



Ministry of
Transportation
and Infrastructure

EVERGREEN LINE RAPID TRANSIT PROJECT REQUEST FOR QUALIFICATIONS

July 5, 2010



partnerships
British Columbia

SUMMARY OF KEY INFORMATION

This summary has been prepared as an overview summary only and is not intended to replace, supersede or supplement the terms set out in this RFQ. It is the responsibility of each Respondent to ensure that they have received and fully understood the complete RFQ including all Addenda.

RFQ TITLE	<p>The title of this RFQ is:</p> <p>RFQ EVRG 29 – Evergreen Line Rapid Transit Project</p> <p>Please use this title on all correspondence.</p>
CONTACT PERSON (contact details)	<p>Name: Ryan Murphy</p> <p>Courier Address: 550 – 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Facsimile: 604-660-8286</p> <p>Email: EvergreenDBF@gov.bc.ca</p> <p><u>No telephone inquiries please.</u></p> <p>Please direct all enquiries, in writing, to the Contact Person.</p>
RECEIPT CONFIRMATION	<p>The RFQ Data DVD, Addenda and any further information relating to this RFQ will be directed only to parties who have completed and returned the Receipt Confirmation</p>
CLOSING TIME	<p>11:00 AM (Vancouver), September 7, 2010</p>
CLOSING LOCATION	<p>Evergreen Line Rapid Transit Project 550 – 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>ATTENTION: CONTACT PERSON</p>

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1 INTRODUCTION

1.1 Purpose

This Request for Qualifications is issued by the Province of British Columbia. The purpose of this RFQ is to invite interested parties to indicate their interest in, and their qualifications for, the Evergreen Line Rapid Transit Project. Through the process described in this RFQ the Province anticipates identifying up to three Respondents to be invited to participate in the next phase of the Evergreen Line Selection Process, being the Request for Proposals phase.

The purpose of the Evergreen Line Selection Process is to identify a qualified party or parties with whom the Province may enter into a Project Agreement to design, construct and finance the Project over a period of approximately three and a half years commencing at Financial Close and with a completion date that will accommodate Service Commencement by no later than December 31, 2014.

The Province expects to implement the Project through a design-build-finance delivery model, with TransLink assuming responsibility for the ongoing operation and maintenance of the Evergreen Line as a fully interoperable extension of the SkyTrain System upon completion of construction, testing and commissioning.

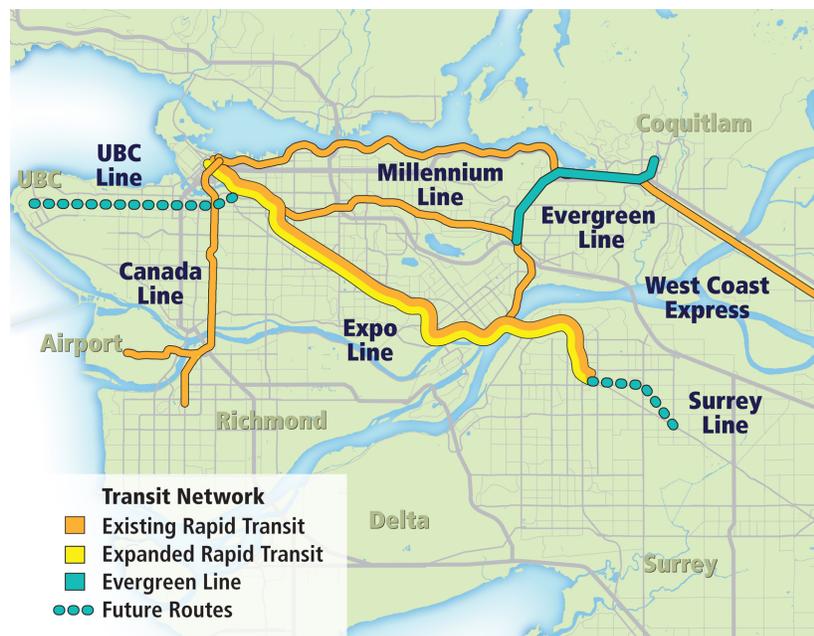
1.2 Background

The Project includes the design, construction and financing during construction of an approximately 11 kilometre long new advanced light rapid transit line that will connect with and extend the existing SkyTrain System to the Northeast sector of Metro Vancouver, servicing the municipalities of Burnaby, Port Moody and Coquitlam.

The Evergreen Line will run from Lougheed Town Centre in Burnaby to Douglas College in Coquitlam. The alignment will require a combination of elevated and at-grade guideway, and an approximately two-kilometre long bored tunnel. It will include an expansion of the existing Lougheed Station and five new stations that are currently planned with provision for three potential future stations, together with associated facilities such as bus and other transit integration facilities and facilities for pedestrian, motor vehicle and bicycle access.

The Northeast sector is one of the fastest growing areas in Metro Vancouver, adding pressure to the regional transportation network as traffic volumes build and congestion increases. The Evergreen Line will address these and other challenges by increasing transportation choice and supporting growth management and environmental sustainability objectives. The Evergreen Line is an integral part of the Provincial Transit Plan and the broader regional planning objectives of Metro Vancouver, which include connecting regional centres with rapid transit to achieve sustainable growth. A diagram showing the anticipated integration of the Evergreen Line into the Metro Vancouver transit network, including the existing SkyTrain System, is included in Figure 1.

Figure 1 – Greater Vancouver Transit Network



Planning for the Evergreen Line has been ongoing for more than ten years. In the Spring of 2008 the Province announced that advanced light rapid transit technology would be used for the Evergreen Line consistent with the technology used for the Expo and Millennium Line components of the existing SkyTrain System.

The Province has completed a preliminary design for the Evergreen Line alignment that is the basis for the Environmental Assessment Application. The Alignment as at the date of this RFQ is represented in the drawings identified as the “Evergreen Line Rapid Transit Project” Baseline Alignment Drawings EAC Application – April 2010 DRAFT – Volume 3” on the RFQ Data DVD.

1.3 RFQ Data DVD and Further Information

An RFQ Data DVD with background data relating to the Project is available. To receive the RFQ Data DVD and any further information in connection with this RFQ, recipients of this RFQ are required to fully complete, sign and return the Receipt Confirmation.

The RFQ Data DVD will be sent via courier to parties who sign and return the completed Receipt Confirmation.

1.4 Eligibility

A response to this RFQ may be submitted by any interested party or parties.

1.5 General Scope of the Primary Contractor's Responsibility

The purpose of this section is to outline the anticipated general scope of the Primary Contractor's responsibilities. The Primary Contractor will be responsible for design and construction as outlined in section 1.5.1 and for obtaining construction period financing as outlined in section 1.5.2, all as will be more particularly described in the Project Agreement that is anticipated to be entered into by the Province and other relevant provincial entities and the Primary Contractor.

1.5.1 Design and Construction

It is anticipated that the Primary Contractor will be responsible for all aspects of design and construction in accordance with the requirements and specifications outlined in the Project Agreement. A summary of significant components of the anticipated design and construction scope is set out in Table 1. This should not be considered an exhaustive or complete list.

Table 1 – Summary of Anticipated Design and Construction Scope

SUMMARY DESIGN AND CONSTRUCTION SCOPE
<ul style="list-style-type: none"> • Obtaining necessary permits, approvals and authorizations, including those required pursuant to applicable federal and provincial regulatory requirements and legislation • Site preparation including, where applicable, demolition of existing buildings • Design and construction of guideway along the approximately 11 kilometre long alignment, including a combination of elevated and at-grade guideway for approximately 9 kilometres and approximately two kilometres through bored tunnel • Design and construction of an expansion of the existing Lougheed Station and five new stations and associated facilities • Design and construction of a vehicle storage facility • Design, supply and installation of trackwork and electrical and mechanical systems and subsystems including the automatic train control system • Road and other civil works required to accommodate the Project • Utility relocations required within the alignment • Traffic management, including maintenance of residential and commercial access along the alignment • Integration of the Evergreen Line with the existing SkyTrain System including the existing automatic train control and other electrical and mechanical systems and the existing vehicle fleet • Testing, commissioning and integration of all Evergreen Line components, systems and subsystems including necessary coordination with SkyTrain personnel • Achieving completion to accommodate Service Commencement by no later than December 31, 2014

1.5.2 Financing

It is anticipated that the value of the work to be undertaken by the Primary Contractor will be approximately \$900 million to \$1 billion. The Primary Contractor will be responsible for obtaining the financing required to complete the design and construction of the Evergreen Line in excess of the payments available during construction as described in section 1.6.1 below. The amount of financing required is estimated to be approximately \$400 million.

1.5.3 Performance Security

It is anticipated that the Primary Contractor will be required to provide performance security in favour of the Province to a specified minimum amount. Performance security requirements will be set out in the Project Agreement, and may include Performance and Labour and Material Payment Bonds and irrevocable demand letters of credit, or combinations thereof.

1.6 General Scope of Province Responsibilities

The purpose of this section is to outline the anticipated general scope of the Province's responsibilities. Table 2 provides a summary of the anticipated Province responsibilities.

Table 2 – Summary of Anticipated Province Responsibilities

SUMMARY OF PROVINCE RESPONSIBILITIES
<ul style="list-style-type: none"> • Payments to the Primary Contractor • Obtain the requisite environmental assessment certificate for the Project based on the Alignment • Provide the land interests to accommodate the Alignment • Consultation and community relations with stakeholders and the public, including public consultation on preliminary station design • Undertake selected advance site preparation, including road widening, demolition of a number of buildings, several major utilities relocations, CPR track relocation and supply of power infrastructure for the tunnel boring machine • Facilitate the supply of the ATC system • Work with TransLink to supply vehicles and ticket vending machines and faregates for stations

1.6.1 Payments

It is anticipated that partial progress payments will be available to the Primary Contractor during construction, the amount, timing and terms and conditions of which will be set out in the Project Agreement, and that the balance of the contract price will be payable upon completion of the Project in accordance with and subject to the terms and conditions of the Project Agreement.

1.6.2 Environmental Assessment

The Project has been excluded by Transport Canada from the requirement to conduct an environmental assessment under the *Canadian Environmental Assessment Act* pursuant to the Exclusion List Regulations, 2007. The Project is undergoing an environmental assessment under the *Environmental Assessment Act* (British Columbia).

An Application for Environmental Assessment Certification under the BCEAA was accepted for review by the Environmental Assessment Office on June 16, 2010 and is available for review at http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_project_doc_list_348_r_app.html. The Environmental Assessment Certificate is anticipated to be obtained in early 2011.

1.6.3 Property Acquisition

It is anticipated that the Province will acquire the land rights necessary to accommodate the Alignment. The Province has commenced acquisition of these land rights.

1.6.4 Communications and Consultation with Stakeholders and the Public

A communications and consultation program was initiated by the Province in 2009. This program has provided, and will continue to provide, opportunities for stakeholders and members of the public to learn about the Project and provide input on key aspects and features of the Project.

In addition to the pre-design consultation and environmental assessment public comment periods, the Province expects to develop preliminary designs for the Evergreen Line stations and undertake public consultation on the proposed designs during the RFP phase. Public input into the proposed designs will be considered in establishing the specifications for stations included in the Project Agreement.

The anticipated allocation of responsibilities for traffic management communications, community relations, consultation, media relations and public information relating to the Project are as follows:

- a) **Traffic Management Communications** – The Province will develop and implement traffic communications plans, and the Primary Contractor will provide support for a comprehensive traffic communications program which will provide the public, stakeholders, businesses and commuters with regular traffic information.
- b) **Community Relations During Construction** – The Province will lead and be responsible for implementing, and the Primary Contractor will provide support for a comprehensive community relations program which will provide stakeholders and the public with regular information and address public inquiries and concerns.

- c) **Public and Stakeholder Consultation During Construction** – The Province will lead and be responsible for public and stakeholder consultation during construction with support and participation by the Primary Contractor. Support and participation will include such things as providing information and materials regarding preliminary and detailed designs and attending and participating in consultation activities such as small group meetings, open houses and other consultation activities.
- d) **Media Relations** – The Province will lead and be responsible for media relations activities including the provision of a designated spokesperson. The Primary Contractor will support the Province by providing all information necessary and a spokesperson as necessary and requested by the Province.

1.6.5 Automatic Train Control System

The Evergreen Line is intended to be fully interoperable with the existing SkyTrain System, which uses the proprietary Thales SELTRAC™ automatic train control system. It is anticipated that the Primary Contractor will be responsible for ensuring that this interoperability is achieved.

The Province is in discussions with Thales regarding a possible approach for the supply of the ATC system that would involve the Primary Contractor engaging Thales to supply the ATC system through a supply subcontract. Under this approach, the supply subcontract would be developed through Province negotiations with Thales and Province-facilitated discussions and consultations likely involving Proponents and Thales during a subsequent RFP phase of the Evergreen Line Selection Process. In accordance with applicable governmental procurement policies, the Province anticipates issuing a Notice of Intent on BC Bid. The Notice of Intent would give notice to potential ATC system suppliers of the possibility of Thales being directly engaged to supply the ATC system.

If, among other things, another ATC system supplier objects to the Notice of Intent and the objection is substantiated, then a different approach may be implemented for supply of the ATC system.

Respondents and prospective Respondents are to ensure that neither they nor any of their respective Respondent Team Members uses, consults, communicates or enters into any arrangements, directly or indirectly, with Thales, save and except and only to the extent expressly provided for in any subsequent phase of the Evergreen Line Selection Process, including the RFP.

1.6.6 Advance Site Preparation

As indicated in Table 2, the Province anticipates undertaking a range of advance site preparation works which may include:

- a) road widening and utility relocation work along North Road;
- b) demolition of a number of buildings;

- c) relocation of several major utilities;
- d) relocation of CPR track presently located adjacent to a portion of the Alignment; and
- e) supply of power infrastructure for the tunnel boring machine.

1.6.7 Vehicles, Ticket Vending Machines and Faregates

It is anticipated that TransLink will provide the vehicles, ticket vending machines and faregates required for the Evergreen Line.

The Primary Contractor will not be responsible for providing vehicles, but will be responsible for ensuring that all vehicles (including new vehicles to be acquired for the Evergreen Line and the SkyTrain System's existing vehicles) can run seamlessly on and between the existing SkyTrain System and the Evergreen Line.

The Primary Contractor will be required to ensure that stations are designed and constructed to accommodate ticket vending machines and faregates in accordance with the specifications contained in the Project Agreement.

1.7 Project Agreement

A draft form of Project Agreement will be included with the RFP. The Draft Project Agreement will, among other things, set out proposed technical requirements and specifications for the design and construction components of the Project, scope of services to be provided by the Primary Contractor, and commercial terms including allocation of risks as between the Primary Contractor and the Province. It is anticipated that the Primary Contractor will bear most risks relating to design, construction and integration of the Evergreen Line with the existing SkyTrain system, traffic management and private finance during construction, while the Province will retain risks associated with property acquisition for the Alignment and scope changes initiated by the Province.

It is anticipated that the Definitive Project Agreement, incorporating revisions and amendments to the Draft Project Agreement, will be the basis upon which Proposals will be prepared in response to the RFP.

2 EVERGREEN LINE SELECTION PROCESS

This section describes the process that the Province expects to implement in selecting a Preferred Proponent. The anticipated Evergreen Line Selection Process includes an RFQ phase and an RFP phase.

2.1 Request For Qualification Phase

The RFQ phase is anticipated to result, in the discretion of the Province, in a short list of up to three Respondents. The short list is intended to include those Respondents who have successfully

demonstrated to the satisfaction of the Province, in its discretion, that they are the best qualified Respondents based on the criteria described in this RFQ.

Only Respondents who, on invitation of the Province, have delivered a fully and duly executed Proponent Agreement will be eligible to be short-listed to proceed to the RFP phase of the Evergreen Line Selection Process. Respondents are to consider the provisions of this RFQ in this regard, including sections 5.7, 5.10 and 5.11 and Note 1.0 of Appendix G.

2.2 Request For Proposals Phase

The Province anticipates implementing an RFP phase during which the Province may seek, in its discretion, to select a Preferred Proponent who may be offered the opportunity to enter into the Project Agreement.

2.2.1 Consultation Processes

The Province anticipates facilitating a series of consultations in conjunction with or during the RFP phase relating to technical and commercial matters, with the intention of providing Proponents the opportunity to comment on Project specific issues.

These processes are anticipated to involve each of the Proponents and other relevant parties and to include exchanges of information, discussions, clarification of issues and review of documents and specifications through workshops and topic meetings, and to provide for the submission and consideration of comments on and proposed amendments to the Draft Project Agreement leading to the development of the Definitive Project Agreement.

2.2.2 Technical Submission

The Province anticipates that the technical submission under the RFP will include:

- (a) the Proponent's preliminary design in sufficient detail to demonstrate that all specifications and requirements set out in the RFP will be met or exceeded; and
- (b) plans outlining the Proponent's approach to items such as quality, construction, systems, traffic and environmental management and communications.

2.2.3 Financial Submission

The Province anticipates that the financial submission under the RFP will occur after the technical submission and include the following:

- a) fully committed financing, including confirmation from the Proponent's funding sources of acceptance of the terms of the Definitive Project Agreement;
- b) a commitment to enter into the Definitive Project Agreement by the Proponent; and

- c) committed pricing for the Project.

2.3 Compensation for Participation in Evergreen Line Selection Process

No compensation will be available to Respondents for participating in the RFQ phase of the Evergreen Line Selection Process.

If the Evergreen Line Selection Process is completed and a Project Agreement is executed and delivered, it is anticipated that a Stipend in the amount of \$1,500,000 will be available to each Proponent participating in the RFP phase that is not selected as the Preferred Proponent, on the terms and subject to the conditions, including as to eligibility for payment, described in the Proponent Agreement.

If the Evergreen Line Selection Process continues to the RFP phase and is terminated for reasons described in the Proponent Agreement, it is anticipated that a Termination Fee in an amount equal to the out of pocket costs incurred to prepare its Proposal, subject to a maximum amount of up to \$1,500,000 depending on when the termination occurs, will be available to each Proponent on the terms and subject to the conditions, including as to eligibility for payment, described in the Proponent Agreement.

The conditions for payment of the Stipend and Termination Fee are anticipated to include, among other things, transfer of intellectual property rights and execution and delivery of a full and final release of Claims and a waiver of liability.

2.4 Evergreen Line Selection Process Timeline

The currently anticipated timeline for Evergreen Line Selection Process milestones is as set forth in Table 3:

Table 3 – Timeline

ACTIVITY	TIMELINE
RFQ issue	July 5, 2010
RFQ Closing Time	September 7, 2010
Announce Short-listed Respondents	Fall 2010
Issue RFP and Draft Project Agreement	Fall 2010
Technical submission	Spring 2011
Financial submission	Spring 2011
Announce Preferred Proponent	Spring 2011
Financial Close	Summer 2011

All dates and milestones in the above timeline are subject to change at the discretion of the Province.

3 SUBMISSION INSTRUCTIONS

3.1 Closing Time and Delivery Address

Qualification Responses are to be delivered by hand or courier delivery, addressed to the attention of the Contact Person, and received before the Closing Time at the Closing Location.

The calendar and clock at the Closing Location, whether accurate or not, will be used for all purposes and proceedings relating to this RFQ to determine whether a Qualification Response or Revision, including any part of a Qualification Response or Revision, has been received before the Closing Time.

Qualification Responses posted by mail or sent by fax or email may not be considered.

3.2 Language of Qualification Responses and Enquiries

Qualification Responses and all enquiries are to be written in English.

3.3 Qualification Response Form and Content

Qualification Responses are to be in the form and follow the outline described in Appendix A. The content of the Qualification Response is to include information in respect of each of the matters to be considered and addressed, as described in the Content Requirements column of Table 2.2 of Appendix A, that is sufficiently comprehensive and responsive to enable the Province to apply the Evaluation Criteria as outlined in Appendix A.

3.4 Complete RFQ

Respondents are solely responsible to ensure that they have received and clearly understood the complete RFQ, including all Addenda, and have delivered their Qualification Responses on that basis.

3.5 Receipt Confirmation

A Receipt Confirmation substantially in the form attached as Appendix B is to be completed, executed and delivered to the Contact Person by parties who wish to receive the RFQ Data DVD and further information relating to this RFQ. The RFQ Data DVD and further information relating to this RFQ, including any Addenda to this RFQ, will be directed to parties who have completed and returned a Receipt Confirmation substantially in such form.

3.6 Communications and Enquiries

Requests for any information, for clarification or for any other matters should be made in writing using the Request for Information Form attached as Appendix F, and should be delivered by email, hand or courier delivery or facsimile to the Contact Person and clearly marked “Evergreen Line Rapid Transit Project RFQ Enquiry”. All communications and enquiries to and responses from the Contact Person will be recorded.

The Province may in its discretion respond to any communication, enquiry or RFI, provided that there is no obligation whatsoever on the Province to respond to any communication, enquiry or RFI, whether or not marked “Commercial in Confidence”. If the Province decides to respond, the response will be in writing and delivered by email, hand or courier delivery or facsimile.

Information offered or otherwise obtained from any source other than the Contact Person is not official, is not endorsed by the Province, may be inaccurate and is not to be relied on or otherwise used in any way by a Respondent or by any person or firm for any purpose.

The Province may in its discretion issue any communication, information or enquiry including any RFI or any Response to Respondents to all Respondents.

If the Province in its discretion considers a RFI or the corresponding RTR to be of a minor or administrative nature and to relate only to the Respondent who submitted the RFI, the Province may issue a RTR only to that Respondent. Despite any other term of this RFQ and any RFI or other communication being identified as “Commercial in Confidence”, if the Province in its discretion considers the matter to be a matter of substance or a matter that should be brought to the attention of all Respondents for purposes of fairness in or maintaining the integrity of the Evergreen Line Selection Process, the Province may issue an Addendum to this RFQ, the RFI, a RTR or a written response relating to the matter to all Respondents.

A Respondent may, if it considers its enquiry set out in a RFI to relate to commercially sensitive matters, request the RFI to be kept confidential by setting out the request in the RFI and by clearly marking the RFI as “Commercial in Confidence”. The Province may in its discretion respond to the RFI on a confidential basis.

If the Province in its discretion considers, including for purposes of fairness in or maintaining the integrity of the Evergreen Line Selection Process, that the Province should not respond to a RFI that is marked “Commercial in Confidence” on a confidential basis, and subject to the Province’s overriding discretion to distribute RFIs, written responses to enquiries and RTRs to all Respondents, the Province may notify the Respondent who submitted the RFI marked “Commercial in Confidence” and specify the time period within which the Respondent may withdraw the RFI in writing and, if the Respondent does not withdraw the RFI within the time specified by the Province, then the Province in its discretion may provide the Province’s response to the RFI to all Respondents.

Respondents are not to communicate, including by media releases or interviews, and are to ensure that their Respondent Team Members, including their respective directors, officers, employees, consultants, advisors, representatives and agents do not communicate, in respect of any part or parts of the Project or the Evergreen Line Selection Process with the media or the public unless the prior written consent of the Province is obtained. Respondents are to promptly notify the Province of any requests for interviews or other requests from media received by the Respondent or any of its Respondent Team Members.

3.7 Delivery and Receipt of Communications, Addenda and Other Documents

The Province does not assume any risk, responsibility or liability whatsoever and makes no guarantee, warranty or representation whatsoever including as to:

- (a) the timeliness, completeness, effectiveness or condition upon delivery or receipt of any communication, enquiry, response, information or other documentation, including this RFQ, any and all Addenda to this RFQ, any RFI or RTR and any Qualification Responses or Revisions, from, to or by any Person including any Respondent or the Province, whether delivered by email, by hand or courier delivery or by facsimile; and
- (b) the working order, functioning or malfunctioning or capacity of any facsimile transmission equipment or electronic email or information system or medium, including the RFQ Data DVD.

All fax or email communications or delivery of documents relating to this RFQ will be considered for all purposes to have been received by the Province on the dates and at the times indicated on the Province's facsimile transmission equipment or other electronic equipment.

Each part of this RFQ, any and all Addenda to this RFQ and any other communications, responses or other documentation delivered by or on behalf of the Province will be considered validly delivered to and received by the intended recipient, including any Respondent, at the time that the RFQ, such Addenda or such other communication, response or other documentation, as the case may be, is issued by facsimile transmission to the facsimile number designated by the Respondent as the facsimile number for receipt of information in connection with this RFQ or by electronic email to the email address designated by the Respondent as the email address for receipt of information in connection with this RFQ.

3.8 Addenda to RFQ

The Province may in its discretion amend any part or parts of this RFQ, including the Closing Time, at any time and from time to time by Addendum issued through the Contact Person. Addenda are the only means of amending this RFQ, and no other form of communication, whether written or oral, including written responses to enquiries and RTRs, are included in or form part of or in any way amend this RFQ.

3.9 Inconsistency between Paper and Electronic Form

In the event of a conflict or inconsistency between the paper form of any document as issued to Respondents and the digital, electronic or other computer readable or other form of the document, the paper form of the applicable document as issued to Respondents pursuant to this RFQ will govern and take precedence.

3.10 Revisions to Qualification Responses Prior to the Closing Time

Respondents may make Revisions to their Qualification Responses, including withdrawing their Qualification Responses, in accordance with this RFQ.

Revisions are to:

- (a) be written in English and be enclosed in a sealed envelope or container addressed to the attention of the Contact Person at the Closing Location;
- (b) clearly indicate the changes made with every page numbered, or the withdrawal of the Qualification Response, as the case may be; and
- (c) be delivered by hand or courier delivery and received at the Closing Location before the Closing Time.

Revisions are to be clearly marked "Revision to Evergreen Line Rapid Transit Project RFQ Qualification Response of [Respondent's name]".

Revisions received on or after the Closing Time or posted by mail or sent by facsimile or email may not be considered.

4 EVALUATION

4.1 Evaluation

It is anticipated that the review and evaluation of Qualification Responses will be conducted by evaluators comprised of employees and representatives of the Province, TransLink, government agencies and private sector advisors and consultants.

In implementing and administering the processes contemplated by this RFQ or any other aspect of the Evergreen Line Selection Process, including in reviewing and evaluating any Qualification Responses and carrying out any inquiries, reviews and checks, the Province may in its discretion and in confidence utilize, be assisted by, consult with and obtain and rely upon input, advice and direction from technical, financial, managerial, legal and other advisors and consultants in any way that the Province considers in its discretion will be of assistance to the Province. Such advisors and consultants may be representatives and employees of the Province, of TransLink, of government agencies and of private sector firms.

4.2 Evaluation Criteria

The Province anticipates applying, in its discretion, the Evaluation Criteria outlined in Appendix A in connection with the evaluation of Qualification Responses.

4.3 Evaluation and Selection Process

The Province in its discretion may:

- (a) conduct reference, credit or other checks with any or all of the references and other sources cited in a Qualification Response;
- (b) in carrying out any Qualification Response evaluations and related activities, inquiries, reviews and checks, in confidence obtain and rely on technical, financial, legal and other input, advice and direction from government and private sector advisors and consultants;
- (c) independently verify any information regarding a Respondent or Respondent Team Member, including its directors and officers, whether or not contained in any Qualification Response;
- (d) conduct any background investigations that it considers necessary in the course of the Evergreen Line Selection Process;
- (e) seek clarification, rectification or more complete, supplementary or additional information or documentation from any Respondent or in connection with any Qualification Response, any Respondent, any Respondent Team composition or any Respondent Team Member if the Province considers that a Qualification Response or any part of a Qualification Response requires clarification, rectification or more complete, supplementary or additional information or documentation or contains an alteration, qualification, omission, inaccuracy or misstatement or for any reason is not responsive to any provisions of this RFQ; and
- (f) in evaluating any Qualification Response, rely on, consider or disregard any irrelevant or relevant information and documentation, including any clarification, rectification or more complete, supplementary or additional information or documentation, as the case may be, contemplated in sections 4.3(a) to (e) or otherwise obtained from any other source the Province in its discretion considers appropriate. The Province may also include in the evaluation of any Qualification Response consideration of any additional documents and information submitted pursuant to this RFQ and advice and input from TransLink and the Province's government and private sector advisors and consultants.

Without limiting any other provision of this RFQ, the Province in its discretion may at any time decline to evaluate or cease evaluation of any Qualification Response for any reason considered appropriate by the Province in its discretion, including if the Province in its discretion:

- (g) considers the Qualification Response to be incomplete;

- (h) after reviewing the information submitted in the Qualification Response relating to the requirements set out in section 3.1 of Table 2.2 of Appendix A, considers that the information submitted is insufficient to demonstrate to the satisfaction of the Province, in its discretion, that the Respondent has the ability to raise sufficient capital to finance completion of the Project and that the Respondent and each other Respondent Team Member (other than Key Individuals) is financially viable and has the financial capacity to fulfill its obligations in respect of the Project; or
- (i) considers that the Respondent or Qualification Response, as compared to all the Respondents and Qualification Responses, is not in contention to be short-listed.

The Province in its discretion may disregard any experience, capacity or other information contained in any Qualification Response that is not verifiable to the satisfaction of the Province, in its discretion, or that otherwise is not responsive to any provision of this RFQ.

After announcement of the Short-listed Respondents, the Province upon written request may in its discretion conduct a debriefing for any Respondent that was not short-listed to discuss the strengths and weaknesses of that Respondent's Qualification Response, but the Province will not disclose or discuss any confidential information of or concerning any other Respondent or its Qualification Response in any such debriefing.

4.4 Interviews / Presentations

The Province in its discretion may request all or any Respondents to have interviews with or present their Qualification Responses to the Province during the evaluation process. Such interviews or presentations are to be conducted in accordance with procedures set by the Province and are to focus on matters specified in the Province's request, and are not to include presentation of any Respondent or Respondent Team marketing information.

5 OTHER PROVISIONS

5.1 No Obligation to Proceed

This RFQ is not a tender, an offer or a request for proposals, and there is no intention by the Province to make an offer of any kind by issuing this RFQ including an offer to enter into any contract with any Person, including any Respondent.

No contract of any kind arises from or is formed under or entered into pursuant to this RFQ including as a result of the submission or evaluation of a Qualification Response, and no legal obligations or duties of any kind, express or implied and whether in contract, tort or otherwise, are constituted by or arise from or out of this RFQ including the submission or evaluation of a Qualification Response, including any obligation to proceed with or complete the RFQ phase or to proceed with or complete an RFP phase or any other part of the Evergreen Line Selection Process and including any actual or implied duty of good

faith or actual or implied duty of fairness. Neither this RFQ nor the submission or evaluation of a Qualification Response is to be interpreted or construed as constituting or giving rise to any contract or any such legal obligations or duties.

5.2 Freedom of Information and Protection of Privacy Act

Each Respondent is responsible for ensuring that in preparing and submitting its Qualification Response it has complied with all applicable laws and regulations, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such Person and to the submission of such information to the Province and the use, distribution and disclosure of such information as part of the Qualification Response for the purposes of or in connection with this RFQ and the Evergreen Line Selection Process.

All documents and other records in the custody of or under the control of the Province are subject to the *Freedom of Information and Protection of Privacy Act* and other applicable legislation. Except as expressly stated in this RFQ and subject to the FOIPPA and other applicable legislation, all documents and other records submitted in response to this RFQ will be considered confidential.

5.3 Cost of Preparing the Qualification Response

Without limiting any other provision of this RFQ, including section 5.4, each Respondent is solely responsible for all costs and expenses incurred in preparing its Qualification Response and all information and documentation relating to this RFQ, including any more complete, supplementary or additional information and documentation requested by the Province, attending meetings and conducting due diligence.

5.4 Actions by Province

Without limiting any other provision of this RFQ, including sections 4.3 and 5.1, the Province in its discretion may do any one or more of the following:

- (a) modify, replace, substitute, postpone, extend, cancel or suspend, temporarily or otherwise, any or all phases of the Evergreen Line Selection Process, including the RFQ phase and the RFP phase;
- (b) re-issue this or any request for qualifications, or issue or implement any other selection process for or take any steps or actions to procure the delivery of the same or similar Project or any part or parts of the works comprising the Project, including entering into negotiations with any Person;
- (c) amend any part of this RFQ, including the scope or any other part of the Project, the dates, schedules, timelines, Closing Location, Closing Time, Evergreen Line Selection Process or any other provision or provisions of this RFQ;

- (d) consider, evaluate, accept, not accept, not consider, not evaluate or discontinue evaluation of any Qualification Response;
- (e) notify any Respondent, any Respondent Team, any Respondent Team Member or any prospective Respondent Team Member that it is or has become ineligible to participate in or continue participating in the RFQ phase or any other part of the Evergreen Line Selection Process;
- (f) disregard any defect, deficiency or irregularity, including any alteration, qualification, omission, error, inaccuracy, misstatement, non-compliance or non-conformity including as to form, content, timeliness of submission or other defect, deficiency or irregularity in a Qualification Response, and consider and evaluate, including any more complete, supplementary and additional information or documentation, that Qualification Response; and
- (g) not consider or evaluate any or all Qualification Responses,

at any time or from time to time and for any reason or reasons the Province in its discretion considers appropriate and to be solely in the best interests of the Province or the Evergreen Line Selection Process.

Without limiting any other provision of this RFQ, and except to the limited extent expressly provided in the Proponent Agreement, none of the Province, BCTFA, TransLink, Partnerships BC, the Fairness Reviewer, the Conflict of Interest Adjudicator or any of their respective directors, officers, employees, servants, representatives, agents, consultants and advisors has any responsibility, obligation or liability whatsoever, in contract, tort or otherwise, for Claims, reimbursement, costs, expenses, damages or losses, including loss of profits or loss of opportunity, incurred or suffered in any way by any Respondent, Respondent Team, Respondent Team Member or prospective Respondent, Respondent Team or Respondent Team Member or any other Person in connection with, relating to or arising from any or all Qualification Responses, any use of or reliance on the Restricted Parties list, any identification of or failure to identify (in a timely manner or at all) any Person as a Restricted Party, any ruling or advice of or failure to provide a ruling or advice (in a timely manner or at all) of the Conflict of Interest Adjudicator, any RFI, response to enquiries or RTR or failure to provide any response to enquiries or RTR (in a timely manner or at all), this RFQ including any of the matters described in section 4.3 and this section 5.4, the Evergreen Line Selection Process or any departure (fundamental or otherwise) from the provisions of this RFQ or the Evergreen Line Selection Process.

5.5 Ownership of Qualification Response

In accordance with the Certificate and Declaration Form, all Qualification Responses submitted to the Province will become the property of the Province and, subject to FOIPPA and the terms of this RFQ, will be held in confidence by the Province.

5.6 Disclosure and Transparency

The Province expects to publicly disclose the following information during the RFQ phase of the Evergreen Line Selection Process: this RFQ, the number of Respondents and the names of Short-listed Respondents and their Respondent Team Members, as at the date of publication.

The disclosure to the public of any information generated in relation to the Project or the Evergreen Line Selection Process, including through communications with the media and the public, is to be coordinated with and is subject to the prior approval of the Province.

Respondents are to ensure that all of their respective Respondent Team Members and all others associated with them are informed of and observe these provisions of this RFQ.

5.7 No Communication or Collusion

Respondents and their Respondent Team Members are not to discuss or communicate, directly or indirectly, with other Respondents or their Respondent Team Members or any of their respective directors, officers, employees, consultants, advisors, agents or representatives regarding the preparation, content or submission of their Qualification Responses or any other aspect of the Evergreen Line Selection Process.

Each Respondent is to ensure that its Qualification Response has been prepared and submitted without collusion or fraud and in fair competition with other Respondents and Respondent Teams and prospective Respondents and Respondent Teams.

5.8 No Lobbying

Respondents are to ensure that they and their respective Respondent Team Members and any other Persons associated with any of them do not communicate or attempt to communicate directly or indirectly with the Province, BCTFA or TransLink, including any elected official, Partnerships BC or the Fairness Reviewer or Conflict of Interest Adjudicator, or any directors, officers, employees, servants, representatives, agents or consultants of any of them, during any part of the RFQ phase, including during any part of the evaluation process, or during any other part of the Evergreen Line Selection Process, except as expressly directed or permitted by the Province.

5.9 Changes

5.9.1 Changes to Proponents and Proponent Teams

Changes to a Proponent or its Proponent Team or any of its Proponent Team Members may only be made with the express written consent of the Province. If for any reason such a Change occurs or a Proponent wishes to make or requires that such a Change be made or has knowledge that such a Change is likely to occur, the Proponent will promptly deliver a written request to the Province for its consent to the Change.

The Proponent will include in such written request a comprehensive description of the Change, the reason for the Change and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the Persons involved in the Change, to enable the Province to consider in its discretion whether the Change, if consented to the Province, will result in the Proponent and its Proponent Team, considered separately and as a whole, meeting or exceeding the suitability, knowledge, skills, resources, experience, qualifications and abilities of the Proponent and its Proponent Team, considered separately and as a whole, before the Change. The Proponent will provide such further information and documentation as the Province may request for the purpose of considering any such request for consent to a Change.

The Province in its discretion may by written notice consent or decline to consent to any Change. Any consent of the Province may be on and subject to such terms and conditions as the Province in its discretion may consider appropriate.

5.9.2 Changes to Respondents and Respondent Teams

Changes to a Respondent or its Respondent Team or any of its Respondent Team Members may only be made for reasons beyond the control of the Respondent and with the express written consent of the Province. If for any reason such a Change occurs or a Respondent has knowledge that such a Change is likely to occur, the Respondent will promptly deliver a written request to the Province for its consent to the Change.

The Respondent will include in such written request a comprehensive description of the Change, the reason for the Change and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the Persons involved in the Change, to enable the Province to consider in its discretion whether the Change, if consented to by the Province, will result in the Respondent and its Respondent Team, considered separately and as a whole, meeting or exceeding the suitability, knowledge, skills, resources, experience, qualifications and abilities of the Respondent and its Respondent Team, considered separately and as a whole, before the Change. The Respondent will provide such further information and documentation as the Province may request for the purpose of considering any such request for consent to a Change, and any such request for consent to a Change and any additional information and documentation so provided may in the discretion of the Province be considered and taken into account in the evaluation of a Qualification Response and in considering a Respondent's eligibility to be short-listed, whether before or after delivery by the Respondent of a Proponent Agreement.

The Province in its discretion may by written notice consent or decline to consent to any Change. Any consent of the Province may be on and subject to such terms and conditions as the Province in its discretion may consider appropriate.

5.10 Relationship Disclosure and Review Process

Without limiting any other provision of this RFQ, the Province may in its discretion notify any Respondent that it is or has become ineligible to participate in or continue participating in the RFQ phase or any other part of the Evergreen Line Selection Process where the Province in its discretion considers that Respondent or any of its Respondent Team Members to have an actual conflict of interest or unfair advantage or to have a relationship that has the potential for creating an actual or perceived conflict of interest or unfair advantage.

Each Respondent is to fully disclose all relationships which it and any of its Respondent Team Members may have with the Province or any agency, authority, board, tribunal, commission or department of the Province, TransLink, Partnerships BC, any Restricted Party or any other Person providing advice or services to the Province with respect to the Project:

- (a) by submission of a completed and executed Relationship Disclosure Form with the Respondent's Qualification Response; and
- (b) thereafter during the Evergreen Line Selection Process, by written notice addressed to the Contact Person promptly after becoming aware of any such relationship.

At the time of such disclosure, the Respondent is to include sufficient information and documentation to demonstrate that appropriate measures have been or will be implemented to mitigate, minimize or eliminate the actual, potential or perceived conflict of interest or unfair advantage, as applicable. The Respondent is to provide such additional information and documentation and may be required to implement such additional measures as the Province in its discretion may require in connection with the Province's consideration of the disclosed relationship and proposed measures.

A description of the Project relationship review guidelines is posted on the Project website at <http://www.evergreenline.gov.bc.ca/>.

5.11 Relationships

5.11.1 Use or Inclusion of Restricted Parties

The Province in its discretion may notify any Respondent that it is or has become ineligible to participate in or continue participating in the RFQ phase or any other part of the Evergreen Line Selection Process or impose such conditions on the Respondent's participation or continued participation in the Evergreen Line Selection Process as the Province may consider to be in the public interest or otherwise appropriate if the Respondent or any of its Respondent Team Members is a Restricted Party or if the Respondent or any of its Respondent Team Members uses a Restricted Party:

- (a) to advise or otherwise assist it in connection with the Respondent's participation in the Evergreen Line Selection Process, including in connection with the preparation of the Respondent's Qualification Response; or

- (b) as an employee, advisor or consultant.

Each Respondent is responsible to ensure that neither it nor any of its Respondent Team Members is or includes or uses, consults or seeks advice from any Restricted Party.

5.11.2 Restricted Parties

As at the date of issue of this RFQ, the Province has identified the following Persons as Restricted Parties:

- Anthony Steadman and Associates Inc.
- Boughton Law Corporation
- CH2M Hill Canada Limited
- Clark Wilson LLP
- Delcan Corp.
- Gannett Fleming Inc.
- Golder Associates Ltd.
- Halcrow Consulting Inc.
- Hatch Ltd.
- Kirk & Co Consulting Ltd.
- KPMG LLP
- Lea + Elliott, Inc.
- Levelton Consultants Ltd.
- Meyers Norris Penny LLP
- Miller Thomson LLP
- PricewaterhouseCoopers LLP
- Sereca Fire Consulting Ltd.
- VIA Architecture Inc.
- Westco Consulting Inc.

This is not an exhaustive list of Restricted Parties. Additional Persons may be identified by the Province as Restricted Parties, including by being added to the list during the Evergreen Line Selection Process.

5.11.3 Exclusivity

Key Firms, Key Individuals and Financial Sponsors may participate as members of and are to be exclusive to only one Respondent Team.

5.11.4 Conflict of Interest Adjudicator

The Province has appointed a Conflict of Interest Adjudicator to make decisions on conflicts of interest and unfair advantage and other relationships, including Connections, involving participants and prospective participants in the Evergreen Line Selection Process, including whether any Person is a Restricted Party. The decision of the Conflict of Interest Adjudicator on any issue, whether in response to a request for advance ruling or a request by the Province during any phase of the Evergreen Line Selection Process, is final and binding on the Person requesting the ruling and on all other Persons, including all Respondents, Respondent Teams and Respondent Team Members.

5.11.5 Request for Advance Rulings

A Respondent or a current or prospective Respondent Team Member or a current or prospective advisor or consultant to a Respondent or Respondent Team Member who has any concerns regarding whether it or any of its current or prospective employees, advisors or consultants is or may be a Restricted Party or becomes aware of circumstances that may constitute or give rise to an actual, potential or perceived conflict of interest or unfair advantage is to request an advance ruling from the Conflict of Interest Adjudicator.

To request an advance ruling, a Respondent or a current or prospective Respondent Team Member or a current or prospective advisor or consultant to a Respondent or Respondent Team Member should submit to the Contact Person by email, hand or courier delivery or facsimile, not less than ten (10) days prior to the Closing Time, all relevant information and documentation, including the following information:

- (a) names and contact information of the Respondent and the Person in respect of which the advance ruling is requested;
- (b) a detailed description of the relationship that may constitute or give rise to an actual, potential or perceived conflict of interest or unfair advantage;
- (c) a detailed description of the steps taken to date and future steps proposed to be taken to eliminate or mitigate the conflict of interest or unfair advantage; and
- (d) copies of any relevant documentation.

Subject to the terms of this RFQ, including section 5.2, all requests for advance rulings will be treated in confidence. If any Person, including any Respondent or current or prospective Respondent Team Member or advisor or consultant, becomes a Restricted Party, it may be listed in an Addendum to this RFQ or in subsequent Evergreen Line Selection Process documents as a Restricted Party.

5.11.6 The Province May Request Advance Rulings

The Province may independently seek advance rulings from the Conflict of Interest Adjudicator if Persons who may be Restricted Parties, or if actual, potential or perceived conflicts of interest or unfair advantage are brought to or otherwise come to the attention of or are identified by the Province. If the Province seeks an advance ruling it will endeavour to provide the Conflict of Interest Adjudicator with relevant information in its possession, including relevant information in its possession about the participation of the subject Person in the Project or other circumstances that may render such Person a Restricted Party. The Province will give notice to the Person that is the subject of the request for an advance ruling so that it can make its own submission to the Conflict of Interest Adjudicator.

5.11.7 Relationships

Without limiting section 5.7, the Province in its discretion at any time and from time to time may notify either or both of the relevant Respondents that they are ineligible to participate or continue participating in the Evergreen Line Selection Process if a Connection is identified between them or any of their respective Respondent Team Members, unless the Province is satisfied in its discretion that the parties between whom the Connection has been identified are not sharing or able to share information nor coordinating or able to coordinate their activities in connection with the Evergreen Line Selection Process in a manner that may have the effect of materially adversely affecting the competitiveness or integrity of the Evergreen Line Selection Process. In the event that the Province is not so satisfied, the determination as to whether either or both of the relevant Respondents, or which of the relevant Respondents, are ineligible to participate or continue participating in the Evergreen Line Selection Process may be made by the Province on any basis that the Province in its discretion considers appropriate and to be solely in the best interest of the Province or the Evergreen Line Selection Process.

A Respondent or Respondent Team Member or a prospective Respondent or Respondent Team Member who has any concerns, whether before or after the Closing Time, regarding whether a Connection exists is to make full disclosure of the possible Connection to the Province upon becoming aware of the relevant circumstances giving rise to the possible Connection. The Province may in its discretion provide an assessment or, at its option, the Province may seek an advance ruling on the matter from the Conflict of Interest Adjudicator.

In making its full disclosure, a Respondent or Respondent Team Member or a prospective Respondent or Respondent Team Member is to submit to the Contact Person by email, hand or courier delivery or facsimile all relevant information and documentation, including the following information and documentation:

- (a) names and contact information of the Respondent or Respondent Team Member or prospective Respondent or Respondent Team Member making the disclosure and the other relevant Respondent or Respondent Team Member;
- (b) a detailed description of the relationship or other circumstances that may constitute a Connection;

- (c) a detailed description of the steps taken to date and future steps proposed to be taken to eliminate or mitigate any material adverse or potential material adverse effect of the Connection on the competitiveness or integrity of the Evergreen Line Selection Process; and
- (d) copies of any relevant documentation.

The Province may require additional information or documentation to demonstrate to the satisfaction of the Province in its discretion that no such Connection exists or, if it does, that measures satisfactory to the Province in its discretion have been or will be implemented to eliminate or mitigate any risk to the competitiveness or integrity of the Evergreen Line Selection Process.

A “Connection” for the purposes of this RFQ includes:

- (a) any connection arising directly or indirectly through the ownership or holding of shares or other equity interests, including the ownership or holding by a Respondent or any of its Respondent Team Members of shares or other equity interests in another Respondent or any of its Respondent Team Members and including the ownership or holding by any Person, whether direct or indirect, of shares or other equity interests in more than one Respondent or Respondent Team Members of more than one Respondent; provided that the ownership or holding of shares or other equity interests which does not confer or result in, and which could not reasonably be considered to confer or result in, the ability to influence the activities of the relevant Respondent(s) or Respondent Team Member(s) in connection with the Evergreen Line Selection Process will not be considered to fall within this paragraph (a);
- (b) any comparison, transfer or exchange of knowledge or information in relation to the Project or the Evergreen Line Selection Process or potential for the comparison, transfer or exchange of such knowledge or information, whether direct or indirect including by way of common directors, officers, employees, consultants, advisors, agents or representatives or any other arrangement, between a Respondent or any of its Respondent Team Members and another Respondent or any of its Respondent Team Members; or
- (c) any other connection or relationship between a Respondent or any of its Respondent Team Members and another Respondent or any of its Respondent Team Members which the Province in its discretion considers has or may have the effect of materially adversely affecting the competitiveness or integrity of the Evergreen Line Selection Process.

5.12 Fairness Reviewer

The Province has appointed a Fairness Reviewer with responsibility to review the evaluation process undertaken pursuant to this RFQ and the Province’s process for the selection of Short-listed Respondents. The Fairness Reviewer will provide the Province with a written report at the end of the RFQ phase.

The Fairness Reviewer will be provided full access to all documents and information related to the evaluation process undertaken and other activities associated with this RFQ, as may be required by the Fairness Reviewer.

5.13 No Representation for Accuracy of Information

None of the Province, TransLink, Partnerships BC or any of their respective representatives, agents, consultants or advisors makes any representation or warranty, or has any liability or responsibility whatsoever with respect to, the accuracy, reliability, sufficiency, relevance or completeness of any of the information set out in this RFQ or its appendices (as amended from time to time) or in the RFQ Data DVD or in any other background or reference information or documents made available to Respondents pursuant to or in connection with this RFQ.

Qualification Responses are to be prepared and submitted solely on the basis of information independently obtained and verified by each Respondent, and on the basis of the Respondent's independent investigations, examinations, knowledge, analysis, interpretation, information and judgment, rather than in reliance on information provided in or pursuant to or in connection with this RFQ or on the Respondent's analysis or interpretation of any such information.

Nothing in this RFQ or otherwise relieves Respondents from responsibility for undertaking their own investigations and examinations and developing their own analysis, interpretations, opinions and conclusions with respect to the matters set out or referred to in this RFQ and the preparation and delivery of their Qualification Responses.

6 DEFINITIONS

In this RFQ the following terms have the meanings set out as corresponding to those terms:

“Addenda” means the documents expressly identified as addenda and issued by the Province to Respondents in accordance with this RFQ or to Proponents in accordance with the RFP, and **“Addendum”** means any one of such documents.

“Alignment” means the physical alignment of the Evergreen Line as shown in the drawings referred to in the last paragraph of section 1.2 of this RFQ, as such physical alignment may be revised from time to time by the Province.

“Appendix” means an Appendix to this RFQ.

“ATC system” means the automatic train control system for the Evergreen Line.

“Authorized Signatory” or **“Authorized Signatories”** of a Respondent or Respondent Team Member or any other Person means the person(s) or firm(s) having the authority to legally bind the Respondent or Respondent Team Member or other Person.

“**BCEAA**” means the *Environmental Assessment Act* (British Columbia).

“**BCTFA**” means the BC Transportation Financing Authority, a corporation continued under the *Transportation Act* (British Columbia).

“**Certificate and Declaration Form**” means the form set out in Appendix C to this RFQ.

“**Change**” includes, in respect of a Respondent or Respondent Team or Respondent Team Member, or in respect of a Proponent or Proponent Team or Proponent Team Member, a change in ownership (including by way of shareholdings, ownership of interests or units in a general or limited partnership or otherwise) or control or a redesignation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of any of them, and “**Changed**” has a corresponding meaning.

“**Change Process**” means the Change process described in section 5.9 of this RFQ.

“**Claims**” includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including indirect and consequential losses), damages, remuneration, compensation, costs, expenses, grievances, executions, judgments, obligations, liabilities (including those relating to or arising out of loss of opportunity or loss of anticipated profit), rights and demands whatsoever, whether actual, pending, contingent or potential, whether express or implied, whether present or future and whether known or unknown, and all related costs and expenses, including legal fees on a full indemnity basis, howsoever arising, including pursuant to law, equity, contract, tort, statutory or common law duty, or to any actual or implied duty of good faith or actual or implied duty of fairness, or otherwise.

“**Closing Location**” means the location identified as the Closing Location in the Summary of Key Information, as such location may be amended from time to time by Addendum to this RFQ.

“**Closing Time**” means the time and date specified as the Closing Time in the Summary of Key Information, as such time and date may be amended from time to time by Addendum to this RFQ.

“**Confidentiality Agreement**” means an agreement substantially in the form set out in Appendix E to this RFQ.

“**Confidential Information**” has the meaning given to it in the Confidentiality Agreement.

“**Conflict of Interest Adjudicator**” means the Conflict of Interest Adjudicator described in section 5.11.4 of this RFQ.

“**Connection**” has the meaning given to it in section 5.11.7.

“**Contact Person**” means the individual identified as the Contact Person in the Summary of Key Information, or any substitute or alternate individual from time to time identified by Addendum to this RFQ.

“CPR” means Canadian Pacific Railway Company and its affiliates.

“**Definitive Project Agreement**” means the documentation forming part of the RFP and comprising the Draft Project Agreement as revised and amended by Addenda and delivered to the Proponents in accordance with the RFP.

“**Draft Project Agreement**” means the form of Project Agreement entitled “Draft Evergreen Line Project Agreement” issued as part of the RFP.

“**Environmental Assessment Application**” means the application for environmental review submitted by the Province in connection with the Project pursuant to the BCEAA, as amended and supplemented from time to time.

“**Evaluation Criteria**” means the Evaluation Criteria described in Appendix A of this RFQ.

“**Evergreen Line**” means the entire advanced light rapid transit system to be designed, constructed, supplied, tested and commissioned in accordance with the Project Agreement.

“**Evergreen Line Selection Process**” means:

- (a) the procurement process for the Project and any part or phase or phases of the procurement process, and includes this RFQ, the Proponent Agreement, the RFP, any and all processes relating to this RFQ and the RFP, workshops, topic meetings, any additional meetings and any consultations, meetings and participation relating to or arising from any workshops, topic meetings or additional meetings, other consultative and facilitative/facilitated processes including processes relating to procurement of the ATC system, relationship review processes including processes conducted and reports, determinations, rulings, assessments and opinions issued by the Fairness Reviewer or the Conflict of Interest Adjudicator or by the Province or committees of the Province pursuant to any relationship review process or policies referenced in this RFQ or the RFP, processes and decisions and determinations made with respect to Changes, and the consultations, discussions, negotiations, closings and settling of agreements and documents relating to the Project; and
- (b) activities, participation, continued participation, waivers, evaluation, inclusion, exclusion, determinations, opinions, rulings, reports, comments, advice, notices including notices of ineligibility, and decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Response, Proposal, Conforming Proposal or any other proposals, whether conforming or otherwise,

involving the Province, the Conflict of Interest Adjudicator, the Fairness Reviewer, any relationship review committee of the Province, any or all Respondents, Respondent Teams or Respondent Team Members, any or all Proponents, Proponent Teams or Proponent Team Members, or any of their respective

contractors, subcontractors, directors, officers, employees, consultants, advisors or agents, or any other Person, in connection with the matters described in paragraphs (a) and (b) of this definition.

“**Fairness Reviewer**” means the Fairness Reviewer described in section 5.12 of this RFQ.

“**Financial Close**” means the date on which the Project Agreement is entered into between the Province and the Primary Contractor and the financing arrangements contemplated by the Project Agreement are completed and all conditions precedent to the drawdown of funds under such arrangements are satisfied and such funds are available to be drawn down.

“**Financial Sponsor**” means an equity owner or other related entity providing financial support to a Respondent or Key Firm by way of guarantee or commitment to provide equity or dedicated credit facilities to support the participation by the Respondent or Key Firm in the Evergreen Line Selection Process and the Project as described in the Respondent’s Qualification Response.

“**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia).

“**Key Firm**” means an entity or entities exclusive to one Respondent Team identified by a Respondent in its Qualification Response to have primary responsibility for the performance of one or more of the Key Project Activities in the event that the Respondent becomes the Primary Contractor. A Key Firm may be a Respondent, an entity comprised in a Respondent or a subcontractor or consultant to a Respondent.

“**Key Individual**” means an individual exclusive to one Respondent Team identified by a Respondent in its Qualification Response to hold a Key Position in the event that the Respondent becomes the Primary Contractor. A Key Individual may be an employee, subcontractor or consultant of a Respondent or a Key Firm. The same individual is not to be nominated to more than one Key Position.

“**Key Position**” means each of the following positions:

- (a) Design-Build Director;
- (b) Design Manager;
- (c) Construction Manager; and
- (d) Systems Manager;

and such other positions as may be specified as being Key Positions in subsequent phases of the Evergreen Line Selection Process, including the RFP phase.

“**Key Project Activities**” means the following key activities involved in carrying out the Project:

- (a) Project management;

- (b) Civil works design;
- (c) Civil works construction;
- (d) Systems design;
- (e) Systems construction/installation;
- (f) Integration and configuration of Project components including systems and subsystems; and
- (g) Testing and commissioning,

and such other activities as may be specified as being Key Project Activities in subsequent phases of the Evergreen Line Selection Process, including the RFP phase.

“Nominated Projects” means those projects, relevant and comparable to the Project, that a Respondent includes in its Qualification Response to demonstrate the strength and relevance of its Respondent Team experience and capabilities as related to the Evaluation Criteria.

“Partnerships BC” means Partnerships British Columbia Inc.

“Person” means an individual, corporation, partnership, joint venture, consortium, association, trust, pension fund or union and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual and the receivers and administrators of a corporation.

“Preferred Proponent” means the Proponent, if any, selected as Preferred Proponent by the Province as part of the Evergreen Line Selection Process, as the Preferred Proponent may be Changed from time to time in accordance with and subject to the Change Process.

“Primary Contractor” means the entity or entities that enter into the Project Agreement for the delivery of the Project.

“Project” or **“Evergreen Line Rapid Transit Project”** means the activities, objectives and improvements described in Section 1 of this RFQ.

“Project Agreement” means the agreement or agreements, if any, entered into by the Province and the Primary Contractor for the delivery of the Project.

“Proponent” means a Short-listed Respondent, as the Proponent may be Changed from time to time in accordance with and subject to the Change Process.

“Proponent Agreement” means an agreement substantially in the form set out in Appendix G to this RFQ.

“Proponent Team” means, in the case of each Proponent, that Proponent and its Key Firms, Key Individuals and Financial Sponsors, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proponent Team Member” means a member of a Proponent Team, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proposal” means a proposal, including any of its component parts (technical and financial), that is submitted by a Proponent during the RFP phase of the Evergreen Line Selection Process in accordance with the RFP.

“Province” means Her Majesty the Queen in right of the Province of British Columbia.

“Qualification Response” means the documentation and information, including all clarifications, rectifications and more complete, supplementary and additional information or documentation, submitted by a Respondent in response to and in accordance with this RFQ, including from and after the Closing Time in response to any request of the Province.

“Receipt Confirmation” means a receipt confirmation substantially in the form set out in Appendix B to this RFQ.

“Relationship Disclosure Form” means the form set out in Appendix D to this RFQ.

“Request for Information” or “RFI” means a request for information as described in section 3.6 of this RFQ.

“Request for Proposals” or “RFP” means the request for proposals which may be issued by the Province as a phase of the Evergreen Line Selection Process, including all volumes, appendices and attachments, as amended from time to time by Addenda in accordance with the RFP.

“Request for Qualifications” or “RFQ” means this request for qualifications including all appendices and attachments, as amended from time to time by Addenda in accordance with this RFQ.

“Respondent” means any corporation, general partnership (acting through its partners), limited partnership (acting through its general partner), consortium or joint venture (acting through the legal entities comprising the consortium or joint venture) or trust (acting through its trustee) that submits a Qualification Response and, in the case of a partnership (general or limited) or a consortium or joint venture, includes each of the partners (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, in each case as any such entity may be Changed from time to time in accordance with and subject to the Change Process; provided that a Respondent may not be or include an individual acting in his or her capacity as such.

“Respondent Team” means, in the case of each Respondent, that Respondent and its Key Firms, Key Individuals and Financial Sponsors, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Respondent Team Member” means a member of a Respondent Team, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Respondent’s Representative” means the individual identified in the Receipt Confirmation submitted by a Respondent who is fully and duly authorized to represent the Respondent and all Respondent Team Members in any and all matters related to this RFQ and the Respondent’s Qualification Response.

“Responses to Respondents” or “RTRs” means the documents entitled “Response to Respondents” and issued by the Province through the Contact Person to respond to enquiries or RFIs or otherwise to provide any information, communication or clarification to Respondents or any of them, and **“Response to Respondents” or “RTR”** means any one of such documents.

“Restricted Party” means a Person who has participated or been involved in, or is currently participating or involved in:

- (a) the Evergreen Line Selection Process;
- (b) the design, planning or implementation of the Project;
- (c) any other relationship with the Province;

and as a result has an actual conflict of interest or may provide a material unfair advantage to any of the Respondents or their respective Respondent Team Members or may provide Confidential Information to any of the Respondents or their respective Respondent Team Members that is not, or would not reasonably be expected to be, available to the other Respondents or their respective Respondent Team Members, and includes, if the Person is a corporate entity or a partnership, the Person’s former and current directors, officers, employees and partners, as applicable, and further includes each of the Persons listed in section 5.11.2 of this RFQ and any other Persons that may, from time to time, be specifically identified by the Province as Restricted Parties, and **“Restricted Party”** means any one of such Persons.

“Revisions” means changes made by a Respondent to its Qualification Response, including a withdrawal of its Qualification Response, in accordance with this RFQ, and **“Revision”** means any one of such Revisions.

“RFQ Data DVD” means the Digital Video Disk (DVD) containing background data relating to the Project issued by the Province in connection with the RFQ phase of the Evergreen Line Selection Process.

“**Service Commencement**” means the placement of the Evergreen Line into revenue service as part of the SkyTrain System.

“**Short-listed Respondents**” means the Respondents (if any) designated by the Province as Short-Listed Respondents pursuant to this RFQ.

“**SkyTrain System**” means the SkyTrain advanced light rapid transit system presently operated by TransLink on its Millennium Line and Expo Line into which the Project, upon completion, is to be fully integrated.

“**Stipend**” means the sum described as the Stipend in section 2.3 of this RFQ.

“**Summary of Key Information**” means the page or pages having the same name and forming a part of this RFQ.

“**Termination Fee**” means the sum described as the Termination Fee in section 2.3 of this RFQ.

“**Thales**” means Thales Rail Signalling Solutions Inc., and includes any of its subsidiaries or affiliates who may be involved with the design or delivery of the ATC system.

“**TransLink**” means South Coast British Columbia Transportation Authority continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia), and includes any subsidiary as defined in the *South Coast British Columbia Transportation Authority Act*.

7 INTERPRETATION

The headings, captions and formatting in this RFQ are inserted for convenience only and do not form a part of this RFQ and in no way define, limit, alter or enlarge the scope or meaning of any provision of this RFQ.

References in this RFQ to “at the discretion”, “in its discretion”, “at its discretion”, “in the opinion”, “in its opinion” and “to the satisfaction of” or similar words or phrases when used in relation to the Province are to be interpreted as meaning the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion, opinion or satisfaction, as the case may be, of the Province.

In this RFQ, wherever the singular or masculine is used it is to be construed as including the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it is to be construed as including the singular or masculine, as the case may be, as the context may require.

Each Appendix attached to this RFQ is an integral part of this RFQ as if set out at length in the body of this RFQ.

All monetary amounts referred to in this RFQ are to lawful currency of Canada.

A reference in this RFQ to a statute, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof.

In this RFQ, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

Appendix A

APPENDIX A – QUALIFICATION RESPONSE GUIDELINES

Table of Contents

1. Qualification Response Guidelines
2. Evaluation Criteria
 - 2.1 Evaluation Framework
 - 2.2 Qualification Response Content Requirements

Form A - 1: Nominated Projects

Appendix A

1 Qualification Response Guidelines

Qualification Responses should:

- (a) Include all of the information requested in this Appendix A;
- (b) Follow the outline for the submission content structure provided in Table 2.2 of this Appendix A;
- (c) Be on 8.5” x 11” paper;
- (d) Have text with 1.5 line spacing and minimum 11 point font size;
- (e) Be clearly labeled on the outside of a sealed container with the following words:
 “RFQ – Evergreen Line Rapid Transit Project, RFQ Qualification Response”; and
 Respondent Name and return address; and
- (f) Be submitted in two packages, in accordance with Table 1.

Table 1 – Submission Packages

Package	Contents	Number of Copies
1	<ul style="list-style-type: none"> a. Original transmittal letter; b. Original Certificate and Declaration Form (Appendix C) signed by the Respondent; c. Original Relationship Disclosure Form (Appendix D) signed by the Respondent; d. Confidentiality Agreement (Appendix E) signed by the Respondent and all Respondent Team Members identified in the Qualification Response; and e. Original Letters of Commitment. 	One electronic copy, preferably in PDF format, and One original copy
2	Qualification Response (Section 2 of this Appendix A)	One electronic copy, preferably in PDF format, One unbound printed copy marked “Master” and 5 identical bound printed copies

Appendix A

2 Evaluation Criteria

2.1 Evaluation Framework

The Province will evaluate Qualification Responses by applying the Evaluation Criteria, including the weighting in Table 2.1, in accordance with each section of the Qualification Response content requirements outlined in Table 2.2.

Table 2.1 – Evaluation Framework and Criteria [subject to the provisions of this RFQ including sections 4.3 and 5.4]

Category	Evaluation Items	Weighting
Section 1	Each response should contain the following information:	
Introduction and Nominated Projects	1. Proposed Respondent Team;	N/A
	2. Contact information;	
	3. Certificate and Declaration Form;	
	4. Relationship Disclosure Form;	
	5. Confidentiality Agreement;	
	6. Letters of Commitment; and	
	7. Nominated Projects.	
Section 2	Strength and relevance of demonstrated experience and capability relating to:	
Respondent Team Experience and Capability	1. Infrastructure development experience;	10
	2. Project management;	15
	3. Design;	20
	4. Construction;	20
	5. Systems integration and configuration; and	20
	6. Key Individuals.	10
Section 3	Strength and relevance of demonstrated experience and capability relating to:	
Financial Capacity and Experience	1. Financial capacity; and	N/A
	2. Project financing experience.	5
Total		100

Appendix A

2.2 Qualification Response Content Format Structure and Requirements

Qualification Responses should include the section numbers and titles provided in Table 2.2 and should indicate how the information provided by the Respondent relates to the specified content requirements in Table 2.2.

Table 2.2 – RFQ Qualification Response Content Format Structure and Requirements

Section	Section Title	Content Requirements
1	Introduction and Nominated Projects	
1.1	Proposed Respondent Team	a. Provide the legal name(s) of each of the following: <ul style="list-style-type: none"> i) Respondent; ii) Financial Sponsors; iii) Key Firms; and iv) Key Individuals. b. Provide a short description of the Respondent and each Key Firm included in the Respondent Team (for publication of the teams short-listed for the RFP stage). c. Provide organization chart(s) describing all of the proposed major contractual relationships among the members of the Respondent Team including: <ul style="list-style-type: none"> i) Respondent; ii) Financial Sponsors; and iii) Key Firms. d. Provide Project management organization chart(s) showing the reporting relationships of the following: <ul style="list-style-type: none"> i) Senior Project management (including Key Individuals); ii) Management committee(s); and iii) Project board(s) (or their organizational equivalents).

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1.2	Contact Information	<p>Provide the following details for the Respondent's Representative:</p> <ul style="list-style-type: none"> a. Name; b. Employer; c. Mailing/Courier Address; d. Telephone numbers; e. Facsimile number; and f. Email address. <p><i>Please note: The Respondent's Representative will be the person to whom communications from the Contact Person regarding the RFQ will be directed.</i></p>
1.3	Certificate and Declaration Form	Provide in form and content set out in Appendix C to this RFQ, signed by the Respondent.
1.4	Relationship Disclosure Form	Provide in form and content set out in Appendix D to this RFQ, signed by the Respondent.
1.5	Confidentiality Agreement	Provide substantially on the terms (in form and content) set out in Appendix E to this RFQ, signed by the Respondent and all Respondent Team Members identified in the Qualification Response.
1.6	Letters of Commitment	<p>Submit a letter of commitment from a senior officer of each Financial Sponsor and Key Firm which describes the degree of that party's commitment to:</p> <ul style="list-style-type: none"> a. Completing the Evergreen Line Selection Process; and b. Providing the necessary resources for the Project.
1.7	Nominated Projects	Submit up to ten Nominated Projects (combined maximum for Respondent Team) using a Form A-1 for each Nominated Project.

Appendix A

2	Respondent Team Experience and Capability	
2.1	Infrastructure Development Experience	<p>a. Describe the experience and capability of Respondent Team Members with the following based on up to five of the Nominated Projects that are demonstrated to be relevant to the Project focusing primarily on assembling and managing multi-disciplinary teams:</p> <ul style="list-style-type: none"> i) For the development and delivery of public transportation infrastructure projects, with emphasis on development and delivery of rapid rail transit systems in urban areas as applicable; and ii) Managing complex design build contracts, including schedules, budgets and cost risks and interrelationships between project team members; <p>b. For each of the Nominated Projects referenced in (a), specifically discuss experience and capability of the relevant Respondent Team Members with the following with reference to a primary agreement (e.g. the Project Agreement):</p> <ul style="list-style-type: none"> i) The performance of the relevant Respondent Team Members in meeting their respective obligations, including obligations with respect to schedule and budget; and ii) The level of achievement of performance specifications, including any cured and uncured contractual defaults.
2.2	Project Management	<p>Describe the experience and capability of Respondent Team Members based on up to five Nominated Projects that are demonstrated to be relevant to the Project focusing primarily on project management experience with:</p> <ul style="list-style-type: none"> a. Large, fast tracked, multi-disciplinary projects, particularly design-build or public private partnership projects; b. Rapid rail transit projects in urban areas; c. Design and construction of bored tunnels; d. Design and construction of elevated guideways for rapid rail transit systems in urban areas; e. Integration and configuration of project components and systems; f. Traffic management in urban areas; g. Environmental management programs including design and construction activities; h. Quality management systems; and i. Stakeholder relations including government relations, relations with municipalities and utilities, traffic management communications, and public consultation and community relations.

Appendix A

2.3	Design	<p>Describe the experience and capability of Respondent Team Members with the following based on up to five Nominated Projects that are demonstrated to be relevant to the Project focusing primarily on design experience with:</p> <ul style="list-style-type: none"> a. Large, fast tracked, multi-disciplinary projects, particularly design-build or public private partnership projects; b. Structures and foundations of elevated and at-grade guideways; c. Bored tunnels; d. Trackwork, traction power, train control systems, communications systems and fire and life safety systems for rapid rail transit systems and in particular automated, driverless rapid rail transit systems; and e. Rapid rail transit stations.
2.4	Construction	<p>Describe the experience and capability of Respondent Team Members with the following based on up to five Nominated Projects that are demonstrated to be relevant to the Project focusing primarily on construction experience with:</p> <ul style="list-style-type: none"> a. Large, fast tracked, multi-disciplinary projects, particularly design-build or public private partnership projects; b. Structures and foundations of elevated and at-grade guideways; c. Projects that involved construction of rapid rail transit systems through urban areas; d. Traffic management for projects involving long linear alignments through urban areas; e. Bored tunnels; f. Construction along and over heavy rail corridors; and g. Sequencing, scheduling and logistics of rapid rail transit construction projects.
2.5	Systems Integration and Configuration	<p>Describe the experience and capability of Respondent Team Members with the following based on up to five Nominated Projects that are demonstrated to be relevant to the Project focusing primarily on experience with:</p> <ul style="list-style-type: none"> a. Installation, integration and configuration of project components, systems and subsystems; b. Automated, driverless rapid rail transit systems; c. Fire and life safety systems for rapid rail transit systems d. Integration of a new extension with an existing operating rapid rail transit system; e. Permitting and regulatory approvals including operating permits for rapid rail transit systems; and f. Testing and commissioning of rapid rail transit systems and in particular automated, driverless rapid rail transit systems;

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2.6	Key Individuals	<p>Provide comprehensive resumes including references for the following Key Individuals as identified in the project organization chart(s):</p> <ul style="list-style-type: none"> a. Design-Build Director ; b. Design Manager; c. Construction Manager; and d. Systems Manager. <p>The resumes should describe their degree of involvement with management of the development, design and construction phases of large, fast tracked, complex projects, particularly design-build or public private partnership projects.</p>
3 Financial Capacity and Experience		
3.1	Financial Capacity	<p>Demonstrate the financial capacity of the Respondent Team by providing the following in the case of the Respondent, each Financial Sponsor and each Key Firm:</p> <ul style="list-style-type: none"> a. Annual audited financial statements or, if annual audited financial statements are not available, equivalent financial information for each of the last three fiscal years; b. Interim quarterly financial statements since the last annual statement; c. Details of any material events that may affect the party’s current financial standing since the last financial statements provided; d. Details of credit rating(s); and e. Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation or proceedings in the last three fiscal years. <p>Provide a description of the Respondent’s proposed approach to financing the Project, including but not limited to a description of potential capital structure, potential funding sources and, if it is anticipated that performance security would be provided in favour of lenders as part of the financing, a description of the type and amount of security contemplated.</p> <p>The information provided in response to this section should be sufficient to demonstrate that the Respondent has the ability to finance completion of the Project and that each member of the Respondent Team (other than Key Individuals) is financially viable and has the financial capacity to fulfill its obligations in respect of the Project.</p>
3.2	Project Financing Experience	<p>Describe the experience and capability of the Respondent Team in securing construction or other similar financing based on up to three Nominated Projects in which Respondent Team Members secured construction or other similar financing that were completed within the last five years and that are demonstrated to be relevant to the Project. This description should include, but not be limited to, a description of the amount, term and types of financing used.</p>

Appendix A

Form A-1: Nominated Project Details

(Maximum 3 pages in length per project)

Respondent _____

Respondent Team Member(s) _____

Project number _____ (sequentially numbered 1 to 10)

Item	Notes to Respondents
Name of project	<i>Details including official project name and contract number</i>
Location of project	<i>Country, province/state, rail line/ highway/road/ facility, site or project extents</i>
Client organization	<i>Organization name</i>
Reference contact details	<i>Key client contacts (individuals), name, title, role, telephone numbers, facsimile number, email addresses, mailing address and preferred language of correspondence. By providing this information you are authorizing the Province or the Province’s representatives to contact these individuals for all purposes, including to gather information and documentation, in connection with the RFQ.</i>
Contract period	<i>Contract commencement date, end of construction date and contract end date</i>
Time period of involvement	<i>Commencement date and duration</i>
Description of project	<i>Capital value, scope and complexity</i>
Current status of project	<i>Describe the current status of project relative to key milestone events.</i>
Contract Model	<i>Contract structure i.e. design-build, public private partnership, etc.</i>
Project Setting	<i>Urban/rural</i>
Role(s) on project	<i>Role, duties and responsibilities of Respondent Team Member(s)</i>
Other information	<i>Any information the Respondent considers relevant to the Evaluation Criteria</i>

Appendix B

APPENDIX B – RECEIPT CONFIRMATION FORM

RECEIPT CONFIRMATION

Evergreen Line Rapid Transit Project
Request for Qualifications

To receive the RFQ Data DVD and any further distributed information about or in connection with this Request for Qualifications, please execute and deliver this Receipt Confirmation Form to the attention of the Contact Person at:

Evergreen Line Rapid Transit Project
550 – 925 West Georgia Street
Vancouver, BC V6C 3L2

Email: EvergreenDBF@gov.bc.ca

Fax: 604-660-8286

RESPONDENT CONTACT INFORMATION

NAME OF RESPONDENT (THE “RESPONDENT”): _____

STREET ADDRESS: _____

CITY _____ POSTAL/ZIP CODE: _____

PROVINCE/STATE: _____ COUNTRY: _____

MAILING ADDRESS, IF DIFFERENT: _____

FAX: (_____) _____ TELEPHONE: (_____) _____

RESPONDENT’S REPRESENTATIVE: _____

E-MAIL ADDRESS: _____

Unless it can be sent by fax or e-mail, please send us any further correspondence about this Request for Qualifications by:

COURIER COLLECT COURIER Name and Account No.: _____

MAIL (default if neither box checked)

Appendix B

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged by the Respondent, the Respondent represents, warrants and agrees as follows:

The Respondent represents and warrants that:

- (a)** the individual identified as the Respondent's Representative in this Receipt Confirmation is a duly authorized signatory of the Respondent and has full power and authority to represent and act on behalf of the Respondent in any and all matters related to the Request for Qualifications and the Qualification Response, including but not limited to providing clarifications and additional information pursuant to the Request for Qualifications; and
- (b)** the Respondent has received a full and complete copy of the RFQ, including, without limitation, all Appendices attached thereto.

The Respondent makes these representations and warranties with the knowledge and intention that the Province will rely upon such representations and warranties.

The Respondent agrees that it is bound by and will comply with, and will cause each of its Respondent Team Members to be bound by and comply with, the terms of the Form of Confidentiality Agreement set out in Appendix E to the Request for Qualifications, which terms are incorporated by reference and form an integral part of this Receipt Confirmation.

Unless otherwise expressly defined, the capitalized terms used in this Receipt Confirmation have the meanings given to them in the Request for Qualifications for the Project.

This Receipt Confirmation is executed the ____ day of _____, 2010.

<NAME OF RESPONDENT>

[insert appropriate signature block(s) for Respondent]

Execution Instructions

This Receipt Confirmation is to be duly executed by the "Respondent" in accordance with the definition of that term in section 6 of the RFQ. It is the responsibility of the Respondent to ensure that it and, where applicable, each of its constituent entities has been properly identified by its legal name in this Receipt Confirmation and has duly executed this Receipt Confirmation, and the Province may in its discretion request an opinion from the Respondent's legal counsel to that effect.

Appendix C

APPENDIX C – CERTIFICATE AND DECLARATION FORM

[Respondent's Letterhead]

CERTIFICATE AND DECLARATION

**To: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the "Province")
Evergreen Line Rapid Transit Project
550 – 925 West Georgia Street
Vancouver, BC V6C 3L2**

**Re: Evergreen Line Rapid Transit Project:
Request for Qualifications entitled "Evergreen Line Rapid Transit Project Request for Qualifications", as amended in accordance with its terms (the "RFQ"), for the Evergreen Line Rapid Transit Project
<insert Respondent name> Qualification Response (the "Qualification Response Submission")**

I, **<insert name>**, in my capacity as **<insert title>** of **<insert name of Respondent>**, on behalf of the Respondent and each of the other Respondent Team Members as listed in Exhibit 1 to this Certificate and Declaration:

1. hereby unconditionally and irrevocably represent, warrant, certify and declare from and after the date of this Certificate and Declaration in connection with the RFQ, the Evergreen Line Selection Process and the Qualification Response (as herein defined), including any consideration and evaluation of the Qualification Response, that:
 - (a) I am duly authorized to deliver this Certificate and Declaration on behalf of the Respondent and each of the other Respondent Team Members;
 - (b) all clarifications, rectifications and more complete, supplementary, replacement and additional information and documentation delivered by the Respondent from and after the Closing Time in response to any request of the Province in accordance with the RFQ are incorporated into and form part of the Qualification Response Submission, which Qualification Response Submission together with such clarifications, rectifications and more complete, supplementary, replacement and additional information and documentation is herein referred to as the "Qualification Response";
 - (c) all statements made in the Qualification Response are and will be deemed to be representations and warranties of the Respondent and each of the other Respondent Team Members and this Certificate and Declaration is in addition to and does not

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- limit the representations and warranties made by delivery of the Qualification Response;
- (d) the Respondent and each of the other Respondent Team Member has received, reviewed, read and understood the RFQ and this Certificate and Declaration and authorized and consented to the delivery of the Qualification Response and the execution and delivery of this Certificate and Declaration;
 - (e) in preparing and delivering the Qualification Response the Respondent has complied with all applicable laws and regulations, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such Person and to the submission of such information to the Province as part of the Qualification Response for the purposes of the Qualification Response, the RFQ and the Evergreen Line Selection Process, or any of them;
 - (f) the Qualification Response has been prepared and delivered without collusion, comparison of information or arrangement with any other respondent or any of its respondent team members or any of their respective directors, officers, employees, consultants, advisors, agents or representatives or fraud and in fair competition, including in fair competition with other respondents and respondent teams and prospective respondents and respondent teams;
 - (g) the Respondent and each of the other Respondent Team Members has had sufficient time, opportunity and resources to investigate and consider and has investigated and considered and satisfied itself as to conditions and risks relating to the Project, the RFQ, the Evergreen Line Selection Process and the Qualification Response, and the Qualification Response is based solely and exclusively in reliance on the independent investigations, verifications, assessments, experience, interpretation, knowledge, information, analysis and judgment undertaken, obtained or formed by or on behalf of the Respondent or other Respondent Team Members and not in reliance on information provided through or in connection with the Project Brief, the RFQ including the RFQ Data DVD or the Evergreen Line Selection Process;
 - (h) the members of the Respondent Team are the entities listed in Exhibit 1 to this Certificate and Declaration;
 - (i) neither the Respondent nor any of the other Respondent Team Members has discussed or communicated, directly or indirectly, with any other respondent or its respondent team members or any of their respective directors, officers, employees, consultants, advisors, agents or representatives regarding the preparation, content or presentation of their submissions, or any part thereof, relating to the RFQ or the Evergreen Line Selection Process;
 - (j) except as has been fully disclosed in writing to and consented to by the Province and any conditions corresponding to such consent having been and continuing to be

Appendix C

- satisfied, there is no Connection between the Respondent or any other Respondent Team Member and any other respondent or its respondent team members;
- (k) to the best of the knowledge of the Respondent and each of the other Respondent Team Members there has not been and as of the date of this Certificate and Declaration there is not any conflict of interest, actual or potential, that exists or may reasonably be expected to arise in the future with respect to the preparation and delivery of the Qualification Response;
 - (l) neither the Respondent nor any of the other Respondent Team Members has had access to or has availed itself of any confidential information of the Province, other than confidential information disclosed by the Province to all respondents, in connection with the preparation and delivery of the Qualification Response;
 - (m) neither the Respondent nor any of the other Respondent Team Members is or has hired, retained or utilized the services of any Restricted Party, except as previously disclosed in writing to the Province and consented to in writing by the Province, and in respect of such disclosure and consent, if any, any conditions imposed by the Province to the granting of such consent have been and continue to be satisfied; and
 - (n) except as detailed in writing and attached to this Certificate and Declaration as Exhibit 2, neither the Respondent nor any of the other Respondent Team Members has knowledge of any actions, suits or proceedings in excess of \$10 million pending or, to the best of the knowledge of the Respondent and the applicable Respondent Team Member, threatened against or affecting any of them in law or in equity or before or by any foreign, federal, provincial, municipal or other governmental department, court, commission, board, bureau, or agency, or before or by an arbitrator or arbitration board which, if adversely determined, could have a material adverse effect on the solvency, liquidity or financial condition of the Respondent or Respondent Team Member;

2. hereby:

- (a) acknowledge that the Province may or may cause to be undertaken, in connection with the Qualification Response, the RFQ and the Evergreen Line Selection Process, or any of them, any one or more of the reference, credit and other checks, independent verifications and background investigations described in the RFQ, including criminal record investigations, credit enquiries, litigation searches, bankruptcy registrations and taxpayer information investigations, on all or any of the Respondent and the other Respondent Team Members (collectively, the “Investigations”); and
- (b) irrevocably consent to and authorize the Province and the authorized representatives of the Province to undertake any and all such Investigations; and

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3. hereby acknowledge that the Qualification Response, upon submission to the Province, becomes the property of the Province.

The representations, warranties, certifications, acknowledgements and consents set out in this Certification and Declaration are true and are made with the knowledge and intention that the Province will rely on them in accepting and evaluating the Qualification Response and that despite any prior or subsequent investigation the Province will be deemed to have relied upon them.

Unless otherwise expressly defined, the capitalized terms used in this Certificate and Declaration have the meanings given to them in the RFQ.

THIS CERTIFICATE AND DECLARATION is dated as of the <> day of <>, 20<>.

<NAME OF RESPONDENT>

Per:

Authorized Signatory

Name:

Title:

Appendix C

Exhibit 1 to Appendix C: Respondent Team

Respondent Team

Name	Address	Respondent, Key Firm, Key Individual or Financial Sponsor

Appendix D

APPENDIX D – RELATIONSHIP DISCLOSURE FORM

**To: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)
Evergreen Line Rapid Transit Project
550 – 925 West Georgia Street
Vancouver, BC V6C 3L2**

**Re: Evergreen Line Rapid Transit Project:
Request for Qualifications entitled “Evergreen Line Rapid Transit Project Request for Qualifications”, as amended in accordance with its terms (the “RFQ”), for the Evergreen Line Rapid Transit Project
<insert Respondent name> Qualification Response (the “Qualification Response”)**

The Respondent hereby declares, on its own behalf and on behalf of each of its Respondent Team Members, that:

1. the Respondent has undertaken the necessary and due searches and inquiries in connection with and to verify the accuracy of the information set out in this Relationship Disclosure Form;
2. the Respondent and each of the other Respondent Team Members has reviewed the list of Restricted Parties set out in the RFQ and as of the date of this Relationship Disclosure Form neither the Respondent nor any of the other Respondent Team Members has any former or current relationship with:
 - (a) any former or current officials, employees, representatives or elected officials of the Province; or
 - (b) any former or current officers, directors, employees or representatives of any individual, corporation, partnership or other entity, or the entity itself, that have been involved in the Evergreen Line Selection Process or the design, planning or implementation of the Project, or
 - (c) any Restricted Party or any current or former employee, shareholder, director or officer of any Restricted Party,other than as identified in Form D-1 to this Relationship Disclosure Form.

The Respondent makes the declarations set out in this Relationship Disclosure Form with the knowledge and intention that the Province will rely upon and, despite any prior or subsequent investigation by the Province, will be deemed to have relied upon these declarations in connection with the Qualification Response, including any consideration and evaluation of the Qualification Response, pursuant to the RFQ.

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Unless otherwise expressly defined, the capitalized terms used in this Relationship Disclosure Form have the meanings given to them in the RFQ.

THIS DECLARATION is dated as of the <> day of <>, 20<>.

<NAME OF RESPONDENT>

[insert appropriate signature block(s) for Respondent]

Execution Instructions

This Relationship Disclosure Form is to be duly executed by the “Respondent” in accordance with the definition of that term in section 6 of the RFQ. It is the responsibility of the Respondent to ensure that it and, where applicable, each of its constituent entities has been properly identified by its legal name in this Relationship Disclosure form and has duly executed this Relationship Disclosure Form, and the Province may in its discretion request an opinion from the Respondent’s legal counsel to that effect.

Appendix D

Form D-1 of Appendix D – ATTACHMENT 1 TO RELATIONSHIP DISCLOSURE FORM

Name of Restricted Party/Person	Details of the nature of the Respondent's or Respondent Team Member's relationship with the listed Restricted Party

Appendix E

APPENDIX E – CONFIDENTIALITY AGREEMENT FORM

EVERGREEN LINE RAPID TRANSIT PROJECT CONFIDENTIALITY AGREEMENT

IMPORTANT INSTRUCTIONS:

This Agreement is to be duly executed by the “Respondent” and each “Key Firm”, “Key Individual” and “Financial Sponsor” included in the “Respondent Team” in accordance with the definitions of those terms in section 6 of the RFQ. It is the responsibility of the Respondent to ensure that each such party and, where applicable, each entity included in each such party has been properly identified by its legal name in this Agreement and has duly executed this Agreement, and the Province may in its discretion request an opinion from the Respondent’s legal counsel to that effect.

THIS CONFIDENTIALITY AGREEMENT is made as of the <>day of <>, 2010

BY:

<> [*insert legal name(s) of Respondent*], having a place of business at <>

[where the Respondent is a partnership (general or limited) or a consortium or joint venture, include legal name and place of business of each partner (general or limited) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]
(the “Respondent”)

AND:

<> [*insert legal name of Key Firm*], having a place of business at <>

- and -

[replicate for each Key Firm. Where a Key Firm is a partnership (general or limited) or a consortium or joint venture, include legal name and place of business of each partner (general or limited) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]
(each a “Key Firm” and collectively the “Key Firms”)

AND:

<> [*insert legal name of Key Individual*], having a place of business at <>

- and -

[replicate for each Key Individual]
(each a “Key Individual” and collectively, the “Key Individuals”)

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AND:

<> [*insert legal name of Financial Sponsor*], having a place of business at <>

- and -

[replicate for each Financial Sponsor. Where a Financial Sponsor is a partnership (general or limited) or a consortium or joint venture, include legal name and place of business of each partner (general or limited) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(each a “Financial Sponsor” and collectively the “Financial Sponsors”)

(the Respondent, the Key Firms, the Key Individuals and the Financial Sponsors being herein collectively referred to as the “**Respondent Team**” and individually referred to as a “**Respondent Team Member**”)

IN FAVOUR OF:

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

WHEREAS:

- A. The Province has implemented the Evergreen Line Selection Process for the Project.
- B. The Evergreen Line Selection Process is anticipated to include a number of phases including a request for qualifications phase as described in the Request for Qualifications and a request for proposals phase that will likely be described in the Request for Proposals.
- C. The Respondent and each of the other Respondent Team Members acknowledges that the unauthorized use and disclosure of Confidential Information in connection with the Evergreen Line Selection Process may result in irreparable harm to the Province including by materially adversely impacting the actual and perceived integrity of the Evergreen Line Selection Process and therefore wishes to enter into, execute and deliver this Confidentiality Agreement in favour of the Province.

NOW THEREFORE, in consideration of the opportunity to participate in the Evergreen Line Selection Process and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the undersigned), each of the undersigned hereby covenants and agrees in favour of the Province as follows:

1. Interpretation

In this Agreement following terms have the following meanings:

“**Agreement**” means this agreement.

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“Confidential Information” means all documents, knowledge and information provided by the Province or any of its Representatives or a Third Party or any of its Representatives (in each case, the "Disclosing Party") to, or otherwise prepared or obtained by, a Recipient or any of its Representatives (the "Receiving Party"), whether before or after the date of this Agreement and whether orally, in writing or other visual or electronic form, in connection with or relevant to the Project, the RFQ, the RFP or the Evergreen Line Selection Process or any phase thereof including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Disclosing Party or prepared by the Receiving Party containing or based upon any such information. Notwithstanding the foregoing, Confidential Information does not include information which:

- (i) is or subsequently becomes available to the public, other than through a breach of this Agreement by the Receiving Party or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;
- (ii) is subsequently communicated to the Receiving Party by an independent third party, other than a Third Party, without breach of this Agreement and which third party did not receive such information directly or indirectly under obligations of confidentiality;
- (iii) was rightfully in the possession of the Receiving Party or was known to the Receiving Party before the date of this Agreement and did not originate, directly or indirectly, from the Disclosing Party (the onus of establishing which shall be on the Receiving Party);
- (iv) was developed independently by the Receiving Party without the use of any Confidential Information (the onus of establishing which shall be on the Receiving Party); or
- (v) is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law.

“Evergreen Line Selection Process” means the selection process implemented by the Province for the Project as described in the RFQ and RFP.

“Permitted Purposes” means evaluating the Project, preparing a Qualification Response or a Proposal and any other use permitted by this Agreement.

“Project” means the Evergreen Line Rapid Transit Project as described in the RFQ, as such description may be modified, supplemented, limited and expanded in the RFP and the Project Agreement.

“Proponent Agreement” means the Proponent Agreement attached as Appendix G to the RFQ.

“Proposal” means a Proposal as defined in the Proponent Agreement.

“Qualification Response” means the documentation and information, including all clarifications, rectifications and more complete, supplementary and additional information or documentation, submitted by the Respondent in response to and in accordance with the RFQ, including from and after the Closing Time specified in the RFQ in response to any request of the Province.

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“Recipient” means the Respondent and each other Respondent Team Member or other interested party who executes and delivers this Agreement in favour of the Province.

“Representative” means, as applicable, a director, officer, employee, agent, accountant, lawyer, consultant, financial adviser or subcontractor of a Recipient, the Province or a Third Party or any other person contributing to or involved with the preparation or evaluation of a Qualification Response or Proposal, as the case may be, or otherwise retained by a Recipient, the Province or Partnerships BC.

“Request for Proposals” or **“RFP”** means the request for proposals that may be issued by the Province in connection with the Project as contemplated in the RFQ, including all volumes, appendices and attachments thereto, as amended from time to time by the Province.

“Request for Qualifications” or **“RFQ”** means the document entitled “Evergreen Line Rapid Transit Project Request for Qualifications” issued by the Province on July 5, 2010 in connection with the Project, including all appendices and attachments thereto, as amended from time to time by the Province.

“Third Party” means a person which is not the Province, a Recipient or a Representative of the Province or a Recipient, which has provided Confidential Information to the Province, a Recipient or a Recipient’s Representative.

“Third Party Agreement” means an agreement between the Province and a Third Party with respect to Third Party Confidential Information.

“Third Party Confidential Information” means Confidential Information owned by a Third Party or in which a Third Party has an interest.

2. Confidentiality

Each Recipient will keep all Confidential Information, including Third Party Confidential Information, strictly confidential and will not without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, disclose or allow any of its Representatives to disclose, in any manner whatsoever, in whole or in part, or use or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purposes. Each Recipient will make all reasonable, necessary and appropriate efforts to safeguard the Confidential Information from disclosure to any other person, firm, corporation or other entity except as permitted in this Agreement, and will ensure that each of its Representatives agrees to keep such information confidential and to be bound by the terms contained herein. Without limiting any other requirement of this Agreement, in the case of Third Party Confidential Information, the Recipient will cause such Third Party Confidential Information to be kept confidential and used in accordance with this Agreement as well as with the terms and conditions of any pertinent Third Party Agreement of which the Recipient has knowledge.

3. Ownership of Confidential Information

The Province owns all right, title and interest in the Confidential Information and, except as may be otherwise agreed between the Province and any Third Party, in any Third Party Confidential Information.

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Subject to any disclosure requirements under applicable law, and except as permitted by this Agreement, each Recipient will keep all Confidential Information (other than Third Party Confidential Information) that the Recipient receives, has access to or otherwise obtains strictly confidential for a period of three years after the date of this Agreement and will not, without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, use, divulge, give, release or permit or suffer to be used, divulged, given or released any portion of the Confidential Information to any other person, firm, corporation or other entity for any purpose whatsoever. Subject to any disclosure requirements under applicable law, and except as permitted by this Agreement and any Third Party Agreement, each Recipient will keep all Third Party Confidential Information that the Recipient receives, has access to or otherwise obtains strictly confidential for a period of three years after the date of this Agreement or such longer period of time as may be required by the pertinent Third Party Agreement and will not, without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, and the Third Party as provided in the Third Party Agreement use, divulge, give, release or permit or suffer to be used, divulged, given or released any portion of the Third Party Confidential Information to any other person, firm, corporation or other entity for any purpose whatsoever.

4. Limited Disclosure

A Recipient may disclose Confidential Information only for Permitted Purposes to those of its Representatives who need to know the Confidential Information, and on the condition that all such Confidential Information be retained by each of those Representatives as strictly confidential in accordance with the terms of this Agreement. Each Recipient will notify the Province and, in the case of Third Party Confidential Information, the pertinent Third Party, on request, of the identity of each Representative to whom any Confidential Information has been delivered or disclosed.

5. Destruction on Demand

On written request of the Province or, in the case of Third Party Confidential Information, on written request of the Province and the Third Party, or either of them, each Recipient will promptly in accordance with such request deliver to the Province or the Third Party in accordance with such request or destroy all documents and copies thereof in its possession or control constituting or based on the Confidential Information and certify that delivery or destruction to the Province in writing in form and content satisfactory to the Province; provided, however, that a Recipient may retain one copy of any Confidential Information which it may be required to retain or furnish to a court or regulatory authority pursuant to applicable law, and in such case the terms and conditions of this Agreement will continue to apply in respect of such retained copy.

6. Acknowledgement of Irreparable Harm

Each Recipient acknowledges and agrees that the Confidential Information is proprietary and confidential and that the Province and/or a Third Party may be irreparably harmed if any provision of this Agreement

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or any pertinent Third Party Agreement were not performed, observed or complied with by the Recipient or any person or party to whom the Recipient provides or discloses Confidential Information, including any of the Recipient's Representatives, and that any such harm could not be compensated reasonably or adequately in damages. Each Recipient further acknowledges and agrees that the Province and, in the case of Third Party Confidential Information, the Province and the pertinent Third Party, and each of them, will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any of the provisions of this Agreement or any applicable Third Party Agreement by the Recipient or any of its Representatives or any Person to whom the Recipient or any of its Representatives provides or discloses Confidential Information, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Province and such Third Party, or either of them, may be entitled at law or in equity.

7. Waiver

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement by the Province or by the Province or any Third Party under a Third Party Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement or any Third Party Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

8. Waiver

On written request, the Recipient will execute and deliver or cause to be executed and delivered to the Province all such further documents, do or cause to be done all such further acts and things and give all such further assurances as in the opinion of the Province are necessary or advisable to give full effect to the provisions and intent of this Agreement or any Third Party Agreement. In addition, if requested by the Province, the Recipient will provide such written assurances as the Province or any Third Party may request to confirm and evidence that the Recipient is bound by any Third Party Agreement which is pertinent to any Third Party Confidential Information received by the Recipient or its Representatives.

9. Severability

If any portion of this Agreement is found to be invalid or unenforceable by law by a court of competent jurisdiction then that portion will be severed and the remaining portion will remain in full force and effect.

10. Enurement

This Agreement enures to the benefit of the Province and its assigns and binds each Recipient and its successors.

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11. Governing Law

This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia.

12. Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties to this Agreement will constitute a full, original and binding agreement for all purposes. Counterparts may be executed in original, faxed, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form. This Agreement may be delivered by hand, facsimile or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

IN WITNESS WHEREOF this Agreement has been duly executed by each of the undersigned as of the day and year first above mentioned.

RESPONDENT:

<> [insert legal name(s) and appropriate signature block(s) for Respondent]

KEY FIRMS:

<> [insert legal name and appropriate signature block for each Key Firm]

KEY INDIVIDUALS:

<>

FINANCIAL SPONSORS:

<> [insert legal name and appropriate signature block for each Financial Sponsor]

Appendix F

APPENDIX F – REQUEST FOR INFORMATION FORM

**Evergreen Line Rapid Transit Project
Request for Information / Clarification / Meeting**

Request Number: (Respondent name and sequential number)

Raised By: (contact name)

Date Raised:

Date by Which Response Requested:

Type of Request: Information Clarification Meeting
(please indicate with tick boxes)

Source of Query: (reference document section and date, if applicable)

Meeting:

Date:

Other:

REQUEST / QUERY (One query / request per sheet)

Do you request this query to be “Commercial in Confidence”? YES No

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FORM OF PROPONENT AGREEMENT**Note 1.0:**

This Agreement is to be duly executed by the “Respondent” and each “Key Firm”, “Key Individual” and “Financial Sponsor” included in the “Respondent Team” in accordance with the definitions of those terms in Schedule 1 to this Agreement. It is the responsibility of the Respondent to ensure that each such party and, where applicable, each entity included in each such party has been properly identified by its legal name in this Agreement and has duly executed this Agreement, and the Province may in its discretion request an opinion from the Respondent’s legal counsel to that effect. Subject to the provisions of the RFQ including sections 4.3 and 5.4, the failure to properly identify parties and to duly execute this Proponent Agreement or to provide any requested opinion may render the Respondent ineligible to participate in the Evergreen Line Selection Process, including to be identified as a short-listed respondent or to continue to participate after having been identified as a short-listed respondent

THIS PROPONENT AGREEMENT made as of the _____ day of _____, 2010.

B E T W E E N :

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

(the “Province”)

And:

<> [*insert legal name(s) of Respondent*], having a place of business at <>

[where the Respondent is a partnership (general or limited) or a consortium or joint venture, include legal name and place of business of each partner (general or limited) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Proponent”)

And:

<> [*insert legal name of Key Firm*], having a place of business at <>

- and -

[replicate for each Key Firm. Where a Key Firm is a partnership (general or limited) or a consortium or joint venture, include legal name and place of business of each partner (general or limited) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

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(each a “Key Firm” and collectively the “Key Firms”)

And:

<> **[insert legal name of Key Individual]**, having a place of business at <>

- and -

[replicate for each Key Individual]

(each a “Key Individual” and collectively, the “Key Individuals”)

And:

<> **[insert legal name of Financial Sponsor]**, having a place of business at <>

- and -

[replicate for each Financial Sponsor. Where a Financial Sponsor is a partnership (general or limited) or a consortium or joint venture, include legal name and place of business of each partner (general or limited) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(each a “Financial Sponsor” and collectively the “Financial Sponsors”)

WHEREAS:

- A. The Province has implemented the Evergreen Line Selection Process for the Evergreen Line Rapid Transit Project.
- B. The Evergreen Line Selection Process includes a request for qualifications stage, as described in the Request for Qualifications, and a request for proposals stage that will, among other things, enable proponent input and consultations and facilitate development of high quality, competitive proponent submissions.
- C. The Province has invited the Proponent to continue in the Evergreen Line Selection Process by proceeding to and participating in the request for proposals stage, subject to and in accordance with the terms of this Agreement.
- D. The Proponent wishes to continue in the Evergreen Line Selection Process by proceeding to and participating in the request for proposals stage, subject to and in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT the Province, the Proponent and each of the Key Firms, Key Individuals and Financial Sponsors, for good and valuable

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consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, agree as follows,

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Schedule 1 of this Agreement will apply wherever the defined terms appear in this Agreement.
- 1.2 If there are conflicts or inconsistencies between this Agreement and any part of the RFP, the provisions of this Agreement will prevail.

2.0 LEGAL OBLIGATIONS

- 2.1 Except for this Agreement, the Confidentiality Agreement and the contracts that are expressly identified as such and referenced in this Agreement (and then if and only to the extent set out in the express terms of this Agreement and of each such other contract), no legal obligations or duties, whether in contract, tort, statute or common law, including any actual or implied duty of good faith or actual or implied duty of fairness, or contracts of any kind whatsoever are intended to be formed under or to arise from or are formed under or arise from the Evergreen Line Selection Process or any part of the Evergreen Line Selection Process, including the RFQ or the RFP.
- 2.2 The Proponent and each of the other Proponent Team Members acknowledges and agrees that, notwithstanding any term of this Agreement, the Province is not in any way whatsoever obligated to continue with or complete any phase or stage of the Evergreen Line Selection Process and may in its sole discretion do any one or more of the following:
- (a) at any time, from time to time, for any reason whatsoever, including for reasons that the Province in its sole discretion considers to be in the interests of or advantageous to the Province, modify, including by limiting, expanding, replacing, substituting, extending, suspending, postponing or cancelling, any stage of the Evergreen Line Selection Process or the whole or any part or parts, including the scope, of the Project;
 - (b) by delivery of a Termination Notice to the proponents, at any time, for any reason whatsoever, including for reasons that the Province in its sole discretion considers to be in the interests of or advantageous to the Province, terminate the Evergreen Line Selection Process, including if the Province elects in its sole discretion not to continue negotiations with the Preferred Proponent to settle the Project Agreement or elects in its sole discretion not to execute and deliver the settled form of Project Agreement;
 - (c) not accept, review or evaluate any one or all of the Proposals;
 - (d) not select a Preferred Proponent;

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- (e) not offer any of the proponents the opportunity to enter into or award the Project Agreement to any proponent or at all;
 - (f) implement or issue any other procurement or other process for, or proceed in any other manner whatsoever, including using the Province's own forces, contractors or authorities, with the whole or any part or parts of the Project; and
 - (g) proceed, including in conjunction with any one or more of the activities, processes or works described in section 12.1, with all or any part of the design, construction, financing, operation or fare collection in respect of the whole or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project through any other procurement or other process of any kind whatsoever, including negotiation, or prosecution of works using the Province's own forces, contractors or authorities.

2.3 The Proponent and each of the other Proponent Team Members:

- (a) acknowledges that the Province has appointed the Conflict of Interest Adjudicator to make decisions and rulings and to provide advice and comment to the Province as to actual or perceived conflicts of interest, unfair advantage, restricted parties, exclusive parties and shared use Persons and other relationships involving participants and prospective participants in the Evergreen Line Selection Process, as may be described in the RFQ or the RFP, as the case may be;
- (b) agrees that the decisions and rulings of the Conflict of Interest Adjudicator are final and binding on the Proponent and each of the other Proponent Team Members and all Persons;
- (c) acknowledges and agrees that the Fairness Reviewer has been engaged with responsibility, as an independent observer, to review the development and implementation of the Evergreen Line Selection Process from a fairness perspective, including by participating in any or all aspects of the Workshops and Topic Meetings and other consultative, facilitative or facilitated processes in the Evergreen Line Selection Process, and to report thereon only to the Province, including by providing, on an ongoing basis, an objective opinion as to the fairness of the Evergreen Line Selection Process;
- (d) agrees to accept the reports, commentary and opinions of the Fairness Reviewer as a final determination of any issues of fairness with respect to the Evergreen Line Selection Process; and
- (e) acknowledges and agrees that the sole obligations of the Province are as and only to the extent expressly set out in Article 3 of this Agreement

3.0 STIPEND AND TERMINATION FEE**Stipend Conditions and Invoice**

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- 3.1** The Proponent will, subject to the terms of this Agreement and subject to the following conditions having been satisfied, be eligible to receive the Stipend in the manner set out in this Agreement:
- (a)** the Proponent has submitted a Conforming Proposal and has not withdrawn from the Evergreen Line Selection Process;
 - (b)** subject to subsection 3.1(c), the Province has not selected the Proponent as the Preferred Proponent;
 - (c)** if the Proponent was selected as Preferred Proponent, the Province has revoked its invitation and terminated negotiations with the Proponent as contemplated in the RFP Volume 1 and not proceeded with the Proponent to finalize and settle the Project Agreement;
 - (d)** the Province has not delivered notice of ineligibility to the Proponent in respect of the Evergreen Line Selection Process in accordance with the RFP or under section 7.1 of this Agreement;
 - (e)** the Proponent has executed and delivered and caused to be executed and delivered, as the case may be, each of the acknowledgments, transfers, waivers, licences, sublicences and assignments contemplated in Article 6;
 - (f)** the Proponent has attended and participated in each of the Workshops in accordance with the terms of this Agreement and of the RFP;
 - (g)** the Proponent has delivered a duly executed release and waiver substantially in the form attached as Schedule 6;
 - (h)** the Proponent has delivered, for purposes of reliance thereon by the Province, a duly executed certificate on behalf of the Proponent and each of the other Proponent Team Members, bearing the date of the earliest to occur of the event and date specified in section 3.2, and otherwise being in form and content satisfactory to the Province in its sole discretion, certifying that the Proponent and each of the other Proponent Team Members has observed and satisfied and, as at the date of the certificate, continues to observe and satisfy all of the terms of the Evergreen Line Selection Process, including the RFQ, this Agreement and the RFP;
 - (i)** the Proponent and each of the other Proponent Team Members has observed and satisfied and continues to observe and satisfy all of the terms of the Evergreen Line Selection Process, including the RFQ, this Agreement and the RFP;
 - (j)** the Province has not delivered a Termination Notice; and
 - (k)** the Proponent has delivered the Stipend Invoice in accordance with section 3.2.

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- 3.2** The Proponent will, subject to each of the conditions listed in subsections 3.1(a) to (j) having been satisfied, deliver an invoice (the “Stipend Invoice”) to the Province confirming satisfaction of each of such conditions and requesting payment of the Stipend, by not later than 90 days after the earliest to occur of the following event and date:
- (a)** delivery of written notice from the Province to the Proponent of execution and delivery of the Project Agreement by all parties; and
 - (b)** the date that is 180 days after the Closing Time if the Province has not announced a Preferred Proponent.
- 3.3** The Province will, subject to the terms of this Agreement and provided that each of the conditions listed in section 3.1 has been satisfied, pay the Stipend to the Proponent not later than 30 days after receipt of the Stipend Invoice.

Termination Fee Conditions and Invoice

- 3.4** If the Province delivers a Termination Notice terminating the Evergreen Line Selection Process for reasons unrelated to the integrity of the Evergreen Line Selection Process, the Proponent will, subject to the terms of this Agreement and subject to the following conditions having been satisfied, be eligible to receive the Termination Fee in the manner set out in this Agreement:
- (a)** the Proponent has delivered a Conforming Proposal if the Termination Notice is issued after the Closing Time;
 - (b)** the Proponent has not withdrawn from the Evergreen Line Selection Process;
 - (c)** the Province has not delivered notice of ineligibility to the Proponent in respect of the Evergreen Line Selection Process in accordance with the RFP or under section 7.1 of this Agreement;
 - (d)** the Proponent has executed and delivered and caused to be executed and delivered, as the case may be, the Proposal and each of the acknowledgments, transfers, waivers, licences, sublicences and assignments contemplated in Article 6 of this Agreement;
 - (e)** the Proponent has attended and participated in each of the Workshops held before issuance of the Termination Notice, in accordance with the terms of this Agreement and the RFP;
 - (f)** the Proponent has delivered a fully and duly executed waiver and agreement substantially in the form attached as Schedule 4, and a duly executed release and waiver substantially in the form attached as Schedule 6;
 - (g)** the Proponent has delivered to the Province a full accounting with accompanying supporting documentation in sufficient detail to demonstrate to the satisfaction of

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the Province the actual and reasonable expenditures incurred by the Proponent to prepare the Conforming Proposal or, in the case of a Termination Notice being issued before the Closing Time, the Proposal up to the date of the Termination Notice;

- (h) the Proponent has delivered, for purposes of reliance thereon by the Province, a duly executed certificate on behalf of the Proponent and each of the other Proponent Team Members effective as of the date of the Termination Notice, and otherwise being in form and content satisfactory to the Province in its sole discretion, certifying that the Proponent and each of the other Proponent Team Members has observed and satisfied and, as at the date of the certificate, continues to observe and satisfy all of the terms of the Evergreen Line Selection Process, including the RFQ, this Agreement and the RFP.
 - (i) the Proponent and each of the other Proponent Team Members has observed and satisfied and continues to observe and satisfy all of the terms of the Evergreen Line Selection Process, including the RFQ, this Agreement and the RFP; and
 - (j) the Proponent has delivered the Termination Fee Invoice in accordance with section 3.5.
- 3.5** The Proponent will, subject to each of the conditions listed in subsections 3.4(a) to (i) having been satisfied, deliver an invoice (the “Termination Fee Invoice”) to the Province setting out in reasonable detail the expenditures referenced in subsection 3.4(g), by not later than 90 days after delivery by the Province to the Proponent of the Termination Notice referred to in section 3.4.
- 3.6** The Province will, subject to the terms of this Agreement and provided that each of the conditions listed in section 3.4 has been satisfied, pay the Termination Fee to the Proponent not later than 30 days after receipt of the Termination Fee Invoice.
- 4.0** **RELEASES AND WAIVERS**
- 4.1** Each of the Proponent and the other Proponent Team Members:
- (a) agrees that the Releasees and each of them will not under any circumstances be responsible or liable for or in respect of any Claims by any Person (including the Proponent or any other Proponent Team Member, including any Person claiming through any of them, or any of their respective contractors, sub-contractors, directors, officers, employees, consultants, advisors or agents);
 - (b) releases, acquits and forever discharges the Releasees and each of them from any and all Claims; and
 - (c) agrees that it will not bring and hereby waives any Claims against the Releasees and each of them in excess of an amount equivalent to the actual and reasonable

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out of pocket costs directly incurred and paid by the Proponent in preparing the Proposal to a maximum of:

- (i) the amount of the Stipend, if the Evergreen Line Selection Process has not been terminated by delivery of a Termination Notice; or
- (ii) the applicable amount set out as the Termination Fee that corresponds to such Termination Notice, if a Termination Notice is delivered by the Province;

for any matter whatsoever arising out of, in connection with or relating in any way to the Evergreen Line Selection Process or any one or more parts of the Evergreen Line Selection Process, including matters or issues contemplated or considered in the reports, opinions or commentary of the Fairness Reviewer, the decisions and rulings of the Conflict of Interest Adjudicator and the Derivative Activities, or any of them.

4.2 The Proponent and each of the other Proponent Team Members agrees that:

- (a) in no event will the Proponent be eligible to receive or the Province be obligated to pay both the Stipend and the Termination Fee, and that the payment of the Stipend or the applicable Termination Fee, as the case may be, operates to render the obligations of the Province under Article 3 exhausted, spent and extinguished; and
- (b) if the Proponent is eligible in accordance with the terms of this Agreement to receive either the Stipend or the Termination Fee, as the case may be, then payment by the Province to the Proponent of the Stipend or the applicable Termination Fee, as the case may be, will not be cumulative and in addition to, but will be deemed to be in substitution for and as full and final settlement of any Claim of the Proponent or any Proponent Team Member, including any Claim referenced in section 4.1.

4.3 The Proponent will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims brought by or on behalf of:

- (a) any present, former or prospective Proponent Team Member or Proponent Team Members against the Province or any other Releasee or Releasees, or
- (b) any Person as a result of any act or omission of the Proponent or any other Proponent Team Member;

arising out of, in connection with or relating in any way to the Evergreen Line Selection Process or any one or more parts of the Evergreen Line Selection Process, including matters or issues contemplated or considered in the reports, opinions or commentary of the Fairness Reviewer, the decisions and rulings of the Conflict of Interest Adjudicator and the Derivative Activities, or any of them, including in connection with the performance of the obligations of the Proponent and each of the other Proponent Team Members under this Agreement.

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- 4.4** The Proponent and each of the other Proponent Team Members accepts and agrees to be bound by the waivers, disclaimers, limitations of liability and indemnities delivered, or which will be delivered, by the Proponent and each of the other Proponent Team Members, as the case may be, in connection with the Evergreen Line Selection Process or any one or more parts of the Evergreen Line Selection Process, including the Workshops and Topic Meetings and other consultative or facilitative or facilitated processes in the Evergreen Line Selection Process, and agrees that:
- (a)** such waivers, disclaimers, limitations of liability and indemnities:
 - (i)** will be in addition to the terms of this Agreement; and
 - (ii)** are not intended to and do not in any way limit or narrow the application, interpretation or operation of the terms of this Agreement; and
 - (b)** where any term set out in any such waivers, disclaimers, limitations of liability and indemnities conflicts with any term of this Agreement, the term set out in this Agreement will prevail.

5.0 PREFERRED PROPONENT SECURITY DEPOSIT

5.1 The Proponent agrees that:

- (a)** the Proponent's eligibility to be considered for selection as the Preferred Proponent is conditional upon the Proponent delivering, in response to an unrevoked invitation from the Province, the Preferred Proponent Security Deposit in the amount of \$20,000,000.00 in accordance with the RFP; and
- (b)** if the Proponent does not deliver the Preferred Proponent Security Deposit to the Province in accordance with the RFP:
 - (i)** the Proponent will neither be eligible to be selected as the Preferred Proponent nor be eligible to receive the Stipend or the Termination Fee; and
 - (ii)** the Province may, in its sole discretion, do any one or more of the following:
 - (A)** by written notice to the Proponent, cease all negotiations with the Proponent and refrain from designating the Proponent as Preferred Proponent for all purposes in connection with the Evergreen Line Selection Process, including this Agreement and the RFP;
 - (B)** select any other of the proponents as the Preferred Proponent and continue with the Evergreen Line Selection Process;

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- (C) commence negotiations with any other proponent or any other Person;
- (D) pursue any of the Derivative Activities, including any of the options available to the Province under the RFP.

5.2 The Province will, subject to the terms of this Agreement, return the Preferred Proponent Security Deposit to the Proponent:

- (a) within 10 days after receipt by the Province of a written demand from the Proponent, if:
 - (i) the Province issues a Termination Notice terminating the Evergreen Line Selection Process for reasons unrelated to the Proponent and the Proponent Team Members; or
 - (ii) the Province fails to execute and deliver an agreement substantially in the form of the Project Agreement contemplated to be finalized and settled in accordance with the process described in the RFP Volume 1 on or before the date which is 120 days (or such longer period as the parties may agree in writing) after receipt by the Proponent of notification of its selection as Preferred Proponent, provided that such failure is not a result of a failure by the Proponent to satisfy any conditions precedent set out in the Project Agreement or a result of the Province and the Proponent having been negotiating a Project Agreement as contemplated in the RFP Volume 1; or
- (b) within 10 days following the later of:
 - (i) the execution and delivery of the Project Agreement by all parties; and
 - (ii) Financial Close.

5.3 Despite any other term of this Agreement, the Province may in its sole discretion and without notice draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit to its own or other use in its sole discretion, despite delivery by the Proponent of a notice under section 5.4, if

- (a) there is a material breach of this Agreement by the Proponent or by any of the other Proponent Team Members; or
- (b) after receipt of written notice from the Province:
 - (i) the Proponent fails to execute and deliver an agreement substantially in the form of the Project Agreement contemplated to be finalized and settled in accordance with the process for settling the Project Agreement described in the RFP Volume 1; or
 - (ii) Financial Close does not occur,

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within 30 days (or such longer period as the parties may agree in writing) of receipt of such written notice, provided that such failure on the part of the Proponent to execute and deliver or such failure to reach Financial Close, as the case may be, is not solely as a result of a major disabling event (other than a disruption of financial markets) which could not have been reasonably prevented by and is beyond the reasonable control of the Proponent and which the Proponent can demonstrate to the satisfaction of the Province, acting reasonably, would substantially frustrate or render it impossible for the Proponent to perform the obligations of the Primary Contractor under the Project Agreement for a continuous period of 180 days.

5.4 If the Proponent notifies the Province in writing in accordance with this Agreement that the Proponent disputes the Province's right to call on and retain the Preferred Proponent Security Deposit, then:

- (a)** the Province may, in its sole discretion, nonetheless call on the Preferred Proponent Security Deposit and retain and apply the proceeds of the Preferred Proponent Security Deposit in accordance with section 5.3;
- (b)** the retention and application of the proceeds of the Preferred Proponent Security Deposit will be without prejudice to the right of the Proponent to dispute the Province's right to call on and retain the Preferred Proponent Security Deposit; and
- (c)** if the dispute is resolved fully and finally in favour of the Proponent, then the Province's liability will be limited to repayment of all or the portion of the amount of the Preferred Proponent Security Deposit called on and retained by the Province, together with interest charges at the rate prescribed under the *Financial Administration Act* and the Interest on Overdue Accounts Payable Regulation (B.C. Reg 215/83) on that amount.

5.5 If the Proponent fails to provide written notice to the Province of the renewal or extension of the Preferred Proponent Security Deposit at least 30 days prior to the expiry date of the Preferred Proponent Security Deposit, or if the Proponent fails to renew or extend the Preferred Proponent Security Deposit, the Province may, in its sole discretion and at any time without notice to the Proponent, call on the Preferred Proponent Security Deposit and hold the proceeds as the Preferred Proponent Security Deposit in the same manner and for the same purposes as the letter of credit and the terms of section 5.4 do not apply to the Province's call and retention of the proceeds under this section.

6.0 INTELLECTUAL PROPERTY RIGHTS

6.1 At the time the Proponent submits the Proposal, the Proponent is to deliver to the Province (or any Person designated by the Province in writing):

- (a)** the Work Product;
- (b)** a List of Third Party Technology specifically identifying, describing and indicating the owner or owners of all Background Technology and Third Party Technology, categorized as such, that is used, or intended or likely to be used, in connection

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with the Work Product, provided that if such specific identification and description of any Background Technology or Third Party Technology would cause the Proponent to violate any confidentiality obligations, the Proponent will disclose only:

- (i) a general identification and description of such Background Technology or Third Party Technology;
 - (ii) the identity of the owner or owners of such Background Technology or Third Party Technology and the Proponent's relationship to such owner or owners; and
 - (iii) the reason that the Background Technology or Third Party Technology is not fully disclosed;
- (c) an acknowledgement and confirmation of the ownership and present and future assignment to the Province of the Intellectual Property Rights, including all copyright, in the Work Product; and
- (d) executed waivers, in favour of the Province, of all moral rights in the Work Product, as set out in section 6.3, by one or more instruments in writing substantially in the form of the Waiver of Moral rights form included in Schedule 7.
- 6.2** Except as otherwise agreed in writing with the Province, the Proponent hereby represents, warrants and agrees that it owns or has, or at the time of the submission of its Proposal the Proponent will own or have, or will as necessary acquire, the rights to the Intellectual Property Rights associated with the Work Product, the Background Technology and the Third Party Technology as necessary to make the assignments and grant the licenses to the Province as set out in this Agreement and has obtained or will obtain waivers of moral rights from all Persons as necessary to provide the waivers in favour of the Province as set out in this Agreement. Subject to the Proponent's limited right to grant a license in lieu of an assignment with respect to Work Product as set out in section 6.6 of this Agreement, if for any reason the Proponent is unable to provide any assignments, licenses or waivers as required to be provided under this Agreement, the Proponent will replace the portion of the Work Product, Background Technology or Third Party Technology for which the assignment, license or waiver, as the case may be, cannot be provided with an alternative product or technology that meets the Province's requirements at no cost to the Province.
- 6.3** The Proponent agrees that it does hereby, at no cost to the Province:
- (a) irrevocably and unconditionally convey, sell, transfer and assign, or agree to cause to be so conveyed, sold, transferred and assigned, to the Province all right, title and interest in and to the Work Product and the copyright works forming a part of the Work Product and all Intellectual Property Rights thereto; and

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- (b) provide to the Province, from all Persons who generated or may generate Work Product, waivers in favour of the Province of all moral rights that such Persons may have in the Work Product.
- 6.4** The Province acknowledges that, except as otherwise provided in this Agreement, any use of the Work Product by or on behalf of the Province will be at the risk of the Province and not the Proponent or the Proponent Team Members, provided that if the Proponent is selected as the Preferred Proponent, the foregoing limitation is not intended to extend to any Claims arising after the execution and delivery of the Project Agreement pursuant to the terms of the Project Agreement.
- 6.5** Effective upon the date of execution of the Project Agreement by the Preferred Proponent, the Province hereby grants to the Proponent, unless the Proponent is the Preferred Proponent, a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sublicensable, transferable and assignable license to use and disclose the Work Product for any purpose whatsoever, and the Proponent acknowledges that:
- (a) the Work Product is provided “as is” without warranty of any kind whether express or implied including, without limitation, implied warranties of accuracy, completeness, merchantability or fitness for a particular purpose;
 - (b) neither the Province nor any other of the Releasees has any or will accept any liability whatsoever for any Claims in respect of the Work Product;
 - (c) any use or disclosure of the Work Product will be at the risk of the Proponent and not the Province; and
 - (d) nothing in this license will relieve the Proponent from any obligation of confidentiality or non-use, however arising, in any way relating to the Work Product.
- provided that if the Proponent enters into the Project Agreement, any license that may be granted to the Proponent with respect to the Work Product will be as set out in the Project Agreement.
- 6.6** If any assignment of Intellectual Property Rights in any of the Work Product cannot, as a matter of law, be granted by the Proponent to or in favour of the Province as provided in section 6.3, effective upon delivery of the Proposal the Proponent, at no cost to the Province, hereby unconditionally grants to the Province a Complete License to any such Work Product, which license may be rejected in whole or in part by the Province and the provisions of section 6.2 shall apply.
- 6.7** Effective as of the date that the Proponent submits the Proposal, the Proponent, at no cost to the Province, hereby unconditionally grants to the Province a Complete License to the Background Technology for the Permitted Use.
- 6.8** Despite section 6.7, the Province will have no right to reverse engineer, decompile or otherwise arrive at the source code of any software included in the applicable

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Background Technology, nor will it have the right to sell, lease, license, sublicense or otherwise transfer, convey or alienate any software included in the Background Technology (whether for commercial consideration or not) to any Person, otherwise than as may be necessary or desirable to exploit the Work Product in connection with the Permitted Use. Software included in the Background Technology will not be removed from the Work Product or used as a stand-alone product, and will only be used in conjunction with the Work Product.

6.9 Unless the Province and the Proponent expressly agree otherwise in writing, the following applies in respect of any Third Party Technology:

- (a)** as at the date that the Proponent submits the Proposal, the Proponent, at no cost to the Province, hereby unconditionally grants to the Province, subject to subsections 6.9(b) and (c), a Complete License to the Third Party Technology for the Permitted Use;
- (b)** the Complete License described in subsection 6.9(a) does not extend to include:
 - (i)** any Third Party Technology which consists of non-specialized third party software programs that are generally commercially available and that the Province, in its sole discretion and based on its review of the List of Third Party Technology, has determined that the Province does not require a sublicense from the Proponent in order to operate or use the Work Product; and
 - (ii)** any Third Party Technology which the Province has been informed of and has agreed in advance in writing is, due to its specialized and proprietary nature, the proper subject matter of a Limited License;
- (c)** regarding the Complete License described in section 6.9(a) and any Limited License described in subsection 6.9(b)(ii), if the Proponent is not selected as the Preferred Proponent, the Province will have the option from and after the selection of the Preferred Proponent:
 - (i)** to terminate the Complete License or the Limited License, as the case may be, with no liability to the Province, the Proponent, the owner of the Third Party Technology or any other Person; or
 - (ii)** to continue the Complete License or the Limited License, as the case may be, provided that the Province will be obligated to pay all license fees associated with the use of the applicable Third Party Technology from the date the Proponent is notified by the Province that it has not been selected as the Preferred Proponent; and
- (d)** if the Complete License described in section 6.9(a) or any Limited License described in subsection 6.9(b)(ii), as the case may be, cannot be validly granted without the consent of a third party, the Proponent, at the Proponent's expense, will use its best efforts to obtain such consent and, without limiting any of its other

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obligations, will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims in any way arising from the Proponent's failure to obtain such consent.

6.10 Without limiting Article 4, the Proponent will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims in any way arising out of or in connection with:

- (a) the Proponent's use or disclosure of the Work Product, the Background Technology and the Third Party Technology or any of them; and
- (b) allegations of or findings of infringement of Intellectual Property Rights, breach of confidence, breach of moral rights or unauthorized use by any of the Releasees of confidential information or Intellectual Property Rights of other Persons, or failure to obtain waivers of moral rights;

in respect of the Work Product, the Background Technology and the Third Party Technology or any of them.

6.11 The Proponent hereby irrevocably designates and appoints the Province and its duly authorized ministers, officers and agents as the Proponent's agent and attorney-in-fact to act for and on behalf of the Proponent to execute, deliver and file any and all documents with the same legal force and effect as if executed by the Proponent, if the Province is unable for any reason to secure the execution by the Proponent of any document reasonably required to assign, transfer, license, waive or register any Intellectual Property Rights contemplated under this Article 6.

7.0 NOTICE OF INELIGIBILITY

7.1 Without limiting any other rights, powers and remedies of the Province, the Province may in its sole discretion on the happening of any one or more of the following events or at any time thereafter give written notice of such event or events to the Proponent and such notice will constitute a notice of ineligibility for purposes of Article 3 of this Agreement:

- (a) an order is made, a resolution is passed or a petition is filed for the liquidation or winding up of the Proponent or any other Proponent Team Member;
- (b) the Proponent or any other Proponent Team Member becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (c) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any other jurisdiction is made by, the Proponent or any other Proponent Team Member;
- (d) a compromise or arrangement is proposed under the *Companies' Creditors Arrangement Act* (Canada) or any similar law of any other jurisdiction in respect of the Proponent or any other Proponent Team Member; or

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- (e) a receiver or receiver-manager or other Person with similar powers is appointed of any property of the Proponent or any other Proponent Team Member.

8.0 WORKSHOPS AND TOPIC MEETINGS

8.1 The Province may, as part of the Evergreen Line Selection Process, schedule and conduct:

- (a) workshops to enable communication between the Province and the proponents with respect to issues relating to the RFP, the Project and the Draft Project Agreement in accordance with this Agreement, including the terms of the Workshops and Topic Meetings Schedule, and as may be further detailed in the RFP;
- (b) topic meetings to enable the proponents to provide information and comments to the Province regarding changes proposed by the proponents to the Draft Project Agreement or regarding proponent submissions in response to the RFP and to enable the Province to discuss issues arising in connection with proponent submissions and proposed changes to the Draft Project Agreement in accordance with this Agreement, including the terms of the Workshops and Topic Meetings Schedule, and as may be further detailed in the RFP; and
- (c) any other meetings, consultations or facilitative or facilitated processes in conjunction with or as part of the Evergreen Line Selection Process.

8.2 The Province may in its sole discretion from time to time, by written notice to the Proponent, deliver to the Proponent written policies and procedures clarifying, supplementing or otherwise modifying the terms of the Workshops and Topic Meetings Schedule, and on issuance of such written policies and procedures the Workshops and Topic Meetings Schedule will be amended, supplemented or replaced as applicable.

8.3 The Proponent will:

- (a) attend each of the Workshops that are not designated by the Province as optional;
- (b) observe, abide by and comply with the terms of this Agreement in respect of the Workshops and Topic Meetings and any additional terms and procedures as may be more particularly detailed by the Province in the RFP;
- (c) execute and deliver a waiver and agreement in respect of the Workshops and Topic Meetings substantially in the form set out in Schedule 4;
- (d) ensure that each Proponent Team Member and each individual in attendance on behalf of the Proponent or any other Proponent Team Member at the Workshops or Topic Meetings:

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- (i) observes, abides by and complies with the terms of this Agreement in respect of Workshops and Topic Meetings and any additional terms and procedures as may be more particularly detailed by the Province in the RFP; and
- (ii) reviews, executes and before the start of each Workshop or Topic Meeting delivers to the Province a waiver and agreement substantially in the form set out in Schedule 4; and
- (e) without limiting Article 4, indemnify and hold harmless the Province and each of the other Releasees from and against all Claims arising directly or indirectly from the failure by any individual referenced in subsection 8.3(d) to execute and deliver, and to comply with, abide by and observe the terms of the waiver and agreement referenced in subsection 8.3(d)(ii).

9.0 NON-BINDING NATURE OF TOPIC MEETINGS AND WORKSHOPS

9.1 No part of the evaluation of the Proponent's Proposal will be based on:

- (a) information obtained or shared;
- (b) the conduct of the Proponent, the other Proponent Team Members, other proponents or their respective proponent team members, the Province, Partnerships BC, TransLink, or their respective representatives, including officers, directors, employees, consultants, agents and advisors; or
- (c) discussions that occur;

at or during any Workshop or Topic Meeting.

9.2 In any Topic Meeting or Workshop the Proponent may seek information or comments from the Province and the Province in its sole discretion may, but in no event will be obligated to, determine whether to provide, and the timing and method for providing, any such information or comments, or any response at all.

9.3 If the Proponent wishes to have any matter confirmed, including any statement made by any of the Releasees at a Workshop or Topic Meeting, the Proponent will submit an RFI describing the matter and requesting that the Province confirm the matter by Response to Proponents and, if the matter relates to a clarification or change to a term of the RFP or Draft Project Agreement, requesting that the Province confirm the matter by Addendum clarifying or amending, as the case may be, the applicable term of the RFP or Draft Project Agreement.

9.4 The Province may in its sole discretion, but in no event will be obligated to, on its own initiative or in response to an RFI from the Proponent or any of the other proponents, address any or all questions and matters raised by the Proponent or any of the other proponents or which otherwise come to the attention of the Province during or in connection with a Workshop or a Topic Meeting by Responses to Proponents or by

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Addenda amending the RFP, including the Draft Project Agreement or the Definitive Project Agreement.

10.0 COMMUNICATIONS AND INFORMATION

10.1 Neither the Proponent nor any of the other Proponent Team Members will, in relation to the Evergreen Line Selection Process including in relation to the RFP or the preparation of the Proponent's Proposal, communicate with any representative, including any officer, elected official, director, manager, employee, consultant, advisor, agent or other representative, of any of the Province, Partnerships BC or TransLink except:

- (a) in writing by RFI in accordance with this Agreement, including Schedule 3 to this Agreement, and the applicable terms of the RFP;
- (b) in Workshops and Topic Meetings, and any additional meetings subject to the terms of this Agreement; and
- (c) as may be otherwise expressly invited in writing by the Province or permitted by the RFQ, the RFP or this Agreement.

10.2 The Proponent and each other Proponent Team Member acknowledges and agrees that:

- (a) no actions or omissions or communications or responses, including information, statements, opinions, comments, consents, waivers, acceptances or approvals made or raised by any of the Releasees, the Proponent or any of the other Proponent Team Members, any of the other proponents or any of their respective proponent team members, any other Person, or any of them, whether positive or negative, including if set out in any document or information provided by the Proponent or any of the other Proponent Team Members or any of the other proponents or any of their respective proponent team members;
- (b) in relation to any matter, including the Evergreen Line Selection Process, the RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, Specifications or the Project;

at any time or times during the Evergreen Line Selection Process, including during or before or after any Workshop or Topic Meeting, will be binding on the Releasees, or any of them, be relied upon in any way by the Proponent or the other Proponent Team Members for any purpose whatsoever, be deemed or considered to be an indication of a preference by the Releasees, or any of them, even if adopted by the Proponent or another of the proponents, or will amend or waive any part of the Evergreen Line Selection Process, including any term of the RFP or the Draft Project Agreement, Definitive Project Agreement or Project Agreement, in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum to the RFP or expressly set out in a Response to Proponents issued by the Province to the proponents.

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10.3 Each of the Proponent and the other Proponent Team Members agrees that:

- (a)** neither the Proponent nor any of the other Proponent Team Members will in any way or for any reason or purpose whatsoever rely upon any action or omission or the scope, timeliness, accuracy, completeness, relevance or suitability of any information, opinion, statement, comment, representation, data or conclusion posted, set out in, provided or made available through or in connection with the Evergreen Line Selection Process or any stage of the Evergreen Line Selection Process, including without limitation in the RFQ or the RFP or during or before or after any Workshop or Topic Meeting; and
- (b)** the Proponent's Proposal or Conforming Proposal, as the case may be, will be prepared and submitted to the Province solely on the basis of the independent investigations, examinations, knowledge, analysis, interpretation, information, opinions, conclusions and judgement independently undertaken, formulated, obtained and verified by the Proponent and the other Proponent Team Members.

11.0 NOTICES

11.1 All notices and any other communications under this Agreement, including RFI's and Responses to Proponents, will be in writing and will be delivered by hand, sent by prepaid registered mail to the following addresses, or transmitted by facsimile or electronic mail to the following facsimile numbers or electronic mail addresses, provided that in the case of facsimile or electronic mail, confirmation of transmission is printed. The following telephone numbers are included solely for the purpose of confirming whether a communication was received, and not for the purpose of giving notice:

If to the Proponent and the other Proponent Team Members, or any of them:

<>

Attention: <>

Fax: <>

Phone: <>

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If to the Province:

Contact Person

<> Project Office
<> Street
<>, BC <>
Canada

Attention: <>

Fax: <>

E-mail: <>

- 11.2** Either the Province or the Proponent may from time to time notify the other by notice in writing in accordance with section 11.1 of any amendment to the addresses, facsimiles, emails or phone numbers referenced in that section, and from and after the giving of such notice the amended address or amended number specified will, for purposes of this Agreement, be deemed to be the address or number of the applicable party.
- 11.3** In the event of an actual or imminent postal strike, slowdown or other postal disruption, neither notices nor any other communications will be mailed but will either be delivered by hand or transmitted by facsimile or electronic mail in accordance with this Agreement.
- 11.4** Notices and any other communications delivered in accordance with this Agreement will be deemed to have been given and received, if transmitted by facsimile transmission, when so transmitted as confirmed by the transmission report, and, if transmitted by electronic mail, when capable of being retrieved by the intended recipient.
- 11.5** Without limiting Article 4, the Province does not assume any risk, responsibility or liability whatsoever and makes no guarantee, warranty or representation whatsoever as to:
- (a)** the timely, complete or effective delivery or receipt or condition on delivery or receipt of any Response to Proponents, RFI, the RFP or any Addenda, or any communication or submission including the Proposal, to or from any Person including the Proponent or any other Proponent Team Member or the Province under or in connection with any stage of the Evergreen Line Selection Process, including the RFP and this Agreement; or
 - (b)** the working order, functioning or malfunctioning or capacity of any facsimile transmission equipment or electronic email or information system, including the RFQ Data DVD or any data room established in connection with the Evergreen Line Selection Process, including the RFP.

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12.0 CONFIDENTIALITY AND RESTRICTIVE COVENANTS

12.1 The Proponent and each of the other Proponent Team Members acknowledges and agrees that if the Province fails to select a Preferred Proponent within 180 days after the Closing Time or terminates the Evergreen Line Selection Process or cancels any part of the Evergreen Line Selection Process, including the RFP, at any time and subsequently proceeds with any one or more of the activities, processes or works described in section 2.2, the Province may in its sole discretion:

- (a) contract directly with any Person for any or all matters related directly or indirectly to all or any part of the design, construction, operation, financing or fare collection in respect of all or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project; and
- (b) contract directly with any one or more of any of the Proponent Team Members or any of the other proponents or any of their respective proponent team members, or with any one or more of the contractors, sub-contractors, consultants, advisors or other Persons engaged by or through any of them, and neither the Proponent nor any other Proponent Team Member will take any step or action that might prevent or impede the Province from so doing.

12.2 The Proponent and each other Proponent Team Member acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and extends to the Evergreen Line Selection Process in its entirety, including the RFQ and the RFP, and agrees to abide by, observe and comply with the terms of the Confidentiality Agreement.

12.3 Without limiting any other confidentiality obligations imposed on the Proponent and the Proponent Team Members, including pursuant to the Confidentiality Agreement, the Proponent and each Proponent Team Member will at all times hold all Confidential Information in confidence and will not disclose or permit to be disclosed any Confidential Information to any Person except only to:

- (a) the Proponent Team Members and such of the directors, officers, managers, employees, professional advisors and agents of the Proponent and the Proponent Team Members, or any of them, who are directly concerned with the Project and whose knowledge is required in connection with the preparation of the Proponent's Proposal and, if awarded to the Proponent, in connection with the performance of the Project Agreement; and
- (b) any other Person only with the prior written consent of the Province;

provided that, in the case of each of the Persons to whom Confidential Information is disclosed in accordance with subsections 12.3 (a) and (b), such Person has been informed of the confidential nature of the Confidential Information by the Proponent or the Proponent Team Member, as the case may be, that disclosed such information and has agreed in writing in favour of the Province to observe and abide by and comply with section 12.2 and this section 12.3 and the terms of the Confidentiality Agreement, and provided further that the Proponent or Proponent Team Member that disclosed the

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Confidential Information to such Person will ensure that the Person to whom such disclosure is made provides such agreement in favour of the Province and observes, abides by and complies with the provisions of such agreement and section 12.2 and this section 12.3 and the terms of the Confidentiality Agreement as if that Person was a party to this Agreement and to the Confidentiality Agreement. A failure by any such Person to observe and abide by and comply with the provisions of such agreement in favour of the Province and section 12.2 and this section 12.3 and the terms of the Confidentiality Agreement will be deemed to constitute a breach of this Agreement and the Confidentiality Agreement by the Proponent.

13.0 GENERAL

13.1 Neither the Proponent nor any other Proponent Team Member will transfer or assign the whole or any part of or interest in this Agreement or any right, title, obligation, benefit or interest of the Proponent or any other Proponent Team Member herein or hereunder without the prior written consent of the Province, which consent may be arbitrarily withheld or may be subject to such terms and conditions as the Province in its sole discretion may impose.

13.2 The Province may in its sole discretion, on prior written notice to the Proponent, transfer or assign the whole or any part of or interest in this Agreement or any right, title, obligation, benefit or interest of the Province herein or hereunder to any Government Corporation, and the Proponent and each of the other Proponent Team Members agrees that on written notice of such transfer or assignment and without further written agreement:

- (a) the Government Corporation will be entitled to take the benefit of the terms, including representations and warranties, of this Agreement and to enforce such terms against the Proponent and each of the other Proponent Team Members and any other Person;
- (b) to the extent that the applicable Government Corporation has assumed the obligations and liabilities of the Province under or in connection with this Agreement, the Province will be released and discharged from such obligations and liabilities; and
- (c) it will, at the request of the Province, deliver in favour of the applicable Government Corporation certifications in form and content satisfactory to the Province in its sole discretion and such Government Corporation as to compliance with this Agreement or covenants on substantially the terms of this Agreement.

13.3 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and upon the Proponent and each of the other Proponent Team Members and their respective successors and permitted assigns. For greater certainty, this Agreement will continue to be binding on the Proponent and each of the other Proponent Team Members notwithstanding that it may subsequently cease to be a proponent or Proponent Team Member.

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- 13.4** Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be unenforceable or invalid in respect of any Person or circumstance, then such provision may be severed and such unenforceability or invalidity will not affect any other provision of this Agreement, and this Agreement will be construed and enforced as if such invalid or unenforceable provision had never been contained herein and such unenforceability or invalidity will not affect or impair the application of such provision to any other Person or circumstance but such provision will be valid and enforceable to the extent permitted by law.
- 13.5** The Proponent acknowledges that pursuant to Section 28(2) of the *Financial Administration Act*, it is a term of every agreement providing for the payment of money by the Province that the payment of money that becomes due under the agreement is subject to an appropriation (as such term is defined in the *Financial Administration Act*) being available for that agreement in the fiscal year when any payment of money by the Province falls due under such agreement.
- 13.6** This Agreement and the Confidentiality Agreement constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and cancel and supersede all prior proposals, agreements, understandings, representations, conditions, warranties, negotiations, discussions and communications, whether oral or written, statutory or otherwise, and whether express or implied, between the parties with respect to the subject matter of this Agreement.
- 13.7** This Agreement may only be amended by instrument in writing signed by all of the parties.
- 13.8** This Agreement and the obligations of the parties hereunder will be interpreted, construed and enforced in accordance with the laws of the Province of British Columbia and each party to this Agreement irrevocably attorns to the jurisdiction of the courts of British Columbia.
- 13.9** If the Proponent or any other Proponent Team Member is a partnership (general or limited) or a consortium or joint venture:
- (a)** each partner (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, shall have executed this Agreement by its duly authorized representatives, both on behalf of the partnership, consortium or joint venture, as the case may be, and in its own behalf, in the same manner as if such partner or entity, as the case may be, was the sole party executing this Agreement; and
 - (b)** if any partner or entity, as the case may be, has not executed this Agreement as required by subsection 13.9(a), this Agreement will be valid and binding on the partners and entities, as the case may be, who have executed this Agreement, each of whom by execution of this Agreement expressly agrees to be jointly and severally liable to the Province for the obligations that would have been assumed hereunder by the partner or

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entity, as the case may be, that has not executed this Agreement had it executed this Agreement.

- 13.10** Time is of the essence of this Agreement.
- 13.11** By executing this Agreement, each entity comprised in the Proponent and each entity comprised in any other Proponent Team Member hereby represents, warrants and agrees that:
- (a)** it is jointly and severally liable with the Proponent or other Proponent Team Member, as the case may be, to the Province for all covenants, obligations and liabilities of the Proponent or other Proponent Team Member, as the case may be, set forth in this Agreement; and
 - (b)** the signatories to this Agreement include all of the entities comprised in the Proponent or other Proponent Team Member, as the case may be, and no such party will assign its interest in the Proponent or other Proponent Team Member, as the case may be, without obtaining the prior written consent of the Province, which consent may, in the sole discretion of the Province, be subject to such conditions or requirements as the Province may require, including an agreement by the assignee, in form and content satisfactory to the Province in its sole discretion, to be bound by the terms of this Agreement.
- 13.12** Any additional Person that becomes an entity comprised in the Proponent or an entity comprised in any other Proponent Team Member subsequent to the execution and delivery of this Agreement will, as a condition to becoming an entity comprised in the Proponent or other Proponent Team Member, execute and deliver to the Province an agreement directly with the Province and in form and substance satisfactory to the Province in its sole discretion agreeing to be bound by the terms of this Agreement in the same manner and with the same effect as if such Person had been an original signatory to this Agreement.
- 13.13** The Proponent and each of the other Proponent Team Members will from time to time and upon the reasonable request of the Province make, do, execute, and deliver or cause to be made, done, executed and delivered all such further assurances, acts, instruments and documents as may be requested for the purpose of giving full force and effect to this Agreement.
- 13.14** The rights, powers and remedies conferred on the Province under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, under the Evergreen Line Selection Process or any part thereof, at law or in equity or under statute, and the exercise by the Province in its discretion of any right, power or remedy will not preclude the later exercise of that same right, power or remedy or the simultaneous or later exercise by the Province of any other right, power or remedy.

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- 13.15** No waiver by any party of a breach or default by any other party in the observance or performance of or compliance with any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default, and failure or delay on the part of any party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against any other party.
- 13.16** References in this Agreement to “in its sole discretion”, “in the discretion of the Province”, “in the sole discretion of the Province” or similar words or phrases when used in respect of the Province will be interpreted to mean the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion of the Province.
- 13.17** The Proponent and each other Proponent Team Member hereby represents and warrants, on its own behalf and jointly and severally with the Proponent and each other Proponent Team Member, that:
- (a)** it has the requisite power, authority and capacity to execute and deliver this Agreement and the Confidentiality Agreement;
 - (b)** this Agreement Agreement has been duly and validly executed and delivered by it or on its behalf by its duly authorized representatives; and
 - (c)** this Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.
- 13.18** The Province may in its sole discretion request any party executing this Agreement to provide, and on such request such party will deliver to the Province, proof, in a form and content satisfactory to the Province in its sole discretion, that any signatory to this Agreement on behalf of such party had the requisite authority to execute this Agreement on behalf of and to bind such party and that this Agreement has been duly and validly executed and delivered by or on behalf of such party and constitutes a legal, valid and binding agreement enforceable against such party in accordance with its terms.
- 13.19** This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties to this Agreement will constitute a full, original and binding agreement for all purposes. Counterparts may be executed in original, faxed, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form. This Agreement may be delivered by hand, facsimile or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

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

PROVINCE:

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

Authorized Signatory

Full Name and Title

PROPONENT:

<> *[insert legal name(s) and appropriate signature block(s) for Proponent]*

KEY FIRMS:

<> *[insert legal name and appropriate signature block for each Key Firm]*

KEY INDIVIDUALS:

<>

FINANCIAL SPONSORS:

<> *[insert legal name and appropriate signature block for each Financial Sponsor]*

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SCHEDULE 1 TO PROPONENT AGREEMENT
DEFINITIONS AND INTERPRETATION**1. DEFINITIONS**

Unless the context otherwise expressly requires, whenever used in this Agreement or any Schedules to this Agreement the following terms will have the meanings given to them in this Schedule 1.

“Addenda” means the documents expressly identified as addenda and issued by the Province to proponents in accordance with the RFQ or the RFP, and **“Addendum”** means any one of such documents.

“Agreement” means this agreement between the Province, the Proponent and each of the other Proponent Team Members, and includes all schedules attached to this agreement and documents specifically incorporated by reference in this agreement.

“ATC–related agreement(s)” means the agreement(s) for or relating to the supply of the automatic train control system for the Project.

“ATC–related Consultation Process” means the process forming part of the Evergreen Line Selection Process consultations described in the RFP and comprises the negotiation, if any, the review and development of documents, submission of comments, information and proposed amendments and the attendance and participation in Topic Meetings and Workshops relating to the ATC–related agreement(s).

“Background Technology” means Intellectual Property specifically set out in the List of Third Party Technology, whether owned by the Proponent or a third party, that was conceived, created, authored, developed, reduced to practice, acquired or otherwise obtained by or on behalf of the Proponent and is embedded in or used in connection with the Work Product or in the preparation or development of the Work Product, or necessary or desirable to exploit the Work Product, but which does not otherwise form part of the Work Product.

“BCTFA” means BC Transportation Financing Authority continued under the *Transportation Act* (British Columbia).

“Change” includes, in respect of the Proponent or any other Proponent Team Member or any other proponent or any of its proponent team members, a change in ownership (including by way of shareholdings, ownership of interests or units in a general or limited partnership or otherwise) or control or a redesignation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of any of them, and **“Changed”** has a corresponding meaning.

“Change Process” means the Change process described in section 5.9 of the RFQ and the corresponding section of the RFP.

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“Claims” includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including indirect and consequential losses), damages, remuneration, compensation, costs, expenses, grievances, executions, judgments, obligations, liabilities (including those relating to or arising out of loss of opportunity or loss of anticipated profit), rights and demands whatsoever, whether actual, pending, contingent or potential, whether express or implied, whether present or future and whether known or unknown, and all related costs and expenses, including legal fees on a full indemnity basis, howsoever arising, including pursuant to law, equity, contract, tort, statutory or common law duty, or to any actual or implied duty of good faith or actual or implied duty of fairness, or otherwise.

“Closing Location” means the address designated as the Closing Location in the RFP.

“Closing Time” means the time and date specified as the Closing Time in the RFP.

“Complete License” means, in respect of any Intellectual Property Rights to which the Complete License applies (the **“Licensed Property”**), a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sublicensable, transferable and assignable licence or sub-licence (if applicable, by instrument in writing in form and content satisfactory to the Province in its sole discretion) for the Province, its employees, contractors, consultants, advisors, sublicensees, successors and assigns:

- (a) to reproduce, modify, create derivative works from, distribute, publicly perform, publicly display, communicate by telecommunication, translate and otherwise use the Licensed Property in any medium or format, whether now known or hereafter devised;
- (b) to use, make, have made, sell, offer to sell, import and otherwise exploit any product or service based on, embodying, incorporating or derived from the Licensed Property; and
- (c) to exercise any and all other past, present or future rights in and to the Licensed Property.

“Confidentiality Agreement” means the agreement entitled “Confidentiality Agreement” executed and delivered by the Proponent and each of the other Proponent Team Members in accordance with the RFQ.

“Confidential Information” has the meaning given to it in the Confidentiality Agreement.

“Conflict of Interest Adjudicator” has the meaning given to it in section 2.3 of this Agreement.

“Conforming Proposal” means a Proposal designated by the Province under the RFP as having substantially satisfied or exceeded the requirements set out in the RFP.

“Contact Person” means the individual designated as the Contact Person in the RFP, as that designation may be changed in accordance with the RFP.

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“day” means a calendar day.

“**Definitive Project Agreement**” means the documentation forming part of the RFP and comprising the Draft Project Agreement as revised and amended by Addenda and delivered to the Proponents in accordance with the RFP.

“**Deliverables**” means the items to be provided or actually provided by the Proponent to the Province under this Agreement, or as part of or in connection with the Evergreen Line Selection Process, including the Proposal.

“**Derivative Activities**” means any one or more of the activities, processes and works contemplated in section 2.2 or section 12.1 of this Agreement.

“**Draft Project Agreement**” means the form of Project Agreement entitled “Draft Evergreen Line Project Agreement”, including the Specifications, issued as part of the RFP.

“**Evergreen Line Selection Process**” means:

- (a) the procurement process for the Project and any part or phase or phases of the procurement process, and includes this Agreement, the RFQ, the RFP, any and all processes relating to the RFQ and the RFP, Workshops, Topic Meetings, any additional meetings and any consultations, meetings and participation relating to or arising from any Workshops, Topic Meetings or additional meetings, other consultative and facilitative/facilitated processes including the ATC-related Consultation Process, relationship review processes including processes conducted and reports, determinations, rulings, assessments and opinions issued by the Fairness Reviewer or the Conflict of Interest Adjudicator or by the Province or committees of the Province pursuant to any relationship review process or policies referenced in the RFQ or the RFP, processes and decisions and determinations made with respect to Changes, and the consultations, discussions, negotiations, closings and settling of agreements and documents relating to the Project; and
- (b) activities, participation, continued participation, waivers, evaluation, inclusion, exclusion, determinations, opinions, rulings, reports, comments, advice, notices including notices of ineligibility, and decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Response, Proposal, Conforming Proposal or any other proposals, whether conforming or otherwise;

involving the Province, the Conflict of Interest Adjudicator, the Fairness Reviewer, any relationship review committee of the Province, any or all Respondents, Respondent Teams or Respondent Team Members, the Proponent, the Proponent Team or any or all Proponent Team Members, any or all other proponents, proponent teams or proponent team members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors or agents, or any other Person, in connection with the matters described in paragraphs (a) and (b) of this definition.

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“**Fairness Reviewer**” has the meaning given to it in section 2.3 of this Agreement.

“**Financial Administration Act**” means the *Financial Administration Act* (British Columbia).

“**Financial Close**” means the date on which the Project Agreement is entered into between the Province and the Primary Contractor and the financing arrangements contemplated by the Project Agreement are completed and all conditions precedent to the drawdown of funds under such arrangements are satisfied and such funds are available to be drawn down.

“**Financial Submittal**” has the meaning given to it in the Financial Submittal Certificate and Declaration.

“**Financial Submittal Certificate and Declaration**” means the Financial Submittal Certificate and Declaration delivered by the Proponent in accordance with the RFP.

“**Government Corporation**” has the same meaning as in the Financial Administration Act.

“**Intellectual Property**” means, without limitation, all algorithms, application programming interfaces (APIs), apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), IP cores, know-how, materials, marks (including trade-marks, official marks, brand names, product names, logos, and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locators (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

“**Intellectual Property Rights**” means all past, present and future rights of the following types which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property in any medium or format, whether now known or hereafter devised:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights;
- (b) trademark and trade name rights and similar rights;
- (c) trade secret rights;
- (d) patent and industrial property rights;
- (e) rights to bring actions and other proceedings against third parties for the past, present or future infringement or misuse of any Intellectual Property;
- (f) all other proprietary rights in Intellectual Property of every kind and nature; and

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- (g) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in subsections (a) through (f) of this definition.

“Limited License” means a license for the Permitted Use in respect of any Third Party Technology which, due to the specialized and proprietary nature of that Third Party Technology, is in any way less than a Complete License.

“List of Third Party Technology” means the list that specifically identifies, categorizes and describes Background Technology and Third Party Technology as described in section 6.1(b) of this Agreement.

“Partnerships BC” means Partnerships British Columbia Inc.

“Permitted Use” means in connection with the Project Agreement, the Project or otherwise in connection with any one or more of the current or future construction, operation, maintenance, repair, modification, expansion, alteration, adaptation, financing, rehabilitation or regulation of all or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project, including in connection with any works, projects or activities implemented as part of any Derivative Activity.

“Person” means an individual, corporation, partnership, joint venture, consortium, association, trust, pension fund or union and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation.

“Preferred Proponent” means the proponent, if any, selected as the Preferred Proponent by the Province as part of the Evergreen Line Selection Process.

“Preferred Proponent Security Deposit” means the financial security, by way of a letter of credit in the form attached as Schedule 5 or otherwise in form and content acceptable to the Province in its sole discretion.

“Project” or the **“Evergreen Line Rapid Transit Project”** means the activities, objectives and improvements described in Section 1 of the RFQ, as subsequently amended, changed, replaced, supplemented and substituted in the RFP.

“Project Agreement” means:

- (a) the Definitive Project Agreement, as changed, modified or added to in accordance with the RFP Volume 1; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Province and the Primary Contractor for the delivery of the Project.

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“proponents” means the Respondents, including the Proponent, short-listed by the Province pursuant to the RFQ, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proponent Team” means the Proponent, the Key Firms, the Key Individuals and the Financial Sponsors, in each case as Changed from time to time in accordance with and subject to the Change Process.

“proponent team” means, in the case of a proponent other than the Proponent, that proponent and its Key Firms, Key Individuals and Financial Sponsors (each of which terms for purposes of this definition only has the meaning ascribed to it in the RFQ), in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proponent Team Member” means the Proponent and each other member of the Proponent Team including each Key Firm, Key Individual and Financial Sponsor, in each case as Changed from time to time in accordance with and subject to the Change Process.

“proponent team member” means, in the case of a proponent other than the Proponent, a member of that proponent’s proponent team and, in the case of the Proponent, a Proponent Team Member, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proposal” means the material, documentation and information that in the aggregate comprise the submission:

- (a) comprising the Technical Submittal and Financial Submittal delivered by the Proponent in accordance with the RFP, together with all clarifications, rectifications and more complete, supplementary, replacement and additional information and documentation delivered by the Proponent from and after the Technical Submittal Deadline specified in the RFP or the Closing Time in response to any request of the Province; or
- (b) in its most complete and developed condition and delivered by the Proponent, in the event that the Province issues a Termination Notice before the Closing Time, after issuance of the Termination Notice and before expiry of the 90-period referenced in section 3.5 of this Agreement.

“Province” means Her Majesty the Queen in right of the Province of British Columbia.

“Releasees” means and includes each of the Province, TransLink, Partnerships BC, BCTFA, the Conflict of Interest Adjudicator, the Fairness Reviewer and each of their respective directors, officers, representatives, any of their elected officials including members of the Executive Council, managers, employees, consultants, contractors, advisors and agents and successors and assigns.

“Request for Information” or **“RFI”** means a request for information in the form attached as Appendix A to Schedule 3.

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“Request for Proposals” or “RFP” means the request for proposals for the Project issued by the Province to the proponents, including all volumes, appendices and attachments, as amended from time to time by Addenda in accordance with the RFP.

“Request for Qualifications” or “RFQ” means the request for qualifications, including all appendices and attachments, for the Project, as amended from time to time by Addenda in accordance with the RFQ.

“Responses to Proponents” or “RTPs” means the documents entitled “Response to Proponents” and issued by the Province through the Contact Person in accordance with this Agreement or the RFP, as applicable, to respond to enquiries or RFIs or otherwise to provide any information, communication or clarification to proponents or any of them, and **“Response to Proponents” or “RTP”** means any one of such documents.

“Restricted Party” means a Person who has participated or been involved in, or is currently participating or involved in:

- (a) the Evergreen Line Selection Process;
- (b) the design, planning or implementation of the Project;
- (c) any other relationship with the Province;

and as a result has an actual conflict of interest or may provide a material unfair advantage to any of the proponents or their respective proponent team members or may provide Confidential Information to any of the proponents or their respective proponent team members that is not, or would not reasonably be expected to be, available to the other proponents or their respective proponent team members, and includes, if the Person is a corporate entity or a partnership, the Person’s former and current directors, officers, employees and partners, as applicable, and further includes each of the Persons listed as Restricted Parties in the RFQ and any other Persons that may, from time to time, be specifically identified by the Province as Restricted Parties, and **“Restricted Party”** means any one of such Persons.

“Specifications” means the technical requirements and specifications set out in or referenced in the RFP, as amended from time to time by Addenda in accordance with the RFP.

“Stipend” means the sum of CDN\$1,500,000.00.

“Stipend Invoice” means the invoice referenced in section 3.2 of this Agreement.

“Technical Submittal” has the meaning given to it in the Financial Submittal Certificate and Declaration.”

“Termination Fee” means:

- (a) in respect of a Termination Notice that is delivered after completion of the first Workshop, an amount not to exceed \$500,000.00

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- (b) in respect of a Termination Notice that is delivered after completion of the second Workshop, an amount not to exceed \$1,000,000.00;
 - (c) in respect of a Termination Notice that is delivered after completion of all Workshops or after the Closing Time, an amount not to exceed \$1,500,000.00;

that is equal to the actual and reasonable expenditures incurred by the Proponent up to the date of the Termination Notice to prepare its Conforming Proposal or Proposal, as applicable, as fully demonstrated in sufficient detail to the satisfaction of the Province with supporting documentation.

“Termination Fee Invoice” means the invoice referenced in section 3.5 of this Agreement.

“Termination Notice” means a written notice designated as a “Termination Notice” and issued by the Province to the proponents for the purpose of giving the proponents notice of termination by the Province of the Evergreen Line Selection Process.

“Third Party Technology” means Intellectual Property of third parties embedded in or used in connection with the Work Product or in the preparation or development of the Work Product, or necessary or desirable to exploit the Work Product, but which does not otherwise form part of the Work Product.

“Topic Meetings” means the meetings described in Article 8 and the Workshops and Topic Meetings Schedule of this Agreement, and **“Topic Meeting”** means any one of such meetings.

“TransLink” means the South Coast British Columbia Transportation Authority continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia) and includes a subsidiary as defined in the *South Coast British Columbia Transportation Authority Act*.

“Work Product” means:

- (a) all Deliverables;
- (b) all Intellectual Property, in any stage of development, that is conceived, created, authored, developed, reduced to practice, acquired or otherwise obtained by or on behalf of the Proponent, or is the product of permitted modifications made to any Intellectual Property, in connection with the preparation of the Deliverables, the Proposal or as part of the Evergreen Line Selection Process and the Project; and
- (c) all tangible embodiments (including models, presentations, prototypes, reports, samples and summaries) of each item of such Intellectual Property;

but excludes Third Party Technology and Background Technology that is specifically set out in the List of Third Party Technology

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“Workshops” means the workshops described in Article 8 and the Workshops and Topic Meetings Schedule of this Agreement, and **“Workshop”** means any one of such workshops.

“Workshops and Topic Meetings Schedule” means Schedule 2 of this Agreement, describing procedures applicable to the Workshops and Topic Meetings, as that Schedule may be amended and replaced from time to time by the Province in its sole discretion and delivered to the Proponent pursuant to this Agreement.

2. INTERPRETATION

In this Agreement, the following will apply:

- 2.1** Headings or captions in this Agreement are inserted for convenience of reference only and in no way define, limit, alter or enlarge or otherwise affect the scope or meaning or interpretation of this Agreement.
- 2.2** As used herein, gender is used as a reference term only and applies with the same effect whether the parties are masculine, feminine, corporate or other form, and unless the context indicates to the contrary the singular includes the plural and the plural includes the singular.
- 2.3** Reference to a section, article or paragraph is a reference to the whole of the section, article or paragraph, and reference to a section, article, paragraph or other part by number is a reference to the section, article, paragraph or other part, as applicable.
- 2.4** “includes”, “including” and other terms of like import will not be deemed limited by any specific enumeration of items but will be deemed to be without limitation and will be interpreted as if the term used was “including without limitation” and as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 2.5** All monetary amounts herein refer to lawful currency of Canada.
- 2.6** References to “herein”, “hereunder”, “hereof” and similar terms, unless otherwise expressly provided, refer to this Agreement as a whole and not to any article, section, subsection or other subdivision of this Agreement.
- 2.7** References to any statute or statutory provision or regulation include any statute or statutory provision or regulation which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute or regulation.
- 2.8** Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

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- 2.9** References in this Agreement to the Province executing and delivering a settled form of Project Agreement or to the Province proceeding in any manner whatsoever, including as contemplated in subsections 2.2(f) and (g), subsection 5.1(b)(ii)(D) and subsections 12.1 (a) and (b) of this Agreement, will be interpreted to include any one or more of the Province alone, the Province together with a Government Corporation and BCTFA, or a Government Corporation or BCTFA executing and delivering a settled form of Project Agreement or proceeding in any manner whatsoever, including as contemplated in subsections 2.2(f) and (g), subsection 5.1(b)(ii)(D) and subsections 12.1 (a) and (b) of this Agreement.

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SCHEDULE 2 TO PROPONENT AGREEMENT
WORKSHOPS AND TOPIC MEETINGS**1.0 Workshops**

- 1.1** The Province may in its sole discretion and on prior written notice to the proponents schedule Workshops at the dates, times and locations and for the duration the Province considers appropriate, and such Workshops may be held separately with each proponent or together with all the proponents.
- 1.2** Unless the Province notifies the Proponent that an additional Workshop is optional, the Proponent will attend each Workshop and may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Workshop on behalf of the Proponent.
- 1.3** The Proponent will attend all Workshops that are designated by the Province as optional, unless the Proponent provides written notice to the Province at least 5 business days before the scheduled applicable Workshop date that the Proponent has declined the invitation to attend, provided that the Province may proceed with the applicable Workshop or Workshops with the other or others of the proponents that have not declined attendance at any such additional optional Workshop.
- 1.4** The Province may, on request of the Proponent or any of the other proponents, schedule additional Workshops if the Province considers it desirable or necessary in its sole discretion.

2.0 Workshop Agendas and Summaries

- 2.1** Prior to each scheduled Workshop and not later than the date specified by the Province in its written notice to the proponents, the Proponent will deliver to the Contact Person a list of requested agenda items, if any.
- 2.2** Following receipt of the proponents' requested agenda items, the Province will develop a separate agenda for each of the proponents and will distribute each agenda to the applicable proponent before the specified Workshop, provided that the Workshop agendas may be varied by the Province, with prior written notice to the applicable proponent.
- 2.3** The Province will prepare and distribute to the applicable proponent a written summary in respect of each Workshop held with the proponent, which written summary will be deemed and considered to be the definitive summary of the Workshop.

3.0 Topic Meetings

- 3.1** The Province may in its sole discretion and on prior written notice to the proponents schedule Topic Meetings at the dates, times and locations and for the duration the Province considers appropriate, and such Topic Meetings may be held separately with

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the Proponent or any other proponent which elects to attend or together with all of the proponents that elect to attend.

- 3.2** Attendance at Topic Meetings is not mandatory and the Proponent or any of the other proponents may decline to take part in any one or more Topic Meetings, provided that the Province may proceed with a Topic Meeting or Topic Meetings with the other or others of the proponents that have not declined attendance at any particular Topic Meeting.
- 3.3** The Proponent may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Topic Meeting on behalf of the Proponent.
- 3.4** The Province may, on request of the Proponent or any of the other proponents, schedule Topic Meetings on topics identified in the request if the Province considers it desirable or necessary in its sole discretion.
- 3.5** The Province will prepare and distribute to the applicable proponent a written summary in respect of each Topic Meeting held with the proponent, which written summary will be deemed and considered to be the definitive summary of the Topic Meeting.

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SCHEDULE 3 TO PROPONENT AGREEMENT
REQUESTS FOR INFORMATION AND DISTRIBUTION OF INFORMATION

1.0 REQUESTS FOR INFORMATION

- 1.1** The Province may, in its sole discretion, by written notice to the Proponent, amend this Schedule 3 by issuing written policies and procedures clarifying, expanding, simplifying or otherwise amending the provisions of this Schedule 3, and on issuance such written policies and procedures will be incorporated by reference and form part of this Agreement and of this Schedule 3.
- 1.2** RFI's are to be as set out in the form of RFI attached as Appendix A to this Schedule, and delivered by the Authorized Representative of the Proponent to the Contact Person.
- 1.3** Each RFI is to be numbered sequentially and should clearly set out the Proponent's name, the question, inquiry, request for information or other purpose of the communication, and the date by which a response is requested by the Proponent.
- 1.4** The Proponent may submit a series of separate RFIs categorized by subject matter of the questions set out in the RFIs to facilitate responses and the tracking of responses to RFIs.
- 1.5** The Province may in its sole discretion issue any communication, information or enquiry including any RFI or any Response to Proponents to all proponents. If the Province in its sole discretion considers a RFI or the corresponding RTP to be of a minor or administrative nature and to relate only to the proponent who submitted the RFI, the Province may issue a RTP only to that proponent.
- 1.6** The Proponent may, if it considers its enquiry set out in a RFI to relate to commercially sensitive matters, request the RFI to be kept confidential by setting out the request in the RFI and by clearly marking the RFI as "Commercial in Confidence". The Province may in its sole discretion respond to the RFI on a confidential basis.
- 1.7** If the Province in its sole discretion considers, including for purposes of fairness in or maintaining the integrity of the Evergreen Line Selection Process, that the Province should not respond to a RFI submitted by the Proponent that is marked "Commercial in Confidence" on a confidential basis, and subject to the Province's overriding discretion to distribute RFIs, written responses to enquiries and RTPs to all proponents, the Province may notify the Proponent and specify the time period within which the Proponent may withdraw the RFI in writing and, if the Proponent does not withdraw the RFI within the time specified by the Province, then the Province in its sole discretion may provide the Province's response to the RFI to all proponents.

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- 1.8** Despite any other term of the Proponent Agreement or the RFP, and despite any RFI or other communication being identified as “Commercial in Confidence”, if the Province in its sole discretion considers the matter to be a matter of substance or a matter that should be brought to the attention of all proponents for purposes of fairness in or maintaining the integrity of the Evergreen Line Selection Process, the Province may issue an Addendum to the RFP, the RFI, a RTP or a written response relating to the matter to all proponents.
- 1.9** The Province may in its sole discretion respond to any communication, enquiry or RFI, provided that there is no obligation whatsoever on the Province to respond to any communication, enquiry or RFI, whether or not marked “Commercial in Confidence”. If the Province decides to respond, the response will be in writing and delivered by email, hand or courier delivery or facsimile or by a general posting of the response in any data room established in connection with the RFP.

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APPENDIX A TO SCHEDULE 3 TO PROPONENT AGREEMENT
REQUEST FOR INFORMATION

Request For Information

EVERGREEN LINE RAPID TRANSIT PROJECT
Request For Information / Clarification / Meeting

Request Number: (Proponent name and sequential number)

Raised By: (contact name)

Date Raised:

Date by Which Response Required:

Type of Request: Information Clarification Meeting
(please indicate with tick boxes)

Source of Query (reference document section and date, if applicable):

Meeting:

Date:

Other:

REQUEST / QUERY (One query / request per sheet)

Do you request this query to be “Commercial in Confidence”? YES NO

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SCHEDULE 4 TO PROPONENT AGREEMENT
FORM OF WAIVER AND AGREEMENT

(see attached)

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WAIVER AND AGREEMENT

This Waiver and Agreement dated the <> day of <>, 20<>.

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

**PARTNERSHIPS BRITISH COLUMBIA INC.
 (“Partnerships BC”)**

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

**SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY AND EACH
 OF ITS SUBSIDIARIES
 (“TransLink”)**

**RE: EVERGREEN LINE RAPID TRANSIT PROJECT: WORKSHOPS AND TOPIC
 MEETINGS**

WHEREAS:

- A.** The Province has implemented and <> **[insert name of Proponent]** (the “Proponent”) has agreed to participate in the Evergreen Line Selection Process for the Evergreen Line Rapid Transit Project.
- B.** As part of the Evergreen Line Selection Process the Province, the Proponent and each of <> and <> **[insert names of the Parties to the Proponent Agreement other than the Proponent as at the date that the Waiver and Agreement is to be delivered]** have entered into the Proponent Agreement made as of the <> day of <>, 20<> (the “Proponent Agreement”).
- C.** As a further part of the Evergreen Line Selection Process the Province has made arrangements to meet in Workshops and Topic Meetings with each of the proponents, together with those individual representatives of each of the proponents and their respective proponent team members selected by the proponents, both as a group and on a one on one basis.
- D.** The Province’s arrangements involve the dedication of extensive resources, including financial and labour by and on behalf of the Province, and have as their objective Workshops and Topic Meetings that will enable the candid communication of information, comments and views from the proponents to the Province.

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IN CONSIDERATION of these premises and of being permitted to participate in the Workshops and the Topic Meetings and for other good and valuable consideration, the receipt and sufficiency of which each of the undersigned hereby acknowledges, each of the undersigned hereby confirms and agrees, on its own behalf, as follows:

1. Each of the undersigned:
 - (a) has been selected by the Proponent to attend the Workshops and Topic Meetings as a representative of and on behalf of the Proponent in connection with the Project;
 - (b) is of the age of majority and of full mental capacity, and has been provided with a copy of and has reviewed and is familiar with the terms of the Proponent Agreement including the Workshops and Topic Meetings Schedule;
 - (c) will observe, abide by and comply with the terms of the Proponent Agreement in respect of the Workshops and Topic Meetings and any additional terms and procedures as may be more particularly detailed by the Province in the RFP;
 - (d) understands that the undersigned will not be permitted to participate in the Workshops or Topic Meetings unless they have signed this Waiver and Agreement;
 - (e) understands that any concerns with respect to fairness in connection with the Workshops or Topic Meetings should be brought to the attention of the Fairness Reviewer; and
 - (f) waives any and all rights to contest and/or protest the Evergreen Line Selection Process or any part of the Evergreen Line Selection Process based on the fact that the Workshops and Topic Meetings and any additional meetings or workshops occurred or on the basis that information or documentation may have been received by a competing proponent, Proponent Team or proponent team member that was not received by the applicable undersigned.
2. The Workshops are for the purpose of enabling communication between the Province and the proponents as to issues relating to the RFP, the Project and the Draft Project Agreement, and the Topic Meetings are for the purpose of enabling the proponents to provide information and comments to the Province regarding changes proposed by the proponents to the Draft Project Agreement or regarding proponent submissions, as the case may be, in response to the RFP and of facilitating the discussion between the Province and the proponents of issues arising in connection with the proponent submissions and proposed changes to the Draft Project Agreement, all in accordance with the Proponent Agreement, and as may be detailed in the RFP.
3. No part of the evaluation of the Proponent's Proposal will be based on:
 - (a) information obtained or shared;

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(b) the conduct of the Proponent, the other Proponent Team Members, other proponents or their respective proponent team members, the Province, Partnerships BC, TransLink, or their respective representatives, including officers, directors, employees, consultants, agents and advisors, or of any of the undersigned; or

(c) discussions that occur;

at or during any Workshop or Topic Meeting.

4. Each of the undersigned acknowledges and agrees that:

(a) no actions or omissions or communications or responses, including information, statements, opinions, comments, consents, waivers, acceptances or approvals made or raised by any of the Releasees, the Proponent or any of the other Proponent Team Members, any of the other proponents or any of their respective proponent team members, any of the undersigned, any Person, or any of them, whether positive or negative, including if set out in any document or information provided by the Proponent or any of the other Proponent Team Members or any of the other proponents or any of their respective proponent team members;

(b) in relation to any matter, including the Evergreen Line Selection Process, the RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, Specifications or the Project;

at any time or times during the Evergreen Line Selection Process, including during or before or after any Workshop or Topic Meeting, will be binding on the Releasees, or any of them, be relied upon in any way by the Proponent or the other Proponent Team Members for any purpose whatsoever, be deemed or considered to be an indication of a preference by the Releasees, or any of them, even if adopted by the Proponent or another of the proponents, or will amend or waive any part of the Evergreen Line Selection Process, including any term of the RFP or the Draft Project Agreement, Definitive Project Agreement or Project Agreement, in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum to the RFP or expressly set out in a Response to Proponents issued by the Province to the proponents.

5. Each of the undersigned agrees to not:

(a) seek to obtain commitments from any of the Releasees or otherwise seek to obtain an unfair competitive advantage over any other proponent during the Workshops and Topic Meetings, including during any related communications; and

(b) use any aspect of the Workshops and Topic Meetings to provide the Proponent or any other Proponent Team Member with access to information that is not equally available to the other proponents and their proponent team members.

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- 6. Any information provided by any of the undersigned at any meeting or otherwise during any of the Workshops or Topic Meetings, including questions raised by any of the undersigned during such Workshops and Topic Meetings and any responses in writing by the Province to such questions, may be subject to disclosure to the other proponents in the sole discretion of the Province as contemplated in the Proponent Agreement.
- 7. The Province may in its sole discretion, on its own initiative or in response to an RFI from the Proponent or any other proponent, address any or all questions and matters raised by the Proponent or any of the other proponents or which otherwise come to the attention of the Province during or in connection with a Workshop or Topic Meeting by Responses to Proponents or by Addenda amending the RFP, including the Draft Project Agreement.
- 8. Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Schedule 1 of the Proponent Agreement will apply wherever such defined terms appear in this Waiver and Agreement, and Schedule 1 of the Proponent Agreement is hereby expressly incorporated by reference and forms a part of this Waiver and Agreement as if set out at length herein.
- 9. This Waiver and Agreement is in addition to the Proponent Agreement and nothing in this Waiver and Agreement is intended to or does in any way limit or narrow the application, interpretation or operation of the terms of the Proponent Agreement.

IN WITNESS WHEREOF this Waiver and Agreement has been executed as follows and is effective as of the day and year first above written.¹

Proponent:

[Insert legal name(s) and appropriate signature block(s) as per Note below]

Proponent Representatives:

_____ Name

_____ Name

_____ Name

_____ Signature

_____ Signature

_____ Signature

¹ **Note: This Waiver and Agreement is to be duly executed by the Proponent (if a corporation, by its duly authorized signatories; if a consortium or joint venture, by each of the legal entities comprising the consortium or joint venture by their duly authorized signatories; if a limited partnership, by all general partners by their duly authorized signatories; if a general partnership, by all of the partners) and by each of the Proponent’s individual representatives in attendance.**

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Name

Name

Name

Signature

Signature

Signature

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SCHEDULE 5 TO PROPONENT AGREEMENT
FORM OF LETTER OF CREDIT

[Note: Letter of Credit to be issued by a Canadian chartered bank acceptable to the Province in its sole discretion and be callable at the bank's counters in Vancouver, British Columbia.]

TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

<>
 (the "**Beneficiary**")

RE: PREFERRED PROPONENT SECURITY DEPOSIT

IRREVOCABLE DEMAND LETTER OF CREDIT NO:

Dear Sirs:

At the request of our client, _____ (the "**Customer**"), we hereby issue in your favour our irrevocable demand letter of credit No. _____ ("**Letter of Credit**") for a sum not exceeding in the aggregate <> Canadian Dollars (CDN \$ _____) effective immediately.

This bank shall immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of CDN \$ _____, upon your written demand(s) for payment being made upon us at our counter during normal business hours, <> **[Note: insert address of Bank in Vancouver, British Columbia]**, Canada, referencing this Letter of Credit No. _____ dated _____.

Partial drawings are permitted.

This Letter of Credit is issued subject to Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600.

Drawings up to the full amount of this Letter of Credit may be made where the drawing is accompanied by a certificate executed by an authorized signatory of the Beneficiary stating that:

- (a) the person signing the certificate is an authorized signatory of the Beneficiary; and
- (b) the Beneficiary is entitled to draw upon this Letter of Credit.

Any drawings made under this Letter of Credit must be accompanied by the original or certified copy of this Letter of Credit, together with an original certificate complying with the conditions set out above.

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We shall honour your written demand(s) for payment on presentation without enquiring whether you have a legitimate claim between yourself and our said Customer.

All banking charges are for the account of the Customer.

This Letter of Credit shall remain in full force and effect and, unless renewed, will expire at the close of business on **[Note: Insert date which is 180 days from the date of issuance of the Letter of Credit – such date should be a date no earlier than the date of the Province’s letter delivered pursuant to Section <> of the RFP].**

Notice of non-renewal will be provided to the Beneficiary in writing by registered mail by not later than 30 days before the expiry date.

Authorized Signatory

Authorized Signatory

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SCHEDULE 6 TO PROPONENT AGREEMENT
FORM OF RELEASE AND WAIVER

(see attached)

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RELEASE AND WAIVER**Note:**

This Release and Waiver is to be duly executed by the “Proponent” and each “Proponent Team Member” in accordance with the definitions of those terms in the Proponent Agreement. It is the responsibility of the Proponent to ensure that each such party and, where applicable, each entity included in each such party has been properly identified by its legal name in this Release and Waiver and has duly executed this Release and Waiver, and the Province may in its sole discretion request an opinion from the Proponent’s legal counsel to that effect.

THIS RELEASE AND WAIVER DATED the ____ day of _____, 20<>.

FROM: <> [insert legal name(s) of Proponent], having a place of business at <>
(the “Proponent”)

and: <> [insert legal name of Key Firm], having a place of business at <>
[replicate for each Key Firm]

and: <> [insert legal name of Key Individual], having a place of business at <>
[replicate for each Key Individual]

and: <> [insert legal name of Financial Sponsor], having a place of business at <>
[replicate for each Financial Sponsor]

(each a “Proponent Team Member” and collectively, together with the Proponent, the “Proponent Team Members”)

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

PARTNERSHIPS BRITISH COLUMBIA INC.
(“Partnerships BC”)

BC TRANSPORTATION FINANCING AUTHORITY
(“BCTFA”)

**SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY AND EACH
OF ITS SUBSIDIARIES**
(“TransLink”)

RE: EVERGREEN LINE RAPID TRANSIT PROJECT

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WHEREAS:

- A. The Province implemented and the Proponent and each of the other Proponent Team Members participated in the Evergreen Line Selection Process for the Evergreen Line Rapid Transit Project.
- B. As part of the Evergreen Line Selection Process the Province, the Proponent and each of the other Proponent Team Members entered into the Proponent Agreement made as of the <> day of <>, 20<> (the “Proponent Agreement”), as amended, whereby the Proponent and each of the other Proponent Team Members agreed, among other things, to grant this Release and Waiver.

NOW THEREFORE

- 1.1 The Proponent and each of the other Proponent Team Members, **IN CONSIDERATION** of the premises and **FOR OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged by the Proponent and each of the other Proponent Team Members (collectively, the “Releasers”):
- (a) on their own behalf and on behalf of their respective contractors, subcontractors, employees, officers, directors, managers, consultants, advisors, representatives, successors and permitted assignees, and any person who is or may be entitled to assert any moral rights or other rights with respect to any of the Proposal, the Work Product, the Intellectual Property and the Intellectual Property Rights, hereby irrevocably and unconditionally waives, releases and forever discharges the Releasees and each of them of and from any and all Claims for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, known or unknown, contingent or otherwise, for or by reason of or arising out of, in connection with or in any way related to the Proponent Agreement, the ATC-related agreement(s), any other process-related agreements, the Irrevocability Agreement, the Evergreen Line Selection Process, the ATC-related Consultation Process and any other consultative and facilitative or facilitated processes, including matters or issues contemplated or considered in any decision or ruling of the Conflict of Interest Adjudicator or in any opinion, commentary or report of the Fairness Reviewer, the Derivative Activities, and the use by or on behalf of the Province of any of the material with respect to the Proposal, the Work Product, the Intellectual Property, the Third-Party Technology, the Background Technology, the Permitted Use and the Intellectual Property Rights, or any of them; provided that if the Proponent is selected as the Preferred Proponent and enters into the Project Agreement, the foregoing releases and waivers are, subject to the terms of the Project Agreement, not intended to extend to any claims arising under the Project Agreement after the execution and delivery of the Project Agreement and solely in connection with the breach by the Province of any of its obligations under the Project Agreement;

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-
- (b) covenants and agrees not to directly or indirectly join, assist, aid or act in concert with any other Person, including any Proponent Team Member, in the making of any Claim in any manner whatsoever against any or all of the Releasees arising out of or in relation to the matters described in section 1.1(a);
- (c) covenants and agrees not to make or bring in any way whatsoever any Claim against any Person, including any Proponent Team Member, who might claim contribution or indemnity or other relief from any or all of the Releasees; and
- (d) hereby represents, warrants and covenants that it has not assigned and will not assign to any other Person, including any Proponent Team Member, any of the Claims arising out of or in relation to the matters described in this Release and Waiver.
- 1.2 This Release and Waiver will be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia, without regard to its conflicts of law rules, and the courts of competent jurisdiction within the Province of British Columbia will have exclusive jurisdiction with respect to any actions to enforce the provisions of this Release and Waiver.
- 1.3 The provisions of this Release and Waiver will enure to the benefit of each of the Releasees and their respective successors and assigns and shall be binding upon each of the Releasors and their respective successors and assigns.
- 1.4 The Releasors, and each of them, acknowledge and confirm that the Releasors, and each of them, have received independent legal advice with respect to the execution of this Release and Waiver and confirm that the Releasors, and each of them, know and understand the contents of this Release and Waiver and grant and deliver this Release and Waiver of their own free will.
- 1.5 Each term of this Release and Waiver will be valid and enforceable to the fullest extent permitted by law. If any term or the application of any term to any Person or circumstance is held to be invalid or unenforceable, then such term may be severed and the remainder of this Release and Waiver will not be affected or impaired thereby and will be construed and enforced as if such invalid or unenforceable term had never been contained herein, and such invalidity or unenforceability will not affect or impair the application of such term to any other Person or circumstance but such term will be valid and enforceable to the fullest extent permitted by law.
- 1.6 The Proponent hereby acknowledges and confirms receipt of the **[Stipend] <> [the Termination Fee]** and acknowledges and agrees that it is not eligible for any further payment or compensation and that delivery of the **[Stipend] <> [the Termination Fee]** is full and final settlement of any and all Claims arising out of or in relation to the matters described in this Release and Waiver.
- 1.7 Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Schedule 1 of the Proponent Agreement will

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apply wherever such defined terms appear in this Release and Waiver, a copy of the said Schedule 1 of the Proponent Agreement being attached as Schedule 1 to this Release and Waiver and incorporated by reference and forming a part of this Release and Waiver as if set out at length in the body hereof.

IN WITNESS WHEREOF this Release and Waiver has been duly executed by each of the undersigned as of the day and year first above written.

PROPONENT:

[insert legal name(s) and appropriate signature block(s) for Proponent]

PROPONENT TEAM MEMBERS:

[insert legal name and appropriate signature block for each Proponent Team Member]

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SCHEDULE 1 TO RELEASE AND WAIVER

[INTD: CONFORMED VERSION OF THE DEFINITIONS TO THE PROPONENT AGREEMENT AS AT THE RFP CLOSING TIME OR AT THE TIME OF DELIVERY OF THIS INSTRUMENT TO BE INSERTED AND ISSUED IN THE EXECUTION VERSION OF THIS DOCUMENT THAT WILL BE POSTED TO PROPONENTS]

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SCHEDULE 7 TO PROPONENT AGREEMENT
FORMS OF ACKNOWLEDGEMENTS AND WAIVERS

(see attached)

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**ACKNOWLEDGEMENT OF
ASSIGNMENT OF COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

For good and valuable consideration provided pursuant to the Proponent Agreement made as of the <> day of <>, 20<> (the "Proponent Agreement") among **[INSERT NAME OF PROPONENT]** (the "Proponent"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (the "Province") and each of **[INSERT NAMES OF OTHER PROPONENT TEAM MEMBERS]**, the Proponent does hereby acknowledge, confirm and perfect the assignment to the Province and its successors and assigns:

- (a) of the entire right, title and interest in and to all Intellectual Property Rights in the Work Product (as defined in the Proponent Agreement) and all other rights and interests of a proprietary nature in and associated with the Work Product throughout the world, including, without limitation, all copyright therein; and
- (b) of the entire right, title and interest throughout the world in and to the copyright works forming any part of the Work Product, whether registered or unregistered, all of which are set out in Schedule A attached hereto, including any copyright registrations and applications for copyright registration in respect of same, in each case free and clear of all liens and encumbrances.

IN WITNESS WHEREOF the parties have caused their authorized signatories to execute this Acknowledgement of Assignment effective as of the _____ day of _____, 20____.

**[INSERT LEGAL NAME(S) AND APPROPRIATE
SIGNATURE BLOCK(S) FOR PROPONENT]**

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**ACKNOWLEDGEMENT OF
ASSIGNMENT OF COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

SCHEDULE A

In and to the following copyright works forming part of the Work Product (each a "Work"):

Title of Work	Nature of Work (i.e. artistic/literary...)	Author	Year of Publication (if any)	Registration Number (if any)

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WAIVER OF MORAL RIGHTS

For good and valuable consideration, (the receipt and sufficiency of which are hereby acknowledged) I, **[insert name of employee, contractor etc.]** do agree and hereby waive in favour of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (the “Province”), her servants, agents and employees, all of my moral rights in any of the Work Product (as defined in the Proponent Agreement made as of the <> day of <>, 20<> among **[insert name of Proponent]**, the Province and each of **[insert names of other Proponent Team Members]**) established under the *Copyright Act* (Canada), as amended from time to time, including but not limited to the right to prevent distortion, mutilation or modification of the Work Product, the right to prevent the Work Product from being used in association with a product, service cause or institution, and the right to have my name associated with the Work Product, and I will not make any claim against the Province, its servants, agents, employees or licensees with respect to these moral rights. I further acknowledge and agree that the Province may license or assign the Work Product to third parties and agree that the preceding sentence will extend to all such parties, and their assignees and licensees.

EXECUTED at <>, this <> day of <>, 20<>.

SIGNED AND DELIVERED BY
[insert name of employee, contractor etc.]
 in the presence of:

(Witness)

[insert name of employee, contractor etc.]

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PATENT ASSIGNMENT

For value received, **[INSERT NAME OF PROPONENT]**, a _____ corporation with offices at _____ (the “**Proponent**”) has assigned and/or agreed to assign to **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (the “**Province**”) and its successors and assigns the entire right, title and interest in and to all Intellectual Property Rights in Work Product (as defined in the Proponent Agreement made as of the <> day of <>, 20<> among the Proponent, the Province and each of **[insert names of other Proponent Team Members]**) and all other rights and interests of a proprietary nature in and associated with the Work Product throughout the world, including, without limitation, all ideas and inventions (whether or not patentable or reduced to practice), all patents and applications therefor and the right to apply for patents thereon in any and all countries of the world.

In furtherance thereof, the Proponent hereby assigns to the Province and its successors and assigns the entire right, title and interest throughout the world in and to, free and clear of all liens and encumbrances:

1. the following issued patents and patent applications:
 - (a) **[Insert description of issued patents or patent applications];**
 - (b) **[Insert description of issued patents or patent applications];**
 - (c) all continuations and continuations-in-part to any of the foregoing;
 - (d) all divisionals, patents of addition, reissues, renewals, re-examinations and extensions to any of the foregoing; and
 - (e) all foreign counterparts to any of the foregoing,
 (collectively, the “**Assigned Patents**”);
2. all income, royalties, damages and payments now and hereafter due and/or payable under and with respect to the Assigned Patents, including, without limitation, damages and payments for past or future infringement of the Assigned Patents; and
3. the right to sue for past, present and future infringements of the Assigned Patents.

IN WITNESS WHEREOF the Proponent has caused its authorized signatories to execute this Patent Assignment effective as of the _____ day of _____, 20____.

[insert legal name(s) and appropriate signature block(s) for Proponent]