

PROJECT AGREEMENT

AMONG

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS
REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**

- and -

BC TRANSPORTATION FINANCING AUTHORITY

- and -

BROADWAY SUBWAY PROJECT CORPORATION

AUGUST 28, 2020

TABLE OF CONTENTS

PART 1 INTERPRETATION	1
1.1 Definitions and Interpretation.....	1
1.2 Governing Law	1
1.3 Submission to Jurisdiction.....	2
1.4 No Fettering of Province’s Rights, Powers and Authority	2
1.5 Schedules	2
1.6 Language.....	2
PART 2 GENERAL PROJECT TERMS	2
2.1 The Project.....	2
2.2 Term.....	3
2.3 Assumption of Risk and Responsibility	3
2.4 <i>Financial Administration Act</i>	3
2.5 Access to and Responsibility for Project Site.....	3
2.6 [Not Used]	5
2.7 Limited Use.....	5
2.8 Business Opportunities	5
2.9 Location of Primary Infrastructure Components	5
2.10 Title to Infrastructure and Improvements	5
2.11 No Registration	6
2.12 Transfer of Title.....	6
2.13 Review, Approval, Inspection and Audit by the Province	7
2.14 Site Inspection and Investigations	8
2.15 Disclosed Data	12
2.16 Project Name, Project Marks and Website	13
2.17 Execution and Delivery of Project Documents	15
2.18 Financial Model	15
2.19 No Agency	16
2.20 Financing Letter of Credit	17
2.21 [Not Used]	18
2.22 Province’s Representative and Project Co’s Representative.....	18
2.23 [Not Used]	18
2.24 Community Benefits	18
2.25 Limited Notice to Proceed Agreement	18
PART 3 GENERAL OBLIGATIONS OF PROVINCE.....	19
3.1 Mitigation By Province.....	19
3.2 Representations and Warranties of the Province and BCTFA	20
3.3 Without Prejudice	20
3.4 Survival of Representations and Warranties	20
PART 4 GENERAL OBLIGATIONS OF PROJECT CO	20
4.1 Project Co to Carry Out Project Work.....	20
4.2 Informational Rights	21
4.3 No Adverse Reflection or Restricted Person	22
4.4 No Other Business or Conflicts of Interest.....	23
4.5 Prohibited Acts	23
4.6 Public Roads and Transit Facilities and Operations.....	24

4.7	Access to Project Site and Project Infrastructure by Others.....	25
4.8	No Other Activity, Improvements or Change in Use.....	26
4.9	Project Co Submittals	27
4.10	Mitigation By Project Co.....	27
4.11	Site Safety and Security	28
4.12	Project Co as Prime Contractor	28
4.13	Health and Safety Program	29
4.14	Project Co’s Occupational Health and Safety Obligations.....	30
4.15	Refusal to Recognize Project Co as Prime Contractor	33
4.16	Appointment of other Prime Contractors by Province	34
4.17	Notice of Failure to Comply with Health and Safety Requirements	35
4.18	Permits	36
4.19	Agreements with Governmental Authorities	38
4.20	Archaeological and Heritage Objects	38
4.21	Representations and Warranties of Project Co.....	39
4.22	Without Prejudice	42
4.23	Survival of Representations and Warranties	42
PART 5 FINANCING OF THE PROJECT.....		42
5.1	Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements	42
5.2	Restrictions on Changes to Senior Lending Agreements	43
5.3	Permitted Borrowing.....	43
5.4	Exempt Transaction.....	44
5.5	Copies of Documents.....	44
5.6	Payment of Province’s Costs	44
5.7	Changes Not to Increase Province’s Liability	45
5.8	Restricted Persons Prohibited.....	46
PART 6 INSURANCE, DAMAGE AND DESTRUCTION.....		46
6.1	Insurance Coverages	46
6.2	Province’s Right to Insure	47
6.3	Particular Requirements of Policies	47
6.4	Deductibles	47
6.5	Project Co Insurance Primary	48
6.6	Release of the Province for Insured Loss	48
6.7	Compliance with Policies	48
6.8	Evidence of Insurance.....	49
6.9	Renewal	49
6.10	Copies of Communications.....	50
6.11	Review of Insurance by Province	50
6.12	Workers’ Compensation Coverage.....	50
6.13	Claims	51
6.14	Insurance Not to Prejudice.....	51
6.15	Restoration and Reinstatement of Damage or Destruction.....	51
6.16	Reinstatement Plan	52
6.17	Conduct of Reinstatement Work	53
6.18	Application of Proceeds of Insurance.....	53
6.19	Repayment of Insurance Proceeds	57

6.20	Proceeds of Property Insurance if Agreement Terminated.....	57
6.21	Alternate Risk Financing Measures.....	57
PART 7 PROVINCE CHANGES AND PROJECT CO PROPOSALS		58
7.1	Province Changes	58
7.2	Project Co Proposals.....	58
7.3	Minor Works.....	58
7.4	Value Engineering Proposals.....	59
7.5	Responsibility for Province Changes and Project Co Proposals	59
7.6	Payments in Respect of Province Changes and Project Co Proposals	59
PART 8 SUPERVENING EVENTS.....		59
8.1	Supervening Events	59
8.2	Procedures Upon Occurrence of a Supervening Event.....	61
8.3	Project Co’s Entitlements Upon Occurrence of a Compensation Event	63
8.4	Project Co’s Entitlements Upon Occurrence of a Relief Event.....	65
8.4A	Termination for Relief Event.....	67
8.5	Parties’ Entitlements Upon Occurrence of a Force Majeure Event	68
8.6	Termination for Force Majeure Event	69
8.7	Termination for Damage or Destruction.....	69
8.8	Responsibility for Participants and Trespassers	71
8.9	Allocation of Risks of Participants and Trespassers	72
8.10	Sharing of Increased Recoverable Expenditures in Specified Circumstances	74
8.11	Effect of Insurance.....	74
8.12	Delay in Notification	75
8.13	[Not Used]	76
8.14	Sharing of Disposal Costs for Specified Materials.....	76
8.15	Limited Compensation for COVID-19 Related Health Event.....	76
8.16	Allocation of Risks of COVID-19 Related Health Event.....	77
PART 9 INDEMNITIES AND LIMITATIONS ON LIABILITY		78
9.1	Indemnification by Project Co.....	78
9.2	Exceptions to Indemnification by Project Co.....	80
9.3	Indemnification for ATC Intellectual Property Infringement.....	81
9.4	Effect of Project Co’s Indemnities	82
9.5	Conduct of Claims Indemnified by Project Co.....	83
9.6	Indemnification by the Province.....	86
9.7	Limited Province Indemnity for Contamination and Nuisance	86
9.8	Exceptions to Indemnification by the Province.....	87
9.9	Limitation of Province Liability	87
9.10	Conduct of Claims Indemnified by the Province.....	88
9.11	Costs and Expenses.....	90
9.12	No Liability for Irrecoverable Losses.....	90
9.13	No Double Compensation.....	90
9.14	No Compensation Where Insured.....	91
9.15	Acknowledgement Regarding Equivalent Project Relief	92
9.16	Not Used	92
9.17	Survival.....	92

PART 10 PAYMENTS	92
10.1 Contract Price and Payments	92
10.2 Additional Payments and Financing	93
10.3 Province Rights to Audit	93
10.4 Province's Right of Set-Off	94
10.5 Payments in Canadian Dollars	94
10.6 Due Date for Payments	94
10.7 Taxes on Payments	94
10.8 Payment of Disputed Amounts	96
10.9 Inaccuracies in Payments	97
10.10 Interest on Overdue Amounts	97
10.11 Interest without Prejudice	97
10.12 Payment of Interest by Province	97
PART 11 PROVINCE'S ACCESS, MONITORING AND STEP-IN RIGHTS.....	98
11.1 Province Access	98
11.2 Uncovering of Work	98
11.3 Increased Monitoring	99
11.4 Province's Emergency and Critical Failure Step-In Rights	100
11.5 Province's Other Step-In Rights	102
11.6 Availability of Certain Assets on Step-In	103
PART 12 PROJECT CO DEFAULT AND PROVINCE REMEDIES.....	103
12.1 Project Co Default	103
12.2 Notice of Default by Project Co	107
12.3 Remedies of the Province for Project Co Default	107
12.4 Termination for Failure to Remedy According to Program	110
12.5 Province Costs	110
12.6 Province Remedies Cumulative	110
12.7 Continued Effect	111
12.8 Compensation on Termination	111
PART 13 PROVINCE DEFAULT AND PROJECT CO REMEDIES.....	111
13.1 Province Default	111
13.2 Notice of Default by Province	113
13.3 Remedies of Project Co for Province Default	113
13.4 Project Co Costs	114
13.5 Project Co Remedies Cumulative	114
13.6 Continued Effect	114
13.7 Compensation on Termination	114
PART 14 TERMINATION	114
14.1 [Not Used]	114
14.2 Termination for Convenience	114
14.3 No Other Rights of Termination	115
14.4 Continued Performance	115
14.5 Notice of Intention to Terminate and Dispute	115
14.6 Changes after Notice of Termination	116

14.7	Effect of Termination or Expiry Generally	117
14.8	Province Discretion to Complete	118
14.9	Transfer of Assets	119
14.10	Handover	121
14.11	Project Co Involvement in Competition Process	123
PART 15 CONFIDENTIALITY AND INTELLECTUAL PROPERTY		123
15.1	Confidentiality	123
15.2	Freedom of Information, Privacy Protection and Security	125
15.3	Ownership of Intellectual Property and License to Province	126
15.4	License of Intellectual Property to Project Co.....	129
15.5	Project Co Traffic Data.....	129
15.6	[Not Used]	130
15.7	Survival	130
PART 16 ASSIGNMENT, CHANGE IN OWNERSHIP AND SUBCONTRACTING		130
16.1	Province Consent Required to Assignment by Project Co	130
16.2	Where Province Consent to Assignment Not Required	130
16.3	Other Requirements for Assignment by Project Co	131
16.4	Assignment by the Province and BCTFA.....	131
16.5	Release of the Province and BCTFA on Assignment.....	132
16.6	Change in Control of Project Co	132
16.7	No Change in Ownership to Restricted Person	133
16.8	Consent to Change in Control Not Required in Certain Cases.....	133
16.9	Use of Contractors by Project Co	133
16.10	Restrictions on Changes to Principal Contracts	134
16.11	Non-Arm's Length Contracts	135
16.12	Restricted Persons Prohibited.....	135
16.13	Replacement Principal Contracts.....	136
16.14	New Principal Contracts	136
16.15	Copies of Documents.....	136
16.16	Payment of Province's Costs	136
16.17	Exempt Principal Contractor Matter.....	137
16.18	Principal Contract Changes Not to Increase Province's Liability	138
PART 17 DEFECTS		138
17.1	Risks of Defects	138
17.2	[Not Used]	139
17.3	[Not Used]	139
PART 18 GENERAL		139
18.1	Disputes	139
18.2	Public Communications	140
18.3	Entire Agreement	140
18.4	Amendment.....	140
18.5	Notices	140
18.6	Waiver.....	142
18.7	Further Assurances	142

18.8	Relationship of the Parties.....	142
18.9	Binding Effect.....	142
18.10	Counterparts.....	142

SCHEDULES

Schedule 1	Definitions and Interpretation
Schedule 2	Representatives, Review Procedure and Consent Procedure
Schedule 3	Project Schedule
Schedule 4	Design and Construction
Schedule 5	Project Work Defects and Warranties
Schedule 6	Environmental Obligations
Schedule 7	Quality Management
Schedule 8	Lands
Schedule 9	Communications, Community Relations and Business Relations
Schedule 10	Payment and Performance Mechanism
Schedule 11	Changes
Schedule 12	Proposal Extracts
Schedule 13	Compensation on Termination
Schedule 14	Lenders' Remedies Agreement
Schedule 15	Insurance Requirements
Schedule 16	Dispute Resolution Procedure
Schedule 17	Records and Reports
Schedule 18	Insurance Trust Agreement
Schedule 19	Collateral Agreement
Schedule 20	Waiver of Moral Rights
Schedule 21	Community Benefits Requirements
Schedule 22	Indigenous Requirements
Schedule 23	Privacy Protection
Schedule 24	Closing Deliveries
Schedule 25	Financing and Shareholder Agreements

PROJECT AGREEMENT

THIS PROJECT AGREEMENT dated as of the 28th day of August, 2020 is entered into:

AMONG:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**, as represented by the **MINISTER OF
TRANSPORTATION AND INFRASTRUCTURE**

(the “**Province**”)

AND:

BC TRANSPORTATION FINANCING AUTHORITY

(“**BCTFA**”)

AND:

BROADWAY SUBWAY PROJECT CORPORATION

(“**Project Co**”)

WHEREAS:

- A. Project Co has been retained by the Province to carry out the Project and the Project Work; and
- B. The rights and obligations among the parties with respect to the Project shall be governed by the terms and conditions set forth in this Agreement.

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

1.3 Submission to Jurisdiction

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

1.4 No Fettering of Province's Rights, Powers and Authority

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

1.5 Schedules

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

1.6 Language

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

PART 2 GENERAL PROJECT TERMS

2.1 The Project

Project Co shall:

- (a) provide, perform and carry out the Project Work:
 - (i) in accordance with and subject to the terms and conditions of this Agreement;
and

- (ii) in accordance with the Proposal Extracts (provided that Project Co acknowledges that the Proposal Extracts shall be in addition to and not in substitution for any terms, conditions, requirements, criteria and specifications set out in this Agreement, including Schedule 4 [Design and Construction], Schedule 5 [Project Work Defects and Warranties] or any other Project Requirements)
- (b) perform and observe all other obligations for which it is responsible under this Agreement; and
- (c) obtain sufficient financing to enable Project Co to perform and observe its obligations under this Agreement;

(collectively, the “**Project**”) at its own cost and risk and without recourse to the Province, BCTFA, public funds, or guarantees by the Province or any other Governmental Authority, except as expressly provided otherwise in, or to the extent Project Co otherwise has rights arising out of or in respect of, this Agreement or any of the other Province Project Documents.

2.2 Term

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

2.3 Assumption of Risk and Responsibility

- (a) Except to the extent provided otherwise pursuant to the express provisions of this Agreement or any other Province Project Document, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement and the other Province Project Documents are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.
- (b) As between the parties, and except for the selection of Thales as a Principal Contractor, Project Co shall be solely responsible for the selection, pricing and performance of all Principal Contractors, Subcontractors and other persons for whom Project Co is in law responsible, and for the acts, defaults, omissions, breaches and negligence of all Principal Contractors, Subcontractors and any other persons for whom Project Co is in law responsible, as fully as if such acts, defaults, omissions, breaches and negligence were those of Project Co.

2.4 Financial Administration Act

Project Co acknowledges that it is aware of the provisions of the *Financial Administration Act* (British Columbia).

2.5 Access to and Responsibility for Project Site

- (a) For the duration of the Access Period in respect of each part of the Project Site:
 - (i) the Province and BCTFA agree, subject to and in accordance with the terms and conditions of this Agreement, including the provisions of Schedule 8 [Lands]

and the Conditions of Access, to make such part available to Project Co, on a non-exclusive basis in common with all persons identified in Section 4.7 [Access to Site and Project Infrastructure by Others] as having the right to access, for Project Co, the Principal Contractors, the Subcontractors, and any other person engaged or involved in the performance of the Project Work, and their respective representatives, agents, employees and contractors, and any other persons for whom Project Co is in law responsible engaged or involved in the performance of the Project Work to enter upon and use such part and the Infrastructure located on such part as may be reasonably required from time to time to permit Project Co to carry out the Project Work; and

- (ii) Project Co shall assume all risk and responsibility for, and custody and control of, such part, save to the extent expressly provided otherwise in this Agreement.
- (b) Without prejudice to any rights of the Province or BCTFA that may have accrued during, or may accrue in respect of, the Access Period in respect of any part of the Project Site as a result of or in connection with Project Co's obligations under this Agreement (including under Section 2.5(a)(ii)), on the date of expiry or termination of the Access Period in respect of such part, Project Co's risk and responsibility for, and custody and control of, such part shall cease, provided that such cessation shall not relieve Project Co of any obligations that relate to the Project Site or the performance of Project Work on the Project Site (or the part thereof that was subject to such cessation) that are, notwithstanding such cessation, applicable to the performance of Project Work thereon by Project Co at such times as it has access thereto pursuant to Section 2.5(c).
- (c) To the extent permitted by, and subject to and in accordance with the Conditions of Access, after the date of expiry or termination of the Access Period in respect of any part of the Project Site, the Province and BCTFA shall, on terms and conditions determined by the Province and BCTFA, acting reasonably, provide access to such former part of the Project Site to Project Co and the persons for whom Project Co is in law responsible engaged or involved in the performance of the Project Work, to the extent necessary to enable Project Co to perform any of its obligations under this Agreement after such date that are required to be carried out after such date.
- (d) Notwithstanding Section 2.5(c), after the Substantial Completion Date, Project Co is responsible for obtaining from the applicable Transit Operators, in accordance with Section 4.18 and the documents set out in Section 18.1.3(a)(i) and 18.1.3(a) (ii) of Article 18 [Integration with Existing Transit Facilities] of Part 2 Schedule 4, any and all work permits and occupancy permits such Transit Operators may require Project Co to obtain in order to have access after the Substantial Completion Date to former parts of the Project Site owned or operated by, or under the care and control of, such Transit Operators (and the Province Infrastructure located on such parts) to enable Project Co to perform any of its obligations under this Agreement after the Substantial Completion Date that are required to be carried out after the Substantial Completion Date.

2.6 [Not Used]

2.7 Limited Use

- (a) During the Term, and without prejudice to any access rights of any such person as a member of the general travelling public, Project Co shall not make any use of, or allow or authorize the Principal Contractors, the Subcontractors, or any other person engaged or involved in the performance of the Project 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 Project Work in accordance with this Agreement and the other Project Documents.
- (b) In addition to the restrictions in Section 2.7(a), Project Co shall make only such use of, and shall cause the Principal Contractors, the Subcontractors and all other persons engaged or involved in the performance of the Project Work, and their respective representatives, agents, employees and contractors to make only such use of, the Municipal Infrastructure as may be necessary for the purposes of carrying out the Project Work that specifically relates thereto, and no other Project Work, and in so doing Project Co shall make all reasonable efforts, and shall cause the Principal Contractors, the Subcontractors and all other persons engaged or involved in the performance of the Project 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 Municipal Infrastructure.
- (c) Without limiting the generality of the foregoing, except as permitted by or pursuant to Section 2.8 [Business Opportunities], Project Co 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 otherwise agreed by the Province in its discretion, the Province reserves the right to all commercial and other opportunities for, or related to, the Project except for the commercial opportunity for Project Co as represented by this Agreement.

2.9 Location of Primary Infrastructure Components

Project Co covenants and agrees that no part of the Province Infrastructure constructed as part of the Project Work shall be constructed or located on any lands that are not Permanent Project Lands.

2.10 Title to Infrastructure and Improvements

Except to the extent that title to any Plant has not passed to the Province or BCTFA in accordance with Section 2.12(a), and except for Project Intellectual Property or Background IP that is owned by Project Co and licensed to the Province and BCTFA in accordance with Section 15.3 [Ownership of Intellectual Property and License to Province]:

- (a) Project Co shall not acquire or have any interest in land or any other property or proprietary interest in or title to the Project Site or any Project Infrastructure, or any other improvements on or to the Project Site from time to time;

- (b) as between the Province and BCTFA, and Project Co, and subject to Section 2.10(c), title to and ownership of the Project Site and the Project Infrastructure and all other improvements on or to the Project Site from time to time shall vest in the Province or BCTFA, such other person as the Province may direct, or the owner of the relevant lands, as applicable; and
- (c) title to and ownership of the Municipal Infrastructure shall vest in the City.

2.11 No Registration

Subject to Project Co's rights pursuant to the *Builders Lien Act* (British Columbia), Project Co 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

- (a) As between the Province and BCTFA, and Project Co, title to all Plant shall pass to and vest absolutely in the Province or BCTFA, such other person as the Province may direct, or the owner of the relevant lands, as applicable, at the earlier of:
 - (i) title to the Plant being acquired by Project Co; and
 - (ii) the Plant being affixed to or incorporated into the Project Site or the Project Infrastructure,

provided that all testing applicable to such Plant shall have been completed in accordance with this Agreement prior to such passing of title. Project Co covenants that each of the Principal Contracts (other than the ATC Supply Contract) shall contain a provision that title to all Plant shall pass to the Province or BCTFA (or such other person as the Province may direct, as applicable, under this Section 2.12(a)) at the earlier of title to the Plant being acquired by the Principal Contractor and the Plant being affixed to or incorporated into Project Site or the Project Infrastructure.

- (b) Title to any property (whether real or personal, tangible or intangible) not referred to in Section 2.12(a) that is or is to be transferred to or acquired by the Province or BCTFA or any other person from Project Co pursuant to the terms of this Agreement shall pass to the Province, BCTFA or such other person, as applicable, at the time of the transfer or acquisition as contemplated by this Agreement.
- (c) Without limiting the provisions of Section 18.7 [Further Assurances], Project Co shall, at the written request of the Province from time to time, execute and deliver to the Province, BCTFA or to such other person as the Province may direct, and cause the Principal Contractors and Subcontractors with which Project Co has contracted directly (or, in the case of Thales, use reasonable efforts (without any obligation to incur any material expenditure in using such efforts) to cause Thales) to execute and deliver to the Province, BCTFA or such other person as the Province may direct, all such bills of sale and other documents as the Province shall reasonably request for transferring rights in or title to property (whether real or personal, tangible or intangible) or confirming the transfer of rights in or title to any such property, as contemplated by this Section 2.12.

- (d) Project Co covenants that the Principal Contracts and all Subcontracts to which Project Co is a party (other than the ATC Supply Contract) shall contain a provision imposing on the Principal Contractor or the Subcontractor thereunder the same obligation to execute and deliver bills of sale and other documents as is imposed on Project Co under Section 2.12(c).
- (e) Notwithstanding the passage to the Province, BCTFA or such other person as the Province may direct of rights in or title to Plant as provided above in this Section 2.12, Project Co, the Principal Contractors and the Subcontractors shall be entitled to make use of such Plant for the purposes of carrying out the Project Work subject to and in accordance with this Agreement.

2.13 Review, Approval, Inspection and Audit by the Province

- (a) If any review, approval, inspection, examination, audit, Quality Audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection is provided, performed or made by or on behalf of the Province or BCTFA or the Province'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 by the Province, BCTFA or the Province's Representative pursuant to the Review Procedure or the Consent Procedure or otherwise:
 - (i) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, shall be for assessment by the Province or BCTFA or the Province's Representative of general compliance by Project Co with its obligations under this Agreement or the other Project Documents only;
 - (ii) subject to the exceptions set out in subsections (A) through (D) below, 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 Province or BCTFA or the Province's Representative or any person for whom the Province is in law responsible:
 - (A) shall relieve or exempt or be deemed to relieve or exempt Project Co or any other person for whom Project Co is in law responsible from any of its obligations and liabilities under this Agreement or any other Province Project Document or at law or in equity, except in the circumstances and to the extent expressly provided in Section 2.13(b);
 - (B) shall constitute a waiver or release or be deemed to be a waiver or release by the Province or BCTFA of any duty or liability owed by Project Co or any other person to the Province or BCTFA, or of any indemnity given by Project Co to the Province or any Province Indemnified Person under this Agreement or any other Province Project

Document, except in the circumstances and to the extent expressly provided in Section 2.13(b);

- (C) shall create or impose or be deemed to create or impose any requirement, liability, covenant, agreement or obligation on the Province or BCTFA, except to the extent expressly set out in this Agreement as a consequence of the review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection; or
 - (D) shall entitle or be deemed to entitle Project Co to make any Claim against the Province or BCTFA for, or to recover from the Province or BCTFA, any Losses, except to the extent expressly set out in this Agreement; and
- (iii) any decision so made by the Province under 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 Province in its discretion if errors or further relevant facts are revealed after the decision has been made.

At the request of the Province from time to time, Project Co shall obtain from the Key Individuals and any other person identified by the Province, acting reasonably, prior to any such party carrying out any part of the Project Work, waivers of liability substantially on the terms of this Section 2.13(a) in favour of the Province, BCTFA and the Province's Representative and in form and substance satisfactory to the Province.

- (b) If any consent, approval, acceptance, certification, determination or other permission of, or review, inspection, examination, audit or testing by, the Province or BCTFA or the Province's Representative is expressly required under this Agreement or any other Province Project Document in order for any specific act or conduct of Project Co to be in compliance with (or not in breach of) any provision of this Agreement or any other Province Project Document, and if such consent, approval, acceptance, certification, determination or other permission is given by, or review, inspection, examination, audit or testing is carried out by, the Province or BCTFA or the Province's Representative (as the case may be) in any particular circumstance, Project Co shall be relieved of the obligation under this Agreement or other Province Project Document to obtain the specific consent, approval, acceptance, certification, determination or other permission given, or to have the review, inspection, examination, audit or testing carried out, but only for the purposes and in the particular circumstances in which it was given or carried out and to which it applied.

2.14 Site Inspection and Investigations

- (a) Project Co represents and warrants to the Province and BCTFA and agrees with the Province and BCTFA that Project Co shall be deemed to have:

- (i) been afforded the opportunity prior to executing this Agreement to inspect and examine all lands that will become the Project Site and their surroundings, and all existing Infrastructure in, on, over or under such lands, and inspected and examined the same and to have satisfied itself with respect thereto;
- (ii) satisfied itself prior to executing this Agreement as to:
 - (A) the structural, geotechnical, geological, climatic, hydrological, ecological, environmental and general condition of the lands that will become the Project Site and all Infrastructure thereon, 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 such 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 Project Work;
 - (B) any effect the condition of soils, including the presence of weak and compressible soils underlying the lands that will become the Project Site, may have on the performance of the Design and the achievement of the design life of the Project Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) as contemplated by Schedule 4 [Design and Construction];
 - (C) the adequacy of the lands that will become the Project Site and the Land Rights in such lands for the performance of Project Work and the performance by Project Co of all of its other obligations under this Agreement;
 - (D) the means and methods of communication with the various parts of, and access to and through, the lands that will become the Project Site, the accommodation it may require and the adequacy and sufficiency of the rights of access and use and occupation provided by Section 2.5 [Access to and Responsibility for Project Site] and Schedule 8 [Lands] for the purposes of performing the Project Work, including the means and methods of coordination and implementation of such communication, access, use and occupation;
 - (E) the possibility of interference by third parties, including members of the public, with access to or use of the lands that will become the Project Site, and the Infrastructure thereon, with particular regard to the Requirements of Interested Parties;
 - (F) the precautions and times and methods of working necessary to minimize any nuisance or interference, whether public or private, being caused to any third parties in the performance of the Project Work; and

- (G) any other contingencies, restrictions, conditions or constraints which would or might interfere with, limit or affect the ability of Project Co to carry out the Project Work in accordance with the terms of this Agreement;
- (iii) reviewed and satisfied itself, prior to executing this Agreement, with respect to:
 - (A) Project Co's Environmental Obligations;
 - (B) the Indigenous Requirements;
 - (C) the Project Requirements, and that the Project Requirements are in compliance with the requirements of Sections 4.1(a) (except to the extent that the Project Requirements impose obligations on Project Co to carry out and perform the Project Work to a higher standard than would be required to enable Project Co to carry out and perform the Project Work in accordance with Good Industry Practice), (b), and (c);
 - (D) the nature and extent (and that such nature and extent is adequate having regard to Project Co's obligations under this Agreement) of all Advance Work, Concurrent Work and other work that could reasonably have been anticipated from any analysis of all relevant information available to Project Co (including the Disclosed Data) as at the Financial Submittal Date, carried out or to be carried out by, or by other contractors on behalf of, the Province, BCTFA, Utility Suppliers, the City, TransLink, Railways or others in connection with the Project or the Project Infrastructure or otherwise on or in the vicinity of the lands that will become the Project Site, and the impact of the conduct of such work on the carrying out of the Project Work; and
 - (E) the completeness, accuracy, correctness, suitability, adequacy, fitness for purpose and sufficiency of the provisions and requirements of the ATC Supply Contract;
- (iv) obtained for itself prior to executing this Agreement all necessary information as to:
 - (A) the risks, contingencies and all other circumstances which may influence or affect the Project Requirements, Project Co's Environmental Obligations or the Indigenous Requirements or its obligation to carry out the Project Work in accordance with the provisions of this Agreement; and
 - (B) all other factors which would affect its decision to enter into this Agreement or the terms on which it would do so; and
- (v) 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)(i) through (iv) inclusive.

- (b) Project Co agrees with the Province and BCTFA that:
 - (i) Project Co accepts and will accept the Project Site and all existing Infrastructure thereon on an “as is, where is” basis;
 - (ii) neither the Province nor BCTFA has made and does not hereby make any representation or warranty with respect thereto; and
 - (iii) except as otherwise expressly set out in this Agreement, the Province and BCTFA shall have no responsibility or liability for the structural, geological, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Project Site and all Infrastructure thereon, and Project Co assumes and will assume any and all risk with respect to the structural, geotechnical, geological, climatic, hydrological, ecological, environmental and general conditions thereof and any and all risk that all or any part or parts thereof may not be suitable for the Project Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) or any Project Work.
- (c) Except as otherwise expressly set out in this Agreement, Project Co shall be solely and wholly responsible for, and hereby accepts responsibility for, investigation, assessment and evaluation of and all risks associated with any and all:
 - (i) surficial and sub-surface geotechnical and geological conditions or characteristics of the lands that will become the Project Site and any other lands, including any adjoining lands, or
 - (ii) geotechnical or geological features,which may in any way affect either directly or indirectly the design, construction, operation or use of the Project Infrastructure or any of its component parts.

The representations, warranties and agreements of Project Co in this Section 2.14 shall not constitute an actionable representation, warranty or agreement by Project Co in favour of the Province or BCTFA or give rise to a right of termination on the part of the Province or BCTFA, but the Province and BCTFA may rely on such representations, warranties, and agreements for the purpose of defending any action brought against the Province and BCTFA, or either of them, or any Claim by Project Co for damages, Losses, extensions of time, additional compensation or any other relief, provided that no such representation, warranty or agreement shall prejudice an otherwise valid Claim by Project Co:

- (d) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
- (e) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or under any other Province Project Document.

The provisions of paragraphs (a) to (c) of this Section 2.14 do not limit the provisions of any other paragraph of this Section 2.14.

2.15 Disclosed Data

- (a) Except as otherwise expressly provided in any other provisions of this Agreement, including Section 2.15(d), or as a result of any breach of any express obligation of the Province or BCTFA under this Agreement, neither the Province nor BCTFA shall have any liability to Project Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

- (b) Neither the Province nor BCTFA gives or makes, has given or made or shall be deemed to have given or made, any representation, warranty or undertaking that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of execution of this Agreement) relevant or material to the Project, the Project Infrastructure, the Project Site or the obligations undertaken by Project Co under this Agreement. Without limiting the generality of the foregoing, neither the Province nor BCTFA shall have any liability to Project Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to Project Co any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform Project Co (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data, except for any otherwise valid Claim by Project Co:
 - (i) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
 - (ii) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or under any other Province Project Document.

- (c) Project Co acknowledges, represents, warrants and confirms that, without prejudice to its express rights under any other provisions of this Agreement, including Section 2.15(d):
 - (i) Project Co shall be deemed to have conducted prior to executing this Agreement its own investigations, examinations, interpretations, analysis and review of the Disclosed Data and to have satisfied itself as to the accuracy, completeness and adequacy of all such Disclosed Data which it has relied upon, adopted or made use of or intends to rely upon, adopt or make use of in carrying out the Project Work; and
 - (ii) Project Co shall not be entitled to make, and shall not make, any Claim against the Province or BCTFA, whether in damages or for Losses or for extensions of time, compensation or additional payments or other relief, and whether under this Agreement or otherwise, and shall not be released from any risks or obligations imposed on or undertaken by it under this Agreement or any other

Province 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, insufficient or incomplete information relating to the Disclosed Data or to the Project Site or the Infrastructure thereon was given to it by any person (whether or not in the employ of the Province or BCTFA) including any person for whom the Province is in law responsible, the City of Vancouver or any other Governmental Authority, except for an otherwise valid Claim by Project Co:
 - (1) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
 - (2) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or under any other Province Project Document.

The provisions of any paragraph of this Section 2.15(c) do not limit the provisions of any other paragraph of this Section 2.15(c).

- (d) Notwithstanding the foregoing provisions of this Section 2.15 or any other provision of this Agreement, if a delay is caused to the progress of the Project Work or any additional costs are incurred by Project Co in performing the Project Work that in either case would not otherwise have been experienced or incurred by Project Co in performing its obligations under this Agreement, and such delay or costs are a direct result of an error in the Factual Geotechnical Data (as at the currency date of the relevant Factual Geotechnical Data) upon which Project Co has reasonably and in accordance with Good Industry Practice relied in the design and construction of the Project Infrastructure, then such error in the Factual Geotechnical Data shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply. For greater certainty, Project Co shall not be entitled to relief under this Section 2.15 if and to the extent that it was not, in all the relevant circumstances and having regard to any other information known to Project Co at the relevant time, reasonable in accordance with Good Industry Practice for Project Co to rely on the Factual Geotechnical Data containing the error or to rely on such Factual Geotechnical Data without further investigation or site examination.

2.16 Project Name, Project Marks and Website

- (a) There is hereby reserved exclusively to the Province all rights to:
 - (i) name and rename from time to time the Project and the Project Infrastructure, and any part thereof; and
 - (ii) determine the names, branding, logos, domain names and other marks associated with the Project Work, the Project, the Project Infrastructure, the Website or

other components of the Project as designated by the Province from time to time (collectively, the “**Project Marks**”).

- (b) In accordance with Section 15.4(a)(iii) but without limiting the right of each of Project Co, the Principal Contractors and any Subcontractor to identify itself and its role in the Project using its own names, marks and logos reasonably and in accordance with standard industry practice, Project Co:
- (i) shall, in association with the Project and all Project Work performed with respect to the Project, use only the Project Marks and shall not use any other names, branding, logos, domain names or other marks in association with the Project Work, the Project, the Province Infrastructure, the Website or other components of the Project without the prior written consent of the Province in its discretion;
 - (ii) agrees that its use of the Project Marks will at all times be under the control of the Province;
 - (iii) acknowledges the validity of the Project Marks and the Province’s interest in the Project Marks and all goodwill associated with or appurtenant to the Project Marks, and Project Co further acknowledges and agrees that all use of the Project Marks by Project Co will be deemed to be use by the Province and all the benefit and goodwill associated with such use will at all times, as between Project Co and the Province, enure entirely to the Province;
 - (iv) will not do anything or omit to do anything that might impair, jeopardize, violate or infringe the Project Marks or the Province’s interest in the Project Marks, including:
 - (A) opposing, contesting or in any other manner challenging the validity of the Project Marks or the Province’s interest in the Project Marks; and
 - (B) claiming, using, displaying, reproducing or applying to register any trade mark, trade name, copyright or design that is identical to or confusing with any of the Project Marks, or that is derived from or based on any of the Project Marks;and Project Co will not assist, permit or encourage any other person or entity to do any of the foregoing; and
 - (v) will not use, display, reproduce, register or attempt to register any of the Project Marks, or any words, designs, characters or symbols that are confusing with or are derived from the Project Marks, as part of any internet domain name, universal resource locator, telephone number, address, firm name, corporate name or any other designator.
- (c) [Not Used].

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

2.17 Execution and Delivery of Project Documents

- (a) On or before the Effective Date:
 - (i) Project Co shall deliver to the Province and BCTFA the documents described in Part 1 [Documents to be Delivered by Project Co] of Schedule 24, executed and delivered by the signatories specified or contemplated in such Part; and
 - (ii) the Province and BCTFA shall deliver to Project Co the documents described in Part 2 [Documents to be Delivered by the Province and BCTFA] of Schedule 24, executed and delivered by the signatories specified or contemplated in such Part.

2.18 Financial Model

- (a) Project Co hereby unconditionally grants to the Province a non-exclusive, perpetual, irrevocable, worldwide, royalty free, fully-paid license to use, both during and after the Term, the Financial Model, and any updated Financial Model, for any purpose (including the carrying out of any statutory, public or other powers, authorities, discretions, duties or functions), in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure, or any part of any of them. The license granted by this Section 2.18(a) shall not be sublicensable, transferable or assignable by the Province, except to BCTFA for the purposes set out in this subsection and subject to the provisions of Part 15 [Confidentiality and Intellectual Property], without any further right of BCTFA to transfer or assign such license, except in each case as provided in Section 16.4(a).
- (b) Without prejudice to Project Co’s obligations under Part 8 [Supervening Events] and Schedule 11 [Changes] to provide revised versions of the Financial Model to the Province’s Representative, Project Co shall, subject to the provisions of this Section 2.18, deliver to the Province’s Representative an update of the Financial Model (certified by a senior officer or director of Project Co having knowledge of the facts as being a true and correct copy of the updated Financial Model) to reflect the occurrence of any Province Change, agreed Project Co Proposal or Supervening Event promptly (and in any event no later than 14 days) after agreement by the parties, or determination pursuant to the Dispute Resolution Procedure, of the terms of such Province Change or Project Co Proposal or the effects of such Supervening Event or in such other circumstances as the Province, acting reasonably, may require. Project Co will not make any other change, update or amendment to the Financial Model that would adversely affect Project Co’s

ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of the Province, whether actual or potential, unless full particulars of the relevant proposed change, update or amendment to the Financial Model has been submitted to the Province's Representative pursuant to the Consent Procedure and been accepted by the Province, in its discretion, in accordance with the Consent Procedure.

- (c) Project Co covenants that:
 - (i) the Financial Model reflects now and as from time to time updated hereafter will reflect the Project (including financial outputs in respect of the Project) as defined by this Agreement and the other Project Documents; and
 - (ii) each update of the Financial Model shall be prepared in accordance with the methodology used in the Financial Model as at the Effective Date and, to the extent that the Province has a consent right pursuant to Section 2.18(b), shall reflect only changes to financial inputs that have been agreed by the parties or determined pursuant to the Dispute Resolution Procedure;
- (d) Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Province], any receipt or review of the Financial Model or any update of the Financial Model, by or on behalf of the Province or BCTFA or the Province's Representative, shall not constitute an acceptance of, approval of or consent to the Financial Model or such update and shall not constitute a waiver or release by the Province or BCTFA of any rights of the Province or BCTFA of any of the obligations of Project Co under this Agreement.

2.19 No Agency

- (a) Project Co acknowledges that no provision of this Agreement shall be construed as a delegation to Project Co by the Province, BCTFA, the Minister or any other person to whom a power, discretion or right has been conferred by Law to make a decision deciding or prescribing the legal rights, powers, privileges, duties or liabilities of a person, or the eligibility of a person to receive or to continue to receive a benefit or license (whether or not the person is legally entitled to it), of any power, authority, duty, function, right or discretion conferred under Laws.
- (b) Except to the extent (if any) that any provision in this Agreement expressly constitutes Project Co the "agent" of the Province or BCTFA, Project Co shall not be or be deemed to be or hold itself out as being an agent of the Province or BCTFA and Project Co shall not hold itself out as having authority or power to bind the Province or BCTFA in any way.
- (c) Project Co acknowledges and agrees that neither the Province nor BCTFA has made any representation or warranty that Project Co, the Principal Contractors or any Subcontractor shall have the benefit of any Crown immunity.
- (d) Subject to Sections 2.19(a) and (b) and the other provisions of this Agreement, the parties acknowledge that Project Co is carrying out the Project Work at the request of the Province and BCTFA.

2.20 Financing Letter of Credit

- (a) Project Co shall, on or before the Effective Date, deliver to the Province one or more Letters of Credit (together, the “**Initial Financing Letter of Credit**”) in an aggregate amount (the “**Financing Letter of Credit Required Amount**”) equal to:
- (i) \$150 million
- LESS
- (ii) the amount of the drawdown of funds from the Senior Lenders under the Senior Lending Agreements that has been provided by the Senior Lenders to Project Co on the Effective Date, such drawdown amount to be confirmed by evidence satisfactory to the Province, acting reasonably, delivered to the Province on or before the Effective Date.
- (b) After the Effective Date, if Project Co receives further drawdowns of funds from the Senior Lenders under the Senior Lending Agreements in an amount which, in the aggregate, are less than the Financing Letter of Credit Required Amount, Project Co may, with any Project Co Draw Request, provide to the Province a replacement Letter of Credit (the “**Replacement Financing Letter of Credit**”) in an aggregate amount equal to:
- (i) \$150 million
- LESS
- (ii) the aggregate amount of the drawdown of funds from the Senior Lenders under the Senior Lending Agreements that has been provided by the Senior Lenders to Project Co on or after the Effective Date, such aggregate drawdown amount to be confirmed by evidence satisfactory to the Province, acting reasonably.

The Province will return the Initial Financing Letter of Credit, or any Replacement Financing Letter of Credit previously accepted by the Province, promptly after receipt of any Replacement Financing Letter of Credit accepted by the Province in accordance with this Section 2.20(b).

- (c) The Initial Financing Letter of Credit, and, if applicable any Replacement Financing Letter of Credit, shall be held by the Province as security for the obligations of Project Co to obtain the Senior Credit Facilities and to carry out the Project Work.
- (d) The Initial Financing Letter of Credit, or, any applicable Replacement Financing Letter of Credit held by the Province, shall be maintained in effect by Project Co until Project Co has delivered to the Province evidence satisfactory to the Province, acting reasonably, confirming that Project Co has received further drawdowns of funds from the Senior Lenders under the Senior Lending Agreements in an aggregate amount equal to or greater than the Financing Letter of Credit Required Amount, and upon receipt of such confirmation the Province shall as soon as reasonably practicable surrender the Initial Financing Letter of Credit or the Replacement Financing Letter of Credit, as the case may be, to Project Co.

- (e) The Province shall as soon as reasonably practicable surrender to Project Co the Initial Financing Letter of Credit or any Replacement Financing Letter of Credit held by the Province if this Agreement is terminated by the Province other than pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(c)(ii), 12.3(d) or 12.4 [Termination for Failure to Remedy According to Program].
- (f) The Province may present the Initial Financing Letter of Credit or any Replacement Financing Letter of Credit for payment, and may retain the proceeds therefrom on account of the Project Co Default Termination Sum, only if this Agreement is terminated by the Province pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(c)(ii), 12.3(d) or 12.4 [Termination for Failure to Remedy According to Program], provided that the condition in Section 2.20(d) for release of the Initial Financing Letter of Credit or any Replacement Letter of Credit has not been achieved prior to the presentation of the Financing Letter of Credit by the Province.

2.21 [Not Used]

2.22 Province's Representative and Project Co's Representative

The parties acknowledge that:

- (a) the Province has appointed the Province's Representative as set out in Section 1.1(a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure]; and
- (b) Project Co has appointed Project Co's Representative in accordance with Section 3.1(a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].

2.23 [Not Used]

2.24 Community Benefits

Project Co will carry out the Community Benefits Requirements in accordance with Schedule 21 [Community Benefits Requirements].

2.25 Limited Notice to Proceed Agreement

The parties acknowledge and agree that:

- (a) the Limited Notice to Proceed Agreement ended effective as of the Effective Date and the terms of this Agreement supersede the Limited Notice to Proceed Agreement;
- (b) all Approved Activities (as defined in the Limited Notice to Proceed Agreement) undertaken under the Limited Notice to Proceed Agreement in advance of the Effective Date are deemed to have been undertaken by Project Co as Project Work pursuant to this Agreement and Project Co accepts and assumes the risk, responsibility and liability for such Approved Activities as Project Work in accordance with the terms of this Agreement;
- (c) no party shall be entitled to make any Claim against another party or such other party's respective advisors, consultants, contractors or agents:

- (i) under the Limited Notice to Proceed Agreement; or
- (ii) in connection with, or arising out of, the Limited Notice to Proceed Agreement,

(whether for damage, Losses, extensions of time, compensation, additional payment or any other benefit) unless such Claim is permitted under this Agreement; and
- (d) any dispute in connection with or arising out of the Limited Notice to Proceed Agreement existing at the Effective Date shall, unless otherwise agreed in writing between the parties, be resolved in accordance with the Dispute Resolution Procedure.

**PART 3
GENERAL OBLIGATIONS OF PROVINCE**

3.1 Mitigation By Province

- (a) In all cases where the Province or BCTFA is entitled under this Agreement to receive from Project Co any compensation (including pursuant to Schedule 13 [Compensation on Termination]), costs, damages or other Direct Losses incurred by the Province or BCTFA (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, but not in any other case, each of the Province and BCTFA shall have a duty to use all reasonable efforts to mitigate and reduce the amount required to be paid by Project Co to the Province or BCTFA, as the case may be, the length of the extension of time or the relief to be provided, provided that such duty shall not require the Province or BCTFA to:
 - (i) take any action which is contrary to the public interest, as determined by the Province or BCTFA in its discretion;
 - (ii) exercise or refrain from exercising any power, authority, duty, function, right or discretion conferred on the Province or BCTFA under Laws as a consequence of its status as the Crown, Crown agent or Crown corporation or as a legislative or a public body and that is not conferred on a private commercial party;
 - (iii) undertake any mitigation measure that might be available arising out of its status as the Crown, Crown agent or Crown corporation or as a legislative or a public body that would not normally be available to a private commercial party;
 - (iv) alter the amount of any Province Payments or Performance Incentive Payments determined in accordance with Schedule 10 [Payment and Performance Mechanism]; or
 - (v) breach or act in a manner that could be inconsistent with the obligations of the Province or BCTFA under this Agreement.
- (b) Neither the Province nor BCTFA shall be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Province or BCTFA, as the case may be, or those parts of any extensions of time or other relief from performance, that the Province or BCTFA (as applicable) could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts, to the extent of

the duty of the Province or BCTFA (as applicable) to do so in accordance with the provisions of Section 3.1(a).

- (c) Project Co shall not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Province Indemnified Person failing to mitigate to the same standard as is required of the Province under this Section 3.1.

3.2 Representations and Warranties of the Province and BCTFA

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

3.3 Without Prejudice

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

3.4 Survival of Representations and Warranties

The representations and warranties made or given by the Province or BCTFA under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Province or BCTFA at the time of execution of this Agreement are given at the date of execution of this Agreement and shall, unless expressly provided otherwise, survive the execution and delivery of this Agreement and are not mitigated or affected by any investigation by or on behalf of Project Co.

PART 4 GENERAL OBLIGATIONS OF PROJECT CO

4.1 Project Co to Carry Out Project Work

Project Co shall carry out and perform the Project Work, and cause such Project 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 such Project Work in accordance with this Agreement and in compliance with all other obligations of Project Co 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
- (d) in accordance with all Project 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 from exercising rights, powers and discretions and discharging duties and functions as a transportation authority, and so as not to prevent the Province, BCTFA or any other Governmental Authority from exercising any other rights, powers and discretions or discharging any other lawful duties and functions; and
- (f) in compliance with all applicable Laws and Permits, all lawful and other proper instructions of the Police and all lawful and other proper requirements of Relevant Authorities and other Governmental Authorities.

4.2 Informational Rights

Without limiting any other obligation of Project Co to provide notification to the Province of the occurrence of any event or circumstance in accordance with this Agreement, Project Co shall provide to the Province's Representative promptly, and in any event within five Business Days following the date on which Project Co becomes aware of the same:

- (a) true and complete copies of any notices, complaints or orders (including directives and work orders) of violation or non-compliance or liability received by Project Co or any of its Principal Contractors or Subcontractors from any Governmental Authority or any other person in respect of any matter relating to the Project, the Project Work, the Project Site or the Project Infrastructure;
- (b) a notice describing any fact, development, event or other matter of which Project Co has become aware that could reasonably be expected to prevent the achievement of any or all of:
 - (i) the Substantial Completion Date on or before the Substantial Completion Target Date; or
 - (ii) the Total Completion Date on or before the Total Completion Target Date;
 - (iii) the On-Time Performance Demonstration Completion on or before the On-Time Performance Demonstration Completion Target Date; or

- (iv) the TIDS Performance Demonstration Completion on or before the TIDS Performance Demonstration Completion Target Date;
- (c) a notice describing any litigation or other proceeding or Claim which has been commenced or threatened, or any event or occurrence which is reasonably likely to give rise to a Claim against any of Project Co, a Principal Contractor, a Subcontractor or the Province in respect of or relating to the Project;
- (d) a notice describing any proposal to suspend or abandon the Project or the Project Work;
- (e) a notice describing any material default or event of default of any party (including Project Co) under any Project Document to which Project Co is a party;
- (f) a notice describing any expropriation of any property or assets of Project Co or comprising part of the Project Site or the Project Infrastructure; and
- (g) a notice of any discrepancy, error, omission, conflict, inconsistency or ambiguity in this Agreement, including the Project Requirements, of which Project Co has become aware.

4.3 No Adverse Reflection or Restricted Person

- (a) Without limiting Project Co's obligations under Section 4.1 [Project Co to Carry Out Project Work], in the performance of the Project Work Project Co shall not knowingly do or omit to do, or suffer or permit to be done or omitted, anything that might reasonably be expected to detract, or that the Province gives notice to Project Co would detract, from the image and reputation of the Province as a transportation authority or otherwise or the reputation of the Province or BCTFA, provided that any action taken or not taken in the course of performing the Project Work that is expressly required to be taken or not taken pursuant to this Agreement, a direction or instruction issued by the Province or a specific provision of the Project Requirements, will not constitute a breach of Project Co's obligations under this Section 4.3(b), and provided that this Section 4.3(b) shall not prejudice an otherwise valid Claim by Project Co:
 - (i) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
 - (ii) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or any other Province Project Document.
- (b) Notwithstanding any other provision of this Agreement, Project Co shall not be, or become at any time during the Term, either:
 - (i) a Restricted Person; or
 - (ii) a person any of whose Affiliates is, to the knowledge of Project Co (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

4.4 No Other Business or Conflicts of Interest

- (a) Project Co shall not engage in any business or activity other than the business and activities related to, and conducted for the purposes of, carrying out the Project and the Project Work, in accordance with this Agreement and the other Project Documents to which Project Co is a party.
- (b) Project Co shall ensure that no conflict of interest arises between any other matter in which it may be interested whether directly or indirectly, and Project Co's performance of the Project, the Project Work and the obligations of Project Co under this Agreement.
- (c) Project Co shall use all reasonable efforts to ensure that no person for whom Project Co is in law responsible is a current or former public servant or public office holder or reporting public office holder to whom the Conflict of Interest Act (Canada), the Federal Government's Values and Ethics Code for the Public Service and/or the Federal Government's Conflict of Interest and Post-employment Code for Public Office Holders (in this Section 4.4(c), the "**Relevant Acts and Codes**") apply will derive any direct benefit from this Agreement unless such individual is in compliance with the applicable provisions of the Relevant Acts and Codes, and Project Co shall inform the Province upon becoming aware of any such occurrence.

4.5 Prohibited Acts

- (a) Project Co covenants that neither Project Co nor any of its agents, Principal Contractors or Subcontractors nor the employees of any of the aforementioned persons, nor any person for whom Project Co is in law responsible, shall offer or give or agree to give any person in the service of the Province or BCTFA any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour in relation to this Agreement.
- (b) Project Co covenants that neither Project Co nor any Principal Contractor shall enter into this Agreement or any other agreement with the Province or BCTFA in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by Project Co or a Principal Contractor or on behalf of Project Co or a Principal Contractor or to the knowledge of Project Co or a Principal Contractor, other than to any person for whom Project Co is in law responsible, to the Senior Lenders or to any person in the service of the Senior Lenders, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province.
- (c) Without limiting Section 4.5(b), Project Co covenants that no person for whom Project Co is in law responsible shall enter into any agreement with the Province or BCTFA in relation to the Project in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by such person or on its behalf or to its knowledge, other than to any person for whom Project Co is in law responsible, to the Senior Lenders or to any person in the service of the Senior Lenders, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of

the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province.

4.6 Public Roads and Transit Facilities and Operations

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

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

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

- (c) Project Co shall not in the course of performing the Project Work disrupt the operation of or the delivery of services in connection with any of the Existing Transit Facilities, the Existing SkyTrain System and the Integrated SkyTrain System except as permitted by and in accordance with the provisions of Articles 13 [Systems] and 18 [Integration with Transit Facilities], Part 2 of Schedule 4 [Design and Construction].

4.7 Access to Project Site and Project Infrastructure by Others

Project Co shall, subject to and in accordance with the health and safety procedures established by Project Co pursuant to Section 4.13 [Health and Safety Program] for the time being in force in relation to the relevant parts of the Project Site, ensure that, at all times during the Access Period in respect of any part of the Project Site and any period referred to in Section 4.12(a)(i)(B) in respect of such part of the Project Site:

- (a) the Province, BCTFA and the Province's Representative and any employees, contractors, consultants or other persons authorized by any of them, including Third Party Contractors, have access to such part of the Project Site and the Project Infrastructure located on such part in accordance with Section 11.1 [Province Access] and generally for purposes of inspecting and monitoring the progress of the Project Work and otherwise exercising their rights and performing their obligations under this Agreement, provided that nothing in this Section 4.7 [Access to Project Site and Project Infrastructure by Others] shall be construed so as to impede the proper performance of the roles, functions and duties of the Province and BCTFA as set out in this Agreement and under Laws;
- (b) the Province and BCTFA and other Governmental Authorities have access to such part of the Project Site and the Project Infrastructure located on such part to fulfil any statutory, public or other powers, authorities, discretions, duties or functions;
- (c) the Independent Certifier has access to such part of the Project Site and the Project Infrastructure located on such part for the purpose of performing its duties under the Independent Certifier Contract;
- (d) the Independent Engineer has access to such part of the Project Site and the Project Infrastructure located on such part for the purpose of performing its duties under its agreement with the Province;
- (e) inspectors and other persons authorized to act on behalf of TransLink, the City, MVRD and BCTFA have access to such part of the Project Site for inspection and acceptance purposes in connection with the Project Work, subject to notice being given by such persons to Project Co in accordance with (in the case of the City) the terms of the Municipal Agreements and (in the case of MVRD) the terms of the Accommodation Agreement;
- (f) the owners or operators of any Third Party Facilities and their employees, agents and contractors have unrestricted access to such part of the Project Site and the Project Infrastructure located on such part at all reasonable times, subject, where applicable, to notice being given by such persons in accordance with the terms of the agreements referred to in Section 4.7(e) and otherwise subject to reasonable notice being given by such persons to Project Co, to install, operate, manage, maintain, repair, rehabilitate or

reconstruct such Third Party Facilities, provided that, subject to the applicable requirements of Laws, the requirements of this Agreement and where applicable the requirements of such other agreements, Project Co may limit such access so as to not unnecessarily impede or restrict any Project Work being carried out by Project Co;

- (g) all Relevant Authorities, Railways and Utility Suppliers have access to such part of the Project Site and the Project Infrastructure located on such part in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Laws or the agreements referred to in Section 4.7(e), subject, where applicable, to notice being given by such persons in accordance with the terms of the agreements referred to in Section 4.7(e) and otherwise subject to reasonable notice being given by such Relevant Authority, Railways or Utility Supplier to Project Co, and provided that, subject to the applicable requirements of the Relevant Authority, Railway, Utility Supplier or Laws and the requirements of this Agreement and where applicable the requirements of such other agreements, Project Co may limit such access so as to not unnecessarily impede or restrict any Project Work being carried out by Project Co;
- (h) TransLink, the City, MVRD, Railways and Utility Suppliers and their employees, agents and contractors have access to such part of the Project Site and the Project Infrastructure located on such part, subject, where applicable, to notice being given by such persons in accordance with the terms of the agreements referred to in Section 4.7(e) and otherwise subject to reasonable notice being given at all reasonable times, subject, where applicable, to the provisions of this Agreement and where applicable the requirements of such other agreements, for purposes of carrying out works and activities relating to or in connection with the Project Work, and for purposes of operating and maintaining their own facilities and infrastructure on, in or in the vicinity of the Project Site and activities in connection therewith; and

without prejudice to any access rights of any such person as a member of the general public, the Province, BCTFA and any other Governmental Authority, Third Party Contractors, owners or operators of Third Party Facilities, Relevant Authorities, Railways and Utility Suppliers are permitted to enter upon such part of the Project Site and the Project Infrastructure located on such part for the purposes of access to and from any other lands or facilities adjacent to or in proximity to the Project Site and the Project Infrastructure (including any street, road or highway) owned or operated by such person or in which such person has any interest, provided that, subject to the applicable requirements of Laws and the requirements of this Agreement and where applicable the requirements of the agreements referred to in Section 4.7(e), Project Co may limit such access so as to not unnecessarily impede or restrict any Project Work being carried out by Project Co.

4.8 No Other Activity, Improvements or Change in Use

Project Co 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 Project Work as expressly required or permitted by, and subject to and in accordance with, the provisions of, this Agreement.

4.9 Project Co Submittals

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

4.10 Mitigation By Project Co

- (a) Without limiting and in addition to all other obligations to mitigate required by this Agreement or at law, in all cases where Project Co is entitled under this Agreement to receive from the Province any compensation (including for any Supervening Event or pursuant to Schedule 13 [Compensation on Termination]) or any other costs, damages or other Direct Losses incurred by Project Co (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, Project Co shall have a duty to use all reasonable efforts to mitigate and reduce (which reasonable efforts may include by way of competitive procurement for expenditures (where appropriate in accordance with Good Industry Practice or otherwise required by Laws), rescheduling of works and deliveries, and reallocation or redeployment of labour forces and equipment, and pursuing recourse against insurers and third parties) the amount required to be paid by the Province to Project Co, the length of the extension of time or the relief to be provided.
- (b) Project Co shall not be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by Project Co, or those parts of any extensions of time or other relief from performance, that Project Co could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts as required in accordance with the provisions of Section 4.10(a).
- (c) Upon request from the Province, Project Co shall promptly submit a detailed description, supported by all such documentation as the Province may reasonably require, of the measures and steps taken by Project Co to meet its obligations under Section 4.10(a).
- (d) Project Co shall require all Principal Contractors and, where practicable, Subcontractors with which Project Co contracts directly, to assume and carry out the same duty to mitigate as is required of Project Co under Section 4.10(a), *mutatis mutandis*.
- (e) Neither the Province nor BCTFA shall be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Principal

Contractor or Subcontractor or other Project Co Indemnified Persons failing to mitigate to the same standard as is required of Project Co under this Section 4.10.

4.11 Site Safety and Security

- (a) Project Co shall have full regard for the safety of all persons (including users of the Project Lands) on the Project Site (whether lawfully or not) during the Access Period (and any period during which access to any other area is made available to Project Co pursuant to Section 2.5(c) or Project Co otherwise has access) and during such period maintain the Project Site and any such other area 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.
- (b) Without limiting Section 8.8 [Responsibility for Participants and Trespassers] or any other provision of this Agreement, Project Co shall during the Access Period (and any period during which access to any other area is made available to Project Co pursuant to Section 2.5(c) or Project Co otherwise has access) in respect of the Project Site and any such other area at all times take such measures as are reasonably required, including hoarding and fencing where appropriate, in respect of the Project Work being carried out by it to prevent the trespass and access onto the Project Site or such other areas of any persons not entitled to be there or of any creatures.
- (c) Project Co shall take action in accordance with Laws to 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 Project Co as Prime Contractor

- (a) Subject to Article 18.6.1(a) of Part 2 of Schedule 4, by entering into this Agreement, Project Co agrees that:
 - (i) during:
 - (A) the Access Period in respect of any part of the Project Site; and
 - (B) subject to Section 4.16, any period during which access to any part of the Project Site is made available to Project Co pursuant to Section 2.5(c) or Project Co otherwise has access for the purposes of performing any Project Work in accordance with Schedule 5 [Project Work Defects and Warranties],it is the Prime Contractor for such part of the Project Site and each Traffic Site;
 - (ii) it shall at all times until the Substantial Completion Date be qualified to fulfil all functions and duties of the Prime Contractor as required under all Health and Safety Laws; and

- (iii) 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) Project Co shall, by not later than 10 days after the Effective Date, submit to the Province's Representative for review, acting reasonably, pursuant to the Review Procedure a copy of the form of the "notice of project" for the Project required and described in the WCA and the OHS Regulation (the "**Notice of Project**") Project Co proposes for delivery in accordance with the WCA and OHS Regulation.
- (c) Without limiting Project Co's obligations to fulfill, as of and from the Effective Date, all duties and functions of the Prime Contractor, Project Co shall, by not later than 30 days after the Effective Date, and in any event before the commencement of any of the Project Work at the Project Site:
 - (i) designate a qualified coordinator (the "**Qualified Coordinator**") who shall be an individual qualified within the contemplation of the WCA and the OHS Regulation (including being knowledgeable of the Project 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 of a "qualified coordinator" as described in the WCA and the OHS Regulation; and
 - (ii) deliver to the Province's Representative:
 - (A) written notice of the designation of the Qualified Coordinator under Section 4.12(c)(i);
 - (B) a copy of the Notice of Project delivered in accordance with the WCA and the OHS Regulation; and
 - (C) written notice confirming that the Health and Safety Program has been initiated and is readily available in accordance with the WCA and the OHS Regulation.

4.13 Health and Safety Program

Notwithstanding any limitation in the OHS Regulation regarding the number of workers in any work force, Project Co shall prepare and submit to the Province's Representative in accordance with the Review Procedure, and implement prior to mobilization by Project Co to the Project Site a formal written health and safety program (the "**Health and Safety Program**") in respect of the Project Site that:

- (a) complies with Good Industry Practice and all Laws (including all applicable specifications and standards in Health and Safety Laws);
- (b) satisfies the requirements of Section 3.3 of Part 3 of the OHS Regulation;
- (c) is designed to prevent injuries and occupational diseases within the contemplation of the WCA and the OHS Regulation;

- (d) 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 Project Co's obligations in respect of occupational health and safety under this Agreement;
- (e) without limiting the foregoing, deals specifically with controlling the hazards of the Project Site, including such hazards as may be identified in hazard identifications provided in the Disclosed Data, and as such hazard identifications are updated by Project Co from time to time throughout the Term;
- (f) implements the Health and Safety Policy and Program (as defined in the BCIB-Contractor Agreement); and
- (g) satisfies and addresses all health and safety requirements contained in the Conditions of Access.

Project Co shall prepare and submit to the Province's Representative in accordance with the Review Procedure updates to the Health and Safety Program as required from time to time to ensure that the Health and Safety Program at all times complies with the requirements of this Agreement, including this Section 4.13.

4.14 Project Co's Occupational Health and Safety Obligations

- (a) Project Co shall at all times until the Total Completion Date:
 - (i) ensure that at all times a Qualified Coordinator is designated in respect of the Project Site and that such Qualified Coordinator is qualified to discharge the responsibilities thereof, as described in the WCA and the OHS Regulation, including by having knowledge of the Project Work, the hazards involved and the means to control such hazards, and by a combination of training, education and experience;
 - (ii) implement and maintain the Health and Safety Program;
 - (iii) observe and comply with, and ensure that the performance of the Project Work (including by conducting worker safety orientations, health and safety meetings, safety inspections and accident and incident investigations) complies at all times with, all Health and Safety Laws;
 - (iv) ensure that, in relation to the Project Work, all assessments, levies, penalties, fees and fines which may be made under any Health and Safety Laws are punctually paid as they become due;
 - (v) establish and maintain a joint health and safety committee and ensure that such committee fulfils its functions under Health and Safety Laws;
 - (vi) deliver and post within the Project Site any and all Notices of Project as may be required by the WCA and the OHS Regulation;
 - (vii) 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 that the Qualified Coordinator alerts all workers to all reasonably foreseeable hazards to which they are likely to be exposed;

- (viii) immediately notify all employers, workers, suppliers, Principal Contractors and Subcontractors and any other persons throughout the Project Site of any hazard created by the Project Work or by overlapping or adjoining work activities of two or more employers and ensure that the hazards are addressed throughout the duration of such activities;
- (ix) ensure that the activities of employers, workers and other persons relating to occupational health and safety in respect of the Project Work are coordinated and promptly deliver to the Province's Representative the name of any employer who does not cooperate with, assist or comply with the requirements of the Qualified Coordinator regarding coordination of health and safety activities throughout the Project Site;
- (x) ensure that no person, including any person employed or otherwise engaged directly or indirectly by Project Co, the Principal Contractors, the Subcontractors or any other person for whom Project Co is in law responsible, is permitted to enter upon or otherwise allowed access (other than as a user of the Province Facilities) to any part or parts of the Project Site in respect of which there is for the time being any part of the Project Work being carried out unless such person complies with the requirements of the Health and Safety Program and all Health and Safety Laws;
- (xi) not enter into any agreement with any Principal Contractor, Subcontractor, or other employer or person that interferes with or impinges upon Project Co's responsibility as Prime Contractor under this Agreement, including where the Health and Safety Program requires the Prime Contractor stop work because of a hazard to workers or noncompliance with Health and Safety Laws by any such Principal Contractor, Subcontractor, or other employer or person;
- (xii) in the event of an accident or incident arising from performance of the Project Work that requires notification to the Workers' Compensation Board, ensure that a copy of such notification is provided to the Province at the same time as the notification is delivered to the Workers' Compensation Board, and provide ongoing information to the Province on the progress of any investigation resulting from such notification, accident or incident;
- (xiii) record, collect and retain all occupational health and safety Records, including notices, reports, directives and penalty assessments, in respect of the Project and the Project Work required by and in accordance with all Health and Safety Laws, including:
 - (A) notices which Project Co is required to provide to the Workers' Compensation Board or to any other Governmental Authority under Health and Safety Laws;

- (B) monthly summaries of remedial actions taken by Project Co to reduce occupational health and safety hazards within the Project Site;
 - (C) monthly site safety statistical reports setting out leading indicators and lagging indicators;
 - (D) directives and inspection reports issued by or through the Workers' Compensation Board or any other Governmental Authority under Health and Safety Laws in connection with the Project Site or the performance of the Project Work;
 - (E) reports and investigations on incidents and accidents which are required to be reported on and investigated by Project Co by the Workers' Compensation Board or any other Governmental Authority under Health and Safety Laws;
 - (F) records, including minutes, of safety meetings and tailgate meetings relating to the Project Site and the performance of the Project Work;
 - (G) copies of any hazard identifications performed on the Project Site;
 - (H) 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; and
 - (I) all occupational health and safety Records required in accordance with the BCIB-Contractor Agreement.
- (b) In addition to the obligations set out in Section 4.14(a), at all times during the carrying out of the Construction, Project Co shall:
- (i) observe and comply with, and ensure that the performance of such Construction at all times complies with, all Health and Safety Laws applicable to such Construction;
 - (ii) post at the Project Site:
 - (A) the name of the Qualified Coordinator; and
 - (B) a site drawing showing the boundaries of the Project Site with project layout, first aid locations, emergency transportation provisions (including distance to, location of and directions to the closest medical facility) and the evacuation marshalling points relating to the Project Site; and
 - (iii) ensure that a copy of each 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 WCA and OHS Regulation are readily available at convenient locations within the Project Site.

- (c) At the request of the Province from time to time, Project Co shall:
 - (i) deliver to the Province's Representative evidence of Project Co's implementation and maintenance of the Health and Safety Program in accordance with Section 4.13 [Health and Safety Program] and that a system or systems or a process or processes have been put into place to ensure compliance with Health and Safety Laws and to satisfy Project Co's obligations in respect of occupational health and safety under this Agreement;
 - (ii) provide the Province's Representative with evidence satisfactory to the Province of compliance by Project Co with its obligations in respect of Health and Safety Laws in accordance with this Agreement, including where applicable the compliance of Project Co and its agents, Principal Contractors and 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 Province's Representative access to and copies of any Records maintained by Project Co as contemplated in Section 4.14(a)(xiii).

4.15 Refusal to Recognize Project Co as Prime Contractor

If the Workers' Compensation Board refuses to recognize or accept Project Co at any time as the Prime Contractor, including by making a declaration or determination to that effect, then:

- (a) Project Co shall not be relieved of any obligations, duties and liabilities as Prime Contractor but shall be responsible to the Province and BCTFA and to those for whom Project Co would have been responsible if Project Co had been accepted or recognized by the Workers' Compensation Board as the Prime Contractor for fulfilling all obligations, duties and liabilities imposed on the Province or BCTFA or any contractor or subcontractor of any tier of the Province or BCTFA pursuant to Health and Safety Laws in the same manner and to the same extent and for the same purposes as if Project Co undertook the obligations of a Prime Contractor for the Project Site and the Traffic Sites at all times throughout the Term (which obligations include, for greater certainty, the liability for any assessments, levies, penalties, fees or fines assessed, levied or charged from time to time against Project Co or against the Province or BCTFA based on the number of employees employed in relation to the Project or otherwise); and
- (b) if the Workers' Compensation Board recognizes or accepts, including by making a declaration or determination to that effect, any Principal Contractor or Subcontractor as the Prime Contractor, then Project Co shall not be considered to be in breach of this Agreement solely by reason of the refusal to accept Project Co as the Prime Contractor or the declaration or determination by the Workers' Compensation Board to that effect, provided that and only to the extent that:
 - (i) Project Co has not failed to observe, abide by or comply with any term of this Agreement;

- (ii) such refusal to recognize or accept, or other declaration or determination, of the Workers' Compensation Board was for a reason other than a failure by any person, including for greater certainty by Project Co, to discharge the duties as a Prime Contractor under the Health and Safety Laws;
- (iii) Project Co has not entered into a contract with any person, including any Principal Contractor or Subcontractor, under which that person has agreed to be the Prime Contractor in connection with the Project or any part of the Project Site or Traffic Sites and, for greater certainty, nothing in this paragraph prevents Project Co from entering into such arrangements as are appropriate to fulfil its obligations as the Prime Contractor;
- (iv) Project Co indemnifies and holds harmless the Province and the Province Indemnified Persons, and each of them, in connection with any and all Direct Losses or (except only to the extent such Direct Losses are caused directly by a Province Non-Excusable Event) arising in connection with any matter contemplated under this Section 4.15 (including for greater certainty any assessments, levies, penalties, fees or fines assessed or charged against the Province and the Province Indemnified Persons, or any of them, based on the number of employees employed in relation to the Project or otherwise); and
- (v) Project Co shall make, do, execute and cause to be made, done and executed all further and other acts, deeds, instruments, agreements and assurances as the Province or BCTFA may require for the performance of Project Co's obligations as Prime Contractor in accordance with Section 4.12(a).

4.16 Appointment of other Prime Contractors by Province

- (a) Notwithstanding Section 4.13(a), there may be circumstances in which Project Co will be required to perform parts of the Project Work under the direction of another Prime Contractor (in this Section 4.16, the "**Other Prime Contractor**") who has been appointed by the Province or BCTFA 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 4.16, the lands or premises upon which the relevant parts of the Project Work are to be performed, the "**Separate Site**"). The Province shall provide prior written notice of any such circumstances, and shall notify Project Co of the identity of the Other Prime Contractor, the location or locations of the Separate Site, the period of time in question and reasonable particulars of the work for which the Other Prime Contractor is in law responsible.
- (b) Project Co agrees that, on receipt of written notice from the Province pursuant to Section 4.16(a), Project Co shall cease to be the Prime Contractor in respect of such Separate Site for the specified period and shall at all times in good faith and at the cost of Project Co:
 - (i) coordinate with and comply with the occupational health and safety requirements of the Other Prime Contractor while on the Separate Site, including requirements of the Other Prime Contractor to coordinate health and safety activities;

- (ii) ensure compliance with the health and safety program of the Other Prime Contractor by Project Co and its Principal Contractors and all Subcontractors while on the Separate Site, including by developing a system to ensure such compliance and, upon the request of the Province, deliver to the Province evidence that such system is in place and being adhered to; and
- (iii) coordinate 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 Province of written notice of the conclusion of the works and activities referred to in a notice delivered under Section 4.16(a), Project Co 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 4.17, the terms “**employer**” and “**workers**” do not include Project Co, or any Principal Contractor or Subcontractor, or BCIB, or the employees of any of them, including the Employees (as defined in the BCIB-Contractor Agreement).
- (b) If Project Co 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, on written notice from Project Co to the employer of such condition, act or failure, the employer has failed or refused to take action to correct the condition, act or failure, including any condition, act or failure of any of the employer’s workers, Project Co may issue a notice (in this Section 4.17, a “**Notice of Failure to Comply**”) to the applicable employer stipulating in reasonable detail the basis for the issuance of the Notice of Failure to Comply, and shall deliver a copy of any Notice of Failure to Comply so issued to the Province.

- (c) Upon issuance of a Notice of Failure to Comply by Project Co under Section 4.17(b), Project Co may suspend all or any part of the Project Work at the location specified in the Notice of Failure to Comply if Project Co believes such action is necessary to ensure that any risk to workers is eliminated or minimized, and shall provide to the Province, promptly and in reasonable detail, confirmation of all such action so taken by Project Co in respect of such Notice of Failure to Comply.
- (d) Upon receipt of a copy of a Notice of Failure to Comply from Project Co under Section 4.17(b), the Province may take whatever action in accordance with Section 11.5

[Province's Other Step-In Rights] the Province deems necessary to ensure that any risk to workers is eliminated or minimized.

- (e) On rectification of the matter set out in a Notice of Failure to Comply, Project Co shall withdraw such Notice of Failure to Comply by endorsing on a copy thereof confirmation of the rectification, and Project Co shall deliver a copy of the endorsed Notice of Failure to Comply to the applicable employer and to the Province. If Project Co suspended all or any part of the Project Work under Section 4.17(c), Project Co shall resume such Project Work.
- (f) The Province shall be deemed to have relied on the terms of and the reasons set out in the Notice of Failure to Comply, notwithstanding any subsequent investigation or inquiry of the matter by the Province, which the Province may but will not be obligated to undertake, and Project Co shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in connection with any and all Direct Losses or Claims (except only to the extent such Direct Losses or Claims are caused directly by a Province Non-Excusable Event) arising in connection with the issuance of any Notice of Failure to Comply issued by Project Co and any acts or omissions of the Province in reliance on such Notice of Failure to Comply.

4.18 Permits

- (a) Project Co shall, or shall cause the Principal Contractors or Subcontractors, as the case may be, at its or their sole cost, to:
 - (i) obtain all Permits (excluding Province Permits) by the time required or contemplated by the terms of this Agreement to permit it to perform its relevant obligations hereunder;
 - (ii) renew, amend or extend, as applicable, all Permits (excluding the Operating Permit) by the time required or contemplated by the terms of this Agreement to permit it to perform its relevant obligations hereunder; and
 - (iii) comply with each Permit (including each Province Permit) and maintain in good standing each Permit (excluding each Province Permit), in each case in accordance with its terms, including complying with all requirements and obligations in respect of all Province Permits.
- (b) Where Permits that are Project Co's obligation to obtain, renew, amend or extend under Section 4.18(a) have requirements that may impose any conditions, liabilities, obligations or costs on the Province or BCTFA or on any person other than Project Co, the Principal Contractors, the Subcontractors and other persons for whom Project Co is in law responsible, Project Co shall, prior to obtaining, renewing, amending or extending such Permits, seek the acceptance of the Province, acting reasonably, pursuant to the Consent Procedure, provided, however, that, except as provided in Section 2.2(f)(i) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], neither the Province nor BCTFA shall be responsible for obtaining or for any delay in obtaining or failure to obtain any such Permit, renewal, amendment or extension.

- (c) Where Project Co, or any Principal Contractor or Subcontractor, as the case may be, is unable to apply for or to obtain, renew, amend or extend any Permit that is Project Co's obligation to obtain, renew, amend or extend under this Section 4.18 without obtaining information or administrative assistance from the Province or BCTFA or without submitting the application for such Permit or renewal or extension in the name of the Province or BCTFA, each of the Province and BCTFA shall at Project Co's cost and expense, provide such information and administrative assistance as Project Co may reasonably request and the Province or BCTFA, as the case may be, may reasonably be able to provide and, if requested, shall execute such applications as are required to be in its name to assist Project Co, such Principal Contractor or such Subcontractor, as the case may be, in obtaining, renewing, amending or extending such Permit.
- (d) Project Co at its expense shall provide or cause to be provided such information, documentation and administrative assistance as may be requested by the Province and as Project Co may reasonably be able to provide and, if requested, shall execute such applications as are required to be in its name, to enable the Province or BCTFA to apply for, obtain and (without limiting Project Co's obligations under Section 4.18(a)) renew, amend or extend, and comply with and demonstrate compliance with requirements and obligations under, Province Permits.
- (e) Project Co shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims that the Province and the Province Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of:
 - (i) the satisfaction and performance during the Term of all conditions, liabilities and obligations imposed on the Province or BCTFA by Permits obtained, renewed or extended by Project Co in accordance with Section 4.18(b) and the payment of all costs in respect thereof;
 - (ii) the provision of information or administrative assistance by the Province or BCTFA and the execution of any applications by the Province or BCTFA in accordance with Section 4.18(c) and the payment of all costs in respect thereof, regardless of whether or not Project Co ultimately is able to obtain, renew, amend or extend the relevant Permit as a result of the provision of such assistance or the execution of such applications by the Province or BCTFA;
 - (iii) any inability of the Province or BCTFA to obtain or, as applicable, renew or extend any Province Permit or any increased cost to the Province or BCTFA of obtaining or, as applicable, renewing or extending any Province Permit, as a result of any breach of this Agreement by Project Co or any negligent act or omission of Project Co, any Principal Contractor or Subcontractor, or any other person for whom Project Co is in law responsible; or
 - (iv) any cost to the Province or BCTFA of complying with any condition included in any Province Permit to the extent that such condition was included in the Province Permit as a result of any negligent act or omission of, or breach of this Agreement by, Project Co, any Principal Contractor or Subcontractor, or any other person for whom Project Co is in law responsible.

4.19 Agreements with Governmental Authorities

- (a) Project Co, 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 Project or to enable Project Co to perform the Project Work in accordance with the terms of this Agreement, provided that, if either or both of the Province and BCTFA shall be bound or affected in any way by any such agreement, Project Co shall seek the consent of the Province to the terms of such agreement pursuant to the Consent Procedure (such consent not be unreasonably withheld) before entering into the agreement.
- (b) If the Province consents to either or both of the Province and BCTFA being a party or parties to any agreement referred to in Section 4.19(a), Project Co shall assist the Province or BCTFA (as the case may be) in entering into such agreement; provided, however, that Project Co 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 Province or assistance provided by Project Co; and provided further that, if the Province or BCTFA incur 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 Province or BCTFA (as the case may be) (which approval may be granted or withheld by the Province or BCTFA in its discretion) and, as between the Province or BCTFA (as the case may be) and Project Co, unless otherwise agreed in writing by the parties, Project Co shall discharge such liabilities and perform such obligations and shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any failure of Project Co to discharge such liabilities or perform such obligations.

4.20 Archaeological and Heritage Objects

- (a) Project Co shall carry out all archaeological surveys, inspections, impact assessments and other archaeological works specified as part of, and shall consult with archaeologists specified by the Province as required by, the Project 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 Project Work are and shall be, as between Project Co and any Principal Contractor or Subcontractor on the one hand, and the Province on the other, the sole and absolute property of the Province.
- (c) Upon the discovery of any object referred to in Section 4.20(b) on, at or in the Project Site or otherwise during the carrying out of the Project Work, Project Co shall:
 - (i) immediately inform the Province's Representative;
 - (ii) take all steps not to disturb the object and, if necessary, cease any Project Work in so far as performing such Project Work would or is reasonably likely to endanger the object or prevent or impede its excavation;

- (iii) take all necessary steps to preserve the object in the same position and condition in which it was found; and
- (iv) comply with all Laws and requirements of Governmental Authorities with respect to the discovery of such item, including pursuant to the *Heritage Conservation Act* (British Columbia),

and the discovery of such object and compliance by Project Co 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 Province wishes Project Co 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 Province shall request a Province Change pursuant to Section 7.1 [Province Changes] in respect of such additional procedures.

4.21 Representations and Warranties of Project Co

Project Co represents and warrants to the Province and BCTFA, and acknowledges that the Province and BCTFA are relying upon such representations and warranties in entering into this Agreement and the other Province Project Documents, that at the Effective Date, based on the facts subsisting at the Effective Date:

- (a) Project Co is a corporation duly created and validly existing under the laws of the **[Province of 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 Project Co pursuant to this Agreement or such other Project Documents, and to carry out the Project Work;
- (b) [Not used];
- (c) the execution and delivery by Project Co 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 corporate action on the part of Project Co, and this Agreement, and each other Project Document to which Project Co is a party and to be executed and delivered on or before the Effective Date, has been duly executed and delivered by Project Co and constitutes a legal, valid and binding obligation of Project Co 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, and subject to such other qualifications as are set out in the opinions of counsel for Project Co delivered to the Province and BCTFA in accordance with Section 2.17 [Execution and Delivery of Project Documents];

- (d) the entry into and performance of this Agreement by Project Co do not and shall not:
 - (i) conflict with its constating documents; or
 - (ii) conflict with any document which is binding upon it or any of its assets to the extent that such conflict would have or be reasonably likely to have a material adverse effect on the performance by Project Co of its obligations under this Agreement;
- (e) all agreements and consents of third parties required for the execution by Project Co of, and performance of its obligations under, this Agreement and the other Project Documents to which it is a party, have been received, other than the Permits contemplated in this Agreement to be obtained in connection with the Project Work and agreements with Governmental Authorities to be entered into as contemplated by Section 4.19 [Agreements with Governmental Authorities];
- (f) since the Financial Submittal Date:
 - (i) there has been no material reduction in the collective qualifications and expertise of Project Co and the Principal Contractors to perform the Project Work; and
 - (ii) there has been no material adverse change in the financial condition of Project Co;
- (g) all statements, representations and information provided 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 Project Co has in writing expressly advised the Province of any incorrectness or inaccuracy prior to the date of execution of this Agreement;
- (h) Project Co has no knowledge of any fact that materially adversely affects or, so far as it can reasonably foresee, could reasonably be expected to materially adversely affect, either the financial condition of Project Co or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (i) Project Co is not a party to or, to its knowledge, threatened with any litigation or Claims that, if successful, would materially adversely affect the financial condition of Project Co or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (j) [Not used];
- (k) the information set out in Section 3.4 [Project Co Ownership Information] of Schedule 2 is true and accurate in all material respects and, except as set out in that Section, the Initial Senior Lending Agreements or the Initial Shareholder Agreements, there is not outstanding any offer, agreement or other arrangement whereby:
 - (i) any person is at the Effective Date or at any time thereafter entitled to or obligated to subscribe for or take by means of transfer or conversion of any form of investment or security, any shares or any securities or voting rights in Project

- Co (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against Project Co or any other person); or
- (ii) any alteration to the Initial Shareholder Agreements or the power of the shareholders of Project Co may take effect; or
 - (iii) any alteration to the constitution or power of the board of directors of Project Co may take effect;
- (l) the copies of the Initial Shareholder Agreements and other constating documents of Project Co certified by appropriate officers of Project Co are true and accurate;
 - (m) the copies of the Initial Lending Agreements and Principal Contracts certified by appropriate officers of Project Co are true and accurate;
 - (n) the Initial Shareholder Agreements are the only Shareholder Agreements in effect;
 - (o) the Initial Lending Agreements are the only Lending Agreements in effect;
 - (p) the financial arrangements and other terms set out in the Initial Shareholder Agreements and the Initial Lending Agreements constitute the manner in which Project Co will finance the Project;
 - (q) Project Co has delivered to the Province true copies of all agreements to which Project Co is a party that are material to the Project Work or to the affairs of Project Co in relation to the Project Work;
 - (r) all of the Principal Contractors and the Key Individuals are available to carry out their obligations under this Agreement in respect of the Project Work in accordance with this Agreement;
 - (s) each of the Project Documents has been executed and delivered by all parties thereto other than the Province, BCTFA, BCIB, Thales and TransLink, the copies of the Project Documents that Project Co has delivered to the Province and BCTFA are true and complete copies of such documents, and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;
 - (t) neither Project Co nor any of the Principal Contractors or Subcontractors, nor the employees of any of them, nor any other person for whom Project Co is in law responsible, has, prior to the Effective Date, done or caused to be done any of the matters or things referred to in Section 4.5 [Prohibited Acts], provided that this representation and warranty shall not apply to Thales BCIB, or any of the Employees (as defined in the BCIB-Contractor Agreement);
 - (u) Project Co is not currently subject to any charge, conviction, ticket, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order or proceeding under any Environmental Laws that might reasonably be expected to have a material adverse effect on the performance by Project Co of its obligations under this Agreement; and

- (v) none of Project Co, any person having a direct ownership interest in Project Co nor any person having Control of Project Co is a Restricted Person.

4.22 Without Prejudice

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

4.23 Survival of Representations and Warranties

All representations and warranties made or given by Project Co under any provision of this Agreement or in any certificate or other document delivered by or on behalf of Project Co 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 Province or BCTFA.

PART 5 FINANCING OF THE PROJECT

5.1 Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements

Subject to Section 5.4 [Exempt Transaction], Project Co shall not (and shall ensure that no Contracting Affiliate of Project Co will):

- (a) terminate or permit the termination of any Shareholder Agreement or Junior Lending Agreement to which it is a party;
- (b) assign or permit the assignment of any Shareholder Agreement or Junior Lending Agreement to which it is a party or any Junior Debt, except for any assignment by way of security in favour of the Senior Lenders in accordance with the Senior Lending Agreements and the other provisions of this Agreement;
- (c) make or agree to or permit the making of any material amendment to or material variation of any Shareholder Agreement or Junior Lending Agreement to which it is a party;
- (d) waive or fail to enforce any material rights Project Co (or its Contracting Affiliate, if applicable) may have under, or allow others to depart in any material respect from their material obligations under, any Shareholder Agreement or Junior Lending Agreement to which Project Co (or its Contracting Affiliate, if applicable) is a party;
- (e) enter into any agreement or document, other than the Senior Lending Agreements, that would materially affect the interpretation or application of any Shareholder Agreement or Junior Lending Agreement;
- (f) enter into any contract or agreement in replacement of a Shareholder Agreement or Junior Lending Agreement; or

- (g) enter into any Shareholder Agreement other than the Initial Shareholder Agreements or any Junior Lending Agreement,

unless full particulars of the relevant documents and proposed course of action have been submitted to the Province's Representative and there has been no objection by the Province in accordance with the Review Procedure.

5.2 Restrictions on Changes to Senior Lending Agreements

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

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

unless full particulars of the relevant documents and proposed course of action have been submitted to the Province's Representative and there has been no objection by the Province, acting reasonably, in accordance with the Review Procedure.

5.3 Permitted Borrowing

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

- (a) the Province shall not have a right of objection or consent, and Section 5.2 [Restrictions on Changes to Senior Lending Agreements] shall not apply; and
- (b) in the case of any Additional Permitted Borrowing or any advance under any Committed Standby Facility referred to in paragraph (c) of the definition of Permitted Borrowing in Section 1.1 [Definitions] of Schedule 1, Project Co shall, forthwith after the occurrence of such Permitted Borrowing and in any event no later than 10 Business Days thereafter, submit to the Province full particulars of the relevant documents and course of action comprising the Permitted Borrowing including:
 - (i) any action contemplated by any of Sections 5.2(a) to (f) inclusive; and

- (ii) particulars of why the action or transaction constitutes a Permitted Borrowing including information with respect to the matters referred to in Sections 5.7 [Changes Not to Increase Province's Liability] and 5.8 [Restricted Persons Prohibited].

5.4 Exempt Transaction

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

- (a) the Province shall not have a right of objection or consent, and Section 5.1 [Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements] and 5.2 [Restrictions on Changes to Senior Lending Agreements] shall not apply; and
- (b) Project Co shall, forthwith after becoming aware of the occurrence of such Exempt Transaction and in any event no later than 10 Business Days after becoming aware of the Exempt Transaction, submit to the Province full particulars of the relevant documents (to the extent available to Project Co) and course of action comprising the Exempt Transaction including:
 - (i) particulars of any action contemplated by any of Sections 5.1(a) to (g) inclusive and Sections 5.2(a) to (f) inclusive; and
 - (ii) particulars of why the action or transaction constitutes an Exempt Transaction including information with respect to the matters referred to in Sections 5.7 [Changes Not to Increase Province's Liability] and 5.8 [Restricted Persons Prohibited].

5.5 Copies of Documents

If at any time any action or matter referred to in any of Sections 5.1(a) to (g) inclusive or in any of Sections 5.2(a) to (f) inclusive occurs, Project Co shall deliver to the Province's Representative a conformed copy of each document or, if not in writing, a true and complete record thereof in writing, within 10 Business Days after the date of its execution or creation or the occurrence of such action, certified as a true copy or accurate and complete record (as the case may be) by an officer of Project Co.

5.6 Payment of Province's Costs

- (a) If particulars of any proposed documents or course of action are submitted to the Province's Representative pursuant to any provision of this Part 5, or if Project Co requests any consent pursuant to any provision of this Part 5, or if any action, transaction, event or circumstance occurs or is proposed that requires the consent of the Province under any provision of this Part 5 or to which the Province has a right of review or objection under this Part 5, Project Co shall pay to the Province, in accordance with this Section 5.6, all reasonable and proper costs and expenses incurred by the Province in connection with reviewing any such submission, request, action, transaction, event or circumstance or making a determination as to the making of an objection or the giving or withholding of consent or 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 Province 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 any third party to the Province, and the Province's reasonable internal administrative and personnel costs.

- (b) At the time of Project Co's submission to the Province's Representative pursuant to Sections 5.1 [Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements] and 5.2 [Restrictions on Changes to Senior Lending Agreements], or pursuant to any other Section in this Part 5 pursuant to which the Province or the Province's Representative has a right of review, objection, consent, verification or other action, and as a condition precedent to the commencement of any time period specified for the Province or the Province's Representative to object, consent or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in respect of which any such submission is made, Project Co shall pay to the Province the sum of \$50,000 to be held by the Province on account of Project Co's obligations to pay under this Section 5.6 in respect of such submission.
- (c) The Province may from time to time invoice Project Co for amounts to be paid by Project Co under this Section 5.6. For each particular matter submitted to the Province's Representative, such invoices shall be paid first out of any funds provided by Project Co under Section 5.6(b) with respect to the matter, to the extent such funds have not been applied to previous invoices. When the aggregate of amounts invoiced in respect a matter exceeds the amount of any funds provided by Project Co under Section 5.6(b) with respect to the matter, Project Co shall pay to the Province within 10 Business Days after invoicing the amount of the excess and the amount of any subsequent invoices in respect of the matter.
- (d) After any relevant decision or action of the Province is rendered or taken or deemed to have been rendered or taken or any action contemplated by the submission or request has been taken, the Province shall invoice Project Co for all amounts to be paid by Project Co under this Section 5.6 not previously invoiced by the Province, and the Province shall refund any overpayment by Project Co on account of amounts to be paid by Project Co under this Section 5.6, and Project Co shall pay any amount owing by it under this Section 5.6, in either case within 10 Business Days after receipt of such invoice.
- (e) The foregoing provisions of this Section 5.6 shall not apply in the case of any action or transaction that consists solely of an Exempt Transaction or a Permitted Borrowing to which Section 5.6(b) applies.

5.7 Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement and without prejudice to the rights of the Province under the other provisions of this Part 5, no action referred to in any of Sections 5.1(a) to (g) inclusive or any of Sections 5.2(a) to (f) inclusive, whether or not consented to or permitted under any of Sections 5.1 [Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements], 5.2 [Restrictions on Changes to Senior Lending Agreements], 5.3 [Permitted Borrowing] and 5.4 [Exempt Transaction], and no amendment, waiver or exercise of a right under any Lending Agreement or Shareholder Agreement, shall have the effect of increasing any liability of the Province or BCTFA arising from early termination of this Agreement, unless:

- (a) Project Co has obtained, in addition to any other consent and any other requirements under this Part 5, the prior written consent of the Province under the Consent Procedure expressly consenting, for the purposes of this Section 5.7, to the increase in the liability of the Province that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion; or
- (b) it is a Permitted Borrowing under the Senior Lending Agreements of an amount that does not increase the principal amount of Senior Debt outstanding under the Senior Lending Agreements to an amount greater than the aggregate of:
 - (i) the Original Senior Commitment, less any portion thereof which has been cancelled pursuant to the terms of the Senior Lending Agreements; and
 - (ii) any increases in the principal amount of all funding for the Project committed under the Senior Lending Agreements that have previously been consented to by the Province pursuant to Section 5.7(a),

and, in all cases where Section 5.3(b) applies, Project Co has complied with Section 5.3(b).

5.8 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, Project Co shall not carry out or permit any action referred to in any of Sections 5.1(a) to (g) inclusive or any of Sections 5.2(a) to (f) inclusive, and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, involve either:

- (a) a person who is a Restricted Person; or
- (b) a person any of whose Affiliates is, to the knowledge of Project Co (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

PART 6 INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverages

Project Co 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, such insurance to be taken out at least five 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).

Project Co 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 Term, from Qualified Insurers, all other insurance as may be required to be taken out from time to time in respect of all or any of the Project Work, the Project Site or the Project Infrastructure in accordance with any Laws or any Project Site Agreements and Project Site Encumbrances.

6.2 Province's Right to Insure

If Project Co fails or refuses to obtain or maintain in force any Required Insurance, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Part 6, the Province shall, without prejudice to any of its other rights under this Agreement or otherwise, have the right (but not the obligation) itself to procure such insurance, in which event Project Co shall pay to the Province on demand any amounts paid by the Province for that purpose together with an administrative fee equal to 15% of such amounts. Any administrative fee charged under this Section 6.2 shall not be in duplication of any administrative fee charged under Section 12.3(c) in respect of the same costs and expenses.

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, the policies for the insurance required by Section 6.1 [Insurance Coverages] 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 must be issued in the English language and governed by the laws of British Columbia and the laws of Canada applicable therein, or such other laws as may be acceptable to the Province in its discretion; and
- (c) all policies of insurance under which the Province or BCTFA is insured or is required to be insured must contain an endorsement to the effect that the policies will not be invalidated and coverage thereunder will not be denied for the Province or BCTFA or any other insureds (other than Project Co, Project Co Indemnified Persons and persons for whom Project Co is in law responsible) by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies by Project Co, any of Project Co Indemnified Persons, or any person for whom Project Co is in law responsible.

6.4 Deductibles

- (a) Subject to Section 6.4(b), if any policies for the Required Insurance or any other insurance required to be taken out by Section 6.1 [Insurance Coverages] provide that the amount payable in the event of any claim, loss or liability shall be reduced by a deductible amount or subject to a waiting period, then Project Co shall be responsible for any such deductible amount or waiting period and, in the event of any claim, loss or liability, Project Co shall be responsible for and shall pay, and shall indemnify and hold harmless the Province and the Province Indemnified Persons and each of them in 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 Province will be responsible for any deductible amount or waiting period provided for in any policies of Required Insurance (not exceeding the maximum deductible or

waiting period set out for such policy in Schedule 15 [Insurance Requirements]), in the event of any claim, loss or liability to the extent arising from a Province Non-Excusable Event.

6.5 Project Co Insurance Primary

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

6.6 Release of the Province for Insured Loss

- (a) Subject to Section 6.6(b), Project Co, for itself and its successors and assigns, hereby releases the Province and BCTFA and those persons for whom the Province is in law responsible, and their successors and assigns, from any and all financial liability for:
 - (i) damage to any property or any other loss required to be insured by the Required Insurance or actually insured by Project Co or any Principal Contractor or Subcontractor (whether or not required to be insured by the Required Insurance); and
 - (ii) any delay in start up, business interruption, extra expense, loss of income and loss of profit related thereto;

caused by any of the perils against which Project Co or any Principal Contractor or Subcontractor has insured or against which by the terms of this Agreement Project Co is required to insure or to procure insurance, and whether or not such loss or damage may have arisen out of any act, omission or negligence of the Province or BCTFA or any person for whom the Province is in law responsible.

- (b) The release in Section 6.6(a) shall not apply to the extent that both:
 - (i) the Province would, but for Section 6.6(a), be liable under this Agreement in respect of the damage to property or other loss required to be insured by the Required Insurance; and
 - (ii) the amount of the relevant loss exceeds the amount of insurance required to be obtained under Schedule 15 [Insurance Requirements] in respect of such property or other loss.

6.7 Compliance with Policies

- (a) Project Co 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 Project Co is in law responsible or, insofar as it is within its power or the power of any of its Principal Contractors or Subcontractors, any other person (other than the Province, BCTFA and persons for whom the Province is in law responsible), anything on or with respect to the Project Site or the Project Infrastructure or with respect to the Project 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) Provided the Province has been provided with copies of the policies of Required Insurance, neither the Province nor BCTFA shall do, or permit to be done by any person for whom the Province is in law responsible, anything on or with respect to the Project Site or the Project Infrastructure (excluding lawful acts of the Province or BCTFA 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) Project Co shall provide to the Province's Representative certified copies of all policies of insurance, certified by the insurer or its agent, within 90 days after the date the insurance is required to be in effect under this Agreement.
- (b) Project Co shall provide such additional evidence of compliance with this Part 6 as may be requested by the Province from time to time.

6.9 Renewal

- (a) At least 10 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 and Schedule 15 [Insurance Requirements], Project Co shall provide to the Province's Representative drafts of a cover note and a certificate of insurance for the renewal or replacement of such policy. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province, and must be sufficient to confirm the insurance and terms and conditions thereof, as required by this Agreement, and, for such purposes, Project Co shall cause the cover note and the certificate of insurance to be revised as the Province may require.
- (b) At least five Business Days before the expiration or cancellation of any policy to be renewed or replaced as provided in Section 6.9(a), Project Co shall deliver to the Province's Representative, for each such policy, the cover note and certificate of insurance for the renewal or replacement of the policy, as provided in draft to the Province's Representative pursuant to Section 6.9(a), and as revised as required by the Province pursuant to Section 6.9(a), signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province, confirming that the insurance has been obtained and will be in full force and effect at or before the time of expiry or cancellation of the policy being renewed or replaced, in each case together with:
 - (i) evidence satisfactory to the Province 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 Project Co 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), Project Co shall provide to the Province's Representative evidence satisfactory to the Province 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 Project Co provides to the Province's Representative any submittal, notice or other communication with respect to insurance under this Part 6 or Schedule 15 [Insurance Requirements], Project Co shall at the same time provide a copy of such submittal, notice or other communication and a copy of all documents and enclosures therewith, to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN Prov Govt, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Province may from time to time by notice to Project Co advise).

6.11 Review of Insurance by Province

Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Province], the submission or delivery to the Province's Representative, and the receipt, review, approval or acceptance by the Province or the Province's Representative of any insurance policy or any draft or certified copy of an insurance policy or any certificate of insurance, cover note or other evidence of compliance with this Part 6 and Schedule 15 [Insurance Requirements], shall not, irrespective of whether any objection is made thereto by the Province:

- (a) imply any acceptance by the Province or BCTFA that the extent of the insurance coverage is sufficient or that the terms and conditions thereof are satisfactory, in either case for the purposes of the Project or this Agreement; or
- (b) relieve or exempt or be deemed to relieve or exempt Project Co or any other person from any of its obligations and liabilities under this Agreement or any of the other Province 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]; or
- (c) derogate from, limit or prejudice any rights of the Province or BCTFA under this Agreement.

6.12 Workers' Compensation Coverage

Subject to the terms of the BCIB-Contractor Agreement, Project Co shall at all times during the 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 Project Work. Project Co shall, at the request of the Province from time to time, provide to the Province's Representative evidence satisfactory

to the Province that such coverage is in effect and that all assessments payable under the WCA in respect of the Project have been paid.

6.13 Claims

- (a) Project Co shall maintain a written register of all claims and incidents which might result in a claim under any of the policies of Required Insurance and shall allow the Province to inspect such register at any time on reasonable notice.
- (b) Project Co shall in addition notify the Province within five Business Days after making any claim under any of the policies for the Required Insurance where the value of the claim exceeds \$25,000 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) Subject to the terms of the BCIB-Contractor Agreement, in the event of any claim or loss to which any Required Insurance may apply, Project Co shall, and shall ensure that the relevant insured (other than the Province and BCTFA) shall, promptly and diligently notify all applicable insurers, file all required proofs of claim, supply to the insurers and adjusters all required documents and information, and generally execute and deliver all documents and do all acts and things that may be required to obtain the benefit of the insurance for the insureds thereunder including the additional named insureds and additional insureds.
- (d) Each party shall have the right, as its interest may appear, to be a party to and to participate in any claims settlement under any policy of property insurance insuring the Project Infrastructure or any part thereof required by this Agreement to be part of the Required Insurance, and to make and submit its own claim with respect to any loss or damage separately from any claim of any other party or any other person.

6.14 Insurance Not to Prejudice

Neither full compliance by Project Co nor a failure to comply by Project Co with the requirements of this Part 6 [Insurance, Damage and Destruction] shall derogate from, limit or prejudice any rights of the Province or BCTFA under this Agreement or relieve Project Co from any of its other obligations or liabilities under this Agreement.

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 prior to the Substantial Completion Date, Project Co 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 Project Co of any of its obligations under this Agreement or entitle Project Co to any compensation from the Province or BCTFA.

6.16 Reinstatement Plan

If all or any part of the Project Infrastructure or the Project Site is damaged or destroyed prior to the Substantial Completion Date, 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 or in any other case where the Province, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding if the Province considers that the continued application of the Design and Construction Certification Procedures would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Province, as the case may be, (or if, with the exercise of all due diligence, more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Province, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Province's Representative for acceptance, acting reasonably, pursuant to the Consent Procedure a plan (a "**Reinstatement Plan**") prepared by Project Co setting out, in reasonable detail, all aspects of Project Co's plan for carrying out the Reinstatement Work, including

- (a) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction (in accordance, where applicable, with any Province Change issued in respect thereof);
- (b) an estimate of the cost to carry out the Reinstatement Work and confirmation of whether or not there are sufficient funds available to Project Co from all sources, including debt, equity, letters of credit, construction or other security, insurance proceeds, deductibles for which Project Co is responsible in accordance with this Agreement, recourse against third parties, amounts required to be paid by the Province to Project Co pursuant to Section 8.3(b) or otherwise under this Agreement, but without imposing any obligation on Project Co to obtain any new debt or equity in order to carry out the Reinstatement Work, to allow Project Co to complete the Reinstatement Work while meeting its payment and other obligations under the Senior Lending Agreements, together with reasonable supporting documentation;
- (c) Project Co's proposed schedule for the execution of the Reinstatement Work;
- (d) the proposed terms upon which the Reinstatement Work is to be effected and, if the Reinstatement Work is to be effected by a third party, the procurement procedure which Project Co proposes to implement to procure the execution of the Reinstatement Work, provided that, if required by the Province in order to comply with applicable Competitive Procurement Requirements, the execution of the Reinstatement Work shall be procured through a competitive procedure designated by the Province and conducted under the supervision of the Province;
- (e) Project Co's proposal for any amended Project Schedule 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) Project Co's proposal for any related amendment to the Traffic Management Plan required in connection with the execution of the Reinstatement Work;

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

6.17 Conduct of Reinstatement Work

Project Co shall carry out the Reinstatement Work in accordance with the Project Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan accepted by the Province in accordance with the Consent Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the Province, the persons retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a Collateral Agreement with the Province, BCTFA and Project Co in substantially the same form as set out in Schedule 19 [Collateral Agreement].

6.18 Application of Proceeds of Insurance

Project Co shall ensure that the insurers under any of the policies of Required Insurance pay the proceeds of insurance under such policies as follows:

- (a) in the case of any policy for the insurance referred to in any of Sections 1.1 [Third Party Liability Insurance – Construction] and 1.3 [Automobile Insurance], of Schedule 15, 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) in the case of any policy for the insurance referred to in Section 1.4(a) of Schedule 15 [Insurance Requirements] (excluding any delay in start up, extra expense, business interruption, loss of income or loss of profits insurance proceeds payable under any such policy), the proceeds of insurance shall be paid to the Insurance Trustee as first loss payee, except where:
 - (i) Project Co 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;

in either of which cases the Province shall direct that the proceeds be paid directly to Project Co or the relevant insured; provided that, where the proceeds of any such insurance policy (other than any delay in start up, extra expense, business interruption or loss of profits insurance policy proceeds payable to Project Co) are paid to Project Co in respect of any single claim equal to or less than \$15,000,000, Project Co shall ensure that such proceeds are applied to the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds and not for any other purpose; and provided

further that, where the proceeds of such policies of insurance are payable in whole or in part to the Insurance Trustee pursuant to this Section 6.18(b) (such proceeds, together with any interest, distribution or other gain from time to time received by the Insurance Trustee in respect thereof pursuant to Section 4.2 [Investment of Property Damage Insurance Records] of the Insurance Trust Agreement, are called the “**Property Damage Insurance Proceeds**”), then either Section 6.18(c) or Section 6.18(d) as applicable shall apply;

(c) if Project Co 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 Insurance Trustee:

(i) if, in accordance with such contract, Project Co is required to make a payment to such third party for such purpose, and if Project Co submits to the Province’s Representative pursuant to the Review Procedure:

(A) a copy of an invoice from such third party to Project Co for payment of the cost of such Reinstatement Work;

(B) such supporting documentation and detail as may be required by the Province 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 Section 2.6 [General Grounds for Objection or Rejection] of Schedule 2 in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;

(C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.8 [Compliance with *Builders Lien Act* and Payments to Contractors] of Schedule 8 and Section 6.12 [Workers’ Compensation Coverage] of this Agreement 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 Project Co addressed to the Province that the amount of the invoice is justly due and payable in accordance with the relevant contract and that Project Co requires such invoice to be discharged out of the Property Damage Insurance Proceeds,

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

(E) the date that is five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Sections 6.18(c)(i)(A) to (D) inclusive; and

- (F) the date that is seven Business Days prior to the due date for payment of such invoice by Project Co under the terms of the relevant contract,

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

- (ii) upon the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Construction Certification Procedure, if Project Co submits to the Province'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 Project Co of the balance (if any) of any such Property Damage Insurance Proceeds; and

(C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.8 [Compliance with *Builders Lien Act* and Payments to Contractors] of Schedule 8 and Section 6.12 [Workers' Compensation Coverage] of this Agreement have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work,

the Province shall, subject to any specific requirements of the insurers, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Sections 6.18(c)(ii)(A) to (C) inclusive, authorize and direct the Insurance Trustee in writing to pay to Project Co the balance (if any) of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates;

- (d) if Project Co 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 Insurance Trustee, then:

- (i) if Project Co submits to the Province's Representative pursuant to the Review Procedure:

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

- (B) such supporting documentation and detail as may be required by the Province 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 Section 2.6 [General Grounds for Objection or Rejection] of Schedule 2 in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
- (C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.8 [Compliance with *Builders Lien Act* and Payments to Contractors] of Schedule 8 and Section 6.12 [Workers' Compensation Coverage] of this Agreement 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 Project Co addressed to the Province that the amount of the certificate is justly due and payable in accordance with this Agreement and that Project Co requires such certificate to be discharged out of the Property Damage Insurance Proceeds,

then the Province shall, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Section 6.18(d)(i)(A) to (D) inclusive, authorize and direct the Insurance Trustee in writing to pay to Project Co, out of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Insurance Trustee and the amount claimed in such certificate; and

- (ii) upon the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if Project Co submits to the Province'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 Project Co of the balance (if any) of any such Property Damage Insurance Proceeds; and
 - (C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.8 [Compliance with *Builders Lien Act* and Payments to Contractors] and Section 6.12 [Workers' Compensation Coverage] of this Agreement have been complied with in

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

the Province shall, subject to any specific requirements of the insurers, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Sections 6.18(d)(ii)(A) to (C) inclusive, authorize and direct the Insurance Trustee in writing to pay to Project Co the balance (if any) of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates; and

- (e) in the case of any insurance other than that referred to in Sections 6.18(a) and (b), proceeds shall be paid so as to ensure the performance by Project Co of its obligations under this Agreement. Proceeds of delay in start up insurance and business interruption insurance may be used to pay Project Co's debt service and other costs incurred by Project Co covered by such insurance and if so paid shall be deemed to have been paid to ensure the performance by Project Co of its obligations under this Agreement.

6.19 Repayment of Insurance Proceeds

Project Co hereby undertakes that if, following payment to Project Co or to a third party at the request of or on behalf of Project Co as contemplated by Sections 6.18(c) and (d), the Province receives a *prima facie* valid demand from the relevant insurer for all or any part of the Property Damage Insurance Proceeds, Project Co shall, if and to the extent that such demand arises or results (directly or indirectly) from any Project Co Non-Excusable Event, pay to the insurer the amount demanded within the time period stated in the demand.

6.20 Proceeds of Property Insurance if Agreement Terminated

If this Agreement is terminated, all proceeds of any property insurance that is required as part of the Required Insurance (excluding the insurance required by Section 1.4(b) 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 in respect of the loss or damage in respect of which such proceeds were payable, shall be paid to and retained by the Province as its sole property, and for such purposes the Province and Project Co shall sign all such documents and do all such things as may be reasonably required for such proceeds to be paid to the Province by insurers and the Insurance Trustee.

6.21 Alternate Risk Financing Measures

From time to time during the Term, the Province may, but will not be obliged to, pursue and implement, subject to and in accordance with the provisions of Part 7 [Province Changes and Project Co Proposals] and Schedule 11 [Changes], alternate risk financing measures for the Project if the Province considers in its discretion that such alternate measures would result in coverage substantially similar to the insurance coverages described in Schedule 15 [Insurance Requirements] being obtained in a more cost efficient manner.

**PART 7
PROVINCE CHANGES AND PROJECT CO PROPOSALS**

7.1 Province Changes

The Province may, at any time during the Term, require Province Changes (including Minor Works under Section 7.3(a)) subject to and in accordance with the provisions of this Part 7 and Schedule 11 [Changes], and Project Co 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 7 and such Schedule.

7.2 Project Co Proposals

Project Co may, at any time during the Term:

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

7.3 Minor Works

If at any time during the Term:

- (a) the Province initiates a Province Change that:
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the Project Requirements to which such Province Change relates); or
 - (ii) will not negatively affect any date set out in the Project Schedule and 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 Province:
 - (A) cannot reasonably be expected to exceed \$30,000,000; and

- (B) during the current Contract Year, cannot reasonably be expected to exceed \$5,000,000; or
- (b) Project Co establishes to the satisfaction of the Province, acting reasonably, that a Project Co Proposal initiated by Project Co under Section 7.2(a):
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the Project Requirements to which such Project Co Proposal relates); and
 - (ii) has a Minor Works Valuation of less than or equal to zero,

then such Province Change or Project Co 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

Project Co may initiate Project Co 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 Province Changes and Project Co Proposals

Project Co shall not be entitled to any payment, compensation, extension of time or other relief for a Province Change or Project Co Proposal except (in the case of Minor Works) in accordance with Section 1.2(c) of Schedule 11 [Changes] or (in the case of other Province Changes) to the extent provided in a Change Certificate issued in accordance with Schedule 11 [Changes].

7.6 Payments in Respect of Province Changes and Project Co Proposals

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

PART 8 SUPERVENING EVENTS

8.1 Supervening Events

- (a) If, in the case of:
 - (i) Project Co, a Compensation Event or Relief Event occurs; or
 - (ii) either the Province or Project Co, a Force Majeure Event occurs,then if and to the extent that such event:
 - (A) in the case of Project Co:

- (1) interferes adversely with, or causes a failure of, or prevents the performance of the Project Work; or,
 - (2) is a Compensation Event and results in Direct Losses; and
- (B) in the case of the Province, interferes adversely with, or causes a failure of, or prevents the performance of the any obligation under this Agreement,

then, subject to Section 8.1(b), the affected or entitled party (the “**Applicant**”) may apply for relief from its obligations, apply for extensions of time, claim compensation or claim a termination right under this Agreement to the extent provided in this Part 8.

- (b) Notwithstanding any other provision of this Part 8, an Applicant shall only be entitled to relief from its obligations, extensions of time, compensation or a termination right under this Agreement in accordance with this Part 8 in respect of a Supervening Event:
- (i) in the case of a claim of any Supervening Event by Project Co other than a No Threshold Compensation Event:
 - (A) if the interference with, failure of or prevention of the Project Work referred to in Section 8.1(a) arising from such Supervening Event is in respect of either or both of the Design and the Construction, and such Supervening Event is either:
 - (1) one of the first four Supervening Events claimed by Project Co and determined in accordance with this Part 8 to have occurred in any Contract Year from the Effective Date until the Total Completion Date (or portion of such Contract Year in the case of the first and last Contract Years which commence during such period), each of which has resulted in either or both of the following:
 - (I) a Change in Costs in respect of the Design or the Construction of greater than \$100,000; or
 - (II) a delay of three or more days to the occurrence of any of the Substantial Completion Date, the Total Completion Date, the On-Time Performance Demonstration Completion Date and the TIDS Performance Demonstration Completion Date; or
 - (2) claimed by Project Co in a Contract Year (or portion thereof in the case of the first and last Contract Years commencing in the period referred to in Section 8.1(b)(i)(A)(1)) after four other Supervening Events meeting the requirements of this Part 8, including Section 8.1(b)(i)(A)(1), have occurred;

- (ii) if and to the extent that such Supervening Event is not caused by, could not reasonably have been prevented by and is beyond the reasonable control of the Applicant or any person for whom the Applicant is in law responsible;
 - (iii) in the case of any claim of a Supervening Event by Project Co, if and to the extent that such Supervening Event or the effect thereof is not required by the Project Requirements to be contemplated or taken into account in the Design of the Project Infrastructure;
 - (iv) if and to the extent that such Supervening Event 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 Project Co, any Project Co Non-Excusable Event; or
 - (B) in the case of a claim of a Force Majeure Event by the Province, any Province Non-Excusable Event; and
 - (v) if the Applicant provides a Supervening Event Notice in respect of such Supervening Event pursuant to Section 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 8 shall limit the Province's right to request a Province Change pursuant to Section 7.1 [Province Changes] in response to the occurrence of any Supervening Event, including a Province Change to give to Project Co instructions to accelerate construction or take other steps to avoid any delay or impediment, or reduce the period of any future delay or mitigate the effect of any future impediment, resulting from such Supervening Event. Subject to a cancellation of such request for a Province Change as a result of the successful exercise by Project Co of its rights in accordance with Section 4.2 [Project Co Objection] of Schedule 11, in the event that the Province requests such a Province Change the procedures in respect of such Supervening Event set out in this Part 8 shall terminate and the matter shall be fully determined in accordance with Part 7 [Province Changes and Project Co Proposals] and Schedule 11 [Changes], provided that the Supervening Event and its consequences (as such consequences may be affected by the Province Change) shall be dealt with as part of the resulting Province Change.

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 8 (or would have caused an entitlement under this Part 8 but for the application of Section 8.1(b)(i)(A)(1)), the Applicant shall give to the Province, where the Applicant is Project Co, or Project Co, where the Applicant is the Province, 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 Province, where the Applicant is Project Co, or Project Co, where the Applicant is the Province,:
 - (i) any additional details or information, including available supporting documentation, in support of its claim in respect of the occurrence of the Supervening Event; and
 - (ii) if applicable, a detailed breakdown of all estimated Direct Losses that have been, will be or are reasonably likely to be incurred by the Applicant as a result of the Supervening Event; and
 - (iii) all other relevant information which would be required to be included in a Change Report under Section 2.3 [Preparation of Change Report] of Schedule 11 if such Supervening Event was a Province Change;
- (c) if a Supervening Event for which a Supervening Event Notice has been delivered ceases, the Applicant shall give to the Province, where the Applicant is Project Co, or Project Co, where the Applicant is the Province, as soon as practicable notice thereof and of when performance of its affected obligations can be resumed;
- (d) a party may not make multiple or duplicative claims in respect of any Supervening Event, and the relief, extensions of time, compensation 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)(i)(B) shall be the only relief, extensions of time, compensation 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 9.10 [Conduct of Claims Indemnified by the Province] applies, such Claims shall be subject to the provisions of Section 9.10 [Conduct of Claims Indemnified by the] and otherwise the claim in respect of such Supervening Event shall be subject to the provisions of this Part 8;
- (g) the Applicant shall demonstrate to the reasonable satisfaction of the Province, where the Applicant is Project Co, or Project Co, where the Applicant is the Province, that:
 - (i) the applicable criteria required under Section 8.1(b) have been met;
 - (ii) the Supervening Event has caused or will cause the Applicant to suffer the effects from which or for which the Applicant seeks relief, extensions of time, compensation or a termination right under this Part 8; and
 - (iii) it has complied with its mitigation obligations under Section 3.1 [Mitigation By Province] or Section 4.10 [Mitigation By Project Co], as applicable; and

- (h) following the delivery of a Supervening Event Notice under Section 8.2(a):
 - (i) the Province and Project Co shall consult and seek to agree to the effect of the relevant Supervening Event, provided that either of them may submit for resolution in accordance with the Dispute Resolution Procedure the question of:
 - (A) whether such Supervening Event has occurred, if within 10 Business Days following the delivery of the Supervening Event Notice the Province and Project Co have not agreed to the occurrence of such Supervening Event; or
 - (B) the extent of relief, extensions of time or compensation to which the Applicant is entitled, if within 20 Business Days following the exchange of all relevant information required under this Section 8.2, the Province and Project Co have not agreed to the extent of such relief, extensions of time or compensation;
 - (ii) without limiting the obligations set out in Section 4.10 [Mitigation by Project Co], if the Applicant is Project Co and while the relevant Supervening Event is continuing, Project Co will:
 - (A) consult and meet with the Province at all times as may be required by the Province in the circumstances to review and discuss matters pertaining to the ongoing Supervening Event;
 - (B) promptly provide to the Province for its review, comment and input, and then implement, and update as necessary in the circumstances, detailed contingency plans addressing worker health and safety, general site safety, site security, compliance with any Law (including any special orders or regulations imposed by Governmental Authorities) and any other matters the Province reasonably requires to be addressed as a consequence of the ongoing Supervening Event;
 - (C) promptly advise and seek the input of the Province in respect of Project Co's actions, plans and strategies to mitigate the effects of the ongoing Supervening Event; and
 - (D) work collaboratively and in good faith with the Province promptly to seek to identify opportunities to advance the conduct of the Project Work and the delivery of the Project.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] and to Project Co's obligations under Section 4.10 [Mitigation By Project Co], if at any time a Compensation Event occurs:

- (a) to the extent that, and for so long as, the performance of any obligation under this Agreement by Project Co is negatively affected by the Compensation Event (other than those obligations arising as a result of the Compensation Event, including Project Co's obligations under Section 6.15 [Restoration and Reinstatement of Damage or

Destruction]), Project Co shall be relieved from any liability or consequence under this Agreement (including termination by the Province other than as expressly provided for in Section 8.7 [Termination for Damage or Destruction] and without limiting the Province's right to terminate this Agreement pursuant to Section 14.2 [Termination for Convenience]) arising from Project Co's inability to perform such obligation, including that:

- (i) no NCE Points or Default Points shall be assigned in respect of any such affected performance; and
 - (ii) no Non-Compliance Event Payments shall be applied in respect of any such affected performance;
- (b) subject to Section 8.7 [Termination for Damage or Destruction], Section 8.9 [Allocation of Risks of Participants and Trespassers], Section 8.11 [Effect of Insurance] and 8.14 [Sharing of Disposal Costs for Specified Materials], and save to the extent that Project Co is entitled to be indemnified therefor pursuant to Section 9.7 [Limited Province Indemnity for Contamination and Nuisance] in respect of a Compensation Event falling within paragraph (m), (n), (bb) or (cc) of the definition thereof in Section 1.1 [Definitions] of Schedule 1, Project Co shall be compensated through a lump sum payment from the Province for the amount of any Direct Losses incurred, or to be incurred, by Project Co from the occurrence of the Compensation Event, provided that:
- (i) in the case of a Compensation Event referred to in paragraph (p) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount shall not include the first \$250,000 of the aggregate amount of the Direct Losses incurred by Project Co to mitigate the effects of all Protest Actions during the Term;
 - (ii) in the case of a Compensation Event (or a Force Majeure Event in the circumstances set out in Section 8.6(a)(i)) that causes damage to or destruction of all or any part of the Project Infrastructure or the Project Site, the Province shall make payment of the portion of the amount that is payable for the Reinstatement Work in respect of such damage or destruction based on the same criteria and subject to satisfaction of all the same conditions as are set out in Sections 6.18(c) and (d) for the disbursement of Property Damage Insurance Proceeds under Section 6.18(b), except that the Province shall not be required to deposit the amount with the Insurance Trustee;
- (c) subject to Section 8.9 [Allocation of Risks of Participants and Trespassers] and 8.14 [Sharing of Disposal Costs for Specified Materials], if the Compensation Event occurs:
- (i) prior to the Substantial Completion Date and it has been agreed or determined that the Substantial Completion Date has been or will be delayed, then the Substantial Completion Target Date shall be postponed; or
 - (ii) after:

- (A) the Substantial Completion Date and it has been agreed or determined that the Total Completion Date has been or will be delayed; or
- (B) the Service Commencement Date and it has been agreed or determined that the On-Time Performance Demonstration Completion Date or the TIDS Performance Demonstration Completion Date has been or will be delayed,

then the Total Completion Target Date, the On-Time Performance Demonstration Completion Target Date or the TIDS Performance Demonstration Completion Target Date, as the case may be, shall be postponed,

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, or that will be caused, by the Compensation Event to the achievement of the relevant date or dates, and in each case the Project Schedule shall be amended accordingly to reflect such postponement, including any resulting postponement of other related milestone dates set out therein.

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Sections 8.1(b), 8.12 [Delay in Notification], 8.15 [Limited Compensation for COVID-19 Related Health event], 8.16 [Allocation of Risks of COVID-19 Related Health Event] and to Project Co's obligations under Section 4.10 [Mitigation By Project Co], if a Relief Event occurs:

- (a) to the extent that, and for so long as, the performance of any obligation under this Agreement by Project Co is negatively affected by the Relief Event (other than those obligations arising as a result of the Relief Event, including Project Co's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) without limiting the Province's right to terminate this Agreement pursuant to Section 14.2 [Termination for Convenience], the Province shall not exercise any right it would otherwise have under this Agreement to terminate this Agreement arising from Project Co's inability to perform such obligation (other than as expressly provided for in this Section 8.4 or Section 8.7 [Termination for Damage or Destruction]); and
 - (ii) no NCE Points or Default Points shall be assigned in respect of any such affected performance; and
- (b) if the Relief Event occurs:
 - (i) prior to the Substantial Completion Date and it has been agreed or determined that the Substantial Completion Date has been or will be delayed, then the Substantial Completion Target Date shall be postponed; or
 - (ii) after:
 - (A) the Substantial Completion Date and it has been agreed or determined that the Total Completion Date has been or will be delayed; or

- (B) the Service Commencement Date and it has been agreed or determined that the On-Time Performance Demonstration Completion Date or the TIDS Performance Demonstration Completion Date has been or will be delayed,

then the Total Completion Target Date, the On-Time Performance Demonstration Completion Target Date or the TIDS Performance Demonstration Completion Target Date, as the case may be, shall be postponed,

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, or that will be caused, by the Relief Event to the achievement of the relevant date or dates, and in each case the Project Schedule shall be amended accordingly to reflect such postponement, including any resulting postponement of other related milestone dates set out therein (the total period of such delay being the “**Delay Period**”);

(c) if:

- (i) a Relief Event referred to in paragraph (b), (d), (e), (f), (g), (h), (i), (k), (l) or (m) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1 occurs; and
- (ii) it has been agreed or determined that such Relief Event, together with all previously incurred Relief Events, has resulted or will result in a delay of more than 30 days to the occurrence of:
 - (A) if such Relief Event occurs prior to the Substantial Completion Date, the Substantial Completion Date;
 - (B) if such Relief Event occurs after the Substantial Completion Date, the Total Completion Date; or
 - (C) if such Relief Event occurs after the Service Commencement Date, the On-Time Performance Demonstration Completion Date or the TIDS Performance Demonstration Completion Date;

then

- (iii) in respect of each day during the Delay Period, the Province shall pay to Project Co an amount equal to the Recoverable Senior Debt Service Amount payable by Project Co to the Senior Lenders under the Senior Lending Agreements in respect of the Permitted Borrowing at the No Default Interest Rate;
- (iv) any amount payable by the Province pursuant to Section 8.4(c)(iii) shall be payable:
 - (A) to Project Co no later than two Business Days, and no earlier than ten Business Days, prior to the date on which Project Co is required to pay any such Recoverable Senior Debt Service Amount to the Senior Lenders, provided that no less than five Business Days prior to the due

date for payment of any such amount by the Province determined in accordance with this Section 8.4(c)(iv)(A) the Province has received an invoice for such amount from Project Co, accompanied by a certificate from the Agent certifying the calculation of the amount referred to in Section 8.4(c)(iii) and certifying the due date for payment of any Recoverable Senior Debt Service Amount in the relevant calendar month; or

(B) if, by the due date for payment of any such amount by the Province, the Province has been given notice of a Designated Account pursuant to, and as defined in, Section 12.4 of the Lenders' Remedies Agreement, to such Designated Account;

(v) if a Relief Event referred to in paragraph (k) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1 continues for more than six months and Thales is entitled to payment under Article 34.1.1 of the ATC Supply Contract, the Province shall pay to Project Co, without Mark-up, an amount equal to the amounts actually paid by the Design-Build Contractor to Thales in accordance with Article 34.1.1 of the ATC Supply Contract;

8.4A Termination for Relief Event

- (a) Other than in respect of a Delay Period, or any portion thereof, arising from a COVID-19 Related Health Event, if a Delay Period continues for more than 180 days, the Province may at any time thereafter during the Delay Period terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute], and compensation on termination shall be payable for such termination in accordance with Part 2 [Compensation on Non-Default Termination] of Schedule 13
- (b) If a Delay Period arising entirely from a COVID-19 Related Health Event continues for more than 180 days, then either the Province or Project Co may at any time, provided that such Delay Period is then continuing, terminate this Agreement by notice to the other party having immediate effect, subject to Sections 8.1(b) and 14.5 [Notice of Intention to Terminate and Dispute], provided that, if Project Co exercises such right to terminate, the Province may, by notice to Project Co reject such termination of this Agreement by Project Co and upon such rejection by the Province:
- (i) the parties, insofar as they are able to do so, will continue to perform their respective obligations under this Agreement in accordance with the provisions of this Agreement;
- (ii) without prejudice to the other relief available to the parties in respect of such COVID-19 Related Health Event pursuant to Section 8.4 [Parties' Entitlements Upon Occurrence of a Relief Event], Project Co shall, for so long as the effects of such COVID-19 Related Health continue, be compensated in accordance with Section 8.3(b), but only in respect of the Direct Losses incurred by Project Co as a result of such COVID-19 Related Health Event as and from the date of the exercise by Project Co of its termination right; and

- (iii) the Province may at any time thereafter, provided that such Delay Period is continuing, terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute].
- (c) If this Agreement is terminated by either the Province or Project Co pursuant to Section 8.4A(b), compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] of Schedule 13.

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 3.1 [Mitigation By Province] or Section 4.10 [Mitigation By Project Co], as applicable, if at any time a Force Majeure Event occurs:

- (a) to the extent that, and for so long as, the performance of any obligation under this Agreement by the Applicant is negatively affected by the Force Majeure (other than those obligations arising as a result of the Force Majeure Event, including Project Co's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) the Applicant shall be relieved from liability or consequence under this Agreement arising from the Applicant's inability to perform such obligation and, without limiting the Province's right to terminate this Agreement pursuant to Section 14.2 [Termination for Convenience], neither party shall exercise any right that it would otherwise have under this Agreement to terminate this Agreement (other than as expressly provided for in Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction]); and
 - (ii) if the Applicant is Project Co, no NCE Points or Default Points shall be assigned in respect of any such affected performance; and
- (b) if it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to the occurrence of:
 - (i) the Substantial Completion Date, the Total Completion Date, the On-Time Performance Demonstration Completion Date or the TIDS Performance Demonstration Completion Date, then if the Force Majeure Event occurs:
 - (A) prior to the Substantial Completion Date, then the Substantial Completion Target Date shall be postponed;
 - (B) after the Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date shall be postponed; or
 - (C) after the Service Commencement Date, then the Total Completion Target Date, the On-Time Performance Demonstration Completion Target Date or the TIDS Performance Demonstration Completion Target Date, as the case may be, shall be postponed,

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, or that will be caused, by the Force Majeure Event to the achievement of the relevant date or dates, and in each case the Project Schedule shall be amended accordingly to reflect such postponement, including any resulting postponement of other related milestone dates set out therein.

8.6 Termination for Force Majeure Event

- (a) If the occurrence of a Force Majeure Event frustrates or renders impossible for a continuous period of more than 180 days the performance by the Province or Project Co of its respective obligations with respect to all or a material portion of the Project or the Project Work, as the case may be, so as to frustrate the overall purpose and intent of the Project, then either the Province or Project Co may at any time, provided that such frustration is then continuing, terminate this Agreement by notice to the other party having immediate effect, subject to Sections 8.1(b) and 14.5 [Notice of Intention to Terminate and Dispute], provided that, if Project Co exercises such right to terminate, the Province may, by notice to Project Co reject such termination of this Agreement by Project Co and upon such rejection by the Province:
- (i) the parties, insofar as they are able to do so, will continue to perform their respective obligations under this Agreement in accordance with the provisions of this Agreement;
 - (ii) without prejudice to the other relief available to the parties in respect of such Force Majeure Event pursuant to Section 8.5 [Parties' Entitlements Upon Occurrence of a Force Majeure Event], Project Co shall, for so long as the effects of the relevant Force Majeure Event continue, be compensated in accordance with Section 8.3(b), but only in respect of the Direct Losses incurred by Project Co as a result of the Force Majeure Event as and from the date of the exercise by Project Co of its termination right; and
 - (iii) the Province may at any time thereafter, provided that such frustration is then continuing, terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute].
- (b) If this Agreement is terminated by either the Province or Project Co pursuant to Section 8.6(a), compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] of Schedule 13.

8.7 Termination for Damage or Destruction

If all or any substantial part of the Project Infrastructure or the Project Site is damaged or destroyed as a result of the occurrence of:

- (a) any event (other than a Compensation Event referred to in paragraph (r) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1),
- (i) the information provided by Project Co and consented to by the Province as part of the Reinstatement Plan pursuant to Section 6.16 [Reinstatement Plan], or as

otherwise provided by Project Co to the satisfaction of the Province if there is no Reinstatement Plan required under Section 6.16, establishes that there are insufficient funds available to Project Co from all sources to allow Project Co to complete the Reinstatement Work while meeting its scheduled payment obligations under the Senior Lending Agreements (the deficiency being called the “**Reinstatement Funds Deficiency**”); and

(ii) no party has 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 Project Infrastructure or Project Site results from or is contributed to by a Project Co Non-Excusable Event, including as a result of a failure by Project Co to comply with and implement all design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure or Project Site; or

(B) the cause of the Reinstatement Funds Deficiency is a breach by Project Co of any of its obligations with respect to the Required Insurance set out in Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements], including a failure by Project Co to fund any deductibles or waiting periods for which it is responsible under this Agreement,

the Province may terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 3 [Compensation on Termination for Project Co Default] of Schedule 13; or

(iv) in any case where Section 8.7(a)(iii) does not apply, either the Province or Project Co may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] of Schedule 13; or

(b) a Compensation Event referred to in paragraph (r) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Province shall elect, by notice to Project Co having immediate effect, either:

(i) to compensate Project Co in accordance with Section 8.3(b), and this Agreement will continue; or

(ii) subject to Section 14.5 [Notice of Intention to Terminate and Dispute], to terminate this Agreement, in which event compensation on termination shall be

payable in accordance with Part 2 [Compensation on Non-Default Termination] of Schedule 13,

provided that the Province may not in such case elect to terminate this Agreement pursuant to Section 8.7(b)(ii) if Project Co releases the Province from all obligations under Section 8.7(b)(i) and deposits with the Insurance Trustee an amount equal to the estimated amount to complete the Reinstatement Work as set out in the Reinstatement Plan pursuant to Section 6.16 [Reinstatement Plan]. Such amount shall be held and disbursed based on the same criteria as are provided in Sections 6.18(c) and (d) for the disbursement of Property Damage Insurance Proceeds under Section 6.18 [Application of Proceeds of Insurance] (subject to satisfaction of all conditions to such disbursement provided for in that Section).

8.8 Responsibility for Participants and Trespassers

- (a) Except as otherwise expressly provided in this Agreement, neither the Province nor BCTFA shall be responsible for the presence on or around or entry onto or around the 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 Project 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 Term). 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 Project Work by or caused by, any Participant or Trespasser and any lawful or unlawful activities of any such person shall not be a breach of the obligation of the Province or BCTFA hereunder to permit Project Co to have access to the Project Site, nor a breach of any other obligation or representation or warranty of the Province or BCTFA under this Agreement.
- (b) The management of Participants and Trespassers in respect of the Project Site and the Project Infrastructure shall be the responsibility of Project Co until the Substantial Completion Date. If at any time prior to the Substantial Completion Date any part of the Project Site or the Project Infrastructure is occupied by any Participants or Trespassers, then as soon as reasonably practicable Project Co shall notify the Province of such occurrence and of the action which Project Co proposes to take to deal with such Participants or Trespassers. Project Co may exercise any legal remedies available to it to remove Participants or Trespassers (including the obtaining of injunctions and enforcement orders in respect thereof), provided that Project Co shall give the Province’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 Project Co 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 Project Co shall not by virtue of this Section 8.8 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) Project Co may request the assistance of the Province (at the cost of Project Co) to remove Participants where Project Co demonstrates to the Province's reasonable satisfaction that it has exercised all legal remedies available to it to remove the Participants (provided that for this purpose Project Co 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 Project Work that Project Co is unable to mitigate. Following such request, the Province shall notify Project Co whether the Province can lawfully provide any assistance in relation to the removal of the Participants that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, the Province shall provide such assistance (at Project Co's cost) to the extent it is, in the discretion of the Province, reasonable and appropriate in the circumstances to do so.
- (d) Where Project Co is given assistance by the Province in accordance with Section 8.8(c), Project Co shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of all Direct Losses or Claims suffered or incurred by the Province and the Province Indemnified Persons, or any of them, as a result of or in connection with the provision of such assistance.

8.9 Allocation of Risks of Participants and Trespassers

- (a) In the event of any Protest Action, Project Co shall be entitled to compensation, extensions of time and other relief in respect thereof as a Compensation Event in accordance with this Part 8 and the following additional parameters:
 - (i) Project Co shall only be entitled to extensions of time in respect of Protest Actions pursuant to Section 8.3(c) if and to the extent that Project Co 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 Project Co has exhausted all legal remedies available to it to seek injunctive relief or other interim judicial remedies from a Court of first instance to remove them and to enforce any injunction or other interim remedy granted by such Court to remove them (provided that for this purpose Project Co may but shall not be obligated to prosecute injunctive or other interim judicial remedies beyond the Court of first instance); and
 - (ii) Project Co shall only be entitled to compensation in respect of Protest Actions pursuant to Section 8.3(b) if and, subject to Section 8.11 [Effect of Insurance], to the extent that Project Co establishes that it has incurred during the Term Direct Losses to mitigate the effects of Protest Actions, including:
 - (A) the costs of exercising any legal remedy available to Project Co 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 Project Co is entitled;
 - (C) the cost of remedying any damage caused by Protest Actions; and

(D) the taking of any mitigation action in relation to Protest Actions,

which aggregate (including amounts paid by way of indemnity under Section 8.8(d) but excluding amounts referred to in Section 8.11 [Effect of Insurance]) more than \$250,000,

provided that the limitations on the compensation and extensions of time available to Project Co from that otherwise available to Project Co in the event of a Compensation Event, as set out in Sections 8.9(a)(i) and 8.9(a)(ii), shall not apply to the extent that such Protest Action arose, directly or indirectly, as a result of any Province Non-Excusable Event or as a result of actions taken or threatened to be taken by the Employees (as defined in the BCIB-Contractor Agreement).

(b) Except as expressly provided in Section 8.9(a), and subject to Sections 8.4 and 8.5, as between the Province and Project Co Project Co shall bear, without recourse to the Province:

(i) any Losses suffered by Project Co, its agents, Principal Contractors and Subcontractors or employees of any of them;

(ii) any Direct Losses suffered by the Province or any of the Province Indemnified Persons arising:

(A) from any interference, obstruction, or other hindrance to the Project or to the conduct of the Project Work, including the presence of any Participant 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 Project Co; or

(D) as a result of the failure by Project Co to take or cause to be taken measures which should have been taken,

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

(c) Nothing in this Section 8.9 shall affect:

(i) any right of the Province or BCTFA to make or recover any Claim against any Participant or Trespasser for public nuisance or for damage suffered by the Province or BCTFA or their respective agents, contractors or subcontractors of any tier or any employees of any of them; or

(ii) any right of Project Co to make or recover any Claim against any Participant or Trespasser for damage suffered by Project Co, its agents, Principal Contractors or Subcontractors or any employees of any of them.

8.10 Sharing of Increased Recoverable Expenditures in Specified Circumstances

- (a) In the event that the discovery of any Undisclosed Utilities causes Project Co to incur additional Recoverable Expenditures in order to carry out the Project Work and otherwise comply with the Project Requirements as a result of the existence or actual location of such Utilities which Project Co would not have incurred but for such discovery, then Project Co shall be entitled, subject to Project Co’s obligations under Section 4.10 [Mitigation By Project Co] and except to the extent that any such Recoverable Expenditures result from or are contributed to, directly or indirectly, by any Project Co Non-Excusable Event, to receive compensation through a lump sum payment from the Province pursuant to Section 10.2 [Additional Payments and Financing], in respect of such additional aggregate Recoverable Expenditures incurred by Project Co as a direct consequence of the discovery of all such Undisclosed Utilities during the Term (the “**Additional Utilities Recoverable Expenditures**”) in an amount calculated in accordance with Table 8.10(a) set forth below.

Table 8.10(a) Sharing of Additional Utilities Recoverable Expenditures

Additional Utilities Recoverable Expenditure	Province Share of Additional Utilities Recoverable Expenditure	Project Co Share of Additional Utilities Recoverable Expenditure	Maximum Cumulative Project Co Share of Additional Utilities Recoverable Expenditure during Term
Applicable to first			
Applicable to next incremental			
Applicable to amount over			

8.11 Effect of Insurance

Notwithstanding anything to the contrary in this Part 8, Project Co shall not be entitled to any compensation under this Part 8 in respect of any Supervening Event to the extent, in respect of the Supervening Event:

- (a) that:
- (i) Project Co recovers or is entitled to recover under any Required Insurance, or would have been entitled to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Supervening Event or any aspect thereof is insured against, or required to be insured against, under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement,

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of Project Co (or any person for whom Project Co 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 Province or any person for whom the Province 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);

- (b) that Project Co recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that Project Co has in fact taken out and maintained;
- (c) that there are proceeds of insurance held by the Insurance Trustee that are (subject to Project Co 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;
- (d) that the Province makes or authorizes, or is obligated under this Agreement (subject to Project Co fulfilling all conditions thereto) to make or authorize, payment to or for the account of or on behalf of Project Co under Section 6.18 [Application of Proceeds of Insurance]; or
- (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 8.11(a) and (b) for which Project Co is responsible;

provided that, in the case of a Compensation Event described in paragraph (p) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Province shall not reduce pursuant to this Section 8.11 the compensation it would otherwise have paid under this Part 8 by reason of proceeds of insurance that Project Co recovers or is entitled to recover up an aggregate limit over the Term of \$250,000.

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 would (but for this Section 8.12(b)) have increased as a result of such delay in providing such notice or information.

8.13 [Not Used]

8.14 Sharing of Disposal Costs for Specified Materials

- (a) The Province and Project Co will share Disposal Costs For Ground Materials Containing Foreseeable Contamination as follows:

Bulked Quantity of Ground Materials Containing Foreseeable Contamination	Province's share of Disposal Cost For Ground Materials Containing Foreseeable Contamination	Project Co's share of Disposal Cost for Ground Materials Containing Foreseeable Contamination
Amount up to or equal to 16,000 m ³		
Amount greater than 16,000 m ³ and less than or equal to 30,000 m ³		
Amount greater than 30,000 m ³		

- (b) The Province and Project Co will share Disposal Costs For Contaminated Building Materials as follows:

Disposal Cost For Contaminated Building Materials	Province's share of Disposal Cost For Contaminated Building Materials	Project Co's share Disposal Cost For Contaminated Building Materials
Amount up to \$1,000,000		
Amount greater than \$1,000,000		

- (c) Other than the amounts payable in accordance with Section 8.14(a) and (b) Project Co will not be entitled to any further relief or compensation in respect of any Foreseeable Contamination or Contaminated Building Materials, including:
- (i) any additional payment for the excavation, segregation, loading, treatment or removal of any Ground Materials Containing Foreseeable Contamination or any replacement of fill or backfill or any groundwater treatment;
 - (ii) any additional payment for the demolition, handling or removal of any Contaminated Building Materials; or
 - (iii) any adjustment to the Project Schedule.

8.15 Limited Compensation for COVID-19 Related Health Event

Subject to Section 8.16 [Allocation of Risks of COVID-19 Related Health Event], in addition to the relief provided in Section 8.4 with respect to a COVID-19 Related Health Event, Project Co shall, for

so long as the effects of such COVID-19 Related Health Event continue, be compensated in accordance with Section 8.3(b), but only in respect of additional incremental costs and expenses exceeding \$5 million in the aggregate and incurred by Project Co as a result of:

- (a) any delay to the Project Work directly attributable to compliance by Project Co with:
 - (i) an order issued, whether before or after the Effective Date, by a Senior Governmental Authority in connection with the COVID-19 Related Health Event; or
 - (ii) any guidance or recommendation issued after the Effective Date by the Minister of Health (British Columbia), the Provincial Health Officer (British Columbia) or the Workers' Compensation Board in connection with the COVID-19 Related Health Event:
 - (A) imposing, after the Effective Date, new or additional physical distancing requirements or restricting the number of workers on the Project Site; and
 - (B) compliance with such guidance or recommendation adversely affects Project Co's productivity in performing the Project Work;
- (b) the acquisition of personal protective equipment for those working at the Project Site where such personal protective equipment is reasonably required for Project Co to continue performance of the Project Work while complying with:
 - (i) an order referred to in Section 8.15(a)(i) of this Agreement; or
 - (ii) any guidance or recommendation issued after the Effective Date by the Minister of Health (British Columbia), the Provincial Health Officer (British Columbia) or the Workers' Compensation Board in connection with the COVID-19 Related Health Event;
- (c) complying with any changes or amendments to the Occupational Health and Safety provisions under the WCA, or the regulations to the WCA, directly attributable to the COVID-19 Related Health Event and coming into effect after the Effective Date; and
- (d) accommodation costs incurred in respect of workers reasonably required to be physically present at the Project Site to perform their duties but who were required by a Senior Governmental Authority to quarantine upon entry into British Columbia in connection with a COVID-19 Related Health Event and such requirement for quarantine could not have been reasonably anticipated by Project Co.

8.16 Allocation of Risks of COVID-19 Related Health Event

In the event of any COVID-19 Related Health Event, Project Co shall only be entitled to the relief and compensation provided for a Relief Event in accordance with this Part 8 if and to the extent the effects of the COVID-19 Related Health Event in respect of which Project Co seeks relief are present on or after the date which is 90 days after the Effective Date regardless of the time at which the event arose.

**PART 9
INDEMNITIES AND LIMITATIONS ON LIABILITY**

9.1 Indemnification by Project Co

Without limiting Project Co's duties, obligations and liabilities under Section 2.3 [Assumption of Risk and Responsibility], and subject to Section 9.2 [Exceptions to Indemnification by Project Co], Section 9.3 [Indemnification for ATC Intellectual Property Infringement], Section 9.4 [Effect of Project Co's Indemnities] Project Co shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons, or any of them, that arise directly or indirectly out of, in the course of, in connection with or as a result of the Project Work, or any use or occupation of or event, loss or occurrence on or to the Project Site or the Project Infrastructure during the Term, or any obligation of Project Co under this Agreement, including, in respect of any of the foregoing, Claims and Direct Losses:

- (a) for or in respect of:
 - (i) bodily injury including death resulting at any time therefrom; or
 - (ii) any damage to or loss of property, whether real or personal, including damage to or loss of:
 - (A) all or any part of the Project Infrastructure or any other property belonging to the Province or BCTFA or for which either of them are responsible;
 - (B) Infrastructure or property of any Governmental Authority or other Relevant Authority, including the City of Vancouver, or of any Utility Supplier, Railway or other third party;
 - (C) lands (and improvements thereon) forming part of or adjacent to the Project Site; or
 - (D) Plant or Construction Plant;
- (b) suffered by Project Co or any person for whom Project Co is in law responsible or any employees of any of them or any user of the Project Lands or Project Infrastructure or other third party, that arise out of or in the course of or in connection with or as a result of the Project 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);
- (c) that are to be borne by Project Co 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 Project Co, or by or on behalf of the Province or BCTFA at the request of Project Co, against or in connection with Participants or Trespassers; or
- (d) caused by, arising out of, relating to or resulting from or in connection with:

- (i) any act or omission of any user of any part of the Project Site or any part of the Project Infrastructure or other person on or about any part of the Project Site or any part of the Project Infrastructure, in each case prior to the Substantial Completion Date;
- (ii) any adoption, reliance, use, interpretation or application by or on behalf of Project Co, any Principal Contractor or any Subcontractor, or any other person for whom Project Co is in law responsible in relation to any Project Work, of any or all of or any part of the Design Data, Disclosed Data or other data or documents provided or made available by or on behalf of the Province or BCTFA, whether before or after execution of this Agreement, except as expressly provided in Section 2.15(d);
- (iii) any act or omission of Project Co or any person for whom Project Co is in law responsible or employees of any of them that directly or indirectly causes any breach of any statutory or public powers, authorities, discretions, duties or obligations;
- (iv) any Contamination, or any remediation, handling or legal requirement of a Governmental Authority in respect of Contamination;
- (v) any infringement or misappropriation or alleged infringement or misappropriation of any other person's Intellectual Property Rights (other than infringement, misappropriation or alleged infringement or misappropriation of Intellectual Property Rights in respect of ATC Equipment, ATC Software or ATC Documentation, to which Section 9.3 [Indemnification for ATC Intellectual Property Infringement] shall apply) or breach or alleged breach of obligations of confidentiality by Project Co or any person for whom Project Co is in law responsible;
- (vi) any breach in the observance or performance of any of the obligations of Project Co under this Agreement or any of the other Project Documents;
- (vii) any repair, correction or warranty obligations of Project Co under this Agreement, including the obligation to correct Project Work Defects under Schedule 5 [Project Work Defects and Warranties];
- (viii) anything done or omitted to be done by or on behalf of Project Co, any Principal Contractor or any Subcontractor, or any other person for whom Project Co is in law responsible, or any of them, in connection with or pursuant to or under any of the Conditions of Access,
- (ix) any breach of Section 4.5 [Prohibited Acts] or anything done or omitted to be done by or on behalf of Project Co, any Principal Contractor or any Subcontractor or any other person in connection with any of Sections 12.3(b)(ii) to (v) inclusive; or

- (x) any wrongful act, wrongful omission, negligence or wilful misconduct of Project Co or persons for whom Project Co is in law responsible in connection with the Project Work, or during the Term;
- (xi) the provision of any assistance by the Province to Project Co in accordance with Sections 8.10(a) or (b) of Article 8 [Utilities] of Part 2 of Schedule 4 [Design and Construction], regardless of whether or not Project Co ultimately obtains the relevant rights of entry, access or other action, or is able to take the benefit of or exercise any rights under the relevant Utility Agreement, as the case may be.

9.2 Exceptions to Indemnification by Project Co

The obligations of Project Co to indemnify under Section 9.1 [Indemnification by Project Co] (and, to the extent this Section 9.2 (or any paragraph of this Section 9.2) 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 Province is obligated to indemnify Project Co in respect of Claims and Direct Losses arising out of the same events or circumstances pursuant to Section 9.6 [Indemnification by the Province] or Section 9.7 [Limited Province Indemnity for Contamination and Nuisance];
- (b) the Claims or Direct Losses are directly attributable to any wrongful act, wrongful omission or wilful misconduct by the Province, BCTFA or any person for whom the Province is in law responsible on or about the Project Site or the Project Infrastructure;
- (c) the Claims or Direct Losses are directly attributable to any breach in the observance or performance of any of the obligations of the Province or BCTFA under this Agreement or any other Province Project Document, by the Province, BCTFA or any person for whom the Province is in law responsible;
- (d) the Claims or Direct Losses:
 - (i) consist of payments that the Province has made or is obligated to make to Project Co pursuant to Schedule 11 [Changes];
 - (ii) consist of compensation that the Province has paid or is obligated to pay to Project Co pursuant to Section 8.3(b), Section 8.4(c) or Section 8.6(a)(iii) to the extent that the relevant Compensation Event, Relief Event or Force Majeure Event, as the case may be, does not arise or result (directly or indirectly) from any Project Co Non-Excusable Event; or
 - (iii) are directly attributable to a Province Change, Compensation Event or a Force Majeure Event (save that this exception shall not apply to the extent that Project Co would otherwise be responsible for any such Claims or Direct Losses pursuant to Section 8.9(b)),

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

- (e) the Province or the Province Indemnified Persons, as the case may be, have received or are entitled to receive insurance proceeds in respect of such Claims and Direct Losses under the Required Insurance;
- (f) the Claims or Direct Losses relate to rent, user fees, property taxes (if any) or occupancy costs that are or become payable by the Province or BCTFA under Project Site Agreements or Project Site Encumbrances to the extent that Project Co is not obligated to pay such amounts pursuant to Section 4.2 [Exception to Project Co Responsibilities for Designated Project Lands] of Schedule 8;
- (g) the Claims or Direct Losses consist of compensation that the Province has paid or is obligated to pay to Project Co under Section 8.10 [Sharing of Increased Recoverable Expenditures in Specified Circumstances] or Section 8.14 [Sharing of Disposal Costs for Specified Materials], to the extent that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Project Co Non-Excusable Event; or
- (h) the Claims or Direct Losses arise as a result of or in connection with any Non-Foreseeable Contamination or Subsequent Contamination, and do not arise as a result of or in connection with:
 - (i) a Project Co Non-Excusable Event in the performance or non-performance of Project Co's Environmental Obligations with respect to such Contamination; or
 - (ii) Project Co or any person for whom Project Co is in law responsible causing, contributing to or exacerbating any such Non-Foreseeable Contamination or Subsequent Contamination.

9.3 Indemnification for ATC Intellectual Property Infringement

- (a) Project Co shall indemnify and hold harmless each Province Indemnified Person from and against all Claims by third parties and all Direct Losses suffered or incurred by any of them, arising, directly from or related to, any third party Claim that any ATC Equipment, ATC Software or ATC Documentation provided by Project Co infringes, based upon a substantive allegation, any Canadian or United States Intellectual Property Right (including copyright, trademark and patent) of the third party (an “**ATC Intellectual Property Infringement Claim**”).
- (b) In the event of an ATC Intellectual Property Infringement Claim, Project Co shall have the option, at its expense, to:
 - (i) modify the infringing or allegedly infringing ATC Equipment, ATC Software or ATC Documentation to be non-infringing, provided that the modified ATC Equipment, ATC Software and ATC Work is functionally equivalent or superior in all respects and complies with the requirements of this Agreement;
 - (ii) settle the ATC Intellectual Property Infringement Claim and procure the right to continue using the infringing or allegedly infringing ATC Equipment, ATC Software or ATC Work; or

- (iii) replace the infringing or allegedly infringing ATC Equipment, ATC Software or ATC Work with a functionally equivalent or better component which is non-infringing and complies with the requirements of this Agreement.
- (c) Project Co shall not be responsible for any ATC Intellectual Property Infringement Claim to the extent the ATC Intellectual Property Infringement Claim is based upon:
 - (i) use (other than by Project Co or any person for whom Project Co is in law responsible) of the ATC Equipment, ATC Software or ATC Work in a manner, or for a purpose, which was not anticipated under this Agreement;
 - (ii) modification of any ATC Equipment, ATC Software or ATC Work not approved by Project Co (other than temporary Systems Software patches as described in Section 2.5(a) of Schedule 5, or the installation of Spare Parts or reinstallation of repaired or replacement ATC Equipment as described in Sections 2.6(g) and 2.6(h) of Schedule 5, respectively);
 - (iii) the assembly, combination, function, operation or use of any ATC Equipment, ATC Software or ATC Work (other than by Project Co or any person for whom Project Co is in law responsible) with any materials or software not approved by Project Co which materially causes or contributes to the ATC Intellectual Property Infringement Claim (other than temporary Systems Software patches as described in Section 2.5(a) of Schedule 5, or the installation of Spare Parts or reinstallation of repaired or replacement ATC Equipment as described in Sections 2.6(g) and 2.6(h) of Schedule 5, respectively).
- (d) Notwithstanding any provision of this Agreement to the contrary:
 - (i) the provisions of this Section 9.3 constitute the Province's sole remedy under this Agreement with respect to any claim of infringement of any patent, copyright, trade secret or other Intellectual Property Right, in any such case relating to any ATC Equipment, ATC Software or ATC Documentation (including any ATC Intellectual Property Infringement Claim); and
 - (ii) to the extent that any ATC Intellectual Property Infringement Claim arises as a result of a breach by Project Co of its representation, warranty and covenant in Section 15.3(j)(ii) that is caused by Thales, the maximum aggregate liability of Project Co under this Section 9.3 in respect of all such Claims shall be the Contract Price (as defined in the ATC Supply Contract).
- (e) Except as otherwise expressly provided in this Section 9.3, Project Co makes no representation, warranty or condition of any kind with respect to any ATC Intellectual Property Infringement Claim, and Project Co disclaims any and all implied warranties relating thereto, including but not limited to non-infringement of any rights of third parties.

9.4 Effect of Project Co's Indemnities

Subject to Section 9.13 [No Double Compensation]:

- (a) Project Co's liability to the Province and the Province Indemnified Persons, or any of them, under any indemnity in this Agreement is without prejudice to any other right or remedy available to the Province and the Province Indemnified Persons, or any of them, provided that any Claim of the Province against Project Co in respect of the subject matters of the indemnity in Section 9.1 [Indemnification by Project Co], if made in tort or for breach of contract rather than for indemnification under Section 9.1 [Indemnification by Project Co], shall be subject to the exceptions set out in Section 9.2 [Exceptions to Indemnification by Project Co] to the same extent as if the Claim had been made under Section 9.1 [Indemnification by Project Co]; and
- (b) any obligation of Project Co 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 Project Co to indemnify and hold harmless under any other provision of this Agreement.

9.5 Conduct of Claims Indemnified by Project Co

- (a) If the Province or any Province Indemnified Person (in this Section 9.4 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 Project Co under this Agreement, the Indemnified Party shall give notice to Project Co 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 Project Co establishes that such failure has materially and adversely affected or prejudiced the ability of Project Co to defend or contest the Claim.
- (b) Subject to Sections 9.5(c), (d), (e), (f) and (g), on the receipt of a notice delivered by an Indemnified Party pursuant to Section 9.5(a) Project Co shall, in its discretion, be entitled to resist the Claim that is the subject of the notice, in the name of the Indemnified Party or the Indemnified Parties at Project Co'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 Project Co and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to Project Co 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 Project Co 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 which Project Co exercises its discretion to resist in accordance with Section 9.5(b) shall be undertaken through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and Project Co, acting reasonably. If:

- (i) Project Co 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 Project Co or some other person who may be represented by counsel retained by Project Co;
- (iii) it appears that an Indemnified Party might not be entitled to indemnification by Project Co in respect of all of the liability arising out of the Claim, unless Project Co 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) Project Co fails to comply in any material respect with the provisions of Section 9.4(d),

then the Indemnified Party shall be represented by separate counsel selected by the Indemnified Party and the indemnity obligations of Project Co 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 Project Co. 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 Project Co 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, Project Co and its counsel shall (at the cost of Project Co) 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 9.5(c) and actions taken by such separate counsel in the course of such representation, including attendance at examinations, hearings and trials, shall not constitute a taking over of the conduct of the relevant legal proceedings by the Indemnified Party for the purposes of Section 9.5(f).

- (d) With respect to any Claim which Project Co exercises its discretion to resist in accordance with Section 9.5(b):
 - (i) Project Co 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 Project Co for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 9.5(b) that increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity from Project Co;

- (iii) Project Co shall not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;
 - (iv) Project Co shall not bring the name of the Indemnified Party into disrepute; and
 - (v) Project Co 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 9.5(a) Project Co fails to notify the Indemnified Party of its intention to resist a Claim pursuant to Section 9.5(b); or
 - (ii) Project Co exercises its discretion under Section 9.5(b) not to resist a Claim,
- the Indemnified Party shall be entitled to resist such Claim in the name of the Indemnified Party or the Indemnified Parties or in the name of Project Co and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations, and to pay or settle the Claim on such terms as it may think fit, without prejudice to its right to indemnification by Project Co (including with respect to the costs and expenses of resisting the Claim) and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 3.1 [Mitigation By Province] and 9.11 [Costs and Expenses]. If the Indemnified Party has conduct of the Claim pursuant to this Section 9.5(e), the Indemnified Party shall keep Project Co fully informed and consult with Project Co about the conduct of the Claim.
- (f) The Indemnified Party shall be free at any time to give notice to Project Co that the Indemnified Party is taking over the conduct of any defence, dispute, compromise or appeal of any Claim that is subject to Section 9.5(b) or of any incidental negotiations. Upon receipt of such notice Project Co shall promptly take all steps necessary to transfer the conduct of such Claim to the Indemnified Party and shall provide the Indemnified Party with all reasonable cooperation, access and assistance (including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege) for the purposes of considering and resisting such Claim. If the Indemnified Party gives any notice pursuant to this Section 9.5(f), then, except as otherwise expressly provided by this Agreement, Project Co 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 Project Co to resist the Claim with all due diligence and in a timely manner or to otherwise perform its obligations in accordance with this Section 9.5.
 - (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.

9.6 Indemnification by the Province

Subject to Sections 6.4 [Deductibles], 6.6 [Release of the Province for Insured Loss] and 9.8 [Exceptions to Indemnification by the Province], the Province shall indemnify and hold harmless Project Co and Project Co Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, Project Co and Project Co Indemnified Persons, or any of them, to the extent resulting from any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible in relation to the Project Work, the Project Site or the Project Infrastructure, other than Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with:

- (a) any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible referred to in either of Sections 2.13(a)(ii) or 2.15 [Disclosed Data];
- (b) the matters referred to in Section 9.1(c) to the extent any such Claim or Direct Loss has not been caused or contributed to by the failure of the Province or BCTFA to perform its obligations in accordance with Schedule 8 [Lands];
- (c) negligent acts or negligent omissions occurring prior to the Effective Date or after the Termination Date;
- (d) 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 Project Co's rights under Section 9.7 [Limited Province Indemnity for Contamination and Nuisance]; and
- (e) Claims and Direct Losses arising as a result of or in connection with any negligent act or negligent omission of the Province or any person for whom the Province 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 Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under any of those Sections to comply with all applicable Laws and Permits in the course of exercising the Province's rights under any of those Sections.

9.7 Limited Province Indemnity for Contamination and Nuisance

- (a) Subject to Sections 6.4 [Deductibles], 6.6 [Release of the Province for Insured Loss] and 9.8 [Exceptions to Indemnification by the Province], the Province shall, solely for the purpose of holding Project Co and Project Co Indemnified Persons harmless against any Relevant Third Party claim (but not so as to give rise to or constitute any separate or new cause of action against the Province aside from any cause of action for recovery of such losses or damages awarded by a court to such Relevant Third Party against Project Co or Project Co Indemnified Persons pursuant to such Relevant Third Party claim), indemnify

and hold harmless Project Co and Project Co Indemnified Persons in respect of any Claims and Direct Losses arising from any damage, injury or other harm suffered by such Relevant Third Party or Relevant Property that was caused by Existing Contamination or Subsequent Contamination that migrated or leached into or onto the Relevant Property, except to the extent such migration or leaching of such Existing Contamination or Subsequent Contamination (or damage, injury or other harm suffered) was caused or contributed to by any act or omission of Project Co or any person for whom Project Co is in law responsible after Project Co had knowledge of the Existing Contamination or Subsequent Contamination, as the case may be.

- (b) The Province shall indemnify and hold harmless Project Co and Project Co Indemnified Persons in respect of any Direct Losses arising from a Nuisance Claim, except to the extent that such Nuisance Claim was caused or contributed to by Project Co or any person for whom Project Co is in law responsible failing to carry out Project Work strictly in accordance with Project Co's obligations under this Agreement.

9.8 Exceptions to Indemnification by the Province

The obligations of the Province to indemnify under Section 9.6 [Indemnification by the Province] or Section 9.7 [Limited Province Indemnity for Contamination and Nuisance] shall not apply to any Claims or Direct Losses to the extent that:

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

9.9 Limitation of Province Liability

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

- (a) Claims and Direct Losses to the extent the Province must indemnify Project Co or any of Project Co Indemnified Persons therefor under Sections 9.6 [Indemnification by the Province] or 9.7 [Limited Province Indemnity for Contamination and Nuisance];
- (b) any failure by the Province or BCTFA to make proper payment to Project Co in accordance with the terms of this Agreement; or
- (c) any breach in the observance or performance of any of its obligations under this Agreement (other than payment obligations) by the Province or BCTFA, except where

Project Co has an express remedy under this Agreement in respect of such breach, which remedy shall be exhaustive of Project Co's rights in respect of such breach.

9.10 Conduct of Claims Indemnified by the Province

- (a) If Project Co or any Project Co Indemnified Person (in this Section 9.9 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 Province under this Agreement, or to compensation by the Province in respect of a Supervening Event under Part 8 [Supervening Events], the Indemnified Party shall give notice to the Province 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 Indemnified Party under the applicable indemnity or compensation provision except to the extent that the Province establishes that such failure has materially and adversely affected or prejudiced the ability of the Province to defend or contest the Claim.
- (b) Subject to Sections 9.10(c), (d), (e) and (f), on the receipt of a notice delivered by an Indemnified Party pursuant to Section 9.10(a) the Province shall, in its discretion, be entitled to resist the Claim that is the subject of the notice, in the name of the Indemnified Party or the Indemnified Parties at the Province'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 Province and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to the Province and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Province shall pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.
- (c) The defence and any other legal proceedings in respect of any Claim which the Province exercises its discretion to resist in accordance with Section 9.10(b) shall be undertaken through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and the Province, acting reasonably. If:
 - (i) the Province and/or BCTFA and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;
 - (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Province and/or BCTFA or some other person who may be represented by counsel retained by the Province and/or BCTFA;

- (iii) it appears that an Indemnified Party might not be entitled to indemnification or compensation by the Province in respect of all of the liability arising out of the Claim, unless the Province agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity or compensation provision; or
- (iv) the Province fails to comply in any material respect with the provisions of Section 9.10(d),

then the Indemnified Party shall be represented by separate counsel selected by the Indemnified Party and the indemnity or compensation obligations of the Province, 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 Province. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity or compensation obligations of the Province, 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 Province and BCTFA and its or their counsel shall (at the cost of the Province) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege.

- (d) With respect to any Claim which the Province exercises its discretion to resist in accordance with Section 9.10(b):
 - (i) the Province shall keep the Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified or compensated by the Province for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 9.10(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 Province;
 - (iii) the Province shall not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;
 - (iv) the Province shall not bring the name of the Indemnified Party into disrepute; and
 - (v) the Province 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 9.10(a) the Province fails to notify the Indemnified Party of its intention to resist a Claim pursuant to Section 9.10(b); or
 - (ii) the Province exercises its discretion under Section 9.10(b) not to resist a Claim,
- the Indemnified Party shall be entitled to resist such Claim in the name of the Indemnified Party or the Indemnified Parties or in the name of the Province and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations, and to pay or settle such Claim on such terms as it may think fit, without prejudice to its right to indemnification or compensation by the Province and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 4.10 [Mitigation By Project Co] and 9.11 [Costs and Expenses]. If the Indemnified Party has conduct of the Claim pursuant to this Section 9.10(e), the Indemnified Party shall keep the Province fully informed and consult with the Province about the conduct of the Claim.
- (f) Notwithstanding the foregoing, all parties shall comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim shall be subject to the rights of such insurer under the applicable policy of insurance.

9.11 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.

9.12 No Liability for Irrecoverable Losses

Notwithstanding any other provision of this Agreement, no party to this Agreement shall be obligated to pay to any other party to this Agreement, or liable to any other party to this Agreement for, whether in contract or in tort or on any other basis whatsoever, any Irrecoverable Losses suffered or incurred by such other party to this Agreement.

9.13 No Double Compensation

Notwithstanding any other provision of this Agreement, but without prejudice to the rights of a 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 another party) to the extent that it has already been compensated in respect of that Loss or failure pursuant to this Agreement or otherwise, and, for the purposes of this Section 9.13, Performance Incentive Payments, and Non-Compliance Event Payments shall only be considered compensation to the Province or BCTFA in respect of the breaches or failures by Project Co or other events or circumstances that give rise thereto to the extent such payments or deductions are made, and such payments or

deductions shall be without prejudice to the right of the Province to claim and recover from Project Co, subject to the other provisions of this Agreement, Direct Losses to the extent any such payment or deduction does not compensate the Province in full for such Direct Losses, and such right of the Province is hereby expressly preserved.

9.14 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), and in the case of compensation on termination under Schedule 13 [Compensation on Termination] (in which case Section 7.1 [No Compensation to Extent of Insurance] of Schedule 13 applies), neither the Province nor BCTFA shall be liable to Project Co, whether in contract or in tort or on any other basis whatsoever, for any Claims or Direct Losses, and any amounts payable by the Province or BCTFA shall be reduced, to the extent, in respect of such Claims or Direct Losses:

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

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of Project Co (or of any person for whom Project Co 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 Province or any person for whom the Province 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);

- (b) that Project Co recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that Project Co has in fact taken out and maintained;
- (c) that there are proceeds of insurance held by the Insurance Trustee that are (subject to Project Co fulfilling all conditions to the disbursement thereof) available for satisfaction of such Claims or Direct Losses, in whole or in part;
- (d) that the Province makes or authorizes, or is obligated under this Agreement (subject to Project Co fulfilling all conditions thereto) to make or authorize, payment to or for the account of or on behalf of Project Co, under Section 6.18 [Application of Proceeds of Insurance]; or
- (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 9.14(a) and (b) for which Project Co is responsible.

9.15 Acknowledgement Regarding Equivalent Project Relief

The Province and BCTFA acknowledge and agree that:

- (a) the Principal Contracts may provide that Principal Contractors may claim relief from Project Co only if and to the extent that such claim or relief is granted to Project Co under this Agreement; and
- (b) Project Co will not be precluded from advancing any claim or seeking any relief under this Agreement solely by reason that Project Co is not liable to a Principal Contractor only (and not any of its employees, agents, contractors or subcontractors of any tier or the employees of any of them) under a Principal Contract until or only to the extent that such claim or relief is granted by the Province to Project Co under this Agreement;

provided that all such claims shall be made and administered by Project Co, and nothing in this Section 9.14 creates any contract or obligation directly between the Province or BCTFA and any Principal Contractor or gives any Principal Contractor any rights as against the Province or BCTFA.

9.16 Not Used

9.17 Survival

The provisions of this Part 9 and each other indemnity contained in this Agreement shall survive the expiration or termination of this Agreement.

**PART 10
PAYMENTS**

10.1 Contract Price and Payments

- (a) Project Co shall perform its obligations under this Agreement for the contract price of \$1,727,760,775.18 (the “**Contract Price**”). The Contract Price is not subject to change or adjustment except as expressly provided in Section 2.5 [Consequences of Province Changes] of Schedule 11. Project Co agrees to accept the Contract Price as full payment and reimbursement to Project Co for performing the Project Work, including all labour, services, materials, equipment and overhead required to perform the Project Work, all financing costs and profit.
- (b) Subject to Project Co meeting the requirements for payment set out in this Agreement, the Province will pay Project Co the amounts expressly provided for in this Agreement in accordance with the provisions of this Agreement.
- (c) The obligations of Project Co to make payments under this Agreement are cumulative and in addition to, and not in substitution for or to the exclusion of, each or any other payment obligation of Project Co hereunder.
- (d) No payment of or on account of any amount by the Province to Project Co in accordance with this Agreement, including the release by the Province of any holdback amounts hereunder, or partial or entire use or occupancy of the Project Infrastructure, the Project Site or any part or parts thereof by the Province or any other person, and no approval of

any invoice, report or application submitted by Project Co to the Province for any such payment, shall constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Project Work as being in accordance or compliance with this Agreement.

- (e) Notwithstanding any payment by the Province to Project Co in accordance with this Agreement, including the release by the Province of any holdback amounts hereunder, and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of an invoice, report or application submitted by Project Co to the Province for any such payment, Project Co is and at all times shall remain responsible for providing, performing and carrying out the Project Work in accordance and compliance with this Agreement.

10.2 Additional Payments and Financing

- (a) If it is agreed or determined in accordance with this Agreement that a party is entitled to payment from another party in respect of any of:
 - (i) a Province Change (including Minor Works) or Value Engineering Proposal under Part 7 [Province Changes and Project Co Proposals], subject to Section 2.5 [Consequences of Province Changes] of Schedule 11;
 - (ii) a Compensation Event (other than in the circumstances described in Section 8.3(b)(ii)) under Part 8 [Supervening Events];
 - (iii) a Force Majeure Event (which, for greater certainty, shall only be in the circumstances described in Section 8.6.(a)ii)) under Part 8 [Supervening Events];
 - (iv) any of the events described in Section 8.10 [Sharing of Increased Recoverable Expenditures in Specified Circumstances] or Section 8.14 [Sharing of Disposal Costs for Specified Materials]; and
 - (v) a Relief Event in the circumstances described in Section 8.4(c) under Part 8 [Supervening Events],

then the affected party may make written demand for such payment from time to time following such agreement or determination and, in respect of any Direct Losses, after such Direct Losses have been incurred, and such payment will be due and payable within 30 days of delivery of written demand supported with all relevant information required in accordance with this Agreement.

10.3 Province Rights to Audit

Without limiting any other rights of the Province to audit the Financial Model or any other aspect of the Project Work in accordance with this Agreement, Project Co shall, before, during and at any time after the payment of any lump sum contemplated in Section 10.2(a), ensure that the Province has unrestricted rights of audit over the Financial Model, any update or adjustment to the Financial Model, and any other financial model, and to all documentation (including any aspect of the calculation of any such lump sum or adjustments) used in connection with, or relevant to, the calculation of any such lump sum or adjustments.

10.4 Province's Right of Set-Off

Subject to Section 5.4 [Rights of Set-Off] of Schedule 13, and without prejudice to and without limiting or derogating from any statutory right of the Province to withhold any sum of money due or becoming due to Project Co, the Province and BCTFA may set off any liquidated amounts owing by Project Co to the Province or BCTFA under this Agreement or any of the other Province Project Documents (which, without limiting any other provision of the Agreement, shall be deemed to include the amount of any payment made by the Province to any person which is the responsibility of Project Co under this Agreement) against any payments due from the Province or BCTFA to Project Co under this Agreement.

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) as specified (save as otherwise provided in the Lenders' Remedies Agreement) by the recipient from time to time with reference to this Section 10.5.

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 on Payments

- (a) For the purposes of this Section 10.7:
 - (i) **"Change in Tax Law"** means a Change in Law relating to GST or PST, including the imposition of any successor or replacement tax for GST or PST;
 - (ii) **"Irrecoverable Tax"** means GST or PST:
 - (A) incurred by Project Co in respect of the supply of any property or service to Project Co which is consumed, used or supplied or to be consumed, used or supplied exclusively by Project Co in the course of carrying out the Project Work; or
 - (B) required to be collected and remitted to any Governmental Authority by Project Co in respect of the supply of any property or service by Project Co to the Province made exclusively in the course of carrying out the Project Work,

- in each case to the extent that Project Co is unable to collect or obtain any Recovery;
- (iii) “**Recipient**” means a party to which a taxable supply is provided under this Agreement;
 - (iv) “**Recovery**” in relation to any GST or PST means recovery or elimination of liability for such GST or PST in any way, including by way of input tax credits, refunds, rebates, exemptions, remissions or any similar recovery for such GST or PST; and
 - (v) “**Supplier**” means a party providing a taxable supply under this Agreement.
- (b) Subject to this Section 10.7, including the provisions relating to a Change in Tax Law herein, all payments (including payments in kind) to be made by a party under this Agreement are:
- (i) exclusive of GST; and
 - (ii) inclusive of all Taxes (including PST) other than GST.
- (c) If any GST is imposed on a Recipient in connection with the provision of any taxable supply under this Agreement by a Supplier, the Recipient shall pay the GST to the Supplier and the Supplier shall remit the GST, all in accordance with the obligations of the Recipient and the Supplier under the *Excise Tax Act* (Canada).
- (d) Project Co acknowledges and agrees that as and from the Effective Date it shall levy, collect and remit GST on the supply of the Project Work provided that if, following the Effective Date, the Province provides to Project Co certification that according to Laws or agreement between the Province and the Federal Government it is no longer required to pay GST, Project Co shall, at the later of the time that Project Co receives such certification and the date the Province is no longer required to pay GST, cease levying and collecting GST on the supply of the Project Work.
- (e) Following receipt of an invoice therefor from Project Co, the Province shall pay to Project Co from time to time amounts equal to any Irrecoverable Tax if and to the extent such Irrecoverable Tax results solely from a Change in Tax Law as any such Irrecoverable Tax is incurred by Project Co or required to be collected and remitted to any Governmental Authority, as the case may be, with the intent that Project Co will be placed in a position under this Agreement neither better nor worse than it would have been in had the Change in Tax Law not occurred, provided that all amounts paid under this Section 10.7(e) shall be grossed up by an amount equal to the amount of income tax actually payable in a Contract Year by Project Co that can be demonstrated by Project Co results from being subjected to the Irrecoverable Tax or receipt of the payment under this Section 10.7(e) after taking into account any other income tax credits, deductions or relief to which Project Co may be eligible.
- (f) If, solely as a result of a Change in Tax Law, Project Co becomes entitled to a Recovery in respect of GST or PST which:

- (i) was included in the Financial Model as an estimated cost for Irrecoverable Tax; or
- (ii) was, prior to such Change in Tax Law, an Irrecoverable Tax that had been paid to Project Co by the Province pursuant to Section 10.7(e),

then Project Co shall pay to the Province from time to time the amount or amounts of such Recovery to which Project Co becomes entitled, to the extent required to place Project Co in a position under this Agreement neither better nor worse than it would have been in had the Change in Tax Law not occurred.

- (g) Any payment required to be made by the Province to Project Co pursuant to Section 10.7(e), or by Project Co to the Province pursuant to Section 10.7(f), shall be paid by the relevant party within 10 Business Days following the delivery by the other applicable party of an invoice or debit note for such payment, provided that the Province shall not be required to pay any amount to Project Co pursuant to Section 10.7(e) until Project Co has delivered to the Province's Representative written details of the amount claimed and the grounds for and computation of the amount claimed and such further information, calculations, computations and documentation as the Province may reasonably require.
- (h) Project Co shall provide to the Province's Representative any information, calculations, computations and documentation reasonably requested by the Province from time to time in relation to the amount of any GST or PST chargeable in accordance with this Agreement and payable by the Province to Project Co or by Project Co to the Province 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 demand, invoice, debit note or Report.
- (b) Except as otherwise expressly provided in this Agreement, 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 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 earlier of:
 - (i) the date of such payment in accordance with this Section 10.8(c); and
 - (ii) the due date for such payment under this Section 10.8(c).

For greater certainty, Section 10.10 [Interest on Overdue Amounts] shall apply to any amount payable pursuant to this Section 10.8(c) that is not paid within such 10 Business Days.

10.9 Inaccuracies in Payments

Subject to Section 5.5 [Full and Final Settlement] of Schedule 13, if there is any inaccuracy in any demand, invoice, debit note or Report issued by a party pursuant to this Agreement providing for the payment of an amount from one party to the other, whether determined upon an examination by the Province pursuant to Section 1.6 [Province Access to Records] of Schedule 17 or otherwise:

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

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(g), 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 Province

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

**PART 11
PROVINCE'S ACCESS, MONITORING AND STEP-IN RIGHTS**

11.1 Province Access

The Province, BCTFA, the Province'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 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 Province's Representative, the Province or BCTFA under this Agreement;
 - (ii) fulfil any statutory, public or other powers, authorities, discretions, duties or functions;
 - (iii) conduct any study, test or trial for purposes of research initiated by the Province or BCTFA or any other person authorized by the Province or BCTFA; and
 - (iv) construct, operate, manage, maintain, repair, rehabilitate or reconstruct on the Project Site any Infrastructure other than the Project Infrastructure;
- (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 Project 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 11.1 shall be exercised in accordance with any health and safety procedures established by Project Co pursuant to Sections 4.13 [Health and Safety Program] and 4.14 [Project Co'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 11.1 shall be construed so as to impede the proper performance of the roles, functions and duties of the Province and BCTFA as set out in this Agreement and under Laws.

11.2 Uncovering of Work

- (a) Project Co shall ensure that the Province's Representative is afforded advance notice of and a full opportunity to witness inspection and test activity in accordance with the Inspection and Test Plan and other relevant provisions of this Agreement. If Project Co does not provide such notice and opportunity, Project Co shall at the request of the Province uncover any relevant part of the Project Work which has been covered up or otherwise put out of view or remove any relevant part of the Project Work that has been proceeded with in order to permit the Province to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Project Work.

- (b) The Province shall have the right to request Project Co to open up and inspect any part or parts of the Project Work where the Province (following consultation with Project Co) reasonably believes that such part or parts of the Project Work is or are defective or that Project Co has failed to comply with the requirements of this Agreement, and Project Co shall comply with such request. If the Province exercises such right, it shall consult with Project Co as to the timing of the opening up and inspection of the relevant part or parts of the Project Work with a view to avoiding or, if unavoidable, minimizing any delay caused to the conduct of the remaining Project Work.
- (c) If the Province requires an uncovering of the Project Work pursuant to Section 11.2(b) and such Project 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 Project 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 Province under this Agreement, if at any time during the Term:
 - (i) Project Co is assigned 10 or more Default Points in any 12 calendar month period; or
 - (ii) a Project Co Default occurs; or
 - (iii) any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Province or the Province's Representative in respect of any monthly report delivered by Project Co to the Province in accordance with Part 9 [Periodic Reports and Payment Applications] of Schedule 10,

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

- (b) A notice to Project Co provided by the Province's Representative pursuant to Section 11.3(a) shall specify the additional measures to be taken by the Province in monitoring Project Co in response to the matters which led to such notice being sent.
- (c) If the Province carries out increased monitoring pursuant to this Section and requires Project Co to pay the Province'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 Province was not entitled to require Project Co to pay the Province's costs and expenses in respect of such increased monitoring in accordance with this Section, then the payment by Project Co of such Province costs and expenses shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.

- (d) Project Co shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out increased monitoring under this Section 11.3, together with an administration fee equal to fifteen percent (15%) of such costs and expenses, and all without prejudice to any other rights of the Province.

11.4 Province's Emergency and Critical Failure Step-In Rights

- (a) Without limiting any other rights of the Province under this Agreement or at Law, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or Project Co 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 Term the Province reasonably believes that it needs to take action in relation to the Project or the Project Work or any part thereof due to the occurrence of an Emergency or a Critical Failure, then the Province may in its discretion do either or both of the following (but this shall not obligate the Province to mitigate, rectify or protect against, or attempt to mitigate, rectify or protect against, such Emergency or Critical Failure or, after having commenced to mitigate, rectify or protect against or attempt to mitigate, rectify or protect against such Emergency or Critical Failure, to continue to do so):
 - (i) upon notice from the Province to Project Co (which notice shall not be required to be in writing and shall not be required where it is impracticable in the circumstances for the Province to give prior notice) take or cause to be taken all such steps and actions as the Province considers, in its discretion, are required to mitigate, rectify or protect against such Emergency or Critical Failure 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 or cause to be carried out any work, provided that the Province shall, and shall cause any applicable third parties engaged by it for the purposes of exercising the Province's rights under to this Section 11.4 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 Province to Project Co, require Project Co to take such steps as the Province considers, in its discretion, necessary or expedient to mitigate, rectify or protect against such Emergency or Critical Failure including, if such Emergency or Critical Failure has been caused or contributed to by a breach of any Principal Contract or Subcontract, taking all action in respect of such Principal Contract or Subcontract as the Province considers, in its discretion, necessary or expedient, and Project Co shall use all reasonable efforts to comply with the Province's requirements as soon as reasonably practicable.
- (b) If the Province gives notice to Project Co pursuant to Section 11.4(a)(ii) and Project Co either:
 - (i) does not confirm, within the time period specified by the Province 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 Province to

mitigate, rectify and protect against such Emergency or Critical Failure that the Province may accept or reject, in its discretion; 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 Province, in its discretion, shall stipulate,

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

- (c) No action taken by the Province under Section 11.4(a) or 11.4(b) shall be deemed to be a termination of this Agreement or relieve Project Co from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and, subject to Section 11.4(d), the Province shall not incur any liability to Project Co for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section 11.4 to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 11.4(a) or 11.4(b).
- (d) Except to the extent an Emergency or Critical Failure has been caused by a Project Co Non-Excusable Event or a Compensation Event, any actions of the Province under this Section 11.4 in respect of such Emergency or Critical Failure shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (e) If the Province carries out actions under this Section 11.4 in the event of an Emergency or Critical Failure caused by a Project Co Non-Excusable Event, Project Co shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions under this Section 11.4, including any costs paid by the Province to Project Co 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 Province.
- (f) If the Province takes action under Section 11.4(a) and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to take such action in accordance with this Section, then the taking of any such action shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.

11.5 Province's Other Step-In Rights

- (a) Without limiting any other rights of the Province under this Agreement or at Law, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or Project Co 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 Term any one or more of the following events occurs:
- (i) Project Co has been assigned one or more Default Points pursuant to Section 8.4(b) or 8.4(c) of Schedule 10 [Payment and Performance Mechanism] and the matter or matters giving rise to the assignment of such Default Point(s) has not or have not been remedied within a reasonable time to the satisfaction of the Province, acting reasonably;
 - (ii) a Project Co Default occurs and the Province reasonably believes that such Project Co Default remains unremedied; or
 - (iii) the Province receives a Notice of Failure to Comply from Project Co pursuant to Section 4.17(b),

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

- (iv) by five Business Days' notice to Project Co, to the extent and for the period necessary to remedy such matter or matters, suspend the progress of any or all of the Project Work, and suspend in whole or in part the rights of Project Co under this Agreement (including the rights of Project Co under Section 2.5 [Access to and Responsibility for Project Site] and Schedule 8 [Lands]), provided that any such suspension of Project Co's rights shall cease on the earlier of the date upon which the Province has completed remedying such matter or notifies Project Co that such suspension shall cease; and
 - (v) upon notice to Project Co, take or cause to be taken all such steps and actions as may be reasonably required to remedy such matter or matters 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 Province shall, and shall cause any Third Party Contractors engaged by the Province for the purposes of exercising the Province's rights under this Section 11.5 to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously.
- (b) No action taken by the Province under Section 11.5(a) shall be deemed to be a termination of this Agreement or relieve Project Co from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and, subject to Section 11.5(c), the Province shall not incur any liability to Project Co for any

act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section 11.5 to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 11.5(a).

- (c) If the Province takes action under Section 11.5(a) and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to take such action in accordance with this Section 11.5, 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 Province carries out actions under this Section 11.5 in the circumstances contemplated in Section 11.5(a)(iii) or where Section 11.5(c) applies, Project Co shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions, including any costs paid by the Province to Project Co 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 Province.

11.6 Availability of Certain Assets on Step-In

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

PART 12 PROJECT CO DEFAULT AND PROVINCE REMEDIES

12.1 Project Co Default

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

- (a) any Project Co Insolvency Event;
- (b) the abandonment of the Project by Project Co;
- (c) Project Co ceasing to perform a substantial portion of its business or the suspension or non-performance of a substantial portion of the business of Project Co (except as a result of the exercise by the Province of its rights under Part 11 [Province's Access, Monitoring and Step-In Rights], and except where such cessation, suspension or non-performance constitutes a Project Co Default referred to in Section 12.1(b)), whether

voluntarily or involuntarily, that has or could reasonably be expected to have a material adverse effect on the performance by Project Co of its obligations under this Agreement or any other Project Document, and such event or circumstance is not remedied by the resumption of business or the cessation of the suspension or non-performance of business, within 30 Business Days after the date notice to do so is given by the Province to Project Co;

- (d) any Change in Ownership or Change in Control that is not permitted by Sections 16.6 [Change in Control of Project Co] to 16.8 [Consent to Change in Control Not Required in Certain Cases] inclusive;
- (e) any breach by Project Co of any of Sections 16.1 [Province Consent Required to Assignment by Project Co] to 16.3 [Other Requirements for Assignment by Project Co] inclusive;
- (f) any breach of Section 4.5 [Prohibited Acts];
- (g) any failure by Project Co 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 Province to Project Co (and for the purposes of this paragraph such failure shall be considered remedied when Project Co has taken steps satisfactory to the Province to mitigate the effects of the failure and has implemented measures satisfactory to the Province to prevent a recurrence of the failure);
- (h) [Not Used];
- (i) any breach by Project Co of either Section 5.1 [Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements] or Section 5.2 [Restrictions on Changes to Senior Lending Agreements] and that would, or might reasonably be expected to, or does, have any of the effects described or referenced in either of Sections 2.6(b) or 2.6(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], except where such breach or such effects are capable of being remedied and such breach or such effects are in fact remedied within 30 Business Days after the date notice of such breach is given by the Province to Project Co; or
- (j) any of the Senior Lending Agreements, Junior Lending Agreements or Shareholder Agreements:
 - (i) not constituting, or ceasing to constitute, the valid, binding and enforceable obligation of any of the parties thereto, other than as a result of the expiry or termination thereof as expressly contemplated and provided for therein; or
 - (ii) is terminated, assigned, materially amended or varied, or materially departed from, other than in accordance with Sections 5.1 [Restrictions on Changes to Shareholder Agreements and Junior Lending Agreements] and 5.2 [Restrictions on Changes to Senior Lending Agreements],

and such occurrence is not caused by a breach referred to in Section 12.1(i), and such occurrence would, or might reasonably be expected to, or does, have any of the effects described or referenced in either of Sections 2.6(b) or 2.6(c) of Schedule 2

[Representatives, Review Procedure and Consent Procedure], except where such occurrence or such effects are capable of being remedied and such occurrence or such effects are in fact remedied within 30 Business Days after the date notice of such occurrence is given by the Province to Project Co;

- (k) any of the following:
 - (i) Project Co carries out or permits the carrying out of any action contemplated by any of Sections 16.10(a) to (g) inclusive in breach of Section 16.10 [Restrictions on Changes to Principal Contracts] or Section 16.12 [Restricted Persons Prohibited]; or
 - (ii) any of the Principal Contracts:
 - (A) not constituting, or ceasing to constitute, the valid, binding and enforceable obligation of any of the parties thereto, other than as expressly contemplated in Section 16.10(a); or
 - (B) is terminated, assigned, materially amended or varied, or materially departed from, other than in accordance with Section 16.10 [Restrictions on Changes to Principal Contracts],

and such occurrence is not caused by a breach referred to in Section 12.1(k)(i),

and such breach or occurrence would, or might reasonably be expected to, or does, have any of the effects described or referenced in either of Sections 2.6(b) or 2.6(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], except where such breach, such occurrence or such effects are capable of being remedied and such breach, such occurrence or such effects are in fact remedied within 30 Business Days after the date notice of such breach or such occurrence is given by the Province to Project Co;

- (l) a sale, transfer, lease or other disposition by Project Co of the whole or any part (that is material in the context of the performance of Project Co'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 Project Co or the performance by Project Co of its obligations under this Agreement, except where such occurrence or the relevant material adverse effect is capable of being remedied and is in fact remedied within 30 Business Days after the date notice of such occurrence is given by the Province to Project Co;
- (m) any representation or warranty made by Project Co in Section 4.21 [Representations and Warranties of Project Co] 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 Project Co or the Province to perform their respective obligations, or the ability of the Province to exercise any of its rights, under this Agreement or any of the other Province Project Documents, except where such incorrect representation or warranty or the relevant material adverse effect is

capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by the Province to Project Co;

- (n) any 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;
- (o) evidence that 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 Province in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements];
- (p) a failure by Project Co to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter dealt with in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 30 Business Days after the date notice of such non-compliance is given by the Province to Project Co 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 Project Co has commenced to comply within such 30 Business Days and proceeds with such compliance with all due diligence and continuity to completion;
- (q) at any time the Default Points Balance is 60 or more Default Points;
- (r) failure by Project Co to achieve Substantial Completion on or before the Substantial Completion Longstop Date (unless such failure is solely attributable to the failure of Thales to achieve Substantial Completion of the ATC Work as defined in, and in accordance with, the ATC Supply Contract);
- (s) a failure by Project Co to pay to the Province or BCTFA (as applicable) when due and payable any amount that is due and payable by Project Co 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 Province to Project Co;
- (t) the provision, performance or carrying out of the Project Work or any part of the Project Work without a Permit required in connection with such Project Work or in breach of the terms of any Permit required in connection with such Project Work and the failure to have the relevant Permit or such breach is not remedied within 30 Business Days after the date notice of such failure or breach is given by the Province to Project Co or, if a longer period of time is reasonably required to remedy such failure or breach, within such longer period of time so long as Project Co has commenced remedying such failure or breach within such 30 Business Days and proceeds to remedy it with all due diligence and continuity to completion; and
- (u) a failure by Project Co to perform or observe any of its material obligations under this Agreement or any of the other Province Project Documents that is not referred to in any of the other paragraphs of this Section 12.1, and without regard to whether or not Project Co has received or receives NCE Points or Default Points under this Agreement for or as

a result of such failure, and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to Project Co.

Each notice that may be given to Project Co referred to in any of Sections 12.1(c), (g), (i), (j), (k), (l), (m), (p), (t), (u) and (v) shall specify in reasonable detail according to the information then reasonably available to the Province the failure, breach, occurrence or other matter in respect of which the notice is given, and shall state clearly that the notice is given under this Section 12.1 and could lead to a Project Co Default and to termination of this Agreement.

12.2 Notice of Default by Project Co

Project Co shall notify the Province of the occurrence, and details, of any Project Co 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 Project Co Default, in any case promptly upon Project Co becoming aware of such occurrence.

12.3 Remedies of the Province for Project Co Default

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

- (a) if Project Co Default is one referred to in any of Sections 12.1(a), (b), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (p), (q), (r), (s) or (u), the Province may terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];
- (b) if Project Co Default is one referred to in Section 12.1(f), the Province may:
 - (i) where the breach is occasioned by Project Co or by an employee of Project Co who is not acting independently of Project Co or by any person duly authorized to act for and on behalf of Project Co (but for greater certainty excluding any person (and any subcontractor of any such person) referred to in Section 12.3(b)(iii)), terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];
 - (ii) where the breach is occasioned by an employee of Project Co who is acting independently of Project Co, then unless Project Co causes the termination of such employee's employment (or, where such employee is an Employee as defined in the BCIB-Contractor Agreement, then unless Project Co recommends dismissal of such Employee to BCIB in accordance with the BCIB-Contractor Agreement) within 30 days after the earlier of Project Co becoming aware of the breach and notification to Project Co of the breach and (if considered by Project Co, acting reasonably, to be necessary) employs a replacement to perform such terminated employee's functions (or, in the case of an Employee under the BCIB-Contractor Agreement, requests such a replacement from BCIB in accordance with the BCIB-Contractor Agreement) within such 30 day period,

terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];

- (iii) where the breach is occasioned by a Principal Contractor, or by an agent or employee of a Principal Contractor who is not acting independently of that Principal Contractor, then unless Project Co causes the termination of the engagement or employment of the relevant Principal Contractor within 30 days and provides details of a proposed replacement in accordance with Sections 16.10 [Restrictions on Changes to Principal Contracts] and 16.13 [Replacement Principal Contract] within 40 days, in each case, after the earlier of Project Co becoming aware of the breach and notification to Project Co of the breach or such longer period as the Province may in its discretion by notice permit, terminate this Agreement in its entirety by further notice given after the end of such 30 day or 40 day period (as the case may be), such further notice having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];
- (iv) where the breach is occasioned by an employee of a Principal Contractor who is acting independently of that Principal Contractor, then unless such Principal Contractor causes the termination of such employee's employment (or, where such employee is an Employee as defined in the applicable BCIB-Subcontractor Agreement, then unless the Principal Contractor recommends dismissal of such Employee to BCIB in accordance with such BCIB-Subcontractor Agreement) within 30 days after the earlier of Project Co becoming aware of the breach and notification to Project Co of the breach and the Principal Contractor (if necessary) employs a replacement to perform such terminated employee's functions (or, in the case of an Employee under a BCIB-Subcontractor Agreement, requests such a replacement from BCIB in accordance with such BCIB-Subcontractor Agreement) within such 30 day period, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.5 [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(b)(i) to 12.3(b)(iv) inclusive, and whether or not any benefit to Project Co or the employer of the person occasioning the breach was intended, then unless Project Co causes the termination of the employment of such person (including, where such employee is an Employee as defined in the BCIB-Contractor Agreement or any BCIB-Subcontractor Agreement, recommending or causing the recommending of the dismissal of such Employee to BCIB in accordance with such BCIB-Contractor Agreement or BCIB-Subcontractor Agreement, as the case may be) (and, in the case of a person other than a person employed by Project Co or a Principal Contractor, the termination of the engagement or employment of that person's employer) within 30 days after the earlier of Project Co becoming aware of the breach and notification to Project Co of the breach or such longer period as the Province 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 14.5 [Notice of Intention to Terminate and Dispute];

- (c) if the Project Co Default is one referred to in Section 12.1(n) or Section 12.1(o):
 - (i) the Province may in its discretion, and without prejudice to its rights under Section 12.3(c)(ii), after advising Project Co of the Province's intention to do so, remedy the Project Co Default or engage one or more third parties to do so, and in connection therewith the Province may take or cause to be taken all such steps and actions as may be reasonably required to remedy the Project Co Default (but this shall not obligate the Province to (A) remedy or to attempt to remedy a Project Co Default or (B) after having commenced to remedy or to attempt to remedy a Project Co Default, to continue to do so), and Project Co shall pay to the Province on demand all costs and expenses incurred by the Province in remedying or attempting to remedy such Project Co Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses, provided that no such action by the Province shall be deemed to be a termination of this Agreement or relieve Project Co from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province); and
 - (ii) if the Project Co Default is not remedied within 20 Business Days after notice of such Project Co Default is given by the Province to Project Co, the Province may terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];
- (d) if the Project Co Default is one referred to in Section 12.1(s), and provided that the aggregate amount of:
 - (i) the sum that is the subject of that Project Co Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by Project Co to the Province;
 - (B) are not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure; and
 - (C) have each been outstanding and unpaid by Project Co to the Province for more than 20 Business Days after the date a notice of non-payment thereof was given by the Province to Project Co under Section 12.1(s);exceeds \$250,000, the Province may give further notice to Project Co of such aggregate amount and the non-payment thereof requiring Project Co to pay such aggregate amount within 10 Business Days after the date such further notice is given by the Province to Project Co, and if such aggregate amount is not paid by Project Co within such 10 Business Days, then the Province may terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];
- (e) if Project Co Default is one referred to in Section 12.1(u), the Province may give notice to Project Co of Project Co Default requiring Project Co at the option of Project Co either:

- (i) to remedy Project Co Default referred to in that notice within 20 Business Days after the date such notice is given by the Province to Project Co; or
- (ii) to submit to the Province's Representative pursuant to the Review Procedure, within 20 Business Days after the date such notice is given by the Province to Project Co, a reasonable schedule and plan for the remedying of such Project Co Default specifying in reasonable detail the manner and latest date by which such Project Co Default will be remedied;

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

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

12.4 Termination for Failure to Remedy According to Program

If the Province gives notice to Project Co of a Project Co Default pursuant to Section 12.3(e), and if Project Co Default referred to in that notice is not remedied:

- (a) according to a schedule and plan that Project Co submits to the Province's Representative pursuant to the Review Procedure in accordance with Section 12.3(e)(ii) and to which the Province has 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(e)(i),

then, in any such event, the Province 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 Province, terminate this Agreement by notice to Project Co having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute].

12.5 Province Costs

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

12.6 Province Remedies Cumulative

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

- (a) all rights and remedies of the Province under this Agreement and the other Province 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 Province under this Agreement or any of the other Province Project Documents or at law or in equity; and
- (b) the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

12.7 Continued Effect

Notwithstanding any Project Co Default, the Province may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Province in relation to such Project Co 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 pursuant to Section 12.3(a) as a result of any Project Co Default referred to in Section 12.1(i) or 12.1(j), or pursuant to Section 12.3(b), compensation on termination shall be payable in accordance with Part 4 [Compensation on Termination for Special Circumstances] of Schedule 13.
- (b) In the event of an effective termination of this Agreement pursuant to Section 12.3(a) (other than where Section 12.8(a) applies), or pursuant to Section 12.3(c)(ii) or 12.3(d) or Section 12.4 [Termination for Failure to Remedy According to Program], compensation on termination shall be payable in accordance with Part 3 [Compensation on Termination for Project Co Default] of Schedule 13.

PART 13 PROVINCE DEFAULT AND PROJECT CO REMEDIES

13.1 Province Default

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

- (a) a failure by the Province to pay to Project Co when due and payable any amount that is due and payable by the Province to Project Co 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 Project Co to the Province;
- (b) a failure by the Province to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter dealt with in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 20 Business Days after the date notice of such non-compliance is given by Project Co to the Province, or, if a longer period of time is reasonably required to comply, within such longer period of time as is reasonably required to comply so long

as the Province has commenced to comply within such 20 Business Days and proceeds with such compliance with all due diligence and continuity to completion;

- (c) any breach by the Province of the provisions of Section 16.4 [Assignment by the Province and BCTFA];
- (d) any person to whom the interests of the Province or BCTFA under this Agreement or any other Province Project Document are transferred in accordance with Section 16.4 [Assignment by the Province and BCTFA] ceases to be a Qualified Governmental Entity;
- (e) except where such failure constitutes a Compensation Event, a failure by the Province to perform or observe any of its material obligations under this Agreement or any of the other Province Project Documents, and such failure continues so as to substantially frustrate the performance of, or render it impossible for Project Co to perform, Project Co'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 Project Co to the Province, and such continuing failure is still not remedied within 30 days after further notice of such failure is given by Project Co to the Province 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 paragraph (a) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, any expropriation, sequestration, requisition or other seizure by the Province or any agent, crown corporation, ministry or department of the Province, of the 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 Project Co to perform, Project Co'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 Project Co to the Province, and such matter is still not remedied within 30 days after further notice of such matter is given by Project Co to the Province after the expiration of such 60 days; and
- (g) any representation or warranty made by the Province in Section 3.2 [Representations and Warranties of the Province] 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 Project Co or the Province to perform their respective obligations, or the ability of Project Co to exercise any of its rights, under this Agreement or any of the other Province Project Documents, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by Project Co to the Province; and

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

13.2 Notice of Default by Province

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

13.3 Remedies of Project Co for Province Default

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

- (a) Project Co may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute], if the Province Default is one referred to in Section 13.1(a) and the aggregate amount of:
 - (i) the sum that is the subject of that Province Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Province to Project Co;
 - (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 Province to Project Co for more than 45 Business Days after the date a notice of non-payment thereof was given by Project Co to the Province under Section 13.1(a);exceeds \$250,000, and such aggregate amount is not paid by the Province to Project Co within 20 Business Days following written notice given by Project Co to the Province of such aggregate amount and the non-payment thereof;
- (b) if the Province Default is one referred to in any of Sections 13.1(b), (c), (d), (e) or (f) Project Co may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.5 [Notice of Intention to Terminate and Dispute];
- (c) Not Used.
- (d) except as otherwise expressly provided in this Agreement (including in Section 9.9 [Limitation of Province Liability]) or any of the other Province Project Documents, and subject to Section 1.4 [No Fettering of Province's Rights, Powers and Authority] and Schedule 16 [Dispute Resolution Procedure], Project Co may exercise any of its other rights and remedies, whether under this Agreement or any of the other Province Project Documents, or at law or in equity.

13.4 Project Co Costs

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

13.5 Project Co Remedies Cumulative

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

- (a) all rights and remedies of Project Co under this Agreement and the other Province 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 Project Co under this Agreement or any of the other Province Project Documents or at law or in equity; and
- (b) Project Co 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 Province Default, Project Co 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 Project Co in relation to such Province 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(a) or Section 13.3(b), compensation on termination shall be payable in accordance with Part 1 [Compensation on Termination for Province Default] of Schedule 13.

PART 14 TERMINATION

14.1 [Not Used]

14.2 Termination for Convenience

- (a) The Province may in its discretion and for any reason whatsoever terminate this Agreement at any time by giving to Project Co at least 90 days' prior notice of the effective date of such termination, and on such effective date this Agreement shall terminate.

- (b) In the event of notice being given by the Province in accordance with Section 14.2(a), from and after the giving of such notice and during the notice period thereunder Project Co shall only proceed with or continue, or allow or permit third parties to proceed with or continue, those portions of the Project Work that are specifically authorized in writing by the Province during the notice period.
- (c) In the event of any termination pursuant to Section 14.2(a), compensation on termination shall be payable in accordance with Part 1 [Compensation on Termination for Province Default] of Schedule 13.

14.3 No Other Rights of Termination

Notwithstanding Sections 12.3(f), 12.6, 13.3(d) and 13.5, and without prejudice to their respective rights of termination expressly set out in this Agreement, each of the Province and Project Co waives and agrees not to exercise any common law or equitable right or remedy it may have prior to the Expiry Date to terminate, repudiate, rescind or otherwise bring to an end this Agreement as a consequence of any breach, failure or default by another party hereunder.

14.4 Continued Performance

Subject to any exercise by the Province of its rights under Part 11 [Province's Access, Monitoring and Step-In Rights] and subject to Section 14.2(b), and unless otherwise directed by the Province with respect to obligations of Project Co, 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 the terms of this Agreement.

14.5 Notice of Intention to Terminate and Dispute

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

- (a) if either the Province or Project Co 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 14.5, the "**Terminating Party**") must by notice (a "**Notice of Intention to Terminate**") to the other of them (in this Section 14.5, 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
 - (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 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 14.5(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 14.5(b)(i) or Section 14.5(b)(ii), as applicable.

14.6 Changes after Notice of Termination

If either the Province or Project Co gives a Notice of Intention to Terminate or a notice of termination, Project Co shall not, and shall cause the Principal Contractors and Subcontractors not to, without the prior written consent of the Province (which consent may not be unreasonably withheld or delayed):

- (a) materially amend or offer, promise or agree for the future materially to amend the terms and conditions of employment of any employee employed by Project Co or any of the

- Principal Contractors and 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 14.6(a);
 - (c) do or omit to do any other thing in relation to employees referred to in Section 14.6(a) that would or might reasonably be expected to increase any Employee Termination Payments or Principal Contractor Breakage Costs included in any compensation on termination payable by the Province in connection with the termination of this Agreement;
 - (d) cancel or terminate, or materially amend the terms and conditions of, any agreements or arrangements for the acquisition or supply of Plant for the purposes of the Project Work;
 - (e) materially alter the volumes or quantities of Plant ordered for the purposes of the Project Work; or
 - (f) enter into any new agreements or arrangements for the acquisition or supply of Plant for the purposes of the Project Work except at reasonable arm's length market rates and on reasonable arm's length market terms and conditions.

14.7 Effect of Termination or Expiry Generally

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

- (a) the rights of access granted to Project Co pursuant to Section 2.5 [Access to and Responsibility for Project Site] shall terminate on the Termination Date and Project Co shall cease to have any further rights under Section 2.5 [Access to and Responsibility for Project Site] and Schedule 8 [Lands] with respect to the Project Site and the Project Infrastructure, except to the extent necessary to enable Project Co to perform any obligations of Project Co under this Agreement required to be performed in consequence of or following such termination or expiry;
- (b) after the Termination Date, Project Co shall not have any further right to provide, perform or carry out any further Project Work, but this shall not relieve or release Project Co from any of its obligations under this Agreement or any other Province Project Documents including obligations that, by their terms or by necessary implication, are intended to survive termination or to give effect to termination or expiry or to the consequences thereof, or are consequential upon termination or expiry;
- (c) the Province and Project Co shall reconcile between them any amounts due or accruing due under this Agreement and the other Province Project Documents from one party to the other as at the Termination Date, including:
 - (i) any outstanding Province Payments, Performance Incentive Payments, On-Time Performance Demonstration Completion Amount and Non-Compliance Event Payments that are due; and

- (ii) the uncalled balance of any deposits and security provided by Project Co under Permits assigned under Section 14.9(a)(viii) remaining as at the date of assignment, to the extent not replaced by the Province and returned to Project Co,

and any net balance owing shall be adjusted in the compensation payable on termination as provided in Section 5.3 [Adjustment for Net Balance] and Section 5.4 [Rights of Set Off] of Schedule 13, or paid by the relevant party to the other in the case of expiry;

- (d) subject to Sections 14.7(a), (b) and (c), and Section 5.5 [Full and Final Settlement] of Schedule 13, such termination or expiry shall be without prejudice to all the rights, remedies and obligations of the parties under this Agreement with respect to:
 - (i) any event, occurrence, circumstance, act or omission arising or existing before the effective time of termination or expiry;
 - (ii) any breach of this Agreement, Province Default or Project Co Default occurring prior to the effective time of termination or expiry;
 - (iii) provisions of this Agreement that are to be observed and performed under this Agreement up to the effective time of termination or expiry; and
 - (iv) provisions of this Agreement that, by their terms or by necessary implication, are intended to survive termination or expiry or to give effect to termination or expiry or to the consequences thereof, or are consequential upon termination or expiry;

and such rights, remedies and obligations shall continue following termination or expiry, subject to Sections 14.7(a), (b) and (c) and subject to Section 7.5 [Full and Final Settlement] of Schedule 13; and

- (e) except as provided above in this Section 14.7, all rights and obligations of the parties under this Agreement shall cease and be of no further force or effect.

14.8 Province Discretion to Complete

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

- (a) whether or not the Project Work is continued by the Province or any other person;
- (b) whether or not the Project Infrastructure is operated or attempts to do so are made or discontinued;
- (c) what use, if any, is made of any Project Work performed prior to the Termination Date; and
- (d) whether or not any Project Work performed prior to the Termination Date is altered or removed;

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

14.9 Transfer of Assets

- (a) Without limiting the provisions of Section 18.7 [Further Assurances], within 30 days after the Termination Date Project Co shall, at no cost to the Province or BCTFA and in all cases free from Encumbrances (provided that the Province shall have the right, 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 Project Co to the Province and shall be payable by Project Co to the Province forthwith on demand or, at the option of the Province, shall be adjusted as provided in Section 14.7(c)), and in each case to the extent not previously transferred, assigned or delivered, as the case may be or caused to be transferred, assigned or delivered by Project Co in accordance with the terms of this Agreement:
 - (i) if and to the extent the Province so elects, confirm by bill of sale or other document requested by the Province the transfer to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, of title to and ownership of all Plant title to which has passed or is intended to be passed to the Province or to BCTFA or a third party designated by the Province on or before the Termination Date in accordance with Section 2.12 [Transfer of Title].
 - (ii) deliver to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province possession of all Plant referred to in Section 14.9(a)(i) to the extent it is not then affixed to and part of or incorporated into the Project Infrastructure;
 - (iii) cause the benefit of all manufacturers' and third party warranties in respect of Project Work, Project Infrastructure, and any other assets that are required to be transferred to the Province in accordance with this Agreement, to be transferred and assigned to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province;
 - (iv) quit claim in favour of the Province, or, at the direction of the Province, in favour of BCTFA or a third party designated by the Province, any interest of Project Co in the Project Infrastructure or any other improvements from time to time on, to or forming part of the Project Site;
 - (v) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, the Records Documentation, including "as built drawings" showing all alterations made since the commencement of the Project Work to or for the Project Site and the Project Infrastructure;
 - (vi) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, operation and maintenance manuals for the Project Infrastructure (as the same has been constructed, installed, altered, upgraded and augmented by the carrying out of the Project Work) and any other

assets transferred or to be transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, including in respect of communications, signalling and other systems completed or in service at the Termination Date;

(vii) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, where applicable in accordance with Section 1.5 [Procedure on Termination] of Schedule 17:

(A) the Records;

(B) all Province Provided Materials;

(C) all Modifications to Province Provided Materials; and

(D) copies of all Project Intellectual Property,

in any such case, in any stage of completion or development, in such electronic or other format as the Province may reasonably require;

(viii) if and to the extent the Province so elects, and to the extent permitted by Laws, assign or cause to be assigned all Permits to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province;

(ix) return to the Province all Confidential Information of the Province or BCTFA within the possession or control of Project Co or any Principal Contractor or Subcontractor; and

(x) remove all signs identifying itself and (except as otherwise directed by the Province) the Principal Contractors and Subcontractors as contractors and subcontractors in connection with the Project Work and the Province Facilities.

(b) Without prejudice to any of the other provisions of this Agreement that require earlier transfer of any of the same, following the Termination Date Project Co shall, at its own cost, transfer to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, title to and possession of (to the extent not referred to in Section 14.9(a)), all documents, manuals, records and information reasonably required to enable the Province to carry out and perform, or procure the carrying out and performance of, the work that would, but for termination of this Agreement, have constituted the Project Work, to the extent that title thereto is not owned by or title to or possession thereof has not previously been transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province in accordance with the terms of this Agreement.

(c) Following the Termination Date, to the extent the Province so elects, Project Co shall take all steps required by the Province to ensure:

(i) that all Construction Plant that is being used exclusively for the purposes of any Construction then in progress will remain available for the purpose of

completing the relevant Construction, subject, except as otherwise provided herein, to payment therefor by the Province of a reasonable rental charge; and

- (ii) compliance by Project Co with its obligations under Section 4.5 [No Encumbrances of Project Co] of Schedule 8.
- (d) Within 30 days after the Termination Date, Project Co shall, and shall cause its Principal Contractors and Subcontractors to, offer to sell to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, which offer shall remain open for acceptance for at least 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 Project Co or any of its Principal Contractors and Subcontractors, that is being used or is intended to be used exclusively for the purposes of Project Work (other than Construction) and is not otherwise transferred or to be transferred to or at the direction of the Province pursuant to any other provision of this Agreement.
- (e) In order to facilitate a decision by the Province with respect to any Collateral Agreements, Project Co shall within 14 Business Days after receipt of a notice from the Province requiring it to do so, give notice to the Province of:
 - (i) any dispute which exists in relation to a Principal Contract, including copies of any correspondence and other documentation relating thereto;
 - (ii) any sum that Project Co is aware is due and payable by a party under the relevant Principal Contract as at the date of the notice; and
 - (iii) any material unperformed obligations and outstanding liabilities of a party under the relevant Principal Contract of which Project Co is aware as at the date of the notice.

Project Co shall ensure in the case of all Permits, Principal Contracts and Subcontracts to which Project Co is a party, and shall use all reasonable efforts to ensure in the case of Subcontracts to which Project Co is not a party, that provisions are included to ensure that the Province will be in a position to exercise its rights and Project Co will be in a position to comply with its obligations under this Section 14.9 without additional payment or compensation to any person except as expressly contemplated by this Section 14.9.

14.10 Handover

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

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

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

- (b) Project Co shall as soon as practicable after notice from the Province 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 owned or leased by Project Co or any person for whom Project Co is in law responsible (including Plant and Construction Plant), other than that:
 - (i) title to which has passed to the Province, BCTFA or a third party designated by the Province under Section 2.12 [Transfer of Title]; or
 - (ii) required to be transferred, delivered, provided, sold or rented to or at the direction of the Province pursuant to Section 14.9 [Transfer of Assets];

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

- (c) Project Co shall provide all information concerning the Project, the Project Infrastructure and the Project Work reasonably requested by the Province and not otherwise required to be provided by Project Co pursuant to other provisions of this Agreement to the Province and any successor contractor or operator of the Project Site or the Project Infrastructure (or any part of either thereof) and provide any necessary training in relation to the communications, signalling and other systems and equipment in service at the Termination Date, as shall reasonably be required for the efficient transfer of responsibility for Operation;
- (d) Project Co shall as soon as practicable vacate and hand over to the Province, and leave in a safe and orderly condition, the Project Work, any parts of the Project Site in respect of which either the Access Period has commenced but not otherwise terminated or expired (or in respect of which access has been made available to Project Co pursuant to Section 2.5(c) or Project Co otherwise has access, in either case at the Termination Date) and the Project Infrastructure located on any such parts of the Project Site (including any train control, communications, signalling and other systems and equipment), and deliver to the Province:
 - (i) any keys and pass cards used by Project Co to gain access to the Project Site or any Project Infrastructure; and
 - (ii) codes and passwords to all computers and computerized systems, control of which is required to be transferred to the Province or its designee pursuant hereto; and
- (e) in the case of termination of this Agreement by reason of its expiration on the Expiry Date, Project Co shall hand over to the Province the Project Infrastructure and the Project Site in the state required in accordance with this Agreement.

14.11 Project Co Involvement in Competition Process

If the Province wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of work (which may or may not be the same as, or similar to, the Project Work or any aspect thereof) following the expiration of this Agreement on the Expiry Date, Project Co at its own cost shall, if requested by the Province, prior to the Expiry Date, co-operate with the Province fully in such competition process including by:

- (a) providing any information which the Province may reasonably require to conduct such competition except for information which is commercially sensitive to Project Co (and, for such purpose, commercially sensitive information means the Financial Model and any other information which would, if disclosed to a competitor or potential competitor of Project Co or of any Affiliate of Project Co, give that competitor or potential competitor a competitive advantage over Project Co or such Affiliate and thereby prejudice the business of Project Co or such Affiliate); and
- (b) assisting the Province by providing any participants in such competition process with access to the Province Facilities provided such access does not materially and adversely affect the carrying out of the Project Work.

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 received from another 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 and its Affiliate's directors, officers, employees, contractors, subcontractors, agents and professional advisors, including, in the case of Project Co, the Principal Contractors and 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) to the Independent Certifier if such Confidential Information is required to be provided 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 or by or pursuant to the rules or any order of any recognized public stock exchange;

- (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, Change in Ownership and Subcontracting];
 - (H) if the disclosure is expressly permitted or required by this Agreement; or
 - (I) if the disclosure is necessary for the enforcement of this Agreement;
- (ii) in the case of Project Co, to any bank or financial institution from whom it is seeking or has obtained financing for the Project or any rating agency from whom it is seeking or has obtained a rating in connection with the financing for the Project, and their respective directors, officers, employees, and professional advisors, provided Project Co has first obtained from such person or entity to whom the disclosure is to be made, unless such person or entity is otherwise bound by law or contract by such an obligation of strict confidentiality, an undertaking of confidentiality substantially in accordance with Project Co's undertaking of confidentiality hereunder in relation to the relevant Confidential Information, and provided further that nothing in the foregoing shall prevent any lender under a Lending Agreement from disclosing any Confidential Information received from Project Co in accordance with the foregoing to any person acquiring or potentially acquiring any interest of such lender under the Lending Agreements, and such person's respective directors, officers, employees, and professional advisors, provided that such lender has first obtained from such person or entity to whom the disclosure is to be made an undertaking of confidentiality substantially in accordance with this Section 15.1 in relation to the relevant Confidential Information;
- (iii) in the case of the Province and BCTFA:
- (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 powers, authorities, discretions, duties or functions in respect of the Project Infrastructure and the Project Site, and including with respect to the contemplation,

procurement or undertaking of any such activities by any third parties (including any other Governmental Authority);

- (B) in relation to the outcome of the procurement process for the Project as may be required to be published;
- (C) to any minister, ministry, office or agency of the Province, including the Auditor General and the Office of the Comptroller General, and their respective directors, officers, employees, and professional advisors, where required for parliamentary, governmental, statutory or judicial purposes;
- (D) whether or not falling within Section 15.1(b)(iii)(B) or 15.1(b)(iii)(C), to BCTFA, the Ministry or any other Governmental Authority or to TI Corp, Partnerships BC, and their respective directors, officers, employees, and professional advisors;
- (E) in the exercise of any of the rights granted to the Province by way of license, including under any Complete License; and
- (F) which is required to be provided to the Independent Engineer in order for it to carry out its responsibilities in respect of the Project in accordance with this Agreement.

provided that the Province (or any person to whom the Province discloses the Financial Model in accordance with this Section 15(b)(iii)) shall not be entitled as a result of this Section 15(b)(iii) to disclose the Financial Model to a competitor or potential competitor of Project Co or of any Affiliate of Project Co.

- (c) Without prejudice to any other rights and remedies that another party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 15.1(a) and that each other party shall, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 15.1(a), subject, in the case of a claim for any such remedy against the Province, to the provisions of the *Crown Proceeding Act* (British Columbia).

15.2 Freedom of Information, Privacy Protection and Security

- (a) Project Co 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 Province, the Ministry and BCTFA are required to fully comply with FOIPPA. No action taken or required to be taken by the Province, the Ministry or BCTFA for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.
- (b) Project Co, without limiting its obligation to comply with all Laws, shall comply with and cause all of its agents, Principal Contractors and Subcontractors and the employees

of any of them (or, in the case of Thales, use reasonable efforts (without any obligation to incur material expenditure in using such efforts) to cause Thales) to comply with:

- (i) the provisions of Schedule 23 [Privacy Protection] in connection with all Personal Information collected or created in the course of performing the Project Work; and
- (ii) the Security Schedule in connection with all electronic internet-based systems to be provided by Project Co in accordance with this Agreement.

15.3 Ownership of Intellectual Property and License to Province

- (a) Except as expressly set out in this Agreement, including Section 15.3(b), or as may otherwise be agreed to in writing between the Province and Project Co after the date of this Agreement, as between the Province and Project Co:
 - (i) Project Co shall exclusively own, automatically upon its generation or creation, all rights, including Intellectual Property Rights, in and to the Project Intellectual Property; and
 - (ii) the Province shall exclusively own, automatically upon its generation or creation, all rights, including Intellectual Property Rights, in and to the Records, any Province Provided Materials and any Modifications to Province Provided Materials.
- (b) The Province acknowledges and agrees that all right, title and interest in and to the ATC Software shall remain the property of Thales or Thales' suppliers, as the case may be. The Province acknowledges and agrees that Project Co has not received any title or ownership rights to the ATC Software or ATC Documentation (except to the extent that any ATC Documentation is not prepared or delivered by Thales or any supplier or subcontractor of Thales) and all such title and ownership shall remain with Thales or its suppliers.
- (c) Project Co agrees that, at no cost to the Province or BCTFA, it:
 - (i) hereby irrevocably and unconditionally conveys, transfers and assigns, or shall procure such conveyance, transfer or assignment from any third parties, or for all rights that arise only upon creation agrees that it shall cause to be so conveyed, transferred and assigned, to the Province all right, title and interest in and to the Records (other than ATC Documentation that is prepared or delivered by Thales or any supplier or subcontractor of Thales) and to any Modifications to Province Provided Materials, including all Intellectual Property Rights thereto;
 - (ii) shall provide to the Province, whether during or after the Term, executed waivers in favour of the Province and BCTFA of all moral rights in the Project Intellectual Property, the Records and any Modifications to Province Provided Materials from all Persons who generated or created Project Intellectual Property, Records or Modifications to Province Provided Materials, by one or more instruments in writing substantially in the form of the waiver of moral rights included in Schedule 20 [Waiver of Moral Rights];

- (iii) shall provide to the Province upon Substantial Completion of the Project Infrastructure and at any time upon request by the Province, whether during or after the Term, (A) copies of all materials comprising the Project Intellectual Property and (B) the Modifications to Province Provided Materials, in the format or formats as requested by the Province. Without limiting the generality of the foregoing, Project Co shall provide the Province with copies of all software and firmware, and all updates made thereto, that are included in or relate to the Project Work or the Project Infrastructure (as the same has been constructed, installed, altered, upgraded and augmented by the carrying out of the Project Work); and
 - (iv) shall provide to the Province upon Substantial Completion of the Primary Infrastructure Components and at any other time upon request by the Province the source code (if any) for any Records and Modifications to Province Provided Materials, and shall ensure that the source code (if any) for any Project Intellectual Property, and for any Background IP and Third Party IP necessary or desirable to implement, operate or exploit the Project Intellectual Property, is deposited in escrow or otherwise rendered available to the Province in a manner and on terms acceptable to the Province, acting reasonably (provided that the Province agrees that the deposit into escrow of the “Escrow Materials” as defined in, and as contemplated by, Section 13.5.1 of the ATC Supply Contract shall be acceptable to the Province).
 - (d) Other than any license rights granted to the Province and BCTFA pursuant to Section 15.3(e), neither the Province nor BCTFA will own any Intellectual Property Rights in the Background IP or the Third Party IP.
 - (e) Project Co, at no cost to the Province or BCTFA:
 - (i) hereby unconditionally grants to the Province and BCTFA a Complete License in and to the Project Intellectual Property and the Background IP; and
 - (ii) shall grant, or cause to be granted, to the Province and BCTFA a Complete License in and to the Third Party IP,
- provided that the foregoing license rights shall not extend to the ATC Software or the ATC Documentation, which shall be governed by Section 13.2.1 of the ATC Supply Contract.
- (f) For greater certainty, the provisions of Section 15.3(c)(iv) and the license provisions contained in Section 15.3(e)(ii) do not extend to include any non-specialized third party software, technology or other Intellectual Property that is generally commercially available.
 - (g) Nothing in Section 15.3(e) shall give the Province or BCTFA the right to sell, lease, license, sublicense or otherwise transfer, convey or alienate any software included in the Project Intellectual Property, the Background IP or the Third Party IP (whether for commercial consideration or not) to any person, otherwise than as may be necessary or

desirable to use the Project Intellectual Property, the Background IP or the Third Party IP for Complete License Purposes.

- (h) If any Complete License granted under in Section 15.3(e) cannot be validly granted without the consent of a third party, Project Co, at Project Co's expense, shall use its best efforts to obtain such consent and, without limiting any of its other obligations, shall indemnify and hold harmless the Province and each Province Indemnified Person from and against any and all Direct Losses and Claims in any way arising from Project Co's failure to obtain such consent.
- (i) If Project Co is unable to provide any assignments, licenses or waivers required to be provided under this Agreement, Project Co shall, at no additional cost to the Province or BCTFA, replace the portion of the Third Party IP, Background IP or Project Intellectual Property for which the assignment, license or waiver cannot be provided, with an alternative product or technology that meets the Province's requirements.
- (j) Except as otherwise agreed in writing with the Province and BCTFA, Project Co hereby represents, warrants and covenants that:
 - (i) all Project Intellectual Property, Records and all Modifications to Province Provided Materials are and will be original and (other than in respect of ATC Equipment, ATC Software or ATC Documentation (except to the extent that any ATC Documentation is not prepared or delivered by Thales or any supplier or subcontractor of Thales)) do not and will not infringe any third party's Intellectual Property Rights;
 - (ii) it owns, or will as necessary acquire, the rights associated with the Project Intellectual Property, the Background IP and the Third Party IP as may be necessary to provide the assignments or grant the licenses to the Province and BCTFA as required by the terms of this Agreement; and
 - (iii) it has obtained or will obtain waivers of moral rights from all persons as necessary to provide the waivers in favour of the Province and BCTFA as required by the terms of this Agreement.
- (k) Project Co hereby irrevocably designates and appoints the Province, BCTFA and their duly authorized ministers, officers and agents as Project Co's agent and attorney-in-fact to act for and on behalf of Project Co to execute, deliver and file any and all documents with the same legal force and effect as if executed by Project Co, provided that:
 - (i) the Province, BCTFA or any such other person shall only be entitled to rely upon such designation and appointment in circumstances where the Province and BCTFA are unable for any reason to secure the execution by Project Co of any document reasonably required for the purpose of giving effect to, or establishing compliance with, Project Co's obligations under this Section 15.3; and
 - (ii) if a dispute as to whether or not Project Co has complied with any such obligation has been referred to the Dispute Resolution Procedure, the Province, BCTFA or any such other person shall only be entitled to rely upon such

designation and appointment in relation to such obligations after such dispute has been resolved in favour of the Province and BCTFA.

15.4 License of Intellectual Property to Project Co

- (a) The Province hereby grants to Project Co, only during the Term and only for the purpose of carrying out the Project Work and performing all obligations of Project Co under the Project Documents, a non-transferable, non-exclusive, royalty-free limited license (but with no right to grant sub-licenses except to the Principal Contractors and Subcontractors) to:
 - (i) use and reproduce the Records and any Province Provided Materials, including any Modifications to Province Provided Materials, required by Project Co for any purpose relating to the Project Work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such license, the Disclosed Data), and all Intellectual Property Rights therein;
 - (ii) make Modifications to any Province Provided Materials, including any Modifications to Province Provided Materials, required by Project Co for any purpose relating to the Project Work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such license, the Disclosed Data), and all Intellectual Property Rights therein; and
 - (iii) use all Project Marks designated by the Province for the Project and the Project Infrastructure from time to time, provided that Project Co's use of such Project Marks shall at all times be subject to compliance by Project Co with any and all guidelines provided by the Province to Project Co from time to time in respect of the use thereof.
- (b) Notwithstanding Section 15.4(a), nothing in this Agreement shall be construed as a permission or authorization for Project Co to, and Project Co shall not, copy or make Modifications to any materials, documents or data (including Disclosed Data) or other information owned by third parties without the prior written consent of such third party owner.

15.5 Project Co Traffic Data

- (a) Without prejudice to any rights which Project Co may have in the Project Co Traffic Data, the Province and BCTFA shall be entitled without further consent from Project Co:
 - (i) to use the Project Co Traffic Data for the purposes of exercising rights or carrying out duties under this Agreement or carrying out any statutory, public or other powers, authorities, discretions, duties or functions; and
 - (ii) to incorporate the Project Co Traffic Data in any traffic or other statistics prepared by or on behalf of the Province or BCTFA and to publish such statistics or the Project Co Traffic Data either generally or to a limited category of persons

or otherwise to exploit such statistics or the Project Co Traffic Data and whether or not in return for any fee.

- (b) Without prejudice to any rights which the Province and BCTFA may have in the Project Co Traffic Data, Project Co shall be entitled without further consent from the Province to use the Project Co Traffic Data for the purposes of exercising rights or carrying out duties under this Agreement.

15.6 [Not Used]

15.7 Survival

Notwithstanding any other provision of this Agreement, the provisions of this Part 15 will survive the expiry or any earlier termination of this Agreement.

**PART 16
ASSIGNMENT, CHANGE IN OWNERSHIP AND SUBCONTRACTING**

16.1 Province Consent Required to Assignment by Project Co

Subject to Sections 16.2 [Where Province Consent to Assignment Not Required] and 16.3 [Other Requirements for Assignment by Project Co], Project Co shall not, and shall ensure that no Contracting Affiliate of Project Co shall, in any such case without the prior acceptance of the Province in accordance with the Consent Procedure, which acceptance may be withheld in the Province's discretion, assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any interest of Project Co or any such Contracting Affiliate in and under any of the following (together, the "**Non-Assignable Documents**"):

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

or any part thereof, or any benefit therein or thereunder.

16.2 Where Province Consent to Assignment Not Required

The provisions of Section 16.1 [Province Consent Required to Assignment by Project Co] do not apply:

- (a) to the grant by Project Co of a security interest in, including an assignment by way of security of, all (and not less than all) of the benefit and interest of Project Co in and under the Non-Assignable Documents as security to the Senior Lenders in accordance

with the Initial Senior Lending Agreements, provided that the Senior Lenders (or the Agent and any security trustee or agent of the Senior Lenders, on behalf of the Senior Lenders and so as to legally bind them) shall have executed and delivered to the Province the Lenders' Remedies Agreement; or

- (b) to an assignment or transfer of all (and not less than all) of the interest of Project Co in and under the Non-Assignable Documents to a Suitable Substitute Project Co pursuant to the bona fide enforcement by the Senior Lenders of their security in accordance with the Lenders' Remedies Agreement.

16.3 Other Requirements for Assignment by Project Co

Notwithstanding Sections 16.1 [Province Consent Required to Assignment by Project Co] and 16.2 [Where Province Consent to Assignment Not Required]:

- (a) Project Co shall not assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any of its respective interests in and under any of the Non-Assignable Documents or any part thereof, or any benefit therein or thereunder, whether under Section 16.1 [Province Consent Required to Assignment by Project Co] or Section 16.2 [Where Province Consent to Assignment Not Required] or otherwise, unless at the same time, in the same transaction, to the same person and to the same extent, Project Co assigns, transfers, mortgages, pledges, charges, or creates a trust, security interest or other interest in its respective interests in and under each of the Non-Assignable Documents together, and none of them separately; and
- (b) Project Co shall not assign, transfer or create any trust or other interest in (other than by way of security) any of its respective interests in and under any of the Non-Assignable Documents or any part thereof, or any benefit or interest therein or thereunder, unless the assignee, transferee or other person taking an interest executes and delivers to the Province an agreement in form and substance satisfactory to the Province acting reasonably whereby such assignee, transferee or other person assumes and agrees with the Province to observe, perform and be bound by, all of the obligations of Project Co under the Non-Assignable Documents and the other Project Documents to which Project Co is a party.

16.4 Assignment by the Province and BCTFA

- (a) Subject to Section 16.4(c), the Province and BCTFA may, without the consent of Project Co, assign or transfer any of their respective interest in and under this Agreement and the other Province Project Documents to a Qualified Governmental Entity that executes and delivers to Project Co an agreement in form and substance satisfactory to Project Co acting reasonably whereby such assignee or transferee assumes and agrees to observe, perform and be bound by, all the obligations and liabilities of the Province or BCTFA, as the case may be, under this Agreement and the other Province Project Documents that are being transferred.
- (b) Except as provided in Section 16.4(a), neither the Province nor BCTFA shall, without the prior consent of Project Co, which may be withheld in Project Co's discretion, assign

or otherwise transfer any of its interest in or under this Agreement and the other Province Project Documents.

- (c) Any assignment or transfer to the Federal Government pursuant to Section 16.4(a) shall be conditional upon appropriate steps under the *Financial Administration Act* (Canada) being taken to preserve the then existing security of lenders under the Senior Lending Agreements and the Junior Lending Agreements.

16.5 Release of the Province and BCTFA on Assignment

Upon any assignment or transfer in accordance with Section 16.4(a) of any or all of the obligations or liabilities of the Province or BCTFA under this Agreement and the other Province Project Documents to a Qualified Governmental Entity and the execution and delivery of the agreement contemplated in Section 16.4(a), the Province or BCTFA, as the case may be, shall be released from the obligations and liabilities under this Agreement and the other Province Project Documents that are the subject of such assignment or transfer.

16.6 Change in Control of Project Co

- (a) Subject to Sections 16.6(b), 16.6(c), 16.7 [No Change in Ownership to Restricted Person] and 16.8 [Consent to Change in Control Not Required in Certain Cases], no Change in Control of Project Co shall be permitted without the prior written consent of the Province in accordance with the Consent Procedure, which consent may be withheld in the Province's discretion.
- (b) If Project Co has requested the consent of the Province in accordance with Section 16.6(a) to a proposed Change in Control of Project Co that is pursuant to the bona fide enforcement by the Senior Lenders of a security interest in accordance with the Senior Lending Agreements and where the person acquiring Control of Project Co is:
 - (i) a person:
 - (A) of financial standing (as determined by the Province acting reasonably) at least equivalent to the financial standing at the Effective Date of the ultimate Controlling persons of Project Co;
 - (B) that is not a person or entity to which the Province has previously refused to give its consent;
 - (C) that is not a Restricted Person; and
 - (D) none of whose Affiliates is, to the knowledge of the Senior Lenders (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1; or
 - (ii) a person who is an Appointed Representative (as defined in the Lenders' Remedies Agreement), but only:
 - (A) if such Appointed Representative is not a Restricted Person;

- (B) if none of the Affiliates of the Appointed Representative is, to the knowledge of the Senior Lenders (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1; and
- (C) for so long as such person is and continues to be an Appointed Representative as so defined (and if such person ceases to be an Appointed Representative such cessation shall constitute a Change of Control of Project Co for the purposes of this Section 16.6),

then the Province shall not unreasonably withhold such consent.

- (c) Section 16.6(a) does not apply to a Change in Control of Project Co caused by the appointment of a Suitable Substitute Project Co in accordance with the Lenders' Remedies Agreement.

16.7 No Change in Ownership to Restricted Person

No Change in Ownership of Project Co or any other person which has Control of Project Co shall be permitted where the person acquiring the ownership interest is either:

- (a) a person who is a Restricted Person; or
- (b) a person any of whose Affiliates is, to the knowledge of Project Co (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

16.8 Consent to Change in Control Not Required in Certain Cases

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

16.9 Use of Contractors by Project Co

Except as otherwise provided in this Agreement, the Province acknowledges that Project Co may provide, perform and carry out part of the Project Work through one or more Principal Contractors and Subcontractors. Notwithstanding any such contracting and subcontracting:

- (a) Project Co shall not be relieved or excused from any of its obligations and liabilities under this Agreement; and
- (b) Project Co shall be and remain principally liable to the Province for the observance and performance of all the covenants, agreements, conditions and provisos contained in this Agreement that are by the terms of this Agreement to be observed and performed by Project Co.

16.9A Subcontractor Bonding

- (a) In respect of Project Work performed on the Project Site by direct Subcontractors to the Design-Build Contractor (“**Project Site Work Subcontracts**”), Project Co shall, on or before August 28, 2021 cause the Design-Build Contractor to use its reasonable commercial efforts to procure from such Subcontractors performing Project Site Work Subcontracts having an aggregate minimum of value \$190 million the following bonds:
 - (i) labour and materials bonds equal to 50% of the contract price for the applicable Project Site Work Subcontracts; and
 - (ii) performance bonds equal to 50% of the contract price for the applicable Project Site Work Subcontracts,

(collectively the “**Subcontractor Bonds**”).
- (b) The Subcontractor Bonds shall:
 - (i) be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of British Columbia acceptable to the Province, acting reasonably;
 - (ii) contain a multiple obligee rider or endorsement in favour of Project Co and the Province;
 - (iii) be for a term expiring no earlier than twelve (12) months after the scheduled completion of the applicable Project Site Work Subcontract and be maintained in good standing until such date; and
 - (iv) be in a form acceptable to the Province, acting reasonably.
- (c) Project Co will deliver to the Province copies of all Subcontractor Bonds together with the multi-obligee rider promptly after each applicable Project Site Work Subcontract is executed and delivered.
- (d) Project Co’s obligations under this Section 16.9A are deemed to be material obligations of Project Co for the purposes of Section 12.1(u) of this Agreement.

16.10 Restrictions on Changes to Principal Contracts

Subject to Section 16.17 [Exempt Principal Contractor Matter], Project Co shall not:

- (a) terminate or permit the termination of any Principal Contract (or any of the performance securities or guarantees provided thereunder), unless:
 - (i) the goods, services or rights that were the subject matter of such Principal Contract are no longer reasonably required for the Project or the Project Work or are to be provided directly by Project Co; or
 - (ii) there is an event of default under the Principal Contract and Project Co terminates it in order to prevent or cure a Project Co Default (and Project Co

shall provide to the Province's Representative full particulars of such termination within 10 Business Days after such termination);

- (b) permit the assignment of any Principal Contract (or any of the performance securities or guarantees provided thereunder) by any party thereto other than Project Co in accordance with the terms of this Agreement and other than the assignment of the ATC Supply Contract by Thales as permitted by Section 30.2 thereof;
- (c) make or agree to or permit the making of any material amendment to or material variation of any Principal Contract (or any of the performance securities or guarantees provided thereunder);
- (d) make or agree to any material departure from, or waive or fail to enforce any material rights it may have under, or allow others to depart in any material respect from their material obligations under, any Principal Contract (or any of the performance securities or guarantees provided thereunder);
- (e) enter into any agreement or document that would materially affect the interpretation or application of any Principal Contract (or any of the performance securities or guarantees provided thereunder);
- (f) enter into any contract or agreement in replacement of a Principal Contract (or any of the performance securities or guarantees provided thereunder); or
- (g) enter into any new Principal Contract or a Principal Contract not entered into on or before the Effective Date;

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

16.11 Non-Arm's Length Contracts

Project Co shall:

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

16.12 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, Project Co shall not carry out or permit any action contemplated by any of Sections 16.10(a) to (g) inclusive or Section 16.13 [Replacement

Principal 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, to the knowledge of Project Co (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

16.13 Replacement Principal Contracts

If any Principal Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights that were the subject matter of such Principal Contract are no longer reasonably required for the Project or the Project Work or are to be provided directly by Project Co, then subject to Sections 16.10 [Restrictions on Changes to Principal Contracts] and 16.12 [Restricted Persons Prohibited], Project Co:

- (a) shall as soon as reasonably possible enter into, or cause the entering into of, one or more contracts in replacement of such Principal Contract, with one or more persons who will be Principal Contractors; and
- (b) shall, and shall cause each replacement Principal Contractor to, forthwith enter into a Collateral Agreement with the Province.

16.14 New Principal Contracts

If after the Effective Date Project Co enters into or causes the entering into of a new, replacement or additional Principal Contract, Project Co shall, and shall cause the Principal Contractor thereunder to, forthwith execute and deliver a Collateral Agreement with the Province.

16.15 Copies of Documents

If at any time any act or matter referred to in any of Sections 16.10(a) to (g) inclusive occurs, Project Co shall deliver to the Province's Representative a conformed copy of each document or, if not in writing, a true and complete record thereof in writing, within 10 Business Days after the date of its execution or creation or occurrence, certified as a true copy or accurate and complete record (as the case may be) by an officer of Project Co.

16.16 Payment of Province's Costs

- (a) If particulars of any proposed documents or course of action are submitted to the Province's Representative pursuant to any provision of this Part 16, or if Project Co requests any consent or approval pursuant to any provision of this Part 16, or if any action, transaction, event or circumstance occurs or is proposed that requires the consent or approval of the Province under any provision of this Part 16 or to which the Province has a right of review or objection under this Part 16, Project Co shall pay to the Province, in accordance with the remaining provisions of this Section 16.16, all reasonable and proper costs and expenses incurred by the Province in connection with reviewing any such submission, request, action, transaction, event or circumstance or making a

determination as to the making of an objection or the giving or withholding of consent or approval or any other matter required in connection therewith or related thereto, whether or not any objection is made or any consent or approval is given or any other action is taken by the Province and whether or not the proposed course of action takes place, such costs and expenses to include professional and legal costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged to or incurred by the Province, and the Province's reasonable internal administrative and personnel costs.

- (b) At the time of Project Co's submission pursuant to any of Sections 16.1 [Province Consent Required to Assignment by Project Co], 16.6 [Change in Control of Project Co] or 16.10 [Restrictions on Changes to Principal Contracts], or pursuant to any other Section in this Part 16 pursuant to which the Province or the Province's Representative has a right of review, objection, consent, approval, verification or other action, and as a condition precedent to the commencement of any time period specified for the Province or the Province's Representative to object, consent, approve or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in respect of which any such submission is made, Project Co shall pay to the Province the sum of \$50,000 to be held by the Province on account of Project Co's obligations to pay under this Section 16.16 in respect of such submission.
- (c) The Province may from time to time invoice Project Co for amounts to be paid by Project Co under this Section 16.16. For each particular matter submitted to the Province's Representative, such invoices shall be paid first out of any funds provided by Project Co 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 Project Co under Section 16.16(b) with respect to the matter, Project Co shall pay to the Province within 10 Business Days after invoicing the amount of the excess and the amount of any subsequent invoices in respect of the matter. After any relevant decision of the Province is rendered or any action contemplated by the submission or request has been taken, the Province shall invoice Project Co for all amounts to be paid by Project Co under this Section 16.16 not previously invoiced by the Province, and the Province shall refund any overpayment by Project Co on account of amounts to be paid by Project Co under this Section 16.16, and Project Co shall pay any amount owing by it under this Section 16.16, in either case within 10 Business Days after receipt of such invoice.

16.17 Exempt Principal Contractor Matter

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

- (a) the Province shall not have a right of objection or consent, and Section 16.10 [Restrictions on Changes to Principal Contracts] shall not apply; and
- (b) Project Co shall, forthwith after the occurrence of such Exempt Principal Contractor Matter and in any event no later than 10 Business Days thereafter, submit to the Province full particulars of the relevant documents and course of action comprising the Exempt Principal Contractor Matter including:

- (i) particulars of any action contemplated by any of Sections 16.10(a) to (g) inclusive; and
- (ii) particulars of why the action or transaction constitutes an Exempt Principal Contractor Matter including information with respect to the matters referred to in Sections 16.12 [Restricted Persons Prohibited] and 16.18 [Principal Contract Changes Not to Increase Province's Liability].

16.18 Principal Contract Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement, and without prejudice to the rights of the Province and BCTFA under the other provisions of this Part 16, no action referred to in any of Sections 16.10(a) to (g) inclusive, whether or not consented to or permitted under Section 16.10 [Restrictions on Changes to Principal Contracts] or Section 16.17 [Exempt Principal Contractor Matter], and no amendment, waiver or exercise of a right under any Principal Contract, shall have the effect of increasing any liability of the Province or BCTFA arising from early termination of this Agreement, unless Project Co has obtained, in addition to any other consent or approval and any other requirements under this Part 16, the prior written consent of the Province under the Consent Procedure expressly consenting for the purposes of this Section 16.18 to the increase in the liability of the Province that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion.

PART 17 DEFECTS

17.1 Risks of Defects

- (a) Project Co shall carry out in accordance with Schedule 5 [Project Work Defects and Warranties], as part of the Project Work, any remedial or other works required as a result of any Project Work Defect.
- (b) Except as expressly provided elsewhere in this Agreement, in respect of any Project Work Defect:
 - (i) any such defect comprising a Nonconformity shall be addressed by Project Co in accordance with 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 Project Co; and
 - (iii) neither the Province nor BCTFA shall have any liability to Project Co or any of its Principal Contractors or Subcontractors (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any of 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.

17.2 [Not Used]

17.3 [Not Used]

**PART 18
GENERAL**

18.1 Disputes

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

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

- (b) At all times, notwithstanding the existence of any dispute or the referral of any dispute for resolution under the Dispute Resolution Procedure, except as may otherwise be expressly provided in this Agreement, the parties shall continue to comply with, observe and perform all of their respective obligations (including the obligation of Project Co to proceed with the conduct of the Project Work) in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.
- (c) Without limiting any other provision of this Agreement, to the extent that any such dispute involves a disagreement as to the nature or scope of any of the Project Work (including as to the performance or method of performance of any of the Project Work), Project Co shall abide by the decision of the Province with respect to the subject matter of the dispute and diligently proceed with the Project Work, and shall comply with all instructions given by the Province pending the outcome of the dispute, but without prejudice to the rights of Project Co as ultimately determined in accordance with the Dispute Resolution Procedure.
- (d) Any and all issues or disputes between the Province, BCTFA and Project Co, whether or not subject to the Dispute Resolution Procedure, shall constitute Confidential Information.

18.2 Public Communications

- (a) Project Co will carry out the communications, community relations and business relations activities for the Project in accordance with Schedule 9 [Communications, Community Relations and Business Relations].
- (b) Project Co, in consultation with the Province 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 Province 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 Project Infrastructure or others) in a prompt, courteous and efficient manner in accordance with the Complaints Protocol. Project Co will, where necessary or as required by the Province, submit updates to the Complaints Protocol from time to time in accordance with the Consent Procedure 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 Province.
- (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 consent may be granted or withheld by such other party in its discretion.

18.3 Entire Agreement

This Agreement (including the Schedules) constitutes the entire agreement between the parties with respect to all matters contained herein, expressly superseding all prior agreements and communications (both oral and written) between any of the parties with respect to all matters contained herein and superseding as well the Request for Qualifications and the Request for Proposals.

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

- (a) if to the Province:

Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, British Columbia
V8W 3E6
Attention: The Deputy Minister
Facsimile: 250-387-6431

- (b) if to BCTFA:

BC Transportation Financing Authority
c/o Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, British Columbia
V8W 3E6
Attention: The Chief Executive Officer
Facsimile: 250-387-6431

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

Broadway Subway Project
c/o Transportation Investment Corporation
1100 – 401 West Georgia Street
Vancouver, British Columbia
V6B 5A1
Attention: Province's Representative, Broadway Subway Project
Email: ProvRep.BSP@gov.bc.ca with a copy to Lisa.Gow@ticorp.ca

- (d) if to Project Co or Project Co's Representative:

Broadway Subway Project Corporation
600 – 900 West Hastings Street
Vancouver, British Columbia
V6C 1E5
Attention: Michele Lozza and Carlos Planelles
Email: mlozza@ghella.com and cplanelles@acciona.ca

or to such other address, facsimile transmission number or electronic mail address as any party or its representative may, from time to time, designate to the other party and its 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 a courier service 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;
- (f) if sent by facsimile transmission during business hours on a Business Day, upon the sender receiving confirmation of the successful transmission and, if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

- (g) if sent by electronic transmission during business hours on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice (and provided that a machine generated or other automated email response, including, but not limited to a “read receipt”, is not effective acknowledgement for the purposes hereof); or
 - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

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 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 Province Project Documents nor any action taken pursuant hereto or thereto shall be deemed to constitute the Province and Project Co, or to BCTFA and Project Co, or all of them, a partnership, joint venture or any other similar such entity.

18.9 Binding Effect

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

18.10 Counterparts

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

[Signature page follows]

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT**

**Commercial in Confidence
EXECUTION COPY**

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

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

(Witness) 
Name: Nisha Bathe



Grant Main, Deputy Minister
Ministry of Transportation and Infrastructure

BC TRANSPORTATION FINANCING AUTHORITY
by its authorized signatory:

Per: _____
Name: Grant Main
Title: Chief Executive Officer

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT**

*Commercial in Confidence
EXECUTION COPY*

BROADWAY SUBWAY PROJECT CORPORATION
by its authorized signatories:

Per: 
Name: JEFF SPURSTON
Title: CEO

Per: _____
Name:
Title:

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT**

***Commercial in Confidence
EXECUTION COPY***

BROADWAY SUBWAY PROJECT CORPORATION
by its authorized signatories:

Per:

Name:
Title:

Per:



Name: Marco Giorelli
Title: Director