it pursuant to this Agreement and such other Project Documents, and the completion of the transactions contemplated by this Agreement and such other Project Documents, have been duly authorized by all necessary corporate action on the part of the Primary Contractor, and this Agreement and each other Project Document to which the Primary Contractor is a party and to be executed and delivered on or before the date of this Agreement has been duly executed

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and delivered on behalf of the Primary Contractor and constitutes a legal, valid and binding obligation of the Primary Contractor enforceable in accordance with its terms, except to the extent that the effectiveness of any enforcement action may be limited by bankruptcy, insolvency, liquidation, reorganization or similar laws of general application affecting creditors' rights generally and except that equitable remedies are in the discretion of the court;

- (c) the entry into and performance of this Agreement by the Primary Contractor do not and shall not:
 - (i) conflict with its constating documents; or
 - (ii) conflict with any document which is binding upon it or any of its assets to the extent that such conflict would have or be reasonably likely to have a material adverse effect on the performance by the Primary Contractor of its obligations under this Agreement;
- (d) all agreements and consents of third parties required for:
 - (i) the execution by the Primary Contractor of this Agreement and the other Project Documents to which it is a party have been received; and
 - (ii) the performance by the Primary Contractor of its obligations under this Agreement and the other Project Documents to which it is a party have been received (other than any such agreements or consents that are not required or contemplated by the terms of this Agreement or relevant other Project Document to be obtained prior to the Effective Date);
- (e) since the date of the Proposal:
 - (i) there has been no material reduction in the collective qualifications and expertise of the Primary Contractor and the Subcontractors to perform the Work; and
 - (ii) there has been no material adverse change in the financial condition of the Primary Contractor or any Guarantor;
- (f) all statements, representations and information provided in the Proposal, including in relation to the Primary Contractor, are correct and accurate in all material respects and did not omit any information required to make such statements, representations and information not misleading when taken as a whole, except to the extent the Primary Contractor has in writing expressly advised the Province of any incorrectness or inaccuracy prior to the date of execution of this Agreement by the Province;
- (g) the Primary Contractor has no knowledge of any fact that materially adversely affects or, so far as it can reasonably foresee, could reasonably be expected to materially adversely affect either the financial condition of the Primary Contractor or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;

- (h) the Primary Contractor is not a party to or, to its knowledge, threatened with any litigation or Claim that, if successful, would materially adversely affect the financial condition of the Primary Contractor or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (i) the information set out in Section 3.5 [Primary Contractor Ownership Information] of Schedule 2 [Representatives, Review Procedure and Consent Procedure] is true and accurate in all respects and, except as provided in the Initial Senior Lending Agreements, there is not outstanding any offer, agreement or other arrangement whereby any person is at the date of this Agreement or at any time thereafter entitled to or obligated to subscribe for or take by means of transfer or conversion of any form of investment or security, any Shares or any securities or voting rights in the Primary Contractor (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against the Primary Contractor or any other person);
- (j) the copies of the constating documents of the Primary Contractor certified by an appropriate officer of the Primary Contractor, and delivered to the Province pursuant to paragraph (l)(i) of Part 1 of Schedule 21 [Closing Deliveries], are true and accurate;
- (k) the copies of the Initial Senior Lending Agreements and Principal Subcontracts certified by appropriate officers of the Primary Contractor, and delivered to the Province pursuant to paragraphs (h) and (b) of Part 1 of Schedule 21 [Closing Deliveries], are true and accurate;
- (l) the Initial Lending Agreements are the only Lending Agreements in effect;
- (m) the financial arrangements and other terms set out in the Initial Lending Agreements constitute the manner in which the Primary Contractor will finance the Project;
- (n) the Primary Contractor has delivered to the Province true copies of all agreements to which the Primary Contractor is a party that are material to the Work or to the affairs of the Primary Contractor in relation to the Work;
- (o) all of the Principal Subcontractors and Key Individuals are available to carry out their obligations in respect of the Work in accordance with this Agreement;
- (p) each of the Project Documents has been executed and delivered by all parties thereto other than the Province and BCTFA, the copies of the Project Documents that the Primary Contractor has delivered to the Province and BCTFA are true and complete copies of such documents, and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;
- (q) neither the Primary Contractor nor any Subcontractor, nor the employees of any of them, nor any other person for whom the Primary Contractor is in law responsible, has, prior to the date of this Agreement, done or caused to be done any of the matters or things referred to in Section 4.4(b) or Section 4.5 [Prohibited Acts], provided that this representation and warranty shall not apply to Thales;

- (r) the Primary Contractor is not currently subject to any charge, conviction, ticket, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order or proceeding under any Environmental Laws that might reasonably be expected to have a material adverse effect on the performance by the Primary Contractor of its obligations under this Agreement; and
- (s) none of the Primary Contractor, Holdco, SLI or SNC Group is a Restricted Person.

4.16 Without Prejudice

Any covenant, representation, warranty or undertaking made or given by the Primary Contractor under any provision of this Agreement is without prejudice to or limitation of any covenant, representation, warranty or undertaking made or given by the Primary Contractor under any other provision of this Agreement.

4.17 Survival of Representations and Warranties

All representations and warranties made or given by the Primary Contractor under any provision of this Agreement, including pursuant to Section 4.15 [Primary Contractor's Representations and Warranties], or in any certificate or other document delivered by or on behalf of the Primary Contractor at the time of execution of this Agreement, are given at the date of execution of this Agreement and shall, unless expressly provided otherwise, survive the execution and delivery of this Agreement and are not mitigated or affected by the delivery to or receipt by the Province or BCTFA of any certificates, documents, instruments or agreements, including pursuant to Section 4.15 [Primary Contractor's Representations and Warranties], or by any prior or subsequent investigation by or on behalf of the Province, BCTFA or any other person.

4.18 Informational Rights

The Primary Contractor shall provide to the Province's Representative:

- (a) promptly and in any event within five Business Days following the date on which the Primary Contractor receives the same, true and complete copies of any notices, complaints or orders (including directives and work orders) of violation or non-compliance or liability received by the Primary Contractor or any of its Subcontractors from any Governmental Authority or any other person in respect of any matter relating to the Project, the Work, the Site or the Project Infrastructure;
- (b) promptly and in any event within five Business Days following the date on which the Primary Contractor becomes aware of the same, a notice describing any fact, development or other matter of which the Primary Contractor has become aware that could reasonably be expected to prevent the achievement of Substantial Completion on or before the Substantial Completion Target Date, the achievement of Total Completion on or before the Total Completion Target Date, the achievement of Availability Demonstration Completion on or before the Availability Demonstration Completion Target Date or the achievement of TIDS Performance Demonstration Completion on or before the TIDS Performance Demonstration Completion Target Date;

- (c) promptly and in any event within five Business Days following the date on which the Primary Contractor becomes aware of the same, a notice describing any litigation or other proceeding or Claim which has been commenced or threatened:
 - (i) against any of the Primary Contractor, a Subcontractor, the Province or BCTFA in respect of or relating to the Project; or
 - (ii) against any Subcontractor (other than in respect of or relating to the Project) in excess of \$5,000,000.00;
- (d) promptly and in any event within five Business Days following the date on which the Primary Contractor receives the same, any environmental notices from any Governmental Authority or any pending or threatened action, claim or proceeding involving any violation of Environmental Laws with respect to the Project or the Work or any Hazardous Substance affecting the Site or the Project Infrastructure;
- (e) promptly and in any event within five Business Days following the date on which the Primary Contractor becomes aware of the same, a notice describing any proposal to suspend or abandon the Project or the Work;
- (f) promptly and in any event within five Business Days following the date on which the Primary Contractor becomes aware of the same, a notice describing any material default or event of default of any party (including the Primary Contractor) under any Project Document to which the Primary Contractor is a party;
- (g) promptly and in any event within five Business Days following the date on which the Primary Contractor becomes aware of the same, a notice describing any expropriation of any property or assets of the Primary Contractor or comprising part of the Site or the Project Infrastructure; and
- (h) promptly and in any event within five Business Days following the date on which the Primary Contractor becomes aware of the same, a notice describing any event or occurrence which is reasonably likely to give rise to a Claim:
 - (i) against any of the Primary Contractor, a Subcontractor, the Province or BCTFA in respect of or relating to the Project; or
 - (ii) against any Subcontractor (other than in respect of or relating to the Project) in excess of \$5,000,000.00.

4.19 Notification of Discrepancy, Error or Omission

The Primary Contractor shall notify the Province's Representative, in writing and without delay, if at any time the Primary Contractor becomes aware of any discrepancy, error, omission, conflict, inconsistency or ambiguity in this Agreement, including the Design-Build Requirements.

4.20 Quality Management

- (a) The Primary Contractor acknowledges and agrees that the Primary Contractor is solely responsible for the quality of the Work and that a comprehensive Quality Management

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System is critical for the proper, effective and timely completion of the Work. The Primary Contractor shall develop and implement a Quality Management System in accordance with the requirements of Schedule 6 [Quality Management].

- (b) The Primary Contractor is responsible for all quality assurance and quality control activities set out in Schedule 6 [Quality Management] and as are otherwise required in accordance with Good Industry Practice to manage its own processes as well as the processes of Subcontractors. The Primary Contractor shall ensure that all aspects of the Work are the subject of a Quality Management System that complies with the provisions of Schedule 6 [Quality Management] and Good Industry Practice, and shall comply with and cause each of the Subcontractors and the employees of each of them to comply with the requirements of such Quality Management System. For greater certainty, and without limiting the Primary Contractor's ability to contractually assign matching responsibilities and obligations to Subcontractors in accordance with this Agreement, the Primary Contractor shall not be relieved of any of the Primary Contractor's responsibilities or obligations set out in Schedule 6 [Quality Management] or any other provision of this Agreement by the assignment of such responsibilities or obligations to Subcontractors.

4.21 Removal of Persons from Site

The Primary Contractor shall remove forthwith from the Site any person for whom the Primary Contractor is in law responsible who engages in misconduct or is incompetent or negligent in the performance of any duties or whose presence on the Site is otherwise undesirable.

PART 5 FINANCING OF THE PROJECT

5.1 [Intentionally Not Used]

5.2 Restrictions on Changes to Senior Lending Agreements

Subject to Sections 5.3 [Permitted Borrowing] and 5.4 [Exempt Transaction], the Primary Contractor shall not (and shall ensure that no Contracting Affiliate of the Primary Contractor shall):

- (a) terminate or permit the termination of any Senior Lending Agreement to which the Primary Contractor (or its Contracting Affiliate, if applicable) is a party;
- (b) assign or permit the assignment of any Senior Lending Agreement to which the Primary Contractor (or its Contracting Affiliate, if applicable) is a party;
- (c) make or agree to or permit the making of any material amendment to or material variation of any Senior Lending Agreement to which it is a party;
- (d) waive or fail to enforce any material rights the Primary Contractor (or its Contracting Affiliate, if applicable) may have under, or allow others to depart in any material respect from their material obligations under, any Senior Lending Agreement to which the Primary Contractor (or its Contracting Affiliate, if applicable) is a party;
- (e) enter into any agreement or document that would materially affect the interpretation or application of any Senior Lending Agreement;

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- (f) enter into any contract or agreement in replacement of a Senior Lending Agreement; or
- (g) enter into any Senior Lending Agreement other than the Initial Senior Lending Agreements,

unless full particulars of the relevant documents and proposed course of action have been submitted to the Province's Representative pursuant to the Review Procedure and have been accepted by the Province's Representative, acting reasonably, in accordance with the Review Procedure.

5.3 Permitted Borrowing

In the case of any action under or transaction with respect to any Senior Lending Agreement that consists solely of a Permitted Borrowing:

- (a) the Province's Representative shall not have a right of objection or consent, and Section 5.2 [Restrictions on Changes to Senior Lending Agreements] shall not apply; and
- (b) in the case of any Additional Permitted Borrowing, the Primary Contractor shall, forthwith after the occurrence of such Permitted Borrowing and in any event no later than 10 Business Days thereafter, submit to the Province full particulars of the relevant documents and course of action comprising the Permitted Borrowing, including particulars of:
 - (i) any action contemplated by any of Sections 5.2(a) to (g) inclusive; and
 - (ii) why the action or transaction constitutes a Permitted Borrowing, including information with respect to the matters referred to in Sections 5.7 [Changes Not to Increase Province's Liability] and 5.8 [Restricted Persons Prohibited].

5.4 Exempt Transaction

In the case of any action under or transaction with respect to any Senior Lending Agreement that consists solely of an Exempt Transaction:

- (a) the Province's Representative shall not have a right of objection or consent and Section 5.2 [Restrictions on Changes to Senior Lending Agreements] shall not apply; and
- (b) the Primary Contractor shall, forthwith after becoming aware of the occurrence of such Exempt Transaction and in any event no later than 10 Business Days after becoming aware of the Exempt Transaction, submit to the Province full particulars of the relevant documents (to the extent available to the Primary Contractor) and course of action comprising the Exempt Transaction including particulars of:
 - (i) any action contemplated by any of Sections 5.2(a) to (g) inclusive; and
 - (ii) why the action or transaction constitutes an Exempt Transaction, including information with respect to the matters referred to in Sections 5.7 [Changes Not to Increase Province's Liability] and 5.8 [Restricted Persons Prohibited].

5.5 Copies of Documents

If, at any time, any action or matter referred to in any of Sections 5.2(a) to (g) inclusive occurs, the Primary Contractor shall deliver to the Province's Representative a conformed copy of each document or, if not in writing, a true and complete record thereof in writing, within 10 Business Days after the date of its execution or creation or the occurrence of such action, certified as a true copy or accurate and complete record (as the case may be) by an officer of the Primary Contractor.

5.6 Payment of Province's Costs

- (a) If particulars of any proposed documents or course of action are submitted to the Province's Representative pursuant to any provision of this Part, or if the Primary Contractor requests any consent or approval pursuant to any provision of this Part, or if any action, transaction, event or circumstance occurs or is proposed that requires the consent or approval of the Province or the Province's Representative under any provision of this Part 5 or to which the Province or the Province's Representative has a right of review or objection under this Part, the Primary Contractor shall pay to the Province, in accordance with the remaining provisions of this Section 5.6 [Payment of Province's Costs], all reasonable and proper costs and expenses incurred by the Province in connection with reviewing any such submission, request, action, transaction, event or circumstance or making a determination as to the making of an objection or the giving or withholding of consent or approval or any other matter required in connection therewith or related thereto, whether or not any objection is made or any consent or approval is given or any other action is taken by the Province or the Province's Representative and whether or not the proposed course of action takes place, such costs and expenses to include professional and legal costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged to or incurred by the Province, and the Province's reasonable internal administrative and personnel costs.
- (b) At the time of the Primary Contractor's submission to the Province's Representative pursuant to Section 5.2 [Restrictions on Changes to Senior Lending Agreements], or pursuant to any other Section in this Part 5 pursuant to which the Province or the Province's Representative has a right of review, objection, consent, approval, verification or other action, and as a condition precedent to the commencement of any time period specified for the Province or the Province's Representative to object, consent, approve 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, 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 5.6 [Payment of Province's Costs] in respect of such submission.
- (c) The Province may from time to time invoice the Primary Contractor for amounts to be paid by the Primary Contractor under this Section 5.6 [Payment of Province's Costs]. For each particular matter submitted to the Province's Representative, such invoices shall be paid first out of any funds provided by the Primary Contractor under Section 5.6(b) with respect to the matter, to the extent such funds have not been applied to previous invoices. When the aggregate of amounts invoiced in respect a matter exceeds the amount of any funds provided by the Primary Contractor under Section 5.6(b) with respect to the matter, the Primary Contractor shall pay to the Province within 10 Business

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Days after invoicing the amount of the excess and the amount of any subsequent invoices in respect of the matter.

- (d) After any relevant decision or action of the Province or the Province's Representative is rendered or any action contemplated by the submission or request has been taken, the Province shall invoice the Primary Contractor for all amounts to be paid by the Primary Contractor under this Section 5.6 [Payment of Province's Costs] not previously invoiced by the Province or the Province shall refund any overpayment by the Primary Contractor on account of amounts to be paid by the Primary Contractor under this Section 5.6 [Payment of Province's Costs], and, if invoiced in accordance with Section 5.6(d), the Primary Contractor shall pay any amount owing by it under this Section 5.6 [Payment of Province's Costs] within 10 Business Days after receipt of such invoice.
- (e) The foregoing provisions of this Section 5.6 [Payment of Province's Costs] shall not apply in the case of any action or transaction that consists solely of an Exempt Transaction or a Permitted Borrowing to which Section 5.3(b) applies.

5.7 Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement and without prejudice to the rights of the Province under the other provisions of this Part, (1) no action referred to in any of Sections 5.2(a) to (g) inclusive, whether or not consented to or permitted under any of Sections 5.2 [Restrictions on Changes to Senior Lending Agreements], 5.3 [Permitted Borrowing] and 5.4 [Exempt Transaction], (2) no amendment, waiver or exercise of a right under any Lending Agreement, and (3) for certainty, no Permitted Loss Consolidation Transaction, shall in any such case, have the effect of increasing any liability of the Province or BCTFA arising from early termination of this Agreement, unless:

- (a) the Primary Contractor has obtained, in addition to any other consent or approval and any other requirements under this Part, the prior written consent of the Province expressly consenting for the purposes of this Section 5.7 [Changes Not to Increase Province's Liability] to the increase in the liability of the Province or BCTFA that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion; or
- (b) it is a Permitted Borrowing under the Senior Lending Agreements of an amount that does not increase the principal amount of Senior Debt outstanding under the Senior Lending Agreements to an amount greater than the aggregate of:
 - (i) the Original Senior Commitment;
 - (ii) the Additional Permitted Borrowing Limit; and
 - (iii) any increases in the principal amount of all funding for the Project committed under the Senior Lending Agreements that have previously been consented to by the Province's Representative pursuant to Section 5.7(a).

5.8 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement:

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- (a) the Primary Contractor shall not carry out or permit any action referred to in any of Sections 5.2(a) to (g) inclusive, and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, be undertaken with a counterparty who is either:
 - (i) a person who is a Restricted Person; or
 - (ii) a person any of whose Affiliates is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation];
- (b) the Primary Contractor shall not be, nor shall it become at any time, a Restricted Person.

**PART 6
WORK AND WARRANTIES**

6.1 Representation, Warranty and Covenant as to Work

- (a) The Primary Contractor represents and warrants to and covenants with the Province and BCTFA that:
 - (i) all Design, Construction and Work provided, performed or carried out by or on behalf of the Primary Contractor pursuant to this Agreement and (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Work) all Project Infrastructure shall conform to, comply with and satisfy all of the requirements of this Agreement, Good Industry Practice and all professional engineering principles generally accepted as standards of the industry in the Province of British Columbia;
 - (ii) (save in the case of ATC Equipment, to which Section 6.3 [ATC Warranty] shall apply, and Systems Software, to which Section 6.6 [Systems Software Warranty] shall apply), the Work and (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Work) the Project Infrastructure shall be free of defects, including design defects, errors and omissions;
 - (iii) (save in the case of ATC Equipment, to which Section 6.3 [ATC Warranty] shall apply), all materials and Equipment furnished under this Agreement shall be of good quality and fit for the intended purpose; and
 - (iv) all Equipment which has been manufactured by suppliers other than the Primary Contractor has been obtained through authorized commercial distribution channels for use in Canada and the Primary Contractor has the right to incorporate such Equipment in the Work and transfer such Equipment to the Province on the terms and conditions set out in this Agreement.

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- (b) Any defect which the Primary Contractor is obligated to repair and remediate pursuant to this Agreement and any deficiency, defect or error in the Work or (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Work) the Project Infrastructure or non-compliance with the requirements of this Agreement (including the representations, warranties and covenants in Section 6.1(a)) shall be referred to as a “**Work Defect**”. For certainty, Epidemic Defects, Latent Work Defects, any failure of ATC Equipment to comply with the warranties in Section 6.3 [ATC Warranty], and any breach of any representation or warranty made by the Primary Contractor in respect of Systems Software in Section 6.6 [Systems Software Warranty], shall be Work Defects.
- (c) Except as expressly provided elsewhere in this Agreement, in respect of any Work Defect:
 - (i) any such Work Defect comprising a Nonconformity shall be addressed by the Primary Contractor in accordance with Part 7 [Nonconformities] of Schedule 6 [Quality Management]; and
 - (ii) neither the Province nor BCTFA shall have any liability to the Primary Contractor or any person for whom the Primary Contractor is in law responsible (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any of their respective employees, agents, contractors or subcontractors of any tier or employees of any of them) in respect of any Loss or Claim arising out of or in connection with the existence of any such Work Defect or any remedial or other works required as a result of any such Work Defect.
- (d) For greater certainty, the Primary Contractor shall be responsible in accordance with this Agreement for all Traffic Management and other procedures and arrangements for the safety of the public using the Project Infrastructure for which it is otherwise responsible under the terms of this Agreement irrespective of any Work Defect.

6.2 Work Defect Warranty

Without limiting or derogating from the other warranty obligations of the Primary Contractor contained in this Agreement (including this Part 6 and as contemplated in Article 8.13 [Utility Work Warranties], Part 2 of Schedule 4 [Design and Construction]), the Primary Contractor, at its own cost and expense (but without prejudice to the Province’s obligations under Section 12.7(c)), shall correct to the satisfaction of the Province, acting reasonably, as required by and in accordance with Section 6.8 [Correction of Work Defects], all Work Defects (other than Epidemic Defects) arising during the period (if applicable, as extended in accordance with this Section 6.2, the “**General Work Defect Warranty Period**”) from the Substantial Completion Date to and including the second anniversary of the Substantial Completion Date (or, in the case of Work Defects in respect of ATC Equipment, to and including the expiry of the ATC Warranty Period) or, if earlier, the second anniversary of the Termination Date. The General Work Defect Warranty Period shall be extended for one additional year for all work required of the Primary Contractor to correct any Work Defect completed in the last year of the General Work Defect

Warranty Period pursuant to this Section 6.2, such that the General Work Defect Warranty Period for any such item of remedial work shall extend for an additional year after such Work Defect is corrected.

6.3 ATC Warranty

The Primary Contractor represents and warrants throughout the ATC Warranty Period that each item of ATC Equipment shall satisfy all requirements applicable thereto as contained in the Design-Build Requirements, in accordance with this Agreement, and in particular that each item of ATC Equipment supplied by the Primary Contractor shall, under normal use and maintenance:

- (a) conform to and perform in accordance with the specifications, requirements and standards set out therefor in the Design-Build Requirements, in accordance with this Agreement; and
- (b) be free from defects in manufacturing, materials and workmanship, provided that (unless the Primary Contractor is already aware of such defects) the Primary Contractor is notified of the defects in writing within 25 Business Days after the defects are discovered by the Province.

6.4 Epidemic Defect Warranty

Without limiting and in addition to any other rights of the Province under this Agreement:

- (a) if an Epidemic Defect appears under normal use and maintenance during the period from the Substantial Completion Date to and including:
 - (i) in the case of an Epidemic Defect described in paragraph (a) or (b) of the definition thereof in Section 1.1 [Definitions] of Schedule 1:
 - (A) in the case of any such Epidemic Defect in the Evergreen ATC System, the expiry of the ATC Warranty Period; or
 - (B) in the case of any such Epidemic Defect in any of the Systems other than the Evergreen ATC System, the expiry of the General Work Defect Warranty Period; or
 - (ii) in the case of an Epidemic Defect described in paragraph (c) of the definition thereof in Section 1.1 [Definitions] in Schedule 1, the fifth anniversary of the Service Commencement Date or, if earlier, the fifth anniversary of the Termination Date (the “**Epidemic Defect Warranty Period**”),

and the Primary Contractor is notified in writing within 25 Business Days of the discovery of such Epidemic Defect, or the Primary Contractor otherwise becomes aware of the Epidemic Defect, then the Primary Contractor, at its own cost and expense, shall perform or cause to be performed all remedial Work required to correct and remedy such Epidemic Defect in all like subsystems, components or subcomponents that are subject to the Epidemic Defect, whether or not such Epidemic Defect has manifested itself in all such subsystems, components or subcomponents. Such remedial Work shall be undertaken in accordance with a mutually agreed upon schedule which shall avoid any disruption to the passenger service of the Integrated SkyTrain System, if such correction

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or remedy may be carried out without disruption to passenger service, and otherwise with the minimum possible disruption; and

- (b) if and so often as the Primary Contractor or its Subcontractors fail to commence performing remedial Work to correct and eliminate any Epidemic Defect when the Primary Contractor becomes aware of the Epidemic Defect in accordance with the agreed upon schedule or, if no schedule has been agreed, within 35 Business Days after receipt of written notice or, if after commencing such remedial Work, the Primary Contractor or its Subcontractors fail to prosecute and complete all necessary remedial Work diligently to completion in accordance with the schedule agreed pursuant to Section 6.4(a) or otherwise as may be agreed by the parties and without disruption to passenger service, if such correction or remedy may be carried out without disruption to passenger service, and otherwise with the minimum possible disruption then, notwithstanding anything to the contrary contained in this Agreement and, without limiting the right of the Province pursuant to Part 13 [Province's Access, Monitoring and Step-In Rights], the Province may, upon seven Business Days' written notice to the Primary Contractor, perform some or all of the necessary remedial Work to correct or eliminate such Epidemic Defect, either through its own forces or through the use of contractors designated by the Province, in which case all reasonable and actual direct costs (including costs for the Province's own personnel and services) of such remedial Work performed by or through the Province shall, upon demand, be immediately paid by the Primary Contractor, provided that:
- (i) if, prior to the expiry of the General Work Defect Warranty Period, the Primary Contractor fails on demand either to pay any such costs to the Province or satisfy any Claim made by the Province pursuant to Section 11.1 (including Section 11.1(k)) in respect of an Epidemic Defect, the Province shall be entitled to discharge the relevant claim by:
- (A) applying an amount from the Warranty Holdback (whether, in accordance with this Agreement, deducted from the Substantial Completion Payment Amount or taken into account in the calculation of any termination sum in accordance with Schedule 12 [Compensation on Termination]); and/or
- (B) if a Warranty Holdback Letter of Credit has been provided by the Primary Contractor, making a demand under such Letter of Credit;
- up to an amount in aggregate equal to the amount of such costs or the relevant Claim; and
- (ii) the Primary Contractor's obligation to pay such costs or indemnify the Province, as the case may be, shall only be discharged to the extent of the amount so applied and/or demanded by the Province.

6.5 Latent Work Defect Warranty

- (a) At least three months prior to the end of the General Work Defect Warranty Period, the Province and the Primary Contractor shall jointly inspect all of the Work to identify all Work Defects which are identifiable on visible inspection and shall compile a list of any

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such Work Defects, which shall be corrected by the Primary Contractor in accordance with Section 6.8 [Correction of Work Defects].

- (b) Without limiting or derogating from the other warranty obligations of the Primary Contractor contained in this Agreement, but subject to Section 6.5(c), the Primary Contractor, at its own cost and expense shall, from the expiry of the General Work Defect Warranty Period to and including the sixth anniversary of the Substantial Completion Date or, if earlier, the sixth anniversary of the Termination Date (the “**Latent Work Defect Warranty Period**”), correct to the satisfaction of the Province, acting reasonably, as required by and in accordance with Section 6.8 [Correction of Work Defects], any and all Work Defects that become apparent during the Latent Defect Warranty Period which were not identified, and could not reasonably have been identified in accordance with Good Industry Practice, during the inspection contemplated by Section 6.5(a) (each a “**Latent Work Defect**”).
- (c) Without limiting or derogating from Section 6.4 [Epidemic Defect Warranty], the warranty in respect of Latent Work Defects contained in this Section 6.5 [Latent Work Defect Warranty] does not extend to any Latent Work Defect in any System or any Epidemic Defect.
- (d) The Province shall give to the Primary Contractor written notice of each Latent Work Defect within 30 Business Days following the date the Province first becomes aware of such Latent Work Defect.
- (e) For greater certainty, the Primary Contractor acknowledges and agrees that the notice obligation imposed under Section 6.5(d) does not apply to Work Defects that are not Latent Work Defects.

6.6 Systems Software Warranty

- (a) The Primary Contractor represents and warrants to the Province that:
 - (i) notwithstanding Section 6.6(b), throughout the General Work Defect Warranty Period, the Systems Software will function as required for all Systems to successfully operate in conformity with all applicable Design-Build Requirements; and
 - (ii) neither the Primary Contractor nor any of its Subcontractors has any knowledge of problems with Systems Software which affect other systems supplied by such Subcontractor anywhere in the world which may be reproducible on or affect the safety of the relevant System.
- (b) The Province acknowledges and agrees that Systems Software developed by or licensed from parties other than Thales or, to the extent SLCW is the original supplier, SLCW will be warranted only to the extent of the applicable original supplier’s warranty.
- (c) The Primary Contractor warrants that neither its personnel nor the personnel of any Subcontractor have introduced or will intentionally introduce Harmful Code into any Systems Software.

- (d) Without limiting or derogating from its representations and warranties in Section 6.6(a), the Primary Contractor does not warrant that the Systems Software shall be error free.
- (e) The Primary Contractor warrants that all Systems Software has been obtained through authorized commercial distribution channels for use in Canada and that the Primary Contractor has, where required, purchased or will purchase for the benefit of the Province or otherwise obtained or will obtain the right to sub-license such Systems Software to the Province on the terms and conditions set out in this Agreement.
- (f) The Primary Contractor shall notify in writing the Province, TransLink, and any Qualified Governmental Entity to whom the Province may assign the warranties under this Agreement, of its knowledge of any Systems Software issues affecting any similar system world-wide that may be reproducible on or affect the safety of the Work supplied hereunder. In such event (in the case of ATC Software) during the ATC Warranty Period or (in the case of other Systems Software) during the General Work Defect Warranty Period, the Primary Contractor shall cause a safety assessment to be conducted to determine the need for any action regarding the Systems Software for the relevant System, and where safety considerations reasonably warrant, the Primary Contractor shall recommend the action to be taken to implement a solution for the relevant Work. At the written request of the Province, TransLink, or any Qualified Governmental Entity to whom the Province may assign the warranties under this Agreement, the Primary Contractor shall, subject to the parties' mutual agreement on the terms and conditions thereof, cause the recommended action to be implemented, as applicable to the relevant System, at the sole cost of the Primary Contractor during, as applicable, the ATC Warranty Period or the General Work Defect Warranty Period.
- (g) During the ATC Warranty Period, the Province shall notify the Primary Contractor in writing of any non-conformity of ATC Software to the requirements of this Agreement within 25 Business Days after the non-conformity is discovered.
- (h) During the General Work Defect Warranty Period, the Province shall notify the Primary Contractor in writing of any non-conformity of Software (other than ATC Software) to the requirements of this Agreement within 28 Business Days after the non-conformity is discovered.

6.7 Exclusions from Warranties

The warranties by the Primary Contractor set out in this Part 6 shall not apply to:

- (a) Systems Equipment, Systems Software or Systems Work that has been modified, repaired or reworked by any person other than the Primary Contractor or its Subcontractors or any other person for whom the Primary Contractor is responsible in law without the prior written consent of the Primary Contractor; or
- (b) defects in Systems Equipment, Systems Software or Systems Work that are the result of or caused by:
 - (i) any negligence, improper storage, mishandling or misuse of the Systems Equipment or Systems Software by the Province or TransLink;

- (ii) any use of the Systems Equipment or Systems Software by the Province or TransLink in conjunction with other equipment or software that is electronically or mechanically incompatible or of an inferior quality, not approved by the Primary Contractor;
- (iii) modifications made by the Province or TransLink to the interface requirements relating to ATC Work described in Article 13 [Systems], Part 2 of Schedule 4 and Appendix G [Systems General Requirements] of Schedule 4 not agreed by the Primary Contractor;
- (iv) any damage which occurs after Substantial Completion to the Systems Equipment, Systems Software or Systems Work by power failure, fire, explosion or any act of God or other cause beyond the control of the Primary Contractor or its Subcontractors or their respective subcontractors or employees or any other person for whom the Primary Contractor is responsible in law; or
- (v) Harmful Code not introduced to the Systems Software by the Primary Contractor or its Subcontractors or any of their respective subcontractors or employees or any other person for whom the Primary Contractor is responsible in law.

6.8 Correction of Work Defects

- (a) This Section 6.8(a) shall apply to all Work Defects required to be corrected pursuant to Section 6.2 [Work Defect Warranty], Section 6.3 [ATC Warranty] or Section 6.5 [Latent Work Defect Warranty]. As soon as reasonably practicable and in any event within ten Business Days after the earlier to occur of the Primary Contractor becoming aware of a Work Defect and receipt by the Primary Contractor of written notice from the Province specifying a Work Defect, the Primary Contractor and the Province shall agree when and how the Primary Contractor shall remedy such Work Defect to the satisfaction of the Province, acting reasonably, and in such manner and at such times as to avoid and, if it is not possible to avoid, minimize disruption to the operation of the Integrated SkyTrain System, provided that, in case of an emergency requiring immediate corrective action, the provisions of Section 13.4 [Province's Emergency Rights] shall apply. If the Primary Contractor becomes aware of a Work Defect of which it has not been previously notified by the Province, the Primary Contractor shall notify the Province thereof in writing within five Business Days unless the Primary Contractor has remedied such Work Defect within such five Business Day period.
- (b) This Section 6.8(b) shall apply to all Work Defects required to be corrected pursuant to Section 6.2 [Work Defect Warranty], Section 6.3 [ATC Warranty] or Section 6.5 [Latent Work Defect Warranty]. If the Primary Contractor does not correct a Work Defect in accordance with Section 6.8(a) within the agreed time, or should the Primary Contractor and the Province fail to reach such an agreement within the ten Business Day period referred to in Section 6.8(a), or should the Province disapprove of the actions being taken by the Primary Contractor in the case of emergency conditions, notwithstanding anything to the contrary contained in this Agreement and without limiting the rights of the Province pursuant to Part 13 [Province's Access, Monitoring and Step-In Rights], the Province may, upon five Business Days' written notice to the Primary Contractor, perform some or all of the remedial Work required to correct or eliminate such Work

Defect, either through its own forces or through the use of contractors designated by the Province, in which case all reasonable direct costs incurred by the Province (including costs of the Province's own personnel, materials and services) in remedying such Work Defect shall, on demand, be immediately payable by the Primary Contractor to the Province, provided that:

(i) if, prior to the expiry of the General Work Defect Warranty Period, the Primary Contractor fails on demand either to pay any such costs to the Province or satisfy any Claim made by the Province pursuant to Section 11.1 (including Section 11.1(k)) in respect of a Work Defect (other than an Epidemic Defect, to which Section 6.4(b)(i) shall apply), the Province shall be entitled to discharge the relevant claim for such costs by:

(A) applying an amount from the Warranty Holdback (whether, in accordance with this Agreement, deducted from the Substantial Completion Payment Amount or taken into account in the calculation of any termination sum in accordance with Schedule 12 [Compensation on Termination]); and/or

(B) if a Warranty Holdback Letter of Credit has been provided by the Primary Contractor, making a demand under such Letter of Credit;

up to an amount in aggregate equal to the amount of such costs or the relevant Claim; and

(ii) the Primary Contractor's obligation to pay such costs or indemnify the Province, as the case may be, shall only be discharged to the extent of the amount so applied and/or demanded by the Province.

(c) The Primary Contractor shall at all times promptly replenish, at the Primary Contractor's cost and expense, any Spare Parts taken from the Province's or TransLink's inventory of Spare Parts for use in correcting any Work Defects (including, for certainty, any Epidemic Defects or Latent Work Defects) with the identical or better model of Spare Part taken.

(d) If, at the expiry of the General Work Defect Warranty Period, any Work Defect (including, for certainty, any Epidemic Defect or Latent Work Defect) has been identified by the Province that has not been corrected by the Primary Contractor in accordance with, as applicable, Section 6.3 [ATC Warranty], Section 6.4 [Epidemic Defect Warranty] or this Section 6.8 as applicable (other than any Work Defect in respect of which the Province has applied an amount from the Warranty Holdback and/or made a demand under a Warranty Holdback Letter of Credit in accordance with Sections 6.4(b) or 6.8(b)), then the Province shall be entitled to:

(i) retain from the Warranty Holdback (whether, in accordance with this Agreement, deducted from the Substantial Completion Payment Amount or taken into account in the calculation of any termination sum in accordance with Schedule 12 [Compensation on Termination]); and/or

- (ii) if a Warranty Holdback Letter of Credit has been provided by the Primary Contractor, make a demand under such Letter of Credit;

up to an amount in aggregate equal to 200% of the Province's estimate of the costs for remedying each such Work Defect (unless the Work Defect relates to ATC Software, ATC Equipment or ATC Work that falls within the definition of Evergreen ATC Work in the ATC Supply Contract, in which case such aggregate amount shall be equal to 100% of the Province's estimate of the costs for remedying such Work Defect), provided that, following the correction of any such Work Defect by the Province, the Province shall pay (without interest) to the Primary Contractor the excess (if any) of the amount so retained or demanded over the actual costs incurred by the Province in remedying such Work Defect.

6.9 Terms of Subcontractor Warranties

Without limiting or derogating from any warranty obligations of the Primary Contractor contained in this Agreement, but subject to any express terms or conditions agreed in any Collateral Agreement with any Subcontractor or as otherwise agreed by the Province, in its discretion, the Primary Contractor shall:

- (a) ensure that all Principal Subcontracts (other than the ATC Supply Contract) contain provisions which:
 - (i) impose on the relevant Principal Subcontractor the same warranties as are contained in this Agreement in relation to all Design, Construction and Work provided, performed or carried out and materials and Equipment supplied by such Principal Subcontractor;
 - (ii) acknowledge that such warranties are for the benefit of the Province, BCTFA, TransLink and their respective assignees as well as the Primary Contractor or, as the case may be, the Subcontractor that is the beneficiary of any warranties contained in the relevant Principal Subcontract and are assignable in accordance with the terms of this Agreement; and
 - (iii) obligate the Principal Subcontractor to enter into a Collateral Agreement with the Province if the Province so requires;
- (b) obtain or cause to be obtained any industry standard warranties which may be available which exceed the requirements of this Section 6.9 [Terms of Subcontractor Warranties] (including in respect of the term of such warranties), including against defects in materials and workmanship from each Subcontractor in respect of Design, Construction and Work provided, performed or carried out and materials and Equipment supplied by that Subcontractor under its Subcontract; and
- (c) at the request of the Province and/or BCTFA, cooperate with and assist the Province and/or BCTFA in the enforcement of any claims under warranties contained in any Subcontract or otherwise given by a Subcontractor.

6.10 Assignment of Warranties to Province

- (a) The Primary Contractor:
 - (i) hereby absolutely assigns, on the terms set out in Section 6.10(b), to the Province all warranties contained in any Subcontract to which the Primary Contractor is a party;
 - (ii) shall cause, by ensuring that relevant Subcontractors include relevant provisions in all Principal Subcontracts to which the Primary Contractor is not a party, all warranties contained in any such Principal Subcontract to be absolutely assigned to the Province, on the terms set out in Section 6.10(b).
- (b) Notwithstanding the provisions of Sections 6.10(a)(i) and (ii), the Primary Contractor or the Subcontractor that is the beneficiary of any warranties contained in the relevant Principal Subcontract, as the case may be, shall be permitted to enjoy the benefit of and enforce the warranties referred to in, respectively, Sections 6.10(a)(i) and (ii) as if the assignment made in Section 6.10(a)(i) and any assignments made pursuant to Section 6.10(a)(ii) had not been made until (subject to and without prejudice to the rights of the Secured Parties under, and as defined in, the Lenders' Remedies Agreement) the earlier of (i) the date on which the Province gives the Primary Contractor or the relevant Subcontractor, as the case may be, a written notice stating that a Primary Contractor Default has occurred and that the Province is exercising its rights pursuant to the relevant assignment, (ii) the Termination Date and (iii) the Expiry Date.
- (c) Without limiting the provisions of Section 19.7 [Further Assurance], the Primary Contractor shall:
 - (i) cause to be included in any Subcontract to which it is a party a notice from the Primary Contractor to the relevant Subcontractor of the assignment made in Section 6.10(a)(i) and an acknowledgment of such notice from the relevant Subcontractor; and
 - (ii) cause to be included in any Principal Subcontracts to which it is not a party a notice from the Subcontractor that is the beneficiary of any warranties contained in the relevant Principal Subcontract to the Subcontractor that is the provider of such warranties of the assignment made pursuant to Section 6.10(a)(ii) and an acknowledgment of such notice from the Subcontractor that is the provider of such warranties.

**PART 7
INSURANCE, DAMAGE AND DESTRUCTION**

7.1 Insurance Coverages

The Primary Contractor shall take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, from Qualified Insurers, insurance for the Project as set out in Schedule 14 [Insurance Requirements] and in accordance with this Part 7, such insurance to be taken out at least five Business Days before, and so that it is in effect from, the Effective Date (or, in the case of the insurance referred to in Section 4.1(a)(ii) of Schedule 14, at least five Business Days before,

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and so that is in effect from, the date of commencement of testing and commissioning of the Evergreen Line) for such period as is required by Schedule 14 [Insurance Requirements] in respect of the relevant Required Insurance. The insurance referred to in Schedule 14 [Insurance Requirements] is cumulative. The Primary Contractor shall also take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, from Qualified Insurers, all other insurance as may be required to be taken out from time to time in respect of all or any of the Work, the Site and the Project Infrastructure in accordance with any Laws or any Site Requirements.

7.2 Province's Right to Insure

If the Primary Contractor fails or refuses to obtain or maintain in force any Required Insurance, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Part, the Province shall, without prejudice to any of its other rights under this Agreement or otherwise, have the right (but not the obligation) itself to procure such insurance, in which event the Primary Contractor shall pay to the Province on demand any amounts paid by the Province for that purpose, together with an administrative fee equal to 15% of such amounts.

7.3 Particular Requirements of Policies

In addition to the requirements of Schedule 14 [Insurance Requirements] and without limiting the generality of the other provisions of this Part 7 [Insurance, Damage and Destruction], the policies for the insurance required by Section 7.1 [Insurance Coverages] must comply with the following:

- (a) all policies of insurance must comply with Section 7.18 [Application of Proceeds of Insurance] and Schedule 14 [Insurance Requirements] as to the named insureds, additional named insureds, additional insureds and loss payees under such policies, as applicable;
- (b) all policies must be issued in the English language and governed by the laws of British Columbia and the laws of Canada applicable therein or such other laws as may be acceptable to the Province in its discretion; and
- (c) all policies of insurance under which the Province or BCTFA is insured or is required to be insured must contain an endorsement to the effect that the policies will not be invalidated and coverage thereunder will not be denied for the Province or BCTFA or any other insureds (other than the Primary Contractor, the Primary Contractor Indemnified Persons and persons for whom the Primary Contractor is in law responsible) by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies by the Primary Contractor, any of the Primary Contractor Indemnified Persons or any person for whom the Primary Contractor is in law responsible.

7.4 Deductibles

If any policies for the Required Insurance or any other insurance required to be taken out by Section 7.1 [Insurance Coverages] provide that the amount payable in the event of any claim, loss or liability shall be reduced by a deductible amount or subject to a waiting period, then the Primary Contractor shall be responsible for any such deductible amount and/or waiting period and, in the event of any claim, loss or liability, the Primary Contractor shall be responsible for and shall pay, and shall indemnify and hold harmless the Province and the Province Indemnified Persons and each of them in

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respect of, the amount not paid by the insurer to any of them as a result of any such deductible amount and/or waiting period.

7.5 Primary Contractor Insurance Primary

The Primary Contractor must ensure that all the Required Insurance is primary and not excess to any insurance of the Province, BCTFA or any of the other additional named insureds, and does not require the sharing of any loss by the Province or BCTFA or by any insurance of the Province or BCTFA.

7.6 Release of the Province and BCTFA for Insured Loss

- (a) Subject to Section 7.6(b), and without prejudice to the provisions of Section 9.4(d), the Primary Contractor, for itself and its successors and assigns, hereby releases the Province, all Province Indemnified Persons and those other persons for whom the Province is in law responsible, and their successors and assigns, from any and all financial liability for:
- (i) damage to any property or any other loss required to be insured by the Required Insurance or actually insured by the Primary Contractor or any Subcontractor (whether or not required to be insured by the Required Insurance); and
 - (ii) any delay in start up, business interruption, extra expense, loss of income and loss of profit related thereto;

caused by any of the perils against which the Primary Contractor or any Subcontractor has insured or against which by the terms of this Agreement the Primary Contractor is required to insure or to procure insurance, and whether or not such loss or damage may have arisen out of any act, omission or negligence of the Province or any Province Indemnified Persons, or those other persons for whom the Province is in law responsible.

- (b) The release in Section 7.6(a) shall not apply to the extent that both:
- (i) the Province would, but for Section 7.6(a), be liable under this Agreement in respect of the damage to property or other loss required to be insured by the Required Insurance; and
 - (ii) the amount of the relevant loss exceeds the amount of insurance required to be obtained under Schedule 14 [Insurance Requirements] in respect of such property or other loss.

7.7 Compliance with Policies

The Primary Contractor shall comply with the terms, conditions and requirements of all policies for the Required Insurance and shall not do or omit to do, or permit to be done or omitted by any person for whom the Primary Contractor is in law responsible or, insofar as it is within its power or the power of any of its Subcontractors, any other person (other than the Province, BCTFA and persons for whom the Province is in law responsible), anything on or with respect to the Site or the Project Infrastructure or with respect to the Work that could result in or could reasonably be expected to result in the cancellation of any Required Insurance or that would entitle any insurer to refuse to pay any claim under the policy for

any Required Insurance or that would diminish the value of any claim under the policy of Required Insurance.

7.8 Evidence of Insurance

- (a) The Primary Contractor shall provide to the Province's Representative, at least 10 Business Days before the Effective Date (or, in the case of the insurance referred to in Section 4.1(a)(ii) of Schedule 14, at least 10 Business Days before the date of commencement of testing and commissioning of the Evergreen Line), drafts of a cover note and a certificate of insurance for each policy for the Required Insurance. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative, and must be sufficient to confirm the insurance and the terms and conditions thereof, as required by this Agreement, and, for such purposes, the Primary Contractor shall cause the cover note and the certificate of insurance to be revised as the Province's Representative may require.
- (b) At least five Business Days before the Effective Date (or, in the case of the insurance referred to in Section 4.1(a)(ii) of Schedule 14, at least 5 Business Days before the date of commencement of testing and commissioning of the Evergreen Line), the Primary Contractor shall deliver to the Province's Representative, for each policy for any Required Insurance, the cover note and certificate of insurance for the policy, as provided in draft to the Province's Representative pursuant to Section 7.8(a), and as revised as required by the Province's Representative pursuant to Section 7.8(a), signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative, confirming that the insurance has been obtained and will, on or before the Effective Date (or, in the case of the insurance referred to in Section 4.1(a)(ii) of Schedule 14, the date of commencement of testing and commissioning of the Evergreen Line), be in full force and effect, in each case together with:
 - (i) evidence satisfactory to the Province's Representative that the deposit premiums payable therefor have been paid; and
 - (ii) where the premium for any policy is not fully paid prior to the Effective Date (or, in the case of the insurance referred to in Section 4.1(a)(ii) of Schedule 14, before the date of commencement of testing and commissioning of the Evergreen Line), a statement to that effect certified by the Primary Contractor setting out the due dates for payment of the remaining premiums and the amount payable on each due date.
- (c) Not later than five Business Days after each due date referred to in Section 7.8(b)(ii), the Primary Contractor shall provide to the Province's Representative evidence satisfactory to the Province's Representative that the premiums due on that due date have been paid and that the insurance has not been cancelled and is not susceptible to cancellation for non-payment of such premiums.

- (d) The Primary Contractor shall provide to the Province's Representative certified copies of all policies of insurance, certified by the insurer or its agent, within 90 days after the date the insurance is required to be in effect under this Agreement.
- (e) The Primary Contractor shall provide such additional evidence of compliance with this Part 7 as may be requested by the Province's Representative from time to time.

7.9 Renewal

- (a) Unless such policy is no longer required by the terms of this Part 7 and Schedule 14 [Insurance Requirements], the Primary Contractor shall, at least 10 Business Days before the expiration of any policy for any Required Insurance, provide to the Province's Representative drafts of a cover note and a certificate of insurance for the renewal or replacement of such policy. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative, and must be sufficient to confirm the insurance and terms and conditions thereof, as required by this Agreement, and, for such purposes, the Primary Contractor shall cause the cover note and the certificate of insurance to be revised as the Province's Representative may require.
- (b) At least five Business Days before the expiration of any policy to be renewed or replaced as provided in Section 7.9(a), the Primary Contractor shall deliver to the Province's Representative, for each such policy, the cover note and certificate of insurance for the renewal or replacement of the policy, as provided in draft to the Province's Representative pursuant to Section 7.9(a), and as revised as required by the Province's Representative pursuant to Section 7.9(a), signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative, confirming that the insurance has been obtained and will be in full force and effect at or before the time of expiry of the policy being renewed or replaced, in each case together with:
 - (i) evidence satisfactory to the Province's Representative that the deposit premiums payable therefor have been paid; and
 - (ii) where the premium for the renewal or replacement of any policy is not fully paid prior to the expiration of any policy to be renewed or replaced, a statement to that effect certified by the Primary Contractor setting out the due dates for payment of the remaining premiums and the amount payable on each due date.
- (c) Not later than five Business Days after each due date referred to in Section 7.9(b)(ii), the Primary Contractor shall provide to the Province's Representative evidence satisfactory to the Province's Representative that the premiums due on that due date have been paid and that the insurance has not been cancelled and is not susceptible to cancellation for non-payment of such premiums.

7.10 Copies of Communications

At the time the Primary Contractor provides to the Province's Representative any submittal, notice or other communication with respect to insurance under this Part 7 [Insurance, Damage and

Destruction] or Schedule 14 [Insurance Requirements], the Primary Contractor shall, at the same time, provide a copy of such submittal, notice or other communication and a copy of all documents and enclosures therewith to “The Corporate Insurance and Bonds Manager” at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN Prov Govt, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Province’s Representative may from time to time by notice to the Primary Contractor advise).

7.11 Review of Insurance by Province

Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Province], the submission or delivery to the Province’s Representative and the receipt, review, approval or acceptance by the Province or the Province’s Representative of any insurance policy or any draft or certified copy of an insurance policy or any certificate of insurance, cover note or other evidence of compliance with this Part 7 and Schedule 14 [Insurance Requirements] shall not, irrespective of whether any objection is made thereto by the Province’s Representative:

- (a) imply any acceptance by the Province or BCTFA that the extent of the insurance coverage is sufficient or that the terms and conditions thereof are satisfactory, in either case for the purposes of the Project or this Agreement;
- (b) relieve or exempt or be deemed to relieve or exempt the Primary Contractor or any other person from any of its obligations and liabilities under this Agreement or at law or in equity including its obligations to insure as provided in this Part 7 [Insurance, Damage and Destruction] and Schedule 14 [Insurance Requirements]; or
- (c) derogate from, limit or prejudice any rights of the Province or BCTFA under this Agreement.

7.12 Workers’ Compensation Coverage

The Primary Contractor shall carry and pay for or cause to be carried and paid for full workers’ compensation coverage of all workers, employees and others engaged in the performance of the Work. The Primary Contractor shall, at the request of the Province’s Representative from time to time, provide to the Province’s Representative evidence satisfactory to the Province’s Representative that such coverage is in effect and that all assessments payable under the WCA in respect of the Project have been paid.

7.13 Claims

- (a) The Primary Contractor shall maintain a written register of all claims and incidents which might result in a claim under any of the policies of Required Insurance and shall allow the Province to inspect such register at any time on reasonable notice.
- (b) The Primary Contractor shall in addition notify the Province within seven Business Days after making any claim under any of the policies for the Required Insurance where the value of the claim exceeds \$25,000.00 or (regardless of the value of the claim) the claim involves bodily injury or death, accompanied by full particulars of the incident giving rise to the claim.
- (c) In the event of any claim or loss to which any Required Insurance may apply, the Primary Contractor shall, and shall ensure that the relevant insured (other than the Province and

BCTFA) shall, promptly and diligently notify all applicable insurers, file all required proofs of claim, supply to the insurers and adjusters all required documents and information, and generally execute and deliver all documents and do all acts and things that may be required to obtain the benefit of the insurance for the insureds thereunder, including the additional named insureds and additional insureds.

- (d) Each party shall have the right, as its interest may appear, to be a party to and to participate in any claims settlement under any policy of property insurance insuring the Project Infrastructure or any part thereof required by this Agreement to be part of the Required Insurance, and to make and submit its own claim with respect to any loss or damage separately from any claim of any other party or any other person.

7.14 Insurance Not to Prejudice

Neither full compliance by the Primary Contractor nor a failure to comply by the Primary Contractor with the requirements of this Part 7 [Insurance, Damage and Destruction] shall derogate from, limit or prejudice any rights of the Province or BCTFA under this Agreement or relieve the Primary Contractor from any of its other obligations or liabilities under this Agreement.

7.15 Restoration and Reinstatement of Damage or Destruction

Unless this Agreement is terminated in accordance with its terms (including under Section 9.6 [Termination for Force Majeure Event] or Section 9.7 [Termination for Damage or Destruction]), if all or any part of the Project Infrastructure or the Site that is required to be insured under the Required Insurances is damaged or destroyed prior to the Substantial Completion Date, the Primary Contractor shall restore, replace and reinstate such damage or destruction (the “**Reinstatement Work**”) promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Agreement, damage to or destruction of all or any part of the Project Infrastructure or the Site shall not terminate this Agreement or relieve the Primary Contractor of any of its obligations under this Agreement or entitle the Primary Contractor to any compensation from the Province or BCTFA.

7.16 Reinstatement Plan

If all or any part of the Project Infrastructure or the Site that is required to be insured under the Required Insurances is damaged or destroyed prior to the Substantial Completion Date, in addition to the requirements of Section 9.6 [Termination for Force Majeure Event] or Section 9.7 [Termination for Damage or Destruction], and if the Reinstatement Work is reasonably estimated to cost more than \$10,000,000.00 or in any other case where the Province’s Representative, having regard to the nature of the damage or destruction, notifies the Primary Contractor that a Reinstatement Plan is required, the Primary Contractor shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Province’s Representative, as the case may be, (or if, with the exercise of all due diligence, more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Province’s Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided the Primary Contractor exercises and continues to exercise all such due diligence), submit to the Province’s Representative for acceptance, acting reasonably, pursuant to the Consent Procedure a plan (a “**Reinstatement Plan**”) prepared by the Primary Contractor for carrying out the Reinstatement Work, setting out, in reasonable detail, *inter alia*:

- (a) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction (in accordance, where applicable, with any Province Change issued in respect thereof);
- (b) an estimate of the cost to carry out the Reinstatement Work, together with reasonable supporting documentation;
- (c) the Primary Contractor's proposed schedule for the execution of the Reinstatement Work;
- (d) the proposed terms upon which the Reinstatement Work is to be effected and, if the Reinstatement Work is to be effected by a third party, the procurement procedure which the Primary Contractor proposes to implement to procure the execution of the Reinstatement Work (provided that, if required by the Province's Representative in order to comply with applicable Competitive Procurement Requirements, the execution of the Reinstatement Work shall be procured through a competitive procedure designated by the Province's Representative and conducted under the supervision of the Province's Representative);
- (e) the Primary Contractor's proposal for any amendments to the Project Schedule and Construction Schedule necessary to accommodate the proposed schedule for the execution of the Reinstatement Work (which proposal shall be dealt with in accordance with the provisions of Schedule 3 [Project Schedule], as applicable); and
- (f) the Primary Contractor's proposal for any related amendment to the Traffic Management Plan required in connection with the execution of the Reinstatement Work,

and except to the extent necessary to address any emergency or public safety needs the Reinstatement Work must not be commenced until the Reinstatement Plan has been accepted by the Province's Representative in accordance with the Consent Procedure.

7.17 Conduct of Reinstatement Work

The Primary Contractor shall carry out the Reinstatement Work in accordance with the Design-Build Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan accepted by the Province's Representative in accordance with the Consent Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedures. If requested by the Province's Representative, the persons retained by the Primary Contractor to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a Collateral Agreement with the Province, BCTFA and the Primary Contractor in substantially the same form as set out in Schedule 17 [Collateral Agreement].

7.18 Application of Proceeds of Insurance

The Primary Contractor shall ensure that the insurers under any of the policies of Required Insurance pay the proceeds of insurance under such policies as follows:

- (a) in the case of any policy for the insurance referred to in Sections 1 [Third Party Liability Insurance During Construction] and 3 [Automobile Insurance] of Schedule 14 [Insurance Requirements], the proceeds of insurance shall be paid directly to the third party or,

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where any insured party has discharged the relevant liability to the third party prior to the payment of any relevant insurance proceeds, to the insured party who discharged the relevant liability;

- (b) in the case of any policy for the insurance referred to in Section 4.1(a)(i)(A)(1) and (2) of Schedule 14 [Insurance Requirements], the proceeds of insurance shall be paid to the Province as sole loss payee, except where:
 - (i) the Primary Contractor has already totally completed the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds; or
 - (ii) the insurance proceeds payable in respect of any single claim made under the relevant insurance policy is equal to or less than \$10,000,000.00; and

in either of which cases, the Province shall direct that the proceeds be paid directly to the Primary Contractor or the relevant insured; provided that, where the proceeds of any such insurance policy (other than any delay in start up, extra expense, business interruption or loss of profits insurance policy proceeds payable to the Primary Contractor) are paid to the Primary Contractor in respect of any single claim equal to or less than \$10,000,000.00, the Primary Contractor shall ensure that such proceeds are applied to the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds and not for any other purpose; and provided further that, where the proceeds of such policies of insurance are payable in whole or in part to the Province as loss payee pursuant to this Section 7.18(b) (such proceeds received by the Province being called the “**Property Damage Insurance Proceeds**”), then Section 7.18(c) or Section 7.18(d) as applicable shall apply;

- (c) if the Primary Contractor has, in accordance with the provisions of the relevant Reinstatement Plan, entered into a contract with a third party for the purpose of carrying out the Reinstatement Work in respect of the damage or destruction that gave rise to Property Damage Insurance Proceeds being paid by insurers to the Province, then:
 - (i) if, in accordance with such contract, the Primary Contractor is required to make a payment to such third party for such purpose, and if the Primary Contractor submits to the Province’s Representative for review, acting reasonably, pursuant to the Review Procedure:
 - (A) a copy of an invoice from such third party to the Primary Contractor for payment of the cost of such Reinstatement Work;
 - (B) such supporting documentation and detail as may be required by the Province’s Representative with respect to the Reinstatement Work that is the subject of the invoice including details of the cost of the Reinstatement Work and the amount of the Property Damage Insurance Proceeds;
 - (C) standard Ministry evidence (or other evidence satisfactory to the Province’s Representative) that the provisions of Section 4.2 [Compliance with Builders Lien Act and Payments to Subcontractors] and Section 7.12 [Workers’ Compensation Coverage] have been

complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work; and

- (D) written certification of the Primary Contractor addressed to the Province that the amount of the invoice is justly due and payable in accordance with the relevant contract and that the Primary Contractor requires such invoice to be discharged out of the Property Damage Insurance Proceeds,

then the Province shall, not later than the later of:

- (E) the date that is 15 Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Sections 7.18(c)(i)(A) to (D) inclusive;
- (F) the date that is seven Business Days prior to the due date for payment of such invoice by the Primary Contractor under the terms of the relevant contract; and
- (G) the date that is 15 Business Days after receipt by the Province of the Property Damage Insurance Proceeds in respect of the relevant Reinstatement Work,

pay to the relevant third party, out of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Province and the amount of such invoice; and

- (ii) upon the issuance of a Certificate of Total Completion (Reinstatement Work) in respect of the Reinstatement Work pursuant to the Design and Construction Certification Procedures, if the Primary Contractor submits to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure:

- (A) a copy of the Certificate of Total Completion (Reinstatement Work) in respect of such Reinstatement Work;
- (B) an invoice for payment to the Primary Contractor of the balance (if any) of any such Property Damage Insurance Proceeds; and
- (C) standard Ministry evidence (or other evidence satisfactory to the Province's Representative) that the provisions of Section 4.2 [Compliance with Builders Lien Act and Payments to Subcontractors] and Section 7.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work,

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the Province shall, subject to any specific requirements of the insurers, not later than the later of:

(D) the date that is five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Sections 7.18(c)(ii)(A) to (C) inclusive; and

(E) the date that is 15 Business Days after receipt by the Province of the Property Damage Insurance Proceeds in respect of the relevant Reinstatement Work,

pay to the Primary Contractor the balance (if any) of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates;

(d) if the Primary Contractor itself, in accordance with the provisions of the relevant Reinstatement Plan, carries out the Reinstatement Work in respect of which the Insurance Proceeds have been paid to the Province, then:

(i) if the Primary Contractor submits to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure:

(A) a certificate from the Primary Contractor addressed to the Province, confirming in writing the amount of the Property Damage Insurance Proceeds claimed by the Primary Contractor, based on the value of the Reinstatement Work carried out by the Primary Contractor;

(B) such supporting documentation and detail as may be reasonably required by the Province's Representative with respect to the Reinstatement Work that is the subject of the invoice and the cost thereof (which may include a Mark-up for overhead and profit in accordance with Sections 2.3(c) and 2.4(c) of Schedule 10 [Changes]) including details of the cost of the Reinstatement Work and the amount of the Property Damage Insurance Proceeds;

(C) standard Ministry evidence (or other evidence satisfactory to the Province's Representative) that the provisions of Section 4.2 [Compliance with Builders Lien Act and Payments to Subcontractors] and Section 7.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work; and

(D) written certification from the Primary Contractor addressed to the Province that the amount of the certificate is justly due and payable in accordance with this Agreement and that the Primary Contractor requires such certificate to be discharged out of the Property Damage Insurance Proceeds,

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then the Province shall, not later than the later of:

- (E) the date that is five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Section 7.18(d)(i)(A) to (D) inclusive; and
- (F) the date that is 15 Business Days after receipt by the Province of the Property Damage Insurance Proceeds in respect of the relevant Reinstatement Work,

pay to the Primary Contractor, out of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Province and the amount claimed in such certificate; and

- (ii) upon the issuance of a Certificate of Total Completion (Reinstatement Work) in respect of the Reinstatement Work pursuant to the Design and Construction Certification Procedures, if the Primary Contractor submits to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure:
 - (A) a copy of the Certificate of Total Completion (Reinstatement Work) in respect of such Reinstatement Work;
 - (B) an invoice for payment to the Primary Contractor of the balance (if any) of any such Property Damage Insurance Proceeds; and
 - (C) standard Ministry evidence (or other evidence satisfactory to the Province's Representative) that the provisions of Section 4.2 [Compliance with Builders Lien Act and Payments to Subcontractors] and Section 7.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work,

the Province shall, subject to any specific requirements of the applicable insurers, not later than the later of:

- (D) the date that is five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Sections 7.18(d)(ii)(A) to (C) inclusive; and
- (E) the date that is 15 Business Days after receipt by the Province of the Property Damage Insurance Proceeds in respect of the relevant Reinstatement Work

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pay to the Primary Contractor the balance (if any) of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates;

- (e) in the case of any policy for the insurance referred to in Section 4.1(1)(a)(ii) of Schedule 14 [Insurance Requirements], the proceeds of insurance shall be paid directly to TransLink;
- (f) proceeds of any insurance other than that referred to in Sections 7.18(a), (b), (c) and (e) shall be paid so as to ensure the performance by the Province and the Primary Contractor of their obligations under this Agreement; and
- (g) the Primary Contractor shall ensure that the Required Insurance is in compliance with this Section 7.18 [Application of Proceeds of Insurance].

7.19 Repayment of Insurance Proceeds

The Primary Contractor hereby undertakes that if, following payment to the Primary Contractor or to a third party at the request of or on behalf of the Primary Contractor as contemplated by Sections 7.18(c) and (d), the Province receives a *prima facie* valid demand from the relevant insurer for all or any part of the Property Damage Insurance Proceeds, the Primary Contractor shall pay to the insurer the amount demanded within the time period stated in the demand.

7.20 Proceeds of Property Insurance if Agreement Terminated

If this Agreement is terminated, all proceeds of any insurance referred to in Sections 4.1(a)(i)(A)(1) and (2) of Schedule 14 [Insurance Requirements], to the extent such proceeds have not been used to pay the cost of, or are not owed in respect of, Reinstatement Work in respect of the loss or damage in respect of which such proceeds were payable, shall be paid to and retained by the Province as its sole property and, for such purposes, the Province and the Primary Contractor shall sign all such documents and do all such things as may be reasonably required for such proceeds to be paid to the Province by insurers.

PART 8 PROVINCE CHANGES AND PRIMARY CONTRACTOR PROPOSALS

8.1 Province Changes

The Province may, at any time, require Province Changes (including Minor Works under Section 8.3 [Minor Works]) subject to and in accordance with the provisions of this Part 8 and Schedule 10 [Changes], and the Primary Contractor shall be entitled to apply for relief from its obligations or claim compensation under this Agreement (or both) to the extent, if any, provided in this Part and such Schedule.

8.2 Primary Contractor Proposals

The Primary Contractor may, at any time prior to the Substantial Completion Date:

- (a) submit Primary Contractor Proposals (either as Minor Works under Section 8.3(b) or as Value Engineering Proposals under Section 8.4 [Value Engineering Proposals]) for

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consideration by the Province, subject to and in accordance with the provisions of this Part 8 and Schedule 10 [Changes], provided that the Province shall not be required to consider any Primary Contractor Proposal unless and until the Primary Contractor provides to the Province's Representative sufficient information to enable the Province's Representative to adequately consider and evaluate such Primary Contractor Proposal; and

- (b) request the Province to consider, in its discretion, initiating as a Province Change any other matter, provided that, if the Primary Contractor becomes aware that any element of the Design-Build Requirements does not comply with and satisfy the specific requirements of any of Sections 4.1(a) (save to the extent that the Design-Build Requirements impose obligations on the Primary Contractor to carry out and perform the Work to a higher standard than would be required to enable the Primary Contractor to carry out and perform the Work in accordance with Good Industry Practice), (b), (c), (e) or (f), the Primary Contractor shall so notify the Province's Representative prior to complying with such specific requirements and shall, in the case of any such discrepancy arising after the Effective Date, request that the Province initiate as a Province Change an amendment to the Design-Build Requirements so that the Design-Build Requirements comply with and satisfy such specific requirements, and the Province shall initiate such a Province Change when it is required to do so in accordance with Section 1.2(b)(i) of Schedule 1 [Definitions and Interpretation].

8.3 Minor Works

If, at any time prior to the Substantial Completion Date:

- (a) the Province initiates a Province Change that:
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the Design-Build Requirements to which such Province Change relates);
 - (ii) will not negatively affect any date set out in the Project Schedule; and
 - (iii) sets out in the proposal a Minor Works Valuation that:
 - (A) cannot reasonably be expected to exceed \$2,000,000.00; and
 - (B) when added to the aggregate of all of the Minor Works Valuations for all of the other prior Minor Works initiated by the Province cannot reasonably be expected to exceed \$20,000,000.00; or
- (b) the Primary Contractor establishes to the satisfaction of the Province that a Primary Contractor Proposal initiated by the Primary Contractor under Section 8.2(a):
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the Design-Build Requirements to which such Primary Contractor Proposal relates); and
 - (ii) has a Minor Works Valuation of less than or equal to zero,

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then such Province Change or Primary Contractor Proposal, as the case may be, shall be considered “**Minor Works**” and shall be prepared and evaluated in accordance with the provisions of Part 1 [Minor Works] of Schedule 10 [Changes].

8.4 Value Engineering Proposals

The Primary Contractor may initiate Primary Contractor Proposals as “**Value Engineering Proposals**” to be prepared and evaluated in accordance with Part 3 [Value Engineering Proposals] of Schedule 10 [Changes].

8.5 Responsibility for Province Changes and Primary Contractor Proposals

The Primary Contractor shall not be entitled to any payment, compensation, extension of time or other relief for a Province Change or Primary Contractor Proposal except (in the case of Minor Works) in accordance with Section 1.2(d) of Schedule 10 [Changes] or (in the case of other Province Changes) to the extent provided in a Change Certificate issued in accordance with Schedule 10 [Changes].

8.6 Payments in Respect of Province Changes and Primary Contractor Proposals

Any payments between the Province and the Primary Contractor and any adjustments to the payments to be made under this Agreement in respect of Province Changes or Primary Contractor Proposals shall be made in accordance with Part 12 [Payments] and Schedule 10 [Changes].

PART 9 SUPERVENING EVENTS

9.1 Supervening Events

- (a) If, in the case of:
 - (i) the Primary Contractor, a Compensation Event or a Relief Event occurs; or
 - (ii) either the Province or the Primary Contractor, a Force Majeure Event occurs,

then, if and to the extent that such event interferes adversely with, or causes a failure of or prevents the performance of, in the case of the Primary Contractor, the Work or, in the case of the Province, any obligation under this Agreement, then, subject to Section 9.1(b), the affected or entitled party (the “**Applicant**”) may apply for relief from its obligations, apply for extensions of time, claim compensation and/or claim a termination right under this Agreement to the extent provided in this Part 9.

- (b) Notwithstanding any other provision of this Part 9, an Applicant shall only be entitled to relief from its obligations, extensions of time, compensation and/or a termination right under this Agreement in accordance with this Part in respect of a Supervening Event:
 - (i) in the case of any claim of Supervening Event by the Primary Contractor, if the interference with, failure of, or prevention of the Work referred to in Section 9.1 arising from such Supervening Event results in either or both of:

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- (A) Direct Losses (calculated on the assumption that the Primary Contractor has complied with its obligations under Section 4.10 [Mitigation by Primary Contractor]) of greater than \$100,000.00; and/or
 - (B) a delay of three or more days to the occurrence of any of the Substantial Completion Date, the Total Completion Date, the Availability Demonstration Completion Date and the TIDS Performance Demonstration Completion Date;
- (ii) if and to the extent that such Supervening Event is not caused by, could not reasonably have been prevented by and is beyond the reasonable control of the Applicant or (if the Applicant is the Primary Contractor) any person for whom the Primary Contractor is in law responsible or (if the Applicant is the Province) any person for whom the Province is in law responsible;
 - (iii) in the case of any claim of Supervening Event by the Primary Contractor, if and to the extent that such Supervening Event and/or the effect thereof is not required by the Design-Build Requirements to be contemplated or taken into account in the Design of the Project Infrastructure (provided that this shall not exclude damage caused by a Seismic Event that would otherwise be included pursuant to the definition of the relevant Supervening Event in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation]);
 - (iv) if and to the extent that such Supervening Event and/or the effect thereof does not result from or is not contributed to by, directly or indirectly:
 - (A) in the case of a claim of any Supervening Event by the Primary Contractor, any Primary Contractor Non-Excusable Event; or
 - (B) in the case of a claim of any Supervening Event by the Province, any Province Non-Excusable Event; and
 - (v) if the Applicant provides a Supervening Event Notice in respect of such Supervening Event pursuant to Section 9.2(a) no more than 12 months after the date of the occurrence or commencement of such Supervening Event.
- (c) Nothing in this Part 9 shall limit the Province's right to request a Province Change pursuant to Section 8.1 [Province Changes] in response to the occurrence of any Supervening Event, including a Province Change to give to the Primary Contractor instructions to accelerate construction or take other steps to avoid any delay or impediment, or reduce the period of any future delay or mitigate the effect of any future impediment, resulting from such Supervening Event. Subject to a cancellation of such request for a Province Change as a result of the successful exercise by the Primary Contractor of its rights in accordance with Section 4.2 [Primary Contractor Objection] of Schedule 10 [Changes], in the event that the Province requests such a Province Change, the procedures in respect of such Supervening Event set out in this Part 9 shall terminate and the matter shall be fully determined in accordance with Part 8 [Province Changes and Primary Contractor Proposals] and Schedule 10 [Changes], provided that the Supervening Event and its consequences (as such consequences may be affected by the Province Change) shall be dealt with as part of the resulting Province Change.

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9.2 Procedures Upon Occurrence of a Supervening Event

The following procedures shall apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within five Business Days after the Applicant has knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Part 9, the Applicant shall give to the Province, where the Applicant is the Primary Contractor, or to the Primary Contractor, where the Applicant is the Province, a notice (a “**Supervening Event Notice**”), identifying the particular Supervening Event and summarizing, to the extent the Applicant has knowledge thereof, the consequences and the nature of the Applicant’s claim;
- (b) following the delivery of a Supervening Event Notice, as soon as practicable, and in any event within 30 Business Days after the delivery of the Supervening Event Notice, the Applicant shall give to the Province, where the Applicant is the Primary Contractor, or to the Primary Contractor, where the Applicant is the Province:
 - (i) any additional details or information, including available supporting documentation, in support of its claim in respect of the occurrence of the Supervening Event;
 - (ii) if applicable, a detailed breakdown of all estimated Direct Losses that have been, will be or are reasonably likely to be incurred by the Applicant as a result of the Supervening Event; and
 - (iii) all other relevant information which would be required to be included in a Change Report under Section 2.3 [Preparation of Change Report] of Schedule 10 [Changes] if such Supervening Event was a Province Change;
- (c) if a Supervening Event for which a Supervening Event Notice has been delivered ceases, the Applicant shall give to the Province, where the Applicant is the Primary Contractor, or to the Primary Contractor, where the Applicant is the Province, as soon as practicable notice thereof and of when performance of its affected obligations can be resumed;
- (d) a party may not make multiple or duplicative claims in respect of any Supervening Event, and the relief, extensions of time, compensation and/or termination right in respect of a Supervening Event as is agreed to by the parties or otherwise determined in accordance with the Dispute Resolution Procedure pursuant to Section 9.2(g)(ii) shall be the only relief, extensions of time, compensation and/or termination right to which the Applicant shall be entitled in respect of such Supervening Event;
- (e) the other party shall provide the Applicant with any information reasonably requested by the Applicant in order for the Applicant to make its claim;
- (f) the Applicant shall demonstrate to the reasonable satisfaction of the Province, where the Applicant is the Primary Contractor, or the Primary Contractor, where the Applicant is the Province, that:
 - (i) the applicable criteria required under Section 9.1(b) have been met;

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- (ii) the Supervening Event has caused or will cause the Applicant to suffer the effects from which or for which the Applicant seeks relief, extensions of time, compensation and/or a termination right under this Part; and
 - (iii) it has complied with its mitigation obligations under Section 3.1 [Mitigation by Province] or Section 4.10 [Mitigation by Primary Contractor], as applicable; and
- (g) following the delivery of a Supervening Event Notice under Section 9.2(a), the Province and the Primary Contractor shall consult and seek to agree to the effect of the relevant Supervening Event, provided that either of them may submit for resolution in accordance with the Dispute Resolution Procedure the question of:
- (i) whether such Supervening Event has occurred, if within 10 Business Days following the delivery of the Supervening Event Notice the Province and the Primary Contractor have not agreed to the occurrence of such Supervening Event; and
 - (ii) the extent of relief, extensions of time and/or compensation to which the Applicant is entitled, if within 20 Business Days following the exchange of all relevant information required under this Section 9.2 [Procedures Upon Occurrence of a Supervening Event], the Province and the Primary Contractor have not agreed to the extent of such relief, extensions of time and/or compensation.

9.3 Primary Contractor's Entitlements Upon Occurrence of a Compensation Event

Subject to Sections 9.1(b) and 9.12 [Delay in Notification] and to the Primary Contractor's obligations under Section 4.10 [Mitigation by Primary Contractor], if, at any time, a Compensation Event occurs:

- (a) to the extent that, and for so long as, the Primary Contractor is prevented by the Compensation Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Compensation Event, including the Primary Contractor's obligations under Section 7.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) the Primary Contractor shall be relieved from any liability or consequence under this Agreement (including termination by the Province other than as expressly provided for in Section 9.7 [Termination for Damage or Destruction] and without limiting the Province's right to terminate this Agreement pursuant to Section 16.1 [Termination for Convenience]) arising from its inability to perform such obligation;
 - (ii) no NCE Points or Default Points shall be assigned to the Primary Contractor in respect of any such prevented performance; and
 - (iii) Sections 3.2(e), 3.3(e), 3.4(e), 3.5(e), 3.6(e), 3.7(d), 3.8(f), 3.9(e), 3.10(d), 3.11(e), 3.12(e), 5.1(c) and 5.3(d) of Schedule 9 [Performance Mechanism] shall apply;

- (b) subject to Section 9.7 [Termination for Damage or Destruction], Section 9.9 [Allocation of Risks of Participants and Trespassers] and Section 9.11 [Effect of Insurance], the Primary Contractor shall be compensated by the Province for the amount of any Direct Losses incurred, or to be incurred, by the Primary Contractor from the occurrence of the Compensation Event, provided that:
 - (i) in the case of a Compensation Event referred to in paragraph (m) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation], such amount shall not include the first \$200,000.00 of the aggregate amount of the Direct Losses incurred by the Primary Contractor to mitigate the effects of all Protest Actions;
 - (ii) in the case of a Compensation Event referred to in paragraph (o) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation], such amount shall be reduced by \$5,000,000.00; and
 - (iii) in the case of a Compensation Event (or a Force Majeure Event in the circumstances set out in Section 9.6(a)(ii)) that causes damage to or destruction of all or any part of the Project Infrastructure or the Site, the Province shall make payment of the portion of the amount that is payable for the Reinstatement Work in respect of such damage or destruction based on the same criteria and subject to satisfaction of all the same conditions as are set out in Sections 7.18(c) and (d) for the disbursement of Property Damage Insurance Proceeds under Section 7.18(b);
- (c) subject to Section 9.9 [Allocation of Risks of Participants and Trespassers], if it has been agreed or determined that the Compensation Event has resulted or will result in a delay to the Substantial Completion Date, then if the Compensation Event occurs:
 - (i) prior to the Substantial Completion Target Date, the Substantial Completion Target Date shall be postponed; or
 - (ii) after the Substantial Completion Target Date but prior to the Substantial Completion Date, the Substantial Completion Longstop Date shall be postponed,

in the case of Sections 9.3(c)(i) and (ii), by such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Compensation Event to the achievement of the Substantial Completion Date and in addition:

 - (iii) the Project Schedule shall be amended accordingly to reflect such postponement; and
 - (iv) no Delay Liquidated Damages shall be payable in respect of the period of any such postponement;
- (d) if the Compensation Event occurs:

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- (i) after the Substantial Completion Date and it has been agreed or determined that the Compensation Event has resulted or will result in a delay to the Total Completion Date; or
- (ii) after the Service Commencement Date and it has been agreed or determined that the Compensation Event has resulted or will result in a delay to the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date;

then the Total Completion Target Date, the Availability Demonstration Completion Target Date and/or the TIDS Performance Demonstration Completion Target Date, as the case may be, shall be postponed by such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Compensation Event to the achievement of the Total Completion Date, the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date, as the case may be, and the Project Schedule shall be amended accordingly to reflect such postponement.

9.4 Primary Contractor's Entitlements Upon Occurrence of a Relief Event

Subject to Sections 9.1(b) and 9.12 [Delay in Notification] and to the Primary Contractor's obligations under Section 4.10 [Mitigation by Primary Contractor], if a Relief Event occurs:

- (a) to the extent that, and for so long as, the Primary Contractor is prevented by the Relief Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Relief Event, including the Primary Contractor's obligations under Section 7.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) without limiting the Province's right to terminate this Agreement pursuant to Section 16.1 [Termination for Convenience], the Province shall not exercise any right that it would otherwise have under this Agreement to terminate this Agreement arising from the Primary Contractor's inability to perform such obligation (other than as expressly provided for in Section 9.7 [Termination for Damage or Destruction]);
 - (ii) no NCE Points or Default Points shall be assigned to the Primary Contractor in respect of any such prevented performance; and
 - (iii) Sections 3.2(e), 3.3(e), 3.4(e), 3.5(e), 3.6(e), 3.7(d), 3.8(f), 3.9(e), 3.10(d), 3.11(e), 3.12(e), 5.1(c) and 5.3(d) of Schedule 9 [Performance Mechanism] shall apply;
- (b) if it has been agreed or determined that the Relief Event has resulted or will result in a delay to the Substantial Completion Date, then if the Relief Event occurs:
 - (i) prior to the Substantial Completion Target Date, the Substantial Completion Target Date shall be postponed; or
 - (ii) after the Substantial Completion Target Date but prior to the Substantial Completion Date, the Substantial Completion Longstop Date shall be postponed,

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in the case of Sections 9.4(b)(i) and (ii), by such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Relief Event to the achievement of the Substantial Completion Date and in addition:

- (iii) the Project Schedule shall be amended accordingly to reflect such postponement; and
 - (iv) no Delay Liquidated Damages shall be payable in respect of the period of any such postponement;
- (c) if the Relief Event occurs:
- (i) after the Substantial Completion Date and it has been agreed or determined that the Relief Event has resulted or will result in a delay to the Total Completion Date; or
 - (ii) after the Service Commencement Date and it has been agreed or determined that the Relief Event has resulted or will result in a delay to the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date;

then the Total Completion Target Date, the Availability Demonstration Completion Target Date and/or the TIDS Performance Demonstration Completion Target Date, as the case may be, shall be postponed by such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Relief Event to the achievement of the Total Completion Date, the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date, as the case may be, and the Project Schedule shall be amended accordingly to reflect such postponement;

- (d) if:
- (i) a Relief Event referred to in paragraphs (b), (c), (d), (e)(but only to the extent falling within paragraph (b) of the definition of Labour Dispute in Section 1.1 [Definitions] of Schedule 1), (g), (h), and (k) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1] occurs; and
 - (ii) such Relief Event results in a delay of more than 30 days to the achievement of:
 - (A) if such Relief Event occurs prior to the Substantial Completion Date, the Substantial Completion Date;
 - (B) if such Relief Event occurs after the Substantial Completion, the Total Completion Date; or
 - (C) if such Relief Event occurs after the Service Commencement Date, the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date;

(the total period of the resulting delay to any of the dates referred to in any of Sections 9.4(d)(ii)(A), (B) or (C) being referred to in this Section 9.4(d) as the “**Delay Period**”),

then:

(iii) in respect of each calendar month that both commences and ends during the Compensation Period (as defined below), the Province shall pay to the Primary Contractor an amount equal to:

(A) the interest payable by the Primary Contractor to the Senior Lenders under the Senior Lending Agreements in respect of Permitted Borrowing at the No Default Interest Rate in respect of the relevant calendar month;

less

(B) the interest payable that would have been payable by the Primary Contractor to the Senior Lenders under the Senior Lending Agreements in respect of Senior Debt at any rate in respect of the relevant calendar month had no delay resulted from the occurrence of such Relief Event;

(iv) in respect of each calendar month any day or days of which occur during the Compensation Period but which is not a calendar month that is referred to in Section 9.4(d)(iii), the Province shall pay to the Primary Contractor an amount equal to $CP \times S/D$, where:

(A) CP is the amount that would be payable under Section 9.4(d)(iii) in respect of the relevant calendar month if all of the days in such calendar month were during the Compensation Period;

(B) S is the number of days in such calendar month that occur during the Compensation Period; and

(C) D is the number of days in such calendar month; and

(v) any amount payable by the Province pursuant to Sections 9.4(d)(iii) or (iv) shall be payable:

(A) to the Primary Contractor during the calendar month in respect of which the relevant amount of interest is payable by the Primary Contractor to the Senior Lenders under the Senior Lending Agreements and in any event no later than two Business Days, and no earlier than ten Business Days, prior to the date on which the Primary Contractor is required to pay any such amount to the Senior Lenders, provided that no less than five Business Days prior to the due date for payment of any such amount by the Province determined in accordance with this Section 9.4(d)(v)(A) the Province has received an invoice for such amount from the Primary Contractor, accompanied by a certificate from the Agent certifying the calculation of the amounts referred to in Sections 9.4(d)(iii)(A) and (B)

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and certifying the due date for payment of any interest under the Senior Lending Agreements in the relevant calendar month; and

- (B) if, by the due date for payment of any such amount by the Province, the Province has been given notice of a Designated Account pursuant to, and as defined in, Section 12.3 of the Lenders' Remedies Agreement, to such Designated Account,

provided that, if the Compensation Period continues for more than 180 days, the Province may at any time thereafter during the Compensation Period terminate this Agreement by notice to the other parties having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], and compensation shall be payable for such termination in accordance with Part 2 [Compensation on Non-Default Termination] and Part 5 [General Provisions] of Schedule 12.

In this Section 9.4(d), "**Compensation Period**" means the period that:

- (A) commences on (and includes) the date that is 31 days after:
 - (1) if Section 9.4(d)(ii)(A) applies, the Substantial Completion Target Date;
 - (2) if Section 9.4(d)(ii)(B) applies, the Total Completion Target Date; or
 - (3) if Section 9.4(d)(ii)(C) applies, the Availability Demonstration Completion Target Date and/or the TIDS Performance Demonstration Completion Target Date, as the case may be; and
- (B) ends on (and includes) the earlier of:
 - (1) the date which occurs X days after the commencement date of the period as determined in accordance with (A), where X is the number of days in the relevant Delay Period determined in accordance with Section 9.4(d)(ii)(A), (B) or (C), as applicable, minus thirty; and
 - (2) if:
 - (x) Section 9.4(d)(ii)(A) applies, the Substantial Completion Date;
 - (y) if Section 9.4(d)(ii)(B) applies, the Total Completion Date; or
 - (z) if Section 9.4(d)(ii)(C) applies, the Availability Demonstration Completion Date or the TIDS Performance Demonstration Completion Date, as applicable.

9.5 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Sections 9.1(b) and 9.12 [Delay in Notification] and to the Applicant's obligations under Section 3.1 [Mitigation by Province] or Section 4.10 [Mitigation by Primary Contractor], as applicable, if at any time a Force Majeure Event occurs:

- (a) to the extent that, and for so long as, the Applicant is prevented by the Force Majeure Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Force Majeure Event, including the Primary Contractor's obligations under Section 7.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) without limiting the Province's right to terminate this Agreement pursuant to Section 16.1 [Termination for Convenience], no other party shall exercise any right that it would otherwise have under this Agreement to terminate this Agreement arising from the Applicant's inability to perform such obligation (other than as expressly provided for in Section 9.6 [Termination for Force Majeure Event] or Section 9.7 [Termination for Damage or Destruction]);
 - (ii) if the Applicant is the Primary Contractor, no NCE Points or Default Points shall be assigned to the Primary Contractor in respect of any such prevented performance; and
 - (iii) if the Applicant is the Primary Contractor, Sections 3.2(e), 3.3(e), 3.4(e), 3.5(e), 3.6(e), 3.7(d), 3.8(f), 3.9(e), 3.10(d), 3.11(e), 3.12(e), 5.1(c) and 5.3(d) of Schedule 9 [Performance Mechanism] shall apply;
- (b) if the Applicant is the Primary Contractor and if it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to the Substantial Completion Date, then if the Force Majeure Event occurs:
 - (i) prior to the Substantial Completion Target Date, the Substantial Completion Target Date shall be postponed; or
 - (ii) after the Substantial Completion Target Date but prior to the Substantial Completion Date, the Substantial Completion Longstop date shall be postponed,

in the case of Sections 9.5(b)(i) and (ii), by such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Force Majeure Event to the achievement of the Substantial Completion Date and in addition:
 - (iii) the Project Schedule shall be amended accordingly to reflect such postponement; and
 - (iv) no Delay Liquidated Damages shall be payable in respect of the period of any such postponement;
- (c) if the Applicant is the Primary Contractor, if the Force Majeure Event occurs:

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- (i) after the Substantial Completion Date and it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to the Total Completion Date; or
- (ii) after the Service Commencement Date and it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date;

then the Total Completion Target Date, the Availability Demonstration Completion Target Date and/or the TIDS Performance Demonstration Completion Target Date, as the case may be, shall be postponed by such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Force Majeure Event to the achievement of the Total Completion Date, the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date, as the case may be, and the Project Schedule shall be amended accordingly to reflect such postponement.

9.6 Termination for Force Majeure Event

- (a) If the occurrence of a Force Majeure Event frustrates or renders impossible for a continuous period of more than 180 days the performance by the Province or the Primary Contractor of its respective obligations hereunder with respect to all or a material portion of the Project or the Work, as the case may be, so as to frustrate the overall purpose and intent of this Agreement, then either the Province or the Primary Contractor may, at any time, provided that such frustration is then continuing, terminate this Agreement by notice to the other party having immediate effect, subject to Section 9.1(b) and Section 16.4 [Notice of Intention to Terminate and Dispute], provided that if the Primary Contractor exercises such right to terminate the Province may, by notice to the Primary Contractor, reject such termination of this Agreement by the Primary Contractor and, upon such rejection by the Province:
 - (i) the Primary Contractor, insofar as it is able to do so, will continue to perform its obligations under this Agreement in accordance with the provisions of this Agreement;
 - (ii) without prejudice to the other relief available to the Province in respect of such Force Majeure Event pursuant to Section 9.5 [Parties' Entitlements Upon Occurrence of a Force Majeure Event], the Primary Contractor shall, for so long as the effects of the relevant Force Majeure Event continue, be compensated in accordance with Section 9.3(b), but only in respect of the Direct Losses incurred by the Primary Contractor as a result of the Force Majeure Event as and from the date of the exercise by the Primary Contractor of its termination right; and
 - (iii) the Province may at any time thereafter, provided that such frustration is then continuing, terminate this Agreement by notice to the Primary Contractor having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute].

- (b) If this Agreement is terminated by either the Province or the Primary Contractor pursuant to Section 9.6(a), compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 5 [General] of Schedule 12 [Compensation on Termination].

9.7 Termination for Damage or Destruction

If, prior to the Substantial Completion Date, all or any substantial part of the Project Infrastructure or the Site is damaged or destroyed as a result of the occurrence of:

- (a) any event (other than a Force Majeure Event or a Compensation Event referred to in paragraph (o) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation]) and:
- (i) the information provided by the Primary Contractor and consented to by the Province's Representative as part of the Reinstatement Plan pursuant to Section 7.16 [Reinstatement Plan] establishes that there are insufficient proceeds available under the policy for the insurance referred to in Section 4 [Property Insurance] of Schedule 14 [Insurance Requirements] (excluding any delay in start up, extra expense, business interruption or loss of profits insurance proceeds payable under any such policy) to pay the full cost of completion of the Reinstatement Work (the deficiency being called the “**Reinstatement Funds Deficiency**”); and
 - (ii) the Province has not agreed in its discretion to fund the Reinstatement Funds Deficiency,

then:

- (iii) in the event that it is agreed or established that either:
 - (A) such damage or destruction of all or a substantial part of the Project Infrastructure or Site results from or is contributed to by a Primary Contractor Non-Excusable Event, including as a result of a failure by the Primary Contractor to comply with and implement all design requirements specified in the Design-Build Requirements applicable to the damaged Project Infrastructure or Site; or
 - (B) the cause of the Reinstatement Funds Deficiency is a breach by the Primary Contractor of any of its obligations with respect to the Required Insurance set out in Part 7 [Insurance, Damage and Destruction] and Schedule 14 [Insurance Requirements], including a failure by the Primary Contractor to fund any deductibles or waiting periods for which it is responsible under this Agreement,

the Province may terminate this Agreement by notice to the Primary Contractor having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 3 [Compensation on Termination for Primary

Contractor Default] and Part 5 [General] of Schedule 12 [Compensation on Termination]; or

- (iv) in any case where Section 9.7(a)(iii) does not apply, either the Primary Contractor or the Province may terminate this Agreement by notice to the other parties having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 5 [General] of Schedule 12 [Compensation on Termination]; or
- (b) a Compensation Event referred to in paragraph (o) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation], the Province shall elect, by notice to the Primary Contractor having immediate effect, either:
 - (i) to compensate the Primary Contractor in accordance with Section 9.3(b), and this Agreement will continue; or
 - (ii) to terminate this Agreement, in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 5 [General] of Schedule 12 [Compensation on Termination].

9.8 Responsibility for Participants and Trespassers

- (a) Except as otherwise expressly provided in this Agreement, neither the Province nor BCTFA shall be responsible for the presence on or around or entry onto or around the Site or the Project Infrastructure of, or any other interference with or affecting the Site or the Project Infrastructure or the vicinity of them or the Work by or caused by, any participants (“**Participants**”) in a Protest Action, or any persons other than Participants not entitled to be on the Site or the Project Infrastructure (“**Trespassers**”), nor for any act, omission or default of any Participant or Trespasser (in any such case whether before or during the Term). The presence on or around or entry onto or around the Site or the Project Infrastructure of, or any other interference with or affecting the Site or the Project Infrastructure or the vicinity of them or the Work by or caused by, any Participant or Trespasser and any lawful or unlawful activities of any such person shall not be a breach of the obligation of the Province hereunder to permit the Primary Contractor to have access to the Site, nor a breach of any other obligation or representation or warranty of the Province under this Agreement.
- (b) The management of Participants and Trespassers in respect of the Site shall be the responsibility of the Primary Contractor during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i). If, at any time during any such period, any part of the Site or the Project Infrastructure is occupied by any Participants or Trespassers, then, as soon as reasonably practicable, the Primary Contractor shall notify the Province of such occurrence and of the action which the Primary Contractor proposes to take to deal with such Participants or Trespassers. The Primary Contractor may exercise any legal remedies available to it to remove Participants and Trespassers (including the obtaining of injunctions and enforcement orders in respect thereof), provided that the Primary Contractor shall give the Province's

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Representative reasonable (and in any event not less than 24 hours') notice prior to commencing any legal proceedings for that purpose and provided further that the Primary Contractor shall not give directly or indirectly to any Participant or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Participant or Trespasser or by other Participants or Trespassers, provided that the Primary Contractor shall not by virtue of this Section be prevented from entering into bona fide settlements of Claims brought against it by Participants or Trespassers which provide for reasonable payments in satisfaction of such Claims or agreeing to any reasonable cost orders in any proceedings.

- (c) The Primary Contractor may request the assistance of the Province (at the cost of the Primary Contractor) to remove Participants where the Primary Contractor demonstrates, to the reasonable satisfaction of the Province, that it has exercised all legal remedies available to it to remove the Participants (provided that for this purpose the Primary Contractor may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the Court of first instance) and that the continued presence of the Participants is having a material adverse effect on the conduct of the Work that the Primary Contractor is unable to mitigate. Following such request, the Province shall notify the Primary Contractor as to whether the Province can lawfully provide any assistance in relation to the removal of the Participants that is not independently available to the Primary Contractor and, to the extent that such assistance can be lawfully provided, the Province shall provide such assistance (at the Primary Contractor's cost and expense) to the extent it is, in the discretion of the Province, reasonable and appropriate in the circumstances to do so.
- (d) Where the Primary Contractor is given assistance by the Province in accordance with Section 9.8(c) hereof, the Primary Contractor shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of all Direct Losses and Claims suffered or incurred by the Province and the Province Indemnified Persons, or any of them, as a result of or in connection with the provision of such assistance.

9.9 Allocation of Risks of Participants and Trespassers

- (a) In the event of any Protest Action, the Primary Contractor shall be entitled to compensation, extensions of time or other relief in respect thereof as a Compensation Event in accordance with this Part and the following additional parameters:
 - (i) the Primary Contractor shall only be entitled to extensions of time in respect of Protest Actions pursuant to Section 9.3(c) if and to the extent that the Primary Contractor establishes that the Participants in such Protest Action continue to occupy any part of the Site or the Project Infrastructure for a period of more than seven days after the Primary Contractor has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a Court of first instance and to enforce any injunction or other remedy granted by such Court to remove them (provided that for this purpose the Primary Contractor may but shall not be obligated, to prosecute injunctive or other judicial remedies beyond the Court of first instance); and

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- (ii) the Primary Contractor shall only be entitled to compensation in respect of Protest Actions pursuant to Section 9.3(b) if and, subject to Section 9.11 [Effect of Insurance], to the extent that the Primary Contractor establishes that it has incurred Direct Losses to mitigate the effects of Protest Actions, including:
 - (A) the costs of exercising any legal remedy available to the Primary Contractor in respect of Protest Actions (including in accordance with its obligations under Section 9.8 [Responsibility for Participants and Trespassers]);
 - (B) the increased costs, including financing costs, attributable to any extension of time to which the Primary Contractor is entitled;
 - (C) the cost of remedying any damage caused by Protest Actions; and
 - (D) the taking of any mitigation action in relation to Protest Actions,which aggregate (including amounts paid by way of indemnity under Section 9.8(d) but excluding amounts referred to in Section 9.11 [Effect of Insurance]) more than \$200,000.00.
- (b) Except as expressly provided in Section 9.9(a), as between the Province and the Primary Contractor, the Primary Contractor shall bear, without recourse to the Province or any of the Province Indemnified Persons:
 - (i) any Losses suffered by the Primary Contractor, its agents, Subcontractors or employees of any of them;
 - (ii) any Direct Losses suffered by the Province or any of the Province Indemnified Persons arising:
 - (A) from any interference, obstruction or other hindrance to the Project or any interference with or obstruction or other hindrance to the conduct of the Work, including the presence of any Participant or Trespasser on any part of the Site during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i) for such part or the Project Infrastructure located on such part;
 - (B) from any damage caused to the Project Infrastructure during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i) for the part of the Site on which the damaged Project Infrastructure is located;
 - (C) as a result of any measures taken by or on behalf of or at the request or direction of the Primary Contractor; and/or
 - (D) as a result of the failure by the Primary Contractor to take or cause to be taken measures which should have been taken,

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that are caused by any Participant or Trespasser, including any damage to property, any bodily injury or death, and any loss of income.

- (c) Nothing in this Section shall affect:
 - (i) any right of the Province or BCTFA to make or recover any Claim against any Participant or Trespasser for public nuisance or for damage suffered by the Province or BCTFA or their respective agents, contractors or subcontractors of any tier or any employees of any of them; or
 - (ii) any right of the Primary Contractor to make or recover any Claim against any Participant or Trespasser for damage suffered by the Primary Contractor, its agents or Subcontractors or any employees of any of them.

9.10 Sharing of Increased Capital Expenditures for Undisclosed Utilities

In the event that the discovery of any Undisclosed Utilities causes the Primary Contractor to incur additional Capital Expenditures in order to carry out the Work and otherwise comply with the Design-Build Requirements as a result of the existence of such Utilities which the Primary Contractor would not have incurred but for such discovery, then the Primary Contractor shall be entitled, subject to the Primary Contractor’s obligations under Section 4.10 [Mitigation by Primary Contractor] and except to the extent that any such Capital Expenditures result from or are contributed to, directly or indirectly, by any Primary Contractor Non-Excusable Event, to receive compensation from the Province in respect of such additional aggregate Capital Expenditures incurred by the Primary Contractor as a direct consequence of the discovery of all such Undisclosed Utilities (the “**Additional Utilities Capital Expenditures**”) in an amount calculated in accordance with Table 9.10 set out below.

Table 9.10 Sharing of Additional Utilities Capital Expenditures

Additional Utilities Capital Expenditure	Province Share of Additional Utilities Capital Expenditure	Primary Contractor Share of Additional Utilities Capital Expenditure	Maximum Cumulative Primary Contractor Share of Additional Utilities Capital Expenditure
Applicable to first \$750,000			
Applicable to next incremental \$1,500,000			
Applicable to amount over \$2,250,000			

9.11 Effect of Insurance

Notwithstanding anything to the contrary in this Part 9 [Supervening Events], the Primary Contractor shall not be entitled to any compensation under this Part 9 [Supervening Events] in respect of any Supervening Event to the extent, in respect of the Supervening Event:

- (a) that:
- (i) the Primary Contractor recovers or is entitled to recover under any Required Insurance, or would have been entitled to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Supervening Event or any aspect thereof is insured against, or required to be insured against, under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement,
- whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Primary Contractor or of any person for whom the Primary Contractor is in law responsible (including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer), or for any other reason; or
- (b) that the Primary Contractor recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Primary Contractor has in fact taken out and maintained; or
 - (c) that there are proceeds of insurance held by the Province pursuant to Section 7.18(b) that are (subject to the Primary Contractor fulfilling all conditions to the disbursement thereof) available for satisfaction of the Claims or Direct Losses arising as a result of such Supervening Event, in whole or in part; or
 - (d) that the Province makes, or is obligated under this Agreement (subject to the Primary Contractor fulfilling all conditions thereto) to make, payment to or for the account of or on behalf of the Primary Contractor under Section 7.18 [Application of Proceeds of Insurance]; or
 - (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 9.11(a) and (b) for which the Primary Contractor is responsible;

provided that, in the case of a Compensation Event described in paragraph (m) or paragraph (o) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation], the Province shall not reduce pursuant to this Section 9.11 [Effect of Insurance] the compensation it would otherwise have paid under this Part 9 [Supervening Events] by reason of proceeds of insurance that the Primary Contractor recovers or is entitled to recover up to the following limits:

- (i) in the case of all Compensation Events described in paragraph (m) of the definition of Compensation Event, up to an aggregate limit of \$200,000.00; and
- (ii) in the case of a Compensation Event described in paragraph (o) of the definition of Compensation Event, up to a limit of \$5,000,000.00 per Seismic Event.

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9.12 Delay in Notification

- (a) If a Supervening Event Notice is provided by an Applicant to the other relevant party more than 12 months after the date of the occurrence or commencement of such Supervening Event contrary to Section 9.1(b)(v), then the Applicant shall not be entitled to any compensation, extension of time or relief from its obligations under this Agreement in respect of the Supervening Event that was the subject of such Supervening Event Notice.
- (b) If a Supervening Event Notice or any required information is provided by an Applicant to the other relevant party after the relevant dates referred to in Section 9.2 [Procedures Upon Occurrence of a Supervening Event], then the Applicant shall not be entitled to any compensation, extension of time or relief from its obligations under this Agreement in respect of the Supervening Event that was the subject of such Supervening Event Notice to the extent that the amount thereof would (but for this Section 9.12(b)) have increased as a result of such delay in providing such notice or information.

**PART 10
LIQUIDATED DAMAGES**

10.1 Liquidated Damages

The Province and the Primary Contractor acknowledge and agree that:

- (a) there will be substantial delays, costs and difficulties in determining the loss suffered by the Province if a Liquidated Damages Event occurs;
- (b) upon the occurrence of a Liquidated Damages Event, the Primary Contractor shall, in accordance with Schedule 24 [Liquidated Damages], pay to the Province, as liquidated damages and not as a penalty, the Liquidated Damages payable in respect of such Liquidated Damages Event;
- (c) the Liquidated Damages provided for in this Part 10 [Liquidated Damages] and Schedule 24 [Liquidated Damages] are not intended, nor shall they be construed, to be punitive but are a genuine pre-estimate and assessment, by mutual agreement, of the actual loss that will be suffered by the Province as a result of the occurrence of a Liquidated Damages Event;
- (d) the method of calculation of Liquidated Damages in accordance with Schedule 24 [Liquidated Damages] represents a fair and reasonable pre-estimate of the actual losses that will be suffered by the Province as a result of the occurrence of a Liquidated Damages Event;
- (e) the payment of Liquidated Damages in accordance with this Part 10 [Liquidated Damages] and Schedule 24 [Liquidated Damages] shall be the Province's sole remedy for the occurrence of the applicable Liquidated Damages Event; and
- (f) this Part 10 [Liquidated Damages] (including Section 10.1(e)) and Schedule 24 [Liquidated Damages] shall not, and shall not be construed to:

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- (i) limit the rights and remedies of the Province, or the liabilities of the Primary Contractor, that arise or may arise as a result of the occurrence of the Primary Contractor Default referred to in Section 14.1(a)(v); nor
- (ii) relieve the Primary Contractor from:
 - (A) the obligation to achieve Substantial Completion in accordance with this Agreement; or
 - (B) any liability arising from any failure to comply with any obligation referred to in Section 10.1(f)(ii)(A), other than any liability that would arise as a result of the occurrence of a Liquidated Damages Event (except for the payment of Liquidated Damages).

**PART 11
INDEMNITIES AND LIMITATIONS ON ACTIONS**

11.1 Indemnification by Primary Contractor

Without limiting the Primary Contractor's obligations and liabilities under Section 2.3 [Assumption of Risk and Responsibility], and subject to Section 11.2 [Exceptions to Indemnification by Primary Contractor], the Primary Contractor shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons, or any of them, that arise directly or indirectly out of, in the course of, in connection with or as a result of:

- (A) the Work;
- (B) any use or occupation of:
 - (i) any part of the Site, or the Project Infrastructure located on such part, during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i) for such part; or
 - (ii) any part of the Site or the Project Infrastructure by the Primary Contractor or any person for whom the Primary Contractor is in law responsible;
- (C) any event, loss or occurrence on or relating to:
 - (i) any part of the Site, or the Project Infrastructure located on such part, during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i) for such part; or
 - (ii) any part of the Site or the Project Infrastructure as a result of any act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible; or
- (D) the performance or non performance of any obligation of the Primary Contractor under this Agreement,

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including, in respect of any one or more of (A) to (D), Claims and Direct Losses:

- (a) for or in respect of bodily injury, including death resulting at any time therefrom;
- (b) for or in respect of any damage to or loss of property, whether real or personal, including damage to or loss of:
 - (i) all or any part of the Project Infrastructure or any other property belonging to the Province or BCTFA or for which either of them is responsible;
 - (ii) infrastructure or property of any Governmental Authority or other Relevant Authority, including TransLink and any Municipality, or of any Utility Supplier, CPR or any other third party;
 - (iii) lands (and improvements thereon) forming part of or adjacent to or in the vicinity of the Site; and
 - (iv) Plant or Construction Plant;
- (c) caused by, arising out of, relating to or resulting from or in connection with any Claims or Losses suffered or incurred by, or brought or made against, the Primary Contractor or any person for whom the Primary Contractor is in law responsible or any employees of any of them or any user of the Site or the Project Infrastructure or other third party (including any Claims in respect of environmental mitigation measures);
- (d) caused by, arising out of, relating to or resulting from or in connection with any act or omission of any user of, or of any other person on or about, any part of the Site, or the Project Infrastructure located on such part, during any period in respect of which the Primary Contractor agrees to be the Prime Contractor pursuant to Section 4.11(c)(i) for such part;
- (e) caused by, arising out of, relating to or resulting from or in connection with any adoption, use or application by or on behalf of the Primary Contractor or any Subcontractor, or any other person for whom the Primary Contractor is in law responsible, of any Design Data, Disclosed Data or data or documents provided or made available by or on behalf of the Province or BCTFA, whether before or after execution of this Agreement;
- (f) caused by, arising out of, relating to or resulting from or in connection with matters referred to in Section 9.8 [Responsibility for Participants and Trespassers] and Section 9.9 [Allocation of Risks of Participants and Trespassers] or that are caused by, arise out of, relate to or result from or in connection with any measures taken or not taken by the Primary Contractor, or by or on behalf of the Province or BCTFA at the request of the Primary Contractor, against or in connection with Participants or Trespassers;
- (g) caused by, arising out of, relating to or resulting from or in connection with any act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible or employees of any of them that directly or indirectly causes any breach of any statutory or public powers, authorities, discretions, duties or obligations;

- (h) caused by, arising out of, relating to or resulting from or in connection with any performance by the Primary Contractor of, or any failure by the Primary Contractor to perform, any of its obligations under this Agreement relating to Hazardous Substances and Contamination;
- (i) caused by, arising out of, relating to or resulting from or in connection with any infringement or misappropriation or alleged infringement or misappropriation of any other person's Intellectual Property Rights (other than infringement, misappropriation or alleged infringement or misappropriation of Intellectual Property Rights in respect of ATC Equipment, ATC Software or ATC Documentation, to which Section 11.3 [Indemnification for ATC Intellectual Property Infringement] shall apply), or breach or alleged breach of obligations of confidentiality by the Primary Contractor or any person for whom the Primary Contractor is in law responsible;
- (j) caused by, arising out of, relating to or resulting from or in connection with any breach in the observance or performance of any of the obligations of the Primary Contractor under this Agreement or any of the other Project Documents or the occurrence of any Primary Contractor Default;
- (k) caused by, arising out of, relating to or resulting from or in connection with any repair, correction or warranty obligations of the Primary Contractor under this Agreement, including the obligations to correct Work Defects under Part 6 [Work and Warranties];
- (l) caused by, arising out of, relating to or resulting from or in connection with anything done or omitted to be done by or on behalf of the Primary Contractor or any Subcontractor, or any other person for whom the Primary Contractor is in law responsible, or any of them, in connection with or pursuant to or under any of the Site Requirements;
- (m) caused by, arising out of, relating to or resulting from or in connection with any breach of Section 4.5 [Prohibited Acts] or anything done or omitted to be done by or on behalf of the Primary Contractor or any Subcontractor or any other person in connection with any of Sections 14.3(c)(ii) to (v) inclusive; or
- (n) caused by, arising out of, relating to or resulting from or in connection with any act, omission, negligence or misconduct of the Primary Contractor or persons for whom the Primary Contractor is in law responsible or any employees of any of them.

11.2 Exceptions to Indemnification by Primary Contractor

The obligations of the Primary Contractor to indemnify under Section 11.1 [Indemnification by Primary Contractor] shall not apply to any Claims or Direct Losses to the extent that:

- (a) the Province is obligated to indemnify the Primary Contractor in respect of Claims and Direct Losses arising out of the same events or circumstances pursuant to Section 11.6 [Indemnification by the Province], Section 11.7 [Limited Indemnity for Contamination] or Section 11.9 [Limited Indemnity for Nuisance];

- (b) the Claims or Direct Losses are directly attributable to any wilful misconduct by the Province, BCTFA or any person for whom the Province is in law responsible on or about the Site or the Project Infrastructure;
- (c) the Claims or Direct Losses are directly attributable to any breach in the observance or performance of any of the obligations of the Province or BCTFA under this Agreement or any other Province Project Document by the Province, BCTFA or any person for whom the Province is in law responsible;
- (d) the Claims or Direct Losses:
 - (i) consist of payments that the Province has made or is obligated to make to the Primary Contractor pursuant to Schedule 10 [Changes];
 - (ii) consist of compensation that the Province has paid or is obligated to pay to the Primary Contractor pursuant to Section 9.3(b) or Section 9.6(a)(ii) to the extent that the relevant Compensation Event or Force Majeure Event, as the case may be, does not arise or result (directly or indirectly) from any Primary Contractor Non-Excusable Event;
 - (iii) are directly attributable to a Compensation Event or a Force Majeure Event (save that the exception in this Section 11.2(d)(iii) shall not apply to the extent that the Primary Contractor would otherwise be responsible for any such Claims or Direct Losses pursuant to Section 9.9(b)); or
 - (iv) are directly attributable to the non-performance of any obligations of the Province under any of the CPR Agreements, the Municipal Agreements or the Utility Agreements that the Primary Contractor is not obligated to perform pursuant to this Agreement;and provided that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Primary Contractor Non-Excusable Event;
- (e) the Province and/or the Province Indemnified Persons, as the case may be have received or are entitled to receive insurance proceeds in respect of such Claims and Direct Losses under the Required Insurance;
- (f) the Claims or Direct Losses relate to rent, user fees, property taxes (if any) or occupancy costs referred to in Section 4.2 of Schedule 7 [Lands] to the extent that the Primary Contractor is not obligated to pay such amounts pursuant to Section 3.8(g) of Schedule 7 [Lands];
- (g) the Claims or Direct Losses consist of payments that the Province has made or is obligated to make to the Primary Contractor pursuant to Section 9.4(d) to the extent that the relevant Relief Event does not arise or result (directly or indirectly) from any Primary Contract Non-Excusable Event; or
- (h) the Claims or Direct Losses consist of compensation that the Province has paid or is obligated to pay to the Primary Contractor pursuant to Section 9.10 [Sharing of Increased Capital Expenditures for Undisclosed Utilities] to the extent that such Claims or Direct

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Losses do not arise or result (directly or indirectly) from any Primary Contractor Non-Excusable Event.

11.3 Indemnification for ATC Intellectual Property Infringement

- (a) The Primary Contractor shall indemnify and hold harmless each Province Indemnified Person from and against all Claims by third parties and all Direct Losses suffered or incurred by any of them, arising, directly from or related to, any third party Claim that any ATC Equipment, ATC Software or ATC Documentation provided by the Primary Contractor infringes, based upon a substantive allegation, any Canadian or United States Intellectual Property Right (including copyright, trademark and patent) of the third party (an “**ATC Intellectual Property Infringement Claim**”).
- (b) In the event of an ATC Intellectual Property Infringement Claim, the Primary Contractor shall have the option, at its expense, to:
 - (i) modify the infringing or allegedly infringing ATC Equipment, ATC Software or ATC Documentation to be non-infringing, provided that the modified ATC Equipment, ATC Software and ATC Work is functionally equivalent or superior in all respects and complies with the requirements of this Agreement;
 - (ii) settle the ATC Intellectual Property Infringement Claim and procure the right to continue using the infringing or allegedly infringing ATC Equipment, ATC Software or ATC Work; or
 - (iii) replace the infringing or allegedly infringing ATC Equipment, ATC Software or ATC Work with a functionally equivalent or better component which is non-infringing and complies with the requirements of this Agreement.
- (c) The Primary Contractor shall not be responsible for any ATC Intellectual Property Infringement Claim to the extent the ATC Intellectual Property Infringement Claim is based upon:
 - (i) use (other than by the Primary Contractor or any person for whom the Primary Contractor is in law responsible) of the ATC Equipment, ATC Software or ATC Work in a manner, or for a purpose, which was not anticipated under this Agreement;
 - (ii) modification of any ATC Equipment, ATC Software or ATC Work not approved by the Primary Contractor;
 - (iii) the assembly, combination, function, operation or use of any ATC Equipment, ATC Software or ATC Work (other than by the Primary Contractor or any person for whom the Primary Contractor is in law responsible) with any materials and/or software not approved by the Primary Contractor which materially causes or contributes to the ATC Intellectual Property Infringement Claim.
- (d) Notwithstanding any provision of this Agreement to the contrary:

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- (i) the provisions of this Section 11.3 constitute the Province's sole remedy under this Agreement with respect to any claim of infringement of any patent, copyright, trade secret or other Intellectual Property Right, in any such case relating to any ATC Equipment, ATC Software or ATC Documentation (including any ATC Intellectual Property Infringement Claim); and
- (ii) to the extent that any ATC Intellectual Property Infringement Claim arises as a result of a breach by the Primary Contractor of its representation, warranty and covenant in Section 17.3(m)(ii) that is caused by Thales, the maximum aggregate liability of the Primary Contractor under this Section 11.3 in respect of all such Claims shall be the Contract Price (as defined in the ATC Supply Contract).
- (e) Except as otherwise expressly provided in this Section 11.3, the Primary Contractor makes no representation, warranty or condition of any kind with respect to any ATC Intellectual Property Infringement Claim, and the Primary Contractor disclaims any and all implied warranties relating thereto, including but not limited to non-infringement of any rights of third parties.

11.4 Effect of Indemnities

Subject to Section 11.14 [No Double Compensation]:

- (a) the Primary Contractor's liability to the Province and the Province Indemnified Persons, or any of them, under any indemnity in this Agreement is without prejudice to any other right or remedy available to the Province and the Province Indemnified Persons, or any of them; and
- (b) any obligation of the Primary Contractor to indemnify and hold harmless under any provision of this Agreement is in addition to and not in substitution for or in limitation of any other obligation of the Primary Contractor to indemnify and hold harmless under any other provision of this Agreement.

11.5 Conduct of Claims Indemnified by Primary Contractor

- (a) If the Province or any Province Indemnified Person (in this Section 11.5 individually referred to as an "**Indemnified Party**" and collectively referred to as the "**Indemnified Parties**") receives any notice, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Primary Contractor under this Agreement, the Indemnified Party shall give notice to the Primary Contractor as soon as reasonably practicable and in any event within 30 days after receipt thereof, provided that a failure by an Indemnified Party to give such notice and particulars of a Claim within such time shall not adversely affect the rights of the Indemnified Party under the applicable indemnity to the extent that the Indemnified Party establishes that such failure has not materially and adversely affected or prejudiced the ability of the Primary Contractor to defend or contest the Claim.
- (b) Subject to Sections 11.5(c), (d), (e), (f) and (g), on the receipt of a notice delivered by an Indemnified Party pursuant to Section 11.5(a) the Primary Contractor, in its discretion, shall be entitled to, and shall, resist the Claim that is the subject of the notice in the name of the Indemnified Party or the Indemnified Parties, at the Primary Contractor's own

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expense, and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations. The Indemnified Parties shall give the Primary Contractor and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim, including providing or making available to the Primary Contractor and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Primary Contractor shall pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.

- (c) The defence and any other legal proceedings in respect of any Claim that is subject to Section 11.5(b) shall be undertaken through legal counsel, and shall be conducted in a manner acceptable to the Indemnified Party and the Primary Contractor, acting reasonably. If:
- (i) the Primary Contractor and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;
 - (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Primary Contractor or some other person who may be represented by counsel retained by the Primary Contractor;
 - (iii) it appears that an Indemnified Party might not be entitled to indemnification by the Primary Contractor in respect of all of the liability arising out of the Claim, unless the Primary Contractor agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity; or
 - (iv) the Primary Contractor fails to resist the Claim with all due diligence and in a timely manner,

then the Indemnified Party shall be represented by separate counsel selected by the Indemnified Party and the indemnity obligations of the Primary Contractor with respect to the Claim (including with respect to the cost of such separate legal representation) shall continue to apply and all reasonable costs and expenses (including reasonable legal fees and expenses) of the Indemnified Party doing so shall be included in the indemnity from the Primary Contractor. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity obligations of the Primary Contractor with respect to the Claim shall continue to apply but the fees and disbursements of such separate counsel shall be paid by the Indemnified Party. In any case where an Indemnified Party is represented by separate counsel, the Primary Contractor and its counsel shall (at the cost of the Primary Contractor) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance, including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege. For greater certainty, the representation of an Indemnified Party by separate counsel as

contemplated in this Section 11.5(c) and actions taken by such separate counsel in the course of such representation, including attendance at examinations, hearings and trials, shall not constitute a taking over of the conduct of the relevant legal proceedings by the Indemnified Party for the purposes of Section 11.5(f).

- (d) With respect to any Claim that is subject to Sections 11.5(b) and 11.5(c):
 - (i) the Primary Contractor shall keep the Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified by the Primary Contractor for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 11.5(b) that increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity from the Primary Contractor; and
 - (iii) the Primary Contractor shall not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.
- (e) If, within 30 days after receipt of the notice from the Indemnified Party under Section 11.5(a), the Primary Contractor fails to notify the Indemnified Party of its intention to resist the Claim that is the subject of the notice pursuant to Section 11.5(a), the Indemnified Party shall be entitled to resist the Claim in the name of the Indemnified Party or the Indemnified Parties or in the name of the Primary Contractor and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations, and to pay or settle the Claim on such terms as it may think fit, all without prejudice to its right to indemnification by the Primary Contractor (including with respect to the costs and expenses of resisting the Claim) and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement, including Sections 3.1 [Mitigation by Province] and 11.12 [Costs and Expenses]. If the Indemnified Party has conduct of the Claim pursuant to this Section 11.5(e), the Indemnified Party shall keep the Primary Contractor fully informed and consult with the Primary Contractor about the conduct of the Claim.
- (f) The Indemnified Party shall be free at any time to give notice to the Primary Contractor that the Indemnified Party is taking over the conduct of any defence, dispute, compromise or appeal of any Claim that is subject to Section 11.5(b) or of any incidental negotiations. Upon receipt of such notice, the Primary Contractor shall promptly take all steps necessary to transfer the conduct of such Claim to the Indemnified Party and shall provide the Indemnified Party with all reasonable cooperation, access and assistance (including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege) for the purposes of considering and resisting such Claim. If the Indemnified Party gives any notice pursuant to this Section 11.5(f) then, except as otherwise expressly

provided by this Agreement, the Primary Contractor shall be released from its indemnity in favour of such Indemnified Party in respect of such Claim except where such notice was given by the Indemnified Party as a consequence of the failure of the Primary Contractor to resist the Claim with all due diligence and in a timely manner or to otherwise perform its obligations in accordance with this Section 11.5 [Conduct of Claims Indemnified by Primary Contractor].

- (g) Notwithstanding the foregoing, all parties shall comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim shall be subject to the rights of such insurer under the applicable policy of insurance.

11.6 Indemnification by the Province

Subject to Sections 7.4 [Deductibles], 7.6 [Release of the Province and BCTFA for Insured Loss] and 11.10 [Exceptions to Indemnification by the Province], the Province shall indemnify and hold harmless the Primary Contractor and the Primary Contractor Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Primary Contractor and the Primary Contractor Indemnified Persons, or any of them, to the extent resulting from any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible, in relation to the Work, the Site or the Project Infrastructure, other than:

- (a) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with any act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible or any breach in the observance or performance of any of the obligations of the Primary Contractor under this Agreement;
- (b) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible referred to in either of Sections 2.13(a)(ii) or 2.15 [Disclosed Data];
- (c) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with measures taken or not taken by or on behalf of the Province or BCTFA in connection with Participants or Trespassers pursuant to Section 9.8 [Responsibility for Participants and Trespassers];
- (d) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with negligent acts or negligent omissions occurring prior to the date of this Agreement or after the Termination Date;
- (e) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with any Existing Contamination or Subsequent Contamination, or any migration or leaching of Existing Contamination or Subsequent Contamination, or any remediation, handling or legal requirement of any Governmental Authority in respect of Existing Contamination or Subsequent Contamination, provided that this exclusion shall not prejudice the Primary Contractor's rights under Section 11.7 [Limited Indemnity for Contamination];

- (f) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with matters in respect of which the Primary Contractor is entitled to claim compensation or other relief pursuant to Part 9 [Supervening Events]; and
- (g) Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible in the course of taking action under any of Sections 13.4(a), 13.4(b) and 13.5(a), except to the extent of any failure of the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under any of those Sections to comply with all applicable Laws and Permits in the course of exercising the Province's rights under any of those Sections.

11.7 Limited Indemnity for Contamination

Subject to Sections 7.4 [Deductibles], 7.6 [Release of the Province and BCTFA for Insured Loss] and 11.10 [Exceptions to Indemnification by the Province], the Province shall, solely for the purpose of holding the Primary Contractor harmless against any Relevant Third Party claim (but not so as to give rise to or constitute any separate or new cause of action against the Province aside from any cause of action for recovery of such losses or damages awarded by a court to such Relevant Third Party against the Primary Contractor pursuant to such Relevant Third Party claim), indemnify and hold harmless the Primary Contractor in respect of any Claims and Direct Losses arising from any damage, injury or other harm suffered by such Relevant Third Party or Relevant Property that was caused by Existing Contamination or Subsequent Contamination that, in either case, migrated or leached into or onto the Relevant Property, except to the extent such migration or leaching of such Existing Contamination or Subsequent Contamination (and/or damage, injury or other harm suffered) was caused or contributed to by any act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible after the Primary Contractor had knowledge of the Existing Contamination or Subsequent Contamination, as the case may be.

11.8 Conduct of Claims Indemnified by the Province

- (a) If the Primary Contractor or any Primary Contractor Indemnified Person (in this Section 11.8 individually referred to as an “**Indemnified Party**” and collectively referred to as the “**Indemnified Parties**”) receives any notice, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Province under this Agreement (other than under Section 11.9 [Limited Indemnity for Nuisance]), the Indemnified Party shall give notice to the Province as soon as reasonably practicable and in any event within 30 days after receipt thereof, provided that a failure by an Indemnified Party to give such notice and particulars of a Claim within such time shall not adversely affect the rights of the Indemnified Party under the applicable indemnity to the extent that the Indemnified Party establishes that such failure has not materially and adversely affected or prejudiced the ability of the Province to defend or contest the Claim.
- (b) Subject to Sections 11.8(c), (d), (e) and (f), on the receipt of a notice delivered by an Indemnified Party pursuant to Section 11.8(a), the Province, in its discretion, shall be entitled to resist the Claim that is the subject of the notice in the name of the Indemnified Party or Indemnified Parties at the Province's own expense, and to have the conduct of

any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations. The Indemnified Parties shall give the Province and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to the Province and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Province shall pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.

- (c) The defence and any other legal proceedings in respect of any Claim that is subject to Section 11.8(b) shall be through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and the Province, acting reasonably. If:
- (i) the Province and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;
 - (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Province or some other person who may be represented by counsel retained by the Province;
 - (iii) it appears that an Indemnified Party might not be entitled to indemnification or compensation by the Province in respect of all of the liability arising out of the Claim, unless the Province agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity; or
 - (iv) the Province fails to resist the Claim with all due diligence and in a timely manner;

then the Indemnified Party shall be represented by separate counsel selected by the Indemnified Party and the indemnity of the Province with respect to the Claim (including with respect to the cost of such separate legal representation) shall continue to apply and all reasonable costs and expenses (including reasonable actual legal fees and expenses) of the Indemnified Party doing so shall be included in the indemnity or compensation from the Province. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity of the Province with respect to the Claim shall continue to apply but the fees and disbursements of such separate counsel shall be paid by the Indemnified Party. In any case where an Indemnified Party is represented by separate counsel, the Province and its counsel shall (at the cost of the Province) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance, including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege.

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- (d) With respect to any Claim that is subject to Sections 11.8(b) and 11.8(c):
 - (i) the Province shall keep the Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified or compensated by the Province for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 11.8(b) which increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity from the Province; and
 - (iii) the Province shall not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.
- (e) If, within 30 days after receipt of the notice from the Indemnified Party under Section 11.8(a), the Province fails to notify the Indemnified Party of its intention to resist the Claim that is the subject of the notice pursuant to Section 11.8(a), the Indemnified Party shall be entitled to resist the Claim in the name of the Indemnified Party or the Indemnified Parties or in the name of the Province and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations, and to pay or settle the Claim on such terms as it may think fit, all without prejudice to its right to indemnification by the Province (including with respect to the costs and expenses of resisting the Claim) and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 4.10 [Mitigation by Primary Contractor] and 11.12 [Costs and Expenses]. If the Indemnified Party has conduct of the Claim pursuant to this Section 11.8(e), the Indemnified Party shall keep the Province fully informed and consult with the Province about the conduct of the Claim.
- (f) Notwithstanding the foregoing, all parties shall comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim shall be subject to the rights of such insurer under the applicable policy of insurance.

11.9 Limited Indemnity for Nuisance

- (a) In the event that the Primary Contractor suffers any Losses (including legal fees, court costs, expert witness fees and other disbursements) as a result of a Nuisance Claim, the Primary Contractor shall be solely responsible for all such Losses (including legal fees, court costs, expert witness fees and other disbursements) save to the extent provided by this Section 11.9 [Limited Indemnity For Nuisance].
- (b) Subject to Sections 11.9(c) and (d), the Province shall indemnify the Primary Contractor for its Legal Expenses in connection with a Successful Defence but shall only be liable to indemnify the Primary Contractor for such Legal Expenses with respect to the trial and any appeals after the later of, as applicable:

- (i) the exhaustion of any and all appeals in respect of the applicable Nuisance Claim; and
 - (ii) the expiry of the periods for the filing of any and all appeals in respect of the applicable Nuisance Claim and no appeal having been filed.
- (c) In the event that the Claim in which the Nuisance Claim is brought includes causes of action and/or the plaintiff seeks relief in addition to that sought in respect of the Nuisance Claim, the Province shall only be liable to indemnify the Primary Contractor in respect of Legal Expenses and, where the Primary Contractor's reasonable and actually incurred legal fees, court costs, expert witness fees and other disbursements relate to both the Nuisance Claim and other causes of action and/or relief sought in addition to the Nuisance Claim, the Province's obligation to indemnify the Primary Contractor in respect of Legal Expenses shall be determined on an equitable basis.
- (d) Notwithstanding the foregoing, all parties shall comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Nuisance Claim, and the rights of any party to have conduct of any Nuisance Claim shall be subject to the rights of such insurer under the applicable policy of insurance.

11.10 Exceptions to Indemnification by the Province

The obligations of the Province to indemnify under Section 11.6 [Indemnification by the Province], Section 11.7 [Limited Indemnity for Contamination] or Section 11.9 [Limited Indemnity for Nuisance] shall not apply to any Claims or Direct Losses to the extent that:

- (a) the Claims or Direct Losses are caused by, arise out of, relate to or result from or in connection with any Primary Contractor Non-Excusable Event; or
- (b) the Claims or Direct Losses are otherwise compensated for or eligible for compensation or other relief under the terms of this Agreement (including Part 8 [Province Changes and Primary Contractor Proposals], Part 9 [Supervening Events] and Schedule 12 [Compensation on Termination]).

11.11 Limitation of Province Liability

Neither the Province nor BCTFA shall under any circumstances be liable to the Primary Contractor or any of the Primary Contractor Indemnified Persons or any persons for whom the Primary Contractor is in law responsible, whether in contract, tort, by statute or otherwise, and whether or not arising from any negligent act or negligent omission on the part of the Province or BCTFA or any persons for whom the Province is in law responsible, for any Claims or Losses of any person caused by, arising out of, relating to or resulting from or in connection with the Work or any Existing Contamination or Subsequent Contamination. The foregoing limitation of liability shall not apply in relation to any liability of the Province or BCTFA for:

- (a) Claims and Direct Losses to the extent the Province must indemnify the Primary Contractor or any of the Primary Contractor Indemnified Persons therefor under Sections 11.6 [Indemnification by the Province], 11.7 [Limited Indemnity for Contamination] or Section 11.9 [Limited Indemnity for Nuisance];

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- (b) any breach in the observance or performance of any of its obligations under this Agreement (other than any payment obligations), or any breach of any representation or warranty made in Section 3.2 [Representations and Warranties of the Province and BCTFA], by the Province or BCTFA except where the Primary Contractor has an express remedy under this Agreement in respect of such breach, which remedy shall be exhaustive of the Primary Contractor's rights in respect of such breach; or
- (c) any failure by the Province or BCTFA to make proper payment to the Primary Contractor in accordance with the terms of this Agreement.

11.12 Costs and Expenses

Where, in accordance with any provision of this Agreement, a party is entitled to claim indemnification or reimbursement from another party for any costs, expenses or other amounts, the indemnifying or reimbursing party shall be obligated to provide indemnification or reimbursement only to the extent that the costs, expenses or other amounts claimed were reasonably incurred having regard to all relevant circumstances at the time.

11.13 No Liability for Irrecoverable Losses

Except to the extent expressly provided otherwise in this Agreement, no party to this Agreement shall be obligated to pay to any other party to this Agreement, or liable to any other party to this Agreement, whether in contract or in tort or on any other basis whatsoever, for any Irrecoverable Losses suffered or incurred by such other party to this Agreement.

11.14 No Double Compensation

Notwithstanding any other provision of this Agreement, but without prejudice to the rights of either party to terminate this Agreement in accordance with its terms, no party shall be entitled to recover compensation or make a Claim under this Agreement in respect of any Loss that it has incurred (or any failure of the other party) to the extent that it has already been compensated in respect of that Loss or failure pursuant to this Agreement or otherwise, and, for the purposes of this Section, Traffic Disruption Payments, Pedestrian and Cyclist Disruption Payments, Access Disruption Payments, Parking Disruption Payments, WCE Station Entrance Disruption Payments, WCE Park & Ride Disruption Payments, Off-Street Bus Exchange Disruption Payments, SkyTrain Station Entrance Disruption Payment, SkyTrain Service Disruption Payments, Hours of Work Disruption Payments and Construction Noise Disruption Payments shall only be considered compensation to the Province or BCTFA in respect of the breaches or failures by the Primary Contractor or other events or circumstances that give rise thereto to the extent such payments are made, and such payments shall be without prejudice to the right of the Province to claim and recover from the Primary Contractor, subject to the other provisions of this Agreement, Direct Losses to the extent any such payment does not compensate the Province in full for such Direct Losses, and such right of the Province is hereby expressly preserved.

11.15 No Compensation Where Insured

Notwithstanding anything to the contrary in this Agreement, except in the case of compensation for Claims and Direct Losses under Part 9 [Supervening Events] (in which case Section 9.11 [Effect of Insurance] applies), and in the case of compensation on termination under Schedule 12 [Compensation on Termination] (in which case Section 5.1 [No Compensation to Extent of Insurance] of Schedule 12 [Compensation on Termination] applies), neither the Province nor BCTFA shall be liable to the Primary

Contractor, whether in contract or in tort or on any other basis whatsoever, for any Claims or Direct Losses, and any amounts payable by the Province or BCTFA shall be reduced, to the extent, in respect of such Claims or Direct Losses:

- (a) that:
 - (i) the Primary Contractor recovers or is entitled to recover under any Required Insurance, or would have been able to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Claims or Direct Losses are insured against, or required to be insured against, under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement,

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Primary Contractor (or of any person for whom the Primary Contractor is in law responsible) including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer, or for any other reason; or

- (b) that the Primary Contractor recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Primary Contractor has in fact taken out and maintained; or
- (c) that there are proceeds of insurance held by the Province pursuant to Section 7.18(b) that are (subject to the Primary Contractor fulfilling all conditions to the disbursement thereof) available for satisfaction of such Claims or Direct Losses, in whole or in part; or
- (d) that the Province makes, or is obligated under this Agreement (subject to the Primary Contractor fulfilling all conditions thereto) to make, payment to or for the account of or on behalf of the Primary Contractor under Section 7.18 [Application of Proceeds of Insurance]; or
- (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 11.15(a) and (b) for which the Primary Contractor is responsible.

11.16 Acknowledgement Regarding Equivalent Project Relief

The Province and BCTFA acknowledge and agree that:

- (a) the Principal Subcontracts may provide that Principal Subcontractors may claim relief only if and to the extent that such claim or relief is granted to the Primary Contractor under this Agreement; and
- (b) the Primary Contractor will not be precluded from advancing any claim or seeking any relief under this Agreement solely by reason that the Primary Contractor or the Design-Builder, as applicable, is not liable to a Principal Subcontractor only (and not any of its

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employees, agents, contractors or subcontractors of any tier or the employees of any of them) under a Principal Subcontract until or only to the extent that such claim or relief is granted by the Province to the Primary Contractor under this Agreement,

provided that all such claims shall be made and administered by the Primary Contractor, and nothing in this Section creates any contract or obligation directly between the Province or BCTFA and any Principal Subcontractor or gives any Principal Subcontractor any rights as against the Province or BCTFA.

11.17 Survival

The provisions of this Part 11 [Indemnities and Limitations on Actions] and each other indemnity contained in this Agreement shall survive the expiration or termination of this Agreement.

PART 12 PAYMENTS

12.1 Contract Price

The Primary Contractor shall perform its obligations under this Agreement for the contract price of \$888,994,362.00 (exclusive of GST) (the “**Base Contract Price**”), as adjusted pursuant to Section 2.5 [Consequences of Province Change] of Schedule 10 (the “**Contract Price**”). The Contract Price is not subject to change or adjustment except as expressly provided in Section 2.5 [Consequences of Province Change] of Schedule 10. The Primary Contractor agrees to accept the Contract Price as full payment and reimbursement to the Primary Contractor for performing the Work, including all labour, services, materials, equipment and overhead required to perform the Work, all financing costs and profit.

12.2 Progress Payments

- (a) Subject to the provisions of this Part 12 [Payments], including Sections 12.3 [Lien Holdbacks] and 12.10 [Adverse Claims], the Province shall make Progress Payments, in arrears, to the Primary Contractor on account of the Contract Price in accordance with the procedure set out in this Section 12.2 [Progress Payments].
- (b) The Base Progress Payment for each Payment Period shall be an amount equal to:
 - (i) for each Payment Period from the Effective Date until the Payment Period which ends immediately prior to the Transition Payment Period, an amount equal to 64% of the Aggregate Payment Milestone Eligible Costs for that Payment Period;
 - (ii) for the Transition Payment Period, the amount by which the Aggregate Payment Milestone Eligible Costs for that Payment Period exceeds the Transition Payment Period Base Amount; and
 - (iii) for each Payment Period following the Transition Payment Period, 100% of the Aggregate Payment Milestone Eligible Costs for that Payment Period;

provided that:

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- (iv) if the aggregate of all Base Progress Payments for all prior Payment Periods plus the Base Progress Payment calculated as aforesaid for a Payment Period would exceed the Base Progress Payment Cap Amount, then:
 - (A) the Base Progress Payment for that Payment Period shall be an amount equal to the greater of:
 - (1) zero; and
 - (2) the amount, if any, by which the Base Progress Payment Cap Amount exceeds the aggregate of all Base Progress Payments for all prior Payment Periods;

and

- (B) the Base Progress Payment for each Payment Period following that Payment Period shall be zero;

and further provided that:

- (v) if, for any Payment Period:
 - (A) the Base Amount in respect of such Payment Period is less than
 - (B) an amount equal to 50% of the Lincoln Station Eligible Costs certified by the Independent Engineer for such Payment Period,
- then the Base Progress Payment for such Payment Period will be reduced by an amount equal to:
- (C) the amount referred to in Section 12.2(b)(v)(B); minus
 - (D) the Base Amount in respect of such Payment Period (ignoring, for the purposes of this Section 12.2(b)(v)(D), any adjustment required to be made to the Base Progress Payment pursuant to this Section 12.2(b)(v)).

- (c) The Additional Progress Payment, if any, for each Payment Period shall be an amount equal to:
 - (i) the Aggregate Additional Work Costs for such Payment Period, calculated and certified based on progress achieved towards completion of the relevant Additional Work; minus
 - (ii) the Additional Work Lien Holdback Amount for such Payment Period.
- (d) Prior to delivering a draft Draw Request to the Province's Representative pursuant to Section 12.2(i), the Primary Contractor shall deliver a Form of Statement of Progress (a "**Statement of Progress**") in respect of the relevant Payment Period, duly completed in

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accordance with Part 3 [Measurement and Payment Principles] of Schedule 22, to the Independent Engineer and the Primary Contractor and the Independent Engineer shall endeavour to agree on all Canadian dollar amounts and percentages required to be included in such Statement of Progress prior to delivery of the draft Draw Request by the Primary Contractor. If the Primary Contractor and the Independent Engineer fail to agree on any such amount or percentage prior to delivery of the draft Draw Request, the amount or percentage, as the case may be, determined by the Independent Engineer to be correct shall be the amount or percentage that the Independent Engineer includes in the attachments to the certificate(s) required to be executed and completed by the Independent Engineer substantially in the forms set out in Appendix A and Appendix B to the form of Draw Request attached at Part 4, Form 4A [Draw Request] of Schedule 22 [Payments].

- (e) The Primary Contractor shall prepare and deliver to the Province's Representative a draw request substantially in the form attached at Part 4, Form 4A [Draw Request] of Schedule 22 (the "**Draw Request**") for the Progress Payment for the portion of the Work progressed during each Payment Period. The Draw Request shall set out the Primary Contractor's calculation of each of the following (each stated separately):

A: Base Progress Payment

- (i) the percentage of each Payment Milestone completed during such Payment Period and, in addition, for the first Payment Period, under the Limited Notice to Proceed Agreement, as certified by the Independent Engineer;
- (ii) the Individual Payment Milestone Eligible Costs for such Payment Period in respect of each Payment Milestone, as certified by the Independent Engineer;
- (iii) the cumulative total percentage of each Payment Milestone completed during all Payment Periods up to but excluding such Payment Period and under the Limited Notice to Proceed Agreement, as certified by the Independent Engineer;
- (iv) the cumulative total Individual Payment Milestone Eligible Costs for all Payment Periods up to but excluding such Payment Period in respect of each Payment Milestone, as certified by the Independent Engineer;
- (v) the cumulative total percentage of each Payment Milestone completed during all Payment Periods up to and including such Payment Period and under the Limited Notice to Proceed Agreement, as certified by the Independent Engineer;
- (vi) the cumulative total Individual Payment Milestone Eligible Costs for all Payment Periods up to and including such Payment Period in respect of each Payment Milestone, as certified by the Independent Engineer;
- (vii) the Aggregate Payment Milestone Eligible Costs for such Payment Period, as certified by the Independent Engineer;
- (viii) the amount of any reduction to the Base Progress Payment for such Payment Period determined pursuant to Section 12.2(b)(v) (provided that, if the amount of such reduction is not zero, the Primary Contractor shall provide such information

as is reasonably requested by the Province in connection with the calculation of the amount such reduction, including the calculation of the Lincoln Station Eligible Costs incurred in respect of such Payment Period);

- (ix) the cumulative total Aggregate Payment Milestone Eligible Costs for all Payment Periods up to but excluding such Payment Period, as certified by the Independent Engineer;
- (x) the cumulative total Aggregate Payment Milestone Eligible Costs for all Payment Periods up to and including such Payment Period, as certified by the Independent Engineer;
- (xi) if such Payment Period is the Transition Payment Period, the Transition Payment Period Base Amount;
- (xii) the Base Progress Payment claimed by the Primary Contractor for such Payment Period;
- (xiii) the cumulative total of all Base Progress Payments claimed by the Primary Contractor for all Payment Periods up to but excluding such Payment Period; and
- (xiv) the cumulative total of all Base Progress Payments claimed by the Primary Contractor for all Payment Periods up to and including such Payment Period;

B: Additional Progress Payment (if applicable)

- (i) the percentage of each item of Additional Work completed during such Payment Period, as certified by the Independent Engineer;
- (ii) the Additional Work Costs for such Payment Period in respect of each item of Additional Work, as certified by the Independent Engineer;
- (iii) the cumulative total percentage of each item of Additional Work completed during all Payment Periods up to but excluding such Payment Period, as certified by the Independent Engineer;
- (iv) the cumulative total Additional Work Costs for all Payment Periods up to but excluding such Payment Period in respect of each item of Additional Work, as certified by the Independent Engineer;
- (v) the cumulative total percentage of each item of Additional Work completed during all Payment Periods up to and including such Payment Period, as certified by the Independent Engineer;
- (vi) the cumulative total Additional Work Costs for all Payment Periods up to and including such Payment Period in respect of each item of Additional Work, as certified by the Independent Engineer;
- (vii) the Aggregate Additional Work Costs for such Payment Period, as certified by the Independent Engineer;

- (viii) the Additional Work Lien Holdback Amount for such Payment Period;
- (ix) the cumulative total Additional Work Costs for all Payment Periods up to but excluding such Payment Period in respect of all items of Additional Work, as certified by the Independent Engineer;
- (x) the cumulative total Additional Work Costs for all Payment Periods up to and including such Payment Period in respect of all items of Additional Work, as certified by the Independent Engineer;
- (xi) the Additional Progress Payment claimed by the Primary Contractor for the Payment Period;
- (xii) the cumulative total of all Additional Progress Payments claimed by the Primary Contractor for all Payment Periods up to but excluding such Payment Period; and
- (xiii) the cumulative total of all Additional Progress Payments claimed by the Primary Contractor for all Payment Periods up to and including such Payment Period;

C: Other Items

Net Amount Claimed

- (i) any adjustments to reflect any over-payments or under-payments (each such adjustment stated separately) in respect of Base Progress Payments made by the Province during prior Payment Periods and any Base Lien Holdback Amounts in respect of any such over-payments or under-payments (for which adjustment has not already been made);
- (ii) any adjustments to reflect any over-payments or under-payments (each such adjustment stated separately) in respect of Additional Progress Payments made by the Province during prior Payment Periods and any Additional Work Lien Holdback Amounts in respect of any such over-payments or under-payments (for which adjustment has not already been made);
- (iii) GST;
- (iv) any interest payable in respect of any Progress Payments due and payable;
- (v) the net amount claimed by the Primary Contractor for the Payment Period (taking into account amounts referred to in Sections 12.2(e)C.(i) to (iv));

Lien Holdback Amounts

- (vi) the Base Lien Holdback Amount for such Payment Period;
- (vii) the aggregate of such portions of the Subcontract Release Amounts that do not relate to Additional Work paid to the Primary Contractor during such Payment Period in accordance with Section 12.4(h) in respect of any completed Subcontracts;

- (viii) the balance of the Base Lien Holdback Amounts held by the Province as at the last day of such Payment Period, calculated as:
 - (A) the cumulative total Base Lien Holdback Amounts in respect of all Payment Periods up to and including such Payment Period; minus
 - (B) the cumulative total aggregate amounts referred to in Section 12.2(e)C.(vii) paid to the Primary Contractor during all Payment Periods up to and including such Payment Period;
- (ix) the aggregate of such portions of the Subcontract Release Amounts that constitute Additional Work Lien Holdback Amounts paid to the Primary Contractor during such Payment Period in accordance with Section 12.4(h) in respect of Additional Work associated with any completed Subcontracts;
- (x) the balance of the Additional Work Lien Holdback Amounts held by the Province as at the last day of such Payment Period, calculated as:
 - (A) the cumulative total Additional Work Lien Holdback Amounts in respect of all Payment Periods up to and including such Payment Period; minus
 - (B) the cumulative total aggregate amounts referred to in Section 12.2(e)C.(ix) paid to the Primary Contractor during all Payment Periods up to and including such Payment Period;

Costs that are not Eligible Costs

- (xi) the total costs incurred by the Primary Contractor during the Payment Period that are not Eligible Costs, with a breakdown identifying the nature and amount of such costs incurred;
 - (xii) the cumulative total costs incurred by the Primary Contractor during all Payment Periods up to but excluding such Payment Period that are not Eligible Costs, with a breakdown identifying the nature and cumulative total of such costs incurred during all Payment Periods up to but excluding such Payment Period; and
 - (xiii) the cumulative total costs incurred by the Primary Contractor during all Payment Periods up to and including such Payment Period that are not Eligible Costs, with a breakdown identifying the nature and cumulative total of such costs incurred during all Payment Periods up to and including such Payment Period.
- (f) A Draw Request delivered pursuant to Section 12.2(e) shall be accompanied by the documentation specified in the form of Draw Request attached at Part 4, Form 4A [Draw Request] of Schedule 22.
 - (g) A Draw Request delivered pursuant to Section 12.2(e) shall include or be accompanied by a statement of the amounts (if any) that the Senior Lenders have advanced or the Primary Contractor is intending to request, or has requested, that the Senior Lenders advance in respect of:

- (i) Aggregate Payment Milestone Eligible Costs for the Payment Period to which the Draw Request relates; and
- (ii) costs incurred by the Primary Contractor during such Payment Period that are not Eligible Costs;

and (to the extent not previously the subject-matter of a statement pursuant to this Section 12.2(g)) any previous Payment Period. Each such statement shall identify separately the amount (if any) that falls within each of Sections 12.2(g)(i) and (ii) for such Payment Period, together with the cumulative total of all amounts advanced as referred to in Sections 12.2(g)(i) and 12.2(g)(ii) both (1) for all Payment Periods up to but excluding such Payment Period and (2) for all Payment Periods up to and including such Payment Period (provided that, if the first proviso to Section 12.2(o) applied in respect of any previous Payment Period, such statement shall separately identify any funds received by the Primary Contractor as contemplated by Section 12.2(o)(A) to fund amounts as referred to in Sections 12.2(g)(i) and 12.2(g)(ii) for such previous Payment Period).

- (h) The Draw Request shall (subject to any exceptions set out in Attachment A to the Draw Request delivered pursuant to Section 12.2(e)) constitute a representation and warranty by the Primary Contractor to the Province (the truth and accuracy of which representation and warranty shall be a condition precedent to the obligation of the Province to make any payment pursuant to the Draw Request) that:
 - (i) the Work in respect of each Payment Milestone and, where applicable, each item of Additional Work has progressed to the point indicated in the Draw Request and meets or is ahead of the progress required pursuant to the Construction Schedule;
 - (ii) the Eligible Costs (including Individual Payment Milestone Eligible Costs) and, where applicable, Additional Work Costs identified in the Draw Request have been properly incurred;
 - (iii) the Design and Construction and the quality of the Work covered by the Draw Request are in accordance with the Primary Contractor's obligations under this Agreement;
 - (iv) all of the Subcontractors have been paid in full up to the last Progress Payment received by the Primary Contractor, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and the Builders Lien Act;
 - (v) no Adverse Claim exists with respect to or as a result of or in relation to the Work which, in any such case, has either not been paid, discharged, satisfied and, if filed in the Land Title Office, cancelled or not been removed or cancelled from title following the payment of money into or the posting of security with the Court in accordance with section 23 or 24, as applicable, of the Builders Lien Act;
 - (vi) the Primary Contractor is entitled to payment in the amount requested;

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- (vii) no Primary Contractor Default has occurred which has not been either waived in writing by the Province or remedied to the satisfaction of the Province; and
- (viii) there has not been any material adverse change in the Primary Contractor's ability to perform its obligations under this Agreement.
- (i) The Primary Contractor shall deliver the Draw Request to the Province's Representative pursuant to Section 12.2(e) on or before five Business Days following the last day of each Payment Period.
- (j) The Primary Contractor shall arrange with the Province's Representative a reasonable opportunity for the Province's Representative to inspect the Work and to meet with the Primary Contractor's Representative to review the Draw Request and to attend at the offices of the Primary Contractor to review such documentation as the Province's Representative may request.
- (k) The Primary Contractor shall cooperate with the Province's Representative to reach agreement on a Draw Request on or before the fifth Business Day following delivery of the Draw Request to the Province's Representative pursuant to Section 12.2(i).
- (l) The Province's Representative shall identify any deficiencies or inaccuracies in the Draw Request and the amount affected thereby within five Business Days of the Draw Request being delivered pursuant to Section 12.2(i), which amount shall be subject to Section 12.2(p).
- (m) The Province's Representative shall approve the Draw Request as to amounts not in dispute pursuant to Section 12.2(l) within five Business Days of the Draw Request being agreed upon pursuant to Section 12.2(k).
- (n) The Province shall have no obligation to pay or be responsible in any way for payments to Subcontractors.
- (o) The Province shall make payment to the Primary Contractor of the amount approved in a Draw Request pursuant to Section 12.2(m) (with any unapproved amount being subject to Section 12.2(p)) by not later than the later of:
 - (i) the fifth Business Day following approval of the Draw Request pursuant to Section 12.2(m); and
 - (ii) where a drawdown of funds from the Senior Lenders under the Senior Lending Agreements has been requested by the Primary Contractor in respect of costs incurred in the Payment Period to which the Draw Request relates as indicated in a statement included in or accompanying the Draw Request pursuant to Section 12.2(g), the fifth Business Day after the Province has received a confirmation from the Agent that states that: (1) (without warranty to the Province or BCTFA as to the truth or accuracy of statements of the Primary Contractor or others which are accepted by the Agent as demonstrating satisfaction of any condition precedent) all conditions precedent to the drawdown of funds requested by the Primary Contractor from the Senior Lenders under the Senior Lending Agreements in respect of costs incurred in the Payment Period to which the Draw

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Request relates have been satisfied (or waived by the Senior Lenders), and (2) the Senior Lenders shall be advancing funds in the amount set out in the statement included in or accompanying the Draw Request to the Primary Contractor in respect of costs incurred in such Payment Period within the time period provided therefor in the Senior Lending Agreements;

provided that, where a draw down of funds from the Senior Lenders under the Senior Lending Agreements has been requested by the Primary Contractor in respect of costs incurred in the Payment Period to which the Draw Request relates, and the Agent, following receipt of such request, does not provide the confirmation referred to in Section 12.2(o)(ii) as a result of not all such conditions precedent having been satisfied or waived, the Province shall not be obliged to make payment of the amount approved in the Draw Request pursuant to Section 12.2(m) for such Payment Period, unless:

- (A) the Primary Contractor demonstrates to the Province, acting reasonably, that it has received (by way of a subscription of Share Capital or advance of subordinated debt) funds in replacement for those requested from, and not advanced by, the Senior Lenders;
- (B) the Primary Contractor has provided the Province with (1) a notice from the Agent of all conditions precedent that have not been satisfied or waived and an explanation of why the Agent considers that they have not been satisfied or waived and (2) such further information as may be reasonably requested by the Province relating to the circumstances causing the non-satisfaction and/or non-waiver of any such conditions precedent; and
- (C) the Province determines, acting reasonably, that no Primary Contractor Default has occurred or would occur due to existing circumstances, including the circumstances surrounding the failure to fund by the Senior Lenders but excluding the failure of the Senior Lenders to advance the requested funds; and

provided further that, if as a result of a negative determination by the Province under Section 12.2(o)(C), payment by the Province of the amount approved in the Draw Request pursuant to Section 12.2(m) for the relevant Payment Period is delayed, the Province agrees to make such payment to the Primary Contractor at such time as a positive determination can be made.

- (p) If the Province disputes any amount claimed by the Primary Contractor in a Draw Request, the Province may withhold payment of the amount in dispute pending resolution of the dispute in accordance with the Dispute Resolution Procedure.
- (q) No Progress Payment or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of a Draw Request by the Province's Representative pursuant to Section 12.2(m), shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.

- (r) Notwithstanding any Progress Payments made pursuant to this Section 12.2 [Progress Payments] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Draw Request submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.

12.3 Lien Holdbacks

- (a) The Independent Engineer shall be the “payment certifier” in respect of this Agreement and in respect of the DB Contract for the purposes of the Builders Lien Act.
- (b) The builders lien holdback in respect of the Base Progress Payment for each Payment Period shall be:
 - (i) an amount equal to 10% of the Aggregate Payment Milestone Eligible Costs in respect of such Payment Period (the “**Base Lien Holdback Amount**”); and
 - (ii) included in the Base Amount in respect of such Payment Period, provided that, if the Base Lien Holdback Amount in respect of any Payment Period is greater than the Base Amount in respect of such Payment Period, the amount of such excess shall be deemed to be included in the Base Amounts in respect of previous Payment Periods.
- (c) The Province shall retain from any payment in respect of Additional Work carried out during any Payment Period an amount equal to 10% of the Aggregate Additional Work Costs for the applicable Payment Period as the builders lien holdback in respect of such Additional Work (the “**Additional Work Lien Holdback Amount**”).
- (d) In the event that the Primary Contractor is entitled to any payment in respect of a Supervening Event, such payment shall, to the extent that the Builders Lien Act applies to such payment, be subject to a builders lien holdback (the “**Supervening Event Lien Holdback Amount**”). The provisions of this Agreement dealing with Additional Work Lien Holdback Amounts shall apply to Supervening Event Lien Holdback Amounts, *mutatis mutandis*.
- (e) The Base Lien Holdback Amounts and the Additional Work Lien Holdback Amounts shall be calculated without reference to whether or not the Work or any part thereof is carried out on a “highway” within the meaning of the *Transportation Act* (British Columbia) or to any improvement done or caused to be done on a highway.
- (f) Lien Holdback Amounts shall only be payable to the Primary Contractor pursuant to Section 12.4 [Release of Lien Holdback Amounts], or Section 5.10 [Release of Lien Holdback Amounts in the Event of a Termination] of Schedule 12, as applicable.
- (g) The Province shall not be required to deposit any Lien Holdback Amounts in a holdback account and any payment thereof pursuant to Section 12.4 [Release of the Lien Holdback Amounts], or Section 5.10 [Release of Lien Holdback Amounts in the Event of a Termination] of Schedule 12, as applicable, shall not bear interest.

12.4 Release of Lien Holdback Amounts

Final Certificate of Completion pursuant to the Builders Lien Act

- (a) The Independent Engineer shall, within 10 days after the request of the Province, the Primary Contractor or any Subcontractor, determine whether this Agreement has been completed within the meaning of the Builders Lien Act, and if this Agreement has been so completed, the Independent Engineer shall issue a certificate of completion confirming such fact (the “**Final Certificate of Completion**”).
- (b) Within 7 days after the issuance of the Final Certificate of Completion, the Independent Engineer shall:
 - (i) deliver a copy thereof to the Province, the Primary Contractor and any other person at whose request such certificate was issued;
 - (ii) deliver a notice of certification of completion to all other persons entitled thereto under the Builders Lien Act; and
 - (iii) post a notice of the certification of completion in a prominent place on the Site.

Lien Holdback Payment Application

- (c) Within three Business Days of issuance of a Subcontract Certificate of Completion or the Final Certificate of Completion, as applicable, the Primary Contractor shall deliver to the Province a draft Lien Holdback Payment Application, for payment of the Lien Holdback Amounts (or relevant portion thereof) that:
 - (i) following issuance of any Subcontract Certificate of Completion, relate to Work carried out under the Subcontract that is the subject of such Subcontract Certificate of Completion (the “**Subcontract Release Amount**”); or
 - (ii) following issuance of the Final Certificate of Completion, relate to Work carried out under this Agreement that has not been carried out under a Subcontract that has been the subject of a Subcontract Certificate of Completion (the “**PA Release Amount**”, which amount shall include the SCPA Lien Holdback Amount where the Province has retained such amount pursuant to Section 12.4(k)(i)).

The Lien Holdback Payment Application shall be accompanied by the documentation specified in the form of Lien Holdback Payment Application attached at Part 4, Form 4B [Lien Holdback Payment Application] of Schedule 22.

- (d) Following delivery of the draft Lien Holdback Payment Application pursuant to Section 12.4(c), the Primary Contractor shall arrange with the Province's Representative a reasonable opportunity for the Province's Representative to meet with the Primary Contractor's Representative to review the draft Lien Holdback Payment Application and to review such documentation as the Province's Representative may request.
- (e) The Primary Contractor shall cooperate with the Province's Representative to reach agreement on the finalized Lien Holdback Payment Application and the calculation of the

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Subcontract Release Amount or the PA Release Amount, as applicable, payable in accordance with Section 12.4(h).

- (f) The Province's Representative shall identify any deficiencies or inaccuracies in the Lien Holdback Payment Application and notify the Primary Contractor of the Province's calculation of the Subcontract Release Amount or the PA Release Amount, as applicable, within 5 Business Days of the draft Lien Holdback Payment Application being delivered pursuant to Section 12.4(c). Any dispute between the Province and the Primary Contractor as to the calculation of the Subcontract Release Amount or the PA Release Amount, as applicable, shall be subject to Section 12.4(o).
- (g) The Province's Representative shall approve the Lien Holdback Payment Application as to the amount of the Subcontract Release Amount or the PA Release Amount, as applicable, not in dispute pursuant to Section 12.4(f) within five Business Days of the finalized Lien Holdback Payment Application being agreed upon pursuant to Section 12.4(e).

Payment out of Lien Holdback Amounts

- (h) Subject to Sections 12.4(i), 12.4(l) and 12.10 [Adverse Claims], as applicable, the Province shall make payment to the Primary Contractor of the amount of the Subcontract Release Amount or the PA Release Amount, as applicable, approved pursuant to Section 12.4(g) (with any disputed amount being subject to Section 12.4(o)) on the first Business Day which is more than 55 days following issuance of the relevant Subcontract Certificate of Completion or, as applicable, the Final Certificate of Completion.

Payment out of Lien Holdback Amounts in respect of a Subcontract

- (i) On the first Business Day which is more than 55 days following the issuance of a Subcontract Certificate of Completion (other than a Subcontract Certificate of Completion relating to a Subcontract that solely relates to Additional Work), the Primary Contractor shall pay to the Province an amount equal to that portion of the Subcontract Release Amount payable by the Province to the Primary Contractor pursuant to Section 12.4(h) in respect of the relevant Subcontract that does not relate to Additional Work (the "**Subcontract Release Contribution Amount**"), provided that the Primary Contractor's obligation to pay the Subcontract Release Contribution Amount shall be satisfied by the Province setting off the relevant Subcontract Release Contribution Amount against the amount payable by the Province pursuant to Section 12.4(h).
- (j) In the event that:
 - (i) a Subcontract Certificate of Completion has been issued;
 - (ii) any tier of Subcontractor under the relevant completed Subcontract that is not solely related to Additional Work has made an Adverse Claim prior to the payment of the Subcontract Release Amount by the Province pursuant to Section 12.4(h) in respect of the relevant completed Subcontract; and

- (iii) the Province or BCTFA has, in respect of such Adverse Claim, exercised its rights pursuant to Section 12.10 [Adverse Claims] to retain a portion of such Subcontract Release Amount,

then, if such Adverse Claim is either paid, discharged, satisfied and, if filed in the Land Title Office, cancelled or is removed or cancelled from title without any payment by the Province or BCTFA from such retained portion of such Subcontract Release Amount, the provisions of Sections 12.4(h) and 12.4(i), as applicable, shall apply, *mutatis mutandis*, to such retained portion of such Subcontract Release Amount with effect from the relevant date (as defined in Section 12.10(a)).

Lien Holdback Amounts and the Substantial Completion Payment Amount

- (k) In the event that the Substantial Completion Payment Amount becomes due and payable prior to the date on which the PA Release Amount becomes due and payable pursuant to Section 12.4(h), the Province shall:
 - (i) be entitled to retain from the Substantial Completion Payment Amount an amount equal to 10% of the difference between the Base Contract Price and the total cumulative Aggregate Payment Milestone Eligible Costs for all Payment Periods (the “**SCPA Lien Holdback Amount**”); and
 - (ii) make payment, on the first Business Day which is more than 55 days following the issuance of the Final Certificate of Completion, to the Primary Contractor of the PA Release Amount (which, for certainty, shall include the SCPA Lien Holdback Amount).

Any dispute between the Province and the Primary Contractor as to the calculation of the SCPA Lien Holdback Amount shall be subject to Section 12.4(o).

- (l) In the event that the PA Release Amount becomes due and payable pursuant to Section 12.4(h) on a date that is prior to the date on which the Substantial Completion Payment Amount becomes due and payable, the Primary Contractor shall, on the date that the PA Release Amount becomes due and payable, pay to the Province an amount equal to that portion of the PA Release Amount payable by the Province to the Primary Contractor pursuant to Section 12.4(h) in respect of this Agreement that does not relate to Additional Work (the “**PA Release Contribution Amount**”), provided that the Primary Contractor’s obligation to pay the PA Release Contribution Amount shall be satisfied by the Province setting off the PA Release Contribution Amount against the amount payable by the Province pursuant to Section 12.4(h).
- (m) In the event that the Substantial Completion Payment Amount becomes due and payable on the same date on which the PA Release Amount becomes due and payable pursuant to Section 12.4(h):
 - (i) Sections 12.4(c), (d), (e), (f), and (g) shall, *mutatis mutandis*, apply in respect of the payment of the PA Release Amount; and
 - (ii) for certainty, Sections 12.4(i), 12.4(j), 12.4(k) and 12.4(l) shall not apply.

- (n) In the event that:
- (i) the Final Certificate of Completion has been issued;
 - (ii) a Subcontractor has made an Adverse Claim that is not solely related to Additional Work prior to the payment of the PA Release Amount by the Province pursuant to Section 12.4(h) in respect of the completion of this Agreement; and
 - (iii) the Province or BCTFA has, in respect of such Adverse Claim, exercised its rights pursuant to Section 12.10 [Adverse Claims] to retain a portion of the PA Release Amount,

then, if such Adverse Claim is either paid, discharged, satisfied and, if filed in the Land Title Office, cancelled or is removed or cancelled from title without any payment by the Province from such retained portion of the PA Release Amount, the provisions of Sections 12.4(h), 12.4(k), 12.4(l) and 12.4(m), as applicable, shall apply, *mutatis mutandis*, to such retained portion of the PA Release Amount with effect from the relevant date (as defined in Section 12.10(a)).

Disputes, Adverse Claims and Acceptance of Work

- (o) If the Province disputes the amount of any Lien Holdback Amounts or the relevant portion thereof as claimed by the Primary Contractor in the Lien Holdback Payment Application, the Province may withhold payment of the amount in dispute pending resolution of the dispute in accordance with the Dispute Resolution Procedure, in which case, the amount of any Subcontract Release Contribution Amount or the PA Release Contribution Amount, as applicable, otherwise payable by the Primary Contractor pursuant to Sections 12.4(i) or (l) shall be reduced by an amount equal to the amount so withheld. If, following the resolution of any such dispute, it is determined that the Province is liable to pay any further amounts to the Primary Contractor pursuant to Section 12.4(h), the provisions of Sections 12.4(i) or (l), as applicable, shall apply, *mutatis mutandis*, to such further amounts.
- (p) No payment of or on account of Lien Holdback Amounts or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of any Lien Holdback Payment Application by the Province's Representative pursuant to Section 12.4(g), shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (q) Notwithstanding any payment made pursuant to this Section 12.4 [Release of Lien Holdback Amounts] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Lien Holdback Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.

12.5 Substantial Completion Payment

- (a) Subject to the provisions of this Part 12 [Payments], including Sections 12.3 [Lien Holdbacks], 12.4 [Release of Lien Holdback Amounts], 12.7 [Holdbacks for Deficiencies in Work] and 12.10 [Adverse Claims], the Province shall pay the Substantial Completion Payment Amount to the Primary Contractor on account of the Contract Price in accordance with the procedure set out in this Section 12.5 [Substantial Completion Payment].
- (b) The Primary Contractor shall prepare a draft application for payment of the Substantial Completion Payment Amount substantially in the form attached at Part 4, Form 4C [Substantial Completion Payment Application] of Schedule 22 [Payments] (the “**Substantial Completion Payment Application**”) requesting payment of the Substantial Completion Payment Amount. The Substantial Completion Payment Application shall be accompanied by the documentation specified in the form of Substantial Completion Payment Application attached at Part 4, Form 4C [Substantial Completion Payment Application] of Schedule 22 [Payments].
- (c) The Primary Contractor shall deliver the draft Substantial Completion Payment Application to the Province's Representative and arrange with the Province's Representative a reasonable opportunity for the Province's Representative to meet with the Primary Contractor's Representative to review the draft Substantial Completion Payment Application and review such documentation as the Province's Representative may request.
- (d) The Primary Contractor shall cooperate with the Province's Representative to reach agreement on the finalized Substantial Completion Payment Application and the calculation of the Substantial Completion Payment Amount and any retentions therefrom.
- (e) The Province's Representative shall identify any deficiencies or inaccuracies in (or any disagreement with any estimate of the costs for remedying any Final Deficiency List Deficiency included in the work papers accompanying) the Substantial Completion Payment Application and notify the Primary Contractor of the Province's calculation of the Substantial Completion Payment Amount and any retentions therefrom within five Business Days of the draft Substantial Completion Payment Application being delivered pursuant to Section 12.5(c). Any dispute between the Province and the Primary Contractor as to the calculation of the Substantial Completion Payment Amount and any retentions therefrom shall be subject to Section 12.5(h).
- (f) The Province's Representative shall approve the Substantial Completion Payment Application as to the amount of the Substantial Completion Payment Amount and any retentions therefrom not in dispute pursuant to Section 12.5(e) within five Business Days of the Substantial Completion Payment Application being agreed upon pursuant to Section 12.5(d).
- (g) The Province shall, subject to Section 12.7 [Holdbacks for Deficiencies in Work], make payment to the Primary Contractor of the amount of the Substantial Completion Payment Amount approved pursuant to Section 12.5(f) (with any disputed amount being subject to

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Section 12.5(h)) by not later than the tenth Business Day following approval of the Substantial Completion Payment Application pursuant to Section 12.5(f).

- (h) If the Province disputes the Substantial Completion Payment Amount or any retentions therefrom (including any estimate of costs referred to in Section 12.5(e)) claimed by the Primary Contractor in the Substantial Completion Payment Application, the Province may withhold payment of the amount in dispute pending resolution of the dispute in accordance with the Dispute Resolution Procedure.
- (i) No payment of or on account of the Substantial Completion Payment Amount or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of the Substantial Completion Payment Application by the Province's Representative pursuant to Section 12.5(f), shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (j) Notwithstanding any payment made pursuant to this Section 12.5 [Substantial Completion Payment] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Substantial Completion Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.
- (k) The Primary Contractor's entitlement to be paid the Substantial Completion Payment Amount pursuant to this Section 12.5 [Substantial Completion Payment] shall not be affected by the occurrence of any Supervening Event after the Substantial Completion Date.

12.6 A. Availability Demonstration Completion Payment

- (a) Subject to the provisions of this Part 12 [Payments], including Section 12.10 [Adverse Claims], the Province shall pay the Availability Demonstration Completion Payment Amount to the Primary Contractor in accordance with the procedure set out in this Section 12.6.A [Availability Demonstration Completion Payment].
- (b) Following the earlier to occur of the Availability Demonstration Completion Date and the Availability Demonstration Completion Target Date, the Primary Contractor shall prepare, and deliver to the Province, an application for payment of the Availability Demonstration Completion Payment Amount substantially in the form attached at Part 4, Form 4D [Availability Demonstration Completion Payment Application] of Schedule 22 [Payments] (the "**Availability Demonstration Completion Payment Application**"), requesting, subject to Section 12.6.A(f), payment of the Availability Demonstration Completion Payment Amount (or any portion thereof not replaced by an Availability Demonstration Letter of Credit) and/or, if applicable, the return of any Availability Demonstration Letter of Credit provided by the Primary Contractor. The Availability Demonstration Completion Payment Application shall be accompanied by the documentation specified in the form of Availability Demonstration Completion Payment Application attached at Part 4, Form 4D [Availability Demonstration Completion Payment Application] of Schedule 22 [Payments].

- (c) By not later than the tenth Business Day following receipt of the Availability Demonstration Completion Payment Application pursuant to Section 12.6.A(b), the Province shall, subject to Section 12.6.A(f), make payment, without interest, to the Primary Contractor of the Availability Demonstration Completion Payment Amount (or any portion thereof not replaced by a Letter of Credit) and/or, if applicable, return any Availability Demonstration Letter of Credit provided by the Primary Contractor.
- (d) No payment of or on account of the Availability Demonstration Completion Payment Amount, return of any Availability Demonstration Letter of Credit or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of the Availability Demonstration Completion Payment Application by the Province's Representative, shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (e) Notwithstanding any payment made or return of any Availability Demonstration Letter of Credit pursuant to this Section 12.6.A [Availability Demonstration Completion Payment] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Availability Demonstration Completion Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.
- (f) If the Availability Demonstration Completion Date does not occur on or before the Availability Demonstration Completion Target Date:
 - (i) the Availability Demonstration Completion Payment Application prepared by the Primary Contractor shall deduct from the Availability Demonstration Completion Payment Amount the amount of Availability Liquidated Damages payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages]; and
 - (ii) the Province shall be entitled:
 - (A) irrevocably to retain the Availability Demonstration Completion Payment Amount (or any portion thereof not replaced by an Availability Demonstration Letter of Credit); and/or
 - (B) if an Availability Demonstration Letter of Credit has been provided by the Primary Contractor, to make a demand under such Letter of Credit;

for a principal amount in aggregate of the amount of any Availability Liquidated Damages payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages], in satisfaction of the Primary Contractor's obligation to pay such Availability Liquidated Damages.
- (g) The Primary Contractor's entitlement to be paid any amount and/or, if applicable, to the return of any Availability Demonstration Letter of Credit pursuant to this Section 12.6.A. [Availability Demonstration Completion Payment] shall not be affected by the occurrence of any Supervening Event after the earlier to occur of the Availability

Demonstration Completion Date and the Availability Demonstration Completion Target Date.

12.6 B. TIDS Performance Demonstration Completion Payment

- (a) Subject to the provisions of this Part 12 [Payments] including Section 12.10 [Adverse Claims], the Province shall pay the TIDS Performance Demonstration Completion Payment Amount to the Primary Contractor in accordance with the procedure set out in this Section 12.6.B [TIDS Performance Demonstration Completion Payment].
- (b) Following the earlier to occur of the TIDS Performance Demonstration Completion Date and the TIDS Performance Demonstration Completion Target Date, the Primary Contractor shall prepare, and deliver to the Province, an application for payment of the TIDS Performance Demonstration Completion Payment Amount substantially in the form attached at Part 4, Form 4E [TIDS Performance Demonstration Completion Payment Application] of Schedule 22 [Payments] (the “**TIDS Performance Demonstration Completion Payment Application**”), requesting, subject to Section 12.6.B(f), payment of the TIDS Performance Demonstration Completion Payment Amount (or any portion thereof not replaced by a TIDS Demonstration Letter of Credit) and/or, if applicable, the return of any TIDS Demonstration Letter of Credit provided by the Primary Contractor. The TIDS Performance Demonstration Completion Payment Application shall be accompanied by the documentation specified in the form of TIDS Performance Demonstration Completion Payment Application attached at Part 4, Form 4E [TIDS Performance Demonstration Completion Payment Application] of Schedule 22 [Payments].
- (c) By not later than the tenth Business Day following receipt of the TIDS Performance Demonstration Completion Payment Application pursuant to Section 12.6.B(b), the Province shall, subject to Section 12.6.B(f), make payment, without interest, to the Primary Contractor of the TIDS Performance Demonstration Completion Payment Amount (or any portion thereof not replaced by a TIDS Demonstration Letter of Credit) and/or, if applicable, return any TIDS Demonstration Letter of Credit provided by the Primary Contractor.
- (d) No payment of or on account of the TIDS Performance Demonstration Completion Payment Amount, return of any TIDS Demonstration Letter of Credit or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of the TIDS Performance Demonstration Completion Payment Application by the Province’s Representative, shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (e) Notwithstanding any payment made or return of any TIDS Demonstration Letter of Credit pursuant to this Section 12.6.B [TIDS Performance Demonstration Completion Payment] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any TIDS Performance Demonstration Completion Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.

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- (f) If the TIDS Performance Demonstration Completion Date does not occur on or before the TIDS Performance Demonstration Completion Target Date:
- (i) the TIDS Performance Demonstration Completion Payment Application prepared by the Primary Contractor shall deduct from the TIDS Performance Demonstration Completion Payment Amount the amount of TIDS Liquidated Damages payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages]; and
 - (ii) the Province shall be entitled:
 - (A) irrevocably to retain the TIDS Performance Demonstration Completion Payment Amount (or any portion thereof not replaced by a TIDS Demonstration Letter of Credit); and/or
 - (B) if a TIDS Demonstration Letter of Credit has been provided by the Primary Contractor, to make a demand under such Letter of Credit;for a principal amount in aggregate of the amount of any TIDS Liquidated Damages payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages], in satisfaction of the Primary Contractor's obligation to pay such TIDS Liquidated Damages.
- (g) The Primary Contractor's entitlement to be paid any amount and/or, if applicable, to the return of any TIDS Demonstration Letter of Credit pursuant to this Section 12.6.B. [TIDS Performance Demonstration Completion Payment] shall not be affected by the occurrence of any Supervening Event after the earlier to occur of the TIDS Performance Demonstration Completion Date and the TIDS Performance Demonstration Completion Target Date.

12.7 Holdbacks for Deficiencies in Work

- (a) Notwithstanding any other provision of this Agreement, and in addition to any other holdbacks provided for in this Agreement, the Province may retain out of the Substantial Completion Payment Amount an amount equal to 200% of the Agreed Remedy Cost of any Final Deficiency List Deficiency (or, as the case may be, 200% of the estimate of any costs referred to in Section 12.5(e) as agreed or determined in accordance with the Dispute Resolution Procedure), which amount, for certainty, shall not include any amount in respect of the Work the cost of which is included in the Cost to Complete.

At the option of the Primary Contractor, the amount that the Province is entitled to retain under this Section 12.7(a) (or any portion thereof) may be replaced by a Letter of Credit provided by the Primary Contractor in such amount (or portion thereof) (which Letter of Credit shall remain in full force and effect until the date that is 6 months after the Substantial Completion Date) and, upon receipt of such Letter of Credit, the Province shall pay to the Primary Contractor an amount equal to the retained payments that the Letter of Credit is replacing.

- (b) Following the end of each of the first three complete calendar months (commencing with the first complete calendar month) after the Substantial Completion Date has occurred,

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the Primary Contractor shall prepare, and deliver to the Province, an application for payment, substantially in the form attached at Part 4, Form 4F [Deficiency Retention Payment Application] of Schedule 22 [Payments] (the “**Deficiency Retention Payment Application**”), requesting payment of amounts retained by the Province out of the Substantial Completion Payment Amount pursuant to Section 12.7(a) (or in respect of which a Deficiency Letter of Credit has been provided by the Primary Contractor) (the “**Deficiency Retention Amounts**”) in respect of any Final Deficiency List Deficiencies that have been remedied, to the satisfaction of the Province, acting reasonably, during such month (or, in the case of the first such application, since the Substantial Completion Date). Each Deficiency Retention Payment Application shall be accompanied by the documentation specified in the form of Deficiency Retention Payment Application attached at Part 4, Form 4F [Deficiency Retention Payment Application] of Schedule 22 [Payments].

- (c) By no later than the tenth Business Day following receipt of any Deficiency Retention Payment Application pursuant to Section 12.7(b), the Province shall, subject to Section 12.7(f), make payment, without interest, to the Primary Contractor of the Deficiency Retention Amounts and/or, if applicable, permit the reduction in the amount of any Deficiency Letter of Credit by an amount equal to the Deficiency Retention Amounts and/or, if applicable (following receipt of the final Deficiency Retention Payment Application), return any Deficiency Letter of Credit provided by the Primary Contractor.
- (d) No payment of or on account of any Deficiency Retention Amounts, permission to reduce the amount of any Deficiency Letter of Credit, return of any Deficiency Letter of Credit or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of any Deficiency Retention Payment Application by the Province’s Representative, shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (e) Notwithstanding any payment made, permission given to reduce the amount of any Deficiency Letter of Credit or return of any Deficiency Letter of Credit pursuant to this Section 12.7 [Holdbacks for Deficiencies in Work] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Deficiency Retention Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.
- (f) If the Total Completion Date does not occur on or before the Total Completion Target Date:
 - (i) without prejudice to Section 12.7(b), the Province shall be entitled irrevocably to retain any Deficiency Retention Amounts not paid to the Primary Contractor in accordance with Section 12.7(b) (or any portion thereof not replaced by a Deficiency Letter of Credit) and/or, if a Deficiency Letter of Credit has been provided by the Primary Contractor, shall be entitled to make a demand under any such Letter of Credit for the principal amount thereof; and

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- (ii) in consideration for the making of such retention and/or demand by the Province, the Primary Contractor shall be released from its obligation to remedy any Final Deficiency List Deficiency that as at the Total Completion Target Date has not been remedied in accordance with this Section 12.7.

12.8 Total Completion Payment

The parties agree that, notwithstanding the inclusion of this Section 12.8 in this Agreement, none of them shall have any obligations under this Section 12.8 as a result of the Total Completion Payment Amount being \$0.00.

- (a) Subject to the provisions of this Part 12 [Payments], including 12.10 [Adverse Claims], the Province shall pay the Total Completion Payment Amount to the Primary Contractor in accordance with the procedure set out in this Section 12.8 [Total Completion Payment].
- (b) Following the earlier to occur of the Total Completion Date and the Total Completion Target Date (disregarding any postponement of the Total Completion Target Date pursuant to Sections 9.3(d), 9.4(c) and/or 9.5(c)), the Primary Contractor shall prepare, and deliver to the Province, an application for payment of the Total Completion Payment Amount substantially in the form attached at Part 4, Form 4G [Total Completion Payment Application] of Schedule 22 (the “**Total Completion Payment Application**”), requesting payment of the Total Completion Payment Amount. The Total Completion Payment Application shall be accompanied by the documentation specified in the form of Total Completion Payment Application attached at Part 4, Form 4G [Total Completion Payment Application] of Schedule 22.
- (c) By no later than the tenth Business Day following receipt of the Total Completion Payment Application pursuant to Section 12.8(b), the Province shall make payment, without interest, to the Primary Contractor of the Total Completion Payment Amount.
- (d) No payment of or on account of the Total Completion Payment Amount or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of the Total Completion Payment Application by the Province’s Representative, shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (e) Notwithstanding any payment made pursuant to this Section 12.8 [Total Completion Payment] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Total Completion Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.
- (f) The Primary Contractor’s entitlement to be paid the Total Completion Payment Amount pursuant to this Section 12.8 [Total Completion Payment] shall not be affected by the occurrence of a Supervening Event after the earlier to occur of the Total Completion Date and the Total Completion Target Date (disregarding any postponement of the Total Completion Target Date pursuant to Sections 9.3(d), 9.4(c) and/or 9.5(c)).

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12.9 Warranty Holdback

- (a) Subject to the provisions of Part 6 [Work and Warranties] and this Part 12 [Payments], including Section 12.10 [Adverse Claims], the Province shall pay the Warranty Holdback to the Primary Contractor in accordance with the procedure set out in this Section 12.9 [Warranty Holdback].
- (b) Following the expiry of the General Work Defect Warranty Period, the Primary Contractor shall prepare a draft application for payment of the Warranty Holdback substantially in the form attached at Part 4, Form 4H [Warranty Holdback Payment Application] of Schedule 22 (the “**Warranty Holdback Payment Application**”) requesting payment of the Warranty Holdback or any portion thereof not replaced by a Warranty Holdback Letter of Credit (less any amounts applied therefrom by the Province in accordance with any of Sections 6.4(b), 6.8(b) and/or 6.8(d)) and/or, if applicable, the return of any Warranty Holdback Letter of Credit provided by the Primary Contractor.
- (c) By not later than the tenth Business Day following receipt of the Warranty Holdback Payment Application pursuant to Section 12.9(b), the Province shall make payment, without interest, to the Primary Contractor of the Warranty Holdback or any portion thereof not replaced by a Warranty Holdback Letter of Credit (less any amounts applied therefrom by the Province in accordance with any of Sections 6.4(b), 6.8(b) and/or 6.8(d)) and/or, if applicable, return any Warranty Holdback Letter of Credit provided by the Primary Contractor.
- (d) No payment of or on account of the Warranty Holdback, return of any Warranty Holdback Letter of Credit or partial or entire use or occupancy of the Project Infrastructure, the Site or any part or parts thereof by the Province or any other person, and no approval of the Warranty Holdback Payment Application by the Province’s Representative, shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Work as being in accordance or compliance with this Agreement.
- (e) Notwithstanding any payment made or return of any Warranty Holdback Letter of Credit pursuant to this Section 12.9 [Warranty Holdback] and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of any Warranty Holdback Payment Application submitted by the Primary Contractor to the Province, the Primary Contractor is and remains responsible for providing, performing and carrying out the Work in accordance and compliance with this Agreement.

12.10 Adverse Claims

- (a) The Primary Contractor shall comply with Section 4.7 [Removal of Liens] of Schedule 7 [Lands] in respect of all builders’ liens and other liens and claims of lien for labour, services or materials furnished or alleged to have been furnished with respect to the Work (collectively, an “**Adverse Claim**”). Without prejudice to Sections 12.4(j) and 12.4(n), and Section 5.10(i) of Schedule 12, as applicable, if the Primary Contractor fails to comply with Section 4.7 [Removal of Liens] of Schedule 7 in respect of any Adverse Claim, then:

- (i) the Province or BCTFA shall be entitled to retain from any amounts that would otherwise be payable to the Primary Contractor an amount equal to the amount of such Adverse Claim until the date (for the purposes of Sections 12.4(j) and 12.4(n), and Section 5.10(i) of Schedule 12, the “relevant date”) that is the earliest to occur of:
 - (A) the payment, discharge, satisfaction and, if filed in the Land Title Office, cancellation of such Adverse Claim; and
 - (B) the removal or cancellation of such Adverse Claim from title following the payment of money into or the posting of security with the Court in accordance with section 23 or 24, as applicable, of the Builders Lien Act; and
 - (ii) in the event that any such Adverse Claim is either paid, discharged, satisfied and, if filed in the Land Title Office, cancelled, or is removed or cancelled from title following the payment of money into or the posting of security with the Court in accordance with section 23 or 24, as applicable, of the Builders Lien Act, in any such case by the Province or BCTFA, the Primary Contractor shall, on demand, reimburse the Province and/or BCTFA (as the case may be) all amounts so paid, together with all related costs (including legal costs) and expenses incurred by the Province or BCTFA, and the provisions of Section 12.12 [Province’s Right of Set Off] shall apply to all such amounts, costs and expenses.
- (b) Subject to Sections 12.4(j) and 12.4(n), as applicable, if, as a result of any Adverse Claim, the Province and/or BCTFA have withheld amounts otherwise payable to the Primary Contractor, the Province and/or BCTFA, as applicable, shall, once such Adverse Claim has been finally resolved by way of litigation or settlement, pay to the Primary Contractor the surplus of any funds so withheld that were not used by the Province and/or BCTFA to resolve such Adverse Claim.

12.11 Province Rights to Audit

The Primary Contractor shall at all times ensure that the Province has unrestricted rights of audit, review and investigation over all records and documentation (including the Financial Model, any update or adjustment to the Financial Model and any other financial model) directly or indirectly relating to or used in connection with, or relevant to, the calculation of any payment to be made by any party to any other party under or pursuant to the terms of this Agreement, including all records and documentation relating to or used in connection with, or relevant to, the determination or calculation of any adjustment to the Contract Price.

12.12 Province’s Right of Set Off

Subject to Section 5.4 [Rights of Set-Off] of Schedule 12, and without prejudice to and without limiting or derogating from any statutory or other right of the Province to withhold any sum of money due or becoming due to the Primary Contractor, the Province and BCTFA may set off any liquidated amounts owing by the Primary Contractor to the Province or BCTFA under this Agreement (which, without limiting any other provision of this Agreement, shall be deemed to include the amount of any payment made by the Province or BCTFA to any person which is the responsibility of the Primary Contractor

under this Agreement), or to any other ministry, office, instrumentality or agency of the Province, against any payments due from the Province or BCTFA to the Primary Contractor under this Agreement.

12.13 Payments in Canadian Dollars

All payments under this Agreement shall be made in Canadian Dollars for value on or before the due date to the bank account of the recipient (located in the City of Vancouver or the City of Victoria, British Columbia) as specified (save as otherwise provided in the Lenders' Remedies Agreement) by the recipient from time to time with reference to this Section.

12.14 Due Date for Payments

- (a) If no date is specified for the making of any payment by a party under this Agreement, such party shall make such payment on or before the date that is 20 Business Days after the receipt by such party of the demand, invoice, debit note or Report to which such payment relates, or the final determination of the amount of such payment by the parties in accordance with this Agreement, as the case may be.
- (b) If the date for making any payment under this Agreement falls on a day that is not a Business Day, the date for making such payment shall be extended to the next Business Day.

12.15 Payment of Disputed Amounts

- (a) A party shall have the right to dispute, in good faith, any amount specified as payable from one party to another in any demand, invoice, debit note or Report.
- (b) A party shall pay any undisputed portion of any amount that is the subject of a dispute to the other party in accordance with this Agreement, but any disputed portion or amount shall not be payable until the dispute is resolved in accordance with this Agreement.
- (c) If payment of any amount payable under this Agreement is delayed while the matter is in dispute in accordance with Section 12.15(a), upon resolution of such dispute, a party shall pay any amount agreed or determined to be due by such party within 10 Business Days following such resolution, together with interest on such amount calculated at an interest rate that is 1% per annum over the Prime Rate at that time, compounded monthly from the time such amount originally became payable (but for such dispute) under this Agreement until the date of such payment. For greater certainty, Section 12.17 [Interest on Overdue Amounts] shall not apply to the delayed payment of such amount but shall apply to any non-payment when due of any interest payable pursuant to this Section 12.15(c).

12.16 Inaccuracies in Payments

Subject to Section 5.5 [Full and Final Settlement] of Schedule 12, if there is any inaccuracy in any demand, invoice, debit note or Report issued by either party pursuant to this Agreement providing for the payment of an amount from one party to the other, whether determined upon an examination by the Province pursuant to Section 1.6 [Audit and Inspection] of Schedule 16 or otherwise:

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- (a) the necessary adjustments in such demand, invoice, debit note or Report and resulting payment shall be made by the applicable party within 10 Business Days after the date such inaccuracy is established by agreement or pursuant to the Dispute Resolution Procedure; and
- (b) if such inaccuracy results in an underpayment or overpayment being made by one party to the other party (as against the sum that would have been paid but for such inaccuracy), then, if the paying party or the receiving party, as the case may be, issued the demand, invoice, debit note or Report containing such inaccuracy, the paying party or the receiving party shall, in addition to paying such underpayment or re-paying such overpayment, as the case may be, to the other party, pay interest thereon at a rate per annum equal to the Default Rate from the date of payment by the relevant party to the other party pursuant to the original demand, invoice, debit note or Report to the date of payment of such underpayment by the paying party or the date of repayment of such overpayment by the receiving party, as the case may be.

12.17 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including payments payable pursuant to Schedule 12 [Compensation on Termination] and any payments required pursuant to Sections 12.15(c) and 12.16(b)), interest shall, unless another interest rate is indicated in this Agreement, be payable on such amount at the Default Rate and shall be calculated from the date due under this Agreement until paid, compounded monthly.

12.18 Interest without Prejudice

The right of a party to receive interest in respect of the late payment of any amount due under this Agreement is without prejudice to any other rights that party may have under this Agreement.

12.19 Tax

- (a) For the purposes of this Section 12.19:
 - (i) **“Change in Tax Law”** means:
 - (A) a Change in Law relating to GST or PST, including the imposition of any successor or replacement tax for GST or PST; and
 - (B) the coming into force, after the Financial Submittal Date, of any regulations pursuant to the *Provincial Sales Tax Act* (British Columbia) (the **“PST Regulations”**);but excludes the following:
 - (C) any Transitional Change; and
 - (D) any one or more provisions of the PST Regulations that are the same or substantially the same, or have the same or substantially the same effect, as one or more provisions in the regulations pursuant to the *Social*

Service Tax Act (British Columbia) in force on the Financial Submittal Date;

- (ii) “**CITCA**” means the Comprehensive Integrated Tax Coordination Agreement between the Province and the Federal Government fully executed on November 30, 2009, as subsequently amended by the parties thereto on March 2, 2010;
- (iii) “**Irrecoverable Tax**” means GST or PST:
 - (A) incurred by the Primary Contractor or a Subcontractor in respect of the supply of any property or service to the Primary Contractor or such Subcontractor which is consumed, used or supplied or to be consumed, used or supplied exclusively in the course of carrying out the Work; or
 - (B) required to be collected and remitted to any Governmental Authority by the Primary Contractor in respect of the supply of any property or service by the Primary Contractor to the Province made exclusively in the course of carrying out the Work;to the extent that the Primary Contractor or such Subcontractor is unable to collect or obtain any Recovery;
- (iv) “**PST Commencement Date**” means the first date on which liability for PST is imposed under the *Provincial Sales Tax Act* (British Columbia), which will be April 1, 2013 unless changed by an amendment to such Act;
- (v) “**Recipient**” means a party to which a taxable supply is provided under this Agreement;
- (vi) “**Recovery**” in relation to any GST or PST means recovery or elimination of liability for such GST or PST in any way, including by way of input tax credits, refunds, rebates, exemptions, remissions or any similar recovery for such GST or PST, and including any recovery of GST or PST which the Primary Contractor receives from a Subcontractor and any reduction of liability of the Primary Contractor to a Subcontractor relating to a recovery or elimination of any Subcontractor’s liability for GST or PST;
- (vii) “**RTA**” means the Reciprocal Taxation Agreement between the Province and the Federal Government fully executed on June 30, 2010;
- (viii) “**Supplier**” means a party providing a taxable supply under this Agreement; and
- (ix) “**Transitional Change**” means any Change in Law that relates to the transition from the imposition of Harmonized Sales Tax in the Province pursuant to the *Excise Tax Act* (Canada) to the imposition of PST in the Province, including (as an example only, and without in any way limiting the generality of the foregoing) the coming into force of any Law that imposes liability for PST in respect of property acquired prior to the PST Commencement Date that is used or consumed in the course of improving real property after the PST Commencement Date.

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- (b) Subject to this Section 12.19, including the provisions relating to a Change in Tax Law in Sections 12.19(e), (f) and (h), all payments (including payments in kind) to be made by a party under this Agreement are:
 - (i) exclusive of GST; and
 - (ii) inclusive of all Taxes (including PST) other than GST.
- (c) If any GST is imposed on a Recipient in connection with the provision of any taxable supply under this Agreement by a Supplier, the Recipient shall pay the GST to the Supplier and the Supplier shall collect and remit the GST, all in accordance with the obligations of the Recipient and the Supplier under the *Excise Tax Act* (Canada).
- (d) Notwithstanding the provisions of Section 12.19(c), if at any time after the Effective Date the Province delivers to the Primary Contractor certification that the RTA and CITCA have been amended to relieve the Province from liability to pay GST, and the certification states the effective time of such amendment, the Primary Contractor shall cease to collect GST in connection with the provision of any taxable supply by the Primary Contractor under this Agreement from the later of the time of delivery of the certification and the effective time stated therein.
- (e) Following receipt of an invoice therefor from the Primary Contractor, the Province shall pay to the Primary Contractor from time to time amounts equal to any Irrecoverable Tax if and to the extent such Irrecoverable Tax results solely from a Change in Tax Law:
 - (i) (in the case of Irrecoverable Tax falling within Section 12.19(a)(iii)(A)), as any such Irrecoverable Tax is incurred by the Primary Contractor or relevant Subcontractor; or
 - (ii) (in the case of Irrecoverable Tax falling within Section 12.19(a)(iii)(B)) as any such Irrecoverable Tax is required to be collected and remitted to any Governmental Authority;with the intent, in the case of Section 12.19(e)(i) or (ii), that the Primary Contractor or relevant Subcontractor, as the case may be, will be placed in a position under this Agreement neither better nor worse than it would have been in had the Change in Tax Law not occurred.
- (f) If, solely as a result of a Change in Tax Law, the Primary Contractor becomes entitled to a Recovery in respect of GST or PST which (i) was included in the Financial Model as an estimated cost for Irrecoverable Tax or (ii) was, prior to such Change in Tax Law, an Irrecoverable Tax that had been paid to the Primary Contractor by the Province pursuant to Section 12.19(e), then the Primary Contractor shall pay to the Province from time to time the amount or amounts of such Recovery to which the Primary Contractor becomes entitled, to the extent required to place the Primary Contractor in a position under this Agreement neither better nor worse than it would have been in had the Change in Tax Law not occurred.
- (g) The Primary Contractor shall include in each Principal Subcontract provisions:

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- (i) having substantially the same effect as Section 12.19(f) requiring the Principal Subcontractor to pay to the Primary Contractor the amount of any Recovery in respect of GST or PST to which the Principal Subcontractor becomes entitled solely as a result of a Change in Tax Law; and
- (ii) requiring the Principal Subcontractor (other than Thales) to include in all Subcontracts to which it is a party provisions with substantially the same effect as Section 12.19(f) and this 12.19(g),

with the intent that each Subcontractor that is a supplier under a Subcontract will be required under the terms of the Subcontract to pay the amount of any such Recovery to the recipient of the supply under the Subcontract to the extent required to place each Subcontractor in a position under the Subcontract neither better nor worse than it would have been in had the Change in Tax Law not occurred.

- (h) Any payment required to be made by the Province to the Primary Contractor pursuant to Section 12.19(e) or by the Primary Contractor to the Province pursuant to Section 12.19(f) shall be paid by the relevant party within 10 Business Days following the delivery by the other relevant party of an invoice or debit note for such payment, provided that the Province shall not be required to pay any amount to the Primary Contractor pursuant to Section 12.19(e) until the Primary Contractor has delivered to the Province's Representative written details of the amount claimed and the grounds for and computation of the amount claimed and such further information, calculations, computations and documentation as the Province may reasonably require.
- (i) The Primary Contractor shall provide to the Province's Representative any information, calculations, computations and documentation reasonably requested by the Province's Representative from time to time in relation to the amount of any GST or PST chargeable in accordance with this Agreement and payable by the Province to the Primary Contractor or by the Primary Contractor to the Province in accordance with this Agreement.
- (j) The Province agrees that it shall pay to the Primary Contractor the amount or amounts of any Irrecoverable Tax that is PST arising in respect of: (x) the purchase or lease of tangible personal property, (y) the purchase of software or a taxable service, or (z) any other action which would result in a liability to pay PST (each of the foregoing a "**Transaction**") by the Primary Contractor or a Subcontractor in the period from and including April 1, 2013 to and including May 11, 2013, that, if the Effective Date had occurred on November 1, 2012, such Transaction would have taken place prior to April 1, 2013 and would not have resulted in Irrecoverable Tax in respect of such Transaction (in this Section 12.19(j), "**Delay PST**"), provided that:
 - (i) the Primary Contractor has demonstrated (including by the provision by the Primary Contractor of any information, calculations, computations and documentation reasonably requested by the Province) to the satisfaction of the Province, acting reasonably, that:
 - (A) such amount of Delay PST is Irrecoverable Tax; and

- (B) the Primary Contractor has complied with its obligations under Section 4.10 [Mitigation by Primary Contractor] and that any relevant Subcontractor(s) have mitigated to the same standard as is required of the Primary Contractor under such Section;
- (ii) any such amount payable by the Province pursuant to this Section 12.19(j) shall be payable by the Province within 10 Business Days following the delivery by the Primary Contractor of an invoice for such payment, which invoice the Primary Contractor shall only be entitled to deliver once it has demonstrated to the Province's satisfaction the matters referred to in Sections 12.19(j)(i)(A) and (B) in respect of such amount and the relevant amount of Delay PST has actually been incurred or, as the case may be, remitted; and
- (iii) the maximum amount payable by the Province pursuant to this Section 12.19(j) shall be \$300,000.

12.20 Letters of Credit

In the event that:

- (a) the Primary Contractor fails to replace any Letter of Credit within ten Business Days after the downgrading of the issuer of such Letter of Credit below the level specified in the definition of Letter of Credit in Section 1.1 [Definitions] of Schedule 1; or
- (b) the issuer of any Letter of Credit notifies the Province that such Letter of Credit will not be renewed in accordance with its terms and the Primary Contractor has not (by the date which is ten Business Days prior to the date of termination or expiry of such Letter of Credit) made arrangements satisfactory to the Province, in its discretion, that will result in such Letter of Credit being replaced with effect from the date of its termination or expiry with a Letter of Credit that satisfies (in the discretion of the Province) the requirements specified in the definition of Letter of Credit in Section 1.1 [Definitions] of Schedule 1;

the Province shall be entitled to make a demand for the full principal amount of such Letter of Credit and deposit the proceeds of such demand in an account in the name of the Province, in which event the Province shall thereafter be entitled to withdraw funds from such account in any circumstance in which the Province would otherwise have been entitled in accordance with this Agreement to make a demand under such Letter of Credit, provided that, if, at any time after the Province has made such a demand for the full principal amount of such Letter of Credit, the Primary Contractor delivers a replacement Letter of Credit to the Province that satisfies (in the discretion of the Province) the requirements specified in the definition of Letter of Credit in Section 1.1 [Definitions] of Schedule 1, the Province shall pay the Primary Contractor the amount, as at the date of delivery of such replacement Letter of Credit, standing to the credit of such account (save that the Province shall be entitled to retain for its own account any interest that has accrued to such account).

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**PART 13
PROVINCE'S ACCESS, MONITORING AND STEP-IN RIGHTS**

13.1 Province Access

The Province, BCTFA and the Province's Representative and any employees, contractors, consultants or other persons authorized by any of them, including Third Party Contractors, shall:

- (a) have unrestricted access at all reasonable times to the Site and the Project Infrastructure in order to do any or all of the following:
 - (i) perform any obligations or functions or exercise any rights of the Province's Representative, the Province or BCTFA under this Agreement;
 - (ii) fulfil any statutory, public or other powers, authorities, discretions, duties or functions;
 - (iii) conduct any study, test or trial for purposes of research initiated by the Province or BCTFA or any other person authorized by the Province or BCTFA; and
 - (iv) construct, operate, manage, maintain, repair, rehabilitate or reconstruct on the Site any infrastructure and structures other than the Project Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Work), provided that (except where the carrying out of any such work is expressly contemplated in this Agreement, including Section 4.7 [Access to Site and Project Infrastructure by Others] and Article 6 [Work by Others], Part 1 of Schedule 4) the exercise by the Province or BCTFA of such right in accordance with this Section 13.1(a)(iv) shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply;
- (b) have reasonable access at all reasonable times and upon reasonable prior notice to any site or workshop where Plant is being manufactured for the purposes of general inspection and auditing and of attending any test or investigation being carried out in respect of the Work; and
- (c) have the right to attend regular Site and other similar progress meetings,

provided that any access granted in accordance with this Section shall be exercised in accordance with any health and safety procedures established by the Primary Contractor pursuant to Section 4.11(d) [Health and Safety Program] for the time being in force in relation to the areas to which such access is granted, provided that nothing in this Section 13.1 [Province Access] shall be construed so as to impede the proper performance of the roles, functions and duties of the Province and BCTFA as set out in this Agreement and under Laws.

13.2 Uncovering of Work

- (a) The Primary Contractor shall ensure that the Province's Representative is afforded advance notice of and a full opportunity to witness inspection and test activity in accordance with the Inspection and Test Plan and other relevant provisions of this Agreement. If the Primary Contractor does not provide such notice and opportunity, the

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Primary Contractor shall, at the request of the Province's Representative, uncover any relevant part of the Work which has been covered up or otherwise put out of view or remove any relevant part of the Work that has been proceeded with in order to permit the Province's Representative to witness the relevant inspection or test activity. The Primary Contractor shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Work.

- (b) The Province's Representative shall have the right to request the Primary Contractor to open up and inspect any part or parts of the Work where the Province's Representative (following consultation with the Primary Contractor) believes that such part or parts of the Work is or are defective or that the Primary Contractor has failed to comply with the requirements of this Agreement, and the Primary Contractor shall comply with such request. If the Province's Representative exercises such right, it shall consult with the Primary Contractor as to the timing of the opening up and inspection of the relevant part or parts of the Work with a view to avoiding or, if unavoidable, minimizing any delay caused to the conduct of the remaining Work.
- (c) If the Province's Representative requires an uncovering of the Work pursuant to Section 13.2(b) and such Work is not subsequently found to be defective and is found to have complied with the requirements of this Agreement, then such uncovering of the Work shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply.

13.3 Increased Monitoring

- (a) Without prejudice to any other rights of the Province under this Agreement, if at any time:
 - (i) the Primary Contractor is assigned 10 or more Default Points in any period consisting of 12 consecutive Performance Periods;
 - (ii) a Primary Contractor Default occurs; or
 - (iii) any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Province or the Province's Representative in respect of any Draw Request or monthly report delivered by the Primary Contractor to the Province in accordance with either Section 7.2(a)(v) of Schedule 6 [Quality Management] or Section 6.1 [Monthly Report for Performance Incentive Payments] of Schedule 9 [Performance Mechanism];

then the Province's Representative, may by notice to the Primary Contractor, increase the level of its monitoring of the Primary Contractor above that otherwise permitted under this Agreement, including pursuant to Section 5.5 [Province Monitoring] of Schedule 6 [Quality Management], until such time as the Primary Contractor has demonstrated to the reasonable satisfaction of the Province's Representative that it will perform and is capable of performing its obligations under this Agreement.

- (b) A notice to the Primary Contractor provided by the Province's Representative pursuant to Section 13.3(a) shall specify the additional measures to be taken by the Province's

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Representative in monitoring the Primary Contractor in response to the matters which led to such notice being sent.

- (c) If the Province's Representative carries out increased monitoring pursuant to this Section 13.3 [Increased Monitoring] and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that none of the events in Sections 13.3(a)(i), (ii) or (iii) have occurred, then the Province shall not be entitled to require the Primary Contractor to pay the Province's costs and expenses in respect of such increased monitoring pursuant to Section 13.3(d) and any such costs and expenses previously paid by the Primary Contractor to the Province shall be refunded by the Province.
- (d) Subject to Section 13.3(c), the Primary Contractor shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out increased monitoring under this Section 13.3 [Increased Monitoring], together with an administration fee equal to fifteen percent (15%) of such costs and expenses, and all without prejudice to any other rights of the Province.

13.4 Province's Emergency Rights

- (a) Without limiting any other rights of the Province under this Agreement or at law, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or the Primary Contractor has then given notice of termination in accordance with any provisions of this Agreement entitling it to do so, and regardless of any dispute with respect to whether or not there is a valid right to terminate, if at any time the Province notifies the Primary Contractor that the Province needs to take action in relation to the Site or any part thereof, the Project Infrastructure or any part thereof or the Work or any part thereof due to the occurrence of an Emergency, then the Province may in its discretion do either or both of the following (but this shall not obligate the Province to mitigate, rectify or protect against, or attempt to mitigate, rectify or protect against, such Emergency or, after having commenced to mitigate, rectify or protect against or attempt to mitigate, rectify or protect against such Emergency, to continue to do so):
 - (i) upon notice from the Province's Representative to the Primary Contractor (which notice shall not be required to be in writing and shall not be required where it is impracticable in the circumstances for the Province's Representative to give prior notice), take or cause to be taken all such steps and actions as the Province considers, in its discretion, are required to mitigate, rectify or protect against such Emergency and, to the extent and for the period necessary for such purposes, enter upon the Site and the Project Infrastructure or any part or parts thereof to carry out or cause to be carried out any work, provided that the Province shall comply with, and shall cause any third parties engaged by the Province for the purposes of exercising the Province's rights under this Section 13.4 [Province's Emergency Rights] to comply with, all applicable Laws; or
 - (ii) by written notice from the Province's Representative to the Primary Contractor, require the Primary Contractor to immediately take such steps as the Province considers, in its discretion, necessary or expedient to mitigate, rectify or protect against such Emergency including, if such Emergency has been caused or

contributed to by a breach of any Subcontract, taking all action in respect of such Subcontract as the Province considers, in its discretion, necessary or expedient, and the Primary Contractor shall use all reasonable efforts to comply with the Province's requirements as soon as reasonably practicable.

- (b) If, following the initial response to an Emergency, the Province's Representative gives written notice to the Primary Contractor requiring the Primary Contractor to take such steps as the Province considers necessary, in its discretion, or expedient to mitigate, rectify or protect against such Emergency and the Primary Contractor fails to take the steps as are referred to or required in such notice within such time period as is set out in such notice or (if no time period is set out in such notice) within five Business Days, then the Province may without further notice to the Primary Contractor, to the extent and for the period necessary for such purpose, suspend the progress of the relevant Work and suspend in whole or in part the relevant rights of the Primary Contractor under this Agreement (including the rights of the Primary Contractor under Sections 2.5(a)(i) or 2.5(c), as applicable, and Schedule 7 [Lands] as applicable to the relevant Work), provided that any such suspension of the Primary Contractor's rights shall cease on the date upon which the Province has completed mitigating, rectifying or protecting against such Emergency or notifies the Primary Contractor that such suspension shall cease.
- (c) No action taken by the Province under Section 13.4(a) or 13.4(b) shall be deemed to be a termination of this Agreement or relieve the Primary Contractor from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and, subject to Section 13.4(d), the Province shall not incur any liability to the Primary Contractor for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 13.4(a) or 13.4(b).
- (d) To the extent that an Emergency has been caused by a Province Non-Excusable Event or a Compensation Event, any actions of the Province under this Section 13.4 [Province's Emergency Rights] in respect of such Emergency shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply.
- (e) Where the Province carries out actions under this Section 13.4 [Province's Emergency Rights] as a result of an Emergency caused by a Primary Contractor Non-Excusable Event or any other act or omission of the Primary Contractor or a person for whom the Primary Contractor is in law responsible, the Primary Contractor shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions under this Section, including any costs paid by the Province to the Primary Contractor in accordance with Section 13.6 [Availability of Certain Assets on Step-In], together with an administration fee equal to fifteen percent (15%) of such costs and expenses, and all without prejudice to any other rights of the Province.

13.5 Province's Other Step-In Rights

- (a) Without limiting any other rights of the Province under this Agreement or at law, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or the Primary Contractor has then given notice of termination in accordance with any provisions of this Agreement entitling it to do so, and regardless of any dispute with respect to whether or not there is a valid right to terminate, if at any time the Province's Representative notifies the Primary Contractor that any one or more of the following events has occurred:
- (i) the Primary Contractor has been assigned one or more Default Point(s) and the matter or matters giving rise to the assignment of such Default Point(s) has or have not been remedied to the satisfaction of the Province's Representative, acting reasonably;
 - (ii) a Primary Contractor Default has occurred and the Province reasonably believes that such Primary Contractor Default remains unremedied; or
 - (iii) the Province receives a Notice of Failure to Comply from the Primary Contractor pursuant to Section 4.11(i)(ii),

then the Province may in its discretion do either or both of the following (but this shall not obligate the Province to remedy such matter or attempt to do so, or, after having commenced to remedy such matter or attempt to do so, to continue to do so):

- (iv) by five Business Days' notice to the Primary Contractor, to the extent and for the period necessary to remedy such matter or matters, suspend the progress of any or all of the Work and suspend in whole or in part the rights of the Primary Contractor under this Agreement (including the rights of the Primary Contractor under Sections 2.5(a)(i) or 2.5(c), as applicable, and Schedule 7 [Lands]), provided that any such suspension of the Primary Contractor's rights shall cease on the date upon which the Province notifies the Primary Contractor that such suspension shall cease; and
 - (v) take or cause to be taken all such steps and actions as may be required to remedy such matter or matters and, to the extent and for the period necessary for such purpose, enter upon the Site and the Project Infrastructure or any part thereof to carry out any work, provided that the Province shall comply with, and shall cause any third parties engaged by the Province for the purposes of exercising the Province's rights under this Section 13.5 [Province's Other Step-In Rights] to comply, with all applicable Laws and Permits.
- (b) No action taken by the Province under Section 13.5(a) shall be deemed to be a termination of this Agreement or relieve the Primary Contractor from any of its obligations under this Agreement, and (subject to Section 13.5(d)) the Province shall not incur any liability to the Primary Contractor for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any third party engaged by the Province for the purposes of exercising the Province's rights under this Section to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 13.5(a).

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- (c) Except where the Province carries out actions under this Section 13.5 in the circumstances contemplated in Section 13.5(a)(iii) or where Section 13.5(d) applies, the Primary Contractor shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions, including any costs paid by the Province to the Primary Contractor in accordance with Section 13.6 [Availability of Certain Assets on Step-In], together with an administration fee equal to fifteen percent (15%) of such costs and expenses, all without prejudice to any other rights of the Province.
- (d) If the Province takes action under Section 13.5(a) and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to take such action in accordance with this Section 13.5 [Province's Other Step-In Rights], then the taking of such action shall constitute a Compensation Event and the provisions of Part 9 [Supervening Events] shall apply.

13.6 Availability of Certain Assets on Step-In

Where the Province exercises its rights under Section 13.4 [Province's Emergency Rights] or Section 13.5 [Province's Other Step-In Rights], for the duration of the exercise of such rights the Primary Contractor shall, and shall cause all Subcontractors to, to the extent requested by the Province, make available to the Province or, at the direction of the Province, to a third party designated by the Province, at a fair market price or rent as the case may be and at the risk of the Province, all facilities and all or any part of the stocks of material, vehicles, spare parts, equipment and machinery (including Construction Plant) and other moveable property then owned or leased by or otherwise available to the Primary Contractor or any of the Subcontractors that is required for the purposes of the exercise of such rights by the Province.

PART 14 PRIMARY CONTRACTOR DEFAULT AND PROVINCE REMEDIES

14.1 Primary Contractor Default

Each occurrence of any one or more of the following events or circumstances shall constitute a "Primary Contractor Default":

- (a) any of the following:
 - (i) a Primary Contractor Insolvency Event;
 - (ii) the abandonment of the Work by the Primary Contractor;
 - (iii) the provision, performance or carrying out of the Work or any part of the Work without a Permit required in connection with such Work or in breach of the terms of any Permit required in connection with such Work and the failure to have the relevant Permit or such breach is not remedied within 30 Business Days after the date notice of such failure or breach is given by the Province to the Primary Contractor or, if a longer period of time is reasonably required to remedy such failure or breach, within such longer period of time so long as the Primary Contractor has commenced remedying it within such 30 Business Days and proceeds to remedy it with all due diligence and continuity to completion;

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- (iv) the Primary Contractor ceasing to perform a substantial portion of its business or the suspension or non-performance of a substantial portion of the business of the Primary Contractor, whether voluntarily or involuntarily, that has or could reasonably be expected to have a material adverse effect on the performance by the Primary Contractor of its obligations under this Agreement;
 - (v) if the Substantial Completion Date does not occur on or before the Substantial Completion Target Date, unless the Primary Contractor not later than twenty Business Days prior to the Substantial Completion Target Date has provided the Province with written confirmation from the Agent in form satisfactory to the Province confirming that the Senior Lenders have approved a Late Completion Plan; or
 - (vi) if the Substantial Completion Date does not occur on or before the Substantial Completion Longstop Date;
- (b) any of the following:
- (i) any Change in Ownership that is not permitted by Section 18.6(a);
 - (ii) the Primary Contractor or any person which has Control of the Primary Contractor ceasing to be a subsidiary (within the meaning of “subsidiary” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement) of SNC Group without the prior written consent of the Province, in its discretion, except as permitted by Section 18.6(b); or
 - (iii) an event that is deemed to be a Primary Contractor Default pursuant to Section 18.6(c)(ii)(C);
- (c) any breach by the Primary Contractor of Sections 18.1 [Province Consent Required to Assignment by Primary Contractor] to 18.3 [Other Requirements for Assignment by Primary Contractor] inclusive;
- (d) any breach of Section 4.5 [Prohibited Acts];
- (e) any failure by the Primary Contractor to comply with Schedule 19 [Privacy Protection] and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to the Primary Contractor (and for the purposes of this Section such failure shall be considered remedied when the Primary Contractor has taken steps satisfactory to the Province to mitigate the effects of the failure and has implemented measures satisfactory to the Province to prevent a recurrence of the failure);
- (f) any of the following:
- (i) any breach by the Primary Contractor of any of Section 5.2 [Restrictions on Changes to Senior Lending Agreements] or Sections 5.8(a) or (b) [Restricted Persons Prohibited]; or
 - (ii) any of the Senior Lending Agreements:

- (A) not constituting, or ceasing to constitute, the valid, binding and enforceable obligation of any of the parties thereto; or
- (B) is terminated, assigned, materially amended or varied, or materially departed from, other than in accordance with Section 5.2 [Restrictions on Changes to Senior Lending Agreements];

and such occurrence is not caused by a breach referred to in Section 14.1(f)(i);

and (in the case of (i)) such breach or (in the case of (ii)) such occurrence would, or might reasonably be expected to, or does:

- (1) have any of the effects described in any of Sections 2.6(b)(i), 2.6(b)(iii) or 2.6(e) of Schedule 2 [Representatives, Review Procedure and Consent Procedure]; or
- (2) constitute a breach of Section 5.8 [Restricted Persons Prohibited];

except where such breach, such occurrence or effects are capable of being remedied and such breach, such occurrence or such effects are in fact remedied within 30 Business Days after the date notice of such breach or occurrence is given by the Province to the Primary Contractor;

(g) any of the following:

- (i) any breach by the Primary Contractor of Section 18.9 [Restrictions on Changes to Principal Subcontracts]; or
- (ii) any of the Principal Subcontracts:
 - (A) not constituting, or ceasing to constitute, the valid, binding and enforceable obligation of any of the parties thereto, other than as a result of a termination in accordance with Section 18.9(a); or
 - (B) is terminated, assigned, materially amended or varied, or materially departed from, other than in accordance with Section 18.9 [Restrictions on Changes to Principal Subcontracts];

and such occurrence is not caused by a breach referred to in Section 14.1(g)(i);

and (in the case of (i)) such breach or (in the case of (ii)) such occurrence would, or might reasonably be expected to, or does:

- (1) have any of the effects described in any of Sections 2.6(b)(i), 2.6(b)(iii) or 2.6(e) of Schedule 2 [Representatives, Review Procedure and Consent Procedure]; or
- (2) constitute a breach of Section 5.8 [Restricted Persons Prohibited];

except where such breach, such occurrence or effects are capable of being remedied and such breach, such occurrence or such effects are in fact remedied within 30 Business

Days after the date notice of such breach or occurrence is given by the Province to the Primary Contractor;

- (h) a sale, transfer, lease or other disposition by the Primary Contractor of the whole or any part (that is material in the context of the performance of the Primary Contractor's obligations under this Agreement) of its undertaking, property or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period of time) that has or could be reasonably expected to have a material adverse effect on the financial position of the Primary Contractor or the performance by the Primary Contractor of its obligations under this Agreement, except where such occurrence or the relevant material adverse effect is capable of being remedied and is in fact remedied within 30 Business Days after the date notice of such occurrence is given by the Province to the Primary Contractor;
- (i) any representation or warranty made by the Primary Contractor in Section 4.15 [Primary Contractor's Representations and Warranties] being incorrect in any material respect when made and the incorrectness of the fact or facts misrepresented has or might reasonably be expected to have a material adverse effect on the ability of the Primary Contractor or the Province to perform their respective obligations, or the ability of the Province to exercise any of its rights, under this Agreement or any of the other Province Project Documents, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by the Province to the Primary Contractor;
- (j) any Required Insurance is not taken out, maintained, paid for or renewed in accordance with Part 7 [Insurance, Damage and Destruction] and Schedule 14 [Insurance Requirements] or is cancelled by any insurer;
- (k) evidence that Required Insurance has in fact been taken out, maintained, paid for and renewed in accordance with Part 7 [Insurance, Damage and Destruction] and Schedule 14 [Insurance Requirements] is not provided to the Province in accordance with Part 7 [Insurance, Damage and Destruction] and Schedule 14 [Insurance Requirements];
- (l) a failure by the Primary Contractor to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter dealt with in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 30 Business Days after the date notice of such non-compliance is given by the Province to the Primary Contractor or, if a longer period of time is reasonably required to comply, within such longer period of time as is reasonably required to comply so long as the Primary Contractor has commenced to comply within such 30 Business Days and proceeds with such compliance with all due diligence and continuity to completion;
- (m) at any time the Default Points Balance is 60 or more Default Points;
- (n) a failure by the Primary Contractor to pay to the Province, when due and payable, any amount that is due and payable by the Primary Contractor to the Province under this Agreement or otherwise, and such payment is not the subject of an unresolved dispute

pursuant to the Dispute Resolution Procedure, and such failure is not remedied within 20 Business Days after the date notice that such payment is overdue is given by the Province to the Primary Contractor;

- (o) a failure by the Primary Contractor to perform or observe any of its material obligations under this Agreement that is not referred to in any of the other subsections of this Section 14.1 [Primary Contractor Default], and without regard to whether or not the Primary Contractor has received or receives NCE Points or Default Points under this Agreement for or as a result of such failure, and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to the Primary Contractor;
- (p) the withdrawal, termination, cancellation, non-renewal, invalidation or unenforceability of any Letter of Credit for any reason and the failure of the Primary Contractor to replace such Letter of Credit with another Letter of Credit that satisfies (in the discretion of the Province) the requirements specified in such definition within ten Business Days following such withdrawal, termination, cancellation or non-renewal or the occurrence of such invalidation or unenforceability, unless, in the event that Section 12.20(b) applies, the Province has exercised, or has become entitled to exercise, its rights pursuant to Section 12.20(b) prior to the date of termination or expiry of such Letter of Credit; and
- (q) the downgrading of any Letter of Credit issuer below the level specified in the definition of Letter of Credit in Section 1.1 [Definitions] of Schedule 1 and the failure of the Primary Contractor to replace such Letter of Credit with another Letter of Credit that satisfies (in the discretion of the Province) the requirements specified in such definition within ten Business Days following the downgrading of the Letter of Credit issuer, unless the Province exercises its rights pursuant to Section 12.20(a) within ten Business Days after the expiry of such ten Business Day period, or has become entitled to exercise such rights but has not done so.

Each notice that may be given to the Primary Contractor referred to in any of Sections 14.1(a)(iii), 14.1(e), 14.1(f), 14.1(g), 14.1(h), 14.1(i), 14.1(l), 14.1(n) or 14.1(o) shall specify in reasonable detail according to the information then reasonably available to the Province the failure, breach, occurrence or other matter in respect of which the notice is given, and shall state clearly that the notice is given under this Section 14.1 [Primary Contractor Default] and could lead to a Primary Contractor Default and to termination of this Agreement.

14.2 Notice of Default by Primary Contractor

The Primary Contractor shall notify the Province of the occurrence, and details, of any Primary Contractor Default and of any event or circumstance that has occurred and may or would, with the passage of time or otherwise, constitute or give rise to a Primary Contractor Default, in any case promptly upon the Primary Contractor becoming aware of such occurrence.

14.3 Remedies of the Province for Primary Contractor Default

If and whenever a Primary Contractor Default occurs and is continuing, the Province may, at its option and without prejudice to any of its other rights or remedies or to any rights or action which accrue or shall already have accrued to the Province under this Agreement or at law or in equity, exercise any or all of the following rights and remedies as the Province, in its discretion, shall determine:

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- (a) the Province may terminate this Agreement by notice to the Primary Contractor having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], if the Primary Contractor Default is one referred to in any of Sections 14.1(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (o), (p) or (q);

- (b) the Province may terminate this Agreement by notice to the Primary Contractor having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], if the Primary Contractor Default is one referred to in Section 14.1(n) and the aggregate amount of:
 - (i) the sum that is the subject of that Primary Contractor Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Primary Contractor to the Province;
 - (B) are not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure; and
 - (C) have each been outstanding and unpaid by the Primary Contractor to the Province for more than 20 Business Days after the date a notice of non-payment thereof was given by the Province to the Primary Contractor under Section 14.1(n);exceeds \$250,000.00 and such aggregate amount is not paid by the Primary Contractor to the Province within 10 Business Days following notice given by the Province to the Primary Contractor of such aggregate amount and the non-payment thereof;

- (c) the Province may terminate this Agreement by notice to the Primary Contractor having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], in the case of a Primary Contractor Default under Section 14.1(d):
 - (i) where the breach is occasioned by the Primary Contractor or by an employee of the Primary Contractor who is not acting independently of the Primary Contractor or by any person duly authorized to act for and on behalf of the Primary Contractor;
 - (ii) where the breach is occasioned by an employee of the Primary Contractor who is acting independently of the Primary Contractor, unless the Primary Contractor causes the termination of such employee's employment within 30 days after the earlier of the Primary Contractor becoming aware of the breach and notification to the Primary Contractor of the breach;
 - (iii) where the breach is occasioned by a Subcontractor with whom the Primary Contractor contracts directly, or by an agent or employee of a Subcontractor with whom the Primary Contractor contracts directly who is not acting independently of that Subcontractor, unless the Primary Contractor causes the termination of the engagement or employment of the relevant Subcontractor within 30 days after the earlier of the Primary Contractor becoming aware of the breach and

notification to the Primary Contractor of the breach or such longer period as the Province may in its discretion by notice permit;

- (iv) where the breach is occasioned by an employee of a Subcontractor with whom the Primary Contractor contracts directly who is acting independently of that Subcontractor, unless such Subcontractor causes the termination of such employee's employment within 30 days after the earlier of the Primary Contractor becoming aware of the breach and notification to the Primary Contractor of the breach;
- (v) where the breach is occasioned by any person other than as referred to above in Sections 14.3(c)(i) to 14.3(c)(iv) inclusive, and whether or not any benefit to the Primary Contractor or the employer of the person occasioning the breach was intended, unless the Primary Contractor causes the termination of the employment of such person (and, in the case of a person other than a person employed by the Primary Contractor or a Subcontractor with whom the Primary Contractor contracts directly, the termination of the engagement or employment of that person's employer) within 30 days after the earlier of the Primary Contractor becoming aware of the breach and notification to the Primary Contractor of the breach or such longer period as the Province may in its discretion by notice permit;
- (d) the Province may exercise any of its rights to make a demand under any Letter of Credit as permitted in this Agreement; and
- (e) except as otherwise expressly provided in this Agreement, and subject to Schedule 15 [Dispute Resolution Procedure], the Province may exercise any of its other rights and remedies, whether under this Agreement, any of the Collateral Agreements, the Lenders' Remedies Agreement or any of the other Province Project Documents, or at law or in equity.

14.4 Late Completion Plan

In the event that it becomes apparent that the Substantial Completion Date will not occur on or before the Substantial Completion Target Date, in addition to and without limiting any and all other rights and remedies of the Province and obligations of the Primary Contractor consequent upon the Substantial Completion Date not occurring on or before the Substantial Completion Target Date (including pursuant to Part 10 [Liquidated Damages] and Schedule 24 [Liquidated Damages]), the Primary Contractor may, and at the request of the Province's Representative shall, prepare and submit to the Province's Representative, within 20 Business Days after either the date it becomes so apparent or, as applicable, such request is made by the Province's Representative, a schedule and plan satisfactory to the Province's Representative in its discretion for achieving Substantial Completion, specifying in detail the manner and latest date (which shall not be later than the Substantial Completion Longstop Date) by which the Substantial Completion Date will occur (a "**Late Completion Plan**"). The Primary Contractor shall use best efforts to achieve Substantial Completion of the Work in accordance with such Late Completion Plan.

14.5 Province Costs

Without limiting any other amounts the Primary Contractor is obligated under this Agreement to pay to the Province or BCTFA on account of costs and expenses incurred by the Province and BCTFA, the Primary Contractor shall pay to the Province and BCTFA on demand all costs and expenses incurred by the Province and BCTFA, or either of them, in exercising any rights and remedies as a result of a Primary Contractor Default that would not have been incurred but for the Primary Contractor Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

14.6 Province Remedies Cumulative

Except as otherwise expressly provided in this Agreement:

- (a) all rights and remedies of the Province under this Agreement are cumulative and are in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or at law or in equity; and
- (b) the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit without prejudice to any of its other available rights and remedies.

14.7 Continued Effect

Notwithstanding any Primary Contractor Default, the Province may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Province in relation to such Primary Contractor Default including the right to terminate this Agreement as provided herein.

14.8 Compensation on Termination

In the event of an effective termination of this Agreement by the Province pursuant to Section 14.3 [Remedies of the Province for Primary Contractor Default], compensation on termination shall be payable in accordance with Part 3 [Compensation on Termination for Primary Contractor Default] and Part 5 [General], both of Schedule 12 [Compensation on Termination].

PART 15 PROVINCE DEFAULT AND PRIMARY CONTRACTOR REMEDIES

15.1 Province Default

Each occurrence of any one or more of the following events or circumstances shall constitute a “**Province Default**”:

- (a) a failure by the Province to pay to the Primary Contractor when due and payable any amount that is due and payable by the Province to the Primary Contractor under this Agreement, and such payment is not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure, and such failure is not remedied within 20 Business Days after the date notice that such payment is overdue is given by the Primary Contractor to the Province;

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- (b) a failure by the Province to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter dealt with in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 30 Business Days after the date notice of such non-compliance is given by the Primary Contractor to the Province or, if a longer period of time is reasonably required to comply, within such longer period of time as is reasonably required to comply so long as the Province has commenced to comply within such 30 Business Days and proceeds with such compliance with all due diligence and continuity to completion;
- (c) any breach by the Province of the provisions of Section 18.4 [Assignment by the Province];
- (d) any person to whom the interests of the Province or BCTFA under this Agreement or any other Province Project Document are transferred in accordance with Section 18.4 [Assignment by the Province] ceases to be a Qualified Governmental Entity;
- (e) except where such failure constitutes a Compensation Event, a failure by the Province to perform or observe any of its material obligations under this Agreement, and such failure continues so as to substantially frustrate, or render it impossible for the Primary Contractor to perform, the Primary Contractor's material obligations under this Agreement for a continuous period of not less than 60 days after notice of such failure is first given by the Primary Contractor to the Province, and such continuing failure is still not remedied within 30 days after further notice of such failure is given by the Primary Contractor to the Province after the expiration of such 60 days; and
- (f) except where such expropriation, sequestration, requisition or seizure constitutes or results in a Compensation Event referred to in paragraph (a) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, any expropriation, sequestration, requisition or other seizure by the Province, or any agent, crown corporation, ministry or department of the Province, of the Site or any material part thereof, other than in the exercise of rights or obligations set out in, or expressly contemplated by, this Agreement, and such action substantially frustrates the performance of, or renders it impossible for the Primary Contractor to perform, the Primary Contractor's material obligations under this Agreement for a continuous period of not less than 60 days after the date notice of such action is first given by the Primary Contractor to the Province, and such matter is still not remedied within 30 days after further notice of such matter is given by the Primary Contractor to the Province after the expiration of such 60 days; or
- (g) any representation or warranty made by the Province or BCTFA in Section 3.2 [Representations and Warranties of the Province and BCTFA] being incorrect in any material respect when made and the incorrectness of the fact or facts misrepresented has or might reasonably be expected to have a material adverse effect on the ability of the Primary Contractor to perform its obligations, or the ability of the Primary Contractor to exercise any of its rights, under this Agreement or any of the other Province Project Documents, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60

Business Days after the date notice of such incorrect representation or warranty is given by the Primary Contractor to the Province.

Each notice that may be given to the Province referred to in any of Sections 15.1(a), 15.1(b), 15.1(e), 15.1(f) or 15.1(g) shall be given to the Province's Representative, shall specify in reasonable detail according to the information reasonably available to the Primary Contractor the failure, breach, occurrence or other matter in respect of which the notice is given, and shall state clearly that the notice is given under this Section 15.1 [Province Default] and could lead to a Province Default and to termination of this Agreement.

15.2 Notice of Default by Province

The Province shall notify the Primary Contractor of the occurrence, and details, of any Province Default and of any event or circumstance that has occurred and may or would, with the passage of time or otherwise, constitute or give rise to a Province Default, in either case promptly upon the Province becoming aware of such occurrence.

15.3 Remedies of Primary Contractor for Province Default

If and whenever a Province Default occurs and is continuing, the Primary Contractor may, at its option and without prejudice to any of its other rights or remedies and to any rights or action which accrue or shall already have accrued to the Primary Contractor, exercise any or all of the following rights and remedies as the Primary Contractor, in its sole discretion, shall determine:

- (a) the Primary Contractor may terminate this Agreement by notice to the Province having immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute], if the Province Default is one referred to in Section 15.1(a) and the aggregate amount of:
 - (i) the sum that is the subject of that Province Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Province to the Primary Contractor;
 - (B) are not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure;
 - (C) have each been outstanding and unpaid by the Province to the Primary Contractor for more than 45 Business Days after the date a notice of non-payment thereof was given by the Primary Contractor to the Province under Section 15.1(a);exceeds \$250,000.00 and such aggregate amount is not paid by the Province to the Primary Contractor within 20 Business Days following written notice given by the Primary Contractor of such aggregate amount and the non-payment thereof;
- (b) if the Province Default is one referred to in any of Sections 15.1(b), (c), (d), (e), (f) or (g), the Primary Contractor may terminate this Agreement by notice to the Province having

immediate effect, subject to Section 16.4 [Notice of Intention to Terminate and Dispute]; and

- (c) except as otherwise expressly provided in this Agreement (including in Section 11.11 [Limitation of Province Liability] and Section 15.5 [Primary Contractor Remedies Cumulative]), and subject to Section 1.4 [No Fettering of Rights, Powers and Authority] and Schedule 15 [Dispute Resolution Procedure], the Primary Contractor may exercise any of its other rights and remedies, whether under this Agreement or at law or in equity.

15.4 Primary Contractor Costs

Without limiting any other amounts the Province is obligated under this Agreement to pay to the Primary Contractor on account of costs and expenses incurred by the Primary Contractor, and except to the extent the Primary Contractor is compensated for such costs and expenses in compensation paid or payable under Schedule 12 [Compensation on Termination], the Province shall pay to the Primary Contractor on demand all costs and expenses incurred by the Primary Contractor in exercising any rights and remedies as a result of a Province Default, that would not have been incurred but for the Province Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

15.5 Primary Contractor Remedies Cumulative

Except as otherwise expressly provided in this Agreement:

- (a) all rights and remedies of the Primary Contractor under this Agreement are cumulative and in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Primary Contractor under this Agreement or at law or in equity; and
- (b) the Primary Contractor may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

15.6 Continued Effect

Notwithstanding any Province Default, the Primary Contractor may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Primary Contractor in relation to such Province Default including the right to terminate this Agreement as provided herein.

15.7 Compensation on Termination

In the event of an effective termination of this Agreement pursuant to Section 15.3 [Remedies of Primary Contractor for Province Default], compensation on termination shall be payable in accordance with Part 1 [Compensation on Termination for Province Default Termination] and Part 5 [General] of Schedule 12 [Compensation on Termination].

**PART 16
TERMINATION**

16.1 Termination for Convenience

- (a) The Province may in its discretion and for any reason whatsoever terminate this Agreement at any time by giving to the Primary Contractor at least 90 days' prior notice of the effective date of such termination, and on such effective date this Agreement shall terminate.
- (b) In the event of notice being given by the Province in accordance with Section 16.1(a), from and after the giving of such notice and during the notice period thereunder the Primary Contractor shall only proceed with or continue, or allow or permit third parties to proceed with or continue, those portions of the Work that are specifically authorized in writing by the Province's Representative during the notice period.
- (c) In the event of any termination pursuant to Section 16.1(a), compensation on termination shall be payable in accordance with Part 1 [Compensation on Termination for Province Default] and Part 5 [General] of Schedule 12 [Compensation on Termination].

16.2 No Other Rights of Termination

Notwithstanding Sections 14.3(e), 14.6 [Province Remedies Cumulative], 15.3(c) and 15.5 [Primary Contractor Remedies Cumulative], and without prejudice to their respective rights of termination set out in this Agreement, each of the Province and the Primary Contractor waives and agrees not to exercise any common law or equitable right or remedy it may have prior to the Expiry Date to terminate, repudiate, rescind or otherwise bring to an end this Agreement as a consequence of any breach, failure or default by another party hereunder.

16.3 Continued Performance

Subject to any exercise by the Province of its rights under Part 13 [Province's Access, Monitoring and Step-In Rights] and subject to Section 16.1(b), and unless otherwise directed by the Province with respect to obligations of the Primary Contractor, the parties shall continue to perform their respective obligations under this Agreement notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective in accordance with the terms of this Agreement.

16.4 Notice of Intention to Terminate and Dispute

Except in the case of a termination pursuant to Section 16.1 [Termination for Convenience]:

- (a) if either the Province or the Primary Contractor wishes to terminate this Agreement pursuant to a right of termination that it believes it is entitled to exercise under the terms of this Agreement, such party (in this Section, the "**Terminating Party**") must by notice (a "**Notice of Intention to Terminate**") to the other of them (in this Section, the "**Terminated Party**") to be given before or at the time notice of termination is given, specify the right to terminate that the Terminating Party intends to exercise and the event, circumstance or default giving rise to such right or obligation to terminate;

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- (b) if the Terminated Party wishes to dispute the right to terminate (or the existence or occurrence of the event, circumstance or default giving rise to such right to terminate), as set out in a Notice of Intention to Terminate, the Terminated Party must, within 20 Business Days after receiving the Notice of Intention to Terminate, either:
 - (i) refer the dispute to the Dispute Resolution Procedure, in which event the dispute shall be resolved by agreement of the parties or, failing such agreement, through the Dispute Resolution Procedure and such termination shall take effect:
 - (A) when it is agreed by the parties or finally determined by the Dispute Resolution Procedure that the exercise of the right to terminate is or would be valid in accordance with this Agreement; or
 - (B) when notice of termination pursuant to that right to terminate is actually given;whichever is later; or
 - (ii) apply to Court for declaratory relief in respect of the purported right to terminate and/or refer to the Court the question of whether or not the exercise of the right to terminate is or would be valid in accordance with this Agreement, in which event the dispute shall be resolved by agreement of the parties or, failing such agreement, by the Court, and such termination shall take effect:
 - (A) when it is agreed by the parties or finally determined by the Court (without further rights of appeal) that the exercise of the right to terminate is or would be valid in accordance with this Agreement; or
 - (B) when notice of termination pursuant to that right to terminate is actually given;whichever is later;
- (c) if, within 20 Business Days after receiving the Notice of Intention to Terminate, the Terminated Party neither refers the matter to the Dispute Resolution Procedure nor applies to Court as provided in Section 16.4(b), the Terminating Party shall have a valid right to terminate this Agreement, and the Terminated Party shall have no further right to dispute or challenge or seek recourse in respect of the validity of such right to terminate, and termination pursuant to that right to terminate shall take effect:
 - (i) on the expiration of such 20 Business Days; or
 - (ii) when notice of termination pursuant to that right to terminate is actually given;whichever is later; and
- (d) the parties agree to conduct expeditiously any proceedings under Section 16.4(b)(i) or Section 16.4(b)(ii), as applicable.

16.5 Changes after Notice of Termination

If either party gives a notice of termination, the Primary Contractor shall not, and shall cause the Subcontractors not to, without the prior written consent of the Province (which consent may not be unreasonably withheld or delayed):

- (a) materially amend or offer, promise or agree for the future materially to amend the terms and conditions of employment of any employee employed by the Primary Contractor or any of the Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project;
- (b) materially increase or make offers of employment so as materially to increase the number of employees referred to in Section 16.5(a);
- (c) do or omit to do any other thing in relation to employees referred to in Section 16.5(a) that would or might reasonably be expected to increase any employee termination payments or Primary Contractor Breakage Costs included in any compensation on termination payable by the Province in connection with the termination of this Agreement;
- (d) cancel or terminate, or materially amend the terms and conditions of, any agreements or arrangements for the acquisition or supply of Plant or any Intellectual Property for the purposes of the Work; or
- (e) materially alter the volumes or quantities of Plant ordered for the purposes of the Work.

16.6 Effect of Termination or Expiry Generally

If for any reason this Agreement is terminated or the Term expires:

- (a) the rights of access granted to the Primary Contractor pursuant to Section 2.5(a)(i) or 2.5(c), as then applicable, shall terminate on the Termination Date and the Primary Contractor shall cease to have any further rights pursuant to Sections 2.5(a)(i) and 2.5(c) and Schedule 7 [Lands] with respect to the Site and the Project Infrastructure, except pursuant to Section 2.5(c) to the extent necessary to enable the Primary Contractor to perform any obligations of the Primary Contractor under this Agreement required to be performed in consequence of or following such termination or expiry;
- (b) after the Termination Date the Primary Contractor shall not have any further right to provide, perform or carry out any further Work, but this shall not relieve or release the Primary Contractor from any of its obligations under this Agreement, including obligations that by their terms or by necessary implication are intended to survive termination or to give effect to termination or to the consequences thereof, or are consequential upon termination;
- (c) the Province and the Primary Contractor shall reconcile between them any amounts due or accruing due under this Agreement from one party to the other as at the Termination Date, including:

- (i) any outstanding Province Payments and Performance Incentive Payments that are due; and
- (ii) the uncalled balance of any deposits and security provided by the Primary Contractor under Permits assigned under Section 16.8(a)(v) remaining as at the date of assignment, to the extent not replaced by the Province and returned to the Primary Contractor;

and any net balance owing shall be adjusted in the compensation payable on termination, or paid, as provided in Sections 5.2 [Adjustment for Net Balance] and 5.4 [Rights of Set-Off] of Schedule 12 [Compensation on Termination];

- (d) subject to Sections 16.6(a), (b) and (c) and Section 5.5 [Full and Final Settlement] of Schedule 12 [Compensation on Termination], such termination or expiry shall be without prejudice to all the rights, remedies and obligations of the parties under this Agreement with respect to:

- (i) any event, occurrence, circumstance, act or omission arising or existing before the effective time of termination or expiry;
- (ii) any breach of this Agreement, Province Default or Primary Contractor Default occurring prior to the effective time of termination or expiry;
- (iii) provisions of this Agreement that are to be observed and performed under this Agreement up to the effective time of termination or expiry; and
- (iv) provisions of this Agreement that by their terms or by necessary implication are intended to survive termination or expiry or to give effect to termination or expiry or to the consequences thereof, or are consequential upon termination or expiry;

and such rights, remedies and obligations shall continue following termination or expiry, subject to Sections 16.6(a), (b) and (c) and subject to Section 5.5 [Full and Final Settlement] of Schedule 12 [Compensation on Termination]; and

- (e) except as provided above in this Section, all rights and obligations of the parties under this Agreement shall cease and be of no further force or effect.

16.7 Province Discretion to Complete

If for any reason this Agreement is terminated before the Expiry Date, then notwithstanding any duty of the Province to mitigate its Losses:

- (a) whether or not the Work is continued by the Province or any other person;
- (b) what use, if any, is made of any Work performed prior to the Termination Date; and
- (c) whether or not any Work performed prior to the Termination Date is altered or removed;

shall be in the discretion of the Province, and the Primary Contractor shall have no claim against the Province with respect thereto.

16.8 Transfer of Assets

- (a) Without limiting the provisions of Section 19.7 [Further Assurances], within 10 Business Days after the earlier of the Termination Date and the Substantial Completion Date, the Primary Contractor shall, at no cost to the Province and for nominal consideration only, in all cases free from Encumbrances (provided that the Province shall have the right under this Agreement, but shall not be obligated, to pay off any and all such Encumbrances in which event any amounts so paid shall immediately be due and owing by the Primary Contractor to the Province, and shall be payable by the Primary Contractor to the Province forthwith on demand or, at the option of the Province, shall be adjusted as provided in Section 16.6(c)):
- (i) if and to the extent the Province so elects, confirm by bill of sale or other document requested by the Province the transfer to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province of title to and ownership of all Plant title to which has passed to the Province or to BCTFA or a third party designated by the Province in accordance with Section 2.12 [Transfer of Title];
 - (ii) deliver to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province possession of all Plant referred to in Section 16.8(a)(i) to the extent it is not then affixed to and part of or incorporated into the Project Infrastructure;
 - (iii) cause the benefit of all manufacturers' and third party warranties in respect of Work, Project Infrastructure and any other assets to be transferred and assigned to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province;
 - (iv) quit claim in favour of the Province or, at the direction of the Province, in favour of BCTFA or a third party designated by the Province, any interest of the Primary Contractor in the Project Infrastructure or any other improvements from time to time on, to or forming part of the Site;
 - (v) if and to the extent the Province so elects, and to the extent permitted by Laws, assign or cause to be assigned all Permits to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province; and
 - (vi) remove all signs identifying itself and (except as otherwise directed by the Province) the Subcontractors as contractors and subcontractors in connection with the Design and Construction of the Project Infrastructure.
- (b) Within 10 Business Days after the earlier of the Termination Date and the Substantial Completion Date, Primary Contractor, at its own cost and expense, shall:

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- (i) deliver to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, the Records Documentation, to the extent not previously delivered to the Province;
 - (ii) deliver to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, operation and maintenance manuals for the Project Infrastructure (as the same has been constructed, installed, altered, upgraded and augmented by the carrying out of the Work) and any other assets transferred or to be transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, including in respect of train control, communications, signalling and other systems completed and/or in service at the Termination Date, to the extent not previously delivered to the Province;
 - (iii) (to the extent not previously delivered by the Primary Contractor in accordance with the terms of this Agreement, including pursuant to Article 3 [Completion Deliverables], Part 3 of Schedule 4) deliver to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province (where applicable in accordance with Section 1.5 [Delivery of Records] of Schedule 16 [Records and Reports]):
 - (A) the Records;
 - (B) all Province Provided Materials;
 - (C) all Modifications to Province Provided Materials; and
 - (D) copies of all Project Intellectual Property;in any such case, in any stage of completion or development, in such electronic or other format as the Province may reasonably require; and
 - (iv) return to the Province all Confidential Information of the Province or BCTFA within the possession or control of the Primary Contractor or any Subcontractor.
- (c) Without prejudice to any of the other provisions of this Agreement that require earlier transfer of any of the same, following the Termination Date or the Expiry Date, the Primary Contractor shall, at its own cost, transfer to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, title to and possession of (to the extent not referred to in Section 16.8(b)(iii)) all documents, manuals, records and information reasonably required to enable the Province to carry out and perform, or procure the carrying out and performance of, the work that would, but for termination or expiry of the Term of this Agreement, have constituted the Work, to the extent that title thereto is not owned by, or has not previously been transferred to, the Province in accordance with the terms of this Agreement or, as the case may be, possession thereof has not previously been transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province.
- (d) Following the Termination Date, to the extent the Province so elects, the Primary Contractor shall take all steps required by the Province to ensure:

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- (i) that all Construction Plant that is being used exclusively for the purposes of Construction then in progress will remain available for the purpose of completing the relevant construction activities, subject, except as otherwise provided herein, to payment therefor by the Province of a reasonable rental charge;
 - (ii) compliance by the Primary Contractor with its obligations under Section 3.9(e) of Schedule 7 [Lands].
- (e) Within 20 Business Days after the Termination Date, the Primary Contractor shall, and shall cause the Subcontractors to, offer to sell to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, which offer shall remain open for acceptance for at least 20 Business Days after the date such offer is made, at a fair market value (determined as between a willing seller and a willing buyer with any disputes as to such fair market value being determined pursuant to the Dispute Resolution Procedure) and free from any Encumbrances, any other property including all or any part of the stocks of material, spare parts and Plant owned by the Primary Contractor or any of the Subcontractors that is being used or is intended to be used exclusively for the purposes of Work and is not otherwise transferred or to be transferred to or at the direction of the Province pursuant to any other provision of this Agreement.

The Primary Contractor shall ensure in the case of all Permits, Principal Subcontracts and other Subcontracts to which the Primary Contractor is a party, and shall use all reasonable efforts to ensure in the case of Subcontracts to which the Primary Contractor is not a party, that provisions are included to ensure that the Province will be in a position to exercise its rights and the Primary Contractor will be in a position to comply with its obligations under this Section without additional payment or compensation to any person except as expressly contemplated by this Section.

16.9 Handover on Termination

If for any reason this Agreement is terminated, the following provisions shall apply in respect of the handover of the Site and the Project Infrastructure:

- (a) the Primary Contractor shall, for a period not exceeding one year after the date on which this Agreement is terminated, cooperate fully with the Province and any successor contractor or operator of or with respect to the Site, the Project Infrastructure or the Work or any part thereof in order to achieve a smooth and orderly transfer of the Work and any work in the nature of the Work as a going concern and so as to protect the integrity of the Site and the Project Infrastructure and so as to protect the safety of, and avoid undue delay or inconvenience to, members of the public;
- (b) the Primary Contractor shall as soon as practicable after notice from the Province to do so remove from the Site and the Project Infrastructure all materials, plant, machinery, equipment, apparatus, temporary buildings, road vehicles, spare parts and other property owned or leased by the Primary Contractor or any person for whom the Primary Contractor is in law responsible (including Plant and Construction Plant), other than that:
 - (i) title to which has passed to the Province, BCTFA or a third party designated by the Province under Section 2.12 [Transfer of Title]; or

- (ii) required to be transferred, delivered, provided, sold or rented to or at the direction of the Province pursuant to Section 16.8 [Transfer of Assets];

and, if the Primary Contractor has not done so within 30 days after any notice from the Province requiring it to do so, the Province may (without being responsible for any Loss) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of the Primary Contractor;

- (c) the Primary Contractor shall provide all information concerning the Site, the Project Infrastructure and the Work reasonably requested by the Province and not otherwise required to be provided by the Primary Contractor pursuant to other provisions of this Agreement to the Province and any successor contractor or operator of or with respect to the Site and the Project Infrastructure (or any part of either) or the Work; and
- (d) the Primary Contractor shall as soon as practicable vacate and hand over to the Province and leave in a safe and orderly condition the Work, any parts of the Site in respect of which either the Access Period has commenced but not otherwise terminated or expired (or in respect of which access has been made available to the Primary Contractor pursuant to Section 2.5(c) or the Primary Contractor otherwise has access, in either case at the Termination Date) and the Project Infrastructure located on any such parts of the Site (including any train control, communications, signalling and other systems and equipment) and deliver to the Province any keys and pass cards used by the Primary Contractor to gain access to the Site or any Project Infrastructure.

PART 17 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

17.1 Confidentiality

- (a) Each party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to use or disclose to any person any Confidential Information received from another party, other than as expressly provided in Section 17.1(b) or as otherwise expressly provided in this Agreement.
- (b) Notwithstanding Section 17.1(a), a party may disclose the whole or any part of the Confidential Information in any of the following circumstances:
 - (i) in the case of any party:
 - (A) to its and its Affiliates' directors, officers, employees, contractors, subcontractors, agents and professional advisors, including, in the case of the Primary Contractor, the Subcontractors, to the extent necessary to enable it to perform (or to cause to be performed) or to protect or enforce any of its rights or obligations under this Agreement, provided that the party has first obtained from such person or entity to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the relevant Confidential Information;
 - (B) which is required to be provided to the Independent Certifier pursuant to the Independent Certifier Contract;

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- (C) which is required to be provided to the Independent Engineer pursuant to the Independent Engineer Contract;
 - (D) when required to do so by Laws (including FOIPPA) or by or pursuant to the rules or any order having the force of law of any Governmental Authority;
 - (E) to the extent that the Confidential Information has, except as a result of any disclosure prohibited by this Agreement, become publicly available or generally known to the public at the time of such disclosure;
 - (F) to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to the recipient prior to such disclosure;
 - (G) to the extent that it has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to any other party to this Agreement;
 - (H) to any assignee or proposed assignee permitted under Part 18 [Assignment, Change in Ownership and Control and Subcontracting];
 - (I) the disclosure of which is expressly permitted or required by this Agreement; or
 - (J) the disclosure of which is necessary for the enforcement of this Agreement;
- (ii) in the case of the Primary Contractor, to any bank or financial institution from whom it is seeking or has obtained financing for the Project or any rating agency from whom it is seeking or has obtained a rating in connection with the financing for the Project, and their respective directors, officers, employees, and professional advisors, provided the Primary Contractor has first obtained from such person or entity to whom the disclosure is to be made an undertaking of confidentiality in favour of the Province and BCTFA substantially in accordance with the Primary Contractor's undertaking of confidentiality hereunder in relation to the relevant Confidential Information;
 - (iii) in the case of the Province and BCTFA:
 - (A) in relation to the current or future design, construction, completion, commissioning, testing, operation, maintenance, repair, modification, alteration, adaptation, rehabilitation, improvement, extension, expansion financing or regulation (including with respect to the contemplation, procurement or undertaking of any such activities by any third parties (including any other Governmental Authority) and, in addition, any such third parties shall be entitled to disclose all or any part of the Confidential Information in connection with the procurement or undertaking of any such activities) of all or any parts of the Evergreen Line, the Equipment, the Project Infrastructure, the Site and the lands and

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- infrastructure comprising or anticipated to comprise the Evergreen Line, and/or all or any part or parts of the Existing SkyTrain System and/or the Integrated SkyTrain System, and/or the carrying out of any statutory, public or other duties or functions in respect of any of the foregoing;
- (B) in relation to the outcome of the procurement process for the Project as may be required to be published;
 - (C) to the Federal Government and its employees, representatives and professional advisors in connection with or as required under the Federal Contribution Agreement;
 - (D) to any minister, ministry, office or agency of the Province, including the Auditor General and the Office of the Comptroller General, and their respective directors, officers, employees and professional advisors, where required for parliamentary, governmental, statutory or judicial purposes;
 - (E) whether or not falling within Sections 17.1(b)(iii)(B), 17.1(b)(iii)(C) or 17.1(b)(iii)(D), to the Province, BCTFA, the Ministry or any other Governmental Authority or to Partnerships BC, and their respective directors, officers, employees and professional advisors; and
 - (F) in the exercise of any of the rights granted to the Province by way of license, including under any Complete License or any Limited License.
- (c) Without prejudice to any other rights and remedies that another party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 17.1(a) and that each other party shall, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a) subject, in the case of a claim for any such remedy against the Province, to the provisions of the *Crown Proceeding Act* (British Columbia).

17.2 Freedom of Information and Privacy Protection

- (a) The Primary Contractor acknowledges that it is aware that FOIPPA applies to this Agreement and to all contractual submissions and other documents and records relating to this Agreement and to the procurement process in respect of the Project and that the Ministry, the Province and BCTFA are required to fully comply with FOIPPA. No action taken or required to be taken by the Ministry, the Province or BCTFA for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.
- (b) The Primary Contractor, without limiting its obligation to comply with all Laws, shall comply with and cause all of its agents and Subcontractors and the employees of any of them (or, in the case of Thales, use reasonable efforts (without any obligation to incur material expenditure in using such efforts) to cause Thales) to comply with the provisions of Schedule 19 [Privacy Protection] in connection with all Personal Information collected or created in the course of performing the Work.

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- (c) Within 60 days following the Effective Date, the Primary Contractor, in consultation with the Province's Representative, shall develop and submit a privacy code (the "**Privacy Code**") to the Province's Representative for acceptance, acting reasonably, pursuant to the Consent Procedure that complies with the requirements of all Laws and incorporates the provisions of Schedule 19 [Privacy Protection]. The Primary Contractor shall observe and comply with and cause all of its agents and Subcontractors and the employees of any of them (or, in the case of Thales, use reasonable efforts (without any obligation to incur material expenditure in using such efforts) to cause Thales) to observe and comply with such Privacy Code, and, where necessary or as required by the Province's Representative from time to time, the Primary Contractor shall submit updates to such Privacy Code to the Province's Representative for acceptance, acting reasonably, pursuant to the Consent Procedure.

17.3 Ownership of Intellectual Property and Records and Licenses to the Province

- (a) Except as expressly set out in this Agreement, including Section 17.3(b), or as may otherwise be agreed to in writing between the Province and the Primary Contractor after the date of this Agreement, as between the Province and the Primary Contractor:
 - (i) the Primary Contractor shall exclusively own, automatically upon its generation or creation, all Intellectual Property Rights in and to the Project Intellectual Property; and
 - (ii) the Province shall exclusively own, automatically upon its generation or creation, all rights, including Intellectual Property Rights, in and to the Records, any Province Provided Materials and any Modifications to Province Provided Materials.
- (b) The Province acknowledges and agrees that all right, title and interest in and to the ATC Software shall remain the property of Thales or Thales' suppliers, as the case may be. The Province acknowledges and agrees that the Primary Contractor has not received any title or ownership rights to the ATC Software or ATC Documentation (except to the extent that any ATC Documentation is not prepared or delivered by Thales or any supplier or subcontractor of Thales) and all such title and ownership shall remain with Thales or its suppliers.
- (c) The Primary Contractor agrees that, at no cost to the Province, it:
 - (i) hereby irrevocably and unconditionally conveys, transfers and assigns, or shall procure such conveyance, transfer or assignment from any third parties, or for all rights that arise only upon creation agrees that it shall cause to be so conveyed, transferred and assigned, to the Province all right, title and interest in and to the Records (other than ATC Documentation that is prepared or delivered by Thales or any supplier or subcontractor of Thales) and to any Modifications to Province Provided Materials, including all Intellectual Property Rights thereto;
 - (ii) shall provide to the Province, whether during or after the Term, executed waivers in favour of the Province of all moral rights in the Project Intellectual Property, the Records and any Modifications to Province Provided Materials from all Persons who generated or created Project Intellectual Property, Records or

Modifications to Province Provided Materials, by one or more instruments in writing substantially in the form of the waiver of moral rights included in Schedule 26 [Waiver of Moral Rights];

- (iii) shall provide to the Province upon Substantial Completion and at any time upon request by the Province, whether during or after the Term, (A) copies of all materials comprising the Project Intellectual Property and (B) the Modifications to Province Provided Materials, in the format or formats as requested by the Province. Without limiting the generality of the foregoing, the Primary Contractor shall provide the Province with copies of all software and firmware, and all updates made thereto, that are included in or relate to the Work or the Project Infrastructure (as the same has been constructed, installed, altered, upgraded and augmented by the carrying out of the Work); and
- (iv) shall, unless otherwise agreed by the Province in its discretion, ensure that any source code for any Project Intellectual Property, Records, Modifications to Province Provided Materials, Background Technology or Third Party Technology is deposited in escrow or otherwise rendered available to the Province in a manner and on terms acceptable to the Province, acting reasonably, provided that the Province agrees that the deposit into escrow of the “Escrow Materials” as defined in, and as contemplated by, Section 13.5.1 of the ATC Supply Contract shall be acceptable to the Province.
- (d) Other than any license rights granted to the Province pursuant to Section 17.3(e), the Province will not own or be entitled to any Intellectual Property Rights in the Background Technology or the Third Party Technology.
- (e) The Primary Contractor, at no cost to the Province:
 - (i) hereby unconditionally grants to the Province a Complete License in and to the Project Intellectual Property and the Background Technology; and
 - (ii) shall, subject to Section 17.3(k), grant, or cause to be granted, to the Province a Limited License in and to the Third Party Technology on terms and conditions acceptable to the Province, acting reasonably.
- (f) For greater certainty, the provisions of Section 17.3(c)(iv) and the license provisions contained in Section 17.3(e)(ii) do not extend to include any non-specialized third party software, technology or other Intellectual Property that is generally commercially available and that the Province, acting reasonably, has determined will be licensed by the Province directly from the owner of such software, technology or other Intellectual Property.
- (g) Nothing in Section 17.3(e)(i) shall give the Province the right to sell, lease, license, sublicense or otherwise transfer, convey or alienate any software included in the Project Intellectual Property or the Background Technology (whether for commercial consideration or not) to any person, otherwise than as may be necessary or desirable to use Project Intellectual Property or the Background Technology for Complete License Purposes.

- (h) If the Complete License granted under in Section 17.3(e)(i) or any Limited License described in Section 17.3(e)(ii), as the case may be, cannot be validly granted without the consent of a third party, the Primary Contractor, at the Primary Contractor's expense, shall use its best efforts to obtain such consent and, without limiting any of its other obligations, shall indemnify and hold harmless the Province and each Province Indemnified Person from and against any and all Direct Losses and Claims in any way arising from the Primary Contractor's failure to obtain such consent.
- (i) If any Limited License referred to in Section 17.3(e)(ii) cannot be negotiated on terms and conditions acceptable to the Province, acting reasonably, the Primary Contractor shall replace that Third Party Technology in accordance with Section 17.3(k).
- (j) The Province acknowledges and agrees that the grant to the Province of the Limited Licence in respect of ATC Software and ATC Documentation as set out in Section 13.2 [Grant of Licence to Software and Documentation] of the ATC Supply Contract is on terms and conditions acceptable to the Province.
- (k) If the Province, acting reasonably, does not accept the proposed terms and conditions for any Limited License or the Primary Contractor is unable to provide any assignments, licenses or waivers required to be provided under this Agreement, the Primary Contractor shall, at no additional cost to the Province, replace the portion of the Third Party Technology, Background Technology or Project Intellectual Property for which the Province has not accepted the Limited License terms and conditions, or for which the assignment, license or waiver, as the case may be, cannot be provided, with an alternative product or technology that meets the Province's requirements.
- (l) Without prejudice to Section 19.7 [Further Assurances], the Primary Contractor shall, at any time, perform the acts, execute and deliver the writings, and give the assurances as may be reasonably required by the Province to effect, evidence and perfect any Limited License described in Section 17.3(ii).
- (m) Except as otherwise agreed in writing with the Province, the Primary Contractor hereby represents, warrants and covenants that:
 - (i) all Project Intellectual Property, Records and all Modifications to Province Provided Materials are and will be original and (other than in respect of ATC Equipment, ATC Software or ATC Documentation (except to the extent that any ATC Documentation is not prepared or delivered by Thales or any supplier or subcontractor of Thales)) do not and will not infringe any third party's Intellectual Property Rights;
 - (ii) it owns, or will as necessary acquire, the rights associated with the Project Intellectual Property, the Background Technology and the Third Party Technology as may be necessary to grant the licenses to the Province as required by the terms of this Agreement; and
 - (iii) it has obtained or will obtain waivers of moral rights from all persons as necessary to provide the waivers in favour of the Province as required by the terms of this Agreement.

- (n) The Primary Contractor hereby irrevocably designates and appoints the Province and its duly authorized ministers, officers and agents as the Primary Contractor's agent and attorney-in-fact to act for and on behalf of the Primary Contractor to execute, deliver and file any and all documents with the same legal force and effect as if executed by the Primary Contractor, provided that:
 - (i) the Province or any such other person shall only be entitled to rely upon such designation and appointment in circumstances where the Province is unable for any reason to secure the execution by the Primary Contractor of any document reasonably required for the purpose of giving effect to, or establishing compliance with, the Primary Contractor's obligations under this Section 17.3 [Ownership of Intellectual Property and Records and Licenses to the Province]; and
 - (ii) if a dispute as to whether or not the Primary Contractor has complied with any such obligation has been referred to the Dispute Resolution Procedure, the Province or any such other person shall only be entitled to rely upon such designation and appointment in relation to such obligations after such dispute has been resolved in favour of the Province.

17.4 License to the Primary Contractor

- (a) The Province hereby grants to the Primary Contractor, only during the Term and only for the purpose of carrying out the Work and all obligations of the Primary Contractor under this Agreement, a non-transferable, non-exclusive, royalty-free limited license (but with no right to grant sub-licenses except to Subcontractors) to:
 - (i) use and reproduce the Records and any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Primary Contractor for any purpose relating to the Work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such license, the Disclosed Data), and all Intellectual Property Rights therein;
 - (ii) make Modifications to any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Primary Contractor for any purpose relating to the Work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such license, the Disclosed Data), and all Intellectual Property Rights therein; and
 - (iii) Use all Project Marks designated by the Province for the Project and the Project Infrastructure from time to time, provided that the Primary Contractor's Use of such Project Marks shall at all times be subject to compliance by the Primary Contractor with any and all guidelines issued by the Province from time to time in respect of the Use thereof.
- (b) Notwithstanding Section 17.4(a), nothing in this Agreement shall be construed as a permission or authorization for the Primary Contractor to, and the Primary Contractor shall not, copy or make Modifications to any materials, documents or data (including

Disclosed Data) or other information owned by third parties without the prior written consent of such third party owner.

17.5 Employee Information

- (a) For the purposes of this Section, “**Employee Information**” means written details of:
- (i) the total number of employees employed by the Primary Contractor or any of the Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project;
 - (ii) information relating to or connected with the employment of employees falling within the scope of Section 17.5(a)(i) hereof, including details of:
 - (A) terms and conditions of employment including terms incorporated from any collective agreement;
 - (B) each employee’s salary, normal working hours, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the relevant employer and any redundancy entitlement; and
 - (C) such other information as the Province may reasonably require in relation to the Primary Contractor’s employees or the employees of the Subcontractors (other than the name or other details which enable any employee to be identified unless both the Primary Contractor and that employee have consented in writing to the provision of such details) in connection with this Agreement.
- (b) In the event of the occurrence of a Primary Contractor Default or circumstances giving the Province the right to terminate pursuant to Section 9.7(a)(iii), and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so, the Province may (if it considers, acting reasonably, that successorship of the Primary Contractor’s business may be relevant in relation to any future procurement in connection with the Evergreen Line) request in writing that the Primary Contractor provide Employee Information to the Province and, upon receipt of such written request, the Primary Contractor (subject to any relevant collective agreement and applicable Laws) shall:
- (i) provide such Employee Information to the Province within 14 days of receipt of such notice; and
 - (ii) take, and cause the Subcontractors (or, in the case of Thales, use reasonable efforts (without any obligation to incur material expenditure in using such efforts) to cause Thales) to take, such steps as may be necessary to enable the Primary Contractor to comply with any such request by the Province, including notifying employees that such Employee Information may be provided the Province and obtaining appropriate consents from employees to the release of such Employee Information to the Province,

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and the Primary Contractor shall, after the provision of such Employee Information to the Province and until the completion of any bidding process in connection with the Project described in Section 17.5(c), within 14 days of any such change, discovery of new information or receipt of such request:

- (iii) inform the Province of any change to the information provided or provide any new Employee Information not previously provided;
 - (iv) use reasonable efforts to clarify any matter upon which clarification is requested by the Province; and
 - (v) use reasonable efforts to co-operate with any other reasonable request made by the Province concerning the Employee Information.
- (c) Unless required by Law to do so, the Province shall not disclose Employee Information (or any part thereof) received from the Primary Contractor pursuant to Section 17.5(b) to any other person except only that, subject to any applicable Laws relating to the collection, storage, use or disclosure of personal information, the Province may disclose Employee Information to any person (a “**Prospective Bidder**”) who has been or is to be invited to submit a bid in relation to the provision of works or services of a similar type to any of the Work in connection with the Project, provided that, if requested in writing by the Primary Contractor to do so, the Province shall ensure that prior to such disclosure the Prospective Bidder undertakes in writing not to disclose (unless required by Law to do so) the information to any other person other than a person who:
- (i) is an employee or agent (including legal or other professional advisor) of or potential financier (or any employee or agent, including legal or other professional advisor thereof) to the Prospective Bidder; and
 - (ii) has undertaken in writing not to disclose that information unless required by Law to do so.

17.6 Survival

Notwithstanding any other provision of this Agreement, the provisions of this Part, other than Section 17.4(a), shall survive the expiry or any earlier termination of this Agreement.

PART 18 ASSIGNMENT, CHANGE IN OWNERSHIP AND CONTROL AND SUBCONTRACTING

18.1 Province Consent Required to Assignment by Primary Contractor

Subject to Sections 18.2 [Where Province Consent to Assignment Not Required] and 18.3 [Other Requirements for Assignment by Primary Contractor], the Primary Contractor shall not, and shall ensure that no Subcontractor shall, in any such case without the prior acceptance of the Province, in its discretion, in accordance with the Consent Procedure which acceptance may be withheld in the Province’s discretion, assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any interest of the Primary Contractor or any such Subcontractor in and under any of the following:

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- (a) this Agreement;
- (b) the Lenders' Remedies Agreement;
- (c) any of the Collateral Agreements;
- (d) any of the other Province Project Documents; or
- (e) any of the Principal Subcontracts (or any of the performance securities or guarantees provided thereunder) (other than the assignment of the ATC Supply Contract by Thales as permitted by Section 30.2 thereof);

or any part thereof or any benefit therein or thereunder.

18.2 Where Province Consent to Assignment Not Required

The provisions of Section 18.1 [Province Consent Required to Assignment by Primary Contractor] do not apply:

- (a) to the grant by the Primary Contractor of a security interest in, including an assignment by way of security of, any of the benefits and interests of the Primary Contractor in and under this Agreement and/or the Principal Subcontracts then in effect (and the performance securities and guarantees provided under the Principal Subcontracts) as security to the Senior Lenders in accordance with the Initial Senior Lending Agreements, provided that the Senior Lenders (or the Agent and any security trustee or agent of the Senior Lenders, on behalf of the Senior Lenders and so as to legally bind them) shall have executed and delivered to the Province the Lenders' Remedies Agreement; or
- (b) to an assignment or transfer of all (and not less than all) of the interest of the Primary Contractor in and under this Agreement and/or the Principal Subcontracts then in effect (and the performance securities and guarantees provided under the Principal Subcontracts) to a Suitable Substitute Primary Contractor pursuant to the bona fide enforcement by the Senior Lenders of their security in accordance with the Lenders' Remedies Agreement.

18.3 Other Requirements for Assignment by Primary Contractor

Notwithstanding Sections 18.1 [Province Consent Required to Assignment by Primary Contractor] and 18.2 [Where Province Consent to Assignment Not Required]:

- (a) the Primary Contractor shall not assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any interest of the Primary Contractor in and under any of the following:
 - (i) this Agreement;
 - (ii) the Lenders' Remedies Agreement;
 - (iii) any of the Collateral Agreements;

- (iv) any of the other Province Project Documents; or
- (v) any of the Principal Subcontracts (or any of the performance securities or guarantees provided thereunder);

or any part thereof or any benefit therein or thereunder, whether under Section 18.1 [Province Consent Required to Assignment by Primary Contractor] or Section 18.2 [Where Province Consent to Assignment Not Required] or otherwise, unless at the same time, in the same transaction, to the same person and to the same extent, the Primary Contractor assigns, transfers, mortgages, pledges, charges, or creates a trust, security interest or other interest in, the interest of the Primary Contractor in and under each of this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements, the other Province Project Documents and all of the Principal Subcontracts then in effect (and the performance securities and guarantees provided under the Principal Subcontracts) together, and none of them separately; and

- (b) the Primary Contractor shall not assign, transfer or create any trust or other interest in (other than by way of security) any interest of the Primary Contractor in and under any of the following:
 - (i) this Agreement;
 - (ii) the Lenders' Remedies Agreement;
 - (iii) any of the Collateral Agreements;
 - (iv) any of the other Province Project Documents; or
 - (v) any of the Principal Subcontracts (or any of the performance securities or guarantees provided thereunder);

or any part thereof or any benefit or interest therein or thereunder, whether under Section 18.1 [Province Consent Required to Assignment by Primary Contractor] or Section 18.2 [Where Province Consent to Assignment Not Required] or otherwise, unless the assignee, transferee or other person taking an interest executes and delivers to the Province an agreement in form and substance satisfactory to the Province whereby such assignee, transferee or other person assumes and agrees with the Province to observe, perform and be bound by all of the obligations of the Primary Contractor under this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements, the other Province Project Documents and all the Principal Subcontracts then in effect (and the performance securities and guarantees provided under the Principal Subcontracts).

18.4 Assignment by the Province

- (a) Subject to Section 18.4(c), the Province and BCTFA may, without the consent of the Primary Contractor, assign or transfer any of their respective interests in and under this Agreement and the other Province Project Documents to a Qualified Governmental Entity, provided that where such assignment or transfer includes the transfer of any obligations of the Province and/or BCTFA under this Agreement and the other Province Project Documents, such Qualified Governmental Entity shall execute and deliver to the

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Primary Contractor an agreement (in form and substance satisfactory to the Primary Contractor, acting reasonably) whereby such assignee or transferee assumes and agrees to observe, perform and be bound by all the obligations of the Province or BCTFA, as the case may be, under this Agreement and the other Province Project Documents that are being transferred.

- (b) Except as provided in Section 18.4(a), neither the Province nor BCTFA shall, without the prior consent of the Primary Contractor, which may be withheld in the Primary Contractor's discretion, assign or otherwise transfer any of its interest in or under this Agreement and the other Province Project Documents.
- (c) Any assignment or transfer to the Federal Government pursuant to Section 18.4(a) shall be conditional upon appropriate steps under the *Financial Administration Act* (Canada) being taken to preserve the then existing security of Lenders under the Senior Lending Agreements.

18.5 Release of the Province on Assignment

Upon any transfer in accordance with Section 18.4(a) of any or all of the obligations of the Province or BCTFA under this Agreement and the other Province Project Documents to a Qualified Governmental Entity and the execution and delivery of the agreement contemplated in 18.4(a), the Province or BCTFA, as the case may be, shall be released from the obligations and liabilities under this Agreement and the other Province Project Documents that are the subject of such transfer.

18.6 Change in Control or Ownership of Primary Contractor

- (a) No Change in Ownership of any of the Primary Contractor, Holdco, SLI, SNC Group or any other person which has Control of the Primary Contractor shall be permitted where the person acquiring the ownership interest is a Restricted Person, except (only in the case of a Change in Ownership of SNC Group) pursuant to Section 18.7 [Consent to Change in Ownership Not Required in Certain Cases].
- (b) Neither the Primary Contractor nor any person which has Control of the Primary Contractor shall cease to be a subsidiary (for the purposes of this Section 18.6, within the meaning of "subsidiary" as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement) of SNC Group without the prior written consent of the Province, in its discretion, except pursuant to Section 18.6(c).
- (c) Notwithstanding Section 18.6(b), if the consent of the Province is requested to the Primary Contractor ceasing to be a subsidiary of SNC Group pursuant to the bona fide enforcement by the Senior Lenders of a security interest in accordance with the Senior Lending Agreements and where the person acquiring Control is:
 - (i) a person:
 - (A) of financial standing (as determined by the Province in its discretion) at least equivalent to the financial standing at the Effective Date of the ultimate persons in Control of the Primary Contractor;

- (B) that is not a person or entity to which the Province has previously refused to give its consent;
- (C) that is not a Restricted Person; and
- (D) none of whose Affiliates is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation];

or

- (ii) a person who is an Appointed Representative (as defined in the Lenders' Remedies Agreement), but only:
 - (A) if such Appointed Representative is not a Restricted Person;
 - (B) if none of the Affiliates of the Appointed Representative is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation]; and
 - (C) for so long as such person is and continues to be an Appointed Representative as so defined (and if such person ceases to be an Appointed Representative without the prior written consent of the Province, in its discretion, such cessation shall be deemed to constitute a Primary Contractor Default);

then the Province shall not unreasonably withhold such consent.

18.7 Consent to Change in Ownership Not Required in Certain Cases

A Change in Ownership of SNC Group arising from any bona fide open market transaction effected on a recognized public stock exchange shall not require the Province's consent.

18.8 Use of Subcontractors by Primary Contractor

- (a) Subject to the other provisions of this Agreement, the Province acknowledges that the Primary Contractor may provide, perform and carry out part of the Work through one or more Subcontractors. Notwithstanding any such subcontracting:
 - (i) the Primary Contractor shall not be relieved or excused from any of its obligations and liabilities under this Agreement; and
 - (ii) the Primary Contractor shall be and remain principally liable to the Province for the observance and performance of all the covenants, agreements, conditions and provisos contained in this Agreement that are by the terms of this Agreement to be observed and performed by the Primary Contractor.

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The Primary Contractor shall cause each Principal Subcontractor to enter into a Collateral Agreement with the Province and BCTFA prior to the Principal Subcontractor providing, performing or carrying out any portion of the Work.

- (b) Prior to a Principal Subcontractor providing, performing or carrying out any portion of the Work, the Primary Contractor shall deliver to the Province's Representative a copy of the Principal Subcontractor's Subcontract and thereafter, as soon as practicable, in the event of a substitution of the Principal Subcontractor the Primary Contractor shall deliver a notice of the substitution to the Province's Representative.
- (c) In order to facilitate a decision by the Province with respect to any Collateral Agreements, the Primary Contractor shall within 14 Business Days after receipt of a notice from the Province requiring it to do so, give notice to the Province of:
 - (i) any dispute which exists in relation to a Principal Subcontract, including copies of any correspondence and other documentation relating thereto;
 - (ii) any sum that the Primary Contractor is aware is due and payable by a party under the relevant Principal Subcontract as at the date of the notice; and
 - (iii) any material unperformed obligations and outstanding liabilities of a party under the relevant Principal Subcontract of which the Primary Contractor is aware as at the date of the notice.

18.9 Restrictions on Changes to Principal Subcontracts

Subject to Section 18.16 [Exempt Principal Subcontract Matter], (i) the Primary Contractor shall not, (ii) the Primary Contractor shall procure that the Design-Builder shall not and (iii) the Primary Contractor shall procure that (with respect to the ATC Supply Contract) SLCW shall not:

- (a) terminate or permit the termination of any Principal Subcontract (or any of the performance securities or guarantees provided thereunder);
- (b) permit the assignment of any Principal Subcontract (or any of the performance securities or guarantees provided thereunder) by any party thereto other than the Primary Contractor in accordance with the terms of this Agreement and other than the assignment of the ATC Supply Contract by Thales as permitted by Section 30.2 thereof;
- (c) make or agree to or permit the making of any material amendment to or material variation of any Principal Subcontract (or any of the performance securities or guarantees provided thereunder);
- (d) make or agree to any material departure from, or waive or fail to enforce any material rights it may have under, or allow others to depart in any material respect from their material obligations under, any Principal Subcontract (or any of the performance securities or guarantees provided thereunder);
- (e) enter into, or allow others to enter into, any agreement or document that would materially affect the interpretation or application of any Principal Subcontract (or any of the performance securities or guarantees provided thereunder); or

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- (f) enter into, or allow others to enter into, any contract or agreement in replacement of any Principal Subcontract referred to in any of paragraphs (a) to (e) of the definition thereof in Section 1.1 [Definitions] of Schedule 1 (or any of the performance securities or guarantees provided thereunder);

unless full particulars of the relevant document or proposed course of action have been submitted to the Province's Representative pursuant to the Consent Procedure and have been accepted by the Province's Representative, acting reasonably, in accordance with the Consent Procedure.

18.10 Non-Arm's Length Contracts

The Primary Contractor shall:

- (a) notify the Province's Representative of any Subcontract that the Primary Contractor enters into with an Affiliate of the Primary Contractor or any other person with whom the Primary Contractor is not dealing at arm's length, and of any material amendment of any such contract, within 10 Business Days after entering into such contract or material amendment, and in each case shall provide to the Province's Representative full particulars of the Subcontract or amendment and the parties thereto; and
- (b) notify the Province's Representative of any Subcontract that an Affiliate of the Primary Contractor enters into of which the Primary Contractor is aware, within 10 Business Days after the Primary Contractor becomes aware of such Subcontract.

18.11 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, the Primary Contractor shall not carry out or permit any action contemplated by Section 18.8 [Use of Subcontractors by Primary Contractor] or Section 18.10 [Non-Arm's Length Contracts], and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, involve a person who is either:

- (a) a Restricted Person; or
- (b) a person any of whose Affiliates is a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1 [Definitions and Interpretation].

18.12 Replacement Principal Subcontracts

If any Principal Subcontract at any time lapses, terminates or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights that were the subject matter of such Principal Subcontract are no longer reasonably required for the Project or the Work or are to be provided directly by the Primary Contractor, then subject to Sections 18.9 [Restrictions on Changes to Principal Subcontracts] and 18.11 [Restricted Persons Prohibited], the Primary Contractor:

- (a) shall as soon as reasonably possible enter into, or cause the entering into of, one or more contracts in replacement of such Principal Subcontract, with one or more persons who will be Principal Subcontractors; and

- (b) shall, and shall cause each replacement Principal Subcontractor to, forthwith enter into a Collateral Agreement with the Province.

18.13 New Principal Subcontracts

If after the Effective Date the Primary Contractor or any other Subcontractor in accordance with Section 18.9 [Restrictions on Changes to Principal Subcontracts] enters into a contract or agreement referred to in Section 18.9(f), the Primary Contractor shall, and shall cause the Principal Subcontractor thereunder to, forthwith execute and deliver a Collateral Agreement with the Province.

18.14 Copies of Documents

If at any time any act or matter referred to in any of Sections 18.9(a) to 18.9(f) inclusive occurs, the Primary Contractor shall deliver to the Province's Representative a conformed copy of each document or, if not in writing, a true and complete record thereof in writing, within 10 Business Days after the date of its execution or creation or occurrence, certified as a true copy or accurate and complete record (as the case may be) by an officer of the Primary Contractor.

18.15 Payment of Province's Costs

- (a) If particulars of any proposed documents or course of action are submitted to the Province's Representative pursuant to any provision of this Part, or if the Primary Contractor requests any consent or approval pursuant to any provision of this Part, or if any action, transaction, event or circumstance occurs or is proposed that requires the consent or approval of the Province or the Province's Representative under any provision of this Part or to which the Province or the Province's Representative has a right of review or objection under this Part, the Primary Contractor shall pay to the Province, in accordance with the remaining provisions of this Section 18.15 [Payment of Province's Costs], all reasonable and proper costs and expenses incurred by the Province in connection with reviewing any such submission, request, action, transaction, event or circumstance or making a determination as to the making of an objection or the giving or withholding of consent or approval or any other matter required in connection therewith or related thereto, whether or not any objection is made or any consent or approval is given or any other action is taken by the Province or the Province's Representative and whether or not the proposed course of action takes place, such costs and expenses to include professional and legal costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged to or incurred by the Province, and the Province's reasonable internal administrative and personnel costs.
- (b) At the time of the Primary Contractor's submission pursuant to any of Sections 18.1 [Province Consent Required to Assignment by Primary Contractor], 18.6 [Change in Control or Ownership of Primary Contractor] or 18.9 [Restrictions on Changes to Principal Subcontracts], or pursuant to any other Section in this Part pursuant to which the Province or the Province's Representative has a right of review, objection, consent, approval, verification or other action, and as a condition precedent to the commencement of any time period specified for the Province or the Province's Representative to object, consent, approve 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, 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 18.15 [Payment of Province's Costs] in respect of such submission.

- (c) The Province may from time to time invoice the Primary Contractor for amounts to be paid by the Primary Contractor under this Section 18.15 [Payment of Province's Costs]. For each particular matter submitted to the Province's Representative, such invoices shall be paid first out of any funds provided by the Primary Contractor under Section 18.15(b) with respect to the matter, to the extent such funds have not been applied to previous invoices. When the aggregate of amounts invoiced in respect of a matter exceeds the amount of any funds provided by the Primary Contractor under Section 18.15(b) with respect to the matter, the Primary Contractor shall pay to the Province within 10 Business Days after invoicing the amount of the excess and the amount of any subsequent invoices in respect of the matter. After any relevant decision of the Province or the Province's Representative is rendered or any action contemplated by the submission or request has been taken, the Province shall invoice the Primary Contractor for all amounts to be paid by the Primary Contractor under this Section 18.15 [Payment of Province's Costs] not previously invoiced by the Province, and the Province shall refund any overpayment by the Primary Contractor on account of amounts to be paid by the Primary Contractor under this Section 18.15 [Payment of Province's Costs], and the Primary Contractor shall pay any amount owing by it under this Section 18.15 [Payment of Province's Costs], in either case within 10 Business Days after receipt of such invoice.
- (d) The foregoing provisions of this Section 18.15 [Payment of Province's Costs] shall not apply in the case of any action or transaction that consists solely of an Exempt Principal Subcontract Matter.

18.16 Exempt Principal Subcontract Matter

In the case of any action under or transaction with respect to any Principal Subcontract that consists solely of an Exempt Principal Subcontract Matter:

- (a) the Province's Representative shall not have a right of objection or consent, and Section 18.9 [Restrictions on Changes to Principal Subcontracts] shall not apply; and
- (b) the Primary Contractor shall, forthwith after the occurrence of such Exempt Principal Subcontract Matter and in any event no later than 10 Business Days thereafter, submit to the Province full particulars of the relevant documents and course of action comprising the Exempt Principal Subcontract Matter including:
 - (i) particulars of any action contemplated by any of Sections 18.9(a) to 18.9(f) inclusive; and
 - (ii) particulars of why the action or transaction constitutes an Exempt Principal Subcontract Matter including information with respect to the matters referred to in Sections 18.11 [Restricted Persons Prohibited] and 18.17 [Principal Subcontract Changes Not to Increase Province's Liability].

18.17 Principal Subcontract Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement and without prejudice to the rights of the Province under the other provisions of this Part, no action referred to in any of Sections 18.9(a) to 18.9(f) inclusive, whether or not consented to or permitted under Section 18.9 [Restrictions on Changes to Principal Subcontracts] or Section 18.16 [Exempt Principal Subcontract Matter], and no amendment, waiver or exercise of a right under any Principal Subcontract, shall have the effect of increasing any liability of the Province or BCTFA arising from early termination of this Agreement, unless the Primary Contractor has obtained, in addition to any other consent or approval and any other requirements under this Part, the prior written consent of the Province expressly consenting for the purposes of this Section 18.7 [Principal Subcontract Changes Not to Increase Province's Liability] to the increase in the liability of the Province or BCTFA that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion.

**PART 19
GENERAL**

19.1 Disputes

- (a) Except as otherwise expressly provided in this Agreement:
- (i) any dispute between the parties with respect to any of the subject matters of this Agreement, whether or not the provisions of this Agreement specifically refer the dispute to the Dispute Resolution Procedure;
 - (ii) any matter or dispute between the parties that, by the express terms of this Agreement, is to be resolved or determined by the Dispute Resolution Procedure; and
 - (iii) any disagreement between the parties with respect to any matter that, by the express terms of this Agreement, is to be agreed upon by the parties;

shall be resolved in accordance with, and the parties shall comply with, the Dispute Resolution Procedure; provided that, notwithstanding this or any other provision in this Agreement, no matter, decision or determination which by the terms of this Agreement is subject to or within the discretion of, or is to be made in the discretion of, the Province or the Province's Representative shall be subject to the Dispute Resolution Procedure.

- (b) Without limiting any other provision of this Agreement, if a dispute arises, the Primary Contractor shall abide by the decision of the Province's Representative with respect to the subject matter of the dispute and diligently proceed with the Work, and shall comply with all instructions given by the Province's Representative and closely track all costs and impacts associated therewith, but without prejudice to the rights of the Primary Contractor as may ultimately be determined in accordance with the Dispute Resolution Procedure.
- (c) Any and all issues or disputes between or among the Province, BCTFA and the Primary Contractor, whether or not subject to the Dispute Resolution Procedure, shall constitute Confidential Information.

STRICTLY CONFIDENTIAL

19.2 Public Communications

- (a) The roles and responsibilities of the Province and the Primary Contractor as they relate to all communications and consultation for the Project with Stakeholders and the public will be as set out in Schedule 8 [Communication and Community Relations].
- (b) Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither party shall make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto without the prior written consent of the other party, which consent may be granted or withheld by such other party in its discretion.

19.3 Entire Agreement

This Agreement (including the Schedules) constitutes the entire agreement between the parties with respect to all matters contained herein and supersedes all prior agreements and communications (both oral and written) between any of the parties with respect to all matters contained herein.

19.4 Amendment

No amendment to this Agreement shall be binding unless it is in writing and signed by each of the parties hereto.

19.5 Notices

Any notice, demand, request, consent, approval, objection, agreement or other communication required or permitted to be given, made or issued under this Agreement must, unless otherwise specifically provided in this Agreement, be in writing signed by the providing party and delivered by hand, sent by a recognized courier service (with delivery receipt requested), or transmitted by facsimile transmission to the address or facsimile transmission number of each party set out below:

- (a) if to the Province or BCTFA:

Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, B.C.
V8W 3E6

Attention: The Deputy Minister of Transportation and Infrastructure
Facsimile: (250) 387-6431

With an electronic copy, for information purposes only, to: EGLProvRep@gov.bc.ca

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BC Transportation Financing Authority
c/o Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, B.C.
V8W 3E6

Attention: The Chief Executive Officer
Facsimile: (250) 387-6431

With an electronic copy, for information purposes only, to: EGLProvRep@gov.bc.ca

- (b) if to the Province's Representative:

Evergreen Line Rapid Transit Project
c/o CH2M HILL
Suite 550 – 925 West Georgia

Attention: Province's Representative
Facsimile: (604) 660-8020

With an electronic copy, for information purposes only, to: EGLProvRep@gov.bc.ca

- (c) if to the Primary Contractor:

Evergreen Rapid Transit Holdings Inc.
Suite 1800, 1075 West Georgia Street
Vancouver B.C.
V6E 3C9

Attention: Robert Rollin
Copy: Hannelie Stockenstrom
Facsimile: (604) 662-7688

With an electronic copy, for information purposes only, to:
generalcounsel@snclavalin.com
corporatesecretary@snclavalin.com
president.EGRTC@snclavalin.com

- (d) if to the Primary Contractor's Representative:

SNC-Lavalin
Suite 1500, 1075 West Georgia Street
Vancouver B.C.
V6E 3C9

Attention: Robert Rollin
Facsimile: (604) 662-7688

With an electronic copy, for information purposes only, to:
Robert.Rollin@snclavalin.com

STRICTLY CONFIDENTIAL

or to such other address in British Columbia or facsimile transmission number as any party or its representative may, from time to time, designate to the other parties and their representatives in the manner set out above. Any such notice or communication shall be considered to have been received:

- (e) if delivered by hand or by courier during business hours on a Business Day, when delivered and, if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (f) if sent by facsimile transmission during business hours on a Business Day, upon the sender receiving confirmation of the successful transmission and, if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission.

19.6 Waiver

Except as expressly provided otherwise in this Agreement, any waiver of any provision of this Agreement shall only be effective if in writing signed by the waiving party, and no failure by any party at any time to exercise a right or remedy under or to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver shall only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.

19.7 Further Assurances

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents, assignments, waivers, licenses and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

19.8 Relationship of the Parties

- (a) Nothing contained in this Agreement nor any action taken pursuant hereto shall be deemed to constitute the Province and Primary Contractor a partnership, joint venture or any other similar such entity.
- (b) Nothing contained in this Agreement or in the Federal Contribution Agreement shall be construed as authorizing the Primary Contractor to contract for or to incur any obligation on behalf of the Federal Government or to act as agent for the Federal Government, and the duties assumed by the Primary Contractor hereunder are undertaken on the strength of this Agreement, and not as agent or in any way representative of, or subordinate to, the Federal Government.

19.9 Binding Effect

Subject to the provisions of Part 18 [Assignment, Change in Ownership and Control and Subcontracting], this Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

STRICTLY CONFIDENTIAL

19.10 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form, provided that any party providing its signature in faxed form shall promptly forward to each other party an original signed copy of this Agreement which was so faxed.

[The balance of this page is intentionally blank]

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

SIGNED on behalf of **HER MAJESTY**)
THE QUEEN IN RIGHT OF THE)
PROVINCE OF BRITISH COLUMBIA)
by a duly authorized representative of)
the **MINISTER OF TRANSPORTATION**)
AND INFRASTRUCTURE in the)
presence of:)
)
)
)

(Witness)
Name:
Infrastructure

Grant Main
Deputy Minister, Ministry of Transportation and

BC TRANSPORTATION FINANCING AUTHORITY
by its authorized signatory:

Per:

Name: Grant Main
Title: Chief Executive Officer

EVERGREEN RAPID TRANSIT HOLDINGS INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title: