

**SCHEDULE 12
COMPENSATION ON TERMINATION**

COMPENSATION ON TERMINATION FOR PROVINCE DEFAULT.....	1
Compensation on Termination for Province Default	1
Date for Payment of Province Default Termination Sum	2
COMPENSATION ON NON-DEFAULT TERMINATION	2
Compensation on Termination for Non-Default	2
Date for Payment of Non-Default Termination Sum	3
COMPENSATION ON TERMINATION FOR PRIMARY CONTRACTOR DEFAULT	3
Compensation on Termination for Primary Contractor Default	3
Date for Payment of Primary Contractor Default Termination Sum	9
COMPENSATION ON TERMINATION FOR SPECIAL CIRCUMSTANCES.....	10
Obligation to Pay Special Termination Sum	10
Date for Payment	10
GENERAL.....	10
No Compensation to Extent of Insurance	10
Adjustment for Net Balance	11
Termination Sum Statement	11
Rights of Set-Off	13
Full and Final Settlement.....	13
Senior Debt Termination Amount	14
Payment to Senior Lenders.....	14
Condition Precedent to Payment	14
Gross Up of Termination Payments.....	15
Release of Lien Holdback Amounts in the Event of a Termination	16
Termination Prior to Issuance of Final Certificate of Completion	16
Termination Following Issuance of the Final Certificate of Completion.....	16
Lien Holdback Payment Applications	16
Resolution of Disputes.....	17

Part 1

COMPENSATION ON TERMINATION FOR PROVINCE DEFAULT

Part 1.1 Compensation on Termination for Province Default

- (a) If the Primary Contractor terminates this Agreement pursuant to Section 15.3 [Remedies of Primary Contractor for Province Default] or the Province terminates this Agreement pursuant to Section 16.1(a) [Termination for Convenience], the Province shall pay to the Primary Contractor the Province Default Termination Sum calculated in accordance with Section 1.1(b) of this Schedule, subject to any adjustment in accordance with Part 5 [General] of this Schedule.
- (b) Subject to Sections 1.1(c), (d) and (e) of this Schedule, the “**Province Default Termination Sum**” shall be an amount equal, without duplication, to:
- (i) the aggregate of:
 - (A) the Senior Debt Termination Amount; and
 - (B) Primary Contractor Breakage Costs;
- LESS
- (ii) the aggregate of:
 - (A) the market value of any assets and rights of the Primary Contractor and Subcontractors (other than any transferred to the Province pursuant to the terms of this Agreement) procured for the purpose of, and used principally in connection with, the performance of the Primary Contractor’s obligations under this Agreement; and
 - (B) the Warranty Holdback.
- (c) If a Distribution is made while any Additional Permitted Borrowing has been advanced and is outstanding and the Primary Contractor has wilfully, or through gross negligence, failed to comply with its obligations under Section 2.7(b)(iii) of the Lenders’ Remedies Agreement with respect to that Distribution, then the Province Default Termination Sum shall be reduced by an amount equal to the value of that Distribution.
- (d) If the Primary Contractor has wilfully or through gross negligence failed to comply with its obligations under Section 2.7(b)(iv) of the Lenders’ Remedies Agreement and there has been an overstatement by the Primary Contractor of the credit balances in its accounts which has caused the Province to reasonably believe that it would be required to pay a lesser sum as the Province Default Termination Sum than it actually is required to pay under the terms of this Part 1 [Compensation on Termination for Province Default] of this Schedule, then the Province Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date).
- (e) If the amount of the Province Default Termination Sum calculated in accordance with Sections 1.1(b), (c) and (d) of this Schedule is less than the Senior Debt Termination Amount, then it shall be deemed to be an amount equal to the Senior Debt Termination Amount.

STRICTLY CONFIDENTIAL

Part 1.2 Date for Payment of Province Default Termination Sum

The Province shall pay the Province Default Termination Sum on or before the later to occur of:

- (a) the date that is 60 Business Days after the Termination Date; and
- (b) the date that is 30 Business Days after the date on which the Province Default Termination Sum is finally determined by agreement of the Province and the Primary Contractor or in accordance with the Dispute Resolution Procedure;

provided that, if there is a dispute as to the calculation of the Province Default Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 1.2(a) of this Schedule and any remainder shall be paid on or before the payment date referred to in Section 1.2(b) of this Schedule, with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate, calculated from the payment date referred to in Section 1.2(a) of this Schedule until the date of payment.

Part 2

COMPENSATION ON NON-DEFAULT TERMINATION

Part 2.1 Compensation on Termination for Non-Default

- (a) If this Agreement is terminated by either the Province or the Primary Contractor pursuant to Section 9.6(a) [Termination for Force Majeure] or Section 9.7(a)(iv) [Termination for Damage or Destruction], or by the Province pursuant to Section 9.7(b)(ii) [Termination for Damage or Destruction], the Province shall pay to the Primary Contractor the Non-Default Termination Sum calculated in accordance with Section 2.1(b) of this Schedule, subject to any adjustment in accordance with Part 5 [General] of this Schedule.
- (b) Subject to Sections 2.1(c), (d) and (e) of this Schedule, the “**Non-Default Termination Sum**” shall be an amount equal, without duplication, to:
 - (i) the aggregate of:
 - (A) the Senior Debt Termination Amount; and
 - (B) Primary Contractor Breakage Costs;LESS
 - (ii) the aggregate of:
 - (A) the market value of any assets and rights of the Primary Contractor and Subcontractors (other than any transferred to the Province pursuant to the terms of this Agreement) procured for the purpose of, and used principally in connection with, the performance of the Primary Contractor’s obligations under this Agreement; and
 - (B) the Warranty Holdback.

3

- (c) If a Distribution is made while any Additional Permitted Borrowing has been advanced and is outstanding and the Primary Contractor has wilfully, or through gross negligence, failed to comply with its obligations under Section 2.7(b)(iii) of the Lenders' Remedies Agreement with respect to that Distribution, then the Non-Default Termination Sum shall be reduced by an amount equal to the value of that Distribution.
- (d) If the Primary Contractor has wilfully or through gross negligence failed to comply with its obligations under Section 2.7(b)(iv) of the Lenders' Remedies Agreement and there has been an overstatement by the Primary Contractor of the credit balances in its accounts which has caused the Province to reasonably believe that it would be required to pay a lesser sum as the Non-Default Termination Sum than it actually is required to pay under the terms of this Part 2 [Compensation on Non-Default Termination] of this Schedule, then the Non-Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date).
- (e) If the amount of the Non-Default Termination Sum calculated in accordance with Sections 2.1(b), (c) and (d) of this Schedule is less than the Senior Debt Termination Amount, then the Non-Default Termination Sum shall be deemed to be an amount equal to the Senior Debt Termination Amount.

Part 2.2 Date of Payment of Non-Default Termination Sum

The Province shall pay the Non-Default Termination Sum on or before the later to occur of:

- (a) the date that is 60 Business Days after the Termination Date; and
- (b) the date that is 30 Business Days after the date on which the Non-Default Termination Sum is finally determined by agreement of the Province and the Primary Contractor or in accordance with the Dispute Resolution Procedure;

provided that, if there is a dispute as to the calculation of the Non-Default Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 2.2(a) of this Schedule and any remainder shall be paid on or before the payment date referred to in Section 2.2(b) of this Schedule, with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate, calculated from the payment date referred to in Section 2.2(a) of this Schedule until the date of payment.

Part 3

COMPENSATION ON TERMINATION FOR PRIMARY CONTRACTOR DEFAULT

Part 3.1 Compensation on Termination for Primary Contractor Default

- (a) Except where Part 4 [Compensation on Termination for Special Circumstances] of this Schedule applies, if the Province terminates this Agreement pursuant to Section 9.7(a)(iii) [Termination for Damage or Destruction] or Section 14.3 [Remedies of Province for Primary Contractor Default], the Primary Contractor shall pay to the Province or the Province shall pay to the Primary Contractor, as determined by this Part 3, the termination sum calculated in accordance with this Part 3 (the "**Primary Contractor Default Termination Sum**"), subject to any adjustment in accordance with Part 5 [General] of this Schedule.

STRICTLY CONFIDENTIAL

4

- (b) Subject to the other provisions of this Part 3, the Primary Contractor Default Termination Sum shall be an amount calculated by reference to the following amounts:
- (i) the aggregate, without duplication, of:
 - (A) the Contract Price as at the Termination Date; and
 - (B) any sums not forming part of the Contract Price that have become due and payable from the Province to the Primary Contractor prior to the Termination Date in accordance with this Agreement but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid;
 - (ii) the aggregate, without duplication, of the following amounts to the extent that such amounts have been paid by the Province to the Primary Contractor on or before the Termination Date (provided that, in calculating the amount referred to in this Section 3.1(b)(ii), if the Primary Contractor has provided an Availability Demonstration Letter of Credit and/or a TIDS Demonstration Letter of Credit, the Availability Demonstration Completion Amount and/or the TIDS Performance Demonstration Completion Amount, as the case may be, shall not be treated as having been paid until the relevant Letter of Credit has been returned to the Primary Contractor pursuant to Section 12.6.A(c) or Section 12.6.B(c), as applicable):
 - (A) all Progress Payments;
 - (B) any Additional Work Lien Holdback Amounts;
 - (C) where Section 12.4(k) applies, the PA Release Amount;
 - (D) the Substantial Completion Payment Amount;
 - (E) the Availability Demonstration Completion Amount;
 - (F) the TIDS Performance Demonstration Completion Amount;
 - (G) the Total Completion Payment Amount;
 - (H) the Warranty Holdback;
 - (I) the Province's estimate of all costs and expenses paid, payable or that will be payable by the Province associated with the termination of this Agreement including the cost of appointment, mobilisation and installation of a replacement contractor (or procuring the performance of the unfulfilled obligations of the Primary Contractor by the Province);
 - (J) the Province's estimate of amounts paid, payable or that will be payable by the Province to any alternative contractor(s) for the performance of obligations equivalent to the unfulfilled obligations of the Primary Contractor under this Agreement, including for the avoidance of doubt the cost of remedying any Work Defects and obtaining warranties for

STRICTLY CONFIDENTIAL

5

Work in place and to be performed equivalent to those provided for in this Agreement;

- (K) the Province's estimate of its and BCTFA's costs in reinstating any of its assets or other equipment required for the performance of its obligations under this Agreement, to the extent that such reinstatement is required as a result of a breach by the Primary Contractor of any of its obligations under this Agreement;
- (L) the Province's estimate of all other Direct Losses incurred or to be incurred by the Province and BCTFA associated with the termination of this Agreement and (to the extent that the Province and BCTFA have not previously been compensated for such Direct Losses) any breach by the Primary Contractor of any of its obligations under this Agreement prior to the Termination Date; and
- (M) any sums that have become due and payable from the Primary Contractor to the Province prior to the Termination Date in accordance with this Agreement but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid;

provided that:

- (1) to the extent that any costs, expenses or Direct Losses included in the calculation of the Primary Contractor Default Termination Sum are based on estimates by the Province and the actual costs, expenses or Direct Losses incurred by the Province in respect of the relevant items differ from the estimates by a material amount, the Province and the Primary Contractor shall promptly adjust the amount of the Primary Contractor Default Termination Sum or, if the Primary Contractor Default Termination Sum has been paid in accordance with this Schedule prior to the date on which such difference has been established, make payment or repayment accordingly, without interest;
- (2) if Section 3.1(c)(ii)(A)(2), 3.1(c)(ii)(B)(2) or 3.1(c)(ii)(C)(2) of this Schedule applies, the calculation under this Section 3.1(b)(ii) shall not include any costs or expenses of the Province that are compensated by taking into account the amount referred to in Section 3.1(e)(i)(B)(1), (2) or (3) or Section 3.1(e)(ii)(B)(1), (2) or (3), as applicable, of this Schedule in the calculation of the Primary Contractor Default Termination Sum; and
- (3) if Section 3.1(f) of this Schedule applies, the calculation under this Section 3.1(b)(ii) shall not include any costs or expenses that the Province has incurred or will incur in remedying any Deficiency List Deficiency in respect of which as of the Termination Date an amount is being retained by the Province pursuant to Section 12.7(a) or an amount is outstanding under a Deficiency Letter of Credit provided by the Primary Contractor.

- (c) If the Termination Date occurs:

STRICTLY CONFIDENTIAL

6

- (i) prior to the Substantial Completion Date, the Primary Contractor Default Termination Sum shall be calculated as of the Termination Date; or
- (ii) after the Substantial Completion Date but prior to either or both of the Availability Demonstration Completion Date and the TIDS Performance Demonstration Completion Date, the Primary Contractor Default Termination Sum shall be calculated as of:
 - (A) if the Termination Date occurs prior to the Availability Demonstration Completion Date but after the TIDS Performance Demonstration Completion Date, the earlier to occur of:
 - (1) the Availability Demonstration Completion Date; and
 - (2) the Availability Demonstration Completion Target Date;
 - (B) if the Termination Date occurs prior to the TIDS Performance Demonstration Completion Date but after the Availability Demonstration Completion Date, the earlier to occur of:
 - (1) the TIDS Performance Demonstration Completion Date; and
 - (2) the TIDS Performance Demonstration Completion Target Date;
or
 - (C) if the Termination Date occurs prior to both the Availability Demonstration Completion Date and the TIDS Performance Demonstration Completion Date, the earlier to occur of:
 - (1) the later to occur of the Availability Demonstration Completion Date and the TIDS Performance Demonstration Completion Date; and
 - (2) the later to occur of the Availability Demonstration Completion Target Date and the TIDS Performance Demonstration Completion Target Date.

The parties hereby agree that, for the purposes of this Section 3.1(c)(ii) and the other provisions of this Schedule and this Agreement that apply in the event that this Section 3.1(c)(ii) applies, all provisions of this Agreement relating to the Availability Demonstration (if Section 3.1(c)(ii)(A) or (C) applies) and/or the TIDS Performance Demonstration (if Section 3.1(c)(ii)(B) or (C) applies), including without limitation relevant provisions of Article 13 [Systems], Part 2 of Schedule 4 and Schedule 24 [Liquidated Damages], shall survive termination, for the purposes of determining whether Availability Demonstration Completion and/or TIDS Performance Demonstration Completion has occurred and the amount of Availability Liquidated Damages and/or TIDS Liquidated Damages that would have been payable had there been no termination, save that the occurrence of the Availability Demonstration Completion Date and/or the TIDS Performance Demonstration Completion Date shall be established by the Province, based on data provided by, respectively, TransLink and/or the TIDS system and provided that, for certainty, Sections 12.6.A [Availability Demonstration Completion

STRICTLY CONFIDENTIAL

Payment] and 12.6.B [TIDS Performance Demonstration Completion Payment] shall not have effect.

- (d) If Section 3.1(c)(i), 3.1(c)(ii)(A)(1), 3.1(c)(ii)(B)(1) or 3.1(c)(ii)(C)(1) of this Schedule applies:
- (i) if the aggregate amount calculated in accordance with Section 3.1(b)(ii) of this Schedule exceeds the aggregate amount calculated in accordance with Section 3.1(b)(i) of this Schedule, the Primary Contractor Default Termination Sum shall be an amount equal to the excess and shall be payable by the Primary Contractor to the Province;
 - (ii) if the aggregate amount calculated in accordance with Section 3.1(b)(i) of this Schedule exceeds the aggregate amount calculated in accordance with Section 3.1(b)(ii) of this Schedule, the Primary Contractor Default Termination Sum shall be an amount equal to the excess and shall be payable by the Province to the Primary Contractor; or
 - (iii) if the aggregate amounts calculated in accordance with Sections 3.1(b)(i) and 3.1(b)(ii) of this Schedule are equal, the Primary Contractor Default Termination Sum shall be zero and no amount shall be payable by the Primary Contractor to the Province or by the Province to the Primary Contractor pursuant to this Part 3.
- (e) If Section 3.1(c)(ii)(A)(2), 3.1(c)(ii)(B)(2) or 3.1(c)(ii)(C)(2) of this Schedule applies:
- (i) if the aggregate amount calculated in accordance with Section 3.1(b)(ii) of this Schedule exceeds or is equal to the aggregate amount calculated in accordance with Section 3.1(b)(i) of this Schedule, the Primary Contractor Default Termination Sum shall be an amount equal to the aggregate of:
 - (A) the excess (if any); and
 - (B) an amount equal to:
 - (1) if Section 3.1(c)(ii)(A)(2) of this Schedule applies, the Availability Liquidated Damages that would have been payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages] had there been no termination;
 - (2) if Section 3.1(c)(ii)(B)(2) of this Schedule applies, the TIDS Liquidated Damages that would have been payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages] had there been no termination; or
 - (3) if Section 3.1(c)(ii)(C)(2) of this Schedule applies, the aggregate of the Availability Liquidated Damages and the TIDS Liquidated Damages that would have been payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages] had there been no termination;

and shall be payable by the Primary Contractor to the Province; or

STRICTLY CONFIDENTIAL

8

(ii) if the aggregate amount calculated in accordance with Section 3.1(b)(i) of this Schedule exceeds the aggregate amount calculated in accordance with Section 3.1(b)(ii) of this Schedule, the Primary Contractor Default Termination Sum shall be an amount equal to:

(A) the excess;

less

(B) an amount equal to:

(1) if Section 3.1(c)(ii)(A)(2) of this Schedule applies, the Availability Liquidated Damages that would have been payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages] had there been no termination;

(2) if Section 3.1(c)(ii)(B)(2) of this Schedule applies, the TIDS Liquidated Damages that would have been payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages] had there been no termination; or

(3) if Section 3.1(c)(ii)(C)(2) of this Schedule applies, the aggregate of the Availability Liquidated Damages and the TIDS Liquidated Damages that would have been payable by the Primary Contractor pursuant to Schedule 24 [Liquidated Damages] had there been no termination;

and

(4) if the calculation under this Section 3.1(e)(ii) results in a positive amount, shall be payable by the Province to the Primary Contractor;

(5) if the calculation under this Section 3.1(e)(ii) results in a negative amount, shall be payable by the Primary Contractor to the Province; or

(6) if the amount calculated in accordance with this Section 3.1(e)(i) is zero, shall be zero and no amount shall be payable by the Primary Contractor to the Province or by the Province to the Primary Contractor pursuant to this Part 3.

(f) If Section 3.1(c)(ii) of this Schedule applies and the Total Completion Date has not occurred on or before the Termination Date, the Province shall be entitled:

(i) irrevocably to retain any outstanding amount retained by the Province pursuant to Section 12.7(a); and/or

(ii) if the Primary Contractor has provided a Deficiency Letter of Credit, to make a demand under such Letter of Credit for the principal amount thereof.

STRICTLY CONFIDENTIAL

Part 3.2 Date for Payment of Primary Contractor Default Termination Sum

- (a) The Primary Contractor or the Province, as applicable, as determined by Section 3.1 [Compensation on Termination for Primary Contractor Default] of this Schedule, shall pay the Primary Contractor Default Termination Sum calculated in accordance with Section 3.1 [Compensation on Termination for Primary Contractor Default] of this Schedule on or before the later to occur of:
 - (i) if:
 - (A) Section 3.1(c)(i) of this Schedule applies, the date that is 60 Business Days after the Termination Date; or
 - (B) Section 3.1(c)(ii) of this Schedule applies, the date that is 60 Business Days after the date as of which the Primary Contractor Default Termination Sum is required to be calculated in accordance with that Section; and
 - (ii) the date that is 30 Business Days after the date on which the Primary Contractor Default Termination Sum is finally determined by agreement of the Province and the Primary Contractor or in accordance with the Dispute Resolution Procedure;

provided that, if there is a dispute as to the calculation of the Primary Contractor Default Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 3.2(a)(i)(A) or (B), as applicable, of this Schedule and any remainder shall be paid on or before the payment date referred to in Section 3.2(a)(ii) of this Schedule, with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate, calculated from the payment date referred to in Section 3.2(a)(i) (A) or (B), as applicable, of this Schedule until the date of payment.

- (b) If Section 3.1(c)(ii) of this Schedule applies:
 - (i) whether the Primary Contractor Default Termination Sum is payable by the Primary Contractor to the Province or by the Province to the Primary Contractor or is zero, as determined by Section 3.1 [Compensation on Termination for Primary Contractor Default] of this Schedule, the Primary Contractor agrees that the Province shall be entitled:
 - (A) irrevocably to retain (if not previously paid to the Primary Contractor) the Availability Demonstration Completion Payment Amount, the TIDS Performance Demonstration Completion Payment Amount and the Total Completion Payment Amount; and
 - (B) if the Primary Contractor has provided an Availability Demonstration Letter of Credit and/or a TIDS Demonstration Letter of Credit that has not been returned to the Primary Contractor in accordance with the terms of this Agreement, at any time following the date as of which the Primary Contractor Default Termination Sum is required to be calculated in accordance with Section 3.1(c)(ii) of this Schedule, to make a demand under such Letter(s) of Credit for the full principal amount thereof; and

10

- (ii) unless the Primary Contractor Default Termination Sum is zero, the Primary Contractor or the Province, as the case may be, shall be required to pay the Primary Contractor Default Termination Sum to the Province or the Primary Contractor, as the case may be, in accordance with Section 3.2(a) of this Schedule.

Part 4

COMPENSATION ON TERMINATION FOR SPECIAL CIRCUMSTANCES

Part 4.1 Obligation to Pay Special Termination Sum

If the Province terminates this Agreement pursuant to Section 14.3(a) [Remedies of the Province for Primary Contractor Default] as a result of any Primary Contractor Default referred to in Section 14.1(f) or pursuant to Section 14.3(c), the Province shall pay to the Primary Contractor a termination sum (the “**Special Termination Sum**”) equal to the Senior Debt Termination Amount, subject to any adjustment in accordance with Part 5 [General] of this Schedule.

Part 4.2 Date for Payment

The Province shall pay the Special Termination Sum on or before the later to occur of:

- (a) the date that is 60 Business Days after the Termination Date; and
- (b) the date that is 30 Business Days after the date on which the Special Termination Sum is finally determined by agreement of the Province and the Primary Contractor or in accordance with the Dispute Resolution Procedure;

provided that, if there is a dispute as to the calculation of the Special Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 4.2(a) of this Schedule and any remainder shall be paid on or before the payment date referred to in Section 4.2(b) of this Schedule, with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate, calculated from the payment date referred to in Section 4.2(a) of this Schedule until the date of payment.

Part 5

GENERAL

Part 5.1 No Compensation to Extent of Insurance

Notwithstanding anything to the contrary in this Schedule or this Agreement, the Primary Contractor shall not be entitled to be compensated by the Province under this Schedule, and any amounts payable by the Province under any provisions of this Schedule shall be reduced, to the extent:

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

STRICTLY CONFIDENTIAL

11

- (ii) there are insurance proceeds available to the Primary Contractor in respect of the Project, or that would have been available to the Primary Contractor in respect of the Project under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement;

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Primary Contractor or of any person for whom the Primary Contractor is in law responsible (including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer), or for any other reason, excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies, and any such insurance proceeds recovered by or available to the Primary Contractor were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or

- (b) that the Primary Contractor recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Primary Contractor has in fact taken out and maintained, and any such insurance proceeds recovered by the Primary Contractor or that it is entitled to recover were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or
- (c) that the Province has made or authorized payment to or for the account of or on behalf of the Primary Contractor, or the Primary Contractor is entitled to receive proceeds of insurance, under any of Sections 7.18(b), (c), (d) and (e), and such payments were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or
- (d) of any amounts in respect of deductibles and waiting periods under any of the insurance referred to in either of Sections 5.1(a) and 5.1(b) of this Schedule for which the Primary Contractor is responsible, provided there shall be no reduction under this Section 5.1(d) to the extent that it would reduce the amount of the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum below the Senior Debt Termination Amount.

Part 5.2 Adjustment for Net Balance

Any amount payable by the Province as compensation on termination under this Schedule shall be:

- (a) increased by any net balance owing by the Province or BCTFA pursuant to Section 16.6(c); or
- (b) reduced by any net balance owing by the Primary Contractor to the Province or BCTFA pursuant to Section 16.6(c).

Part 5.3 Termination Sum Statement

- (a) In respect of termination payments to be made pursuant to this Schedule in respect of a termination of this Agreement, as soon as practicable after (and in any event within 20 Business Days after):

STRICTLY CONFIDENTIAL

12

- (i) the Termination Date; or
- (ii) if Section 3.1(c)(ii) of this Schedule applies, the date as of which the Primary Contractor Default Termination Sum is required to be calculated in accordance with that Section;

the Province, in the case of a termination referred to in Section 3.1(a) of this Schedule, or the Primary Contractor, in the case of a termination referred to in Sections 1.1(a), 2.1(a) or 4.1 of this Schedule, shall give to the other party a statement setting out the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to the recipient, justifying the amount of the relevant termination sum including a breakdown of each individual element of each sum.

- (b) In the event that the Termination Date occurs prior to any payment of the PA Release Amount by the Province pursuant to Section 12.4(h), then no later than the third Business Day following the expiry of the period which commences on (but excludes) the earlier of the Termination Date or the date of issuance of the Final Certificate of Completion and ends 45 calendar days thereafter, the Primary Contractor shall give the Province a statement detailing any Adverse Claims which have either not been paid, discharged, satisfied and, if filed in the Land Title Office, cancelled or not been removed or cancelled from title following the payment of money into or the posting of security with the Court in accordance with section 23 or 24, as applicable, of the Builders Lien Act prior to the delivery of such statement.
- (c) A statement given by the Primary Contractor to the Province pursuant to Section 5.3(a) of this Schedule shall be accompanied by:
 - (i) the most current Financial Model in accordance with Section 2.19 [Financial Model];
 - (ii) a certificate of the Agent as to the amount of the Senior Debt Termination Amount, including particulars of the calculation of the various components thereof;
 - (iii) a certificate from a senior officer of the Primary Contractor as to:
 - (A) the amount and calculation of the components of any Primary Contractor Breakage Costs incurred by the Primary Contractor where Primary Contractor Breakage Costs are being claimed as a component of the compensation on termination; and
 - (B) the amount referred to in Section 5.3(c)(ii) of this Schedule;
- (d) In the case of a statement given by the Primary Contractor to the Province pursuant to Section 5.3(a) of this Schedule, the Primary Contractor shall promptly provide to the Province all such documents and information as the Province's Representative may from time to time request for the purposes of calculating, confirming the calculation of, or verifying the amount of compensation payable.

STRICTLY CONFIDENTIAL

Part 5.4 Rights of Set-Off

- (a) Subject to Section 5.4(b) of this Schedule, any amount that is payable by the Province to the Primary Contractor pursuant to this Schedule shall be reduced (without any double-counting) by any amount the Province is entitled to withhold under Section 12.10 [Adverse Claims] or to set off under Section 12.12 [Province's Right of Set Off] (provided this right of set off shall not apply to an amount payable by the Primary Contractor to the Province pursuant to Section 16.6(c) where the amount payable by the Province as compensation on termination has been reduced pursuant to Section 5.2 [Adjustment for Net Balance] of this Schedule by the amount payable by the Primary Contractor to the Province pursuant to Section 16.6(c)).
- (b) Where compensation on termination is payable pursuant to Part 1 [Compensation on Termination for Province Default], Part 2 [Compensation on Non-Default Termination] or Part 4 [Compensation on Termination for Special Circumstances] of this Schedule, subject to the provisions of Section 38 of the *Financial Administration Act* (British Columbia), the right of set off under Section 12.12 [Province's Right of Set Off] and any adjustment contemplated by Section 5.2(b) of this Schedule may only be exercised against any such payment of compensation if and to the extent that such compensation exceeds the Senior Debt Termination Amount at that time.
- (c) To the extent that:
 - (i) any amount the Province is entitled to set off referred to in Section 5.4(a) of this Schedule; or
 - (ii) any net balance owing by the Primary Contractor referred to in Section 5.2(b) of this Schedule;

is not fully paid and satisfied by deduction from or reduction of any amounts payable by the Province to the Primary Contractor under this Schedule, whether by reason of Section 5.4(b) of this Schedule or because the amount referred to in Section 5.4(c)(i) or Section 5.4(c)(ii) of this Schedule is greater than the amount of compensation on termination payable by the Province under this Schedule, or because no compensation on termination is payable by the Province under this Schedule, or for any other reason, the Primary Contractor shall pay to the Province on demand the amount remaining unpaid and unsatisfied.

Part 5.5 Full and Final Settlement

Notwithstanding any other provision of this Agreement or rule of law or equity to the contrary, either:

- (a) payment of the amount payable by the Province or the Primary Contractor, as applicable, pursuant to this Schedule in respect of a termination of this Agreement; or
- (b) a determination that neither party has an obligation to make any payment to the other party pursuant to this Schedule in respect of a termination of this Agreement;

shall be in full and final satisfaction of all Claims that, in relation to any Supervening Events, or breaches or defaults under, or termination of, this Agreement, or any other cause, matter or thing whatsoever with

respect to this Agreement, can be made or brought against the Province or BCTFA by the Primary Contractor, whether under contract, tort, restitution or otherwise, except for:

- (i) any liability of the Province or BCTFA to the Primary Contractor that arose prior to the Termination Date (but not from the termination itself) and has not already been compensated for, or taken into account, in determining the relevant compensation amount and adjustments thereto;
- (ii) any liability of the Province or BCTFA to make payment pursuant to any of:
 - (A) Section 12.10(b); or
 - (B) Sections 5.10(g) or 5.10(i), as applicable, of this Schedule; and
- (iii) any liability of the Province to make a payment and/or, if applicable, return any Warranty Holdback Letter of Credit pursuant to Section 12.9(c).

Notwithstanding any other provision of this Agreement or rule of law or equity to the contrary, the right to compensation payable under this Schedule is the sole and exclusive remedy of the Primary Contractor against the Province and BCTFA for any termination of this Agreement and the Primary Contractor is excluded from all other rights or remedies in respect thereof. Without limiting the generality of the foregoing, the Primary Contractor shall have no Claim against the Province or BCTFA in respect of any Work performed up to the Termination Date, or for any refund or repayment of all or any part of the Performance Incentive Payments, apart from any compensation payable by the Province pursuant to this Schedule, except for any liability of the Province or BCTFA to the Primary Contractor that arose prior to the Termination Date (but not from the termination itself) and has not already been compensated for, or taken into account, in determining the relevant compensation amount and adjustments thereto. The Primary Contractor acknowledges and agrees that the provisions of this Schedule do not constitute or result in a penalty or forfeiture.

Part 5.6 Senior Debt Termination Amount

The Province shall be entitled, but shall not be obligated, to rely on a certificate of the Agent as conclusively establishing the amount of the Senior Debt Termination Amount at any relevant time.

Part 5.7 Payment to Senior Lenders

If the Province is obligated to pay to the Primary Contractor the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum a receipt or other acknowledgement issued by the Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Termination Amount shall discharge the Province's obligation to pay to the Primary Contractor that portion of the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum, as the case may be, that is equal to the amount so acknowledged or confirmed as having been received by the Agent.

Part 5.8 Condition Precedent to Payment

Notwithstanding any other provision of this Schedule or this Agreement, it shall be a condition precedent to any payment by the Province to the Primary Contractor of any compensation on termination in excess of an amount equal to:

15

- (a) the Senior Debt Termination Amount; plus
- (b) in the case of a termination referred to in Sections 1.1(a), 2.1(a) or 4.1 of this Schedule in respect of which there is a dispute as to the calculation of, respectively, the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum, interest on the disputed portion of such amount that it is subsequently agreed or determined be payable by the Province at a rate of interest per annum equal to the No Default Interest Rate, calculated from the payment date referred to in Section 1.2(a), 2.2(a) or 4.2(a), as applicable, until the date of payment of such disputed portion:

that, at the time of such payment by the Province to the Primary Contractor, the Primary Contractor shall have complied with its obligations under Sections 16.8 [Transfer of Assets] and 16.9(b) to (d) inclusive.

Part 5.9 Gross Up of Termination Payments

- (a) For the purpose of this Section:
 - (i) **“Deemed Corporate Primary Contractor”** means a fictional fully taxable single purpose British Columbia resident corporation having a permanent establishment only in the Province of British Columbia that:
 - (A) is, and has since the date of this Agreement been, a subsidiary of a public corporation carrying on active business with the same fiscal year end as the Primary Contractor; and
 - (B) has the same revenues and expenses as the Primary Contractor and has taken all exemptions, relief, allowances, deductions, set offs and credits permitted under Laws relating to Income Taxes (including any that would be available in relation to the Project) since the date of this Agreement so as to minimize its Income Tax payable.
 - (b) If any amount payable by the Province as compensation on termination under Part 1 [Compensation on Termination for Province Default], Part 2 [Compensation on Non-Default Termination] or Part 4 [Compensation on Termination for Special Circumstances] of this Schedule, as such amount may be increased or decreased pursuant to the other provisions of this Part 5 [General Provisions] of this Schedule, would in the hands of a Deemed Corporate Primary Contractor (if the Deemed Corporate Primary Contractor were being paid the amount payable on termination) be subject to Income Tax payable to a Governmental Authority within Canada that would not have been payable but for the fact that such amount is payable as compensation on termination (the **“Excess Income Tax”**), then the Province shall pay to the Primary Contractor the additional amount that would be required to be paid to the Deemed Corporate Primary Contractor (if the Deemed Corporate Primary Contractor were being paid the amount payable on termination) to put the Deemed Corporate Primary Contractor in the same financial position after Income Tax as it would have been in had the amount payable on termination (or portion thereof) not been subject to any such Excess Income Tax, taking account of any exemption, relief, allowances, deductions, set offs or credits in respect of Income Tax (whether available by choice or not) that would be available to the Deemed Corporate Primary Contractor to reduce the Income Tax to which the amount payable on termination, or any portion thereof, would be subject.

STRICTLY CONFIDENTIAL

Part 5.10 Release of Lien Holdback Amounts in the Event of a Termination

Termination Prior to Issuance of Final Certificate of Completion

- (a) If the Termination Date occurs prior to the issuance of a Final Certificate of Completion, the Primary Contractor shall, on the third Business Day which is more than 45 days following the Termination Date (provided that prior to such Business Day the Province or the Primary Contractor, as the case may be, has not paid, or they have not agreed the amount of, a termination sum pursuant to this Schedule that takes into account in its calculation the amount of the Termination Release Amount), deliver to the Province's Representative a draft Lien Holdback Payment Application for the payment of the Lien Holdback Amounts (or relevant portions thereof) that relate to such Work provided under this Agreement as of the Termination Date that has not been carried out under a Subcontract that has been the subject of a Subcontract Certificate of Completion (the "**Termination Release Amount**"). Such Lien Holdback Payment Application shall be accompanied by the documentation specified in the form of Lien Holdback Payment Application attached at Part 4, Form 4B [Lien Holdback Payment Application] of Schedule 22.

Termination Following Issuance of the Final Certificate of Completion

- (b) If the Termination Date occurs after the issuance of a Final Certificate of Completion but before the PA Release Amount has become due and payable pursuant to Section 12.4(h), the Primary Contractor shall, on the third Business Day which is more than 45 days following the date of issuance of the Final Certificate of Completion (provided that prior to such Business Day the Province or the Primary Contractor, as the case may be, has not paid, or they have not agreed the amount of, a termination sum pursuant to this Schedule that takes into account in its calculation the amount of the Termination Release Amount), deliver to the Province's Representative a draft Lien Holdback Payment Application for the payment of the Termination Release Amount. Such Lien Holdback Payment Application shall be accompanied by the documentation specified in the form of Lien Holdback Payment Application attached at Part 4, Form 4B [Lien Holdback Payment Application] of Schedule 22 [Payments].

Lien Holdback Payment Applications

- (c) Following delivery of a draft Lien Holdback Payment Application pursuant to Section 5.10(a) or 5.10(b), as applicable, of this Schedule, the Primary Contractor shall arrange with the Province's Representative a reasonable opportunity for the Province's Representative to meet with the Primary Contractor's Representative to review such draft Lien Holdback Payment Application and to review such documentation as the Province's Representative may request.
- (d) The Primary Contractor shall cooperate with the Province's Representative to reach agreement on the finalized Lien Holdback Payment Application and the calculation of the Termination Release Amount payable in accordance with Section 5.10(g) of this Schedule.
- (e) The Province's Representative shall identify any deficiencies or inaccuracies in the Lien Holdback Payment Application and notify the Primary Contractor of the Province's calculation of the Termination Release Amount within five Business Days of the draft Lien Holdback Payment Application being delivered pursuant to Section 5.10(a) or

5.10(b), as applicable, of this Schedule. Any dispute between the Province and the Primary Contractor as to the calculation of the Termination Release Amount shall be subject to Section 5.11 of this Schedule.

- (f) The Province's Representative shall approve the Lien Holdback Payment Application as to the amount of the Termination Release Amount not in dispute pursuant to Section 5.10(e) within five Business Days of the finalized Lien Holdback Payment Application being agreed upon pursuant to Section 5.10(d) of this Schedule.
- (g) Subject to Sections 5.10(h) and 5.10(i) of this Schedule, the Province shall make payment to the Primary Contractor of the amount of the Termination Release Amount approved pursuant to Section 5.10(f) of this Schedule (with any disputed amount being subject to Section 5.11 [Resolution of Disputes] of this Schedule) on the first Business Day which is more than 55 days following the Termination Date (provided that prior to such Business Day the Province or the Primary Contractor, as the case may be, has not paid, or they have not agreed the amount of, a termination sum pursuant to this Schedule that takes into account in its calculation the amount of the Termination Release Amount) or the issuance of the Final Certificate of Completion, as applicable.
- (h) The Primary Contractor shall, on the date that the Termination Release Amount becomes due and payable pursuant to Section 5.10(g) of this Schedule (provided that prior to such Business Day the Province or the Primary Contractor, as the case may be, has not paid, or they have not agreed the amount of, a termination sum pursuant to this Schedule that takes into account in its calculation the amount of the Termination Release Amount), pay to the Province an amount equal to that portion of the Termination Release Amount payable by the Province to the Primary Contractor pursuant to Section 5.10(g) of this Schedule that does not relate to Additional Work (the “**Termination Release Contribution Amount**”), provided that the Primary Contractor’s obligation to pay the Termination Release Contribution Amount shall be satisfied by the Province setting off the Termination Release Contribution Amount against the amount payable by the Province pursuant to Section 5.10(g) of this Schedule.
- (i) In the event that:
 - (i) a Subcontractor has made an Adverse Claim that is not solely related to Additional Work prior to the payment of the Termination Release Amount pursuant to Section 5.10(g); and
 - (ii) the Province or BCTFA has, in respect of such Adverse Claim, exercised its rights pursuant to Section 12.10 [Adverse Claims] to retain a portion of the Termination Release Amount,

then if such Adverse Claim is either paid, discharged, satisfied and, if filed in the Land Title Office, cancelled or is removed or cancelled from title without any payment by the Province from such retained portion of the Termination Release Amount, the provisions of Sections 5.10(g) and 5.10(h), shall apply, *mutatis mutandis*, to such retained amount with effect from the relevant date (as defined in Section 12.10(a)).

Part 5.11 Resolution of Disputes

If the Province disputes the calculation of the Termination Release Amount, the Province may withhold payment of the amount in dispute pending resolution of the dispute in accordance with the

STRICTLY CONFIDENTIAL

**EVERGREEN LINE RAPID TRANSIT PROJECT
PROJECT AGREEMENT
SCHEDULE 12: COMPENSATION ON TERMINATION**

Execution

18

Dispute Resolution Procedure, in which case, the amount of any Termination Release Contribution Amount payable by the Primary Contractor pursuant to Section 5.10(h) of this Schedule shall be reduced by an amount equal to the amount so withheld. If, following the resolution of any such dispute, it is determined that the Province is liable to pay any further amounts to the Primary Contractor pursuant to Section 5.10(g), the provisions of Section 5.10(h) of this Schedule shall apply, *mutatis mutandis*, to such further amounts.

STRICTLY CONFIDENTIAL