

DESIGN BUILD AGREEMENT

BETWEEN

TRANSPORTATION INVESTMENT CORPORATION

- and -

KIEWIT/FLATIRON GENERAL PARTNERSHIP

March 17, 2009

PORT MANN/HIGHWAY 1 PROJECT

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DESIGN BUILD AGREEMENT

THIS DESIGN BUILD AGREEMENT dated as of March 17, 2009 is entered into:

BETWEEN:

TRANSPORTATION INVESTMENT CORPORATION, a corporation established under the *Transportation Investment Act* (British Columbia)

(the “**Authority**”)

AND:

KIEWIT/FLATIRON GENERAL PARTNERSHIP, a general partnership established under the laws of the Province of British Columbia, comprised of **PETER KIEWIT SONS CO.**, a corporation amalgamated under the laws of the Province of Nova Scotia, and **FLATIRON CONSTRUCTORS CANADA LIMITED**, a corporation incorporated under the laws of the Province of British Columbia

(the “**Constructor**”)

WHEREAS:

A. The Authority wishes to engage the Constructor to perform the DB Work, as more particularly described in this Agreement; and

B. The rights and obligations between the parties with respect to the DB Work 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 hereto, the parties hereto 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 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 and Authority

- (a) Nothing in this Agreement or the other Authority Project Documents 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 any minister, ministry, agency, board, commission, corporation or other entity of the Province (including, for greater certainty, the Minister, the Ministry, BCTFA and the Authority):
 - (i) to enact, amend, repeal or replace any enactment or regulation made under any enactment;
 - (ii) to exercise or refrain from exercising any discretion conferred under Laws; or
 - (iii) to administer, apply and enforce Laws.
- (b) Except as expressly provided for in this Agreement, the Constructor 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
APPOINTMENT AND GENERAL TERMS**

2.1 Appointment

The Authority hereby appoints the Constructor to exclusively provide and perform the DB Work in accordance with, and subject to, the terms and conditions of this Agreement, and the Constructor hereby accepts such appointment and shall provide and perform the DB Work in such manner.

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 DB Term.

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2.3 Assumption of Risk and Responsibility

Except to the extent that the Authority is responsible therefor pursuant to the express provisions of this Agreement or of any other Authority Project Document, all risks, costs and expenses related to the performance by the Constructor of its obligations under this Agreement and the other Authority Project Documents are allocated to, and accepted by, the Constructor as its entire and exclusive responsibility. As between the parties, the Constructor shall be solely responsible for the selection, pricing and performance of all Subcontractors and other persons for whom the Constructor is in law responsible, and for the acts, defaults, omissions, breaches and negligence of all Subcontractors and other persons for whom the Constructor is in law responsible, as fully as if such acts, defaults, omissions, breaches and negligence were those of the Constructor.

2.4 Financial Administration Act

The Constructor acknowledges that it is aware of the provisions of the *Financial Administration Act* (British Columbia) and its effect on the Authority.

2.5 Land Access

The Authority hereby agrees to make available to the Constructor, in common with the Province, BCTFA, the Authority, and others authorized by the Province, BCTFA and the Authority, including the general public, the Concession Lands and the Other Highway Lands, commencing and ending with respect to any particular lands as provided in Section 1.3 [Commencement of Land Access] and Section 1.4 [Termination of Land Access] of Schedule 8, for the Constructor, the Subcontractors, and any other person engaged or involved in the performance of the DB Work, and their respective representatives, agents, employees and contractors, to enter upon and use so much of the Concession Lands and the Other Highway Lands and the Infrastructure located on the Concession Lands and the Other Highway Lands, as may be reasonably required from time to time to permit the Constructor to carry out the DB Work, all subject to and in accordance with the terms and conditions of this Agreement including the provisions of Schedule 8 [Lands].

2.6 Access to Municipal Lands

To the extent that as part of the DB Work any Infrastructure is required to be constructed, altered, upgraded or augmented on any Non-Province Controlled Lands and the municipality or highway authority having ownership or control thereof has not, within a reasonable time (not to be less than 60 days) following a request by the Constructor, given the Constructor and the Subcontractors access to the Non-Province Controlled Lands required to carry out such DB Work, then and during any such period when such access is not available:

- (a) the Constructor shall notify the Authority of the situation as soon as the Constructor becomes aware of it and will provide all such information to the Authority as will enable the Authority to understand the circumstances that have given rise to the situation and such other information relating thereto as the Authority may reasonably require;
- (b) the Constructor, provided it has made and so long as it continues to make all reasonable efforts to obtain and to satisfy any conditions or requirements for obtaining such:

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- (i) shall not be required to carry out such DB Work on such Non-Province Controlled Lands; and
- (ii) may by notice to the Authority's Representative request the assistance of the Authority (at the expense of the Constructor) in obtaining such access, in which event, to the extent the Authority has the legal ability to do so under existing Laws, the Authority shall use reasonable efforts to provide such assistance;
- (c) the Constructor acknowledges that the Authority shall not be required or obligated to make available access to such Non-Province Controlled Lands, the Authority's obligation with respect thereto being limited to its obligation, if any, under Section 2.6(b)(ii);
- (d) subject to Section 2.6(e), the Constructor shall carry out and complete any DB Work relating to such Non-Province Controlled Lands at the earliest opportunity after such access is obtained, notwithstanding that any other DB Work has been Substantially Completed or Totally Completed; and
- (e) notwithstanding Sections 2.6(b) and 2.6(d), provided the Constructor has made and has continued to make all reasonable efforts to obtain and to satisfy any conditions or requirements for obtaining access to any Non-Province Controlled Lands required for the purposes of constructing, altering, upgrading and augmenting thereon as part of the DB Work any Infrastructure intended to form part of the Primary Highway Components (in this Section, the "**Municipal Primary Highway Components Work**"), if such access has not been obtained prior to the Total Completion Date, the Constructor's obligation to carry out such Municipal Primary Highway Components Work on such Non-Province Controlled Lands shall cease, and the Constructor shall not be required to continue to seek access to such Non-Province Controlled Lands for the purposes of performing such Municipal Primary Highway Components Work, but, if such access has been obtained prior to the Total Completion Date, the Constructor shall be required to carry out and complete such Municipal Primary Highway Components Work on such Non-Province Controlled Lands at the earliest opportunity after such access is obtained, notwithstanding that the Substantial Completion Date or the Total Completion Date may have occurred.

2.7 Limited Use

- (a) During the DB Term, the Constructor shall not make any use of, or allow or authorize the Subcontractors or any other person engaged or involved in the performance of the DB Work, or their respective representatives, agents, employees or contractors, to make any use of, the Project Site or the Project Infrastructure or any part thereof, except for the purposes of carrying out the DB Work in accordance with this Agreement.
- (b) In addition to the restrictions in Section 2.7(a), the Constructor shall make only such use of, and shall cause the Subcontractors and all other persons engaged or involved in the performance of the DB Work, and their respective representatives, agents, employees and contractors, to make only such use of, the Other Highway Facilities and Municipal Facilities as may be necessary for the purposes of carrying out the DB Work that specifically relates thereto, and no other DB Work, and in so doing the Constructor shall

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make all reasonable efforts, and shall cause its Subcontractors and all other persons engaged or involved in the performance of the DB Work, and their respective agents, employees and contractors, to make all reasonable efforts, to avoid or, if unavoidable, to minimize, disruption to the operations and use of, and physical damage to, the Other Highway Facilities and the Municipal Facilities.

- (c) Without limiting the generality of the foregoing, the Constructor shall not use or occupy or allow or authorize any person to use or occupy, for any commercial purpose, all or any part of the Project Site or the Project Infrastructure.

2.8 Business Opportunities

Except as the parties may otherwise agree, the Authority reserves the right to all commercial and other opportunities for, or related to, the Concession Highway and the Other Highway Facilities.

2.9 Location of Infrastructure

The Constructor covenants and agrees that:

- (a) no part of the Tolling Commencement Components, the 176 Street Extension or the Primary Highway Components forming part of or intended to form part of Upgraded Concession Infrastructure shall be constructed or located on any lands that are not Concession Lands or on any Concession Lands that are held by the Authority by means only of Temporary Land Rights; and
- (b) [Intentionally Deleted]
- (c) no part of the SFPR Extension, the Golden Ears Connector, or the Primary Highway Components intended to form part of Upgraded Other Highway Infrastructure, shall be constructed or located:
 - (i) on any lands that are not Other Highway Lands; or
 - (ii) on any lands that are Other Highway Lands that are held by the Authority by means only of Temporary Land Rights.

2.10 Title to Improvements

Except to the extent that title to any Toll Assets or Plant has not passed to the Authority in accordance with Section 2.12 [Transfer of the Title to Tangible Personal Property], and except for DB Intellectual Property that is licensed to the Authority in accordance with Section 15.4 [Licenses to Intellectual Property]:

- (a) the Constructor shall not acquire or have any property interest in or title to any Project Infrastructure, or any other improvements on or to the Project Site from time to time;
- (b) subject to Section 2.10(c), title to and ownership of the Project Infrastructure and all other improvements on or to the Project Site from time to time, other than Utilities of Utility Suppliers, Infrastructure and other property of Railways, and Third Party

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Facilities, shall, as between the Authority (on the one hand) and the Constructor (on the other hand), vest in the Authority; and

- (c) title to and ownership of Municipal Infrastructure shall vest in the applicable municipality or highway authority other than the Authority and the Province.

2.11 No Registration

The Constructor shall not register or attempt to register in any 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 to Tangible Personal Property

- (a) Except for DB Intellectual Property that is licensed to the Authority in accordance with Section 15.4 [Licenses to Intellectual Property]:
 - (i) any rights in or title to Toll Assets acquired by the Constructor or the Subcontractors shall pass to the Authority as and when such rights in or title to the Toll Assets are acquired by the Constructor or the Subcontractors;
 - (ii) in addition to any rights in or title to Toll Assets that have passed to and been acquired by the Authority under Section 2.12(a)(i), title to all Toll Assets that are affixed to or incorporated into the Concession Lands or the Concession Infrastructure shall pass to and vest absolutely in the Authority at the time they are affixed to or incorporated into the Concession Lands or the Concession Infrastructure; and
 - (iii) the Constructor covenants and agrees that any rights in or title to Toll Assets acquired by the Constructor or the Subcontractors, by license or lease or in any other manner, shall be freely transferable and assignable to the Authority and freely transferable and assignable by the Authority to the Province and/or BCTFA.
- (b) Title to all Plant other than Toll Assets shall pass to and vest absolutely in the Authority at the earlier of:
 - (i) title to the Plant being acquired by the Constructor; and
 - (ii) the Plant being affixed to or incorporated into the Concession Lands, the Concession Infrastructure, the Other Highway Lands or the Other Highway Infrastructure.
- (c) [Intentionally Deleted]
- (d) Title to any property (whether real or personal) not referred to in Section 2.12(a) that is transferred to or acquired by the Authority pursuant to the terms of this Agreement, shall pass to the Authority at the time of the transfer or acquisition as contemplated by this Agreement.

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- (e) Without limiting the provisions of Section 18.7 [Further Assurances], the Constructor shall, at the written request of the Authority's Representative from time to time, execute and deliver, and cause the Subcontractors to execute and deliver to the Authority, all such bills of sale and other documents as the Authority's Representative shall reasonably request for transferring rights in or title to property (whether real or personal) or confirming the transfer of rights in or title to any such property contemplated by this Section 2.12 [Transfer of Title to Tangible Personal Property].
- (f) The Constructor covenants that all Subcontracts to which the Constructor is a party shall contain a provision imposing on the Subcontractor with which the Constructor has contracted directly the same obligation to execute and deliver bills of sale and other documents as is imposed on the Constructor under Section 2.12(e).
- (g) Notwithstanding the passage to the Authority of rights in or title to Toll Assets and other Plant as provided above in this Section 2.12 [Transfer of Title to Tangible Personal Property], the Constructor and the Subcontractors shall be entitled to make use of such Toll Assets and other Plant for the purposes of carrying out the DB Work, subject to and in accordance with this Agreement.

2.13 Review, Approval, Inspection and Audit by the Authority

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 Authority or the Authority's Representative under, pursuant to, or in respect of this Agreement or any of the other Project Documents, whether pursuant to the Review Procedure or the Consent Procedure or otherwise, or if no comment or objection is made pursuant to the Review Procedure or the Consent Procedure or otherwise:

- (a) 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 Authority or the Authority's Representative of general compliance by the Constructor with its obligations under this Agreement;
- (b) notwithstanding any other provisions of this Agreement or any of the other Project Documents, 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 Authority, the Authority's Representative, or any person for whom the Authority is in law responsible:
 - (i) shall relieve or exempt or be deemed to relieve or exempt the Constructor or any other person for whom the Constructor is in law responsible from any of its obligations and liabilities under this Agreement or any other Project Document or at law or in equity;
 - (ii) shall constitute a waiver or release by the Authority of any duty or liability owed by the Constructor or any other person to the Authority, or of any indemnity

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given by the Constructor to the Authority under this Agreement or any other Project Document;

- (iii) shall create or impose any requirement, liability, covenant, agreement or obligation on the Authority; or
 - (iv) shall entitle the Constructor to make any Claim against the Authority, or to recover from the Authority, any Losses, except to the extent the Constructor is entitled to recover Direct Losses as a result of the occurrence of a Supervening Event; and
- (c) any decision so made by the Authority's Representative pursuant to the Review Procedure or the Consent Procedure shall, once all applicable disputes arising in respect thereof have been resolved in accordance with Schedule 2 [Representatives, Review Procedure and Consent Procedure], be final, subject only to being opened up, reviewed or revised by the Authority in its discretion if errors or further relevant facts are revealed after the decision has been made.

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

2.14 Site Inspection and Investigations

The Constructor represents and warrants to the Authority and agrees with the Authority as follows:

- (a) that the Constructor shall be deemed to have been afforded the opportunity prior to executing this Agreement to inspect and examine the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, and any Non-Province Controlled Lands that may become Municipal Lands, and their surroundings, and all existing structures, improvements and works in, on, over or under the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, and any Non-Province Controlled Lands that may become Municipal Lands, including the Original Infrastructure and the Original Municipal Infrastructure, and that the Constructor shall be deemed to have inspected and examined the same and to have satisfied itself with respect thereto;
- (b) that the Constructor 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 Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, and any Non-Province Controlled Lands that may become Municipal Lands, and the Infrastructure and other improvements thereon including the Original Infrastructure and the Original Municipal Infrastructure, 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 Original Lands, the Designated Lands, the Additional Concession Lands, the Future

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Railway Lands, and any Non-Province Controlled Lands that may become Municipal Lands, 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 DB Work;

- (c) that the Constructor shall be deemed to have satisfied itself prior to executing this Agreement as to:
- (i) the means of communication with the various parts of, and access to and through, the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, and any Non-Province Controlled Lands that may become Municipal Lands, the accommodation it may require and the adequacy and sufficiency of the rights of access provided by Section 2.5 [Land Access], Section 2.6 [Access to Municipal Lands], Section 3.1 [Provision of] and Schedule 8 [Lands] for the purposes of performing the DB Work;
 - (ii) the possibility of interference by third parties with access to or use of the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, and any Non-Province Controlled Lands that may become Municipal Lands, and the Infrastructure and improvements thereon including the Original Infrastructure and the Original Municipal Infrastructure, with particular regard to the Requirements of Interested Parties;
 - (iii) the precautions and times and methods of working necessary to reasonably minimize any nuisance or interference, whether public or private, being caused to any third parties in the performance of the DB Work; and
 - (iv) any other contingencies, restrictions, conditions or constraints which would or might interfere with, limit or affect the ability of the Constructor to carry out the DB Work which could be ascertained through the exercise of reasonable due diligence;
- (d) that the Constructor shall be deemed to have reviewed and satisfied itself, prior to executing this Agreement, with respect to:
- (i) the terms of the Environmental Assessment Certificate and the SFPR Environmental Assessment Certificate, and the Constructor's Environmental Obligations;
 - (ii) the First Nations Requirements; and
 - (iii) the DB Requirements;
- (e) that the Constructor 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 Constructor by or on behalf of the Authority, the Province or BCTFA prior to the date of execution of this Agreement, including all Design Data which the Constructor has relied upon, adopted or made use of or intends to rely upon, adopt or make use of in carrying out the DB Work;

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- (f) that the Constructor shall be deemed to have obtained for itself prior to executing this Agreement all necessary information as to:
 - (i) the risks, contingencies and all other circumstances which may influence or affect the DB Requirements or the First Nations Requirements or its obligation to carry out the DB 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 Constructor shall be deemed to have conducted prior to executing this Agreement its own analysis and review of all materials, documents and data referred to in Section 2.15 [Disclosed Data] that bear on any of the matters referred to in Sections 2.14(a), (b), (c), (e) and (f);
- (h) that the Constructor shall be deemed to have reviewed and satisfied itself prior to executing this Agreement that, the DB Requirements are in compliance with the requirements of Sections 4.1(a) to (f) inclusive; and
- (i) that:
 - (i) the Constructor accepts and will accept the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, the Non-Province Controlled Lands, the Municipal Lands, the Original Infrastructure and the Original Municipal Infrastructure on an "as is, where is" basis;
 - (ii) neither the Authority nor the Province nor BCTFA has made or hereby makes any representation or warranty with respect thereto;
 - (iii) the Authority, the Province and BCTFA shall have no responsibility or liability for the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, the Non-Province Controlled Lands, the Municipal Lands, the Original Infrastructure and the Original Municipal Infrastructure, and the Constructor 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 Infrastructure, Relevant Component or DB Work.
- (j) [Intentionally Deleted]

The representations, warranties and agreements of the Constructor in this Section shall not constitute an actionable representation, warranty or agreement by the Constructor in favour of the Authority or give rise to a right of termination on the part of the Authority, but the Authority, the Province and BCTFA may rely on such representation, warranty, and agreement for the purpose of defending any action brought against the Authority, the Province and BCTFA, or any of them, or any Claim by the Constructor

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for damages, extensions of time, additional compensation or any other relief, provided that no such representation, warranty or agreement shall prejudice an otherwise valid Claim by the Constructor:

- (k) pursuant to any other express provision of this Agreement, of any other Authority Project Document or of the Provincial Payment Guarantee and Support Agreement; or
- (l) in respect of any breach of any express obligation of the Authority under this Agreement or under any other Authority Project Document.

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

2.15 Disclosed Data

- (a) Except as otherwise expressly provided in Section 2.15(d), neither the Authority nor the Province nor BCTFA shall have any liability to the Constructor (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 Authority, the Province or BCTFA or any person for whom the Authority 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 Authority nor 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 before, on or after the date of execution of this Agreement) relevant or material to the Project, the Project Infrastructure, the Project Site or the obligations undertaken by the Constructor under this Agreement. Without limiting the generality of the foregoing, neither the Authority nor the Province nor BCTFA shall have any liability to the Constructor (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 Authority or the Province or BCTFA or any person for whom the Authority 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 Constructor any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform the Constructor (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.
- (c) The Constructor acknowledges, represents, warrants and confirms that, without prejudice to its rights under Section 2.15(d):
 - (i) the Constructor shall be deemed to have conducted prior to executing this Agreement its own analysis and review of the Disclosed Data and to have satisfied itself as to the accuracy, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance; and
 - (ii) the Constructor shall not be entitled to make, and shall not make, any Claim against the Authority, the Province or BCTFA, whether in damages or for extensions of time 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 or any other Project Document, on any grounds relating to the Disclosed Data, including:

- (A) on the grounds of any misunderstanding or misapprehension in respect of 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 information relating to the Disclosed Data or to the Original Lands, the Designated Lands, the Additional Concession Lands, the Future Railway Lands, any Non-Province Controlled Lands that may or do become Municipal Lands, the Original Infrastructure or the Original Municipal Infrastructure was given to it by any person, whether or not in the employ of the Authority, the Province or BCTFA, except for an otherwise valid Claim by the Constructor:
 - (1) pursuant to any other express provision of this Agreement, of any other Authority Project Document or of the Provincial Payment Guarantee and Support Agreement; or
 - (2) in respect of any breach of any express obligation of the Authority under this Agreement or under any other Authority Project Document.
- (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 the Construction Activities prior to the Total Completion Date, or any additional costs are incurred by the Constructor in performing the Construction Activities prior to the Total Completion Date, that in either case would not otherwise have been experienced or incurred by the Constructor in performing its obligations under this Agreement, and such delay and/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 Geotechnical and Survey Data upon which the Constructor has reasonably and in accordance with Good Industry Practice relied in the design and construction of the Fraser Heights Connector, the Tolling Commencement Components or the Primary Highway Components, as the case may be, then such factual error in the Geotechnical and Survey Data shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply. For greater certainty, the Constructor shall not be entitled to relief under this Section:
- (i) with respect to factual errors in any of the Geotechnical and Survey Data that was produced by a third party if and to the extent that:
 - (A) such third party has acknowledged in writing that the Constructor may rely on the information; or
 - (B) the Constructor otherwise has any independent right of recourse against the third party with respect to such errors; or

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- (ii) if and to the extent that it was not, in all the relevant circumstances and having regard to any other information known to the Constructor at the relevant time, reasonable in accordance with Good Industry Practice for the Constructor to rely on the Geotechnical and Survey Data containing the factual error or to rely on such Geotechnical and Survey Data without further investigation or site examination.

The provisions of any subsection of this Section 2.15 [Disclosed Data] do not limit the provisions of any other subsection of this Section 2.15 [Disclosed Data].

2.16 Naming of the Project

- (a) There is hereby reserved exclusively to the Authority all rights:
 - (i) to name and rename from time to time the Project, the Concession Highway, the Concession Bridge(s) and the Other Highway Facilities, and parts thereof; and
 - (ii) as between the parties hereto, to determine the regional and facility branding, logos and domain names and interoperability mark to be used for the Toll System.
- (b) The Constructor shall comply with the names, branding, logos, domain names and interoperability mark as designated by the Authority from time to time in accordance with Section 2.16(a) and shall not use any other names, branding, logos, domain names or interoperability mark for the Project, the Concession Highway, the Concession Bridge(s), the Other Highway Facilities and the Toll System, or parts thereof.
- (c) [Intentionally Deleted]
- (d) [Intentionally Deleted]
- (e) [Intentionally Deleted]

2.17 Execution and Delivery of Project Documents

On or before the Effective Date, each of the Authority and the Constructor shall execute and deliver, or cause to be executed and delivered, the documents described in Schedule 27 [Closing Deliveries] that are to be executed and delivered by or on behalf of it on or before the Effective Date.

2.18 [Intentionally Deleted]**2.19 No Agency**

- (a) The Constructor acknowledges that no provision of this Agreement shall be construed as a delegation or sub-delegation to the Constructor by the Authority, the Province, BCTFA, the Minister or any other person to whom a power or right has been conferred by Law to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, 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 statutory power, statutory function, statutory right or statutory authority.

- (b) Except to the extent (if any) that any provision in this Agreement expressly constitutes the Constructor the "agent" of the Authority, the Constructor shall not be or be deemed to be an agent of the Authority and the Constructor shall not hold itself out as having authority or power to bind the Authority, in any way. For greater certainty, the Constructor shall not hold itself out as being an agent of the Authority or as having the authority or power to bind the Authority in any way.
- (c) The Constructor acknowledges and agrees that the Authority has not made any representation or warranty that the Constructor shall have the benefit of any Crown immunity.
- (d) Subject to Sections 2.19(a), (b) and (c) and the other provisions of this Agreement, the parties acknowledge that the Constructor is carrying out the DB Work at the request of the Authority.

2.20 [Intentionally Deleted]

2.21 [Intentionally Deleted]

2.22 Interface Agreement

- (a) In addition to the obligations of the parties under this Agreement:
 - (i) the Constructor covenants and agrees to observe, perform and be bound by all the obligations contained in the form of Interface Agreement attached to this Agreement as Schedule 18 [Interface Agreement] on the part of the "Constructor" thereunder to be observed and performed,
 - (ii) the Authority covenants and agrees to observe, perform and be bound by all the obligations contained in the form of Interface Agreement attached to this Agreement as Schedule 18 [Interface Agreement] on the part of the "Authority", "Operator" and "Tolling Contractor" thereunder to be observed and performed,

subject in each case to the due observance and performance of the obligations of the other parties to such agreement, and whether or not such agreement is executed and delivered, and subject in the case of the Authority to Section 2.1 of the Interface Agreement.

- (b) The Constructor shall, at the request of the Authority, execute and deliver the Interface Agreement in substantially the form attached hereto as Schedule 18 [Interface Agreement], with the Authority as the "Authority" thereunder, and whether with third parties or the Authority as the "Operator" and/or the "Tolling Contractor" thereunder.
- (c) The Constructor acknowledges and agrees that if the Authority executes and delivers the Interface Agreement as the "Operator" and/or the "Tolling Contractor" thereunder, the Authority shall have the right to assign its rights as such to an Operator and a Tolling

Contractor respectively, provided each such assignee enters into an agreement with the other parties thereto assuming the obligations of the "Operator" or the "Tolling Contractor" under the Interface Agreement, as the case may be.

**PART 3
AUTHORITY'S GENERAL OBLIGATIONS**

3.1 Provision of Lands

Subject to the provisions of Schedule 8 [Lands] and the other provisions of this Agreement, the Authority shall make and keep available to the Constructor, for the purposes of this Agreement and the DB Work, the Original Lands, the Designated Lands, the Additional Concession Lands and the Future Railway Lands, in accordance with Schedule 8 [Lands]. Certain rights and obligations of the parties in respect of the Project Site are set out in Schedule 8 [Lands].

3.2 Mitigation By Authority

- (a) In all cases where the Authority is entitled under this Agreement to receive from the Constructor any compensation, costs, damages or other Direct Losses incurred by the Authority (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, but not in any other case, the Authority shall have a duty to use all reasonable efforts to mitigate and reduce the amount required to be paid by the Constructor to the Authority, provided that such duty shall not require the Authority to:
 - (i) take any action which is contrary to the public interest, as determined by the Authority in their discretion;
 - (ii) undertake any mitigation measure that might be available arising out of its status as a Crown agent or legislative or public body that would not normally be available to a private commercial party; or
 - (iii) alter the amount of any Constructor Remittances; or
 - (iv) breach or act in a manner that could be inconsistent with the obligations of the Authority under this Agreement.
- (b) The Authority shall not be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Authority, or those parts of any compensation or extensions of time or other relief from performance, that the Authority could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts, to the extent of the Authority's duty to do so in accordance with the provisions of Section 3.2(a).
- (c) The Constructor shall not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Authority Indemnified Persons failing to mitigate to the same standard as is required of the Authority under this Section 3.2 [Mitigation By Authority].

3.3 Authority's Representations and Warranties

The Authority represents and warrants to the Constructor, and acknowledges that the Constructor is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:

- (a) the Authority has the necessary power and capacity to execute and deliver this Agreement;
- (b) the necessary authority has been conferred on the Authority to execute and deliver this Agreement;
- (c) the necessary corporate action has been taken by the Authority to authorize the execution and delivery by the Authority of this Agreement; and
- (d) this Agreement has been duly authorized, executed and delivered by the Authority.

3.4 Without Prejudice

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

3.5 Survival of Representations and Warranties

All representations and warranties made or given by the Authority under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Authority 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 the other Project Documents and are not mitigated or affected by any investigation by or on behalf of the Constructor.

**PART 4
CONSTRUCTOR'S GENERAL OBLIGATIONS**

4.1 Constructor to Carry Out DB Work

The Constructor shall carry out and perform the DB Work, and cause the DB 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 consequence of performing the DB Work in accordance with this Agreement and in compliance with all other obligations of the Constructor hereunder will not constitute a breach of the obligation in this Section 4.1(b);
- (c) in compliance with all Requirements of Interested Parties; and

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- (d) in accordance with all DB Requirements;

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 and/or the Authority from exercising rights and powers and discharging duties and functions as a highway authority, and so as not to prevent the Authority, the Province, BCTFA or any other Governmental Authority from exercising any other rights and powers 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 Payments to Contractors

- (a) Without limiting any of its other rights or obligations under this Agreement or the other Project Documents, or under any Laws, the Constructor 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 DB Work (including all accounts for the supply of labour, materials and services in connection with any works carried out in the course of the DB Work).
- (b) The Constructor shall provide to the Authority's Representative, as part of each Draw Request, monthly certificates addressed to the Authority and certified by the Design Build Director, 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) and, if applicable, the *Builders Lien Act* (British Columbia). If the Constructor is unable to obtain from any Subcontractor a representation, warranty or covenant sufficient to enable the Constructor to provide such monthly certificate, the Constructor shall provide the Authority's Representative with full particulars of any matter which precludes the Constructor from providing such certificate to the Authority's Representative.

4.3 No Adverse Reflection on Province or Authority

Without limiting the Constructor's obligations under Section 4.1 [Constructor to Carry Out DB Work], in the performance of the DB Work the Constructor 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 Authority gives notice to the Constructor would detract, from the image and reputation of the Authority or the Province as a highway authority or otherwise or the reputation of the Province, BCTFA or the Authority, provided that any action taken or not taken in the course of performing the DB Work, that is expressly required to be taken or not taken pursuant to this Agreement, pursuant to a direction or instruction issued by the Authority's Representative or pursuant to a specific provision of the DB Requirements, will not constitute a breach of the Constructor's obligations under this Section, and provided that this Section shall not prejudice an otherwise valid Claim by the Constructor:

- (a) pursuant to any other express provision of this Agreement, of any other Authority Project Document or of the Provincial Payment Guarantee and Support Agreement; or

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- (b) in respect of any breach of any express obligation of the Authority under this Agreement or any other Authority Project Document.

4.4 No Other Business or Conflicts of Interest

- (a) [Intentionally Deleted]
- (b) The Constructor shall ensure that no conflict of interest arises between any other matter in which it or any of its Partners may be interested whether directly or indirectly, and the Constructor's performance of the DB Work and the obligations of the Constructor under this Agreement.

4.5 Prohibited Acts

- (a) The Constructor covenants that neither the Constructor nor any of its agents, Subcontractors nor the employees of any of the aforementioned persons, nor any person for whom the Constructor is in law responsible, shall offer or give or agree to give any person in the service of the Authority, 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 Constructor covenants that neither the Constructor nor any Subcontractor shall enter into any agreement with the Authority, the Province or BCTFA in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by the Constructor or a Subcontractor or on behalf of the Constructor or a Subcontractor or to the knowledge of the Constructor or a Subcontractor, other than to any person for whom the Constructor is in law responsible, 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 Authority's Representative.
- (c) Without limiting Section 4.5(b), the Constructor covenants that no person for whom the Constructor is in law responsible shall enter into any agreement with the Authority, 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 Constructor is in law responsible, 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 Authority's Representative.

4.6 Public Use

- (a) The general public's right to use the Concession Highway and the Other Highway Facilities derives from Laws, and not from a grant by the Authority pursuant to this Agreement or otherwise.

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- (b) The Constructor shall keep open for public use the Concession Highway at all times during the Construction Period, and the Other Highway Facilities at all times until the Total Completion Date, except in each case for lane closures or diversions of traffic flow instituted:
- (i) by the Constructor in accordance with the provisions of the Traffic Management Plan;
 - (ii) by the Minister under the *Transportation Act* (British Columbia) or any other Laws;
 - (iii) by the Police or fire, ambulance or other emergency services authorities; or
 - (iv) by any other Governmental Authority pursuant to any Law;

and, except as otherwise expressly provided in this Agreement, the Constructor shall not have any Claim whatsoever against the Authority, the Province, BCTFA, the Police, any fire, ambulance or other emergency services authority or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section or as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority affecting all or any part of the Project Site or the Project Infrastructure at any time. The Constructor shall keep open for public use any Municipal Facilities in accordance with the requirements of the municipality or highway authority having control over the use of such Municipal Facilities.

- (c) Subject to closures or diversions of traffic flow with respect to the Concession Highway and the Other Highway Facilities permitted by Sections 4.6(b)(i) to (iv), the Constructor shall cause all DB 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 roads or highways other than the Concession Highway, whether under the control or in the possession of the Authority, the Province, BCTFA or any other person.

4.7 Access to Project Site and Project Infrastructure by Others

The Constructor shall, subject to and in accordance with the procedures established by the Constructor pursuant to Section 4.13 [Health and Safety Program] and Section 4.14 [Constructor's Occupational Health and Safety Obligations] for the time being in force in relation to the areas to which such access is granted, ensure that, during the Construction Period:

- (a) the Authority's Representative, the Authority, and any contractors, consultants or other persons authorized by the Authority, including Third Party Contractors, have access to the Project Site and the Project Infrastructure in accordance with Section 11.1 [Authority Access] and the Interface Agreement;
- (b) the Province and BCTFA have access to the Project Site and the Project Infrastructure to fulfil any statutory, public or other duties or functions;

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- (c) the Independent Certifier has access to the Project Site and the Project Infrastructure in accordance with Section 3.8 [Access to Project Site] of Part 1 of Schedule 4;
- (d) inspectors and other persons authorized to act on behalf of the Authority have access to the Project Site for inspection and acceptance purposes prior to the Total Completion Date (or, in the case of DB Work carried out after the Total Completion Date as contemplated by Section 2.6(e), such later date as is reasonable for the relevant inspection and acceptance purposes), subject to reasonable notice being given to the Constructor;
- (e) the owners or operators of any Third Party Facilities and their agents or contractors have unrestricted access to the Project Site and the Project Infrastructure at all reasonable times during the Construction Period, subject to reasonable notice being given by such persons to the Constructor, to install, operate, manage, maintain, repair, rehabilitate or reconstruct such Third Party Facilities, provided that, wherever consistent with the applicable requirements of Laws and the requirements of this Agreement, the Constructor may limit such access so as to not unnecessarily impede or restrict traffic flows or any DB Work being carried out by the Constructor ;
- (f) all Relevant Authorities and Utility Suppliers have access to the Project Site and the Project Infrastructure throughout the Construction Period 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 Utility Agreements, subject to reasonable notice being given by such Relevant Authority or Utility Supplier to the Constructor, and provided that, whenever consistent with the applicable requirements of such Relevant Authority, Utility Supplier or Laws and the requirements of this Agreement (as the case may be), the Constructor may limit such access so as to not unnecessarily impede or restrict traffic flows or any DB Work being carried out by the Constructor; and
- (g) without prejudice to any access rights of any such person as a member of the general travelling public, the Authority, the Province, BCTFA, Third Party Contractors, owners or operators of Third Party Facilities, Relevant Authorities and Utility Suppliers are permitted to enter upon the Project Site and the Project Infrastructure for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Project Site and the Project Infrastructure (including any other highway) owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of this Agreement, the Constructor may limit such access so as to not unnecessarily impede or restrict traffic flows or any DB Work being carried out by the Constructor.

4.8 Improvements and Changes in Use

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

4.9 Constructor Plans

Without limiting the obligations of the Constructor to comply with any other DB Requirements, including the preparation and delivery to the Authority's Representative of any plans referred to in the DB Requirements, or the other obligations of the Constructor under this Agreement, the Constructor shall comply with any and all plans set out or referred to in this Agreement or in any Schedule to this Agreement provided that, where the Constructor is required in accordance with this Agreement to submit any such plan to the Authority's Representative pursuant to the Review Procedure or the Consent Procedure, such compliance shall be with such plan to which there has been "no objection" under the Review Procedure or with such plan as has been "accepted" under the Consent Procedure, as the case may be.

4.10 Mitigation By Constructor

- (a) Without limiting and in addition to all other obligations to mitigate required by this Agreement or at law, in all cases where the Constructor is entitled under this Agreement to receive from the Authority any compensation (including for any Supervening Event) or any other costs, damages or other Direct Losses incurred by the Constructor (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, the Constructor shall have a duty to use all reasonable efforts to mitigate and reduce (which reasonable efforts, for purposes of example only, 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 Authority to the Constructor, the length of the extension of time and/or the relief to be provided under this Agreement.
- (b) The Constructor shall not be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Constructor, or those parts of any compensation or extensions of time or other relief from performance, that the Constructor 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 Authority, the Constructor shall promptly submit a detailed description, supported by all such documentation as the Authority may reasonably require, of the measures and steps taken by the Constructor to meet its obligations under Section 4.10(a).
- (d) The Constructor shall require all Subcontractors with which the Constructor contracts directly, to assume and carry out the same duty to mitigate as is required of the Constructor under Section 4.10(a), *mutatis mutandis*.
- (e) The Authority 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 Constructor Indemnified Persons failing to mitigate to the same standard as is required of the Constructor under this Section 4.10 [Mitigation By Constructor].

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4.11 Site Safety and Security

- (a) Without limiting Section 8.8 [Responsibility for Participants and Trespassers], the Constructor shall, in respect of the Project Site at all times throughout the Construction Period, take such measures as are reasonably required, including fencing where appropriate, to prevent the trespass and access onto the Project Site of any persons not entitled to be on the Project Site or of any creatures including wildlife and livestock.
- (b) The Constructor shall at all times throughout the Construction Period have full regard for the safety of all persons (including users of the Concession Highway) on the Project Site (whether lawfully or not) and shall maintain the Project 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.
- (c) The Constructor shall remove forthwith from the Project Site any person who engages in misconduct or is incompetent or negligent in the performance of any duties, or whose presence on the Project Site is otherwise undesirable.

4.12 Constructor as Prime Contractor

- (a) By entering into this Agreement, the Constructor agrees that it is the Prime Contractor for the Project Site and that it shall take all steps or measures necessary, through such arrangements as are appropriate, to fulfil all of its obligations, functions and duties as Prime Contractor in compliance with all Health and Safety Laws.
- (b) The Constructor shall, not later than 30 days after the Effective Date:
 - (i) designate a qualified coordinator (the “**Qualified Coordinator**”) who shall be an employee of the Constructor and shall be qualified (being knowledgeable of the DB Work, the hazards involved and the means to control the hazards, by reason of education, training, experience or a combination thereof) to discharge the responsibilities thereof as described in the *Workers Compensation Act* (British Columbia) and the OHS Regulation, and the Constructor shall at all times during the DB Term continue to employ such a designated Qualified Coordinator at the Project Site; and
 - (ii) deliver to the Authority’s Representative:
 - (A) written notice of the designation of the Qualified Coordinator under Section 4.12(b)(i);
 - (B) a copy of the “notice of project” for the Project required and described in the *Workers Compensation Act* (British Columbia) and the OHS Regulation (the “**Notice of Project**”); and
 - (C) written notice confirming that the Health and Safety Program has been implemented pursuant to Section 4.13 [Health and Safety Program] and is readily available in accordance with the *Workers Compensation Act* (British Columbia) and the OHS Regulation.

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4.13 Health and Safety Program

Notwithstanding any limitation in the OHS Regulation regarding the number of workers in any work force, the Constructor shall prepare, submit to the Authority's Representative in accordance with the Review Procedure and at all times throughout the Construction Period implement, maintain and update, in respect of the Project Site a written health and safety program (the "**Health and Safety Program**") that:

- (a) complies with Good Industry Practice and all Laws (including all applicable specifications and standards in Health and Safety Laws and the requirements of section 3.3 of Part 3 of the OHS Regulation);
- (b) provides for the establishment and maintenance of a system or systems and a process or processes to ensure compliance with all Health and Safety Laws and to satisfy the Constructor's obligations in respect of Health and Safety Laws under this Agreement; and
- (c) is specific to controlling the hazards of the Project Site, as such hazards are identified in the hazard identifications provided in the Disclosed Data, and as such hazard identifications are thereafter updated by the Constructor throughout the Construction Period.

4.14 Constructor's Occupational Health and Safety Obligations

- (a) The Constructor shall at all times throughout the DB Term:
 - (i) observe and comply with, and ensure that the performance of the DB Work (including by conducting worker safety orientations, health and safety meetings, safety inspections and accident and incident investigations) at all times complies with, all Health and Safety Laws;
 - (ii) ensure that all assessments, levies, penalties, fees and fines which may be made under any Health and Safety Laws are punctually paid as they become due;
 - (iii) [Intentionally Deleted]
 - (iv) deliver and post at the Project Site any and all required Notices of Project;
 - (v) when conditions or activities at any location or locations on the Project 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 the Project Site and alerts all workers to all reasonably foreseeable hazards to which they are likely to be exposed;
 - (vi) immediately notify all employers, workers, suppliers and Subcontractors and any other persons throughout the Project Site of any hazard created by the DB Work and/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;

- (vii) ensure that no person, including the Constructor, the Subcontractors and any other person engaged or involved in the performance of the DB Work, and their respective representatives, agents, employees and contractors, is permitted to enter upon or otherwise allowed access (other than as a user of the Concession Highway) to any part or parts of the Project Site in respect of which there is for the time being any part of the DB Work being carried out unless such person complies with the requirements of the Health and Safety Program and all applicable Health and Safety Laws;
- (viii) in the event of an accident or incident that requires notification to the Workers' Compensation Board, deliver a copy of such notice to the Authority's Representative at the same time as it delivers such notice to the Workers' Compensation Board, and provide ongoing information to the Authority's Representative on the progress of any investigation resulting from such notice, accident or incident;
- (ix) record and retain all occupational health and safety Records in respect of the DB Work required by and in accordance with all Health and Safety Laws, including:
 - (A) notices which the Constructor is required to provide to the Workers' Compensation Board;
 - (B) monthly summaries of remedial actions taken to reduce occupational health and safety hazards within the Project Site;
 - (C) directives and inspection reports issued by or through the Workers' Compensation Board in connection with the Project Site or the DB Work;
 - (D) reports and investigations on incidents and accidents which are required to be investigated by the Workers' Compensation Board or any other Governmental Authority requires to be investigated under Health and Safety Laws;
 - (E) records, including minutes, of safety meetings and tailgate meetings;
 - (F) copies of any hazard identifications performed on the Project Site; and
 - (G) evidence that instruction and health and safety orientation and training for workers within the Project Site is being conducted in accordance with Health and Safety Laws.
- (b) In addition to the obligations set out in Section 4.14(a), at all times during the carrying out of the Construction or any other Construction Activities during the DB Term, the Constructor shall:
 - (i) observe and comply with, and ensure that the performance of such Construction Activities at all times complies with, all Health and Safety Laws applicable to such Construction Activities;

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- (ii) post at the Project Site or, for Construction Activities occurring after the Total Completion Date, the relevant Active Construction Zone:
 - (A) the name of the Qualified Coordinator; and
 - (B) a site drawing showing the boundaries of the Project Site or Active Construction Zone, as the case may be, with project layout, first aid locations, emergency transportation provisions and the evacuation marshalling points relating to the Project Site or relevant Active Construction Zone; and
- (iii) ensure that a copy of the Health and Safety Program, the written construction procedures designed to protect the health and safety of workers at the Project Site and the OHS Regulation are readily available at convenient locations within the Project Site or relevant Active Construction Zone, as the case may be.
- (c) At the request of the Authority's Representative from time to time, the Constructor shall:
 - (i) deliver to the Authority's Representative evidence of the Constructor's implementation and maintenance of the Health and Safety Program in accordance with Section 4.13 [Health and Safety Program]; and
 - (ii) provide the Authority's Representative with evidence satisfactory to the Authority of compliance by the Constructor with its obligations in respect of all Health and Safety Laws pursuant to this Agreement, including where applicable the compliance of the Constructor and its agents, Subcontractors and its or their directors, officers, employees and workers with all applicable Health and Safety Laws, including being registered, in good standing, and current in respect of all assessments, levies, penalties, fees and fines thereunder; and
 - (iii) make available to the Authority's Representative access to and copies of any documentation maintained by the Constructor pursuant to Section 4.14(a)(ix).

4.15 [Intentionally Deleted]**4.16 Appointment of other Prime Contractors by Authority**

- (a) The Authority may, from time to time during the DB Term, on prior written notice from the Authority's Representative to the Constructor, appoint a person other than the Constructor as the Prime Contractor (in this Section, the "**Other Prime Contractor**") in connection with specified works and activities that may be undertaken and performed at any specified location or locations in the Project Site (in this Section, the "**Separate Site**"), for a specified period of time, all as set out in such notice.
- (b) Upon receipt of written notice from the Authority's Representative pursuant to Section 4.16(a), the Constructor agrees that it will cease to be the Prime Contractor in respect of such Separate Site only for the specified period of time, and the Constructor shall at all times in good faith and at the cost of the Constructor comply with, and ensure

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compliance by its Subcontractors with, all applicable requirements pursuant to the Health and Safety Laws, including:

- (i) while on the Separate Site, complying with all procedures established by the Authority to coordinate the health and safety activities on the Separate Site; and
- (ii) while on the balance of the Project Site, coordinating the health and safety activities of the Other Prime Contractor while on the balance of the Project Site,

in each case to ensure at all times that the workers on the Separate Site do not create a hazard for the workers on the balance of the Project Site, and vice versa.

- (c) Upon receipt from the Authority's Representative of written notice of the conclusion of the works and activities referred to in a notice delivered under Section 4.16(a), the Constructor shall reassume and thereafter fulfil the responsibilities of the Prime Contractor as otherwise set out in this Agreement at the Separate Site.

4.17 Notice of Failure to Comply with Health and Safety Requirements

- (a) In this Section, the terms "**employer**" and "**workers**" do not include the Constructor or any Subcontractor, or the employees of any of them.
- (b) If the Constructor determines in its reasonable discretion that any employer or its workers:
 - (i) has created an unsafe or harmful condition;
 - (ii) has done or omitted to do something that constitutes an unsafe or harmful act; or
 - (iii) has failed to comply with Health and Safety Laws or the Health and Safety Program,

and that, following written notice from the Constructor to such employer of such condition, act or failure, such employer has failed or refused to take action to correct the matter, the Constructor may issue a notice (in this Section, a "**Notice of Failure to Comply**") to the applicable employer (with a copy to the Authority) stipulating in reasonable detail the basis for the issuance of the Notice of Failure to Comply.

- (c) Upon issuance of a Notice of Failure to Comply by the Constructor under Section 4.17(b), the Constructor may suspend all or any part of the DB Work at the location specified in the Notice of Failure to Comply if the Constructor believes such action is necessary to ensure that any risk to workers is eliminated or minimized, and shall provide to the Authority, promptly and in reasonable detail, confirmation of all such action so taken by the Constructor in respect of such Notice of Failure to Comply.
- (d) Upon receive of a copy of a Notice of Failure to Comply from the Constructor under Section 4.17(b), the Authority may take whatever action in accordance with Section 11.5 [Authority's Other Step-In Rights] the Authority deems necessary to ensure that any risk to works is eliminated or minimized.

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- (e) On rectification of the matter set out in a Notice of Failure to Comply, the Constructor shall withdraw such Notice of Failure to Comply by endorsing on a copy thereof confirmation of the rectification, and the Constructor shall deliver a copy of the endorsed Notice of Failure to Comply to the applicable employer with a copy to the Authority. If the Constructor suspended all or any part of the DB Work under Section 4.17(c), the Constructor shall resume such DB Work.
- (f) The Authority 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 Authority, which the Authority may but shall not be obligated to undertake, and the Constructor shall indemnify and hold harmless the Authority and the Authority Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims (except only to the extent such Direct Losses or Claims are caused directly by an Authority Non-Excusable Event) that the Authority and the Authority Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of the issuance of any Notice of Failure to Comply issued by the Constructor and any acts or omissions of the Authority in reliance thereon.

4.18 Permits

- (a) The Constructor shall, or shall cause the Subcontractors, as the case may be, at its or their sole cost, to:
 - (i) obtain all Permits (excluding Authority Permits);
 - (ii) renew, amend or extend, as applicable, all Permits (including Authority Permits); and
 - (iii) comply with and maintain in good standing each Permit (including each Authority Permit) in accordance with its terms, including complying with all requirements and obligations in respect of all Authority Permits.
- (b) Where Permits that are the Constructor's obligation to obtain, renew, amend or extend under Section 4.18(a), other than the Environmental Assessment Certificate Amendments, have requirements that may impose any conditions, liabilities, obligations or costs on the Authority, the Province or BCTFA or on any person other than the Constructor, the Subcontractors and other persons for whom the Constructor is in law responsible, the Constructor shall, prior to obtaining, renewing, amending or extending such Permits, seek the consent of the Authority's Representative pursuant to the Consent Procedure (which consent the Authority shall not unreasonably withhold), provided, however, that, except as provided in Section 2.2(d)(i) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], neither the Authority nor 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 Constructor or any Subcontractor, as the case may be, is unable to apply for or to renew, amend or extend any Permit, other than the Environmental Assessment Certificate Amendments, that is the Constructor's obligation to obtain, renew, amend or extend under this Section without obtaining information or administrative assistance

from the Authority, the Province or BCTFA, or without submitting the application for such Permit or renewal or extension in the name of the Authority, the Province or BCTFA, the Authority shall at the Constructor's cost provide or cause to be provided such information and administrative assistance as the Constructor may reasonably request and the Authority may reasonably be able to provide and, if requested, shall execute or cause to be executed such applications as are required to be in the name of the Authority, to assist the Constructor or such Subcontractor, as the case may be, in obtaining, renewing, amending or extending such Permit.

- (d) The Constructor at its expense shall provide or cause to be provided such information, documentation and administrative assistance as may be requested by the Authority's Representative and as the Constructor may reasonably be able to provide and, if requested, shall execute such applications as are required to be in its name, to enable the Authority, the Province or BCTFA to apply for, obtain and (without limiting the Constructor's obligations under Section 4.18(a)) renew, amend or extend, and comply with and demonstrate compliance with requirements and obligations under, Authority Permits.
- (e) The Constructor shall indemnify and hold harmless the Authority and the Authority Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims that the Authority and the Authority Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of:
 - (i) the satisfaction and performance during the DB Term of all conditions, liabilities and obligations imposed on the Authority, the Province or BCTFA by Permits obtained, renewed or extended by the Constructor in accordance with Section 4.18(b) and the payment of all costs in respect thereof, except only to the extent such Direct Losses or Claims are caused directly by an Authority Non-Excusable Event;
 - (ii) any inability of the Authority, the Province or BCTFA to obtain or, as applicable, renew or extend any Authority Permit or any increased cost to the Authority, the Province or BCTFA of obtaining or, as applicable, renewing or extending any Authority Permit, as a result of any act or omission of the Constructor, or any Subcontractor, or any other person for whom the Constructor is in law responsible; or
 - (iii) any cost to the Authority, the Province or BCTFA of complying with any condition included in any Authority Permit to the extent that such condition was included in the Authority Permit as a result of any act or omission of the Constructor, or any Subcontractor, or any other person for whom the Constructor is in law responsible.

4.19 Agreements with Governmental Authorities

- (a) The Constructor, subject to Section 4.19(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 DB Work or to enable the Constructor to perform the DB Work in accordance with the terms of this

Agreement, provided that, if the Authority, the Province or BCTFA will be bound or affected in any way by any such agreement, the Constructor shall seek the consent of the Authority's Representative pursuant to the Consent Procedure (such consent not to be unreasonably withheld) before entering into the agreement.

- (b) If the Authority's Representative consents to the Authority, the Province and/or BCTFA being a party or parties to any agreement referred to in Section 4.19(a), the Constructor shall assist the Authority, the Province and/or BCTFA (as the case may be) in entering into such agreement; provided, however, that the Constructor shall not be relieved of any of its obligations under Section 4.19(a) or any other provision of this Agreement as a result of any such consent of the Authority's Representative or assistance provided by the Constructor; and provided further that, if the Authority, 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 the Authority, the Province and/or BCTFA (as the case may be) (which approval may be granted or withheld by the Authority, the Province or BCTFA in its discretion) and, as between the Authority, the Province and/or BCTFA (as the case may be) and the Constructor, unless otherwise agreed in writing by the parties, the Constructor shall discharge such liabilities and perform such obligations and shall indemnify and hold harmless the Authority and the Authority Indemnified Persons, and each of them, in respect of any failure of the Constructor to discharge such liabilities or perform such obligations.

4.20 Archaeological and Heritage Objects

- (a) The Constructor 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 Authority as required by, the DB 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 Project Site or otherwise during the carrying out of the DB Work are and shall be, as between the Constructor and any Subcontractor (on the one hand) and the Authority (on the other hand), the sole and absolute property of the Authority.
- (c) Upon the discovery of any object referred to in Section 4.20(b) on, at or in the Project Site or otherwise during the carrying out of the DB Work, the Constructor shall:
- (i) immediately inform the Authority's Representative;
 - (ii) take all steps not to disturb the object and, if necessary, cease any DB Work in so far as performing such DB 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

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- (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 Constructor with its obligations under this Section 4.20(c) shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.

- (d) If the Authority wishes the Constructor to perform procedures which are in addition to those required pursuant to Section 4.20(c) in respect of any object referred to in Section 4.20(b), then the Authority's Representative shall request an Authority Change pursuant to Section 7.1 [Authority Changes] in respect of such additional procedure.

4.21 Constructor's Representations and Warranties

The Constructor represents and warrants to the Authority, and acknowledges that the Authority is relying upon such representations and warranties in entering into this Agreement and the other Project Documents to which either of them is a party, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:

- (a) the Constructor is a general partnership duly created and validly existing under the *Partnership Act* (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 Constructor pursuant to this Agreement or such other Project Documents to which it is a party, and to carry out the DB Work;
- (b) Peter Kiewit Sons Co. is a duly incorporated and validly existing company under the *Companies Act* (Nova Scotia) and registered as an extra-provincial company under the *Business Corporations Act* (British Columbia), and Flatiron Constructors Canada Limited is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia), and each Initial Partner 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 Constructor pursuant to this Agreement or such other Project Documents, and to carry out the DB Work;
- (c) the execution and delivery by the Constructor and each Initial Partner 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 or 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 partnership action on the part of the Constructor and all necessary corporate action on the part of each Initial Partner and this Agreement and each other Project Document to which the Constructor is a party and to be executed and delivered on or before the date of this Agreement, has been duly executed and delivered by the Initial Partners on behalf of the Constructor and constitutes a legal, valid and

binding obligation of the Constructor and each Initial Partner 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.

- (d) the entry into and performance of this Agreement by the Constructor and each Initial Partner does not and shall not:
 - (i) conflict with the constating documents of the Constructor or of each Initial Partner; or
 - (ii) conflict with any document which is binding upon the Constructor or an Initial Partner or any of its or their assets to the extent that such conflict would have or be reasonably likely to have a material adverse effect on the performance by the Constructor of its obligations under this Agreement;
- (e) all agreements and consents of third parties required for the execution by the Constructor and each Initial Partner of, and performance of its and their obligations under, this Agreement and the other Project Documents to which the Constructor is a party, have been received, other than the Permits contemplated in this Agreement to be obtained in connection with the DB Work, agreements with Governmental Authorities to be entered into as contemplated by Section 2.6 [Access to Municipal Lands] or Section 4.19 [Agreements with Governmental Authorities], Railway Agreements to be entered into as contemplated by Section 5.10 [Railway Agreements] of Schedule 8, and agreements with Utility Suppliers to be entered into as contemplated by Section 5.10 [Rights of Authority] of Part 1 of Schedule 4;
- (f) since February 29, 2008, there has been no material:
 - (i) reduction in the collective qualifications and expertise of the Constructor to perform the DB Work; or
 - (ii) adverse change in the financial condition of the Constructor, any of its Initial Partners or either Guarantor;
- (g) all statements, representations and information provided in relation to the Constructor, each Initial Partner and each Guarantor in the Proposal 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 Constructor has in writing expressly advised the Authority of any incorrectness or inaccuracy prior to the date of execution of this Agreement;
- (h) neither the Constructor nor any of the Initial Partners has any 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 Constructor or either Guarantor or the ability of any of them to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;

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- (i) neither the Constructor nor any of the Initial Partners nor either Guarantor is a party to or, to its knowledge, threatened with any litigation or Claims that, if successful, would materially adversely affect the financial condition of the Constructor or either Guarantor or the ability of any of them to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (j) the Initial Partners are all the Partners of the Constructor;
- (k) [Intentionally Deleted]
- (l) the copies of the Constructor's Partnership Agreements and other constating documents of the Constructor certified by appropriate officers of the Initial Partners and delivered to the Authority pursuant to Section 2.17 [Execution and Delivery of Project Documents], and of the constating documents of each of the Initial Partners certified by appropriate officers of the Initial Partners and delivered to the Authority pursuant to Section 2.17 [Execution and Delivery of Project Documents], are true and accurate;
- (m) [Intentionally Deleted]
- (n) the copies of the Constructor's Partnership Agreements delivered to the Authority pursuant to Section 2.17 [Execution and Delivery of Project Documents] are the only partnership agreements of the Constructor in effect;
- (o) [Intentionally Deleted]
- (p) [Intentionally Deleted]
- (q) the Constructor has delivered to the Authority true copies of all agreements to which the Constructor or any of the Initial Partners or either Guarantor is a party that are material to the DB Work or to the affairs of the Constructor or either Guarantor in relation to the DB Work;
- (r) the Guarantors and the Key Individuals that have been or are proposed to be engaged by the Constructor in relation to the DB Work are available to carry out their obligations in respect of the DB Work in accordance with this Agreement;
- (s) each of the Project Documents to which the Constructor or any Initial Partner or Guarantor is a party has been executed and delivered by all parties thereto, the copies of such documents that the Constructor has delivered to the Authority are true and complete copies of such documents, and there are not in existence any other agreements or documents replacing or relating to any such documents which would materially affect the interpretation or application of any of such documents;
- (t) neither the Constructor, nor either of the Initial Partners, nor any Subcontractors, nor the employees of any of them, nor any other person for whom the Constructor 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 4.5 [Prohibited Acts]; and

- (u) neither the Constructor nor any of the Initial Partners is 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 Constructor of its obligations under this Agreement.

4.22 Without Prejudice

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

4.23 Survival of Representations and Warranties

All representations and warranties made or given by the Constructor under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Constructor 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 the other Project Documents and are not mitigated or affected by any investigation by or on behalf of the Authority or any other person.

4.24 Informational Rights

The Constructor shall provide to the Authority, so long as the obligations of the Constructor under this Agreement are guaranteed by the Guarantors:

- (a) promptly and in any event within two Business Days following the date on which the Constructor receives the same, true and complete copies any notices, complaints or orders (including directives and work orders) of violation or non-compliance or liability received by the Constructor or any of its Subcontractors from any Governmental Authority or any other Person in respect of any matter relating to the Project, the Project Site or the Project Infrastructure;
- (b) promptly and in any event within the lesser of 150 days after the end of the fiscal year of each Guarantor and the period when each Guarantor is required to have such statements available under applicable law, true and complete copies of the audited annual financial statements of each Guarantor, including an audited balance sheet and an audited statement of income, all prepared in accordance with Applicable Accounting Principles;
- (c) promptly and in any event within two Business Days following the date on which the Constructor becomes aware of the same, a notice describing any fact, development or other matter of which the Constructor has become aware that could reasonably be expected to prevent Substantial Completion on or before the Substantial Completion Longstop Date;
- (d) promptly and in any event within two Business Days following the date on which the Constructor becomes aware of the same, a notice describing any litigation or other

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proceeding which has been commenced or threatened against the Constructor, the Authority or the Project in excess of \$5,000,000;

- (e) promptly and in any event within two Business Days following the date on which the Constructor 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 any Hazardous Substance affecting the Project Site;
- (f) promptly and in any event within two Business Days following the date on which the Constructor becomes aware of the same, a notice describing any proposal to suspend or abandon the Project;
- (g) promptly and in any event within two Business Days following the date on which the Constructor becomes aware of the same, a notice describing any material default or event of default of any party (including the Constructor) under any Project Document to which the Constructor or a Guarantor is a party;
- (h) promptly and in any event within two Business Days following the date on which the Constructor becomes aware of the same, a notice describing any expropriation of any property or assets of the Authority or the Constructor; and
- (i) promptly and in any event within two Business Days following the date on which the Constructor becomes aware of the same, a notice describing any event or occurrence which may give rise to a claim against the Constructor, its Subcontractors or the Authority in excess of \$5,000,000.

The obligations contained in this Section 4.24 shall continue throughout the DB Term with the exception of the obligations contained in Sections 4.24(b) and (c), which shall continue up to and until Total Completion.

**PART 5A
DB WORK**

5A.1 Representation as to DB Work

The Constructor represents and warrants to the Authority that:

- (a) all design work performed by or on behalf of the Constructor pursuant to this Agreement shall conform to 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;
- (b) the DB Work shall be free of defects, including design defects, errors and omissions;
- (c) materials and equipment furnished under this Agreement shall be of good quality; and
- (d) the DB Work shall meet all of the requirements of this Agreement.

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Any defect which the Constructor is obligated to repair and remediate pursuant to this Agreement, any deficiency, defect or error in the DB Work or non-compliance with the requirements of this Agreement (including the representation in this Section 5A.1), including DB Work Latent Defects, shall collectively be referred to as a “**DB Work Defect**”.

5A.2 DB Work Defect Warranty

Without limiting the other warranty obligations of the Constructor contained in this Agreement (including in Article 6 [Warranty] of Part 2 of Schedule 4), the Constructor, at its own cost and expense, shall correct all DB Work Defects (including DB Work Latent Defects):

- (a) with respect to the Tolling Commencement Components and the DB Operational Components, for a period of 24 months from the date a Certificate of Substantial Completion is issued for the Tolling Commencement Components (the “**Tolling Components Warranty Period**”); and
- (b) with respect to the Primary Highway Components, for a period of 21 months from the Substantial Completion Date (the “**Primary Highway Components Warranty Period**” and, together with the Tolling Components Warranty Period, the “**DB Warranty Periods**”).

The DB Warranty Periods shall be extended for one additional year for all work required of the Constructor to correct deficient, defective and non-compliant DB Work completed in the last year of the DB Warranty Periods, such that the DB Warranty Period for any particular item of remedial work described above shall extend for an additional year after such remedial work is completed.

5A.3 DB Work Latent Defects

Subject to Section 9.4B(d), but without limiting the other warranty obligations of the Constructor contained in this Agreement (including in Article 6 [Warranty] of Part 2 of Schedule 4), the Constructor, at its own cost and expense, shall for the period of time commencing on the expiry of each of the DB Warranty Periods and ending on the sixth anniversary of the Total Completion Date (the “**DB Latent Defect Period**”) correct any and all DB Work Defects that, at the end of each of the DB Warranty Periods, could not reasonably have been ascertained by a competent person acting in accordance with Good Industry Practice during a visual inspection of the DB Work at least three months prior to the end of each of the DB Warranty Periods (each a “**DB Work Latent Defect**”).

5A.4 DB Work Latent Defect Notice Requirements

- (a) The Authority shall give to the Constructor written notice of each DB Work Latent Defect within nine months following the date the Authority first becomes aware or ought, with reasonable diligence, to have become aware of such DB Work Latent Defect.
- (b) The Constructor acknowledges and agrees that the obligations imposed under Section 5A.4(a) do not apply to DB Work Defects that are not DB Work Latent Defects.

5A.5 Obligations During DB Warranty Period and DB Latent Defect Period

Notwithstanding anything to the contrary contained in this Agreement, but subject always to Section 9.4B [Certain Limitations on Constructor Liability], the parties acknowledge and agree that:

- (a) during the DB Warranty Periods:
 - (i) the Constructor shall be obliged to correct any DB Work Defects or DB Work Latent Defects which are discovered during the DB Warranty Periods in accordance with the provisions of Section 5A.2 [DB Work Defect Warranty]; and
 - (ii) the Authority shall be entitled to recover from the Constructor any Direct Losses and to pursue any Claims arising out of any DB Work Defects or DB Work Latent Defects which are discovered during the DB Warranty Periods in accordance with the provisions of Section 9.1 [Indemnification by Constructor]; and
- (b) during the DB Latent Defect Period:
 - (i) the Constructor shall be obliged to correct any DB Work Latent Defects which are discovered during the DB Latent Defect Period in accordance with the provisions of Section 5A.3 [DB Work Latent Defects];
 - (ii) the Authority shall be entitled to recover from the Constructor any Direct Losses or to pursue any Claims arising out of any DB Work Latent Defects which are discovered during the DB Latent Defect Period in accordance with the provisions of Section 9.1 [Indemnification by Constructor]; and
 - (iii) if, during the first three years of the DB Latent Defect Period, the Toll Revenue is reduced as a result of or in connection with one or more DB Work Latent Defects or the work undertaken by or on behalf of the Constructor to correct such DB Work Latent Defects, then, to the extent that the Toll Revenues are less than the sum of the Authority's debt service costs and the Authority's fixed costs (with such shortfall being the "**DB Latent Defect Mandatory Costs**") the Constructor shall, if and whenever such reduction in Toll Revenue arises, continues or persists during such three year period (the "**Reduced Tolling Period**"), pay to the Authority an amount equal to the DB Latent Defect Mandatory Costs which are incurred or arise during the Reduced Tolling Period. All payments to be made under this Section 5A.5(b)(iii) shall be made on a monthly basis or on such other basis as the Authority may specify from time to time.

5A.6 Acceptance of DB Work

The acceptance by the Authority of the DB Work shall be concurrent with and accomplished in the manner set forth respecting inspections and completions under this Agreement, with the effect that Substantial Completion and Total Completion of the DB Work will be determined in accordance with the

Design and Certification Procedure. For clarity, such determination shall not negate or otherwise detract from the provisions of Sections 5A.2 [DB Work Defect Warranty] and 5A.3 [DB Work Latent Defects].

5A.7 Correction of Non-Conforming Work

- (a) Within seven days of receipt by the Constructor of notice from the Authority specifying a DB Work Defect (including a DB Work Latent Defect), the Constructor and the Authority shall agree when and how the Constructor shall remedy such DB Work Defect to the satisfaction of the Authority and in such manner and at such times as to minimize disruption to the operation of the Project, provided, however, that in case of an emergency requiring immediate corrective action, the provisions of Section 11.4 [Authority's Emergency Rights] shall apply.
- (b) If the Constructor does not promptly and diligently remedy a DB Work Defect pursuant to Section 5A.7(a) within the agreed time, or should the Constructor and the Authority fail to reach such an agreement within such seven day period (or should the Authority disapprove of the actions being taken, in the case of emergency conditions), the Authority, notwithstanding anything to the contrary contained in this Agreement and without limiting the rights of the Authority pursuant to Part 11 [Access, Monitoring and Step-In Rights], after notice to the Constructor, shall have the right to perform or have performed by third parties the necessary remedy, and the reasonable costs thereof shall be borne by the Constructor (subject to the right of the Constructor to dispute the existence of the DB Work Defect in accordance with the Dispute Resolution Procedure). In the event that the Authority expressly, in writing, waives the obligations of the Constructor to rectify a DB Work Defect, the Authority shall be entitled to an equitable and reasonable reduction in the Contract Price with respect to such waiver. Such reduction shall be payable to the Authority by the Constructor within 10 days after the Constructor's receipt of an invoice therefor.

**PART 5
[INTENTIONALLY DELETED]**

**PART 6
INSURANCE, DAMAGE AND DESTRUCTION**

6.1 Authority Insurance Coverages

The Authority 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 15 [Insurance Requirements] and in accordance with this Part 6 [Insurance, Damage and Destruction], as follows:

- (a) from the date that is 30 days after the Effective Date until the Total Completion Date or such later date as may be specified in Part 1 [Insurance Required For Construction] of Schedule 15 (including, with respect to the wrap-up liability insurance, for a further 24 months for the products and completed operations hazards including any required warranty work), the insurance described in Sections 1.1(a), 1.1(b), 1.1(c) (if required), 1.2(a) and 1.4(a) of Schedule 15 [Insurance Requirements];

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- (b) [Intentionally Deleted]
- (c) [Intentionally Deleted]
- (d) [Intentionally Deleted]

such insurance to be taken out at least three Business Days before, and so that it is in effect from, the commencement of the applicable period of time during which the insurance is required (and for clarity the insurance need not take effect until such commencement).

6.1A Constructor Insurance Coverages

The Constructor 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, those insurance policies set out in Schedule 15 [Insurance Requirements] and in accordance with this Part 6 [Insurance, Damage and Destruction], as follows:

- (a) from the date that is 30 days after the Effective Date until the Total Completion Date or such later date as may be specified in Part 1 [Insurance Required For Construction] of Schedule 15, the insurance described in Sections 1.3 and 1.4(b) of Schedule 15 [Insurance Requirements]; and
- (b) during any period of time when any Construction Activities are being carried out after the Total Completion Date, until Total Completion of such Construction Activities, the insurance referred to in Section 1.9 [Construction Activities after the Total Completion Date] of Schedule 15 [Insurance Requirements];

such insurance to be taken out at least three Business Days before, and so that it is in effect from, the commencement of the applicable period of time during which the insurance is required (and for clarity the insurance need not take effect until such commencement). The Constructor shall also take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, throughout the DB Term, from Qualified Insurers, all other insurance as may be required to be taken out from time to time in respect of the DB Work, the Project Site and/or the Project Infrastructure in accordance with any Laws or any Project Site Agreements, Project Site Encumbrances and Railway Agreements, and all other insurance as may be required under any Licenses to Construct.

6.2 Authority's Right to Insure

If the Constructor fails or refuses to obtain or maintain in force any DB 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 Authority 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 Constructor shall pay to the Authority on demand any amounts paid by the Authority for that purpose together with an administrative fee equal to 15% of such amounts.

6.2A Constructor's Right to Insure

If the Authority fails or refuses to obtain or maintain in force any Authority Required Insurance, or to provide evidence of such insurance and renewals in relation thereto as and when required and in

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accordance with this Part the Constructor may provide notice to the Authority indicating its intention to procure such insurance and shall, without prejudice to any of its other rights under this Agreement or otherwise, have the right itself to procure such insurance, in which event the Authority shall pay to the Constructor on demand any amounts paid by the Constructor for that purpose, provided that:

- (a) the procurement of a portion of the Authority Required Insurance by the Constructor fully and completely fulfils the Authority's obligations to procure such portion of the Authority Required Insurance; and
- (b) the Authority has not procured such Authority Required Insurance within 24 hours following receipt by the Authority of notice from the Constructor to do so.

6.3 Particular Requirements of Policies

In addition to the requirements of Schedule 15 [Insurance Requirements] and without limiting the generality of the other provisions of this Part 6 [Insurance, Damage and Destruction], the policies for the Required Insurance must comply with the following:

- (a) all policies of insurance must comply with Section 6.18 [Application of Proceeds of Insurance], and Schedule 15 [Insurance Requirements] as to the named insureds, additional named insureds, additional insureds and loss payees under such policies, as applicable;
- (b) all policies to be procured by the Constructor must be issued in the English language and governed by the laws of British Columbia and the laws of Canada applicable therein;
- (c) all policies to be procured by the Authority must be issued in the English language and governed by the laws of British Columbia and the laws of Canada applicable therein, or the laws of England or New York; and
- (d) all policies of insurance under which the Authority, 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 Authority, the Province or BCTFA or any other insureds (other than the Constructor, the Constructor Indemnified Persons or any person for whom the Constructor is in law responsible) by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies by the Constructor, any of the Constructor Indemnified Persons, and any person for whom the Constructor is in law responsible.

6.4 Deductibles

- (a) If any policies for the Required Insurance or any other insurance required to be taken out by Section 6.1A [Constructor Insurance Coverages] provide that the amount payable in the event of any claim, loss or liability shall be reduced by a deductible amount and/or subject to a waiting period, then, except as set forth in Section 6.4(b), the Constructor shall be responsible for the deductible amount and the waiting period and, in the event of any claim, loss or liability, the Constructor shall be responsible for and shall pay, and shall indemnify and hold harmless the Authority and the Authority Indemnified Persons,

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

- (b) The Authority shall be responsible for the deductible amount and or the waiting period to the extent and proportion that any claim, loss or liability is caused by a negligent act or omission of the Authority or a person for whom the Authority is in law responsible.

6.5 Insurance Primary

The Authority shall ensure that the Authority Required Insurance, and the Constructor shall ensure that the DB Required Insurance, is primary and not excess to any insurance of the Authority, the Province, BCTFA, or any of the other additional named insureds, and does not require the sharing of any loss by the Authority, the Province, BCTFA or the Vancouver Fraser Port Authority, or by any insurance of the Authority, the Province, BCTFA or the Vancouver Fraser Port Authority.

6.6 Release of the Authority for Insured Loss

- (a) Subject to Section 6.6(b), the Constructor, for itself and its successors and assigns, hereby releases the Authority, the Province, BCTFA and those persons for whom the Authority is in law responsible, and their successors and assigns, from any and all liability for:
 - (i) damage to any property or any other loss insured pursuant to Section 1.4(a) or Section 1.4(b) of Schedule 15 [Insurance Requirements], or required to be insured pursuant to Section 1.4(b) of Schedule 15 [Insurance Requirements], or actually insured by the Constructor or any Subcontractor (whether or not required to be insured against 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 insured against pursuant to Section 1.4(a) or Section 1.4(b) of Schedule 15 [Insurance Requirements], or required to be insured against pursuant to Section 1.4(b) of Schedule 15 [Insurance Requirements], or actually insured against by the Constructor or any Subcontractor (whether or not required to be insured by the Required Insurance), and whether or not such loss or damage may have arisen out of any act, omission or negligence of the Authority, the Authority, the Province, BCTFA or any person for whom the Authority or the Authority is in law responsible.
- (b) Section 6.6(a) shall not apply to deductibles or waiting periods that are the Authority's responsibility under Section 6.4 [Deductibles].

6.7 Compliance with Policies

- (a) The Constructor shall comply with the terms, conditions and requirements of all policies for the Required Insurance, shall not do or omit to do, or permit to be done or omitted by any person for whom the Constructor is in law responsible or, insofar as it is within its power or the power of any of its Affiliates or Subcontractors, any other person (other than the Authority, the Province, BCTFA and persons for whom the Authority is in law

responsible), anything on or with respect to the Project Site or the Project Infrastructure or with respect to the DB 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.

- (b) The Authority shall comply with the terms, conditions and requirements of all policies for the Required Insurance and shall not do, or permit to be done by any person for whom the Authority is in law responsible, anything on or with respect to the Project Site or the Project Infrastructure (excluding lawful acts of the Authority required or permitted under this Agreement) that could result in or 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.

6.8 Evidence of Insurance

- (a) The Authority shall provide to the Constructor at least two Business Days before the date that is 30 days after the Effective Date, a cover note and a certificate of insurance for each policy for the Authority Required Insurance. Each cover note and certificate of insurance must be in a form and be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Constructor acting reasonably, and must be sufficient to confirm the insurance and the terms and conditions thereof as required by this Agreement and that such insurance has been obtained and will on the date that is 30 days after the Effective Date be in full force and effect, and, for any of the foregoing purposes, the Authority shall cause the cover note and the certificate of insurance to be revised as the Constructor may reasonably require.
- (b) The Constructor shall provide to the Authority's Representative:
 - (i) in the case of the insurance required by Section 6.1A(a), at least two Business Days before the date that is 30 days after the Effective Date; and
 - (ii) in the case of the insurance required by Section 6.1A(b), at least three Business Days before the commencement of any period of time referred to in that Section;

a cover note and certificate of insurance for each policy for the DB Required Insurance. Each cover note and certificate of insurance must be in a form and be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary, satisfactory to the Authority acting reasonably, and must be sufficient to confirm the insurance and the terms and conditions thereof as required by this Agreement and that such insurance has been obtained and will at the commencement of the applicable period of time during which the insurance is require to be in full force and effect, and, for any of the foregoing purposes, the Constructor shall cause the cover note and the certificate of insurance to be revised as the Authority's Representative may reasonably require. In addition, the Constructor must provide:

- (iii) evidence satisfactory to the Authority acting reasonably that the deposit premiums payable therefor have been paid; and
 - (iv) where the premium for any policy is not fully paid prior to the relevant date for the insurance specified in Section 6.8(b)(i) or Section 6.8(b)(ii), a statement to that effect certified by the Constructor 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 6.8(b)(iv), the Constructor shall provide to the Authority's Representative evidence satisfactory to the Authority's Representative acting reasonably 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 Constructor shall provide to the Authority's Representative certified copies of all policies of DB Required Insurance, and the Authority shall provide to the Constructor certified copies of all policies of Authority Required Insurance, including renewals and replacements thereof as provided in Section 6.9 [Renewal], certified by the insurer or its agent, within 60 days after the date the insurance is required to be in effect under this Agreement.
- (e) The Authority and the Constructor shall provide such additional evidence of compliance with this Part 6 [Insurance, Damage and Destruction] as may reasonably be requested by the other party from time to time.

6.9 Renewal

- (a) At least three Business Days before the expiration or cancellation of any policy for any Required Insurance, unless such policy is no longer required by the terms of this Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements], the party responsible for obtaining and maintaining the applicable policy of Required Insurance shall provide to the other 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 be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Authority acting reasonably, and must be sufficient to confirm the insurance and terms and conditions thereof as required by this Agreement and that such insurance has been obtained and will be in full force and effect at or before the time of expiration or cancellation of the policy being renewed or replaced, and, for any of the foregoing purposes, the party responsible for obtaining and maintaining the applicable policy of Required Insurance shall cause the cover note and the certificate of insurance to be revised as the other party may reasonably require.
- (b) In the case of the renewal or replacement of any policy of DB Required Insurance, at the time of submittal to the Authority's Representative of the cover note and certificate of insurance under Section 6.9(a), the Constructor shall also provide to the Authority's Representative:

- (i) evidence satisfactory to the Authority's Representative acting reasonably 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 or cancellation of any policy to be renewed or replaced, a statement to that effect certified by the Constructor 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 6.9(b)(ii), the Constructor shall provide to the Authority's Representative evidence satisfactory to the Authority's Representative acting reasonably 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.

6.10 Copies of Communications

At the time the Constructor provides to the Authority or the Authority's Representative any submittal, notice or other communication with respect to insurance under this Part 6 [Insurance, Damage and Destruction] or Schedule 15 [Insurance Requirements], the Constructor shall at the same time provide a copy of such submittal, notice, 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 Authority's Representative may from time to time by notice to the Constructor advise).

6.11 Review of Insurance by Authority

Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Authority], the submission or delivery to the Authority's Representative and the receipt, review, approval or acceptance by the Authority'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 6 [Insurance, Damage and Destruction], shall not, irrespective of whether any objection is made thereto by the Authority or the Authority's Representative:

- (a) imply any acceptance by the Authority 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 DB Work or this Agreement; or
- (b) relieve or exempt or be deemed to relieve or exempt the Constructor or any other person from any of its obligations and liabilities under this Agreement or any of the other Authority Project Documents or at law or in equity including its obligations to insure as provided in this Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements].

Neither receipt, nor review, nor approval nor acceptance of any insurance certificate, cover note, insurance policy, or certified copy thereof shall derogate from, limit or prejudice any rights of the Authority under this Agreement.

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6.12 Workers' Compensation Coverage

The Constructor shall at all times during the DB Term 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 DB Work. The Constructor shall, at the request of the Authority's Representative from time to time, provide to the Authority's Representative evidence satisfactory to the Authority's Representative acting reasonably that such coverage is in effect and that all assessments payable under the *Workers' Compensation Act* (British Columbia) in respect of the DB Work have been paid.

6.13 Claims

- (a) The Constructor 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 Authority to inspect such register at any time on reasonable notice.
- (b) The Constructor shall in addition notify the Authority within seven (7) Business Days after making any claim under any of the policies for the Required Insurance where the value of the claim exceeds \$25,000 (index linked) 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 Constructor shall, and shall ensure that the relevant insured (other than the Authority, 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 reasonably 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 the other party or any other person.

6.14 Insurance Not to Prejudice

- (a) Neither full compliance by the Constructor nor a failure to comply by the Constructor with the requirements of this Part shall derogate from, limit or prejudice any rights of the Authority under this Agreement or relieve the Constructor from any of its other obligations or liabilities under this Agreement.
- (b) Neither full compliance by the Authority nor a failure to comply by the Authority with the requirements of this Part shall derogate from, limit or prejudice any rights of the Constructor under this Agreement or relieve the Authority from any of its other obligations or liabilities under this Agreement.

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6.15 Restoration and Reinstatement of Damage or Destruction

Unless this Agreement is terminated in accordance with its terms (including under Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction]), if all or any part of the Project Infrastructure or the Project Site is damaged or destroyed, the Constructor 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 Project Site shall not terminate this Agreement or relieve the Constructor of any of its obligations under this Agreement or entitle the Constructor to any compensation from the Authority.

6.16 Reinstatement Plan

If all or any part of the Project Infrastructure or the Project Site is damaged or destroyed, in addition to the requirements of Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction], if the Reinstatement Work is reasonably estimated to cost more than \$10,000,000 (index linked) or in any other case where the Constructor is notified by the Authority’s Representative that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Total Completion Date and the Authority’s Representative acting reasonably considers that the continued application of the Design and Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), the Constructor 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 Authority’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 Authority, as the case may be, as may be reasonably required with the exercise of all due diligence, provided the Constructor exercises and continues to exercise all such due diligence) submit to the Authority’s Representative pursuant to the Consent Procedure a plan (a “**Reinstatement Plan**”) prepared by the Constructor 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 Authority Change issued in respect thereof);
- (b) an estimate of the cost to carry out the Reinstatement Work, together with reasonable supporting documentation;
- (c) the Constructor’s proposed schedule for the execution of the Reinstatement Work;
- (d) the proposed terms upon which the Reinstatement Work is to be effected and the procurement procedure which the Constructor proposes to implement to procure the execution of the Reinstatement Work (which procurement procedure must, in any circumstances in which the Authority is required to pay in accordance with the terms of this Agreement, or may otherwise agree to pay, for all or any part of the Reinstatement Work, comply with applicable Provincial public procurement policies and requirements and, if required by the Authority’s Representative in order to comply with such applicable Provincial public procurement policies and requirements, must be a

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competitive procedure designated by the Authority's Representative and conducted under the supervision of the Authority's Representative);

- (e) if the damage or destruction occurs prior to the Total Completion Date, the Constructor's proposal for any amended Project Schedule and/or Works 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 Constructor's proposal for any related amendment to the Traffic Management Plan required in connection with the execution of the Reinstatement Work;

and the Reinstatement Work must not be commenced until the Authority's Representative consents thereto in accordance with the Consent Procedure except to the extent necessary to address any emergency or public safety needs.

6.17 Conduct of Reinstatement Work

The Constructor shall carry out the Reinstatement Work in accordance with the DB Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan accepted by the Authority'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 Certification Procedure under this Agreement.

6.18 Application of Proceeds of Insurance

- (a) In the case of any policy for the insurance referred to in any of Sections 1.1(a), 1.1(b), 1.1(c), 1.2(a) and 1.3 [Automobile Insurance] of Schedule 15 [Insurance Requirements], the proceeds of insurance shall be paid directly to the third party or, 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) The first loss payee under the policy for the insurance referred to in Section 1.4(a) of Schedule 15 [Insurance Requirements] (excluding any delay in start up insurance proceeds payable under any such policy), shall be the Authority, and all proceeds of such insurance (excluding any delay in start up insurance proceeds payable under such policy) shall be paid to the Authority as first loss payee, provided that where:
 - (i) the Constructor 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 \$15,000,000 (index linked);

in either of which cases the Authority shall direct that the proceeds be paid directly to the Constructor or the relevant insured; provided that, where the proceeds of any such insurance policy (other than any delay in start up insurance policy proceeds) are paid to the Constructor in respect of any single claim equal to or less than \$15,000,000 (index linked), the Constructor 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 paid in whole or in part to the Authority as loss payee pursuant to this Section 6.18(b) (such proceeds received by the Authority being called the “**Property Damage Insurance Proceeds**”), then either Section 6.18(c) or Section 6.18(d) shall apply;

- (c) If the Constructor 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 Authority, then:
- (i) if, in accordance with such contract, the Constructor is required to make a payment to such third party for such purpose, and if the Constructor submits to the Authority’s Representative pursuant to the Review Procedure:
 - (A) a copy of an invoice from such third party to the Constructor for payment of the cost of such Reinstatement Work;
 - (B) such supporting documentation and detail as may be reasonably required by the Authority’s Representative with respect to the Reinstatement Work that is the subject of the invoice and the cost thereof including documents and information to establish and verify the applicable matters referred to in Sections 2.7(d)(i) to (v) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure] to this Agreement in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
 - (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Authority’s Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [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 confirmation of the Constructor addressed to the Authority that the amount of the invoice is justly due and payable in accordance with the relevant contract and that the Constructor requires such invoice to be discharged out of the Property Damage Insurance Proceeds;
- then the Authority shall, not later than the latest of:
- (E) the date that is 15 Business Days after the date on which there has been no objection by the Authority’s Representative under the Review Procedure to the submittal referred to in Sections 6.18(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 Constructor 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 Authority on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of such Property Damage Insurance Proceeds paid to the Authority and the amount of such invoice; and

- (ii) upon completion of the relevant Reinstatement Work and the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if the Constructor submits to the Authority's Representative pursuant to the Review Procedure:
 - (A) a copy of the Certificate of Total Completion in respect of such Reinstatement Work;
 - (B) an invoice for payment to the Constructor of the balance (if any) of any such Property Damage Insurance Proceeds; and
 - (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Authority's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [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 Authority 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 no objection by the Authority's Representative under the Review Procedure under this Agreement to the submittal referred to in Sections 6.18(c)(ii)(B) and (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 Constructor the balance (if any) of the Property Damage Insurance Proceeds paid to the Authority on account of the damage or destruction to which the Reinstatement Work relates.

- (d) If the Constructor 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 Authority, then:
- (i) if the Constructor submits to the Authority's Representative pursuant to the Review Procedure:
- (A) a certificate from the Constructor addressed to the Authority confirming in writing the amount of the Property Damage Insurance Proceeds claimed by the Constructor, based on the value of the Reinstatement Work carried out by the Constructor;
 - (B) such supporting documentation and detail as may be reasonably required by the Authority'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 Section 2.4 [Valuation of Change in Costs] of Schedule 11) including documents and information to establish and verify the applicable matters referred to in Sections 2.7(d)(i) to (v) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure] in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
 - (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Authority's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [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 confirmation from the Constructor addressed to the Authority that the amount of the certificate is justly due and payable in accordance with this Agreement and that the Constructor requires such certificate to be discharged out of the Property Damage Insurance Proceeds;

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

- (E) the date that is five Business Days after the date on which there has been no objection by the Authority's Representative under the Review Procedure to the submittal referred to in Section 6.18(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 Constructor, out of the Property Damage Insurance Proceeds paid to the Authority on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of such Property

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Damage Insurance Proceeds paid to the Authority and the amount claimed in such certificate; and

- (ii) upon completion of the relevant Reinstatement Work and the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if the Constructor submits to the Authority's Representative pursuant to the Review Procedure:
 - (A) a copy of the Certificate of Total Completion in respect of such Reinstatement Work;
 - (B) an invoice for payment to the Constructor of the balance (if any) of any such Property Damage Insurance Proceeds; and
 - (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Authority's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [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 Authority shall, subject to any specific requirements of the insurers, not later than the later of:

- (D) the date this is five Business Days after the date on which there has been no objection by the Authority's Representative under the Review Procedure to the submittal referred to in Sections 6.18(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;

pay to the Constructor the balance (if any) of the Property Damage Insurance Proceeds paid to the Authority on account of the damage or destruction to which the Reinstatement Work relates.

- (e) Proceeds from delay in start up insurance coverage referred to in Section 1.4(a) of Schedule 15 [Insurance Requirements] shall be paid directly to the relevant insured thereunder who suffers the loss.
- (f) Proceeds of any insurance other than that referred to in Sections 6.18(a), (b) and (e) shall be paid so as to ensure the performance by the Authority and the Constructor of their obligations under this Agreement.
- (g) The Constructor shall ensure that the DB Required Insurance is in compliance with this Section 6.18 [Application of Proceeds of Insurance].

6.19 Repayment of Insurance Proceeds

If, following payment to the Constructor or to a third party at the request of or on behalf of the Constructor, as contemplated by Sections 6.18(c) and (d), the Authority receives a *prima facie* valid demand from the relevant insurer for all or any part of the Property Damage Insurance Proceeds, the Constructor shall pay the amount demanded to the relevant insurer within the time period stated in the demand.

6.20 [Intentionally Deleted]

6.21 [Intentionally Deleted]

6.22 [Intentionally Deleted]

6.23 [Intentionally Deleted]

6.24 [Intentionally Deleted]

6.25 [Intentionally Deleted]

6.26 Proceeds of Property Insurance if Agreement Terminated

The Constructor acknowledges that if this Agreement is terminated, all proceeds of any insurance referred to in Section 1.4(a) of Schedule 15 [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 under this Agreement in respect of the loss or damage in respect of which such proceeds were payable, shall be paid to and retained by the Authority as its sole property, and for such purposes the Constructor acknowledges that the Authority shall sign all such documents and do all such things as may be reasonably required for such proceeds to be paid to the Authority by insurers.

6.27 [Intentionally Deleted]

6.28 [Intentionally Deleted]

6.29 [Intentionally Deleted]

6.30 Alternate Risk Financing Measures

The Constructor acknowledges that, from time to time during the DB Term the Authority may, but will not be obliged to, pursue and implement, alternate risk financing measures for the DB Work if the Authority considers in its discretion that such alternate measures would result in coverage substantially similar to the insurance coverages described in Schedules 15 [Insurance Requirements] being obtained in a more cost efficient manner.

PART 7
AUTHORITY CHANGES AND CONSTRUCTOR PROPOSALS

7.1 Authority Changes

The Authority may, at any time during the DB Term, require Authority Changes (including Minor Works under Section 7.3(a)) subject to and in accordance with the provisions of this Part and Schedule 11 [Changes], and the Constructor 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.

7.2 Constructor Proposals

The Constructor may, at any time during the DB Term:

- (a) submit Constructor Proposals (either as Minor Works under Section 7.3(b) or as Value Engineering Proposals under Section 7.4) for consideration by the Authority subject to and in accordance with the provisions of this Part 7 and Schedule 11 [Changes], provided that the Authority shall not be required to consider any Constructor Proposal unless and until the Constructor provides to the Authority's Representative sufficient information to enable the Authority's Representative to adequately consider and evaluate such Constructor Proposal; and
- (b) request the Authority to consider, in its discretion, initiating as an Authority Change any other matter, provided that, if the Constructor becomes aware that any element of the DB Requirements does not comply with and satisfy the specific requirements of any of subsections (a), (b), (c), (e) or (f) of Section 4.1 [Constructor to Carry Out DB Work], the Constructor shall so notify the Authority'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 Authority initiate as an Authority Change an amendment to the DB Requirements so that they comply with and satisfy such specific requirements.

7.3 Minor Works

If at any time during the DB Term:

- (a) the Authority initiates an Authority Change that:
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the DB Requirements to which such Authority Change relates);
 - (ii) does not constitute an Authority Change falling within paragraph (b) of the definition thereof in Section 1.1 [Definitions] of Schedule 1; and
 - (iii) in the case of an Authority Change initiated by the Authority prior to the Total Completion Date:

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- (A) will not negatively affect any milestone date set out in the Project Schedule; and
- (B) sets out in the proposal a Minor Works Valuation that, when added to the aggregate of all of the Minor Works Valuations for all of the other prior Minor Works initiated by the Authority:
 - (1) cannot reasonably be expected to exceed \$20,000,000 (index linked); and
 - (2) during the current Contract Year, cannot reasonably be expected to exceed \$2,000,000 (index linked); or
- (iv) [Intentionally Deleted]
- (b) the Constructor establishes to the satisfaction of the Authority, acting reasonably, that an Constructor Proposal initiated by the Constructor under Section 7.2(a):
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the DB Requirements to which such Constructor Proposal relates); and
 - (ii) has a Minor Works Valuation consisting of a Change in Costs of less than or equal to zero,

then such Authority Change or Constructor 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 11.

7.4 Value Engineering Proposals

The Constructor may initiate Constructor Proposals as “**Value Engineering Proposals**” to be prepared and evaluated in accordance with Part 3 [Value Engineering Proposals] of Schedule 11.

7.5 Responsibility for Authority Changes and Constructor Proposals

The Constructor shall not be entitled to any payment, compensation, extension of time or other relief for an Authority Change or Constructor Proposal except to the extent provided in a Change Certificate issued in accordance with Schedule 11 [Changes].

7.6 Payments in Respect of Authority Changes and Constructor Proposals

Any payments between the parties and any adjustments to the payments to be made under this Agreement in respect of Authority Changes or Constructor Proposals shall be made in accordance with Part 10 [Payments] and Schedule 11 [Changes].

**PART 8
SUPERVENING EVENTS**

8.1 Supervening Events

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

which event interferes adversely with, or causes a failure of, the DB Work, or otherwise prevents the affected or entitled party (the “**Applicant**”) from performing any obligation under this Agreement, then, subject to Section 8.1(b), 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.

- (b) Notwithstanding any other provision of this Part, an Applicant shall only be entitled to relief from its obligations, extensions of time, compensation and/or a termination right under this Agreement in respect of a Supervening Event:
 - (i) except in the case of a No Threshold Compensation Event, if the interference with or failure of the DB Work or prevention from performance referred to in Section 8.1(a) arising from such Supervening Event results in any or all of the following:
 - (A) a Change in Costs for the DB Work of greater than \$200,000 (index linked); or
 - (B) [Intentionally Deleted]
 - (C) a delay of three or more days to the occurrence of any or all of the FHC Substantial Completion Date, the Tolling Commencement Date, the expected date of Substantial Completion for any or all of the Eastern Segment, Central Segment or Western Segment, the Total Completion Date and the expected date of Total Completion of the demolition of the Existing Port Mann Bridge;
 - (D) [Intentionally Deleted]
 - (E) [Intentionally Deleted]
 - (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;
 - (iii) in the case of a claim of any Supervening Event by the Constructor, if and to the extent that such Supervening Event and/or the effect thereof is not contemplated or taken into account or required by the DB Requirements to be contemplated or

taken into account in the design of the Upgraded 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);

- (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 Constructor, any Constructor Non-Excusable Event; or
 - (B) in the case of a claim of any Supervening Event by the Authority, any Authority Non-Excusable Event; and
- (v) if the Applicant provides a Supervening Event Notice in respect of such Supervening Event pursuant to Section 8.2(a) no more than 12 months after the date of the occurrence or commencement of such Supervening Event.
- (c) Nothing in this Part shall limit the Authority's right to request an Authority Change pursuant to Section 7.1 [Authority Changes] of this Agreement in response to the occurrence of any Supervening Event, including an Authority Change to give to the Constructor 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 an Authority Change as a result of the successful exercise by the Constructor of its rights in accordance with Section 4.2 [Constructor Refusal to Proceed] of Schedule 11, in the event that the Authority requests such an Authority Change the procedures in respect of such Supervening Event set out in this Part shall terminate and the matter shall be fully determined in accordance with Part 7 [Authority Changes and Constructor Proposals] and Schedule 11 [Changes], provided that the Supervening Event and its consequences (as such consequences may be affected by the Authority Change) shall be dealt with a part of the resulting Authority Change.

8.2 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, the Applicant shall give to the other party a notice ("**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 other party:

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- (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 2.2 [Preparation of Change Report] of Schedule 11 if such Supervening Event was an Authority Change;
- (c) if a Supervening Event for which a Supervening Event Notice has been delivered ceases, the Applicant shall give to the other party 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 8.2(h)(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 any information reasonably requested by the Applicant in order for the Applicant to make its claim;
- (f) where the claim in respect of a Supervening Event includes Claims to which Section 9.9 [Conduct of Claims Indemnified by the Authority] applies, such Claims shall be subject to the provisions of Section 9.9 [Conduct of Claims Indemnified by the Authority] and otherwise the claim in respect of such Supervening Event shall be subject to the provisions of this Part;
- (g) the Applicant shall demonstrate to the reasonable satisfaction of the other party that:
- (i) the applicable criteria required under Section 8.1(b) have been met;
 - (ii) the Supervening Event caused 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 3.2 [Mitigation By Authority] or Section 4.10 [Mitigation by Constructor], as applicable; and
- (h) following the delivery of a Supervening Event Notice under Section 8.2(a) hereof, the parties shall consult and seek to agree to the effect of the relevant Supervening Event, provided that either party 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 parties 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, the parties have not agreed to the extent of such relief, extensions of time and/or compensation.

8.3 Constructor's Entitlements Upon Occurrence of a Compensation Event

Subject to Sections 8.1(b) [Supervening Events] and 8.12 [Delay in Notification] and to the Constructor's obligations under Section 4.10 [Mitigation By Constructor], if at any time a Compensation Event has occurred:

- (a) to the extent that, and for so long as, the Constructor 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 Constructor's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) the Constructor shall be relieved from any liability or consequence under this Agreement (including termination by the Authority other than as expressly provided for in Section 8.7 [Termination for Damage or Destruction]) arising from its inability to perform such obligation; and
 - (ii) no NCE Remittance Points or NCE Default Points shall be assigned to the Constructor in respect of any such prevented performance;
- (b) subject to Section 8.7 [Termination for Damage or Destruction], Section 8.9 [Allocation of Risks of Participants and Trespassers] and Section 8.11 [Effect of Insurance], and save to the extent that the Constructor is entitled to be indemnified therefor pursuant to Section 9.6 [Limited Indemnity for Contamination] in respect of a Compensation Event falling within paragraph (o) of the definition thereof in Section 1.1 [Definitions] of Schedule 1, the Constructor shall be compensated by the Authority for the amount of any Direct Losses incurred, or to be incurred, by the Constructor as a result of the Compensation Event, provided that:
 - (i) in the case of a Compensation Event referred to in subsection (s) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount shall not include the first \$200,000 (index linked) of the aggregate amount of the Direct Losses incurred by the Constructor to mitigate the effects of all Protest Actions during the Construction Period;
 - (ii) in the case of a Compensation Event referred to in subsection (v) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount shall be reduced by \$5,000,000 (index linked); and
 - (iii) in the case of a Compensation Event (or a Force Majeure Event in the circumstances set out in Section 8.6(a)(iii)) that causes damage to or destruction

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of all or any part of the Project Infrastructure or the Project Site, the Authority shall make payment of the portion of the amount that is payable for the Reinstatement Work in respect of such damage or destruction;

- (iv) [Intentionally Deleted]
- (c) subject to Section 8.9 [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:
 - (i) the occurrence of the FHC Substantial Completion Date, then if the Compensation Event occurs:
 - (A) prior to the FHC Substantial Completion Target Date, then the FHC Substantial Completion Target Date shall be postponed; or
 - (B) after the FHC Substantial Completion Target Date but prior to the FHC Substantial Completion Date, then the FHC LDs shall be abated;
 - (ii) the occurrence of the Tolling Commencement Date, then if the Compensation Event occurs:
 - (A) prior to the Tolling Commencement Target Date, then the Tolling Commencement Target Date shall be postponed; or
 - (B) after the Tolling Commencement Target Date but prior to the Tolling Commencement Date, then the Tolling LDs shall be abated;
 - (iii) the Substantial Completion of any of the Eastern Segment, the Central Segment and the Western Segment and/or the Total Completion Date, then if the Compensation Event occurs:
 - (A) prior to the Substantial Completion Target Date for any such affected segment, then the Substantial Completion Target Date for such segment and the Total Completion Target Date shall be postponed;
 - (B) after the Substantial Completion Target Date for any such affected segment but prior to the Substantial Completion Date, then the Substantial Completion LDs shall be abated, and the Substantial Completion Longstop Date and the Total Completion Target Date shall be postponed;
 - (C) after the Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date shall be postponed; or
 - (D) after the Total Completion Target Date but prior to the Total Completion Date, then the Total Completion LDs shall be abated; and/or

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- (iv) the Total Completion of the demolition of the Existing Port Mann Bridge after the Substantial Completion Date, then if the Compensation Event occurs:
 - (A) prior to the Existing Port Mann Bridge Demolition Target Date, then the Existing Port Mann Bridge Demolition Target Date shall be postponed; or
 - (B) after the Existing Port Mann Bridge Demolition Target Date but prior to Total Completion of demolition of the Existing Port Mann Bridge, then the PMB Demolition LDs shall be abated,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused by the Compensation Event to the relevant date or dates, and in each case the Project Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to other related milestone dates set out therein.

8.4 Constructor's Entitlements Upon Occurrence of a Relief Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] and to the Constructor's obligations under Section 4.10 [Mitigation By Constructor], if a Relief Event has occurred:

- (a) to the extent that, and for so long as, the Constructor 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 Constructor's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) the Authority shall not exercise any right it would otherwise have under this Agreement to terminate this Agreement arising from the Constructor's inability to perform such obligation (other than as expressly provided for in Section 8.7 [Termination for Damage or Destruction]); and
 - (ii) no NCE Remittance Points or NCE Default Points shall be assigned to the Constructor in respect of any such prevented performance; and
- (b) if it has been agreed or determined that the Relief Event has resulted or will result in a delay to:
 - (i) the occurrence of the FHC Substantial Completion Date, then if the Relief Event occurs:
 - (A) prior to the FHC Substantial Completion Target Date, then the FHC Substantial Completion Target Date shall be postponed; or
 - (B) after the FHC Substantial Completion Target Date but prior to the FHC Substantial Completion Date, then the FHC LDs shall be abated;
 - (ii) the occurrence of the Tolling Commencement Date, then if the Relief Event occurs:

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- (A) prior to the Tolling Commencement Target Date, then the Tolling Commencement Target Date shall be postponed; or
- (B) after the Tolling Commencement Target Date but prior to the Tolling Commencement Date, then the Tolling LDs shall be abated;
- (iii) the occurrence of the Substantial Completion Date, then the Substantial Completion Longstop Date and the Total Completion Target Date shall be postponed;
- (iv) the Substantial Completion of the Central Segment by three or more days, then if the Relief Event occurs:
 - (A) prior to the Substantial Completion Target Date for the Central Segment, then the Substantial Completion Target Date for the Central Segment shall be postponed; or
 - (B) after the Substantial Completion Target Date for the Central Segment, then the Total Completion LDs for the Central Segment shall be abated; and/or
- (v) after the Substantial Completion Date, the Total Completion of the demolition of the Existing Port Mann Bridge, then if the Relief Event occurs:
 - (A) prior to the Existing Port Mann Bridge Demolition Target Date, then the Existing Port Mann Bridge Demolition Target Date shall be postponed; or
 - (B) after the Existing Port Mann Bridge Demolition Target Date but prior to Total Completion of demolition of the Existing Port Mann Bridge, then the PMB Demolition LDs shall be abated,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused by the Relief Event to the relevant date, and in each case the Project Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to other related milestone dates set out therein.

- (c) [Intentionally Deleted]

8.5 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] and to the Applicant's obligations under Section 3.2 [Mitigation By Authority] or Section 4.10 [Mitigation By Constructor], as applicable, if at any time a Force Majeure Event has occurred:

- (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

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arising as a result of the Force Majeure Event, including the Constructor's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]:

- (i) the other party shall not exercise any right 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 8.7 [Termination for Damage or Destruction]); and
 - (ii) if the Applicant is the Constructor, no NCE Remittance Points or NCE Default Points shall be assigned to the Constructor in respect of any such prevented performance; and
- (b) if the Applicant is the Constructor is, and if it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to:
- (i) the occurrence of the FHC Substantial Completion Date, then if the Force Majeure Event occurs:
 - (A) prior to the FHC Substantial Completion Target Date, then the FHC Substantial Completion Target Date shall be postponed; or
 - (B) after the FHC Substantial Completion Target Date but prior to the FHC Substantial Completion Date, then the FHC LDs shall be abated;
 - (ii) the occurrence of the Tolling Commencement Date, then if the Force Majeure Event occurs:
 - (A) prior to the Tolling Commencement Target Date, then the Tolling Commencement Target Date shall be postponed; or
 - (B) after the Tolling Commencement Target Date but prior to the Tolling Commencement Date, then the Tolling LDs shall be abated;
 - (iii) the occurrence of the Substantial Completion Date, then the Substantial Completion Longstop Date and the Total Completion Target Date shall be postponed;
 - (iv) the Substantial Completion of the Central Segment by three or more days, then if the Force Majeure Event occurs:
 - (A) prior to the Substantial Completion Target Date for the Central Segment, then the Substantial Completion Target Date for the Central Segment shall be postponed; or
 - (B) after the Substantial Completion Target Date for the Central Segment, then the Total Completion LDs for the Central Segment shall be abated; and/or

- (v) after the Substantial Completion Date, the Total Completion of the demolition of the Existing Port Mann Bridge, then if the Force Majeure Event occurs:
 - (A) prior to the Existing Port Mann Bridge Demolition Target Date, then the Existing Port Mann Bridge Demolition Target Date shall be postponed; or
 - (B) after the Existing Port Mann Bridge Demolition Target Date but prior to Total Completion of demolition of the Existing Port Mann Bridge, then the PMB Demolition LDs shall be abated,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused by the Force Majeure Event to the relevant date or dates, and in each case the Project Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to other related milestone dates set out therein.

- (c) [Intentionally Deleted]

8.6 Termination for Force Majeure Event

- (a) If the occurrence of a Force Majeure Event:
 - (i) frustrates or renders impossible for a continuous period of more than 180 days the performance by the Authority of its respective obligations with respect to all or a material portion of the Project or the DB Work, as the case may be, so as to frustrate the overall purpose and intent of the Project; or
 - (ii) that takes place after the Tolling Commencement Date, results in the Authority being substantially unable to collect tolls in respect of the Concession Highway and either:
 - (A) in the bona fide written opinion of an independent and duly qualified firm of engineers jointly engaged and jointly paid by the Authority and the Constructor, with the exercise of reasonable diligence, the substantial inability of the Authority to collect tolls in respect of the Concession Highway is reasonably expected to continue for a continuous period of more than 180 days; or
 - (B) the substantial inability of the Authority to collect tolls in respect of the Concession Highway in fact continues for a continuous period of more than 180 days,

then either the Authority or the Constructor may at any time, provided that such frustration, rendering impossible or substantial inability to collect tolls, as the case may be, is then continuing, terminate this Agreement by notice to the other party having immediate effect, subject to Sections 8.1(b) and 14.7 [Notice of Intention to Terminate and Dispute], provided that, if the Authority does not exercise such right to terminate within 180 days of the occurrence of such Force Majeure Event but the Constructor does

so exercise such right, the Authority may by notice to the Constructor reject such termination of this Agreement by the Constructor and upon such rejection by the Authority:

- (iii) without prejudice to the other relief available to the Authority in respect of such Force Majeure Event pursuant to Section 8.5 [Parties' Entitlements Upon Occurrence of a Force Majeure Event], the Constructor shall be compensated in accordance with Section 8.3(b), but only in respect of Direct Losses incurred or to be incurred by the Constructor as a result of the Force Majeure Event as and from the date of the exercise by the Constructor of its termination right; and
 - (iv) the Authority may at any time thereafter terminate this Agreement by notice to the Constructor having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute].
- (b) If this Agreement is terminated by either the Authority or the Constructor pursuant to Section 8.6(a), compensation on termination shall be payable in accordance with Part 3 [Supervening Events] and Part 4 [General] of Schedule 13.

8.7 Termination for Damage or Destruction

If all or any substantial part of the Concession Bridge(s), the Project Infrastructure or the Project Site is damaged or destroyed, provided, in the case of damage to or destruction to the Existing Port Mann Bridge, such damage or destruction occurs prior to the first to occur of Substantial Completion of the Central Segment and the date the Existing Port Mann Bridge is taken out of service, as a result of the occurrence of:

- (a) any event (other than a Force Majeure Event, or a Compensation Event referred to in subsection (v) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1) and:
 - (i) the information provided by the Constructor and approved by the Authority's Representative as part of the Reinstatement Plan pursuant to Section 6.16 [Reinstatement Plan] establishes that there are insufficient funds available to the Authority from all sources to allow the completion of the Reinstatement Work (the "**Reinstatement Funds Deficiency**"); and
 - (ii) the Authority has not agreed 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 Concession Bridge(s), Project Infrastructure or Project Site results from or is contributed to by a Constructor Non-Excusable Event, including as a result of a failure by the Constructor to comply with and implement all design requirements specified in the DB Requirements applicable to the damaged Concession Bridge(s), Project Infrastructure or Project Site, the

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Authority may terminate this Agreement by notice to the Constructor having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 2 [Construction Default] and Part 4 [General] of Schedule 13; or]

- (B) the cause of the Reinstatement Funds Deficiency is a breach by the Authority of any of its obligations with respect to insurance set out in Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements], either the Constructor or the Authority may terminate this Agreement by notice to the other party having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 1 [Construction Default] and Part 4 [General] of Schedule 13; or
- (iv) in any case where Section 8.7(a)(iii) does not apply, either the Constructor or the Authority may terminate this Agreement by notice to the other party having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 3 [Supervening Events] and Part 4 [General] of Schedule 13; or
- (b) a Compensation Event referred to in subsection (v) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Authority shall elect, by notice to the Constructor having immediate effect, either:
 - (i) to compensate the Constructor in accordance with Section 8.3(b), and this Agreement will continue; or
 - (ii) subject to Section 14.7 [Notice of Intention to Terminate and Dispute], to terminate this Agreement, in which event compensation on termination shall be payable in accordance with Part 3 [Supervening Events] and Part 4 [General] of Schedule 13.

8.8 Responsibility for Participants and Trespassers

- (a) Except as otherwise expressly provided in this Agreement, neither the Authority nor the Province nor BCTFA shall be responsible for the presence on or around or entry onto or around the Project Site or the Project Infrastructure, or any other interference with or affecting the Project Site or the Project Infrastructure or the vicinity of them or the DB Work by or caused by, any participants (“**Participants**”) in a Labour Dispute or a Protest Action, or any persons other than Participants not entitled to be on the Project 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 Construction Period). The presence on or around or entry onto or around the Project Site or the Project Infrastructure of, or any other interference with or affecting the Project Site or the Project Infrastructure or the vicinity of them or the DB 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 Authority hereunder to permit the Constructor to have access to the Project Site, nor a breach of any other obligation or representation or warranty of the Authority under this Agreement.

- (b) The management of any Participants and/or any Trespassers during the Construction Period shall be the responsibility of the Constructor. If at any time during the Construction Period any part of the Project Site or the Project Infrastructure is occupied by Participants and/or Trespassers, then as soon as reasonably practicable the Constructor shall notify the Authority of such occurrence and of the action which the Constructor proposes to take to deal with such Participants and/or Trespassers. The Constructor may exercise any legal remedies available to it to remove Participants and/or Trespassers (including the obtaining of injunctions and enforcement orders in respect thereof), provided that the Constructor shall give the Authority's 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 Constructor 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 Constructor 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 Constructor may request the assistance of the Authority (at the cost of the Constructor) to remove Participants where the Constructor demonstrates to the Authority's reasonable satisfaction that it has exercised all legal remedies available to it to remove the Participants (provided that for this purpose the Constructor 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 DB Work that the Constructor is unable to mitigate. The Authority acknowledges that it may be required to be a party to any such Court action and in the event that the Authority requires or obtains legal representation separate to that of the Constructor, the Authority agrees to be responsible for the payment of such separate legal representation. Following such request, the Authority shall notify the Constructor whether the Authority can lawfully provide any assistance in relation to the removal of the Participants that is not independently available to the Constructor and, to the extent that such assistance can be lawfully provided, the Authority shall provide such assistance (at the Constructor's cost) to the extent it is, in the discretion of the Authority, reasonable and appropriate in the circumstances to do so.
- (d) Where the Constructor is given assistance by the Authority in accordance with Section 8.8(c) hereof, the Constructor shall indemnify and hold harmless the Authority and the Authority Indemnified Persons, and each of them, in respect of all Direct Losses and/or Claims suffered or incurred by the Authority and the Authority Indemnified Persons, or any of them, as a result of or in connection with the provision of such assistance.

8.9 Allocation of Risks of Participants and Trespassers

- (a) In the event of any Protest Action, the Constructor shall be entitled to compensation, extensions of time and/or other relief in respect thereof as a Compensation Event in accordance with this Part and the following additional parameters:
- (i) the Constructor shall only be entitled to extensions of time in respect of Protest Actions pursuant to Section 8.3(c) [Constructor's Entitlements Upon Occurrence of a Compensation Event] if and to the extent that the Constructor establishes that the Participants in such Protest Action continue to occupy any part of the Project Site or the Project Infrastructure for a period of more than seven days after the Constructor 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 Constructor may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the Court of first instance); and
 - (ii) the Constructor shall only be entitled to compensation in respect of Protest Actions pursuant to Section 8.3(b) [Constructor's Entitlements Upon Occurrence of a Compensation Event], if and, subject to Section 8.11 [Effect of Insurance], to the extent that the Constructor establishes that it has incurred during the Construction Period costs to mitigate the effects of Protest Actions, including:
 - (A) the costs of exercising any legal remedy available to the Constructor in respect of Protest Actions (including in accordance with its obligations under Section 8.8 [Responsibility for Participants and Trespassers]);
 - (B) the increased costs, including financing costs, attributable to any extension of time to which the Constructor 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 (excluding amounts referred to in Section 8.11 [Effect of Insurance]) more than \$200,000 (index linked),
- provided that the limitations on the compensation and extensions of time available to the Constructor from that otherwise available to the Constructor in the event of a Compensation Event, as set out in Sections 8.9(a)(i) and 8.9(a)(ii) hereof, shall not apply to the extent that such Protest Action arose, directly or indirectly, as a result of any Authority Non-Excusable Event.
- (b) Except as expressly provided in Section 8.9(a), as between the Authority and the Constructor the Constructor shall bear, without recourse to the Authority, any Losses suffered by:
- (i) the Constructor, its agents, Subcontractors or employees of any of them;

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- (ii) the Authority to the extent such Losses are Direct Losses arising:
 - (A) from any interference, obstruction, or other hindrance to the Project including the presence of a Participant and/or Trespasser on the Project Site or the Project Infrastructure;
 - (B) from any damage caused to the Project Infrastructure;
 - (C) as a result of any measures taken by or on behalf of or at the request or direction of the Constructor; and/or
 - (D) as a result of the failure by the Constructor to take or cause to be taken measures which should have been taken,

that are caused by any Participant and/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 Authority, the Province or BCTFA to make or recover any Claim against any Participant or Trespasser for public nuisance or for damage suffered by the Authority, 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 Constructor to make or recover any Claim against any Participant or Trespasser for damage suffered by the Constructor, its agents or Subcontractors or any employees of any of them.

8.10 Sharing of Increased Costs in Specified Circumstances

- (a) In the event that the occurrence of a Change in Law other than:
 - (i) a Discriminatory Change in Law;
 - (ii) a Change in Law relating to Taxes; or
 - (iii) a Change in Law occurring prior to the Total Completion Date and affecting only the DB Requirements relating to the Construction Activities,

changes the DB Requirements to alter, add, demolish, extend or vary the quality or function of the Project Infrastructure and thereby causes the Constructor to incur additional costs to perform DB Work which the Constructor would not have incurred but for such occurrence, then the Constructor shall be entitled, subject to the Constructor's obligations under Section 4.10 [Mitigation By Constructor], to receive compensation in respect of such additional aggregate costs to perform the DB Work incurred by the Constructor as a direct consequence of all occurrences of such Change in Law during the Term (the "**Additional Change in Law Costs**") in an amount calculated in accordance with Table 8.10(a) set forth below.

Table 8.10(a) Sharing of Additional Change in Law Costs

Additional Change in Law Costs	Authority Share of Additional Change in Law Costs	Constructor Share of Additional Change in Law Costs	Maximum Cumulative Constructor Share of Additional Change in Law Costs during Term
Applicable to first [redacted]			
Applicable to next incremental [redacted]			
Applicable to amount over [redacted]			

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- (b) In the event that the existence of any Non-Foreseeable Contamination or any Intervening Subsequent Contamination causes the Constructor to incur additional costs to perform the DB Work in accordance with this Agreement which the Constructor would not have incurred but for such existence, then the Constructor shall be entitled, subject to the Constructor’s obligations under Section 4.10 [Mitigation By Constructor], to receive compensation in respect of such additional aggregate costs to perform the DB Work incurred by the Constructor as a direct consequence of the existence of all such Non-Foreseeable Contamination and Intervening Subsequent Contamination during the DB Term (the “Additional Contamination Costs”) in an amount calculated in accordance with Table 8.10(b) set forth below.

Table 8.10(b) Sharing of Additional Contamination Costs

Additional Contamination Costs	Authority Share of Additional Contamination Costs	Constructor Share of Additional Contamination Costs	Maximum Cumulative Constructor Share of Additional Contamination Costs during Term
Applicable to first [redacted]			
Applicable to next incremental [redacted]			
Applicable to amount over [redacted]			

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- (c) In the event that the discovery of any Undisclosed Utilities causes the Constructor to incur additional costs to perform the DB Work and otherwise comply with the DB Requirements as a result of the existence or actual location of such Utilities which the Constructor would not have incurred but for such discovery, then the Constructor shall be entitled, subject to the Constructor’s obligations under Section 4.10 [Mitigation By

Constructor], to receive compensation in respect of such additional costs to perform the DB Work incurred by the Constructor as a direct consequence of the discovery of all such Undisclosed Utilities during the Term (the "Additional Utilities Costs") in an amount calculated in accordance with Table 8.10(c) set forth below.

Table 8.10(c) Sharing of Additional Utilities Costs

Additional Utilities Costs	Authority Share of Additional Utilities Costs	Constructor Share of Additional Utilities Costs	Maximum Cumulative Constructor Share of Additional Utilities Costs during Term
Applicable to first [redacted]			
Applicable to next incremental [redacted]			
Applicable to amount over [redacted]			

Section 17

8.11 Effect of Insurance

Notwithstanding anything to the contrary in this Part 8 [Supervening Events], the Constructor shall not be entitled to any compensation under this Part 8 [Supervening Events] in respect of any Supervening Event to the extent, in respect of the Supervening Event:

- (a) that the Constructor recovers or is entitled to recover under any Authority Required Insurance, or would have been entitled to recover under any Authority Required Insurance but for any act or omission of the Constructor or any person for whom the Constructor is in law responsible; or
- (b) that the Constructor recovers or is entitled to recover under any DB Required Insurance, or would have been able to recover under any DB Required Insurance if such DB Required Insurance had been taken out and maintained in accordance with this Agreement, whether or not such DB Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Constructor (or by any person for whom the Constructor 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 (excluding only vitiation caused by any act or omission of the Authority or any person for whom the Authority is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies); or
- (c) that the Constructor recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Constructor has in fact taken out and maintained; or

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- (d) that there are proceeds of insurance held by the Authority pursuant to Section 6.18(b) that are (subject to the Constructor 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
- (e) that the Authority makes, or is obligated under this Agreement (subject to the Constructor fulfilling all conditions thereto) to make, payment to or for the account of or on behalf of the Constructor under Section 6.18 [Application of Proceeds of Insurance]; or
- (f) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 8.11(a) and (c) for which the Constructor is responsible;

provided that, in the case of a Compensation Event described in subsection (s) or subsection (v) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Authority shall not reduce pursuant to this Section 8.11 [Effect of Insurance] the compensation it would otherwise have paid under this Part 8 [Supervening Events], by reason of proceeds of insurance that the Constructor recovers or is entitled to recover up to the following limits:

- (g) in the case of all Compensation Events described in subsection (s) of the definition of Compensation Event, up to an aggregate limit over the DB Term of \$200,000; and
- (h) in the case of a Compensation Event described in subsection (v) of the definition of Compensation Event, up to a limit of \$5,000,000 per Seismic Event.

8.12 Delay in Notification

- (a) If a Supervening Event Notice is provided by an Applicant to the other party more than 12 months after the date of the occurrence or commencement of such Supervening Event contrary to Section 8.1(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 party after the relevant dates referred to in Section 8.2 [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 was increased as a result of such delay in providing such notice or information.

PART 9**INDEMNITIES, LIMITATIONS ON LIABILITY AND LIQUIDATED DAMAGES****9.1 Indemnification by Constructor**

Without limiting the Constructor's obligations and liabilities under Section 2.3 [Assumption of Risk and Responsibility], and subject to Section 9.2 [Exceptions to Indemnification by Constructor], the Constructor shall indemnify and hold harmless the Authority and the Authority Indemnified Persons, and

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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 Authority and the Authority 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, the DB Work, or any use or occupation of or event, loss or occurrence on or relating to the Project Site or the Project Infrastructure during the Construction Period, or any obligation of the Constructor under this Agreement, including 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, without limitation, damage to or loss of:
 - (i) all or any part of the Project Infrastructure or any other property belonging to the Authority, the Province or BCTFA or for which any of them is responsible;
 - (ii) Infrastructure or property of any Governmental Authority or other Relevant Authority, or of any Utility Supplier, Railway or other third party; and
 - (iii) lands (and improvements thereon) adjacent to the Project Site;
- (c) for or in respect of any damage to or loss of Plant or Construction Plant;
- (d) suffered by the Constructor or any person for whom the Constructor is in law responsible or any employees of any of them or any user of the Concession Highway or other third party, that arise out of or in the course of or in connection with or as a result of the DB Work or the use or occupation of the Project Site and the Project Infrastructure or any part thereof (including any Claims in respect of environmental mitigation measures);
- (e) caused by or arising from or relating to any act or omission of any user of the Project Site or the Project Infrastructure or other person on or about the Project Site or the Project Infrastructure;
- (f) arising as a result of or in connection with any adoption, use or application by or on behalf of the Constructor or any Subcontractor, or any other person for whom the Constructor is in law responsible, of any Design Data, Disclosed Data or other data or documents provided or made available by or on behalf of the Authority, the Province or BCTFA, whether before or after execution of this Agreement, except as expressly provided in Section 2.15(d);
- (g) [Intentionally Deleted]
- (h) that are to be borne by the Constructor in accordance with Section 8.8 [Responsibility for Participants and Trespassers] or Section 8.9 [Allocation of Risks of Participants and Trespassers] or that arise out of or in connection with any measures taken or not taken by the Constructor, or by or on behalf of or the Authority at the request of the Constructor, against or in connection with Participants or Trespassers;

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- (i) arising as a result of or in connection with any act or omission of the Constructor or any person for whom the Constructor is in law responsible or employees of any of them that directly or indirectly causes any breach of any statutory duties or obligations;
- (j) arising as a result of 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 a Governmental Authority in respect of Existing Contamination or Subsequent Contamination;
- (k) arising as a result of or in connection with any infringement or misappropriation of any other person's Intellectual Property Rights or breach of obligations of confidentiality by the Constructor or any person for whom the Constructor is in law responsible;
- (l) arising as a result of or in connection with any breach in the due observance and performance of any of the obligations of the Constructor under this Agreement or any of the other Project Documents to which the Constructor is a party;
- (m) arising as a result of or in connection with any wrongful act, wrongful omission, negligence or wilful misconduct of the Constructor or persons for whom the Constructor is in law responsible; or
- (n) arising as a result of or in connection with any breach of any repair, correction or warranty obligations of the Constructor under this Agreement, including the obligations to correct DB Work Defects and DB Work Latent Defects under Part 5A [DB Work].

9.2 Exceptions to Indemnification by Constructor

The obligations of the Constructor to indemnify under Section 9.1 [Indemnification by Constructor] (and, to the extent this Section (or any subsection of this Section) is expressly made applicable thereto, under other indemnities under this Agreement) shall not apply to any Claims or Direct Losses to the extent that:

- (a) the Authority is obligated to indemnify the Constructor in respect of Claims and Direct Losses arising out of the same events or circumstances pursuant to Section 9.5 [Indemnification by Authority] or Section 9.6 [Limited Indemnity for Contamination];
- (b) the Claims or Direct Losses are directly attributable to:
 - (i) any wilful misconduct by the Province on the Project Site or the Project Infrastructure; or
 - (ii) any wilful misconduct or breach in the due performance or observance of any of the Authority's obligations under this Agreement or any other Authority Project Document, by the Authority or any person for whom the Authority is in law responsible;
- (c) the Claims or Direct Losses are directly attributable to:
 - (i) an Authority Change;

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- (ii) a Compensation Event or Force Majeure Event to the extent such Compensation Event or Force Majeure Event does not arise or result (directly or indirectly) from any Constructor Non-Excusable Event; or
- (iii) an event or circumstance in respect of which the Authority is obligated to compensate the Constructor under Section 8.10 [Sharing of Increased Costs in Specified Circumstances], but only to the extent of the Authority's obligation under that Section;

and provided that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Constructor Non-Excusable Event;

- (d) the Authority and/or the Authority Indemnified Persons, as the case may be:
 - (i) have received insurance proceeds in respect of such Claims and Direct Losses under the DB Required Insurance;
 - (ii) [Intentionally Deleted]
- (e) the Claims or Direct Losses arise as a result of or in connection with any Non-Foreseeable Contamination, Intervening Subsequent Contamination, Authority Subsequent Contamination, or Contamination for which the Authority is responsible under Part 4 [Remediation of Designated Lands by Authority] of Schedule 6 of this Agreement, and do not arise as a result of or in connection with:
 - (i) a Constructor Non-Excusable Event in the performance or non-performance of the Constructor's Environmental Obligations with respect to such Contamination; or
 - (ii) the Constructor or any person for whom the Constructor is in law responsible causing, contributing to or exacerbating any such Contamination; or
- (f) [Intentionally Deleted]
- (g) the Claims or Direct Losses relate to rent, user fees, property taxes (if any) or occupancy costs that are or become payable by the Province or BCTFA under Project Site Agreements or Project Site Encumbrances to the extent that the Authority is not obligated to pay such amounts pursuant to Section 5.3 [Exception to Authority Responsibilities] of Schedule 8 of this Agreement.

9.3 Effect of Indemnities

Subject to Section 9.12 [No Double Compensation]:

- (a) the Constructor's liability to the Authority and the Authority Indemnified Persons, or any of them, under any indemnity in this Agreement is without prejudice to any other right or remedy available to the Authority and the Authority Indemnified Persons, or any of them, provided that any Claim of the Authority against the Constructor in respect of the subject matters of the indemnity in Section 9.1 [Indemnification by Constructor], if made

in tort or for breach of contract rather than for indemnification under Section 9.1 [Indemnification by Constructor], shall be subject to the exceptions set out in Section 9.2 [Exceptions to Indemnification by Constructor] to the same extent as if the Claim had been made under Section 9.1 [Indemnification by Constructor]; and

- (b) any obligation of the Constructor 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 Constructor to indemnify and hold harmless under any other provision of this Agreement.

9.4A Liquidated Damages

The Authority and the Constructor acknowledge and agree that:

- (a) there will be substantial delays, costs and difficulties in determining the loss suffered by the Authority if a Liquidated Damages Event occurs;
- (b) upon the occurrence of a Liquidated Damages Event and the presentment by the Authority of an invoice, together with reasonable supporting documentation, the Constructor will immediately pay to the Authority, as liquidated damages and not as a penalty, the Liquidated Damages payable in respect of such Liquidated Damages Event in an amount calculated in accordance with Schedule 32 [Liquidated Damages]; and
- (c) the calculation of Liquidated Damages in accordance with Schedule 32 [Liquidated Damages] represents a fair and reasonable pre-estimate of the actual Direct Losses that will be incurred by the Authority as a result of the occurrence of a Liquidated Damages Event.

9.4B Certain Limitations on Constructor Liability

Notwithstanding any other provision of this Agreement:

- (a) the maximum liability of the Constructor for Liquidated Damages on account of a Liquidated Damages Event shall not exceed [REDACTED] The Constructor Section 17 and 21 acknowledges that this Section 9.4B(a) does not limit or in any way affect the Constructor's payment obligations under Schedule 10 [Performance Mechanism] of this Agreement; Section 17 and 21
- (b) the maximum aggregate liability of the Constructor under this Agreement (the "Damages Cap") shall not exceed [REDACTED] of the Contract Price, inclusive of the amount of any Liquidated Damages payable pursuant to Section 9.4A [Liquidated Damages]. The Damages Cap is not intended to limit or otherwise detract from the obligation of the Constructor to perform the DB Work for the Contract Price (including cost overruns), and accordingly, the Damages Cap shall not be applicable (meaning that the following forms of Constructor liability shall not be counted towards or in any way be limited by the Damages Cap):

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- (i) in respect of Claims by persons, other than by the Authority or any Subcontractor or their respective Affiliates, officers, employees, directors or shareholders;
 - (ii) in respect of bodily injury and death;
 - (iii) in respect of abandonment, fraud and fraudulent misrepresentations or wilful default or wilful misconduct;
 - (iv) in respect of breach of statutory duty or non-compliance with law as a result of fraud or wilful misconduct by or on behalf of the Constructor;
 - (v) in respect of risks insured by the Required Insurance to the extent that proceeds of insurance are actually received by the Constructor from the Required Insurance; and
 - (vi) in respect of Claims or Losses arising as a result of or in connection with a breach by the Constructor or any person for whom the Constructor is in law responsible of any Environmental Laws.
- (c) the Constructor shall have no liability in excess of the Liquidated Damages for a loss of Toll Revenue to the extent such loss arises out of or in connection with a Liquidated Damages Event; and
- (d) the Constructor shall have no liability howsoever arising whether in contract, tort or on any basis whatsoever (including any obligation to correct any DB Work Latent Defects), under this Agreement after the sixth anniversary of the Total Completion Date, other than in respect of liabilities (i) which have arisen prior to such date, (ii) in respect of which the Authority has notified the Constructor in accordance with this Agreement, and (iii) which remain unresolved as of such date.

9.4 Conduct of Claims Indemnified by Constructor

- (a) If the Authority or any Authority Indemnified Person (in this Section individually referred to as an “**Indemnified Party**” and collectively referred to as the “**Indemnified Parties**”) receives any notice, demand, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Constructor under this Agreement, the Indemnified Party shall give notice to the Constructor 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 except to the extent that such failure materially and adversely affects or prejudices the ability to defend or contest the Claim.
- (b) Subject to Sections 9.4(c), (d), (e), (f) and (g), on the giving of a notice pursuant to Section 9.4(a) the Constructor 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 Constructor’s own 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 Constructor 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 Constructor 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 Constructor 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 9.4(b) shall be through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and the Constructor, acting reasonably. If:
- (i) the Constructor 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 Constructor or some other person who may be represented by counsel retained by the Constructor;
 - (iii) it appears that an Indemnified Party might not be entitled to indemnification by the Constructor in respect of all of the liability arising out of the Claim, unless the Constructor 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 Constructor 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 Constructor 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 from the Constructor. 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 Constructor 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 Constructor and its counsel shall (at the cost of the Constructor) 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 9.4(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 9.4(f).

- (d) With respect to any Claim that is subject to Section 9.4(b):
- (i) the Constructor 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 Constructor for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 9.4(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 Constructor;
 - (iii) the Constructor 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 consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;
 - (iv) the Constructor shall not bring the name of the Indemnified Party into disrepute; and
 - (v) the Constructor shall resist the Claim with all due diligence and in a timely manner.
- (e) If:
- (i) within 30 days after the notice from the Indemnified Party under Section 9.4(a) the Constructor fails to notify the Indemnified Party of its intention to resist the Claim pursuant to Section 9.4(b); or
 - (ii) the Constructor fails to comply in any material respect with the provisions of Section 9.4(d);

the Indemnified Party shall be free to pay or settle any Claim on such terms as it may think fit, without prejudice to its right to indemnification by the Constructor and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 3.2 [Mitigation By Authority] and 9.10 [Costs and Expenses].

- (f) The Indemnified Party shall be free at any time to give notice to the Constructor that the Indemnified Party is taking over the conduct of any defence, dispute, compromise or appeal of any Claim that is subject to Section 9.4(b) or of any incidental negotiations. Upon receipt of such notice the Constructor 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,

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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 9.4(f), then, except as otherwise expressly provided by this Agreement, the Constructor 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 Constructor to resist the Claim with all due diligence and in a timely manner or to otherwise perform its obligations in accordance with this Section 9.4.

- (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.

9.5 Indemnification by the Authority

Subject to Sections 6.4 [Deductibles], 6.6 [Release of the Authority for Insured Loss], and 9.7 [Exceptions to Indemnification by the Authority], the Authority shall indemnify and hold harmless the Constructor and the Constructor Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by the Constructor and the Constructor Indemnified Persons, or any of them, to the extent resulting from any negligent act or negligent omission of the Authority or any person for whom the Authority is in law responsible, in relation to the DB Work, the Project Site or the Project Infrastructure, other than:

- (a) Claims and Direct Losses arising as a result of or in connection with any negligent act or negligent omission of the Authority or any person for whom the Authority is in law responsible referred to in either of Sections 2.13(b) [Review, Approval, Inspection and Audit by Authority] or 2.15 [Disclosed Data];
- (b) Claims and Direct Losses arising as a result of or in connection with the matters referred to in Section 9.1(h) to the extent any such Claim or Direct Loss has not been caused or contributed to by the failure of the Authority to perform its obligations in accordance with Schedule 8 [Lands];
- (c) Claims and Direct Losses arising as a result of or in connection with negligent acts or negligent omissions occurring prior to the date of this Agreement or after the Termination Date;
- (d) Claims and Direct Losses arising as a result of 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 this exclusion shall not prejudice the Constructor's rights:
 - (i) under Section 9.6 [Limited Indemnity for Contamination]; or
 - (ii) in respect of any negligent act or negligent omission of the Authority, or any person for whom the Authority is in law responsible, in carrying out remediation

in respect of a parcel of Designated Lands pursuant to Section 4.4 [Remediation According to Report and Remediation Plan] of Schedule 6;

and

- (e) Claims and Direct Losses arising as a result of or in connection with any negligent act or negligent omission of the Authority or any person for whom the Authority is in law responsible in the course of taking action under any of Sections 11.4(a), 11.4(b) and 11.5(a) except to the extent of any failure of the Authority or any Third Party Contractor engaged by the Authority for the purposes of exercising the Authority's rights under any of those Sections to comply with all applicable Laws and Permits in the course of exercising the Authority's rights under any of those Sections.

9.6 Limited Indemnity for Contamination

The Authority shall, solely for the purpose of holding the Constructor 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 Authority aside from any cause of action for recovery of such losses or damages awarded by a court to such Relevant Third Party against the Constructor pursuant to such Relevant Third Party claim), indemnify and hold harmless the Constructor in respect of any Claims and Direct Losses arising from any damage, injury or other harm suffered by such Relevant Third Party and/or Relevant Property that was caused by Existing Contamination, Intervening Subsequent Contamination or Authority Subsequent Contamination that migrated or leached into or onto the Relevant Property, except to the extent such migration or leaching of such Existing Contamination, Intervening Subsequent Contamination or Authority Subsequent Contamination (and/or damage, injury or other harm suffered) was caused or contributed to by any act or omission of the Constructor or any person for whom the Constructor is in law responsible after the Constructor had knowledge of the Existing Contamination, Intervening Subsequent Contamination or Authority Subsequent Contamination, as the case may be.

9.7 Exceptions to Indemnification by the Authority

The obligations of the Authority to indemnify under Section 9.5 [Indemnification by the Authority] or Section 9.6 [Limited Indemnity for Contamination] shall not apply to any Claims or Direct Losses to the extent that:

- (a) the Claims or Direct Losses are directly attributable to any Constructor 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 7 [Authority Changes and Constructor Proposals], Part 8 [Supervening Events] and Schedule 13 [Compensation on Termination]).

9.8 Limitation of Authority Liability

The Authority shall not under any circumstances be liable to the Constructor or any of the Constructor Indemnified Persons or any persons for whom the Constructor 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 Authority or any persons for whom the Authority is in law responsible, for

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any Claims or Direct Losses of any person arising out of or in the course of or in connection with the DB Work or any Existing Contamination or Subsequent Contamination. The foregoing limitation of liability shall not apply in relation to any liability of the Authority for:

- (a) Claims and Direct Losses to the extent the Authority must indemnify the Constructor therefor under Sections 9.5 [Indemnification by the Authority], 9.6 [Limited Indemnity for Contamination] and 9.7 [Exceptions to Indemnification by the Authority];
- (b) any failure by the Authority to make proper payment to the Constructor in accordance with the terms of this Agreement; or
- (c) any breach of the Authority's obligations under this Agreement, except where the Constructor has an express remedy under this Agreement in respect of such breach, which remedy shall be exhaustive of the Constructor's rights in respect of such breach.

9.9 Conduct of Claims Indemnified by the Authority

- (a) If the Constructor or any Constructor Indemnified Person (in this Section individually referred to as an "**Indemnified Party**" and collectively referred to as the "**Indemnified Parties**") receives any notice, demand, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Authority under this Agreement, or to compensation by the Authority in respect of a Supervening Event under Part 8 [Supervening Events], the Indemnified Party shall give notice to the Authority as soon as reasonably practicable and in any event within 30 days after receipt thereof, or in accordance with Part 8 [Supervening Events], if applicable, provided that, subject to Section 8.12 [Delay in Notification], 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 Constructor under the applicable indemnity or compensation provision except to the extent that such failure materially and adversely affects or prejudices the ability to defend or contest the Claim.
- (b) Subject to Sections 9.9(c), (d), (e) and (f), on the giving of a notice pursuant to Section 9.9(a) the Authority 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 Authority'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 Authority 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 Authority 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 Authority 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 9.9(b) shall be through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and the Authority, acting reasonably. If:

- (i) the Authority 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 Authority or some other person who may be represented by counsel retained by the Authority;
- (iii) it appears that an Indemnified Party might not be entitled to indemnification or compensation by the Authority in respect of all of the liability arising out of the Claim, unless the Authority 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 compensation provisions; or
- (iv) the Authority 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 or compensation obligations of the Authority, as applicable, 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 Authority. 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 or compensation obligations of the Authority, as applicable, 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 Authority and its counsel shall (at the cost of the Authority) 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.

- (d) With respect to any Claim that is subject to Section 9.9(b):
 - (i) the Authority shall keep 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 Authority for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 9.9(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 or compensation provision from the Authority;
 - (iii) the Authority 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

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consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;

- (iv) the Authority shall not bring the name of the Indemnified Party into disrepute; and
 - (v) the Authority shall resist the Claim with all due diligence and in a timely manner.
- (e) If:
- (i) within 30 days after the notice from the Indemnified Party under Section 9.9(a) the Authority fails to notify the Indemnified Party of its intention to resist the Claim pursuant to Section 9.9(b); or
 - (ii) the Authority fails to comply in any material respect with the provisions of Section 9.9(d);

the Indemnified Party shall be free to pay or settle the Claim on such terms as it may think fit, without prejudice to its right to indemnification or compensation by the Authority and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 4.10 [Mitigation By Constructor] and 9.10 [Costs and Expenses].

- (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.

9.10 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.

9.11 No Liability for Indirect Losses

Notwithstanding any other provision of this Agreement, neither party to this Agreement shall be obligated to pay to the other party to this Agreement, or liable to the other party to this Agreement for, whether in contract or in tort or on any other basis whatsoever, any Indirect Losses.

9.12 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

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failure pursuant to this Agreement or otherwise, and, for the purposes of this Section, Non-Compliance Remittances, Unavailability Events Remittances and Construction Period Traffic Management Remittances shall only be considered compensation to the Authority in respect of the breaches or failures by the Constructor 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 Authority to claim and recover from the Constructor, subject to the other provisions of this Agreement, Direct Losses to the extent any such payment does not compensate the Authority in full for such Direct Losses, and such right of the Authority is hereby expressly preserved.

9.13 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 8 [Supervening Events] (in which case Section 8.11 [Effect of Insurance] applies), the Authority shall not be liable to the Constructor, whether in contract or in tort or on any other basis whatsoever, for any Claims or Direct Losses, and any amounts payable by the Authority shall be reduced, to the extent, in respect of such Claims or Direct Losses:

- (a) that the Constructor recovers or is entitled to recover under any Authority Required Insurance, or would have been entitled to recover under any Authority Required Insurance but for any act or omission of the Constructor or any person for whom the Constructor is in law responsible; or
- (b) that the Constructor recovers under any DB Required Insurance, or would have been able to recover under any DB Required Insurance if such DB Required Insurance had been taken out and maintained in accordance with this Agreement whether or not such DB Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Constructor (or of any person for whom the Constructor 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 (excluding only vitiation caused by any act or omission of the Authority or any person for whom the Authority is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies); or
- (c) that the Constructor recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Constructor has in fact taken out and maintained; or
- (d) that there are proceeds of insurance held by the Authority pursuant to Section 6.18(b) that are (subject to the Constructor fulfilling all conditions to the disbursement thereof) available for satisfaction of such Claims or Direct Losses, in whole or in part; or
- (e) that the Authority makes, or is obligated under this Agreement (subject to the Constructor fulfilling all conditions thereto) to make, payment to or for the account of or on behalf of the Constructor under Section 6.18 [Application of Proceeds of Insurance]; or
- (f) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 9.13(a) and (c) for which the Constructor is responsible.

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9.14 [Intentionally Deleted]

9.15 Survival

The provisions of this Part 9 [Indemnities, Limitations on Liability and Liquidated Damages] and each other indemnity contained in this Agreement shall survive the expiration or termination of this Agreement.

**PART 10
PAYMENTS**

10.1A Contract Price

The Constructor shall perform its obligations under this Agreement for the contract price (including PST but excluding GST) of \$2,398,000,000 (the "**Contract Price**"). The Contract Price is not subject to change except as expressly provided in this Agreement.

10.2A Early Completion Bonus

Section 17

- (a) Provided that the Tolling Commencement Date has occurred prior to the Tolling Commencement Target Date, the Authority shall pay to the Constructor a bonus payment (the "**Early Completion Bonus**") equal to [REDACTED] percent of the Earned Toll Revenue for the period commencing on the Tolling Commencement Date and concluding on (but not including) the Tolling Commencement Target Date (the "**Toll Bonus Period**"), where "**Earned Toll Revenue**" means the gross toll revenue charged during the Toll Bonus Period assuming full payment when due of the appropriate toll for all vehicles (and for clarity, excluding all fines, penalties, interest and other charges for non-payment or late payment of tolls whenever charged or received).
- (b) The Authority shall, no later than 30 days following the Tolling Commencement Target Date, notify the Constructor of the Earned Toll Revenue for the Toll Bonus Period, and shall pay the Early Completion Bonus to the Constructor within 30 days of such notification.

10.3A Progress Payments

The Contract Price shall be paid by the Authority to the Constructor in monthly progress payments in accordance with the following procedure:

- (a) The Constructor shall prepare a draft draw request in the form attached as Schedule 31 [Form of Draw Request] for DB Work progressed during the period ending as at the second to last Saturday of each month (the "**Cut-off Date**"), specifying the payment required in respect of such portion of the DB Work for such month (the "**Draw Request**").
- (b) The Draw Request shall:

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- (i) show the percentage completion of each item of DB Work, including separately itemized construction costs (including stockpiled materials), soft costs, fees and applicable taxes; and
- (ii) set forth the amount payable.

At no time will the cumulative amount of progress payments made pursuant to this Part exceed the amount specified in the Maximum Payment Curve based upon the DB Work completed to the date of the Draw Request.

- (c) The Draw Request shall constitute a representation and warranty by the Constructor to the Authority that:
 - (i) the DB Work has progressed to the point indicated and meets or is ahead of the progress required pursuant to the Project Schedule or a submitted Recovery Plan, as applicable;
 - (ii) the itemized costs, fees and taxes have been properly expended;
 - (iii) the design and the quality of the DB Work covered by the Draw Request are in accordance with the Constructor's obligations under this Agreement;
 - (iv) all of its Subcontractors have been paid in full up to the last payment, subject to holdbacks required by the Constructor and this Agreement and pursuant to the *Builders Lien Act* (British Columbia), if applicable;
 - (v) no Adverse Claims exist with respect to or as a result of or in relation to the DB Work;
 - (vi) the Constructor is entitled to payment in the amount requested;
 - (vii) no Constructor Default has occurred which is continuing;
 - (viii) except as communicated in writing to the Authority, to the best of the Constructor's knowledge, there has not been any material adverse change in the Constructor's ability to perform its obligations under this Agreement; and
 - (ix) except as communicated in writing to the Authority, to the best of the Constructor's knowledge, no event or circumstance exists which:
 - (A) has a material adverse effect on the financial condition of any Guarantor such that it could reasonably be expected to adversely affect the DB Work; or
 - (B) could reasonably be expected to have materially and adversely affect or impair the ability of a Guarantor to perform its obligations under its respective Guarantee or the ability of the Constructor to perform its obligations under this Agreement.

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- (d) The Constructor shall deliver the Draw Request to the Authority's Representative on or before five Business Days following the Cut-off Date.
- (e) The Constructor shall arrange with the Authority's Representative a reasonable opportunity for the Authority's Representative to inspect the DB Work and to attend at the offices of the Constructor to review such documentation as the Authority's Representative may reasonably request.
- (f) The Constructor shall cooperate with the Authority's Representative to reach agreement on a final Draw Request on or before the fifth Business Day following delivery of the Draw Request in respect of DB Work progressed in the period covered by the Draw Request.
- (g) The Authority's Representative shall identify any deficiencies in the Draw Request and the amount affected thereby within five Business Days of the Draw Request being submitted pursuant to Section 10.3A(d), which amount shall be subject to Section 10.3A(m).
- (h) The Authority's Representative shall approve the Draw Request as to amounts not in dispute pursuant to Section 10.3A(g) within five Business Days of the Draw Request being agreed upon pursuant to Section 10.3A(f).
- (i) [Intentionally Deleted]
- (j) The Authority shall have no obligation to pay or be responsible in any way for payments to Subcontractors.
- (k) No progress payment or partial or entire use or occupancy of the Project Infrastructure or the Project Site by the Authority shall constitute an acceptance by the Authority of DB Work as being in accordance with this Agreement.
- (l) The Authority shall, within five Business Days of the approval of a Draw Request pursuant to Section 10.3A(h), make payment to the Constructor or the amount so approved (with any unapproved amount being subject to Section 10.3A(m)).
- (m) If the Authority disputes an amount claimed by the Constructor, the Authority may withhold payment of the amount in dispute pending resolution of the dispute in accordance with the Dispute Resolution Procedure.

10.4A Holdback Amounts

- (a) Notwithstanding any other provisions hereof, the Authority may retain out of any Draw Request payments to be made to the Constructor an amount equal to 100% of the Authority's estimate of the value of:
 - (i) any defects or deficiencies in the DB Work; and
 - (ii) any Constructor Default,

each as determined by the Authority, acting reasonably, provided that the Authority shall, concurrently with making such holdback, provide to the Constructor the basis for the Authority's valuation or estimated costs thereof, within a reasonable time of becoming aware of any such defects or deficiencies or Constructor Default. At the Constructor's option, some or all of the payments retained by the Authority under this Section may be replaced by an additional Letter of Credit from the Constructor in the amount of such retained payments. Upon receipt of such additional Letter of Credit, the Authority shall pay to the Constructor an amount equal to the retained payments that the Letter of Credit is replacing.

- (b) In the event of a disagreement as to the value of any defects or deficiencies in the DB Work or costs to remedy a Constructor Default determined by the Authority in accordance with Section 10.4A(a), the matter shall be finally resolved in accordance with the Dispute Resolution Procedure, and the Authority shall pay the Constructor the remaining amount of any application for payment that is not in dispute, with the amount in dispute to be paid upon correction or completion of such defect or deficient work, or remedying of the Constructor Default, to the satisfaction of the Authority or as otherwise determined in accordance with the Dispute Resolution Procedure.

10.5A Adverse Claims

The Constructor shall comply with Section 5.8 [Removal of Liens] of Schedule 8 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 DB Work (collectively, an "Adverse Claim"). If the Constructor fails to comply with Section 5.8 [Removal of Liens] of Schedule 8 in respect of any Adverse Claim, the Authority shall be entitled to withhold from the progress payments otherwise to be made by the Authority to the Constructor pursuant to Section 10.3A [Progress Payments] any amounts payable by the Constructor pursuant to and in accordance with Section 5.8 [Removal of Liens] of Schedule 8.

10.6A Performance Security

- (a) Throughout the DB Term, the Constructor shall maintain in favour of and deliver to the Authority one or more Letters of Credit, the aggregate amount of which at any time is not, subject to Section 10.7A [Step Down of Letter of Credit Security], less than five percent of the Contract Price. The Letters of Credit shall be held by the Authority as security for the satisfaction by the Constructor of its obligations under this Agreement. The Authority shall be entitled to present one or more Letters of Credit for payment:
- (i) if the Constructor has failed to discharge or cause to be discharged any Adverse Claim;
 - (ii) if a claim for payment of any sum due under this Agreement (including Liquidated Damages) made by the Authority has not been satisfied by the Constructor within 10 Business Days after such claim is made by the Authority;
 - (iii) if at any time, the Constructor has failed to provide a replacement Letter of Credit not later than 30 days prior to the expiry of a Letter of Credit; or
 - (iv) upon the occurrence of the circumstances referred to in Section 12.3(a).

- (b) The Constructor shall deliver to the Authority in accordance with Section 2.17 [Execution and Delivery of Project Documents] the Guarantees duly executed by the Guarantors.

10.7A Step Down of Letter of Credit Security

Subject to and conditional upon the Constructor’s compliance with all the terms and conditions of this Agreement, the aggregate amount of the Letters of Credit required to be maintained by the Constructor under Section 10.6A(a) shall be reduced to:

- (a) [REDACTED] of the Contract Price upon the occurrence of the Tolling Commencement Date;
- (b) [REDACTED] of the Contract Price upon the occurrence of Substantial Completion Date for the Primary Highway Components;
- (c) [REDACTED] of the Contract Price upon the occurrence of the Total Completion Date; and
- (d) [REDACTED] of the Contract Price upon the last to occur of:
 - (i) the demolition of the Existing Port Mann Bridge in accordance with the terms and conditions of this Agreement; and
 - (ii) November 30, 2015.

Section 17 and 21



10.1 Payments by the Parties

If it is determined in accordance with this Agreement that a party is entitled to payment from the other party in respect of any of matter arising under this Agreement, such payment shall be made by way of a change to the Contract Price or by lump sum, as applicable, or as otherwise determined by the parties.

10.2 [Intentionally Deleted]

10.3 Authority Rights to Audit

The Constructor shall, before, during and at any time after the implementation of any payments contemplated in Section 10.1 [Payments by the Parties], ensure that the Authority has unrestricted rights of audit of all documentation (including any aspect of the calculation of any such payment) used in connection with, or relevant to, the calculation of such payment.

10.4 Authority’s Right of Set-Off

Without prejudice to and without limiting or derogating from any statutory right of the Authority to withhold any sum of money due or becoming due to the Constructor, the Authority may set off any liquidated amounts owing by the Constructor to the Authority under this Agreement or any of the other Authority Project Documents against any payments due by the Authority to the Constructor under this Agreement.

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10.5 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) specified by the recipient from time to time with reference to this section.

10.6 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 30 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.

10.7 Taxes

- (a) For the purposes of this Section:
 - (i) **“Change in GST Law”** means a Change in Law relating to GST;
 - (ii) **“Change in PST Law”** means a Change in Law relating to PST;
 - (iii) **“Irrecoverable Tax”** means GST or PST incurred by the Constructor in respect of the supply of any good or service to the Constructor which is consumed, used or supplied or to be consumed, used or supplied exclusively by the Constructor in the course of carrying out the DB Work to the extent that the Constructor is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST (as the case may be); and
 - (iv) **“Recipient”** means the party to which a taxable supply is provided under this Agreement;
 - (v) **“Recoverable Tax”** means GST or PST incurred by the Constructor in respect of the supply of any good or service to the Constructor which is consumed, used or supplied or to be consumed, used or supplied exclusively by the Constructor in the course of carrying out the DB Work to the extent that the Constructor is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST (as the case may be); and
 - (vi) **“Supplier”** means the party providing a taxable supply under this Agreement.
- (b) All payments (including payments in kind) to be made by either party under this Agreement are:
 - (i) exclusive of GST; and

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- (ii) subject to this Section, inclusive of PST and all other applicable Taxes (other than GST).
- (c) In the event that any GST is imposed on the Recipient in connection with the provision of any taxable supply under this Agreement to the Recipient by the Supplier, the Recipient shall be responsible for the payment of such GST where required in accordance with the *Excise Tax Act* (Canada). The Recipient shall pay such GST to the Supplier and the Supplier shall remit such GST in accordance with its obligations under the *Excise Tax Act* (Canada).
- (d) The Authority hereby certifies that according to Laws it is not required to pay GST and that it is acquiring the DB Work (and all relevant property and services) under this Agreement with crown funds. The Constructor acknowledges and agrees that it shall not therefore levy or collect GST on the supply of the DB Work unless and until such time as, according to Laws, the Authority is required to pay GST.
- (e) If, as a result of a Change in PST Law:
 - (i) the provision of any goods or services by the Constructor in connection with the performance of the DB Work that was:
 - (A) not subject to PST as at the Financial Submittal Date becomes subject to PST, the Authority shall pay to the Constructor from time to time thereafter on invoicing by the Constructor identifying the relevant taxable property or service and the value thereof the amount of such PST as may be exigible from time to time thereafter in connection with the provision of such goods or services by the Constructor; or
 - (B) subject to PST as at the Financial Submittal Date ceases to be subject to PST, the Constructor shall from time to time thereafter provide to the Authority a statement identifying the relevant taxable property or service and the value thereof and pay to the Authority the amount of PST that shall have ceased to be exigible in connection with the provision of such goods or services by the Constructor; and
 - (ii) the rate of any PST chargeable to the Authority in respect of or relating to the supply of any goods or services by the Constructor to the Authority in connection with the performance of the DB Work is:
 - (A) increased, the Authority shall pay to the Constructor from time to time thereafter on invoicing by the Constructor identifying the relevant taxable property or service and the value thereof an amount on account of or in respect of such PST calculated at a rate which is equal to the difference between the rate in effect at the time of payment of the PST and the rate in effect immediately prior to the Change in PST Law; or
 - (B) decreased, the Constructor shall from time to time thereafter provide to the Authority a statement identifying the relevant taxable property or service and the value thereof and pay to the Authority an amount on

account of or in respect of such PST calculated at a rate which is equal to the difference between the rate in effect immediately prior to the Change in PST Law and the rate in effect at the time of payment of the PST.

- (f) The Authority shall pay to the Constructor from time to time as the same is incurred by the Constructor and on invoicing by the Constructor amounts equal to any Irrecoverable Tax if and to the extent such Irrecoverable Tax results solely from a Change in GST Law or a Change in PST Law, provided that all amounts paid under this Section 10.7(f) shall be grossed up by an amount equal to the amount of income tax actually payable in a Contract Year by the Constructor or the Partners that can be demonstrated by the Constructor results from being subjected to the Irrecoverable Tax and/or receipt of the payment under this Section 10.7(f) after taking into account any other income tax credits, deductions or relief to which the Constructor or the Partners may be eligible.
- (g) The Constructor shall from time to time as the same is incurred by the Constructor pay to the Authority amounts equal to any Recoverable Tax if and to the extent such Recoverable Tax results solely from a Change in GST Law or a Change in PST Law, and provide to the Authority a statement showing in reasonable detail the calculation of such Recoverable Tax.
- (h) Any payment required to be made by the Authority to the Constructor pursuant to Section 10.7(e)(i)(A), 10.7(e)(ii)(A) or 10.7(f), or by the Constructor to the Authority pursuant to Section 10.7(e)(i)(B), 10.7(e)(ii)(B) or 10.7(g), shall be paid by the relevant party within 10 Business Days following the delivery by the other party of an invoice or debit note for such payment, provided that the Authority shall not be required to pay any amount to the Constructor pursuant to Section 10.7(e)(i)(A), 10.7(e)(ii)(A) or 10.7(f) until the Constructor has delivered to the Authority's Representative written details of the amount claimed and the grounds for and computation of the amount claimed.
- (i) The Constructor shall provide to the Authority's Representative any information reasonably requested by the Authority's Representative from time to time in relation to the amount of any GST and/or PST chargeable in accordance with this Agreement and payable by the Authority to the Constructor or by the Constructor to the Authority in accordance with this Agreement.

10.8 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 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 10.8(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

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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 10.10 [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 10.8(c).

10.9 Inaccuracies in Payments

Subject to Section 4.2 [Full and Final Settlement] and 4.5 [Sole Remedy] of Schedule 13, if there is any inaccuracy in any 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 Authority pursuant to Section 1.6 [Audit and Inspection] of Schedule 17 or otherwise:

- (a) the necessary adjustments in such 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 being made by one party to the other party (as against the sum that would have been paid but for such inaccuracy), then the paying party shall, in addition to paying such underpayment to the other party, pay interest thereon at a rate per annum equal to the Default Rate from the date of payment by the paying party to the other party pursuant to the original invoice, debit note or Report to the date of payment of such underpayment by the paying party.

10.10 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including payments payable pursuant to Schedule 13 [Compensation on Termination] and any payments required pursuant to Sections 10.7(h), 10.8(c) and 10.9(a)), 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.

10.11 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.

10.12 Payment of Interest by Authority

Notwithstanding any other term of this Agreement, the payment of interest by the Authority pursuant to this Agreement is subject to the provisions of the *Financial Administration Act* (British Columbia).

PART 11
ACCESS, MONITORING AND STEP-IN RIGHTS

11.1 Authority Access

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

- (a) have unrestricted access at all reasonable times throughout the DB Term to the Project 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 Authority's Representative or the Authority under this Agreement;
 - (ii) fulfil any statutory, public or other duties or functions;
 - (iii) conduct any study, test or trial for purposes of research initiated by the Authority or any other person authorized by the Authority; and
 - (iv) construct, operate, manage, maintain, repair, rehabilitate or reconstruct on the Project Site any Infrastructure and Structures other than the Concession Infrastructure, including existing or new vehicle inspection and weigh stations on the Concession Highway and access lanes or roads allowing trucks and other vehicles to travel from the Concession Highway to such existing and new stations and to return to the Concession Highway, provided that, the exercise by the Authority of such right in accordance with this Section 11.1(a)(iv), shall constitute a Compensation Event and the provisions of Part 8 [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 DB Work; and
- (c) have the right to attend regular Project 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 Constructor pursuant to Sections 4.13 [Health and Safety Program] and 4.14 [Constructor's Occupational Health and Safety Obligations] for the time being in force in relation to the areas to which such access is granted, provided that nothing in this Section shall be construed so as to impede the proper performance of the Authority's roles, functions and duties as set out in this Agreement.

11.2 Uncovering of Work

- (a) The Constructor shall ensure that the Authority'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. If the Constructor does not provide such notice and opportunity, the Constructor shall at the request of the Authority's Representative

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

- (b) The Authority's Representative shall have the right to request the Constructor to open up and inspect any part or parts of the DB Work where the Authority's Representative (following consultation with the Constructor) reasonably believes that such part or parts of the DB Work is or are defective or that the Constructor has failed to comply with the requirements of this Agreement, and the Constructor shall comply with such request. If the Authority's Representative exercises such right, it shall consult with the Constructor as to the timing of the opening up and inspection of the relevant part or parts of the DB Work with a view to avoiding or, if unavoidable, minimizing any delay caused to the conduct of the remaining DB Work.
- (c) If the Authority's Representative requires an uncovering of the DB Work pursuant to Section 11.2(b) and such DB 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 DB Work shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.

11.3 Increased Monitoring

- (a) Without prejudice to any other rights of the Authority under this Agreement, if at any time during the DB Term:
 - (i) the Constructor is assigned 10 or more NCE Default Points in any 12 calendar month period; or
 - (ii) a Constructor Default occurs; or
 - (iii) any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Authority or the Authority's Representative in respect of any monthly report delivered by the Constructor to the Authority in accordance with Section 5.1 [Monthly Report] of Schedule 10,

then the Authority's Representative may by notice to the Constructor increase the level of its monitoring of the Constructor above that otherwise permitted under this Agreement, including pursuant to Section 4.4 [Authority Monitoring] of Schedule 7, until such time as the Constructor has demonstrated to the reasonable satisfaction of the Authority's Representative that it will perform and is capable of performing its obligations under this Agreement.

- (b) A notice to the Constructor provided by the Authority's Representative pursuant to Section 11.3(a) shall specify the additional measures to be taken by the Authority's Representative in monitoring the Constructor in response to the matters which led to such notice being sent.

- (c) If the Authority's Representative carries out increased monitoring pursuant to this Section and requires the Constructor to pay the Authority's costs and expenses in respect thereof pursuant to Section 11.3(d), and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Authority was not entitled to carry out such increased monitoring in accordance with this Section, then the carrying out of such increased monitoring shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (d) The Constructor shall pay to the Authority on demand all costs and expenses incurred by the Authority in carrying out such actions under this Section, 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 Authority.

11.4 Authority's Emergency Rights

- (a) Without prejudice to any other rights of the Authority under this Agreement, and whether or not the Authority 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 Constructor 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 or obligation to terminate, if at any time during the DB Term the Authority reasonably believes that it needs to take action in relation to the Concession Highway or the DB Work due to the occurrence of an Emergency, then the Authority may in its discretion do either or both of the following (but this shall not obligate the Authority 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 Authority's Representative to the Constructor (which notice shall not be required to be in writing) take or cause to be taken all such steps and actions as may be reasonably required to mitigate, rectify or protect against such Emergency and, to the extent and for the period necessary for such purposes, enter upon the Project Site and the Project Infrastructure or any part thereof to carry out any work, provided that the Authority shall, and shall cause any applicable third parties engaged by it pursuant to this Section to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously; or
 - (ii) by written notice from the Authority's Representative to the Constructor, require the Constructor to take such steps as the Authority, acting reasonably, considers 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 Authority considers necessary or expedient, and the Constructor shall use all reasonable efforts to comply with the Authority's requirements as soon as reasonably practicable.
- (b) If the Authority's Representative gives notice to the Constructor pursuant to Section 11.4(a)(ii) and the Constructor either:

- (i) does not confirm, within the time period specified by the Authority's Representative in the notice given pursuant to Section 11.4(a)(ii) (or, if no such time period is specified, within five Business Days), that it is willing to take such steps as are referred to or required in such notice or present an alternative plan to the Authority to mitigate, rectify and protect against such Emergency that the Authority may accept or reject, acting reasonably; or
- (ii) fails to take the steps as are referred to or required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such time as the Authority, acting reasonably, shall stipulate,

then the Authority may, in addition to the ability to take the actions set out in Section 11.4(a), without further advance notice to the Constructor, to the extent and for the period necessary for such purpose, suspend the progress of the relevant DB Work, and suspend in whole or in part the relevant rights of the Constructor under this Agreement, (including the rights of the Constructor under Section 2.5 [Land Access] and Schedule 8 [Lands] as applicable to the relevant DB Work), provided that any such suspension of the Constructor's rights shall cease on the date upon which the Authority has completed mitigating, rectifying or protecting against such Emergency or notifies the Constructor that such suspension shall cease.

- (c) No action taken by the Authority under Section 11.4(a) or 11.4(b) shall be deemed to be a termination of this Agreement or relieve the Constructor from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Authority or cannot reasonably be performed due to such action taken by the Authority), and, subject to Section 11.4(d), the Authority shall not incur any liability to the Constructor for any act or omission of the Authority or any other person in the course of taking such action, except to the extent of any failure by the Authority or any Third Party Contractor engaged by the Authority for the purposes of exercising the Authority's rights under this Section to comply with all applicable Laws and Permits in the course of exercising the Authority's rights under Section 11.4(a) or 11.4(b).
- (d) To the extent that an Emergency has been caused by an Authority Non-Excusable Event or a Compensation Event, any actions of the Authority under this Section in respect of such Emergency shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (e) Except where the Authority carries out actions under this Section in the circumstances contemplated in Section 11.4(d), the Constructor shall pay to the Authority on demand all costs and expenses incurred by the Authority in carrying out such actions under this Section, including any costs paid by the Authority to the Constructor in accordance with Section 11.6 [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 Authority.

11.5 Authority's Other Step-In Rights

- (a) Without prejudice to any other rights of the Authority under this Agreement, and whether or not the Authority 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 Constructor 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 or obligation to terminate, if at any time during the DB Term:

- (iii) the Constructor is assigned one or more NCE Default Point and the Authority reasonably believes that the matter giving rise to the assignment of such NCE Default Point remains unremedied;
- (iv) a Constructor Default occurs and the Authority reasonably believes that such Constructor Default remains unremedied; or
- (v) the Authority receives a Notice of Failure to Comply from the Constructor pursuant to Section 4.17(b),

then the Authority may in its discretion do either or both of the following (but this shall not obligate the Authority 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):

- (vi) by five Business Days' notice to the Constructor, to the extent and for the period necessary for such purpose, suspend the progress of any or all of the DB Work and suspend in whole or in part the rights of the Constructor under this Agreement (including the rights of the Constructor under Section 2.5 [Land Access] and Schedule 8 [Lands]), provided that any such suspension of the Constructor's rights shall cease on the date upon which the Authority has completed remedying such matter or notifies the Constructor that such suspension shall cease; and
 - (vii) take or cause to be taken all such steps and actions as may be reasonably required to remedy such matter and, to the extent and for the period necessary for such purpose, enter upon the Project Site and the Project Infrastructure or any part thereof to carry out any work, provided that the Authority shall, and shall cause any Third Party Contractors engaged by the Authority for the purposes of exercising the Authority's rights under this Section to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously.
- (b) No action taken by the Authority under Section 11.5(a) shall be deemed to be a termination of this Agreement or relieve the Constructor from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Authority or cannot reasonably be performed due to such action taken by the Authority), and the Authority shall not incur any liability to the Constructor for any act or omission of the Authority or any other person in the course of taking such action, except to the extent of any failure by the Authority or any Third Party Contractor engaged by the Authority for the purposes of exercising the Authority's rights under this Section to comply with all applicable Laws and Permits in the course of exercising the Authority's rights under Section 11.5(a).

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- (c) If the Authority takes action under Section 11.5(a) and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Authority was not entitled to take such action in accordance with this Section, then the taking of any such action shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (d) Except where the Authority carries out actions under this Section in the circumstances contemplated in Section 11.5(a)(iii) or where Section 11.5(c) applies, the Constructor shall pay to the Authority on demand all costs and expenses incurred by the Authority in carrying out such actions, including any costs paid by the Authority to the Constructor in accordance with Section 11.6 [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 Authority.

11.6 Availability of Certain Assets on Step-In

Where the Authority exercises its rights under Section 11.4 [Authority's Emergency Rights] or Section 11.5 [Authority's Other Step-In Rights], for the duration of the exercise of such rights the Constructor shall, and shall cause its Subcontractors to, to the extent requested by the Authority, acting reasonably, make available to the Authority or, at the direction of the Authority to a third party designated by the Authority, at a fair market price or rent, as the case may be, and at the risk of the Authority, all facilities and all or any part of the stocks of material, road vehicles, spare parts, equipment and machinery (including Construction Plant and all Toll Assets) and other moveable property then owned by the Constructor or any of its Subcontractors that is reasonably required for the purposes of the exercise of such rights by the Authority.

PART 12
CONSTRUCTOR DEFAULT AND AUTHORITY REMEDIES

12.1 Constructor Default

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

- (a) any of the following:
 - (i) the occurrence of any Constructor Insolvency Event in respect of the Constructor (as distinct from a Partner) that is not remedied to the satisfaction of the Authority, acting reasonably, within five Business Days following the date of such Constructor Insolvency Event; or
 - (ii) the occurrence of a Constructor Insolvency Event in respect of one Partner concurrently with a Constructor Insolvency Event in respect of another Partner, and neither Constructor Insolvency Event is remedied to the satisfaction of the Authority, acting reasonably, within five Business Days following its occurrence; or
 - (iii) the occurrence of a Constructor Insolvency Event in respect of one Partner that is not remedied to the satisfaction of the Authority, acting reasonably, within five

- Business Days following the date of such Constructor Insolvency Event, at a time when a Constructor Insolvency Event in respect of another Partner has occurred and has not been remedied to the satisfaction of the Authority, acting reasonably, within five Business Days following the date of such Constructor Insolvency Event in respect of such other Partner; or
- (iv) the occurrence of a Guarantor Insolvency Event in respect of one Guarantor concurrently with a Guarantor Insolvency Event in respect of another Guarantor, and neither Guarantor Insolvency Event is remedied to the satisfaction of the Authority, acting reasonably, within five Business Days following its occurrence; or
 - (v) the occurrence of a Guarantor Insolvency Event in respect of one Guarantor that is not remedied to the satisfaction of the Authority, acting reasonably, within five Business Days following the date of such Guarantor Insolvency Event, at a time when a Guarantor Insolvency Event in respect of another Guarantor has occurred and has not been remedied to the satisfaction of the Authority, acting reasonably, within five Business Days following the date of such Guarantor Insolvency Event in respect of such other Guarantor; or
 - (vi) the abandonment of the DB Work by the Constructor; or
 - (vii) the Constructor ceasing to perform a substantial portion of its business or the suspension or non-performance of a substantial portion of the business of the Constructor, whether voluntarily or involuntarily, that has or could reasonably be expected to have a material adverse effect on the performance by the Constructor of its obligations under this Agreement or any other Project Document to which it is a party, and which is not remedied to the satisfaction of the Authority within five Business Days following the date of such cessation of performance, suspension or non-performance; or
 - (viii) a failure to achieve Substantial Completion of the DB Work excluding the Fraser Heights Connector and the demolition of the Existing Port Mann Bridge (the “**Applicable DB Work**”), on or before the latest Substantial Completion Target Date and the Authority believes, acting reasonably, that the plan implemented by the Constructor in accordance with the provisions of Section 12.5A [Late Completion Plan] following the failure to achieve Substantial Completion of the Applicable DB Work by such Substantial Completion Target Date will not allow the Applicable DB Work to be completed on or before the DB Substantial Completion Longstop Date; or
 - (ix) both Guarantees are or become unenforceable, invalid, void or otherwise cease to be in full force and effect through no act or omission of the Authority or those for whom the Authority is in law responsible (which acts and omissions shall not include acts and omissions of the Authority or any person for whom the Authority is in law responsible to perform and comply with the express obligations of the Authority under this Agreement or the other Authority Project Documents), and such occurrence is not remedied within 30 Business Days after the date notice of such occurrence is given by the Authority to the Constructor;

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- (b) [Intentionally Deleted]
- (c) any breach by the Constructor of Section 16A [Restrictions on Changes];
- (d) any breach of Section 4.5 [Prohibited Acts];
- (e) any failure by the Constructor to comply with Schedule 23 [Privacy Protection] in a material respect and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Authority to the Constructor (and for the purposes of this Section such failure shall be considered remedied when the Constructor has taken steps satisfactory to the Authority to mitigate the effects of the failure and has implemented measures satisfactory to the Authority to prevent a recurrence of the failure);
- (f) [Intentionally Deleted]
- (g) [Intentionally Deleted]
- (h) a sale, transfer, lease or other disposition by the Constructor or any Partner of the whole or any part (that is material in the context of the performance of the Constructor'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 reasonably be expected to have a material adverse effect on the financial position of the Constructor or the performance by the Constructor 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 Authority to the Constructor;
- (i) any representation or warranty made by the Constructor in Section 4.21 [Constructor's Representations and Warranties] being incorrect in any 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 Constructor or the Authority to perform their respective obligations, or the ability of the Authority to exercise any of their rights under this Agreement or any of the other 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 30 Business Days after the date notice of such incorrect representation or warranty is given by the Authority to the Constructor;
- (j) any DB Required Insurance is not taken out, maintained, paid for or renewed, in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements], or is cancelled by any insurer;
- (k) evidence that DB Required Insurance has in fact been taken out, maintained, paid for and renewed in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements] is not provided to the Authority in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements];

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- (l) a failure by the Constructor 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 arbitrated or litigated 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 Authority to the Constructor or within such longer period of time after the date such notice is given (if a longer period of time is reasonably required to comply) so long as the Constructor 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 NCE Default Points Balance is 60 or more NCE Default Points
 - (m.1) if at any time a single NCE Default Point remains unremedied under, and the Authority seeks to exercise its step in rights pursuant to, Section 11.5 [Authority's Other Step-In Rights];
 - (m.2) a failure to achieve:
 - (i) Substantial Completion of the Fraser Heights Connector as established by the relevant Certificate of Substantial Completion on or prior to 24 months after the FHC Substantial Completion Target Date; or
 - (ii) Substantial Completion in respect of (A) the Tolling Commencement Components included in the DB Work as established by the Certificate of Tolling Commencement Completion and (B) the DB Operational Components on or prior to the Substantial Completion Longstop Date; or
 - (iii) Substantial Completion in respect of all Relevant Components included in the DB Work, excluding the Fraser Heights Connector, the Existing Port Mann Bridge demolition and the Tolling Commencement Components, on or prior to the Substantial Completion Longstop Date; or
 - (iv) Total Completion of the Existing Port Mann Bridge demolition on or prior to 1 day before the Existing Port Mann Bridge Demolition Target Date; or
 - (v) Total Completion on or prior to 21 months after the Total Completion Target Date; or
- (n) a failure to achieve Substantial Completion of the Primary Highway Components on or before the Substantial Completion Longstop Date;
- (o) a failure by the Constructor to pay to the Authority when due and payable any amount that is due and payable by the Constructor to the Authority 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 Authority to the Constructor;

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- (p) a failure by the Constructor to perform or observe any of its material obligations under this Agreement or any of the other Project Documents that is not referred to in any of the other subsections of this Section 12.1 [Constructor Default], and without regard to whether or not the Constructor has received or receives NCE Remittance Points or NCE 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 Authority to the Constructor;
- (q) the liability of the Constructor under this Agreement exceeding the aggregate limit of liability under this Agreement or the limit of liability for Liquidated Damages; and
- (r) the withdrawal, invalidation, or unenforceability of any Letter of Credit for any reason and the failure of the Constructor to replace such Letter of Credit with another letter of credit in a form, substance and from a financial institution, acceptable to the Authority within five days following the withdrawal, invalidation or enforceability of the Letter of Credit.

Each notice that may be given to the Constructor referred to in any of Sections 12.1(e), 12.1(h), 12.1(i), 12.1(l), 12.1(o) and 12.1(p) shall specify in reasonable detail according to the information then reasonably available to the Authority 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 of this Agreement and could lead to a Constructor Default and to termination of this Agreement.

12.2 Notice of Default by Constructor

The Constructor shall notify the Authority of the occurrence, and details, of any Constructor 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 Constructor Default, in any case promptly upon the Constructor becoming aware of such occurrence.

12.3 Remedies of the Authority for Constructor Default

If and whenever a Constructor Default occurs and is continuing, the Authority 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 Authority, exercise any or all of the following rights and remedies as the Authority, in its discretion, shall determine:

- (a) if the Constructor Default is one referred to in any of Sections 12.1(a), (c), (e), (h), (i), (l), (m), (m.1), (m.2), (n), (q) and (r), the Authority may terminate this Agreement by notice to the Constructor having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (b) if the Constructor Default is one referred to in Section 12.1(o), and provided that the aggregate amount of:
 - (i) the sum that is the subject of that Constructor Default; and
 - (ii) all other sums that:

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- (A) are due and payable and remain unpaid by the Constructor to the Authority;
- (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 Constructor to the Authority for more than 20 Business Days after the date a notice of non-payment thereof was given by the Authority to the Constructor under Section 12.1(o);

exceeds \$250,000 (index linked), the Authority may give further notice to the Constructor of such aggregate amount and the non-payment thereof requiring the Constructor to pay such aggregate amount within 10 Business Days after the date such further notice is given by the Authority to the Constructor, and if such aggregate amount is not paid by the Constructor within such 10 Business Days, then the Authority may terminate this Agreement by notice to the Constructor having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

(c) if the Constructor Default is one referred to in Section 12.1(p), the Authority may give notice to the Constructor of the Constructor Default requiring the Constructor at the option of the Constructor either:

- (i) to remedy the Constructor Default referred to in that notice within 10 Business Days after the date such notice is given by the Authority to the Constructor; or
- (ii) to submit to the Authority's Representative pursuant to the Review Procedure, within 10 Business Days after the date such notice is given by the Authority to the Constructor, a reasonable schedule and plan for the remedying of such Constructor Default specifying in reasonable detail the manner and latest date by which such Constructor Default will be remedied;

and in either case Section 12.4 [Termination for Failure to Remedy According to Program] shall apply;

(d) if the Constructor Default is one referred to in Section 12.1(j) or Section 12.1(k):

- (i) the Authority may in its discretion, and without prejudice to its rights under Section 12.3(d)(ii), after advising the Constructor of the Authority's intention to do so, remedy the Constructor Default or engage one or more third parties to do so, and in connection therewith the Authority may take or cause to be taken all such steps and actions as may be reasonably required to remedy the Constructor Default (but this shall not obligate the Authority to (A) remedy or to attempt to remedy a Constructor Default or (B) after having commenced to remedy or to attempt to remedy a Constructor Default, to continue to do so), and the Constructor shall pay to the Authority on demand all costs and expenses incurred by the Authority in remedying or attempting to remedy such Constructor Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses. No such action by the Authority shall be deemed to be a

termination of this Agreement or relieve the Constructor from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Authority); and

- (ii) if the Constructor Default is not remedied within 20 Business Days after notice of such Constructor Default is given by the Authority to the Constructor, the Authority may terminate this Agreement by notice to the Constructor having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (e) in the case of a Constructor Default under Section 12.1(d):
 - (i) where the breach is occasioned by the Constructor or by an employee of the Constructor who is not acting independently of the Constructor or by any person duly authorized to act for and on behalf of the Constructor, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
 - (ii) where the breach is occasioned by an employee of the Constructor who is acting independently of the Constructor, then unless the Constructor causes the termination of such employee's employment within 30 days after the earlier of the Constructor becoming aware of the breach and notification to the Constructor of the breach, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
 - (iii) where the breach is occasioned by a Subcontractor with whom the Constructor contracts directly, or by an agent or employee of a Subcontractor with whom the Constructor contracts directly who is not acting independently of that Subcontractor, then unless the Constructor causes the termination of the engagement or employment of the relevant Subcontractor within 30 days after the earlier of the Constructor becoming aware of the breach and notification to the Constructor of the breach or such longer period as the Authority may in its discretion by notice permit, terminate this Agreement in its entirety by further notice given after the end of such 30 day period, such further notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
 - (iv) where the breach is occasioned by an employee of a Subcontractor with whom the Constructor contracts directly who is acting independently of that Subcontractor, then unless such Subcontractor causes the termination of such employee's employment within 30 days after the earlier of the Constructor becoming aware of the breach and notification to the Constructor of the breach, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
 - (v) where the breach is occasioned by any person other than as referred to above in Sections 12.3(e)(i) to 12.3(e)(iv) inclusive, and whether or not any benefit to the Constructor or the employer of the person occasioning the breach was intended,

then unless the Constructor causes the termination of the employment of such person (and, in the case of a person other than a person employed by the Constructor, the termination of the engagement or employment of that person's employer) within 30 days after the earlier of the Constructor becoming aware of the breach and notification to the Constructor of the breach or such longer period as the Authority may in its discretion by notice permit, terminate this Agreement in its entirety by further notice given after the end of such 30 day period, such further notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

and

- (f) except as otherwise expressly provided in this Agreement or any of the other Authority Project Documents, and subject to Schedule 16 [Dispute Resolution Procedure], the Authority may exercise any of its other rights and remedies, whether under this Agreement or any of the other Project Documents, or at law or in equity.

12.4 Termination for Failure to Remedy According to Program

If the Authority gives notice to the Constructor of a Constructor Default pursuant to Section 12.3(c), and if the Constructor Default referred to in that notice is not remedied:

- (a) according to a schedule and plan that the Constructor submits to the Authority's Representative pursuant to the Review Procedure in accordance with Section 12.3(c)(ii) and to which the Constructor receives no objection under the Review Procedure; or
- (b) except where Section 12.4(a) applies, before the expiry of the period referred to in Section 12.3(c)(i);

then, in any such event, the Authority may at its option and without prejudice to any of its other rights or remedies and to any rights of action which accrue or shall already have accrued to the Authority, terminate this Agreement, by notice to the Constructor having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute].

12.5A Late Completion Plan

- (a) In the event that Substantial Completion of the Primary Highway Components is not achieved on or before the latest Substantial Completion Target Date, then, at the request of the Authority and in addition to and without limiting any and all other rights and remedies of the Authority and obligations of the Constructor consequential upon such event, the Constructor shall submit to the Authority's Representative pursuant to the Review Procedure, within 10 Business Days after the date such request is made by the Authority to the Constructor, a schedule and plan, to the reasonable satisfaction of the Authority, for achieving Substantial Completion of the Primary Highway Components specifying in detail the manner and latest date (which shall not be later than the Substantial Completion Longstop Date) by which the Constructor will achieve Substantial Completion of the Primary Highway Components. The Constructor shall use best efforts to achieve Substantial Completion of the Primary Highway Components in accordance with such schedule and plan.

- (b) In the event that Substantial Completion of the Tolling Commencement Components included in the DB Work is not achieved on or before the Tolling Commencement Target Date, then, at the request of the Authority and in addition to and without limiting any and all other rights and remedies of the Authority and obligations of the Constructor consequential upon such event, the Constructor shall submit to the Authority's Representative pursuant to the Review Procedure, within 10 Business Days after the date such request is given by the Authority to the Constructor, a schedule and plan, to the reasonable satisfaction of the Authority, for achieving Substantial Completion of the Tolling Commencement Components included in the DB Work specifying in reasonable detail the manner and latest date(s) by which the Constructor will achieve Substantial Completion of the Tolling Commencement Components included in the DB Work (any schedule and plan under 12.5A(a) or (b) is referred to as a "**Late Completion Plan**"). The Constructor shall use best efforts to achieve Substantial Completion of the Tolling Commencement Components included in the DB Work, in accordance with such schedule and plan.
- (c) If, in the opinion of the Authority (acting reasonably), the critical path is delayed by 21 or more days, the Constructor, within 10 Business Days after this delay is identified by the Authority and notice of such delay is delivered to the Constructor or otherwise recognized by the Constructor, shall prepare and deliver to the Authority a proposed recovery schedule together with a narrative recovery plan (which shall include resource requirements, working hours/shifts and contingency actions) to remedy such delay (a "**Recovery Plan**").

12.5 Authority Costs

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

12.6 Authority Remedies Cumulative

Except as otherwise expressly provided in this Agreement or any of the other Authority Project Documents:

- (a) all rights and remedies of the Authority under this Agreement and the other Authority Project Documents 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 Authority under this Agreement or any of the other Authority Project Documents or at law or in equity; and
- (b) the Authority 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.

12.7 Continued Effect

Notwithstanding any Constructor Default, the Authority 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 Authority in relation to such Constructor Default including the right to terminate this Agreement as provided herein.

12.8 Compensation on Termination

- (a) In the event of an effective termination of this Agreement by the Authority pursuant to Section 12.3 [Remedies of the Authority for Constructor Default] or Section 12.4 [Termination for Failure to Remedy According to Program], compensation on termination shall be payable by the Constructor in accordance with Part 2 [Constructor Default] and Part 4 [General] of Schedule 13.
- (b) [Intentionally Deleted]

12.9 Notices to Guarantors

The Authority shall deliver to each of the Guarantors a copy of any notice served by it on the Constructor under this Part 12 [Constructor Default and Authority Remedies].

**PART 13
AUTHORITY DEFAULT AND CONSTRUCTOR REMEDIES**

13.1 Authority Default

Each occurrence of any one or more of the following events or circumstances shall constitute an "Authority Default":

- (a) a failure by the Authority to pay to the Constructor when due and payable any amount that is due and payable by the Authority to the Constructor 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 Constructor to the Authority;
- (b) a failure by the Authority 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 arbitrated or litigated 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 Constructor to the Authority, or within such longer period of time after the date such notice is given (if a longer period of time is reasonably required to comply) so long as the Authority 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 Authority of the provisions of Section 16.4 [Assignment by the Authority];

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- (d) any person to whom the interests of the Authority under this Agreement or any of the other Project Documents are transferred in accordance with Section 16.4 [Assignment by the Authority] ceases to be a Qualified Governmental Entity;
- (e) except where such failure constitutes a Compensation Event, a failure by the Authority to perform or observe any of its material obligations under this Agreement or any of the other Authority Project Documents, and such failure continues so as to substantially frustrate, or render it impossible for the Constructor to perform, the Constructor'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 Constructor to the Authority, and such continuing failure is still not remedied within 30 days after further notice of such failure is given by the Constructor to the Authority after the expiration of such 60 days;
- (f) except where such expropriation, sequestration, requisition or seizure constitutes or results in a Compensation Event referred to in subsection (b) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, any expropriation, sequestration, requisition or other seizure by the Authority, the Province or any agent, crown corporation, ministry or department of the Province, of the Project 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 Constructor to perform, the Constructor'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 Constructor to the Authority, and such matter is still not remedied within 30 days after further notice of such matter is given by the Constructor to the Authority after the expiration of such 60 days;
- (g) the Provincial Payment Guarantee and Support Agreement is or becomes unenforceable, invalid, void or otherwise ceases to be in full force and effect through no act or omission of the Constructor or those for whom the Constructor is in law responsible (which acts and omissions shall not include acts and omissions of the Constructor or any person for whom the Constructor is in law responsible to perform and comply with the express obligations of the Constructor under this Agreement or the other Authority Project Documents), and such occurrence is not remedied within 30 Business Days after the date notice of such occurrence is given by the Constructor to the Authority;
- (h) any representation or warranty made by the Authority in Section 3.3 [Authority'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 Constructor to perform its obligations, or the ability of the Constructor to exercise any of its rights, under this Agreement or any of the other Authority 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 Constructor to the Authority; or
- (i) any Authority Required Insurance is not taken out, maintained, paid for or renewed in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements], or is cancelled by any insurer.

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Each notice that may be given to the Authority referred to in any of Sections 13.1(a), (b), (e), (f), (g) and (h) shall be given to the Authority's Representative, shall specify in reasonable detail according to the information reasonably available to the Constructor 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 of this Agreement and could lead to, or is, a Authority Default and could lead to termination of this Agreement.

13.2 Notice of Default by Authority

The Authority shall notify the Constructor of the occurrence, and details, of any Authority 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 Authority Default, in either case promptly upon the Authority becoming aware of such occurrence.

13.3 Remedies of Constructor for Authority Default

If and whenever an Authority Default occurs and is continuing, the Constructor 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 Constructor, exercise any or all of the following rights and remedies as the Constructor, in its sole discretion, shall determine:

- (a) if the Authority Default is one referred to in Section 13.1(a), and provided that the aggregate amount of:
 - (i) the sum that is the subject of that Authority Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Authority to the Constructor;
 - (B) are not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure;
 - (C) have each been outstanding and unpaid by the Authority to the Constructor for more than 20 Business Days after the date a notice of non-payment thereof was given by the Constructor to the Authority under Section 13.1(a);

exceeds \$250,000 (index linked), the Constructor may:

- (iii) suspend performance of the DB Work (except for such work as may be necessary to secure and protect the Project Infrastructure and the DB Work and to provide for the safety of the Project Infrastructure and the users thereof, during the period of suspension) for such period as such aggregate amount remains unpaid; and
- (iv) give further notice to the Authority of such aggregate amount and the non-payment thereof requiring the Authority to pay such aggregate amount within 45

Business Days after the date such notice is given by the Constructor to the Authority and, if such aggregate amount is not paid by the Authority within such 45 Business Days, then the Constructor may terminate this Agreement by notice to the Authority having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

- (b) if the Authority Default is one referred to in any of Sections 13.1(b), (c), (d), (e), (f), (g) or (h), the Constructor may terminate this Agreement by notice to the Authority having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (c) except as otherwise expressly provided in this Agreement (including in Section 9.8 [Limitation of Authority Liability]), any of the other Project Documents, or the Provincial Payment Guarantee and Support Agreement, and subject to Section 1.4 [No Fettering of Rights and Authority] and Schedule 16 [Dispute Resolution Procedure], the Constructor may exercise any of its other rights and remedies, whether under this Agreement or any of the other Authority Project Documents, or at law or in equity; and
- (d) if the Authority Default is one referred to in Section 13.1(i):
 - (i) the Authority may in its discretion, and without prejudice to its rights under Section 13.3(d)(ii), after advising the Authority of the Constructor's intention to do so, remedy the Authority Default or engage one or more third parties to do so, and in connection therewith the Constructor may take or cause to be taken all such steps and actions as may be reasonably required to remedy the Authority Default (but this shall not obligate the Constructor to (A) remedy or to attempt to remedy a Authority Default or (B) after having commenced to remedy or to attempt to remedy a Authority Default, to continue to do so), and the Authority shall pay to the Constructor on demand all costs and expenses incurred by the Constructor in remedying or attempting to remedy such Authority Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses. No such action by the Constructor shall be deemed to be a termination of this Agreement or relieve the Authority from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Constructor); and
 - (ii) if the Authority Default is not remedied within 20 Business Days after notice of such Authority Default is given by the Constructor to the Authority, the Constructor may terminate this Agreement by notice to the Authority having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute].

13.4 Constructor Costs

Without limiting, but without duplicating, any other amounts the Authority is obligated under this Agreement to pay to the Constructor on account of costs and expenses incurred by the Constructor, and except to the extent the Constructor is compensated for such costs and expenses in compensation paid or payable under Schedule 13 [Compensation on Termination] the Authority shall pay to the Constructor on demand all costs and expenses incurred by the Constructor in exercising any rights and remedies as a result of a Authority Default, that would not have been incurred but for the Authority

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Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

13.5 Constructor Remedies Cumulative

Except as otherwise expressly provided in this Agreement:

- (a) all rights and remedies of the Constructor under this Agreement and the other Authority Project Documents are cumulative and in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Constructor under this Agreement or any of the other Authority Project Documents or at law or in equity; and
- (b) the Constructor 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.

13.6 Continued Effect

Notwithstanding any Authority Default, the Constructor 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 Constructor in relation to such Authority Default including the right to terminate this Agreement as provided herein.

13.7 Compensation on Termination

In the event of an effective termination of this Agreement pursuant to Section 13.3 [Remedies of Constructor for Authority Default], compensation on termination shall be payable in accordance with Part 1 [Authority Default or Termination for Convenience] and Part 4 [General] of Schedule 13.

**PART 14
TERMINATION**

14.1 [Intentionally Deleted]

14.2 Termination for Convenience

- (a) The Authority may in its discretion and for any reason whatsoever terminate this Agreement at any time by giving to the Constructor 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 Authority in accordance with Section 14.2(a), the Authority shall, at any time before the expiration of such notice, be entitled to direct the Constructor, where any Construction Activity or any part or parts thereof or any other DB Work or any elements of the DB Work have not been commenced, to refrain from commencing any such Construction Activity or DB Work or from allowing third parties to commence the same.

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- (c) In the event of any termination pursuant to Section 14.2(a), compensation on termination shall be payable in accordance with Part 1 [Authority Default or Termination for Convenience] and Part 4 [General] of Schedule 13.

14.3 Authority's Rights of Termination

The Authority's rights to terminate this Agreement are set forth in and limited to those set forth in the following Sections: 8.6(a), 8.7(a)(iii), 8.7(a)(iv), 8.7(b)(ii), 12.3(a), 12.3(b), 12.3(d)(ii), 12.3(e), 12.4 [Termination for Failure to Remedy According to Program] and 14.2(a).

14.4 Constructor's Rights of Termination

The Constructor's rights to terminate this Agreement are set forth in and limited to those set forth in the following Sections: 8.6(a), 8.7(a)(iv), 13.3(a)(iv), 13.3(b) and 13.3(d)(ii).

14.5 [Intentionally Deleted]**14.6 Continued Performance**

Subject to any exercise by the Authority of its rights under Part 11 [Authority's Access, Monitoring and Step-In Rights], the parties shall continue to perform their respective obligations under this Agreement, notwithstanding the giving of any notice of default, Notice of Intention to Terminate or notice of termination, until the termination of this Agreement becomes effective in accordance with its terms.

14.7 Notice of Intention to Terminate and Dispute

Except in the case of a termination pursuant to Section 14.2 [Termination for Convenience]:

- (a) if a party 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 party (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;
- (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

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- (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 14.7(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 14.7(b)(i) or Section 14.7(b)(ii).

14.8 Changes after Notice of Termination

If either party gives a Notice of Intention to Terminate or a notice of termination, the Constructor shall not, and shall cause the Subcontractors not to, without the prior written consent of the Authority (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 Constructor 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 14.8(a);

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- (c) do or omit to do any other thing in relation to employees referred to in Section 14.8(a) that would or might reasonably be expected to increase any Employee Termination Payments and/or Constructor Breakage Costs included in any compensation on termination payable by the Authority 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 Toll Assets or Plant for the purposes of the DB Work; or
- (e) materially alter the volumes or quantities of Toll Assets or Plant ordered for the purposes of the DB Work; or
- (f) enter into any new agreements or arrangements for the acquisition or supply of Toll Assets or Plant for the purposes of the DB Work except at reasonable arm's length market rates and on reasonable arm's length market terms and conditions.

14.9 Effect of Termination Generally

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

- (a) the rights of access granted to the Constructor in Section 2.5 [Land Access] shall terminate at the same time and the Constructor shall cease to have any further rights under Section 2.5 [Land Access] and Schedule 8 [Lands] with respect to the Project Site and the Project Infrastructure thereon, except to the extent necessary to enable the Constructor to perform any obligations of the Constructor under this Agreement required to be performed in consequence of or following such termination;
- (b) after the Termination Date:
 - (i) the Constructor shall not have any further right to carry out or perform any further DB Work, but this shall not relieve or release either the Constructor or the Authority from any of its obligations under this Agreement or any other Authority Project Documents, including, without limitation, 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; or
 - (ii) [Intentionally Deleted]
- (c) [Intentionally Deleted]
- (d) [Intentionally Deleted]
- (e) subject to Sections 14.9(a) and (b), such termination shall be without prejudice to all the rights, remedies (including Direct Losses for default) and obligations of the parties under this Agreement with respect to:

- (i) any event, occurrence or circumstance arising or existing before the effective time of termination;
- (ii) any breach of this Agreement, Authority Default or Constructor Default occurring prior to the effective time of termination;
- (iii) provisions of this Agreement that are to be observed and performed under this Agreement up to the effective time of termination; and
- (iv) provisions of this Agreement 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, including the provisions of Schedule 13 [Compensation on Termination];

and such rights, remedies and obligations shall continue following termination, subject to Sections 14.9(a) or (b) and subject to Sections 4.2 [Full and Final Settlement] and 4.5 [Sole Remedy] of Schedule 13; and

- (f) 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.

14.10 [Intentionally Deleted]

14.11 Transfer of Assets

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

- (a) the Constructor shall within 15 days after the Termination Date, at no cost to the Authority and for nominal consideration only, in all cases free from Encumbrances (provided that the Authority 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 Constructor to the Authority, and shall be payable by the Constructor to the Authority forthwith on demand:
 - (i) if and to the extent the Authority so elects, confirm by bill of sale or other document requested by the Authority the transfer to the Authority of title to and ownership of all Plant (other than Toll Assets) title to which has passed or is intended to be passed to the Authority in accordance with Section 2.12 [Transfer of Title to Tangible Personal Property];
 - (ii) confirm by bill of sale or other document requested by the Authority, the transfer to the Authority of rights in, title to and ownership of any Toll Assets title to which has passed or is intended to have passed to the Authority in accordance with Section 2.12 [Transfer to Title to Tangible Personal Property], and assign or cause to be assigned to the Authority all other rights and title in and to Toll Assets that are held by the Constructor or any of its Subcontractors by license or lease or in any other manner;
 - (iii) deliver to the Authority possession of:

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- (A) all Toll Assets to the extent they are not then affixed to and part of or incorporated into the Project Infrastructure; and
- (B) all Plant referred to in Section 14.11(a)(i) to the extent not then affixed to and part of or incorporated into the Project Infrastructure;
- (iv) cause the benefit of all manufacturers' and third party warranties in respect of DB Work, Project Infrastructure, Toll Assets, ITS Equipment and any other assets, to be transferred and assigned to the Authority or, at the direction of the Authority, to the Authority, the Province, BCTFA or a third party designated by the Authority;
- (v) quit claim in favour of the Authority or, at the direction of the Authority, in favour of the Province or BCTFA, any interest of the Constructor in the Project Infrastructure or any other improvements from time to time on, to or forming part of the Project Site;
- (vi) deliver to the Authority or, at the direction of the Authority, to the Province, BCTFA or a third party designated by the Authority, "as built drawings" showing all alterations made since the commencement of the DB Work to or for the Project Site and the Project Infrastructure, to the extent not previously delivered to the Authority;
- (vii) deliver to the Authority or, at the direction of the Authority, the Province, BCTFA or a third party designated by the Authority, operation and maintenance manuals for the Project Infrastructure, the Toll Assets, the ITS Equipment and any other assets transferred or to be transferred to the Authority or, at the direction of the Authority, to the Province, BCTFA or a third party designated by the Authority, including in respect of communications, signalling, Tolling and other systems in service at the Termination Date, to the extent not previously delivered to the Authority;
- (viii) deliver to the Authority or, at the direction of the Authority, the Province, BCTFA or a third party designated by the Authority, the Records in accordance with Section 1.5 [Procedure on Termination] of Schedule 17 and all other DB Intellectual Property, in such electronic or other format as the Authority may reasonably require;
- (ix) transfer to the Authority or, at the direction of the Authority, to the Province, BCTFA or a third party designated by the Authority, title to and possession of all other documents, manuals, records and information reasonably required to enable the Authority to carry out and perform, or procure the carrying out and performance of, the work that would, but for termination of this Agreement, have constituted the DB Work; and
- (x) if and to the extent the Authority so elects, and to the extent permitted by Laws, assign or cause to be assigned all Permits to the Authority or, at the direction of the Authority, to the Province, BCTFA or a third party designated by the Authority;

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- (xi) [Intentionally Deleted]
- (xii) [Intentionally Deleted]
- (xiii) return to the Authority all Confidential Information of the Authority, the Province, or BCTFA within the possession or control of the Constructor or any Subcontractor;
- (b) to the extent the Authority so elects, the Constructor shall take all steps required by the Authority to ensure that all Construction Plant that is being used exclusively for the purposes of any Construction Activities then in progress will remain available for the purpose of completing the relevant Construction Activities, subject to payment therefor by the Authority, and a corresponding payment by the Authority to the Constructor, of a reasonable rental charge; and
- (c) within 30 days after the Termination Date, the Constructor shall, and shall cause the Subcontractors to, offer to sell to the Authority or, at the direction of the Authority, to the Province, BCTFA or a third party designated by the Authority, which offer shall remain open for acceptance for at least 30 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, all or any part of the stocks of material, spare parts and Plant owned by the Constructor or any of the Subcontractors, that is being used or is intended to be used exclusively for the purposes of DB Work (other than Construction Activities) and is not otherwise transferred or to be transferred to or at the direction of the Authority or the Authority pursuant to any other provision of this Agreement.
- (d) [Intentionally Deleted]
- (e) [Intentionally Deleted]

The Constructor shall ensure in the case of all Permits and Subcontracts to which the Constructor is a party, and shall use all reasonable efforts to ensure in the case of Subcontracts to which the Constructor is not a party, that provisions are included to ensure that the Authority will be in a position to exercise its rights under this Section, and the Constructor 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.

14.12 Handover

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

- (a) the Constructor shall, for a period not exceeding one year after the Termination Date, cooperate fully with the Authority and any successor contractor or operator with respect to the Project Site, the Project Infrastructure or the DB Work or any part thereof in order to achieve a smooth and orderly transfer of the DB Work and any work in the nature of the DB Work as a going concern and so as to protect the integrity of the Project

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Infrastructure and so as to protect the safety of, and avoid undue delay or inconvenience to, members of the public;

- (b) the Constructor shall as soon as practicable after notice from the Authority to do so remove from the Project Site and the Project Infrastructure all materials, plant, machinery, equipment, apparatus, temporary buildings, road vehicles, spare parts and other property including Plant and Construction Plant, other than that:
 - (i) title to which has passed to the Authority under Section 2.12 [Transfer of Title to Tangible Personal Property]; or
 - (ii) required to be transferred, delivered, provided, sold or rented to or at the direction of the Authority pursuant to Section 14.11 [Transfer of Assets];

and, if the Constructor has not done so within 30 days after any notice from the Authority requiring it to do so, the Authority 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 Constructor;

- (c) the Constructor shall provide all information concerning the Project Infrastructure and the DB Work to the Authority and any successor contractor or operator with respect to the Project Site, the Project Infrastructure (or any part of either) or the DB Work;
- (d) the Constructor shall not later than the Termination Date, deliver to the Authority:
 - (i) keys to all traffic sign housings;
 - (ii) lifting keys for all types of chamber covers;
 - (iii) keys to all buildings forming part of the Project Infrastructure; and
 - (iv) codes and passwords to all computers and computerized systems, control of which is required to be transferred to the Authority or its designee pursuant hereto; and
- (e) the Constructor shall as soon as practicable vacate and hand over to the Authority and leave in a safe and orderly condition, the DB Work, the Project Site and the Project Infrastructure.
- (f) [Intentionally Deleted]

14.13 [Intentionally Deleted]

**PART 15
CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

15.1 Confidentiality

- (a) Each party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to disclose to any person any Confidential Information

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received from the other party, other than as expressly provided in Section 15.1(b) or as otherwise expressly provided in this Agreement.

- (b) Notwithstanding Section 15.1(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 directors, officers, employees, contractors, subcontractors, agents and professional advisors, including, in the case of the Constructor, 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 or any of the other Project Documents, 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;
 - (C) 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;
 - (D) 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;
 - (E) 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;
 - (F) 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;
 - (G) to any assignee or proposed assignee permitted under Part 16 [Assignment and Subcontracting];
 - (H) the disclosure of which is expressly permitted or required by this Agreement; or
 - (I) the disclosure of which is necessary for the enforcement of this Agreement; and
 - (ii) [Intentionally Deleted]

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- (iii) in the case of the Authority:
 - (A) to the extent required for the design, construction, completion, commissioning, testing, operation, maintenance, rehabilitation or improvement of the Project Infrastructure and the Project Site, or the carrying out of any statutory, public or other duties or functions in respect of the Project Infrastructure and the Project Site;
 - (B) in relation to the outcome of the procurement process for the Project as may be required to be published;
 - (C) to any 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; and
 - (D) whether or not falling within Section 15.1(b)(iii)(B) or 15.1(b)(iii)(C), to the Province, BCTFA, the Ministry, Partnerships BC or any other Governmental Authority, and their respective directors, officers, employees, and professional advisors.
- (c) Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 15.1(a) and that the 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 15.1(a), subject, in the case of a claim for any such remedy against the Authority, to the provisions of the *Crown Proceeding Act* (British Columbia).

15.2 Freedom of Information and Privacy Protection

- (a) The Constructor 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 Authority and the Province are required to fully comply with such Act. No action taken or required to be taken by the Authority for the purpose of complying with such Act shall be considered a breach of any obligation under this Agreement.
- (b) The Constructor, 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 to comply with the provisions of Schedule 23 [Privacy Protection] in connection with all Personal Information collected or created in the course of performing the DB Work.
- (c) Within 60 days following the Effective Date, the Constructor, in consultation with the Authority's Representative, shall develop and submit a privacy code (the "**Privacy Code**") to the Authority's Representative pursuant to the Consent Procedure that complies with the requirements of all Laws and incorporates the provisions of Schedule 23 [Privacy Protection]. The Constructor shall observe and comply with and cause all of its agents and Subcontractors and the employees of any of them to observe and comply with such Privacy Code, and, where necessary or as required by the Authority's

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Representative from time to time, the Constructor shall submit updates to such Privacy Code to the Authority's Representative pursuant to the Consent Procedure.

15.3 DB Intellectual Property

- (a) The Constructor shall, and shall cause:
- (i) its agents and employees; and
 - (ii) to the extent any such DB Intellectual Property is in the possession or control of its Subcontractors, its Subcontractors,

to make available to the Authority without charge and in paper based or machine readable form as required by the Authority, all DB Intellectual Property which might reasonably be required by the Authority whether during or after the DB Term for the purposes of exercising rights or carrying out duties under this Agreement or carrying out any statutory, public or other duty or function in relation to the Concession Highway, including providing to the Authority, during the DB Term, copies of all software and firmware, and all updates thereto, included in or relating to the Toll Assets and the Toll System (to the extent included within the DB Work) and the ITS Equipment.

- (b) In respect of each of the items required to be made available to the Authority under Section 15.3(a), the Constructor shall covenant, represent and warrant that, as at the time such item is made available to the Authority, either:
- (i) such item is original; or
 - (ii) if such item is not original, the Constructor has obtained, or prior to such item being acquired or brought into existence in any manner whatsoever will have obtained, all rights necessary in order to enable:
 - (A) such item to be so acquired or brought into existence and to be used for the purposes of the Project by the Constructor and the Subcontractors; and
 - (B) the Constructor to comply with its obligations under this Agreement (including under Part 15 [Confidentiality and Intellectual Property]); and

in any event, such item does not and will not infringe any third party's Intellectual Property Rights.

15.4 Licenses to Intellectual Property

- (a) The Constructor hereby grants to the Authority a Complete License to use, both during and after the DB Term, all and any DB Intellectual Property for any purpose (including the carrying out of any statutory, public or other duties or functions) in connection with this Agreement, the Project, the Project Site, the Project Infrastructure or any part of any of them, provided that:

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- (i) with respect to any DB Intellectual Property that is created after the Effective Date, such Complete License shall take effect immediately upon the coming into existence of such DB Intellectual Property;
- (ii) to the extent that any of the DB Intellectual Property is generated by or maintained on a computer or in any other machine readable format, the Constructor shall obtain for the benefit of the Authority, at no charge to the Authority, the grant of a license or sub-license, as applicable, for and the supply of any relevant software or database (on equivalent terms to the equivalent license or sub-license granted to the Constructor) to enable the Authority and its employees, agents, contractors, subcontractors and other nominees to access and otherwise use such DB Intellectual Property for any such purpose (whether during or after the DB Term);
- (iii) where any DB Intellectual Property is vested in any third party, the Constructor shall grant or cause the grant of a license or sub-license to the Authority with like effect to the Complete License granted in relation to all other DB Intellectual Property hereunder to the Authority; and
- (iv) if the Constructor is unable to grant or cause the grant of a Complete License in relation to any DB Intellectual Property pursuant to this Section, the Constructor shall indemnify and hold harmless the Authority and the Authority Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims which the Authority and the Authority Indemnified Persons, or any of them, may suffer or incur arising as a result of:
 - (A) the use or disclosure of such DB Intellectual Property; and
 - (B) allegations of or findings of infringement of Intellectual Property Rights of other persons, including breach of confidence, breach of moral rights, unauthorized use by the Authority or any of the Authority Indemnified Persons, or failure to obtain waivers of moral rights, in respect of such DB Intellectual Property.

in each case to the extent not caused directly by a breach in the due performance or observance by the Authority of any of its obligations under this Agreement or any other Authority Project Document.

- (b) The Authority hereby grants to the Constructor a non-transferable, non-exclusive, royalty-free license (but with no right to grant sub-licenses except to Subcontractors) to use, copy and create derivative works from, only during the DB Term and only for the purpose of carrying out the DB Work and all obligations of the Constructor under the Project Documents:
 - (i) all materials, documents and data of any nature relating to the DB Work which is or becomes vested in the Authority and is required by the Constructor for any purpose relating to the DB Work (including the Disclosed Data), and all Intellectual Property Rights therein, provided that, with respect to any such material, document or data created after the Effective Date, such license shall

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take effect immediately upon the coming into existence of such material, document or data; and

- (ii) [Intentionally Deleted]
- (iii) all names, branding and logos, and all Intellectual Property Rights therein, designated by the Authority for the Project and the Project Infrastructure from time to time, provided that the Constructor's use of such names, branding and logos shall be subject to compliance by the Constructor with any and all guidelines issued by the Authority from time to time in respect of the use thereof.

15.5 [Intentionally Deleted]**15.6 Employee Information**

- (a) For the purposes of this Section, "**Employee Information**" means written details of:
 - (i) the total number of employees employed by the Constructor 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 15.6(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;
 - (C) any other information that may be relevant to the calculation of Constructor Breakage Costs; and
 - (D) such other information as the Authority may reasonably require in relation to the Constructor'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 Constructor and that employee have consented in writing to the provision of such details).
- (b) In the event of the occurrence of a Constructor Default or circumstances giving the Authority the right to terminate pursuant to Section 8.7(a)(iii), and whether or not the Authority has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so, the Authority may request in writing that the Constructor provide Employee Information to the Authority and, upon receipt of such written request, the Constructor (subject to any relevant collective agreement and applicable Laws) shall:

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- (i) provide such Employee Information to the Authority within 14 days of receipt of such notice; and
- (ii) take, and cause the Subcontractors to take, such steps as may be necessary to enable the Constructor to comply with any such request by the Authority, including notifying employees that such Employee Information may be provided the Authority and obtaining appropriate consents from employees to the release of such Employee Information to the Authority,

and the Constructor shall, after the provision of such Employee Information to the Authority and until the completion of any bidding process in connection with the Project described in Section 15.6(c), within 14 days of any such change, discovery of new information or receipt of such request:

- (iii) inform the Authority 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 Authority; and
 - (v) use reasonable efforts to co-operate with any other reasonable request made by the Authority concerning the Employee Information.
- (c) Unless required by Law to do so, the Authority shall not disclose Employee Information (or any part thereof) received from the Constructor pursuant to Section 15.6(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 Authority 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 DB Work in connection with the Project, provided that, if requested in writing by the Constructor to do so, the Authority 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.

15.7 Survival

Notwithstanding any other provision of this Agreement, the provisions of this Part will survive the expiry or any earlier termination of this Agreement.

**PART 16
ASSIGNMENT AND SUBCONTRACTING**

16A Restrictions on Changes

The Constructor shall not assign or transfer any interest in this Agreement or any of the other Project Documents without the prior consent of the Authority's Representative in accordance with the Consent Procedure, which may be withheld in the Authority's discretion.

16.1 [Intentionally Deleted]

16.2 [Intentionally Deleted]

16.3 [Intentionally Deleted]

16.4 Assignment by the Authority

- (a) The Authority may, without the consent of the Constructor, assign or transfer any of its interest in and under this Agreement and the other Project Documents to a Qualified Governmental Entity that executes and delivers to the Constructor an agreement in form and substance satisfactory to the Constructor acting reasonably whereby such assignee or transferee assumes and agrees to observe, perform and be bound by, all the obligations of the Authority under this Agreement and the other Project Documents.
- (b) Except as provided in Section 16.4(a), the Authority shall not, without the prior consent of the Constructor, which may be withheld in the Constructor's sole, absolute and unfettered discretion, assign or otherwise transfer any of its interest in or under this Agreement or any of the other Project Documents.

16.5 Release of the Authority on Assignment

Upon any assignment or transfer in accordance with Section 16.4(a) of all of the interest of the Authority in and under this Agreement and the other Authority Project Documents to a single Qualified Governmental Entity, the Authority shall be released from all of its obligations and liabilities under this Agreement and the other Authority Project Documents.

16.6 [Intentionally Deleted]

16.7 [Intentionally Deleted]

16.8 [Intentionally Deleted]

16.9 Use of Contractors by Constructor

- (a) Except as otherwise provided in this Agreement, the Authority acknowledges that the Constructor may perform part of the DB Work through one or more Subcontractors. Notwithstanding any such subcontracting:
 - (i) the Constructor shall not be relieved or excused from any of its obligations and liabilities under this Agreement; and

- (ii) the Constructor shall be and remain principally liable to the Authority for the due 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 Constructor.
- (b) The Constructor acknowledges and agrees that the prior written consent of the Authority shall be required in respect of any Subcontractor proposed to be hired or engaged by the Constructor where the aggregate consideration to be paid to such Subcontractor could reasonably be expected to equal or exceed \$100,000,000.
- (c) The Constructor acknowledges that it is an objective of the Authority and the Province to maximize the economic development of the region of the Project Site and, as a result, the Constructor will, using commercially reasonable efforts, assist in achieving this objective by local purchases and utilization of local Subcontractors, including suppliers, for the performance of the DB Work.

16.10 [Intentionally Deleted]**16.11 Non-Arm's Length Contracts**

The Constructor shall:

- (a) notify the Authority's Representative of any Subcontract that the Constructor enters into with an Affiliate of the Constructor or another person with whom the Constructor 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 Authority's Representative full particulars of the Subcontract or amendment and the parties thereto; and
- (b) notify the Authority's Representative of any Subcontract that an Affiliate of the Constructor enters into of which the Constructor is aware, within 10 Business Days after the Authority becomes aware of such Subcontract.

16.12 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, the Constructor shall not carry out or permit any action contemplated by Section 16.9 [Use of Contractors by Constructor] or Section 16.11 [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.

16.13 [Intentionally Deleted]**16.14 [Intentionally Deleted]**

16.15 [Intentionally Deleted]**16.16 Payment of Authority's Costs**

- (a) If particulars of any proposed documents or course of action are submitted to the Authority's Representative pursuant to any provision of this Part 16 [Assignment and Subcontracting], or if the Constructor requests any consent pursuant to any provision of this Part 16 [Assignment and Subcontracting], or if any action, transaction, event or circumstance occurs or is proposed that requires the consent of the Authority's Representative under any provision of this Part 16 [Assignment and Subcontracting] or to which the Authority's Representative has a right of review or objection under this Part 16 [Assignment and Subcontracting], the Constructor shall pay to the Authority, in accordance with the remaining provisions of this Section 16.16 [Payment of Authority's Costs], all reasonable and proper costs and expenses incurred by the Authority 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 any other matter required in connection therewith or related thereto, whether or not any objection is made or any consent is given or any other action is taken by the Authority 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 by Partnerships BC or the Province to the Authority, and the Authority's reasonable internal administrative and personnel costs.
- (b) At the time of the Constructor's submission pursuant to any Section in this Part 16 [Assignment and Subcontracting] pursuant to which the Authority or the Authority's Representative has a right of review, objection, consent, verification or other action, and as a condition precedent to the commencement of any time period specified for the Authority or the Authority's Representative to object, consent or otherwise respond to such submission and to any obligation of the Authority to review or consider any matter in respect of which any such submission is made, the Constructor shall pay to the Authority the sum of \$35,000 (index linked) to be held by the Authority on account of the Constructor's obligations to pay under this Section 16.16 [Payment of Authority's Costs] in respect of such submission.
- (c) The Authority may from time to time invoice the Constructor for amounts to be paid by the Constructor under this Section 16.16 [Payment of Authority's Costs]. For each particular matter submitted to the Authority's Representative, such invoices shall be paid first out of any funds provided by the Constructor under Section 16.16(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 Constructor under Section 16.16(b) with respect to the matter, the Constructor shall pay to the Authority 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 Authority is rendered or any action contemplated by the submission or request has been taken, the Authority shall invoice the Constructor for all amounts to be paid by the Constructor under this Section 16.16 [Payment of Authority's Costs] not previously invoiced by the Authority, and the Authority shall refund any overpayment by the Constructor on account of amounts to be paid by the

Constructor under this Section 16.16 [Payment of Authority's Costs], and the Constructor shall pay any amount owing by it under this Section 16.16 [Payment of Authority's Costs], in either case within 10 Business Days after receipt of such invoice.

16.17 [Intentionally Deleted]

16.18 [Intentionally Deleted]

PART 17 DEFECTS

17.1 Reporting of Latent Defects

Without prejudice to any other reporting requirement under this Agreement, in the event that a Latent Defect becomes apparent at any time during the DB Term, the Constructor shall promptly and in any event within ten days of becoming aware of such Latent Defect give notice to the Authority's Representative identifying the Latent Defect in reasonable detail.

17.2 Rectification of Latent Defects

Upon the Constructor notifying the Authority of a Latent Defect, or upon the Authority becoming aware of a Latent Defect and notifying the Constructor thereof, the Authority shall as soon as reasonably practicable do one of the following in its discretion:

- (a) retain the Constructor to complete the rectification of the Latent Defect by initiating an Authority Change in respect of such rectification work under Section 7.1 [Authority Changes], with the compensation and relief to which the Constructor is entitled being determined in accordance with Schedule 11 [Changes], provided that any entitlement which the Constructor would have had under Part 8 [Supervening Events] if such Latent Defect had constituted a Compensation Event under Section 17.2(b), including relief from delays and Direct Losses resulting from the Constructor's compliance with its obligations under Section 17.4 [Traffic Management and Public Safety with Defects] in respect of such Latent Defect, shall be dealt with as part of such Authority Change; or
- (b) have such rectification work carried out by the Authority's own labour forces (including day labour retained by the Authority) or by a Third Party Contractor, in which event the existence of such Latent Defect, as well as the acts and omissions of the Authority or a Third Party Contractor in carrying out such rectification work, shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply, except only that, for the purposes of Section 8.1(b)(v), the time period referred to therein shall not apply in respect of any such Compensation Event.

17.3 Risks of Defects

- (a) The Constructor shall carry out, as part of the DB Work, any remedial or other works required as a result of any defect in the DB Work other than any Latent Defect for which the Authority is responsible pursuant to Section 17.2 [Rectification of Latent Defects] (which Latent Defects shall be remedied in accordance with Section 17.2 [Rectification of Latent Defects]).

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- (b) Except as expressly provided in Section 17.2 [Rectification of Latent Defects], or as expressly provided elsewhere in this Agreement, in respect of any defect in the DB Work:
- (i) any such defect comprising a Nonconformity shall be addressed by the Constructor in accordance with Part 5A [DB Work] and Part 6 [Nonconformities] of Schedule 7;
 - (ii) all costs of and associated with such defect and any remedial or other works required as a result of such defect shall be borne by the Constructor; and
 - (iii) the Authority shall not have any liability to the Constructor or any Subcontractor (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 Authority or any of its 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 defect or any remedial or other works required as a result of any such defect.

17.4 Traffic Management and Public Safety with Defects

For greater certainty, the Constructor 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 defect in the DB Work, including any Latent Defect and any DB Work Defect.

**PART 18
GENERAL****18.1 Disputes**

- (a) Except as otherwise expressly provided in this Agreement:
- (i) any dispute between the parties hereto 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 to this Agreement 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 hereto 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.
- (b) Any and all issues or disputes between Constructor and the Authority, whether or not subject to the Dispute Resolution Procedure, shall constitute Confidential Information.

18.2 Public Communications

- (a) The roles and responsibilities of the Constructor and the Authority as they relate to all communications and consultation for the Project with Stakeholders and the public will be as set out in Schedule 9 [Communication and Consultation].
- (b) The Constructor, in consultation with the Authority's Representative and the ombudsman appointed under the *Ombudsman Act* (British Columbia) (the "**Provincial Ombudsman**"), will establish a protocol (the "**Complaints Protocol**") for dealing with complaints received from the public in connection with the Project and the Project Site, that is accepted by the Authority's Representative in accordance with the Consent Procedure, and is satisfactory to the Provincial Ombudsman, and will deal with any complaints received (whether orally or in writing, and whether from a user of the Concession Highway or the Other Highway Facilities or others) in a prompt, courteous and efficient manner in accordance with the Complaints Protocol. The Constructor will where required by the Authority's Representative, prepare updates to the Complaints Protocol from time to time to ensure that the Complaints Protocol continues to meet the requirements of the Provincial Ombudsman and Good Industry Practice, and the reasonable requirements of the Authority.
- (c) 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 shall not be unreasonably withheld or delayed).

18.3 Entire Agreement

This Agreement (including the Schedules) constitutes the entire agreement between the parties hereto with respect to all matters contained herein, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein and superseding as well the Request for Qualifications and the Request for Proposals, and, except as stated herein or in the instruments and documents to be executed and delivered pursuant hereto, contains all the representations, warranties, conditions and other agreements of the respective parties with respect to all matters contained herein.

18.4 Amendment

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

18.5 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 or electronic transmission to the address, facsimile transmission number or electronic transmission address of each party set out below:

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- (a) if to the Authority:

Transportation Investment Corporation
Suite 1420 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Blasetti, Chief Executive Officer
Facsimile: 604-775-1143
Email: frank.blasetti@gov.bc.ca

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

Transportation Investment Corporation
Suite 1420 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Gary A. Webster, P. Eng.
Facsimile: 604-775-1143
Email: gary.webster@ch2m.com

- (c) if to the Constructor:

Kiewit/Flatiron General Partnership
Suite 1410 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Margitan
Facsimile: 604-629-0310
Email: frank.margitan@kiewit.com

- (d) if to the Design Build Director:

Kiewit/Flatiron General Partnership
Suite 1410 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Margitan
Facsimile: 604-629-0310
Email: frank.margitan@kiewit.com

or to such other address in British Columbia or facsimile transmission number or electronic 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

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- (f) if sent by facsimile transmission or electronic 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.

18.6 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.

18.7 Further Assurances

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) 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.

18.8 Relationship of the Parties

Nothing contained in this Agreement or in the other Authority Project Documents nor any action taken pursuant hereto or thereto shall be deemed to constitute the Constructor and Authority a partnership, joint venture or any other similar such entity.

18.9 Binding Effect

Subject to the provisions of Part 16 [Assignment and Subcontracting], this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

18.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

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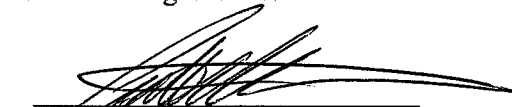
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IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

TRANSPORATION INVESTMENT CORPORATION

by its authorized signatories:

Per:


Name: Peter Milburn
Title: Chair

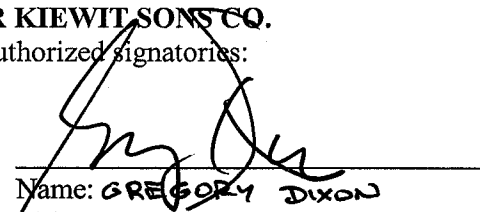
KIEWIT/FLATIRON GENERAL PARTNERSHIP

by its partners:

PETER KIEWIT SONS CO.

by its authorized signatories:

Per:


Name: GREGORY DIXON
Title: SENIOR VICE PRESIDENT


Per:

Name:
Title:

FLATIRON CONSTRUCTORS CANADA LIMITED

by its authorized signatories:

Per:


Name: ROBERT FRENCH
Title: PRESIDENT

Per:

Name:
Title: