

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

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**PART 1
DEFINITIONS**

1.1 Definitions

In this Agreement, including the Recitals and Schedules hereto, unless otherwise specified or the context otherwise requires, the following words and expressions have the following meanings:

“**Access**” means the commercial, residential and institutional property accesses serving the commercial, residential and institutional properties, respectively, as set out in Appendix I [Traffic Management Drawings] of Schedule 4.

“**Access Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.4(a) [Calculation of Access Disruption Payments] of Schedule 9 [Performance Mechanism].

“**Access Period**” means, in respect of any part of the Site, the period:

- (a) commencing on the date from which such part is made available to the Primary Contractor pursuant to Section 2.3 [Commencement of Site Access] of Schedule 7; and
- (b) ending on the date on which the Primary Contractor’s access to such part terminates pursuant to Section 2.5 [Termination of Site Access] of Schedule 7;

provided that, for certainty, if the Primary Contractor exercises its right pursuant to Section 3.8(e) of Schedule 7 [Lands] in respect of any part of the Site and as a result of such exercise is granted a non-continuous extension of the Access Period Expiry Date in respect of such part, then the Access Period in respect of such part shall be deemed to include the period of any non-continuous extension and shall be deemed to exclude the period from (and excluding) the Access Period Expiry Date (taking into account any continuous extension only granted pursuant to Section 3.8(e) of Schedule 7 [Lands]) to (and excluding) the date of commencement of any non-continuous extension.

“**Additional Permitted Borrowing**” means, on any date, the amount by which the principal amount of Senior Debt outstanding under the Senior Lending Agreements exceeds the principal amount of Senior Debt constituted by advances under the Initial Senior Lending Agreements that fall within paragraphs (a)(i) or (b)(i) of the definition of Permitted Borrowing in this Section 1.1, but only to the extent that:

- (a) such excess is less than or equal to the Additional Permitted Borrowing Limit; and
- (b) in respect of any such excess, the Agent is not in breach of its obligations under Section 2.7(a) of the Lenders’ Remedies Agreement.

“**Additional Permitted Borrowing Limit**” means an amount equal to 10% of the Original Senior Commitment at the Effective Date.

“**Additional Progress Payment**” means a progress payment for a Payment Period payable by the Province pursuant to Section 12.2 [Progress Payments], in the amount calculated in accordance with Section 12.2(c).

“**Additional Work**” means Work performed to carry out any Province Changes (including Minor Works under Section 8.3 [Minor Works]) pursuant to and in accordance with Schedule 10 [Changes].

“**Additional Work Costs**” means, in respect of any portion of an item of Additional Work carried out during a Payment Period, an amount equal to the portion of the total Change in Costs that have been agreed or determined in accordance with Schedule 10 [Changes] for the completion of such item of Additional Work during any Payment Period that is equal to the percentage of such item of Additional Work certified by the Independent Engineer as having been completed during such Payment Period or is otherwise certified by the Independent Engineer in respect of such Payment Period.

“**Additional Work Lien Holdback Amount**” has the meaning given in Section 12.3(c) and “**Additional Work Lien Holdback Amounts**” means the Additional Work Lien Holdback Amount in respect of more than one Payment Period.

“**Advance Demolition and Modification Work**” means the demolition and modification works to be undertaken by the applicable Advance Work Contractor on certain parcels of the Designated Project Lands as identified and described in the applicable Conditions of Access.

“**Advance Demolition and Modification Work Contract**” means the document or documents specified in Appendix B [Advance Work Contracts] to this Schedule for the performance of the Advance Demolition and Modification Work as may be amended from time to time.

“**Advance Work**” means work initiated prior to the Effective Date in connection with and to facilitate the Work, consisting of the design and construction of each of the following components:

- (a) North Road Widening Work;
- (b) BC Hydro Power Work;
- (c) those portions of the BC Hydro Transmission Lines Work referred to in Articles 6.2.4(a)(i), (ii) and (iii), Part 1 of Schedule 4;
- (d) Installation of Fibre Optic Cable Work;
- (e) CPR Track Relocation Work; and
- (f) Advance Demolition and Modification Work.

“**Advance Work Contract**” means:

- (a) in the case of the North Road Widening Work, the North Road Widening Work Contract;
- (b) in the case of the BC Hydro Power Work, the BC Hydro Power Work Contract;

- (c) in the case of the BC Hydro Transmission Lines Work, those portions of the BC Hydro Transmission Lines Work Contract addressing the work referred to in Articles 6.2.4(a)(i), (ii) and (iii), Part 1 of Schedule 4;
- (d) in the case of the Installation of Fibre Optic Cable Work, the Installation of Fibre Optic Cable Work Contract;
- (e) in the case of the CPR Track Relocation Work, the CPR Track Relocation Work Contract; and
- (f) in the case of the Advance Demolition and Modification Work, the Advance Demolition and Modification Work Contracts.

“**Advance Work Contractor**” means a contractor that has been retained by the Province to carry out any of the Advance Work, provided that, if Section 6.2.8 [Coordination with Advance Work Contractors], Part 1 of Schedule 4 applies to any Advance Work Contractor, any such contractor shall cease to be an Advance Work Contractor after the relevant Specified Access Date or anticipated date of completion, as the case may be, referred to in Article 6.2.8 [Coordination with Advance Work Contractors], Part 1 of Schedule 4, and shall, from such date, be deemed to be a Concurrent Work Contractor.

“**Adverse Claim**” has the meaning given in Section 12.10 [Holdbacks for Adverse Claims].

“**Advisory Signing Plan**” means a Sub-Plan to the Traffic Management Communications Plan described in Article 1.5 [Advisory Signing Plans], Part 4, of Schedule 4.

“**Affiliate**” means, with respect to a person (in this definition, the “**Subject Person**”) any one or more of the following, as applicable:

- (a) any other person or persons that Control the Subject Person, or is or are Controlled by the Subject Person, or is or are Controlled by the same person or persons that Control the Subject Person; and
- (b) in the case of a corporation, any other corporation that is an “affiliate” of the first mentioned corporation within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement;

and includes:

- (c) in the case of the Primary Contractor, each Shareholder and Holding Company of the Primary Contractor and any person that is an “affiliate” of such Shareholder or Holding Company of the Primary Contractor within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement;
- (d) in the case of a Shareholder or Holding Company of the Primary Contractor, any person that is an “affiliate” of such Shareholder or Holding Company of the Primary Contractor within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement; and

- (e) in the case of a Principal Subcontractor that is not a corporation, each corporation or person that is a member of the joint venture or partnership that comprises such Principal Subcontractor, and each person that is an “affiliate” of a member of the joint venture or partnership that comprises such Principal Subcontractor within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement.

“**Agent**” means the agent for the Senior Lenders under the Senior Lending Agreements, or any other bank, trustee or other financial institution appointed by the Senior Lenders to act as their agent in relation to the Lenders’ Remedies Agreement and the other Senior Lending Agreements, the Senior Debt and any security for the Senior Debt from time to time in accordance with the Senior Lending Agreements and of which notice in writing is given by the Primary Contractor to the Province.

“**Aggregate Additional Work Costs**” means, for any Payment Period, the aggregate of the Additional Work Costs in respect of all items of Additional Work in respect of which work has been carried out during that Payment Period.

“**Aggregate Payment Milestone Eligible Costs**” means, for any Payment Period, the aggregate of the Individual Payment Milestone Eligible Costs in respect of all Payment Milestones in respect of which work has been carried out during that Payment Period and, in addition, for the first Payment Period only, under the Limited Notice to Proceed Agreement.

“**Agreed Remedy Cost**” has the meaning given in Article 4.1.2.4(a)(ii) [Final Deficiency List], Part 3 of Schedule 4.

“**Agreement**” means this agreement including all recitals and Schedules to this agreement, as amended, supplemented or restated from time to time by agreement in writing signed by the parties.

“**Alignment**” means the geometric alignment of the Evergreen Line established by the Primary Contractor in accordance with this Agreement, including Article 3 [Alignment], Part 2 of Schedule 4, as shown in the Proposal Extracts, as revised from time to time in accordance with this Agreement.

“**APEGBC**” means the Association of Professional Engineers and Geoscientists of British Columbia.

“**Applicant**” has the meaning given in Section 9.1(a).

“**ATC Documentation**” means:

- (a) the operation, maintenance and training manuals and handbooks; technical drawings, designs and as-built specifications;
- (b) project work plans; quality assurance plans; test plans, procedures, results and reports; and
- (c) all other documents (if any) pertaining to the ATC Work,

provided by the Primary Contractor, whether in written or electronic form, to the extent and in the format and number of copies provided to the Primary Contractor in accordance with Section 7.19 [Systems Documentation Submittals] of Schedule C [ATC Technical Requirements] of the ATC Supply Contract.

“**ATC Equipment**” means any and all hardware for the Evergreen ATC System supplied by the Primary Contractor as part of the ATC Work, including Spare Parts.

“**ATC Intellectual Property Infringement Claim**” has the meaning given in Section 11.3 [Indemnification for ATC Intellectual Property Infringement].

“**ATC Software**” means any software developed or provided by Thales, as contemplated by the ATC Supply Contract, under a limited license or sublicense for use in or with the Evergreen ATC System, whether owned by Thales or by a third party.

“**ATC Supply Contract**” means the Principal Subcontract dated of even date herewith between SLCW and Thales pursuant to which Thales agrees to design, supply, install, test and commission the Evergreen ATC System and perform related work and services in relation thereto, as amended, supplemented or replaced from time to time.

“**ATC Warranty Period**” means the period commencing on the date of Substantial Completion (as defined in the ATC Supply Contract) for the Evergreen ATC System and expiring two years after such date, provided that:

- (a) if delays attributable solely to the Province, TransLink or Other Contractors (as defined in the ATC Supply Contract) in the aggregate, delay the commencement of the ATC Warranty Period more than 18 months after the date of delivery of the ATC Equipment and ATC Software, the ATC Warranty Period shall commence on the date that is 18 months after the date of delivery of the ATC Equipment and the ATC Software;
- (b) for warranty Claims in respect of Work Defects in ATC Equipment and/or ATC Software which are satisfied during the ATC Warranty Period, such ATC Equipment and/or ATC Software shall be warranted for the later of the remaining term of the ATC Warranty Period as set out in paragraph (a) of this definition or one year from the date upon which such Work Defect or warranty Claim has been corrected or satisfied; and
- (c) the foregoing shall not limit or otherwise affect any longer period of warranty provided under any manufacturer's warranties in respect of any Work Defects in respect of ATC Equipment, ATC Software or ATC Work assigned to the Province or any other person pursuant to the ATC Supply Contract.

“**ATC Work**” means the activities carried out or to be carried out and the services (including training services) provided or to be provided by the Primary Contractor:

- (a) for the Evergreen ATC System (other than Spare Parts):
 - (i) the design, development, engineering, management, manufacture, supply, assembly, testing, delivery, installation, commissioning, transitioning and warranty thereof;
 - (ii) development, finalization and delivery of the ATC Documentation; and

- (iii) the design, development and provision of training services and instruction and maintenance manuals relating to the operation and maintenance thereof; and
- (b) for the Spare Parts to be provided in respect of the Evergreen ATC System, the design, development, engineering, manufacture, supply, factory testing and delivery thereof;

all as more particularly described in this Agreement.

“Availability Demonstration” has the meaning given in Article 13.4.2 [Availability Demonstration], Part 2 of Schedule 4.

“Availability Demonstration Completion” means the satisfaction, to the satisfaction of the Province, of the “Delay Minutes per Million Train Kilometers” test for the Availability Demonstration as specified in Article 13.4.2 [Availability Demonstration], Part 2 of Schedule 4.

“Availability Demonstration Completion Date” means the date on which Availability Demonstration Completion occurs, as established by the test report prepared by the Primary Contractor in accordance with Article 13.4.2 [Availability Demonstration], Part 2 of Schedule 4 and endorsed by the Province’s Representative “received” in accordance with the Review Procedure.

“Availability Demonstration Completion Payment Amount” has the meaning given in paragraph (c) of the definition of Substantial Completion Payment Amount in this Section 1.1.

“Availability Demonstration Completion Payment Application” has the meaning given in Section 12.6.A(b).

“Availability Demonstration Completion Target Date” means the date that is the first anniversary of the Service Commencement Date, as such date may be postponed pursuant to Section 9.3(d), 9.4(c) and/or 9.5(c), provided that:

- (a) if it is agreed or determined that, for any period of time (a “Relevant Period”) during the period from the Service Commencement Date until the Availability Demonstration Completion Date, the Operational Evergreen Line was not available for passenger service as a direct result of either:
 - (i) TransLink not having either ordered a particular item on the Final Spare Parts List in accordance with Article 3.6.2(e), Part 3 of Schedule 4 or purchased such item from any other person; or
 - (ii) any other cause to the extent not directly or indirectly attributable to any Primary Contractor Non-Excusable Event or any other act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible; or
- (b) if it is agreed or determined at any time that the Availability Demonstration Completion Date will not occur, or has not occurred, in either case on or before the Availability Demonstration Completion Target Date solely as a result of a breach of the second sentence of the first paragraph of Section 8.2 [Availability Demonstration] of Schedule C to the ATC Supply Contract which is caused by Thales not having completed the

Evergreen ATC Work in accordance with the terms of, and as defined in, the ATC Supply Contract and the cause or causes of such breach is or are remediable by Thales;

then:

- (c) the Availability Demonstration Completion Target Date shall be postponed by:
 - (i) if paragraph (a) of this definition applies, the number of calendar days in any Relevant Period; or
 - (ii) if paragraph (b) of this definition applies, such time as is reasonable in the circumstances to permit time for such cause or causes to be remedied,provided that the maximum aggregate postponement in respect of all postponements pursuant to this paragraph (c) shall be twelve months;
- (d) the Project Schedule shall be amended accordingly to reflect any such postponement; and
- (e) no Availability Liquidated Damages shall be payable by the Primary Contractor unless the Availability Demonstration Completion Date does not occur on or before the Availability Demonstration Completion Target Date (taking into account any postponement(s) pursuant to Part 9 [Supervening Events] and paragraph (c) of this definition).

“**Availability Demonstration Letter of Credit**” has the meaning given in paragraph (a) of the definition of Letter of Credit in this Section 1.1.

“**Availability Liquidated Damages**” has the meaning given in Section 2(a) of Schedule 24 [Liquidated Damages].

“**Background Technology**” means Intellectual Property, whether owned by the Primary Contractor, any Principal Subcontractor or any Affiliate of any thereof, that is or will be embedded in or used in connection with the Project Intellectual Property or in the preparation or development of the Project Intellectual Property, or necessary or desirable to exploit the Project Intellectual Property, but which was not created or brought into existence for any of the Project Intellectual Property Purposes. For clarity, the “Background Technology” does not include any of the Third Party Technology.

“**Base Amount**” means, in respect of a Payment Period, an amount equal to:

- (a) the Aggregate Payment Milestone Eligible Costs for such Payment Period; minus
- (b) the Base Progress Payment for such Payment Period.

“**Base Amounts**” means the Base Amount in respect of more than one Payment Period.

“**Base Contract Price**” has the meaning given in Section 12.1 [Contract Price].

“**Base Lien Holdback Amount**” has the meaning given in Section 12.3(b)(i) and “**Base Lien Holdback Amounts**” means the Base Lien Holdback Amount in respect of more than one Payment Period.

“**Base Progress Payment**” means a progress payment for a Payment Period payable by the Province pursuant to Section 12.2 [Progress Payments], in the amount calculated in accordance with Section 12.2(b).

“**Base Progress Payment Cap Amount**” means \$587,854,522.

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

“**BC Hydro Power Work**” means the works referred to in Article 6.2.3(a), Part 1 of Schedule 4.

“**BC Hydro Power Work Contract**” means the document or documents specified in Appendix B [Advance Work Contracts] to this Schedule for the performance of the BC Hydro Power Work, except the works referred to in Article 6.2.3(a)(i)A., Part 1 of Schedule 4, as may be amended from time to time.

“**BC Hydro Transmission Lines Work**” means the works referred to in Article 6.2.4(a), Part 1 of Schedule 4.

“**BC Hydro Transmission Lines Work Contract**” means the document or documents specified in Appendix B [Advance Work Contracts] to this Schedule for the performance of the BC Hydro Transmission Lines Work as may be amended from time to time.

“**BCICAC**” means the British Columbia International Commercial Arbitration Centre.

“**BCRTC**” means British Columbia Rapid Transit Company Ltd., being a subsidiary as defined in the *South Coast British Columbia Transportation Authority Act* (British Columbia), and its successors.

“**BCRTC Service Delay Allocation Methodology**” means the methodology set out in the document appended as Attachment B [BCRTC Service Delay Allocation Methodology] to Article 13 [Systems], Part 2 of Schedule 4.

“**BCSA**” means the British Columbia Safety Authority.

“**Block**” means each separate area demarcated by dotted lines on the Traffic Management Block Marker Drawings.

“**Bored Tunnel**” means the portion or portions, as applicable, of the Guideway to be constructed using the Tunnel Boring Machine in accordance with Article 7 [Tunnel], Part 2 of Schedule 4.

“**Bored Tunnel Alignment**” means the alignment of the Bored Tunnel shown in the Proposal Extracts.

“**Borehole and Test Pit Log Data**” means only the borehole and test pit logs and the survey point data related to the borehole and test pit logs provided as part of the Disclosed Data, and for greater certainty excludes the reports and other information associated with such logs and data.

“**Builders Lien Act**” means the *Builders Lien Act* (British Columbia).

“**Building Code Review Agent**” or “**BCRA**” means the Key Individual appointed pursuant to Section 3.3(b) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as

may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], and having the qualifications required by Section 2.1.3(g), Part 3 of Schedule 4.

“Burquitlam Station” means the Station to be generally located in the vicinity of Clarke Road south of Como Lake Avenue.

“Business Day” means a day other than a Saturday, Sunday or Statutory Holiday in British Columbia.

“Capital Expenditures” means capital expenditures as incurred in accordance with GAAP.

“Category of Cost Centre” has the meaning given in paragraph 3 of Part 3 [Measurement and Payment Principles] of Schedule 22.

“CEAA” means the *Canadian Environmental Assessment Act* (Canada).

“Certificate of Substantial Completion” means the certificate issued by the Independent Certifier in accordance with Article 4.1.2.6(a)(i) [Issuance of Certificate of Substantial Completion], Part 3 of Schedule 4, confirming the achievement of Substantial Completion of the Work.

“Certificate of Total Completion” means the certificate issued by the Province’s Representative in accordance with Article 4.2.3(c)(i) [Certification of Total Completion], Part 3 of Schedule 4, confirming the achievement of Total Completion of the Work.

“Certificate of Total Completion (Reinstatement Work)” means a certificate of total completion issued by the Independent Certifier in respect of Reinstatement Work in accordance with Article 4.3(d)(i) [Certification of Total Completion (Reinstatement Work)], Part 3 of Schedule 4.

“Certified Arborist” means a professional member in good standing with the International Society of Arboriculture (ISA) who is a Certified Tree Risk Assessor (CTRA) in good standing with the Pacific Northwest Chapter of the ISA.

“Change Certificate” has the meaning given in Section 2.7 [Change Certificate] of Schedule 10.

“Change in Costs” means, in respect of any Province Change, the net amount (calculated in accordance with Sections 2.3 [Preparation of Change Report] and 2.4 [Valuation of Change in Costs] of Schedule 10), which may be positive or negative, of:

- (a) all additional costs (including direct and indirect costs, capital expenditure costs and financing costs) which the Primary Contractor reasonably expects to incur as a direct consequence of implementing the Province Change which the Primary Contractor would not incur if the Province Change is not implemented; minus
- (b) any cost savings (including direct and indirect costs, capital expenditure costs and financing costs) which the Primary Contractor can realize as a direct consequence of implementing the Province Change including costs which the Primary Contractor would incur if the Province Change is not implemented,

provided that, for certainty, any such additional costs and any such cost savings shall include any costs that are Eligible Costs together with any costs that are not Eligible Costs, in any such case as calculated in accordance with Sections 2.3 [Preparation of Change Report] and 2.4 [Valuation of Change in Costs] of Schedule 10, to the extent that such Sections are applicable.

“Change in Law” means the coming into force, after the Financial Submittal Date, of any new Law in Canada (including a new Law relating to Taxes) or any amendment to or repeal of any existing Law in Canada (including an existing Law relating to Taxes) (but excluding in each case any lawful requirements of any Governmental Authority (unless resulting from a Change in Law)) which is binding on the Primary Contractor, but excluding any such new Law or amendment or repeal:

- (a) relating to Taxes or any amendment to or repeal of any existing Law relating to Taxes that in either case is of general application in respect of capital or large corporations taxes, the rate of taxation applicable to the general income of a person or a change in the manner of calculation of the general income of a person;
- (b) arising from any change in the interpretation of any Law, other than a judgement of a relevant Court which changes binding precedent in British Columbia;
- (c) arising from or in any way connected to or having substantially the same effect as any Law which, as of the Financial Submittal Date:
 - (i) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (ii) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;
- (d) relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Permit; or
- (e) consisting of an amendment, replacement or repeal of any of the Reference Documents.

“Change in Ownership” means, with respect to a person, a change in the ownership, whether beneficial or otherwise, of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.

“Change Report” has the meaning given in Section 2.3 [Preparation of Change Report] of Schedule 10.

“Changeable Message Sign” or **“CMS”** means an electronically programmable sign that is used to display traffic information to travellers.

“Checking Team” means the relevant group of engineers assigned to independently undertake a design check in accordance with the Design and Construction Certification Procedures.

“Claim” means any claim, demand, action, cause of action, suit or proceeding.

“**Closure**” means any Primary Contractor instigated partial or total closure, obstruction, blockage or other restriction or interference (howsoever arising) impeding the flow of Traffic on or affecting the ability of the public to pass and re-pass over a highway of whatever duration including, without limitation, any partial or total closure, obstruction, blockage, restriction or interference.

“**Collateral Agreement**” means:

- (a) in the case of Principal Subcontractors other than Thales, the agreement entered into of even date herewith (or, in the case of any Principal Subcontractor that becomes a Principal Subcontractor after the Effective Date, entered into after the Effective Date) between the Province, BCTFA, the Primary Contractor, the parties to each Principal Subcontract and such other persons determined in the discretion of the Province substantially in the form set out in Schedule 17 [Collateral Agreement] (or, in the case of any replacement Principal Subcontractor that becomes a Principal Subcontractor after the Effective Date, substantially in the form entered into by the Principal Subcontractor being replaced), each as amended, supplemented or replaced from time to time in accordance with this Agreement; and
- (b) in the case of Thales, the agreement entered into of even date herewith between the Province, BCTFA, the Primary Contractor, Thales and such other persons determined in the discretion of the Province in the form agreed pursuant to the terms of the ATC Supply Contract, as such agreement is amended, supplemented or replaced from time to time in accordance with this Agreement.

“**Communications Manager**” means the Key Individual appointed by the Primary Contractor pursuant to Section 3.3(b) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].

“**Communications Plan**” means any plan, including any amendment to such plan, submitted to the Province’s Representative pursuant to Schedule 8 [Communication and Community Relations].

“**Compensation Event**” means any of the following events or circumstances:

- (a) a breach by the Province of Section 2.5(a)(i) or Section 2.5(c);
- (b) the circumstances referred to in Section 2.15(d) as constituting a Compensation Event;
- (c) the existence as at the Financial Submittal Date of:
 - (i) any Site Requirement;
 - (ii) any Utility Agreement;
 - (iii) any amendment to any Site Encumbrance;
 - (iv) any amendment to any Utility Agreement;

in any such case affecting the Designated Project Lands (other than any Designated Project Lands acquired pursuant to Section 3.2A(b)(i)(A) [Additional Lands for Relevant Utility Work or Fisheries Work] of Schedule 7) or any part thereof or any infrastructure thereon, that:

- (A) is not described or referred to in any of:
 - (1) Table A-1 of Appendix A [Project Lands] to Schedule 7;
 - (2) Appendix B [Site Encumbrances] to Schedule 7;
 - (3) the Utility Agreements;
 - (4) the Municipal Agreements;
 - (5) the CPR Agreements; and
 - (6) the Conditions of Access;
- (B) is not registered in the Land Title Office against title to the relevant lands as at the Financial Submittal Date;
- (C) the Primary Contractor does not otherwise have knowledge of as at the Financial Submittal Date, could not have discovered through the exercise of reasonable due diligence prior to the Financial Submittal Date (provided that any investigation of Crown grants or unregistered leases shall be deemed not to be required for reasonable due diligence to have been exercised for these purposes), and could not reasonably have been anticipated from an analysis of all relevant information available to the Primary Contractor (including the Disclosed Data (including the Conditions of Access)) as at the Financial Submittal Date;
- (d) the postponement of a Specified Access Date pursuant to Section 3.6 [Postponement of Specified Access Date] of Schedule 7;
- (e) the circumstances referred to in Section 4.14(c) as constituting a Compensation Event;
- (f) a claim asserting infringement of aboriginal rights or aboriginal treaty rights or aboriginal title by any first nation(s), but not including any Protest Action resulting from or in connection with any such claim (provided that, for certainty, the exclusion of any such Protest Action from this paragraph (f) shall not prejudice any otherwise valid claim that the Primary Contractor may have as a result of the occurrence of a Compensation Event referred to in paragraph (m) of this definition);
- (g) the circumstances referred to in Section 13.1(a)(iv) as constituting a Compensation Event;
- (h) the circumstances referred to in Section 13.2(c) as constituting a Compensation Event;

- (i) the circumstances referred to in Section 13.4(d) as constituting a Compensation Event;
- (j) the circumstances referred to in Section 13.5(d) as constituting a Compensation Event;
- (k) the existence of Non-Foreseeable Contamination or ground water, surface water, soil building materials or other materials that in any such case is or contains Non-Foreseeable Contamination to the extent that the Primary Contractor is required to remediate the same pursuant to Section 4.4(a) of Schedule 5 [Environmental Obligations], except to the extent:
 - (i) such remediation is required to be carried out by the Primary Contractor as a result of or in connection with the Primary Contractor or any person for whom the Primary Contractor is in law responsible causing, contributing to or exacerbating any such Non-Foreseeable Contamination or any such ground water, surface water, soil, building materials or other materials; or
 - (ii) such Non-Foreseeable Contamination or any such ground water, surface water, soil, building materials or other materials is or contains in any such case Contamination which is caused, contributed to or exacerbated by the Primary Contractor or any person for whom the Primary Contractor is in law responsible;
- (l) the existence of Subsequent Contamination or ground water, surface water, soil, building materials or other material that in any such case is or contains Subsequent Contamination to the extent that the Primary Contractor is required to remediate the same pursuant to Section 4.4(a) of Schedule 5 [Environmental Obligations], except to the extent:
 - (i) such remediation is required to be carried out by the Primary Contractor as a result of or in connection with the Primary Contractor or any person for whom the Primary Contractor is in law responsible causing, contributing to or exacerbating any such Subsequent Contamination or any such ground water, surface water, soil, building materials or other materials; or
 - (ii) such Subsequent Contamination or any such ground water, surface water, soil, building materials or other materials is or contains any such case Contamination which is caused, contributed to or exacerbated by the Primary Contractor or any person for whom the Primary Contractor is in law responsible;
- (m) subject to Section 9.9(a), a Protest Action;
- (n) a Discriminatory Change in Law;
- (o) damage to or destruction of the Project Infrastructure or part thereof caused by a Seismic Event, provided that:
 - (i) the cost to repair and restore the damage to or destruction of Project Infrastructure caused by the Seismic Event exceeds \$5,000,000.00 for a single Seismic Event; and

- (ii) all seismic design requirements specified in the Design-Build Requirements applicable to the damaged or destroyed Project Infrastructure have been complied with and implemented by the Primary Contractor;

the onus of establishing which shall be on the Primary Contractor;

- (p) acts or omissions of any Third Party Contractor on or about the Site occurring on or after the Effective Date except in the ordinary course of carrying out works or activities referred to in Article 6 [Work by Others], Part 1 of Schedule 4 (provided that, for certainty, any wilful misconduct, negligent act or negligent omission of any Third Party Contractor shall be deemed not to have been in the ordinary course of carrying out such works or activities);
- (q) the failure by an Advance Work Contractor to complete any Advance Work in accordance with the relevant Advance Work Contract by the Specified Access Date for the Designated Project Lands affected by such Advance Work or, in the case of:
 - (i) the BC Hydro Power Work set out in Articles 6.2.3(a)(i)C., D., E and G and 6.2.4(a)(ii)A., all of Part 1 of Schedule 4, by the anticipated date of completion specified in the applicable Article; or
 - (ii) the Installation of Fibre Optic Cable Work, by the anticipated date of completion specified in Article 6.2.5(c), Part 1 of Schedule 4;
- (r) delay by the Province in disbursing Property Damage Insurance Proceeds in accordance with Section 7.18(c) or Section 7.18(d), as applicable, after all conditions to such disbursement have been satisfied, beyond the relevant time periods provided for in those Sections;
- (s) the circumstances referred to in Section 2.2(d)(i) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] as constituting a Compensation Event;
- (t) failure to achieve Service Commencement on or by the Service Commencement Target Date;
- (u) the existence of a Nonconformity caused solely by a Province Non-Excusable Event;
- (v) the circumstances referred to in Article 1.7.2(b), Part 4 of Schedule 4 as constituting a Compensation Event;
- (w) the circumstances referred to in Article 1.7.3(b), Part 4 of Schedule 4 as constituting a Compensation Event;
- (x) the circumstances referred to in Section 4.2(b)(ii) of Schedule 10 [Changes] as constituting a Compensation Event;
- (y) any failure by TransLink to make Vehicles available to the Primary Contractor in accordance with Article 15.1(b), Part 2 [Vehicles] of Schedule 4; and

- (z) any failure by the Province to provide, in accordance with the planning and scheduling procedures contemplated by Section 9.2 [Submittals], Appendix G of Schedule 4, the base level of TransLink Resources detailed in the column titled “Time Available (Base Level)” in Table 1 of Attachment A [Scope Level Matrix and TransLink Resources] to Article 13, Part 2 of Schedule 4,

except to the extent that any of such events or circumstances arise (directly or indirectly) as a result of any Primary Contractor Non-Excusable Event or an act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible.

“**Compensation Period**” has the meaning given in Section 9.4(d).

“**Competitive Procurement Requirements**” means, in respect of any work involved in a Minor Works or other Province Change pursuant to Schedule 10 [Changes] or any Reinstatement Work, all applicable requirements of Laws, including all treaties or agreements relating to trade to which the Province is a party from time to time, and of procurement policies or guidelines of the Province in effect from time to time.

“**Complete License**” means, in respect of any Intellectual Property or other property 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) for the Province, its employees, agents, contractors, consultants, advisors, sublicensees, successors and assigns to do any one or more of the following for any one or more of the Complete License Purposes:

- (a) to reproduce, make Modifications to, create derivative works from, distribute, publicly perform, publicly display, disclose, 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 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.

“**Complete License Purposes**” means any and all use whatsoever in relation to any past, current or future design, construction, completion, commissioning, testing, operation, maintenance, repair, modification, alteration, adaptation, rehabilitation, improvement, expansion, extension, financing or regulation (including with respect to the contemplation, procurement or undertaking of any such activities by the Province or any third parties) of all or any rail transit projects in British Columbia procured or to be procured by the Province or any other Governmental Authority, and/or the carrying out of any statutory, public or other duties or functions in respect of any of the foregoing.

“**Compulsory Acquisition Laws**” means all Laws authorizing the expropriation or other compulsory acquisition of land or Land Rights, including the *Transportation Act* (British Columbia), the *Transportation Investment Act* (British Columbia) and the *Expropriation Act* (British Columbia).

“**Compulsory Acquisition Order**” means any order or other process of any Court or other relevant body or authority pursuant to a Compulsory Acquisition Law effecting the expropriation or other compulsory

acquisition of any land or Land Rights, but does not include a Railway Order or an agreement entered into pursuant to Section 3 of the *Expropriation Act* (British Columbia).

“**Concurrent Landscaping Work**” means the works that are to be designed, constructed and completed as contemplated in Article 6.3.2(a) of Part 1 of Schedule 4.

“**Concurrent Transit Interface Facilities Work**” means the works that are to be designed, constructed and completed as contemplated in Article 6.3.3(a) of Part 1 of Schedule 4.

“**Concurrent Work**” means work carried out after the Effective Date in connection with the Work, consisting of the following components:

- (a) the portion of the BC Hydro Transmission Lines Work referred to in Article 6.2.4(a)(iv), Part 1 of Schedule 4;
- (b) Concurrent Landscaping Work;
- (c) Concurrent Transit Interface Facilities Work;
- (d) Smart Card and Faregates Work;
- (e) any Advance Work deemed to be Concurrent Work pursuant to Article 6.2.8(b), Part 1 of Schedule 4; and
- (f) installation of Guideway noise barriers by the Province as contemplated by Article 20.4.1(f), Part 2 of Schedule 4;

(each a “**Concurrent Work Component**”).

“**Concurrent Work Contractor**” means a party that is undertaking or prosecuting Concurrent Work.

“**Conditions of Access**” means, in respect of any part of the Site, the conditions of access relating to such part contained in the Data Room entitled “Conditions of Access” or, in respect of any Designated Project Lands acquired by the Province and/or BCTFA pursuant to Section 3.2A(b)(i)(A) of Schedule 7 or any Supplementary Project Lands, the Conditions of Access prepared by the Province in respect thereof on or about the date of acquisition.

“**Confidential Information**” means all confidential or proprietary information of a party that is (whether before, on or after the date of this Agreement) supplied, or to which access is granted, to or on behalf of the other party pursuant to or relating to this Agreement (including the terms of this Agreement and any documents or information supplied in the course of proceedings under the Dispute Resolution Procedure), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party, and includes all documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports, analyses, compilations, studies and other data, records, drawings and information and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such information, and expressly includes Disclosed Data and Personal Information and shall include all information, documents and particulars provided to the parties by the

Independent Certifier pursuant to Section 2.6(d) and referred to in Section 3.3 [Information and Services], in each case, of the Independent Certifier Contract.

“**Consent Procedure**” means the procedure defined in Section 2.2 [Consent Procedure] of Schedule 2 whereby submissions for consent in respect of certain matters are made by the Primary Contractor to the Province’s Representative.

“**Consequential Losses**” means, irrespective of the number of claims, or the form or cause of action, whether in contract, tort, restitution or otherwise, any punitive or aggravated damages, or any indirect or incidental damages, or loss of use, opportunity, data, profit, revenue, income, business, anticipated savings or reputation, or other economic loss, whether or not any such loss arises directly or indirectly from the incident giving rise to the claim and whether foreseeable or not, howsoever caused, even if a party knew or should have known of the possibility or likelihood of such damage or such loss.

“**Construction**” means:

- (a) the performance of all construction, alteration, augmenting, upgrading, installation, configuration, integration, completion, testing, commissioning, reinstatement, rectification and other services and activities, including site preparation and demolition, required to be performed or carried out by the Primary Contractor in accordance with this Agreement;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required to be performed or carried out by the Primary Contractor for the carrying out of the foregoing;
- (c) the supply by the Primary Contractor of all Plant, Construction Plant, other property, materials and workers for the performance or carrying out of the foregoing; and
- (d) all other work, services and activities to be provided by the Primary Contractor in respect of the foregoing,

all as set out and described in and in accordance with this Agreement, including the Design and Construction Certification Procedures set out in Part 3 [Design and Construction Certification] of Schedule 4.

“**Construction Certificate**” means a certificate in respect of the Construction as provided by the Primary Contractor pursuant to the Design and Construction Certification Procedures.

“**Construction Environmental Management Plan**” or “**CEMP**” means the plan, described in Section 3.11 [Construction Environmental Management Plan] of Schedule 5.

“**Construction Management Plan**” has the meaning given in Section 1.5 [Construction Management Plan] of Schedule 3.

“**Construction Noise Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.12(a) [Calculation of Construction Noise Payments] of Schedule 9 [Performance Mechanism].

“**Construction Plant**” means plant, materials, tools, implements, equipment, machinery, vehicles, temporary buildings and structures and other tangible personal property, whether owned or leased by the Primary Contractor or by a Subcontractor, necessary for or used or to be used in the performance of the Work, but does not include Plant.

“**Construction Quality Management Plan**” or “**CQMP**” means the plan for the quality management of the Construction prepared by the Primary Contractor in accordance with Appendix C [Construction Quality Management Plan] to Schedule 6.

“**Construction Schedule**” means the detailed schedule for design, investigation, construction, testing and commissioning and all related activities within the Work to be submitted by the Primary Contractor pursuant to, and as subsequently amended from time to time in accordance with, Section 1.3 [Construction Schedule] of Schedule 3 [Project Schedule].

“**Construction Specifications**” means the specifications, criteria and requirements for materials and products, procedures and methodology for providing, performing and carrying out the Design and Construction of the Non-Systems Components as developed by the Primary Contractor in accordance with this Agreement, including Appendix C [Minimum Considerations for Construction Specifications] to Schedule 4.

“**Contamination**” means the presence of any Hazardous Substance in the environment (including Hazardous Substances that occur naturally in the environment or result from natural processes such as, for example, Hazardous Substances resulting from acid-generating rock), except Hazardous Substances present in the environment in quantities or concentrations below permissible levels as set by applicable Environmental Laws. If Contamination is present in soil, soil vapour, surface water, sediment or ground water, then the soil, soil vapour, surface water, sediment or groundwater, as the case may be, containing the Contamination will also be deemed for the purposes of this Agreement to be Contamination.

“**Contingent Funding Liabilities**” means any contingent liabilities directly or indirectly of the Shareholders or their Affiliates, in respect of financial obligations owed to the Primary Contractor or the Senior Lenders under the Senior Lending Agreements, that are triggered as a result of or in relation to the termination of this Agreement, such as, for example, obligations to fund reserve accounts, and guarantees or letters of credit in respect of deferred equity, subordinated debt or equity bridge loans.

“**Continuous Noise**” means noise which occurs for a total of 3 minutes or more during any 15 minute period of time.

“**Contracting Affiliate**” means any Affiliate of the Primary Contractor that performs any Work or is a party to any Project Document and any Shareholder.

“**Contract Price**” has the meaning given in Section 12.1 [Contract Price].

“**Control**” of a person means any of the following:

- (a) the power to direct or cause the direction of the management, actions, policies or decisions of that person, whether directly or indirectly through other persons, and whether through the ownership of shares, voting securities, partnership interests, units of ownership or other ownership interests, or by contract, or otherwise;
 - (b) legal or beneficial ownership or control over equity or ownership interests in that person, whether directly or indirectly through other persons:
 - (i) having a subscribed value (taking into account contributions to be made) of more than one half of the subscribed value (taking into account contributions to be made) of all equity or ownership interests in that person; or
 - (ii) carrying more than one half of the voting rights for:
 - (A) the management, actions, policies or decisions of that person; or
 - (B) the election or appointment of directors or managers of that person;
- or
- (c) if the person is a corporation, “**control**” within the meaning of Section 2(3) of the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement,

and “**Controlled**” has the corresponding meaning.

“**Coquitlam Central Station**” means the Station to be generally located in the vicinity of Barnet Highway and Mariner Way.

“**Coquitlam Central WCE Station**” means the existing West Coast Express commuter rail station located south of Barnet Highway and east of Mariner Way.

“**Correction**” means one of the following actions to eliminate a detected Nonconformity:

- (a) Rework;
- (b) Repair;
- (c) Reject; and
- (d) Use As Is.

“**Corrective Action**” means an action to eliminate the cause of an existing Nonconformity, defect or other undesirable situation to prevent its recurrence.

“**Cost Centre**” has the meaning given in paragraph 4 of Part 3 [Measurement and Payment Principles] of Schedule 22.

“**Cost to Complete**” means \$0.00.

“**Court**” means the Supreme Court of British Columbia and courts of appeal therefrom.

“**CPR**” means Canadian Pacific Railway Company.

“**CPR Agreements**” means:

- (a) the CPR CATRA;
- (b) the CPR SRW;
- (c) the CPR Ioco Crossing Agreement;
- (d) the CPR Main Line Crossing Agreement; and
- (e) the CPR Canopy Agreement.

“**CPR Canopy Agreement**” means the agreement, dated November 8, 2011, entitled “Canopy License Agreement” and made among CPR, the Province and BCTFA.

“**CPR CATRA**” means the agreement, dated November 8, 2011, entitled “Construction and Track Relocation Agreement” and made among CPR and the Province.

“**CPR Emergency Situation**” means an “Emergency Situation” as defined in Section 1.1 u) of CPR CATRA.

“**CPR Environmental Management Plan**” or “**CPREMP**” means an Environmental Management Plan as defined in Section 1.1 w) of CPR CATRA and to be prepared by the Primary Contractor pursuant to this Agreement, including Article 5.4.5 [Environmental Management on CPR Lands], Part 1 of Schedule 4.

“**CPR Facilities**” means any Existing Conditions on the CPR Lands.

“**CPR Infrastructure**” has the meaning given in Article 5.4.1(b) [General], Part 1 of Schedule 4.

“**CPR Ioco Crossing Agreement**” means the agreement, dated November 8, 2011, entitled “Overpass Crossing Agreement – Ioco Spur Crossing” and made among CPR, the Province and BCTFA.

“**CPR Lands**” means lands under the ownership or control of CPR at any time comprised within the Site.

“**CPR Lands Works**” means all of the Work to be performed by the Primary Contractor pursuant to Article 5 [CPR Requirements], Part 1 of Schedule 4.

“**CPR Main Line Crossing Agreement**” means the agreement, dated November 8, 2011, entitled “Overpass Crossing Agreement – Main Line Crossing” and made among CPR, the Province and BCTFA.

“**CPR Operations**” means the operations and business carried on by the operation of trains, locomotives, railcars, railway machinery, vehicles, equipment of every nature over CPR’s network of railway lines

including maintenance or restorative works to CPR Lands, except the CPR SRW Area (unless permitted pursuant to the CPR SRW), as well as the operation of switches, signals, fibre optic, signal and communications systems (including conduits, cables, fibres, towers, associated equipment and facilities) including operations on and to the CPR Lands except the CPR SRW Area (unless permitted pursuant to the CPR SRW).

“CPR Own Work” means those certain works and activities that, in accordance with CPR CATRA, are required to be carried out, or that may in the discretion of CPR be carried out, by CPR or contractors engaged by CPR, and that CPR may carry out in connection with such works and activities, including:

- (a) the placement of watchmen, flagmen, inspectors or supervisors for the protection of the CPR Property or of others; and
- (b) the work described in Schedule “C” to CPR CATRA, excluding the “Relocation Project” as set out in Paragraphs 2.1 through 2.20 inclusive and the “Third Party Fibre Optic Relocation” as set out in Paragraph 3 of the said Schedule “C”.

“CPR Property” means the CPR Lands, the CPR Facilities and any other lands or infrastructure under the ownership or control of CPR at any time that may be damaged or otherwise impacted by the Work.

“CPR Requirements” means, collectively, in respect of the CPR Lands Works, the following:

- (a) the requirements set out in Article 5 [CPR Requirements], Part 1 of Schedule 4; and
- (b) where not in conflict with the requirements set out in Article 5 [CPR Requirements], Part 1 of Schedule 4, the standards and requirements that would be applicable to obtaining and maintaining access to, use and occupation of, and carrying out work on, adjacent to or in respect of the CPR Property which would reasonably be expected by a contractor experienced in carrying out such work applying Good Industry Practice.

“CPR SRW” means the statutory right of way agreement, dated November 8, 2011, and made among CPR, the Province and BCTFA.

“CPR SRW Area” means those parts of the lands owned by CPR in respect of which CPR is granting to the Province and BCTFA pursuant to the CPR SRW.

“CPR Track Relocation Work” means the works referred to in Section 6.2.6(a), Part 1 of Schedule 4 and Paragraphs 1.1 through 1.12 of Schedule “A” to CPR CATRA.

“CPR Track Relocation Work Contract” means the document or documents specified in Appendix B [Advance Work Contracts] to this Schedule for the performance of the CPR Track Relocation Work as may be amended from time to time.

“Credit Agreement” means the agreement referred to in paragraph 1 of Schedule 20 [Initial Senior Lending Agreements].

“Cross Passages” means the cross passages to be designed and constructed by the Primary Contractor in accordance with the provisions of Schedule 4 [Design and Construction], including Article 7 [Tunnel],

Part 2 of Schedule 4, providing emergency access between each of the inbound and outbound sections of the Bored Tunnel.

“**Data Room**” means the secure website established by the Ministry in connection with the procurement process for the Project prior to the date of this Agreement and includes all of its contents, including the materials, documents, information and data contained or referenced therein; for record purposes the content of the said secure website, both as at the Financial Submittal Date and the Effective Date, has been copied onto a computer hard drive and three identical copies of each such computer hard drive have been distributed (one to the Primary Contractor and two to the Province) and signed by the parties for the purposes of identification.

“**Default Interest**” means any increased interest that pursuant to the Senior Lending Agreements is payable to the Senior Lenders or that accrued as a result of any payment of Senior Debt due to the Senior Lenders under the Senior Lending Agreements not being made on the date on which it is due.

“**Default Points**” means those points assigned to the Primary Contractor in accordance with Section 5.3 [Assignment of Default Points] of Schedule 9 [Performance Mechanism].

“**Default Points Balance**” has the meaning given in Section 5.3(g) [Assignment of Default Points] of Schedule 9 [Performance Mechanism].

“**Default Rate**” at any time means simple interest at an annual rate that is ■■■ per annum over the Prime Rate at that time. If and when the Prime Rate changes, the Default Rate shall automatically change by the same amount at the same time.

“**Deficiency Letter of Credit**” has the meaning given in paragraph (d) of the definition of Letter of Credit in this Section 1.1.

“**Deficiency Retention Amounts**” has the meaning given in Section 12.7(b).

“**Deficiency Retention Payment Application**” has the meaning given in Section 12.7(b).

“**Delay Liquidated Damages**” has the meaning given in Section 1(a) of Schedule 24 [Liquidated Damages].

“**Delay Minutes**” means any delay, measured in minutes, which affects, as applicable, the Existing SkyTrain System or the Integrated SkyTrain System, as determined by the BCRTC in accordance with the process described in Article 13.4.2.1 [Availability Demonstration Review Process], Part 2 of Schedule 4 and the BCRTC Service Delay Allocation Methodology.

“**Delay Period**” has the meaning given in Section 9.4(d)(ii).

“**Demolition and Modification Work**” has the meaning given in Article 1.3.1(a), Part 2 of Schedule 4.

“**Design**” means:

- (a) the production of the compendium of drawings, plans, specifications, calculations and other material produced by or on behalf of the Primary Contractor to calculate and define

the Construction necessary to carry out and complete the Work in accordance with the Design-Build Requirements and the other provisions of this Agreement, including the preparation of all reports, design drawings, construction drawings and Records Documentation;

- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required to be performed or carried out by the Primary Contractor for the carrying out of the foregoing;
- (c) the supply by the Primary Contractor of all Plant, Construction Plant, other property and workers for the carrying out of the foregoing; and
- (d) all other work, services and activities to be provided by the Primary Contractor in respect of the foregoing,

all as set out and described in and in accordance with this Agreement, including the Design-Build Requirements and the Design and Construction Certification Procedures.

“**Design and Construction Certification Procedures**” has the meaning given in Article 1.1(b) [Design and Construction Certification Procedures], Part 3 of Schedule 4.

“**Design-Build Contract**” means the design-build contract dated of even date herewith between the Primary Contractor and the Design-Builder, as amended, supplemented or replaced from time to time in accordance with this Agreement and the Collateral Agreement in respect of such design-build contract.

“**Design-Builder**” means SNC-Lavalin Constructors (Pacific) Inc.

“**Design-Build Requirements**” means all standards, specifications (including the Construction Specifications), procedures, design criteria, design guidelines and other requirements applicable to the Work, including the Design and the Construction, all as set out in this Agreement as at the Effective Date and as amended, supplemented or replaced from time to time after the Effective Date in accordance with this Agreement.

“**Design Certificate**” means a certificate in respect of the Design or any other design activities in respect of the Work as issued by the Primary Contractor pursuant to the Design and Construction Certification Procedures.

“**Design Data**” means all calculations, designs, Design or Construction information, criteria, standards, specifications, plans, reports, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data and including all design submissions required under the Design-Build Requirements, used, or to be used for the Work or any Province Change.

“**Design Quality Management Plan**” or “**DQMP**” means the plan for the quality management of the Design prepared by the Primary Contractor in accordance with Appendix B [Design Quality Management Plan] to Schedule 6.

“**Design Subcontract**” means any Subcontract pursuant to which any person agrees to perform design services in respect of the Design of any portion of the Work.

“**Design Team**” means the group of Professional Engineers and others within a Designer’s organization undertaking the design or assessment of the Work in connection with the Design-Build Requirements.

“**Designated Project Lands**” means the lands described in Table A-1 of Appendix A [Project Lands] to Schedule 7, including as a result of any update thereto in accordance with Section 3.2A(b)(i)(A) of Schedule 7 [Lands].

“**Designer**” means any person that agrees to perform design services pursuant to a Design Subcontract and references to “**the Designer**” shall mean the Designer that has carried out the design services in respect of the relevant portion of the Work.

“**Detour Route**” means a route which takes Traffic off the regular route and, using existing or newly made temporary roadways within the construction work zone, guides Traffic around the work zone.

“**Direct Losses**” means Losses other than:

- (a) in the case of Losses suffered or incurred by the Province, Province Irrecoverable Losses; and
- (b) in the case of Losses suffered or incurred by the Primary Contractor, Primary Contractor Irrecoverable Losses.

“**Disclosed Data**” means any and all information, data, reports and documents from time to time disclosed, provided or made available by the Province or its representatives or any other person on behalf of the Province to the Primary Contractor or its representatives or to any Subcontractor or its representatives or any Proponent Team Member of the Preferred Proponent (as both such terms are defined in the Request for Proposals) in connection with or pertaining to the Project, the Work, the Site, the Project Infrastructure, the requirements of any Governmental Authority, traffic records, or any obligations undertaken by the Primary Contractor under this Agreement, and whether disclosed, provided or made available before, on or after the Effective Date, and including:

- (a) any Design Data provided or made available by or on behalf of the Province;
- (b) the Reference Documents;
- (c) any and all plans, drawings, materials, books, records, files, correspondence, studies, tests, test results, test data, certificates, investigations, samples, surveys, reports, statements, documents, facts, information, projections and traffic information (including any of the foregoing stored electronically or on computer-related media);
- (d) any and all information relating to Contamination;
- (e) the Borehole and Test Pit Log Data and any other information, data, reports and documents relating to geological conditions provided or made available by or on behalf of the Province;

- (f) the data, reports and documents referred to in this Agreement including in any Schedule;
- (g) any of the foregoing provided in connection with the Request for Qualifications and/or the Request for Proposals; and
- (h) anything contained or referred to in the Data Room.

“Discriminatory Change in Law” means a Change in Law consisting of the bringing into force, amendment or repeal of a Law by the Province which specifically applies to:

- (a) the Project and not to other rail transit projects; or
- (b) the Primary Contractor and not to any other persons.

“Dispute Resolution Procedure” means the procedure set out in Schedule 15 [Dispute Resolution Procedure].

“Distribution” means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of Share Capital to any Shareholder in respect of Shares;
 - (ii) reduction of Share Capital, redemption or purchase of Shares, or any other reorganization or variation to Share Capital;
 - (iii) payment, loan, contractual arrangement (including any management agreement or payment in respect thereof) or transfer of assets or rights, in each case to the extent it is made or put in place or entered into by the Primary Contractor after the Effective Date and is not in the ordinary course of business or is not on commercially reasonable terms, including to or with any Relevant Person;
 - (iv) the giving or conferring by the Primary Contractor of any other benefit that is not given or conferred in the ordinary course of business or is not given or conferred on commercially reasonable terms; or
 - (v) any other payment to any Relevant Person howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any class of Shares or Share Capital or other securities of or interest in the Primary Contractor if, in any such case, such payment would not have been made were it not for the occurrence of any Change in Ownership of the Primary Contractor; or
- (b) the early release of any reserves or any Contingent Funding Liabilities;

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated.

“**Douglas College Station**” means the Station to be generally located in the vicinity of Pinetree Way and Guildford Way.

“**DPU**” means the TransLink designated policing unit under the *Police Act* (British Columbia).

“**Draw Request**” has the meaning given in Section 12.2(e).

“**EA Application**” means the application, including submissions, to obtain the Environmental Assessment Certificate.

“**Effective Date**” means December 11, 2012.

“**Eligible Amount**” means, in respect of each Cost Centre or Payment Milestone, the total amount of Eligible Costs attributable to that Cost Centre or Payment Milestone set out in the Form of Statement of Progress.

“**Eligible Costs**” has the meaning given in Part 1 [Eligible Costs] of Schedule 22.

“**Emergency**” means the existence or occurrence of any of the following:

- (a) a serious threat or risk to:
 - (i) the health or safety of members of the public;
 - (ii) the environment; or
 - (iii) the safety or integrity of the Project Infrastructure or any property adjacent to or in the vicinity of the Site;
- (b) any event or circumstance that prevents or restricts the use of the Existing SkyTrain System and/or the Integrated SkyTrain System; and
- (c) any event or circumstance in respect of the Project Infrastructure or the Site that prevents the Province, BCTFA, TransLink or any other Relevant Authority from carrying out any function or duty that it is required by Laws to carry out in respect of the Project Infrastructure or the Site.

“**Emergency Response Agency**” means applicable municipal fire and police departments, RCMP, GVTAPS and the British Columbia Ambulance Service.

“**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, covenant, restrictive covenant, easement, right of way, encroachment, condition, right of re-entry, lease, licence, permit to use or occupy land, crossing agreement (excluding railway crossing agreements), assignment, option, right to acquire, right of first refusal or pre-emption, trust, title defect, claim or encumbrance of any nature whatsoever, whether registered or registrable, and whether or not created by statute.

“Environmental Assessment Certificate” means environmental assessment certificate #T10-01 issued pursuant to the BCEAA on February 2, 2011, the main body and Schedule A of which is attached as Appendix A to Schedule 5 [Environmental Obligations] and the whole of which, including Schedule B thereto, is incorporated by reference into and is an integral part of this Agreement as if set out at length in the body of this Agreement, as amended, supplemented or replaced from time to time after the Effective Date.

“Environmental Authority” means a Governmental Authority exercising its authority under Environmental Laws.

“Environmental Laws” means:

- (a) all requirements and provisions under or prescribed by any and all applicable Laws;
- (b) all applicable rules, regulations, orders-in-council, codes, protocols, guidelines, policies, procedures, concessions, grants, franchises, licences, permits, approvals, plans, authorizations, agreements and any other governmental requirements, promulgated under or pursuant to any Laws; and
- (c) all applicable judicial, administrative or regulatory judgments, orders, decisions, certificates and exemptions, including those rendered by any Governmental Authority;

all as may be amended from time to time, relating to environmental assessment, the protection of the natural environment, the protection of plant, animal and human health, and the protection of land, water and air resources, including those relating to occupational health, management of waste, safety and transportation of dangerous goods, and the safety requirements and procedures that would, in the ordinary and usual course of the construction, operation, management, repair, maintenance and rehabilitation of similar facilities in British Columbia by any person, be recognized, followed and implemented by such person, and includes the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canada Water Act* (Canada) and the *Environmental Management Act* (British Columbia).

“Environmental Manager” means the Key Individual appointed by the Primary Contractor pursuant to Section 3.3(b) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], and having the qualifications required by Section 3.1(a) of Schedule 5 [Environmental Obligations].

“Environmental Quality Management Plan” or **“EQMP”** means the plan for the quality management of the Primary Contractor’s Environmental Obligations prepared by the Primary Contractor in accordance with Appendix E [Environmental Quality Management Plan] to Schedule 6.

“Epidemic Defect” means:

- (a) if more than twenty (20) similar subsystems, components or subcomponents are installed or used in any of the Systems for a same or similar function and an identical or substantially similar repetitive defect or failure is found in 20% or more of such

components during the period specified in Section 6.4(a)(i)(A) or 6.4(a)(i)(B), as applicable;

- (b) where fewer than twenty (20) similar subsystems, components or subcomponents have been installed as part of the Systems for a same or similar function, an identical or substantially similar repetitive defect or failure is found in 50% or more of such subsystems, components or subcomponents during the period specified in Section 6.4(a)(i)(A) or 6.4(a)(i)(B), as applicable; or
- (c) if the mean time between failures in respect of any line replaceable unit or lowest level replaceable unit is less than 50% of the mean time between failures predicted in the reliability, availability and maintainability plan (RAM Program Plan) to be developed by the Primary Contractor as required by the Design-Build Requirements (on the basis that reliability, availability and maintainability of the Evergreen Line shall be as good as or better than that on the Existing SkyTrain System), and a minimum of three identical or substantially similar failures for such line replaceable unit or lowest level replaceable unit have occurred during the Epidemic Defect Warranty Period.

“Epidemic Defect Warranty Period” has the meaning set out in Section 6.4(a)(ii).

“Equipment” means all equipment designed, constructed, modified, configured, integrated, installed or supplied by or on behalf of the Primary Contractor as part of and included in the Work and, for certainty, includes Spare Parts and Station Spare Parts.

“Escrow Agreement” means the documents escrow agreement entered into among the Province, the Primary Contractor, the Principal Subcontractors (other than Thales), the Escrow Agent (as defined therein) and others, as amended, supplemented or replaced from time to time.

“Evergreen ATC System” means the automatic train control system for the Evergreen Line and includes the automatic train control Equipment, software and documentation supplied by the Primary Contractor and its Subcontractors pursuant to this Agreement.

“Evergreen Line” means all of the advanced light rapid transit infrastructure to be designed, created, constructed, supplied, tested and commissioned in accordance with, and as contemplated by, this Agreement and, for greater certainty, includes the various components of the Evergreen Line as they are designed, created, constructed, supplied, tested and commissioned.

“Exempt Principal Subcontract Matter” means any of the following, provided any such action or transaction does not constitute or result in a breach of Section 18.11 [Restricted Persons Prohibited]:

- (a) the exercise under the Principal Subcontracts of rights, waivers, consents and similar actions which relate to administrative and supervisory matters under the Principal Subcontracts; or
- (b) any amendment, variation or supplement of any Principal Subcontract that is approved by the Province as part of any Supervening Event, Province Change or Primary Contractor Proposal accepted by the Province in accordance with Schedule 10 [Changes].

“**Exempt Senior Lending Matter**” means any of the following, provided any such action or transaction does not constitute or result in a breach of Section 5.8 [Restricted Persons Prohibited]:

- (a) the exercise under the Senior Lending Agreements of rights, waivers, consents and similar actions which relate to administrative and supervisory matters under the Senior Lending Agreements and are in respect of:
 - (i) breach of representations, warranties, covenants or undertakings;
 - (ii) movement of monies in accordance with the terms of the Initial Senior Lending Agreements between accounts referred to in and required to be established under the Initial Senior Lending Agreements;
 - (iii) late or non-provision of information, consents or licenses;
 - (iv) amendments to the Principal Subcontracts made in accordance with Section 18.9 [Restrictions on Changes to Principal Subcontracts], or amendments to Subcontracts that are not Principal Subcontracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Lending Agreements);
 - (vi) restrictions imposed by the Senior Lenders on the dates at which financing provided by the Senior Lenders under the Senior Lending Agreements can be advanced to the Primary Contractor under the Senior Lending Agreements, that are imposed as a result of any failure by the Primary Contractor to ensure that the Work is performed in accordance with the Project Schedule;
 - (vii) changes to milestones for drawdown under the Senior Credit Facilities set out in the Senior Lending Agreements that are made as a result of any failure by the Primary Contractor to ensure that the Work is performed in accordance with the Project Schedule;
 - (viii) failure by the Primary Contractor to obtain any consents from Governmental Authorities required by the Senior Lending Agreements;
 - (ix) voting by the Senior Lenders and the voting arrangements among the Senior Lenders in respect of the levels of approval required by them under the Senior Lending Agreements; or
 - (x) application by the Primary Contractor for, and the making of, advances to the Primary Contractor under the Senior Credit Facilities in accordance with the Initial Senior Lending Agreements;
- (b) any amendment, variation or supplement of any Senior Lending Agreement that is approved by the Province as part of any Supervening Event, Province Change or Primary Contractor Proposal accepted by the Province in accordance with Schedule 10 [Changes];

- (c) any Qualifying Bank Transaction;
- (d) any amendment, assignment and assumption or novation of any Senior Lending Agreement that is made solely to reflect a change in a party (other than the Primary Contractor) thereto resulting from a Change in Ownership that is permitted in accordance with Section 18.6(a) or the Primary Contractor or any person which has Control of the Primary Contractor ceasing to be a subsidiary (for the purposes of this paragraph (d), within the meaning of “subsidiary” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement) of SNC Group that is permitted in accordance with Section 18.6(b) and not affecting any other change in the terms of such agreement; or
- (e) accommodating a Permitted Loss Consolidation Transaction (as defined in the Credit Agreement) that does not have or would not be reasonably expected to have any of the effects described in any of Sections 2.6(b)(i), 2.6(b)(iii) or 2.6(e) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].

“**Exempt Transaction**” means an Exempt Senior Lending Matter.

“**Existing Conditions**” means:

- (a) all Existing Facilities; and
- (b) any natural geographic feature existing at the Effective Date.

“**Existing Contamination**” means any Contamination that, as at the Financial Submittal Date, is situated in, on, under or over or affects any Designated Project Lands or any infrastructure or other improvements on or to any Designated Project Lands, and specifically excludes any Contamination that, as at the Financial Submittal Date, is situated in, on, under or over or affects any Supplementary Project Lands or Other Lands or any infrastructure or other improvements on or to any Supplementary Project Lands or Other Lands.

“**Existing Facilities**” means:

- (a) any building, structure, utility, roadway or other thing built or constructed on, in, under or over land or water; and
- (b) any man-made alteration to a natural geographic feature,

existing at the Effective Date.

“**Existing Millennium Line**” means that part of the Existing SkyTrain System operated by TransLink as of the Effective Date under the name “Millennium Line”, from the Waterfront Station terminus in Vancouver through Columbia Station in New Westminster to the VCC-Clark Station terminus in Vancouver, generally as illustrated on the aerial photograph below:

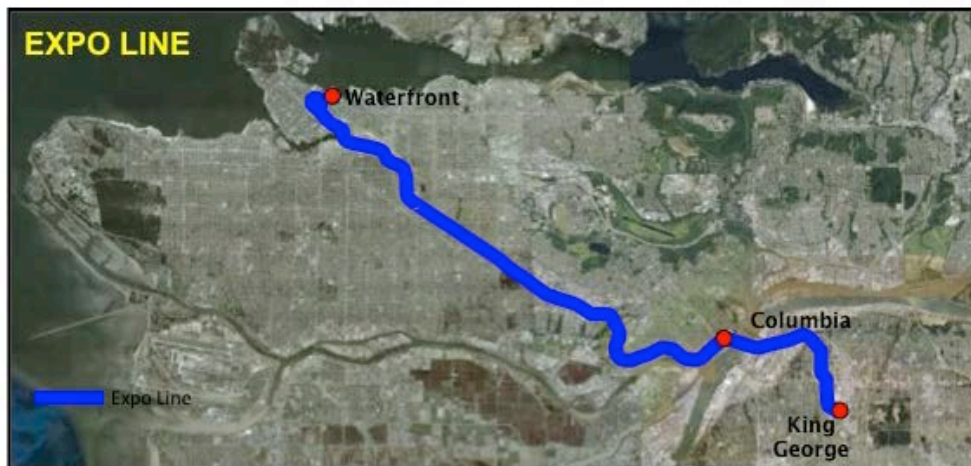


“**Existing SkyTrain System**” means the advanced light rapid transit system operated by TransLink as of the Effective Date as the Expo Line and the Existing Millennium Line, including all additions, improvements or modifications which Thales may make to the Existing SkyTrain System pursuant to the Upgrade Contracts, as such agreements may be amended and supplemented.

“**Existing Transit Facilities**” has the meaning given in Article 18.1.1 [Scope], Part 2 of Schedule 4.

“**Expiry Date**” means the date on which the Term ends.

“**Expo Line**” means that part of the Existing SkyTrain System operated by TransLink as of the Effective Date under the name “Expo Line”, from the Waterfront Station terminus in Vancouver through Columbia Station in New Westminister to the King George Station terminus in Surrey, generally as illustrated on the aerial photograph below:



“**Federal Contribution Agreement**” means the agreement entitled “Contribution Agreement for the Evergreen Line Advanced Light Rapid Transit Project” made as of July 10, 2012 between the Federal Government and the Province, as amended, supplemented or replaced from time to time.

“**Federal Exclusion Determination**” means the determination of the Federal Cabinet to exempt the Project from federal environmental assessment under the *Canadian Environmental Assessment Act*, including the considerations, determinations, advice and requirements of Transport Canada set out in the Federal Exclusion Documents.

“**Federal Exclusion Documents**” means the letter dated August 5, 2009 from John Hnatyshyn, Director Transit Projects, Transport Canada to Dave Duncan, Executive Project Director, Evergreen Line Rapid Transit Project, including the Identification of Federal Environmental Assessment Requirements Form completed by the Ministry of Transportation and Infrastructure on May 27, 2009, as referenced in such letter, and the September 27, 2010 email from John Hnatyshyn, Director Transit Projects, Transport Canada, attached as Appendix C to Schedule 5 [Environmental Obligations].

“**Federal Government**” means Her Majesty the Queen in right of Canada.

“**Final Certificate of Completion**” has the meaning given in Section 12.4(a).

“**Final Deficiency List**” has the meaning given in Article 4.1.2.4(a) [Final Deficiency List], Part 3 of Schedule 4.

“**Final Deficiency List Deficiency**” means a defect or deficiency specified in the Final Deficiency List.

“**Final Spare Parts List**” has the meaning given in Article 3.6.2(d), Part 3 of Schedule 4.

“**Financial Model**” means the computer spreadsheet model and software for the Project incorporating statements of the Primary Contractor’s cash flows including all expenditures and revenues (including on a gross basis), financing and taxation of the Work together with the profit and loss accounts and balance sheets for the Primary Contractor, accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as attached hereto in digital form on CD as Part 1 of Schedule 11 [Financial Model]. If there are updates to the Financial Model from time to time after the Effective Date in accordance with Section 2.19 [Financial Model], references to the “Financial Model” shall mean the Financial Model as so updated, unless a contrary intention is indicated.

“**Financial Submittal Date**” means August 27, 2012.

“**First Nations Requirements**” has the meaning given in Section 1.1 [First Nations Requirements] of Schedule 18.

“**Fixed Facilities**” means all Evergreen Line buildings, including Stations, PPS, and VSF buildings and any other buildings related to the operations and maintenance of the Evergreen Line.

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

“**Force Majeure Event**” means any of the following events or circumstances occurring in Canada:

- (a) war, hostilities (whether declared or undeclared), invasion, revolution, armed conflict, act of foreign enemy or terrorism;
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (c) nuclear explosion, combustion of nuclear fuel or ionizing radiation;
- (d) riot or civil commotion (other than riot or civil commotion constituting a Protest Action); and
- (e) governmental expropriation or confiscation of property by the Federal Government, to the extent that such expropriation or confiscation does not result in a breach by the Province of Section 2.5(a)(i) or Section 2.5(c).

“**Foreseeable Contamination**” means Existing Contamination that is disclosed by, or could reasonably have been foreseen from an analysis of or interpreting, any field test data, investigations, studies and/or reports (for the purposes of this definition, “**Analytical Information**”) contained in the Disclosed Data (excluding any Analytical Information that is located or disclosed in the Data Room solely by way of links to external websites) as at the Financial Submittal Date, to the extent contained in any of the following included in the Data Room:

- (a) a Phase 1 or Phase 2 Environmental Site Assessment in accordance with Standard CAN/CSA-Z768-01;
- (b) a Stage 1 or Stage 2 Preliminary Site Investigation in accordance with the MOE Technical Guidance Document No. 10 entitled “Checklist for Reviewing a Preliminary Site Investigation” dated October 2005;
- (c) any hazardous materials assessments and surveys for buildings; and/or
- (d) any other field test data, or investigations, studies and/or reports associated with such data, disclosed in the Data Room;

provided that, for certainty, the presence of any Existing Contamination on a site identified in the Environmental Assessment Application - Section 11: Screening Level Contaminated Sites Assessment Evergreen Line Rapid Transit Project as potentially contaminated shall be deemed not to be Foreseeable Contamination except to the extent that it is disclosed by, or could reasonably have been foreseen from an analysis of or interpreting, any Analytical Information referred to in paragraphs (a) to (d) of this definition contained in the Disclosed Data as at the Financial Submittal Date.

“**Form of Statement of Progress**” means the form of Statement of Progress set out in Part 2 [Statement of Progress] of Schedule 22.

“**Full Closure**” means a Closure affecting all of the Traffic lanes in one or both travelling directions on a road.

“**Future Millennium Line**” means that part of the Integrated SkyTrain System extending from Waterfront Station terminus in Vancouver through Columbia Station in New Westminister to Lougheed Town Centre Station in Burnaby, generally as illustrated on the aerial photograph below:



“**GAAP**” means, with respect to any entity at any time, generally accepted accounting principles in effect in Canada as applicable to that entity at that time, including, if so accepted and applicable, the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants.

“**General Work Defect Warranty Period**” has the meaning set out in Section 6.2.

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a person skilled and experienced in the design and construction of projects similar to the Project, including rail transit systems similar in type and construction and operating environment to the Evergreen Line and other infrastructure similar to the Project Infrastructure, seeking in good faith to comply with all applicable Laws and the same contractual obligations as the contractual obligations of the Primary Contractor under this Agreement and under the same or similar circumstances and conditions.

“**Governmental Authority**” means:

- (a) the Province;
- (b) TransLink;
- (c) the Federal Government; and
- (d) any:
 - (i) federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, Court, government organization, commission, board or tribunal;

- (ii) regulatory, administrative or other agency; or
- (iii) political or other subdivision, department or branch of any of the foregoing;

having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Work, or the Site or the Project Infrastructure.

“**Graham**” means Graham Building Services, a JV, a joint venture comprising Graham Building Services LP and Jardeg Construction Services Ltd.

“**GST**” means the goods and services tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada) at the applicable rate and, for greater certainty, includes both the federal component of such tax imposed under subsection 165(1) of that Act which is commonly referred to as “GST” and the provincial component of such tax imposed under subsection 165(2) of that Act which is commonly referred to as “HST”, where and as applicable.

“**Guarantees**” means the guarantees provided by each of the Guarantors with respect to the performance of the obligations of any Principal Subcontractor under the terms of the Principal Subcontract or Principal Subcontracts to which such Principal Subcontractor is a party, each as amended, supplemented or replaced from time to time in accordance with this Agreement and the Collateral Agreements, and “**Guarantee**” means any of them.

“**Guarantors**” means SNC Group, Graham Construction Fund, Graham Business Trust and S.E.L.I. Societa Esecuzione Lavori Idraulici S.p.A., and each of them is a “**Guarantor**”.

“**Guideway**” means that part of the Evergreen Line comprising both the superstructure and substructure elements on which the Vehicles operate, whether elevated, at grade, or in the Tunnel, including all beams, slabs, columns and foundations and includes, as applicable, those portions of the Existing Millennium Line and the existing non-operational guideway at Lougheed Town Centre Station which exists at the Effective Date.

“**GVRD**” means Greater Vancouver Regional District (commonly called “Metro Vancouver”) and includes or refers to, as applicable, Greater Vancouver Sewerage and Drainage District and Greater Vancouver Water District.

“**GVRD Accommodation Agreement**” has the meaning given in Article 8.9.2(a), Part 2 of Schedule 4.

“**GVRD Utility Works Agreement**” has the meaning given in Article 8.9.2(a), Part 2 of Schedule 4.

“**Harmful Code**” means computer programming code that is intentionally constructed with the ability to damage, interfere with or otherwise adversely affect the normal functioning of computer programs, data files, or hardware without the consent or intent of the owner or an authorized licensee, which includes, but is not limited to, self-replicating and self-propagating programming such as viruses, worms, Trojan horses, implanted bugs, booby traps and time bombs.

“**Hazardous Substance**” means any hazardous waste, hazardous product, hazardous substance, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, hazardous waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling,

disposal, treatment, generation, use, transport, remediation or Release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws including:

- (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or toxic substances or any other contaminants or pollutants;
- (b) any such substance which may or could pose a hazard to any real property, or to persons on or about any real property, or causes any real property to be in violation of any Environmental Laws, including without limitation any mixing or combination of any such substance with any other such substance that would cause a breach of any applicable Environmental Laws;
- (c) asbestos in any form which is or could become friable, radon gas, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of limits prescribed by any Environmental Laws; and
- (d) any substance defined as or included in the definitions of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “special waste”, “waste” or words of similar import under any applicable Environmental Laws, including the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canada Water Act* (Canada) and the *Environmental Management Act* (British Columbia), including the Hazardous Waste Regulation promulgated thereunder.

“**Health and Safety Program**” has the meaning given in Section 4.11(a)(i).

“**Hedge Termination Amounts**” means the net amount (if any) payable under the Hedging Agreements on termination of the interest rate hedging.

“**Hedging Agreements**” means the Initial Hedging Agreements and any other interest rate hedging agreements relating to the Senior Debt entered into after the Effective Date in accordance with this Agreement, as supplemented and amended in accordance with this Agreement.

“**Holdco**” means SNC-Lavalin Evergreen Line Holdings Inc.

“**Holding Company**” means, with respect to a corporation, another corporation of which the first mentioned corporation is a “subsidiary” within the meaning of “subsidiary” as defined in the *Business Corporations Act* (British Columbia) in effect as at the date of this Agreement.

“**Hours of Work Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.11(a) [Calculation of Hours of Work Payments] of Schedule 9 [Performance Mechanism].

“**Implementation Plan**” means the Sub-Plan to the Traffic Management Plan prepared by the Primary Contractor in accordance with Article 1.3.4 [Implementation Plan], Part 4 of Schedule 4.

“**Income Tax**” means any Tax imposed on the income of a person by any Governmental Authority within Canada.

“**Independent Certifier**” means the independent firm selected to act as the Independent Certifier in accordance with Article 2 [Independent Certifier], Part 1 of Schedule 4, and any replacement appointed pursuant thereto.

“**Independent Certifier Contract**” means the agreement to be entered into by the Province, the Primary Contractor and the Independent Certifier pursuant to Article 2 [Independent Certifier], Part 1 of Schedule 4, and substantially in the form set out Appendix D [Form of Independent Certifier Contract] to Schedule 4, as such agreement may be amended, supplemented or replaced from time to time.

“**Independent Engineer**” means the Independent Engineer retained by the Province, including to perform the functions of the Independent Engineer under the Federal Contribution Agreement.

“**Independent Engineer Contract**” means the agreement entered into by the Province and the Independent Engineer pursuant to which the Independent Engineer is obliged to perform the functions of the Independent Engineer under this Agreement and the Federal Contribution Agreement, as such agreement may be amended, supplemented or replaced from time to time.

“**Individual Payment Milestone Eligible Costs**” means, in respect of any Payment Milestone in respect of which Work has been carried out during a Payment Period (and, in addition, for the first Payment Period only, carried out under the Limited Notice to Proceed Agreement), an amount equal to the portion of the Eligible Amount in respect of such Payment Milestone that is either equal to the percentage of such Payment Milestone certified by the Independent Engineer as having been completed during such Payment Period (and, in addition, for the first Payment Period only, as having been completed under the Limited Notice to Proceed Agreement) in accordance with Part 3 [Measurement and Payment Principles] of Schedule 22 or is otherwise certified by the Independent Engineer in respect of such Payment Period in accordance with Part 3 [Measurement and Payment Principles] of Schedule 22, provided that, for certainty, the aggregate Individual Payment Milestone Eligible Costs for all Payment Periods in respect of any Payment Milestone shall not exceed the Eligible Amount in respect of such Payment Milestone.

“**Initial Hedging Agreements**” means the interest rate hedging relating to Senior Debt forming part of the Initial Senior Lending Agreements and described in paragraph 2 of Schedule 20.

“**Initial Lending Agreements**” means the Initial Senior Lending Agreements (including the Initial Hedging Agreements).

“**Initial Senior Credit Facilities**” means the senior credit facility provided for in the Initial Senior Lending Agreements.

“**Initial Senior Lending Agreements**” means the agreements and instruments described in Schedule 20, each as amended, supplemented or replaced from time to time in accordance with this Agreement.

“**Inspection and Test Plan**” or “**I TP**” means a detailed list of all major on and off Site inspection, calibration, sample, test and trial activities in respect of the Work to be performed by the Primary Contractor and Subcontractors prepared by the Primary Contractor in accordance with Section 4.3 [Inspection and Test Plan] of Schedule 6.

“Installation of Fibre Optic Cable Work” means the works referred to in Article 6.2.5(a) [Installation of Fibre Optic Cable Work], Part 1 of Schedule 4.

“Installation of Fibre Optic Cable Work Contract” means the document or documents specified in Appendix B [Advance Work Contracts] to this Schedule for the performance of the Installation of Fibre Optic Cable Work as may be amended from time to time.

“Integrated SkyTrain System” means the Operational Evergreen Line, the Expo Line and the Future Millennium Line.

“Intellectual Property” means all forms of intellectual property whatsoever including all access codes, 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, trade names, 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, including 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:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, industrial design, integrated circuit topography and mask work rights;
- (b) trade-mark and trade name rights and similar rights;
- (c) trade secret rights;
- (d) patent and industrial property rights;
- (e) other proprietary rights in Intellectual Property of every kind and nature; and
- (f) 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 (e) above.

“Interested Parties” means those persons who may be affected by the carrying out of the Work or who are duly authorized by Laws to review or otherwise take an interest in the Work, including the Relevant Authorities.

“Ioco Station” means the Station to be generally located in the vicinity of Barnet Highway and Ioco Road.

“Irrecoverable Losses” means:

- (a) in the case of Losses suffered or incurred by the Province, Province Irrecoverable Losses; and
- (b) in the case of Losses suffered or incurred by the Primary Contractor, Primary Contractor Irrecoverable Losses.

“ISO 9001:2008 Standard” means the ISO 9001:2008 International Standard for “Quality management systems – Requirements”, as revised and updated from time to time, or, if such standard ceases to be available for any reason, such other replacement standard as the Province may designate.

“Key Individuals” means the individuals specified in Section 3.3(a), or appointed pursuant to Section 3.3(b), of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacements as may be appointed by the Primary Contractor from time to time in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].

“Labour Dispute” means any lawful or unlawful strike (including a general strike in British Columbia), lockout, go-slow or other labour dispute occurring after the Effective Date affecting generally the whole or a significant section of:

- (a) the construction industry in British Columbia; and/or
- (b) the transit operators’ industry in British Columbia.

“Land Rights” means an estate or interest in or right over or relating to any land (including an air space parcel, foreshore and land covered by water) whether legal, equitable, contractual, irrevocable, revocable, permanent, temporary or otherwise, including a fee simple interest, subsurface rights, a leasehold estate, a SRW, an easement, a license, rights under a crossing agreement including a railway crossing agreement, a railway permit or a Railway Order.

“Lane Closure” means any Closure affecting a Traffic lane or lanes on a road, but excludes a Full Closure.

“Lane Shift” means a transfer of Traffic along lane(s) of the same route and which, using existing roadway lanes or surfaces, guides Traffic around the work zone.

“Late Completion Plan” has the meaning given in Section 14.4.

“Latent Work Defect” has the meaning given in Section 6.5(b).

“Latent Work Defect Warranty Period” has the meaning given in Section 6.5(b).

“Laws” means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, bylaws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time affecting, applicable to or otherwise relating to the Project, the Work, the Site, the Project Infrastructure, the Primary Contractor

or the Province, as the case may be, including, for greater certainty, those related to railway construction and railway safety, the issuance of Permits and any applicable building codes.

“**Legal Expenses**” means all reasonable legal fees, court costs, expert witness fees and other disbursements actually incurred by the Primary Contractor in connection with a Successful Defence that the Primary Contractor is unable to recover from the plaintiff(s) in a Nuisance Claim, having made all reasonable efforts to prosecute a claim (including collection and enforcement proceedings) for costs against the plaintiff(s).

“**Lender PS Direct Agreement**” means each direct agreement of even date herewith entered into between the Agent on behalf of the Senior Lenders and the parties to each Principal Subcontract.

“**Lenders’ Remedies Agreement**” means the agreement of even date herewith entered into between the Province, BCTFA, the Agent on behalf of the Senior Lenders and the Primary Contractor, in the form set out in Schedule 13 [Lenders’ Remedies Agreement], as amended, supplemented or replaced from time to time by written agreement of the parties thereto.

“**Lending Agreements**” means all or any agreements and instruments entered into or to be entered into by the Primary Contractor or any of its Affiliates relating to the debt financing of the Project or the Work, including the Initial Lending Agreements and any amendments and supplements thereto or replacements thereof, in each case provided they have been entered into in accordance with this Agreement.

“**Letter of Credit**” means an irrevocable letter of credit in the form of Schedule 23 (modified as indicated in Schedule 23), if being provided by the Primary Contractor pursuant to:

- (a) paragraph (e) of the definition of Substantial Completion Payment Amount in this Section 1.1 (the “**Availability Demonstration Letter of Credit**”);
- (b) paragraph (f) of the definition of Substantial Completion Payment Amount in this Section 1.1 (the “**TIDS Demonstration Letter of Credit**”);
- (c) paragraph (g) of the definition of Substantial Completion Payment Amount in this Section 1.1 (the “**Warranty Holdback Letter of Credit**”); or
- (d) Section 12.7(a) (the “**Deficiency Letter of Credit**”);

in any such case, issued by a Canadian chartered bank with offices in Vancouver, or any other bank or financial institution with offices in Vancouver acceptable to the Province, and in any such case whose long term debt has a credit rating of not less than A (Standard & Poors) or A (Moody’s Investors Service Inc.), and any Letter of Credit shall be callable at the issuing institution’s offices in Vancouver.

“**Licensed Property**” has the meaning given in the definition of Complete License in this Section 1.1.

“**Licensed Use**” means, unless otherwise agreed in writing by the Province and the Primary Contractor, any use whatsoever in connection with the Evergreen Line, the Equipment, the Project or otherwise in connection with any one or more of the current or future design, construction, completion, commissioning, testing, operation, maintenance, repair, modification, alteration, adaptation, rehabilitation, improvement, expansion, extension, financing or regulation (including with respect to the

contemplation, procurement or undertaking of any such activities by the Province or any third parties) of all or any part or parts of the Evergreen Line, the Equipment, the Project Infrastructure, the Site and the lands and infrastructure comprising or anticipated to comprise the Evergreen Line, or all or any part or parts of the Existing Sky Train System and or the Integrated Sky Train System and or the carrying out of any statutory, public or other duties or functions in respect of any of the foregoing.

“Lien Holdback Amounts” means, as applicable:

- (a) the Base Lien Holdback Amounts;
- (b) the Additional Work Lien Holdback Amounts;
- (c) the SCPA Lien Holdback Amount; and/or
- (d) the Supervening Event Lien Holdback Amounts.

“Lien Holdback Payment Application” means an application substantially in the form attached at Part 4, Form 4B [Lien Holdback Payment Application] of Schedule 22.

“LIM” means linear induction motor.

“Limited License” means a license for the Licensed Use in respect of any Third Party Technology, which Limited License will be on terms and conditions acceptable to the Province, acting reasonably.

“Limited Notice to Proceed Agreement” means the agreement entitled “Limited Notice to Proceed Agreement” dated as of November 7, 2012 among the Province, SLI and the Design-Builder, as amended, supplemented or replaced from time to time.

“Lincoln Station” means the Station to be generally located in the vicinity of Pinetree Way at Lincoln Avenue.

“Lincoln Station Eligible Costs” means the Eligible Costs attributable to the Work carried out in respect of Lincoln Station, whether such Eligible Costs are in respect of Payment Milestones within the Cost Centre for Lincoln Station or are in respect of Payment Milestones within any other Cost Centre.

“Liquidated Damages” means Delay Liquidated Damages, Availability Liquidated Damages and TIDS Liquidated Damages, in each case in the amount calculated in accordance with Schedule 24 [Liquidated Damages].

“Liquidated Damages Event” means any event giving rise to liability of the Primary Contractor for Liquidated Damages described in Schedule 24 [Liquidated Damages].

“Losses” means any and all damages, losses, loss of revenue, loss of passenger revenue, loss of profit, loss of business opportunity, liabilities, charges, judgments, court orders, penalties, fines, assessments, costs (including finance costs) and expenses (including legal and other professional charges and expenses on a full indemnity basis and including reasonable costs of mitigation incurred by the Province or BCTFA in complying with its obligations pursuant to Section 3.1 [Mitigation by Province] or by the Primary Contractor in complying with its obligations pursuant to Section 4.10 [Mitigation by Primary Contractor],

as the case may be) of any nature and kind whatsoever and howsoever arising, whether under statute or contract, at common law, in equity, in connection with judgments or criminal or quasi criminal proceedings, or otherwise, and whether direct, indirect or consequential, and “**Loss**” will be construed accordingly.

“**Lougheed Town Centre Station**” means the existing Lougheed Town Centre Station located on the Existing Millennium Line, as altered, expanded and modified in accordance with this Agreement.

“**Makewhole Amount**” has the meaning given in the Credit Agreement.

“**Mark I Vehicle**” means the Mark I type of passenger vehicle used on the Existing SkyTrain System and which will be used on the Integrated SkyTrain System.

“**Mark II Vehicle**” means the Mark II type of passenger vehicle used on the Existing SkyTrain System and which will be used on the Integrated SkyTrain System.

“**Mark-up**” means any head office overhead and profit.

“**Minister**” means the member of the Executive Council of the Province who is charged from time to time with the administration of the *Transportation Act* (British Columbia), and includes the Minister’s deputy and any person authorized to act for or on behalf of either of them with respect to any matter under or contemplated by this Agreement.

“**Ministry**” means the ministry of the Province headed by the Minister.

“**Minor Works**” has the meaning given in Section 8.3 [Minor Works].

“**Minor Works Valuation**” means a reasonable estimate, consistent with the principles set out in Section 2.4 [Valuation of Change in Costs] of Schedule 10, of the Change in Costs to be incurred by the Primary Contractor for Minor Works required to implement a Province Change.

“**Modifications**” means, in respect of any Intellectual Property or other property, all modifications including any alterations, changes, deletions, amendments, upgrades, updates, enhancements, revisions or improvements.

“**Modifications to Province Provided Materials**” means all Modifications made to any Province Provided Materials, whether made by or on behalf of the Province or by or on behalf of the Primary Contractor.

“**MOE**” means the Ministry of Environment of the Province.

“**Municipal Agreements**” means:

- (a) the agreement entitled “Port Moody Municipal Agreement” made as of October 13, 2011 between the Province and the Corporation of the City of Port Moody;
- (b) the agreement entitled “Coquitlam Municipal Agreement” made as of January 31, 2012 between the Province and the Corporation of the City of Coquitlam; and

- (c) the agreement entitled “Evergreen Line Burnaby Access Agreement” made as of November 7, 2012 between the Province and the Corporation of the City of Burnaby,

as each such agreement is amended, supplemented or replaced from time to time.

“**Municipal Infrastructure**” means all infrastructure, equipment, systems, fixtures, facilities and other improvements (including Public Utilities but excluding Regulated Utilities) owned or under the control of a Municipality situated in, on, under, over or in the vicinity of any Municipal Lands (including existing road and sidewalk, pavement, boulevards, trees, landscaping, curbing, gutters, storm drains, street lighting, Traffic Signals, waterworks, sewers, telecommunication utilities and all other utilities and services and anything else from time to time required, built, constructed, erected or installed by or on behalf of a Municipality in, on, under, over or in the vicinity of any Municipal Lands), whether or not such infrastructure, equipment, systems, fixtures, facilities and improvements has at such time been, and whether or not it is required under the terms of this Agreement at any time to be, constructed, installed, altered, upgraded and augmented by the carrying out of the Work.

“**Municipal Lands**” means lands under the ownership or control of a Municipality at any time comprised within the Site.

“**Municipal Requirements**” means, collectively, in respect of Municipal Works, the following:

- (a) the requirements set out in Article 3 [Municipal Requirements], Part 1, Schedule 4; and
- (b) any and all SRWs in favour of a Municipality or registered against any Municipal Lands to the benefit of the Province and BCTFA or either of them;
- (c) the standards and requirements that would be applicable to obtaining and maintaining access to, use and occupation of, and carrying out work on or adjacent to municipal lands and infrastructure which would reasonably be expected by a contractor experienced in carrying out such work applying Good Industry Practice.

“**Municipal Works**” means all temporary and permanent installation, protection, removal, relocation and other works and activities relating to or affecting or in any way impacting the Municipal Lands and the Municipal Infrastructure required to be carried out by the Primary Contractor that are necessary to accommodate the access to and use of the Municipal Lands for the performance of the Work and all other obligations under this Agreement.

“**Municipalities**” means the Corporation of the City of Burnaby, the Corporation of the City of Coquitlam and the Corporation of the City of Port Moody and “**Municipality**” means any of them.

“**NCE Points**” means those points assigned to the Primary Contractor in accordance with Section 5.1 [Assignment of NCE Points] of Schedule 9 [Performance Mechanism].

“**No Default Interest Rate**” means, at any time, in respect of any amount calculated under this Agreement attributable to the Fixed Rate Tranche or the Floating Rate Tranche (as such terms are defined in the Credit Agreement), as the case may be, the non-default interest rate provided for the relevant Tranche in the Credit Agreement at that time, provided that if, at that time, there is more than one non-

default interest rate so provided for the relevant tranche, the “**No Default Interest Rate**” means the lowest of such non-default interest rates at that time.

“**Non-Compliance Disruption Event**” means the occurrence of any of:

- (a) a Non-Permitted Traffic Disruption Event; or
- (b) a Non-Permitted Pedestrian and Cyclist Disruption Event; or
- (c) a Non-Permitted Access Disruption Event; or
- (d) a Non-Permitted Parking Disruption Event; or
- (e) a Non-Permitted WCE Station Entrance Disruption Event; or
- (f) a Non-Permitted WCE Park & Ride High Disruption Event; or
- (g) a Non-Permitted Off-Street Bus Exchange Disruption Event; or
- (h) a Non-Permitted SkyTrain Station Entrance Disruption Event; or
- (i) a Non-Permitted SkyTrain Service Disruption Event; or
- (j) a Non-Permitted Construction Hours of Work Disruption Event; or
- (k) a Non-Permitted Construction Noise Disruption Event.

“**Non-Compliance Disruption Event Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.1 [Calculation of Non-Compliance Disruption Event Payments] of Schedule 9 [Performance Mechanism].

“**Non-Compliance Event**” or “**NCE**” means, as applicable, a Non-Compliance Disruption Event or a Non-Compliance Points Event.

“**Non-Compliance Points Event**” means a failure by the Primary Contractor to meet a performance requirement outlined in Appendix A [Assignment of NCE Points] of Schedule 9 [Performance Mechanism].

“**Non-Compliance Points Event Amount**” means the amount in respect of each day during each Performance Period determined in accordance with Section 4.1 [Calculation of Non-Compliance Points Events Payment] of Schedule 9 [Performance Mechanism].

“**Non-Compliance Points Event Payment**” means the amount in respect of each Performance Period determined in accordance with Section 4.1 [Calculation of Non-Compliance Points Event Payments] of Schedule 9 [Performance Mechanism].

“**Nonconformity**” means any failure by the Primary Contractor to perform any of its obligations under this Agreement in respect of any aspect of the Work, and which failure is not rectified by the Primary Contractor within the applicable time period, if any, stipulated in this Agreement, including the following:

- (a) a Non-Compliance Event (whether a Non-Compliance Disruption Event or a Non-Compliance Points Event);
- (b) defective workmanship or repairs not in compliance with the requirements of this Agreement;
- (c) use of materials and/or equipment not in compliance with the requirements of this Agreement;
- (d) deficient, incomplete and/or illegible Quality Documentation;
- (e) deficient, incomplete and/or illegible Records;
- (f) inadequate and/or ineffective defect identification processes;
- (g) failure to achieve documented response time requirements;
- (h) failure to comply with Quality Management System processes;
- (i) failure to complete a Correction of any Nonconformity and, if applicable, failure to take Corrective Action in respect of any Nonconformity, within the required time;
- (j) failure to take Preventive Action (if applicable) with respect to any potential Nonconformity within the required time; and
- (k) failure to meet the Primary Contractor's reporting obligations under this Agreement.

“Nonconformity Report” or **“NCR”** means a document issued by either the Province's Representative or the Primary Contractor pursuant to Section 7.1 [Nonconformity Reporting Process] of Schedule 6 which provides details of an identified Nonconformity and the proposed Correction and, if applicable, Corrective Action taken or to be taken to deal with such Nonconformity.

“Nonconformity Tracking System” means a system to track Nonconformity Reports issued by the Province's Representative or the Primary Contractor as set out in Section 7.2 [Nonconformity Report Tracking System] of Schedule 6.

“Non-Continuous Noise” means noise which occurs for a total of less than 3 minutes in any 15 minute period of time.

“Non-Default Termination Sum” has the meaning given in Section 2.1(b) of Schedule 12 [Compensation on Termination].

“Non-Foreseeable Contamination” means all Existing Contamination other than Foreseeable Contamination.

“Non-Permitted Access Disruption Event” means each disruption to an Access that is not permitted in accordance with Article 3.4.1 [Residential, Commercial and Institutional Properties], Part 4 of Schedule

4. Any Non-Permitted Access Disruption Event which affects more than one Access shall be treated as a separate Non-Permitted Access Disruption Event in respect of each such Access.

“Non-Permitted Construction Hours of Work Disruption Event” means each time that a construction activity of the Primary Contractor on the Site is undertaken at a time that is not permitted by Article 20.3.1 [Permitted Hours of Work and Noise Level Criteria], Part 2 of Schedule 4.

“Non-Permitted Construction Noise Disruption Event” means each time that a construction activity of the Primary Contractor on the Site causes Continuous Noise or Non-Continuous Noise to exceed the noise levels permitted by Article 20.3.1 [Permitted Hours of Work and Noise Level Criteria], Part 2 of Schedule 4. A Non-Permitted Construction Noise Disruption Event which occurs during the subsistence of a Non Permitted Construction Hours of Work Event shall be treated as a separate Non-Compliance Disruption Event from the Non Permitted Construction Hours of Work Event. In such event, the applicable noise levels during a Non-Permitted Construction Hours of Work Event shall be determined based on the permitted noise levels, as set out in, as applicable, Articles 20.3.1.3(b) or 20.3.1.3(d), Part 2 of Schedule 4, at the time when the Primary Contractor is undertaking the relevant construction activity.

“Non-Permitted Off-Street Bus Exchange Disruption Event” means each disruption of bus access to any bus bay or bus layover space at any Off-Street Bus Exchange that is caused or directed by the Primary Contractor and that is non-compliant with the approved Transit Facility Construction Integration Plans or Article 18.7.2 [Maintaining Service Operations], Part 2 of Schedule 4. A Non-Permitted Off-Street Bus Exchange Disruption Event which simultaneously affects more than one bus bay and/or bus layover space shall be treated as a separate Non-Permitted Off-Street Bus Exchange Disruption Event in respect of each such bus bay and/or bus layover space.

“Non-Permitted Parking Disruption Event” means each disruption to a Parking Stall that is not permitted in accordance with Article 3.5 [Non-Permitted Parking Disruptions], Part 4 of Schedule 4. Any Non-Permitted Parking Disruption Event which affects more than one Parking Stall shall be treated as a separate Non-Permitted Parking Disruption Event in respect of each such Parking Stall.

“Non-Permitted Patrol Disruption Event” means each failure to fulfil the requirements set out in Article 1.6.5 [Patrols], Part 4 of Schedule 4.

“Non-Permitted Pedestrian and Cyclist Disruption Event” means each delay to pedestrians and/or cyclists that is not permitted in accordance with Article 3.3 [Non-Permitted Pedestrian and Cyclist Disruptions], Part 4 of Schedule 4. Any Non-Permitted Pedestrian and Cyclist Disruption Event which simultaneously affects more than one Pedestrian and Cycling Facility and/or more than one Block shall be treated as a separate Non-Permitted Pedestrian and Cyclist Disruption Event in respect of each such Pedestrian and Cycling Facility and/or Block as the case may be.

“Non-Permitted SkyTrain Service Disruption Event” means each delay, caused in the performance of the Work by the Primary Contractor or any person for whom the Primary Contractor is in law responsible, in or to the operation in passenger service of the Existing SkyTrain System or, after Service Commencement, the Integrated SkyTrain System, as applicable, which exceeds two minutes in duration.

“Non-Permitted SkyTrain Station Entrance Disruption Event” means each complete closure of any station entrance at Lougheed Town Centre Station that is non-compliant with the Transit Facility Construction Integration Plans required for this Station in accordance with Article 18 [Integration with

Transit Facilities], Part 2 of Schedule 4. A Non-Permitted SkyTrain Station Entrance Disruption Event which simultaneously affects more than one entrance shall be treated as a separate Non-Permitted SkyTrain Station Entrance Disruption Event in respect of each such entrance.

“Non-Permitted Traffic Disruption Event” means each Lane Closure, Lane Shift, Stoppage, Full Closure or Detour Route that is not permitted in accordance with Article 3.2 [Non-Permitted Traffic Disruptions], Part 4 of Schedule 4. Any Non-Permitted Traffic Disruption Event which simultaneously affects more than one lane of a road and/or more than one Block shall be treated as a separate Non-Permitted Traffic Disruption Event in respect of each such lane and/or Block as the case may be.

“Non-Permitted WCE Park & Ride High Disruption Event” means each disruption to WCE passenger access to more than forty of the numbered parking bays at any time during a calendar day at any one of the existing or temporary park & ride facilities at Port Moody WCE Station or Coquitlam Central WCE Station that is caused or directed by the Primary Contractor and that is non-compliant with the approved Transit Facility Construction Integration Plans or Article 18.8 [Park & Ride Facilities], Part 2 of Schedule 4. A Non-Permitted Park & Ride High Disruption Event which subsists for more than one calendar day shall be treated as a separate Non-Permitted Park & Ride High Disruption Event in respect of each such calendar day. A Non-Permitted Park & Ride High Disruption Event which simultaneously affects more than one park & ride facility shall be treated as a separate Non-Permitted Park & Ride High Disruption Event in respect of each such park & ride facility.

“Non-Permitted WCE Park & Ride Low Disruption Event” means each disruption to WCE passenger access to more than zero and less than or equal to twenty of the numbered parking bays at any time during a calendar day at any one of the existing or temporary park & ride facilities at Port Moody WCE Station or Coquitlam Central WCE Station that is caused or directed by the Primary Contractor and that is non-compliant with the approved Transit Facility Construction Integration Plan or Article 18.8 [Park & Ride Facilities], Part 2 of Schedule 4. A Non-Permitted Park & Ride Low Disruption Event which subsists for more than one calendar day shall be treated as a separate Non-Permitted Park & Ride Low Disruption Event in respect of each such calendar day. A Non-Permitted Park & Ride Low Disruption Event which simultaneously affects more than one park & ride facility shall be treated as a separate Non-Permitted Park & Ride Low Disruption Event in respect of each such park & ride facility.

“Non-Permitted WCE Park & Ride Medium Disruption Event” means each disruption to WCE passenger access to more than twenty and less than or equal to forty of the numbered parking bays at any time during a calendar day at any one of the existing or temporary park & ride facilities at Port Moody WCE Station or Coquitlam Central WCE Station that is caused or directed by the Primary Contractor and that is non-compliant with the approved Transit Facility Construction Integration Plans or Article 18.8 [Park & Ride Facilities], Part 2 of Schedule 4. A Non-Permitted Park & Ride Medium Disruption Event which subsists for more than one calendar day shall be treated as a separate Non-Permitted Park & Ride Medium Disruption Event in respect of each such calendar day. A Non-Permitted Park & Ride Medium Disruption Event which simultaneously affects more than one park & ride facility shall be treated as a separate Non-Permitted Park & Ride Medium Disruption Event in respect of each such park & ride facility.

“Non-Permitted WCE Passenger Access Disruption Event” means each disruption to WCE passenger access to the WCE station platform at Port Moody WCE Station or Coquitlam Central WCE Station during WCE revenue service hours (but not including a Non-Permitted WCE Station Entrance Disruption Event) that is non-compliant with the Transit Facility Construction Integration Plans required for each

Station in accordance with Article 18.6.1 [Passenger Access], Part 2 of Schedule 4. A Non-Permitted WCE Passenger Access Disruption Event which simultaneously affects more than one Station shall be treated as a separate Non-Permitted WCE Passenger Access Disruption Event in respect of each such Station.

“Non-Permitted WCE Station Entrance Disruption Event” means each complete closure of any station entrance at Port Moody WCE Station or Coquitlam Central WCE Station during normal WCE revenue service hours that is non-compliant with the Transit Facility Construction Integration Plans required for each Station in accordance with Article 18.6.1(b) [Passenger Access], Part 2 of Schedule 4. A Non-Permitted WCE Station Entrance Disruption Event which simultaneously affects more than one entrance shall be treated as a separate Non-Permitted WCE Station Entrance Disruption Event in respect of each such entrance.

“Non-Systems Components” means all components of the Evergreen Line other than the Systems and the Tunnel Ventilation System.

“Non-Systems Design Management Plan” has the meaning given in Article 2.2.3.1 [Submission of Non-Systems Design Management Plan], Part 3 of Schedule 4.

“North Road Widening Work” means the works referred to in Article 6.2.2(a) [North Road Widening Work], Part 1 of Schedule 4.

“North Road Widening Work Contract” means the document or documents specified in Appendix B [Advance Work Contracts] to this Schedule for the performance of the North Road Widening Work and the works referred to in Article 6.2.3(a)(i)A., Part 1 of Schedule 4 as may be amended from time to time.

“Notice of Project” has the meaning given in Section 4.11(a)(ii).

“Nuisance Claim” means a Claim for damages or other relief for private nuisance and/or public nuisance in relation to the Evergreen Line.

“Off-Street Bus Exchange” means each existing or temporary bus exchange facility at Lougheed Town Centre Station, Port Moody WCE Station or Coquitlam Central WCE Station.

“Off-Street Bus Exchange Disruption Payment” means the amount in respect of each Performance Period determined in accordance with Section 3.8(a) [Calculation of Off-Street Bus Exchange Disruption Payments] of Schedule 9 [Performance Mechanism].

“OHS Regulation” means the *Occupational Health and Safety Regulation* (British Columbia) pursuant to the WCA.

“Operating Permit” means the permit to operate the Operational Evergreen Line to be issued under Part 2 of the *Railway Safety Act* (British Columbia).

“Operational Evergreen Line” means the Evergreen Line plus that portion of the Existing Millennium Line between Lougheed Town Centre Station in Burnaby to VCC-Clark Station in Vancouver, generally as illustrated on the aerial photograph below:



“**Operations and Maintenance Centre**” or “**OMC**” means the existing BCRTC operations, maintenance and storage facility located at 6800 – 14th Avenue, Burnaby, B.C.

“**Operations Control Centre**” or “**OCC**” has the meaning set out in Appendix F [TransLink Building Code Criteria] to Schedule 4.

“**Original Senior Commitment**” means the principal amount of all funding for the Project committed under the Initial Senior Credit Facilities and the Initial Senior Lending Agreements as at the Effective Date.

“**Other Fixed Facilities**” means Fixed Facilities other than Stations.

“**Other Lands**” means those lands, which are not either the Designated Project Lands or the Supplementary Project Lands, which are proposed to be used by the Primary Contractor in connection with or to facilitate the delivery of all or any part of the Work and which the Province determines are important to the continuous and uninterrupted delivery of the Work and which are described in Table A-3 of Appendix A [Project Lands] to Schedule 7 [Lands].

“**PA Release Amount**” has the meaning given in Section 12.4(c)(ii).

“**PA Release Contribution Amount**” has the meaning given in Section 12.4(l).

“**Parking Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.5(a) [Calculation of Parking Disruption Payments] of Schedule 9 [Performance Mechanism].

“**Parking Stall**” means an area of a municipal street adjacent to the edge of road where On-Street Parking is allowed in accordance with municipal bylaw, and occupying an assumed space of 7 metres in length adjacent to the edge of travelled surface of the road by 2.5 metres in width.

“**Participants**” has the meaning given in Section 9.8(a).

“**parties**” means the parties to this Agreement unless reference is made specifically to another agreement or document.

“**Past Practice**” has the meaning given in the definition of Province Irrecoverable Losses in this Section 1.1.

“**Payment Milestones**” means the milestones in connection with the Work identified in the Form of Statement of Progress and described further in Part 3 [Measurement and Payment Principles] of Schedule 22 and “**Payment Milestone**” means any one of the Payment Milestones.

“**Payment Period**” means each calendar month, provided that:

- (a) the first Payment Period shall commence on the Effective Date and end on the last day of the calendar month following the calendar month in which the Effective Date occurs; and
- (b) the last Payment Period shall end on the last day of the calendar month preceding the calendar month in which the Substantial Completion Date occurs.

“**Pedestrian and Cycling Facility**” means a facility, including a sidewalk, bicycle lane, walking or cycling track or trail, bikeway, pathway, crosswalk (whether signalized or not) or other route or Project Infrastructure, which is designed for use primarily by pedestrians and/or cyclists.

“**Pedestrian and Cyclist Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.3(a) [Calculation of Pedestrian Disruption Payments] of Schedule 9 [Performance Mechanism].

“**Performance Incentive Payment**” means the amount to be paid by the Primary Contractor to the Province in respect of each Performance Period determined in accordance with Section 2.2 [Calculation of Performance Incentive Payments] of Schedule 9 [Performance Mechanism].

“**Performance Period**” means:

- (a) subject to paragraph (b), each calendar month, provided that:
 - (i) the first Performance Period shall commence on the Effective Date and end on the last day of the calendar month following the calendar month in which the Effective Date occurs; and
 - (ii) the last Performance Period shall end on the Total Completion Date; or
- (b) for the purposes of Section 2.1(b) of Schedule 9 [Performance Mechanism], each four-weekly period, provided that for such purposes:
 - (i) the first Performance Period shall commence on the day after the Total Completion Date and shall end at the end of the fourth complete week to end after the commencement of such Performance Period; and
 - (ii) the last Performance Period shall end on the earlier to occur of:

- (A) the later to occur of the Availability Demonstration Completion Date and the TIDS Performance Demonstration Completion Date; and
- (B) the later to occur of the Availability Demonstration Completion Target Date and the TIDS Performance Demonstration Completion Target Date.

“Permanent Project Lands” means the lands identified as “Permanent Project Lands” in Tables A-1 and A-2 of Appendix A [Project Lands] to Schedule 7 (including as a result of any update thereto in accordance with Section 3.2A(b)(i)(A) or Section 3.2A(c)(i)(A), both of Schedule 7) and (other than the OMC) identified as Permanent Project Lands on the Project Lands Drawings.

“Permits” means:

- (a) all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required from any Governmental Authority; and
- (b) all necessary permissions, consents, approvals and agreements from any third parties;

needed to carry out the Project and the Work in accordance with this Agreement, including all such permissions, consents, approvals, certificates, permits, licences, statutory and other agreements and authorizations required under or pursuant to any other Permit, the Environmental Assessment Certificate, the First Nations Requirements, the Requirements of Interested Parties or any Site Requirement.

“Permitted Access Disruption” means a disruption of an Access by the Primary Contractor as permitted pursuant to Article 2.3 [Permitted Access Disruptions], Part 4 of Schedule 4.

“Permitted Borrowing” means, without double counting:

- (a) any:
 - (i) advance to the Primary Contractor under the Senior Credit Facilities in accordance with the Senior Lending Agreements that is made solely for the purpose of funding:
 - (A) Eligible Costs, provided that, immediately following the making of any such advance (the “relevant advance”), the principal amount of all such advances (including the relevant advance) does not exceed:
 - (1) the aggregate of the Aggregate Payment Milestone Eligible Costs for all Payment Periods up to and including the Payment Period that last ended prior to the making of the relevant advance; less
 - (2) the aggregate Base Progress Payments for all Payment Periods up to and including the Payment Period that last ended prior to the making of the relevant advance; or

(B) costs that are not Eligible Costs, provided that such costs are identified in the Financial Model and the aggregate amount of all such costs funded by such advances does not exceed the aggregate amount of all such costs identified in the Financial Model;

and

(ii) interest in respect of any advance falling within paragraph (a)(i) of this definition, provided that the aggregate amount of all such interest does not exceed the aggregate amount of such interest identified in the Financial Model;

(b) any:

(i) Additional Permitted Borrowing; and

(ii) interest in respect of any advances constituting Additional Permitted Borrowing, but only to the extent that the rate of interest on any such advances does not exceed a rate that is consistent with then current market practice in North America for facilities of a similar nature to that pursuant to which such advances have been made to the Primary Contractor; and

(c) in respect of the Initial Senior Lending Agreements only (prior to any subsequent amendment), any other amounts accrued or payable as Senior Debt not falling within any of paragraphs (a) and (b) of this definition;

provided that any amount referred to in any of paragraphs (a) to (c) inclusive of this definition that is, or is being used to fund, a payment of Default Interest on any Additional Permitted Borrowing shall be deemed not to constitute Permitted Borrowing.

“Permitted Disruption Event” means any of the following:

- (a) a Traffic Disruption;
- (b) a Permitted Access Disruption; or
- (c) a Permitted Parking Disruption; or
- (d) a Permitted Pedestrian and Cycling Facility Disruption.

“Permitted Parking Disruption” means a disruption in On-Street Parking by the Primary Contractor as permitted pursuant to Article 2.4 [Permitted Parking Disruptions], Part 4 of Schedule 4.

“Permitted Pedestrian and Cycling Facility Disruption” means a disruption to a Pedestrian and Cycling Facility by the Primary Contractor as permitted by Article 2.2.5 [Pedestrians and Cyclists], Part 4 of Schedule 4.

“**person**” means a legal entity, individual, corporation, body corporate, partnership, joint venture, association, trust, syndicate, limited liability company, pension fund, union or Governmental Authority and the heirs, executors, administrators and legal representatives of an individual.

“**Personal Information**” means recorded information about an identifiable individual collected or created by the Primary Contractor as a result of or in connection with this Agreement.

“**Planned Event**” means an event identified in Attachment A to Article 1 [General Traffic Management Requirements], Part 4 of Schedule 4.

“**Plant**” means plant, goods, products, commodities, materials, supplies, machinery, Equipment, apparatus and other tangible and intangible property (other than Intellectual Property) supplied by the Primary Contractor:

- (a) intended to form part of the Project Infrastructure or actually forming part of the Project Infrastructure; or
- (b) intended to be incorporated into or permanently affixed to real property forming part of the Site or actually incorporated into or permanently affixed to real property forming part of the Site.

“**Police**” means any of:

- (a) the Royal Canadian Mounted Police;
- (b) the DPU;
- (c) any other provincial, federal, regional or municipal police force, police department or other law enforcement body and any related governing body having territorial jurisdiction over or in respect of the Project Infrastructure, the Site or any part thereof from time to time;
- (d) a member of the Royal Canadian Mounted Police or DPU or any other law enforcement body or related governing body referred to in subsection (c) above; and
- (e) any other official who has or is exercising the powers of a constable or a peace officer while engaged in law enforcement duties, when those duties are exercised in relation to a matter in connection with, or which incidentally affects the construction or operation of, the Project Infrastructure, the Site or any part thereof from time to time.

“**Port Moody Central Station**” means the Station to be generally located adjacent to the Port Moody WCE Station.

“**Port Moody WCE Station**” means the existing West Coast Express commuter rail station located between Hugh Street and Williams Street, as altered, expanded and modified in accordance with this Agreement.

“**Portable Changeable Message Sign**” or “**PCMS**” means a temporary and movable electronically programmable sign that is used to display relevant Traffic information to travelers.

“**PPS**” means a propulsion power substation or an electrical power substation that converts AC power to DC (600V) propulsion power for the Evergreen Line.

“**Preliminary Spare Parts List**” has the meaning given in Article 3.6.2(b), Part 3 of Schedule 4.

“**Preventive Action**” means an action to eliminate the cause of a potential Nonconformity or other undesirable situation in order to prevent its occurrence.

“**Primary Contractor Breakage Costs**” means, without duplication, amounts reasonably and properly payable by the Province to the Primary Contractor under the terms of this Agreement, to compensate the Primary Contractor for Direct Losses sustained by the Primary Contractor as a direct result of the early termination of this Agreement, but only to the extent that:

- (a) the Direct Losses are incurred in connection with the Work and in respect of the performance of the Work, including, without duplication:
 - (i) costs of materials or goods ordered or subcontracts placed that cannot be cancelled without such Direct Losses being incurred;
 - (ii) expenditures reasonably incurred in anticipation of the performance of the Work in the future;
 - (iii) demobilisation costs, including the cost of any relocation of Construction Plant used in connection with the Work; and
 - (iv) termination payments that are required under applicable Laws or under lawful contracts of employment to be made to employees of the Primary Contractor and are reasonably and properly incurred by the Primary Contractor arising as a direct result of termination of this Agreement (provided that the Primary Contractor takes all reasonable steps to mitigate such termination payments) and provided that in calculating such amount no account will be taken of any liabilities and obligations of the Primary Contractor arising out of:
 - (A) contracts of employment or other agreements entered into by the Primary Contractor to the extent that such contracts of employment or agreements were not entered into substantially in connection with the Work; or
 - (B) contracts of employment or other agreements entered into by the Primary Contractor to the extent that such contracts of employment or agreements were not entered into in the ordinary course of business and on reasonable commercial arm’s length terms;
- (b) the Direct Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms, including:

- (i) loss of future profits suffered by any Principal Subcontractor (other than Thales) but only to the extent of any future loss of profits that could reasonably have been expected to have been earned by such Principal Subcontractor in the first year immediately following the Termination Date; and
- (ii) amounts payable to Thales pursuant to Sections 18.2.1(a)(i), 18.2.1(b) or 19.2.1(b) of the ATC Supply Contract;
- (c) the Primary Contractor has used all reasonable efforts to mitigate the Direct Losses; and
- (d) the Province is not otherwise able or entitled (for default or otherwise) to terminate this Agreement without payment or for reduced payment;

provided that, for certainty, Primary Contractor Breakage Costs shall not in any event include any compensation for loss of future profits of the Primary Contractor or any Subcontractors, save to the extent expressly provided otherwise in paragraphs (b)(i) and (ii) of this definition.

“Primary Contractor Default” has the meaning given in Section 14.1 [Primary Contractor Default].

“Primary Contractor Indemnified Persons” means:

- (a) the Primary Contractor’s Representative in its capacity as such under this Agreement;
- (b) any agent or professional advisor (including legal and financial advisor) of the Primary Contractor (excluding Subcontractors) in its capacity as such in connection with the Project; and
- (c) any director, officer or employee of the Primary Contractor or of any person falling within paragraph (b) of this definition.

“Primary Contractor Insolvency Event” means the occurrence of any of the following:

- (a) any resolution of the Primary Contractor, the Shareholders or the directors of the Primary Contractor is passed for the dissolution, liquidation or winding-up of the Primary Contractor, or for the suspension of operations of the Primary Contractor, or authorizing any of the actions in any of subsections (b) through (f) of this definition;
- (b) a decree, declaration or order of a court having jurisdiction is issued or entered, adjudging the Primary Contractor bankrupt or insolvent, or ordering the winding-up or liquidation of the Primary Contractor, or approving any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Primary Contractor under the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or any action or proceeding is commenced or instituted against the Primary Contractor for any of the foregoing and such action or proceeding against the Primary Contractor continues unstayed and is not withdrawn or dismissed

within 45 days after it is commenced or instituted, or any action or proceeding is commenced or instituted by the Primary Contractor for any of the foregoing;

- (c) if execution, distress, sequestration or any analogous process is issued, filed or levied against the Primary Contractor or against all or a substantial part of the property or assets of the Primary Contractor and such execution, distress, sequestration or other process continues unstayed and in effect and is not withdrawn, dismissed, overturned or set aside within the period of 45 days following its issuance or filing and such execution, distress, sequestration or analogous process has or could reasonably be expected to have a material adverse effect on the performance by the Primary Contractor of its obligations under this Agreement;
- (d) a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor, or other person with similar powers, is appointed in any manner in respect of the Primary Contractor or any Shares or in respect of all or a substantial portion of the property and assets of the Primary Contractor, or any creditor takes control, or takes steps to take control, of the Primary Contractor or of any Shares or of all or a substantial portion of the property and assets of the Primary Contractor, or any action or proceeding is commenced or instituted against the Primary Contractor for any of the foregoing and such action or proceeding against the Primary Contractor continues unstayed and is not withdrawn or dismissed within 45 days after it is commenced or instituted, or any action or proceeding is commenced or instituted by the Primary Contractor for any of the foregoing;
- (e) the Primary Contractor admits its inability to pay or fails to pay its debts generally as they become due, acknowledges its insolvency, makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, or files any proposal, notice of intention or petition or otherwise commences or consents to or acquiesces in the commencement of any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Primary Contractor under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or consents to or acquiesces in the appointment in any manner of a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other person with similar powers in respect of the Primary Contractor or the Shares or in respect of all or a substantial portion of the property or assets of the Primary Contractor; or
- (f) the Primary Contractor suffers any event, or any event or set of circumstances occurs or comes about, analogous to any of the foregoing events or sets of circumstances set out in this definition, in any jurisdiction in which the Primary Contractor is incorporated, formed, domiciled or resident.

“Primary Contractor Irrecoverable Losses” means:

- (a) any Consequential Losses suffered by the Primary Contractor, any Principal Subcontractor (save to the extent expressly provided otherwise in paragraphs (b)(i) and

- (ii) of the definition of Primary Contractor Breakage Costs in this Section 1.1), any other Subcontractor or any director, officer, representative, employee, worker or agent of any of the foregoing;
- (b) any Losses suffered by, or that might have been, or might be, obtained or received by, the Primary Contractor, any Principal Subcontractor, any other Subcontractor or any director, officer, representative, employee, worker or agent of any of the foregoing, otherwise than in connection with the Project or from a source other than the Project;
- (c) in addition to and without prejudice to or limitation of the terms and provisions of either of paragraphs (a) or (b) of this definition, any of the following:
 - (i) Losses suffered by any Affiliate or former Affiliate of a Principal Subcontractor or Subcontractor (except any Affiliate or former Affiliate that is itself a Principal Subcontractor or Subcontractor at the time that any such Losses are suffered, in which event paragraphs (a) and (b) of this definition shall apply, and provided that this exception shall only apply to the extent that any Losses suffered are in such Affiliate's or former Affiliate's capacity as a Principal Subcontractor or Subcontractor);
 - (ii) Losses suffered by any Relevant Person (except any Relevant Person that is a Principal Subcontractor or Subcontractor at the time that any such Losses are suffered, in which event paragraphs (a) and (b) of this definition shall apply, and provided that this exception shall only apply to the extent that any Losses suffered are in such Relevant Person's capacity as a Principal Subcontractor or Subcontractor); and
 - (iii) Losses suffered by any third party (other than a person referred to in paragraphs (c)(i) or (c)(ii) of this definition) for which the Primary Contractor, any Principal Subcontractor or any other Subcontractor is liable.

“Primary Contractor Non-Excusable Event” means any of the following:

- (a) any wrongful act or omission, negligent act or omission or wilful misconduct; or
- (b) any breach in the performance or observance of any of the Primary Contractor's obligations under this Agreement,

of or by the Primary Contractor or any person for whom the Primary Contractor is in law responsible.

“Primary Contractor Proposal” means any of the following as initiated by the Primary Contractor:

- (a) a variation in the design, quality or scope of the Project Infrastructure or the Work, or the Construction of the Project Infrastructure or any part thereof;
- (b) any other variation in the Design-Build Requirements or this Agreement; or

- (c) any other matter which, by the terms of this Agreement, is stated to constitute a Primary Contractor Proposal or in respect of which the provisions of Section 8.2 [Primary Contractor Proposals] are stated to be applicable.

“Primary Contractor’s Environmental Obligations” means:

- (a) the obligations of the Primary Contractor to observe, comply with and perform all Environmental Laws and the Environmental Assessment Certificate in connection with the Work;
- (b) the obligations of the Primary Contractor to observe, abide by, and do nothing to adversely affect or impact the Federal Exclusion Determination; and
- (c) the obligations of the Primary Contractor described in Schedule 5 [Environmental Obligations].

“Primary Contractor’s Representative” means the person appointed by the Primary Contractor pursuant to Section 3.1 [Primary Contractor’s Representative] of Schedule 2, or such substitute as may be appointed by the Primary Contractor in accordance with Section 3.2 [Change of Primary Contractor’s Representative] of Schedule 2.

“Prime Contractor” means a “prime contractor” as defined and described in the WCA and the OHS Regulation, respectively.

“Prime Rate” at any time means the variable rate of interest per annum announced from time to time by Canadian Imperial Bank of Commerce (or its successor) as such bank’s “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada.

“Principal Subcontract” means:

- (a) the Design-Build Contract;
- (b) the contract of even date herewith among the Design-Builder, SLCW and Graham;
- (c) the contract of even date herewith among the Design-Builder, SLCW and SELI Canada Inc.;
- (d) the contract of even date herewith among the Design-Builder and SLCW;
- (e) the ATC Supply Contract; and
- (f) any contract or agreement entered into after the Effective Date as referred to in Section 18.9(f) or pursuant to Section 18.12 [Replacement Principal Subcontractor];

each as amended, supplemented or replaced from time to time in accordance with this Agreement and the Collateral Agreements.

“**Principal Subcontractor**” means each of the Design-Builder, SLCW, SELI Canada Inc., Graham and Thales, and any replacement Subcontractor for any such Subcontractor engaged directly or indirectly by the Primary Contractor as may be permitted by this Agreement.

“**Privacy Code**” has the meaning given in Section 17.2(c).

“**Professional Engineer**” means a person who is registered as a professional engineer with the APEGBC.

“**Progress Payment**” means, for any Payment Period, the Base Progress Payment and the Additional Progress Payment, if any, for that Payment Period.

“**Project**” has the meaning given in Section 2.1(a).

“**Project Architect**” means the Key Individual identified by such title in Section 3.3(a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], and having a Certificate of Practice with the Architectural Institute of British Columbia or be eligible for reciprocity and complete registration within six months after the Effective Date.

“**Project Documents**” means:

- (a) this Agreement;
- (b) the Lending Agreements;
- (c) the Lenders’ Remedies Agreement;
- (d) the Principal Subcontracts;
- (e) the Collateral Agreements with the Principal Subcontractors;
- (f) the Escrow Agreement;
- (g) when executed by the parties in accordance with this Agreement, the Independent Certifier Contract; and
- (h) the Guarantees;

and all other documents executed and delivered by or on behalf of the parties pursuant to Section 2.18 [Execution and Delivery of Project Documents] and Schedule 21 [Closing Deliveries].

“**Project Infrastructure**” at any time means:

- (a) the Province Infrastructure at that time;
- (b) the Municipal Infrastructure at that time; and
- (c) the CPR Infrastructure at that time.

“Project Intellectual Property” means all Intellectual Property, whether complete or not, and all Intellectual Property Rights therein, that is not Background Technology or Third Party Technology and which is created, brought into existence, acquired, licensed or used by the Primary Contractor or any Subcontractor, directly or indirectly, for the purposes of the design or construction of the Evergreen Line or otherwise for the purposes of the Work or this Agreement, including Work Product (as defined in the Proponent Agreement (as defined in the Request for Proposals)) and Design Data that is prepared by or on behalf of the Primary Contractor and/or any of the Primary Contractor’s agents, employees or Subcontractors, but specifically excluding Records, Records Documentation, Province Provided Materials, Modifications to Province Provided Materials and Design Data provided or made available by or on behalf of the Province.

“Project Intellectual Property Purposes” means the purpose of designing or constructing the Evergreen Line or otherwise for the purposes of the Work or this Agreement.

“Project Lands” means the Designated Project Lands and the Supplementary Project Lands.

“Project Lands Drawings” means collectively the drawings attached in digital form as Appendix C [Project Lands Drawings – CD] to Schedule 7 (a print out of which drawings are attached as Appendix D [Project Lands Drawings – Print Out] to Schedule 7), as the same may be updated from time to time in accordance with this Agreement, including Schedule 7 [Lands].

“Project Marks” has the meaning given in Section 2.17(a).

“Project Schedule” means the schedule of dates for the Work set out in Appendix A [Project Schedule] to Schedule 3 as of the Effective Date, as subsequently amended from time to time in accordance with Section 1.2 [Project Schedule] of Schedule 3.

“Property Damage Insurance Proceeds” has the meaning given in Section 7.18(b).

“Proposal” means a “Proposal” as defined in the Request for Proposals.

“Proposal Extracts” means:

- (a) the extracts from the Primary Contractor’s Proposal (as amended and/or supplemented by the Primary Contractor’s responses to various requests for clarification issued by the Province pursuant to the terms of the Request for Proposals), all of which extracts, responses and requests for clarification are attached as Part 1 of Schedule 25 [Proposal Extracts]; and
- (b) the Initial Durability Report attached as Part 2 of Schedule 25 [Proposal Extracts].

“Protest Action” means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken by any person or persons protesting or demonstrating against the carrying out of any part of the Work or against the construction or operation of rail transit systems in general, occurring after the Effective Date, but excluding any Labour Dispute or any other strike, lockout or industrial relations dispute or job action by, of or against workers carrying out any part of the Work.

“**Province Change**” means any of the following as initiated by the Province:

- (a) a variation in the design, quality or scope of the Project Infrastructure or the Work, or the Construction of the Project Infrastructure or any part thereof;
- (b) any other variation in the Design-Build Requirements or this Agreement; or
- (c) any other matter which, by the terms of this Agreement, is stated to constitute a Province Change or in respect of which the provisions of Section 8.1 [Province Changes] are stated to be applicable.

“**Province Change Notice**” has the meaning given in Section 2.1 [Notice of Province Change] of Schedule 10.

“**Province Contractual Commitment**” has the meaning given in the definition of Province Irrecoverable Losses in this Section 1.1.

“**Province Default**” has the meaning given in Section 15.1 [Province Default].

“**Province Default Termination Sum**” has the meaning given in Section 1.1(b) of Schedule 12 [Compensation on Termination].

“**Province Indemnified Persons**” means:

- (a) the Province’s Representative in its capacity as such under this Agreement;
- (b) BCTFA;
- (c) TransLink;
- (d) any agent or professional advisor (including legal and financial advisors) of the Province, BCTFA or TransLink (excluding the Primary Contractor and any person for whom the Primary Contractor is in law responsible); and
- (e) any minister, elected representative, official, director, officer or employee of the Province, BCTFA or TransLink or of any person falling within subsection (d) of this definition.

“**Province Infrastructure**” means all infrastructure, structures (including Structures), equipment (including Equipment), systems, fixtures, facilities and other property (excluding Utilities of Utility Suppliers) constituting part of the Evergreen Line situated in, on, under, over or in the vicinity of any part of the Site or otherwise used or intended to be used in association with the Evergreen Line (including any and all buildings, improvements, structures, works, apparatus, appliances, controls, facilities for electric lights, heat, communication, powers systems, conduits, pipes, ducts, lines, mains, antenna, footings, pillars, columns, pilings, foundations, cables, anchors, tracks, platforms, Station access and parking facilities, Vehicle maintenance, storage and operations facilities, signs, fences, retaining walls, pipes, wires, machinery, equipment, and apparatus for telephones, electric lights, heat and power and anything else constituting part of the Evergreen Line required, built, constructed, erected or installed by or on

behalf of the Province in, on, under, over or in the vicinity of any part of the Site), whether or not such infrastructure, structures, equipment, systems, fixtures, facilities and property has at such time been, and whether or not it is required under the terms of this Agreement at any time to be, constructed, installed, altered, upgraded and augmented by the carrying out of the Work.

“Province Irrecoverable Losses” means:

- (a) any loss of revenue and loss of profits that might have been, or might be, obtained or received by the Province or BCTFA from the Project or a source other than the Project;
- (b) any loss of business opportunity or other loss of opportunity suffered by the Province or BCTFA with respect to the Project or a source other than the Project; and
- (c) Losses suffered by a third party, for which the Province or BCTFA is, pursuant to a contractual commitment entered into by the Province or BCTFA with such third party, liable to indemnify such third party (in this definition, a **“Province Contractual Commitment”**) where:
 - (i) the entering into by the Province or BCTFA of the Province Contractual Commitment and the nature, scope, extent and terms of the indemnification provisions contained therein were, at the time such Province Contractual Commitment was entered into, inconsistent with Past Practice, or otherwise outside the normal course of the customary activities of the Province or BCTFA, as the case may be, and unreasonable having regard to all relevant circumstances at the time; and
 - (ii) neither the Province nor BCTFA did any of the following:
 - (A) disclosed the Province Contractual Commitment in the Data Room on or before the Effective Date; or
 - (B) consulted with the Primary Contractor or the Primary Contractor’s Representative prior to entering into the Province Contractual Commitment in the case of a Province Contractual Commitment entered into after the Effective Date; or
 - (C) consulted with any Affiliate, agent or representative of the Primary Contractor prior to entering into the Province Contractual Commitment in the case of a Province Contractual Commitment entered into prior to the Effective Date,
 - (iii) the Province Contractual Commitment was entered into for reasons other than the bona fide pursuit of:
 - (A) delivery and/or completion of the Project or the Advance Work or any component of the Project or the Advance Work; or

- (B) performance and/or completion of the Work, the Advance Work or any of the Project Infrastructure; or
- (C) furtherance of the Primary Contractor's obligations in respect of the Project;

and

- (iv) **"Past Practice"** refers to the customary practice of the Province or BCTFA at the time a Province Contractual Commitment is entered into, with respect to the nature, scope, extent and terms of indemnification provisions contained in contractual arrangements entered into by the Province or BCTFA with arm's length third parties, having regard to the nature of the Province Contractual Commitment and all relevant circumstances at the time any such Province Contractual Commitment was entered into.

"Province Non-Excusable Event" means any of the following:

- (a) any wrongful act or omission, negligent act or omission or wilful misconduct; or
- (b) any breach in the performance or observance of any of the Province's obligations under this Agreement,

of or by the Province or any person for whom the Province is in law responsible.

"Province Payments" means, collectively, the payments paid or payable by the Province to the Primary Contractor pursuant to Part 12 [Payments].

"Province Permits" the Operating Permit.

"Province Project Documents" means this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements and, when executed and delivered in accordance with this Agreement, the Independent Certifier Contract.

"Province Provided Materials" means any materials, documents, data (including Design Data provided or made available by or on behalf of the Province and the Disclosed Data) or other information, and any Intellectual Property Rights therein, provided by the Province or its representatives or any other person on behalf of the Province to or for the benefit of the Primary Contractor or its representatives or to any Subcontractor or its representatives or any Proponent Team Member of the Preferred Proponent (as both such terms are defined in the Request for Proposals) for the purposes of the design or construction of the Evergreen Line or otherwise for the purposes of the Work or this Agreement.

"Province's Representative" means the person appointed by the Province pursuant to Section 1.1 [Province's Representative] of Schedule 2 or such substitute as may be appointed by the Province in accordance with Section 1.2 [Change of Province's Representative] of Schedule 2.

"PST" means the sales tax imposed pursuant to the *Provincial Sales Tax Act* (British Columbia).

“**Public Utilities**” means Utilities owned by a Municipality, GVRD or other Governmental Authority (but, for certainty, Utilities owned by BC Hydro shall not be Public Utilities for the purposes of this Agreement).

“**Qualified Archaeologist**” means a professional member in good standing with the Registered Professional Consulting Archaeologists of BC (RPCA-BC) who is recognized as a Qualified Archaeological Professional by the BC Archaeology and Heritage Branch.

“**Qualified Coordinator**” has the meaning given in Section 4.11(a)(iv).

“**Qualified Governmental Entity**” means any of the following:

- (a) any person having the legal capacity, power and authority to become a party to and to perform the Province’s obligations under this Agreement and the other Province Project Documents, the duties, obligations and liabilities of which are guaranteed by the Province or any ministry or department of the Province;
- (b) the Federal Government; and
- (c) any person having the legal capacity, power and authority to become a party to and to perform the Province’s obligations under this Agreement and the other Province Project Documents, the duties, obligations and liabilities of which are guaranteed by the Federal Government or any ministry or department of the Federal Government.

“**Qualified Insurer**” means a reputable and duly qualified insurer of good standing in the worldwide insurance market, licensed to transact insurance business in Canada, rated A.M. Best A- or better or Standard & Poors Ratings Services, a division of the McGraw-Hill Companies Inc. (in this definition, “**Standard & Poors**”) A or better, provided that:

- (a) if a rating from A.M. Best Company or Standard & Poors is not available, or if A.M. Best Company or Standard & Poors ceases to provide ratings for insurance companies, then having a rating equivalent to or better than the A.M. Best A- rating or the Standard & Poors A rating as at the date of this Agreement, from another rating agency of equivalent calibre that provides ratings of equivalent quality, all as agreed upon by the parties or, failing such agreement, as determined by the Dispute Resolution Procedure; or
- (b) if A.M. Best Company changes its A- rating or Standard & Poors changes its A rating, then having a rating equivalent to or better than the A.M. Best A- rating or the Standard & Poors A rating as at the date of this Agreement, from A.M. Best Company or Standard & Poors or another rating agency of equivalent calibre that provides ratings of equivalent quality, all as agreed upon by the parties or, failing such agreement, as determined by the Dispute Resolution Procedure.

“**Qualifying Bank**” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which, in any such case, manages at least \$500 million in securities, including entities wholly owned by any of the foregoing;
- (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that, in any such case, manages at least \$500 million in securities and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (d) an institution which is recognized or permitted under the law of any member state of the European Economic Area (in this definition, the “**EEA**”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state and which manages at least \$500 million in securities, or has assets of at least \$500 million, including entities wholly owned by any such institution;
- (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “**OECD**”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which manages at least \$500 million in securities, or has assets of at least \$500 million, including entities wholly owned by any such institution; or
- (f) any other institution consented to in writing by the Province as a “Qualifying Bank”.

“Qualifying Bank Transaction” means:

- (a) the disposition by a Senior Lender of any of its rights or interests in the Senior Lending Agreements to a Qualifying Bank;
- (b) the grant by a Senior Lender to a Qualifying Bank of any rights of participation in respect of the Senior Lending Agreements; or
- (c) the grant by a Senior Lender to a Qualifying Bank of any other form of benefit or interest in either the Senior Lending Agreements or the revenues or assets of the Primary Contractor, whether by way of security or otherwise;

provided that after any such transaction all the Senior Lenders including any such Qualifying Banks are legally bound by the obligations of the “Agent” and the “Senior Lenders” under the Lenders’ Remedies Agreement.

“Quality Director” means the Key Individual appointed by the Primary Contractor pursuant to Section 3.3(b) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], and having the qualifications required by Section 3.1(b) of Schedule 6 [Quality Management].

“**Quality Documentation**” means all documentation required in accordance with Schedule 6 [Quality Management] which together constitutes and describes the Quality Management System, including the Quality Manual, Quality Management Plans, Work Method Statements and Quality Audit Programmes and Records.

“**Quality Management System**” or “**QMS**” means the Primary Contractor’s management system that establishes the organizational structure, procedures, processes, systems, management plans and resources for determining and implementing the Quality Policy in the performance of the Work in accordance with this Agreement.

“**RAM Program Plan**” has the meaning given in Section 5.2 [RAM Program Plan] of Appendix G [Systems General Requirements] to Schedule 4.

“**Railway Order**” means an order of the Canadian Transportation Agency relating to or affecting the CPR Lands or any part thereof, and amendments thereto.

“**Records**” has the meaning given in Section 1.1 [Primary Contractor Records] of Schedule 16 and includes Records Documentation.

“**Records Documentation**” means all stand-alone documents of any kind, including records, plans and drawings, including installation drawings and cable schedules, delivered to the Province in accordance with the process set out in Article 3.2.1 [Records Documentation], Part 3 of Schedule 4, as applied for construction purposes and as modified during construction, so as to constitute a complete and accurate record of the as built features of the Work.

“**Records Management Protocol**” means the protocol developed by the Primary Contractor pursuant to Section 1.3 [Records Management Protocol] of Part 1 of Schedule 16.

“**Reference Documents**” means the references, codes, criteria, standards, specifications, guidelines, policies, reports, publications, manuals, bulletins and other such documents listed in Appendix A [Reference Documents] to this Schedule, each as amended, supplemented or replaced from time to time in accordance with Section 1.2(b) of this Schedule.

“**Regulated Utilities**” means Utilities which are owned or operated by a Regulated Utility Supplier.

“**Regulation Utility Supplier**” means a Utility Supplier listed under the headings “Regulated Transmission Utilities” or “Regulated Distribution Utilities” in Attachment A to Article 8 [Utilities], Part 2 of Schedule 4.

“**Reinstatement Funds Deficiency**” has the meaning given in Section 9.7 [Termination for Damage or Destruction].

“**Reinstatement Plan**” has the meaning given in Section 7.16 [Reinstatement Plan].

“**Reinstatement Work**” has the meaning given in Section 7.15 [Restoration and Reinstatement of Damage or Destruction].

“**Reject**” means an action to remove (i.e., recycle, destroy) a detected Nonconformity from the Work or discontinue its use.

“**Release**” includes any spill, leak, deposit, pumping, pouring, emission, emptying, discharging, injecting, escape, leaching, migration, disposal, dumping or other form of release of a Hazardous Substance, or permitting of any of the foregoing.

“**Relevant Authority**” means any entity whose authority is or may be required for the carrying out of all or any part of the Work or which has any authority or right in respect of the Project, the Project Infrastructure, the Site or any part thereof under any Laws and includes Governmental Authorities.

“**Relevant Municipal Agreement Provisions**” means, as applicable:

- (a) the following Sections of the Municipal Agreement referred to in paragraph (a) of the definition thereof in this Section 1.1:
 - (i) without prejudice to the Primary Contractor’s obligation to bear relevant costs in accordance with Articles 1.3.2 [Demolition of Buildings] and 8.2.4 [Service Connections], both of Part 2 of Schedule 4, Section 2.9(d);
 - (ii) Section 3.3(c);
 - (iii) Section 4.3(c);
 - (iv) Section 5.2(a) but only to the extent that such Section applies to City Utilities;
 - (v) Section 6.2;
 - (vi) Section 6.4(g); and
 - (vii) Section 6.4(h);
- (b) the following Sections of the Municipal Agreement referred to in paragraph (b) of the definition thereof in this Section 1.1:
 - (i) without prejudice to the Primary Contractor’s obligation to bear relevant costs in accordance with Articles 1.3.2 [Demolition of Buildings] and 8.2.4 [Service Connections], both of Part 2 of Schedule 4, Section 2.10(e);
 - (ii) Section 3.3(c);
 - (iii) Section 4.3(c);
 - (iv) Section 5.2(a) but only to the extent that such Section applies to City Utilities;
 - (v) Section 6.2;
 - (vi) Section 6.4(h); and

- (vii) Section 6.4(i); or
- (c) the following Sections of the Municipal Agreement referred to in paragraph (c) of the definition thereof in this Section 1.1:
 - (i) Section 5.1(f);
 - (ii) Section 7(d)(i) of Schedule C; and
 - (iii) Section 7(h) of Schedule C.

“Relevant Persons” means:

- (a) the Shareholders;
- (b) persons who formerly were Shareholders;
- (c) Affiliates of the Primary Contractor or of any person described in paragraph (a) or (b) of this definition; and
- (d) persons who formerly were Affiliates of the Primary Contractor or of any person described in paragraph (a) or (b) of this definition.

“Relevant Property” means any property that is not within the boundary of the Project Lands or the Other Lands that is affected:

- (a) by any Existing Contamination or Subsequent Contamination in, on, under or over any Designated Project Lands; or
- (b) by any migration or leaching of Existing Contamination or Subsequent Contamination from any Designated Project Lands.

“Relevant Third Party” means:

- (a) any person having a legal interest in any Relevant Property who suffers damage, injury or other harm caused by:
 - (i) Existing Contamination or Subsequent Contamination in, on, under or over any Designated Project Lands; or
 - (ii) migration or leaching of any Existing Contamination or Subsequent Contamination into or onto the Relevant Property from any Designated Project Lands; and
- (b) any person who suffers damage, injury or other harm caused by any Existing Contamination or Subsequent Contamination in, on or under any Relevant Property from time to time to the extent such Existing Contamination or Subsequent Contamination

constitutes Existing Contamination or Subsequent Contamination which has migrated or leached into or onto the Relevant Property from any Designated Project Lands

and “**Relevant Third Party**” includes the Province and BCTFA to the extent they have a legal interest in any Relevant Property.

“**Relief Event**” means any of the following events or circumstances:

- (a) receipt by the Primary Contractor of an order or direction by Police or fire, ambulance or other emergency services or other Relevant Authorities, provided such order or direction does not result from the occurrence of another Supervening Event;
- (b) the inability of the Primary Contractor to obtain a required Permit or a required renewal or extension thereof due to any unreasonable delay by a Relevant Authority, provided that the Primary Contractor has made all reasonable efforts to obtain such Permit, renewal or extension, including making complete and timely application and, to the extent reasonably practicable, making modifications to the applicable design and/or construction methods;
- (c) fire, explosion, lightning, storm or flood affecting the Site or the Project Infrastructure;
- (d) damage to or destruction of the Project Infrastructure or part thereof caused by a Seismic Event, provided that:
 - (i) the cost to repair and restore the damage to or destruction of the Project Infrastructure caused by the Seismic Event is less than or equal to \$5,000,000 for a single Seismic Event; and
 - (ii) all seismic design requirements specified in the Design-Build Requirements applicable to the damaged Project Infrastructure have been complied with and implemented by the Primary Contractor;

the onus of establishing which shall be on the Primary Contractor;

- (e) a Labour Dispute;
- (f) blockade or embargo falling short of a Protest Action or a Force Majeure Event; and
- (g) a failure by CPR to comply with its obligations under one or more of the CPR Agreements (other than under any of the provisions of the CPR Agreements specified in Article 5.2 [CPR Agreements], Part 1 of Schedule 4) where such compliance is necessary in connection with the performance of the Work and where the Primary Contractor has made all reasonable efforts to cause CPR to so comply;
- (h) a failure by any Municipality to comply with its obligations under the Relevant Municipal Agreement Provisions where such compliance is necessary in connection with the performance of the Work and where the Primary Contractor has made all reasonable efforts to cause such Municipality to so comply;

- (i) a failure by GVRD to comply with its obligations under the GVRD Utility Works Agreement where such compliance is necessary in connection with the performance of the Work and where the Primary Contractor has made all reasonable efforts to cause GVRD so to comply;
- (j) the discovery of any Undisclosed Utilities; and
- (k) any “Unavoidable Event” as defined in the ATC Supply Contract (other than any event referred to in paragraph (d) of the definition of “Unavoidable Event” in the ATC Supply Contract), which is not (other than by virtue of this paragraph (k)) a Supervening Event, which delays performance by Thales with or causes non-compliance by Thales with, any obligations of Thales under the ATC Supply Contract,

except to the extent that any of such events or circumstances arise (directly or indirectly) as a result of any Primary Contractor Non-Excusable Event or an act or omission of the Primary Contractor or any Subcontractor.

“**Repair**” means an action that makes a detected Nonconformity acceptable for its intended purpose.

“**Reports**” has the meaning given in Section 2.1 [Required Reports] of Schedule 16.

“**Request for Proposals**” or “**RFP**” means the request for proposals in respect of the Project issued by the Province on November 9, 2011, together with all amendments, supplements and addenda thereto.

“**Request for Qualifications**” means the Request for Qualifications in respect of the Project issued by the Province on July 5, 2010, together with all amendments, supplements and addenda thereto.

“**Required Insurance**” means the insurance required to be taken out, maintained in force, paid for and renewed by the Primary Contractor in accordance with the provisions of Part 7 [Insurance, Damage and Destruction] and Schedule 14 [Insurance Requirements].

“**Required Province Change**” means a Province Change contemplated in Section 1.2 [Reference Documents] of this Schedule or Section 4.7(a)(ii) of Schedule 5 [Environmental Obligations].

“**Requirements of Interested Parties**” means the requirements of Interested Parties which are legally enforceable against any or all of the Province, BCTFA and the Primary Contractor, whether established pursuant to Laws, the provisions of this Agreement or otherwise:

- (a) as disclosed or described in the Disclosed Data; or
- (b) which, as of the Financial Submittal Date, the Primary Contractor otherwise had knowledge of, could have discovered through the exercise of reasonable due diligence, or could reasonably have been anticipated from an analysis of all relevant information available to the Primary Contractor (including the Disclosed Data) as at the Financial Submittal Date.

“**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or, in the case of a legal entity, any of the members of its board of directors or its senior executive) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a claim of the Province or any other Governmental Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time of any proposed transaction and which (in respect of any such pending claim, if it were to be successful) would, in the view of the Province, in either case, be reasonably likely to materially affect the performance by the Primary Contractor of its obligations under this Agreement;
- (f) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code* (Canada); or
- (g) whose standing or activities are inconsistent with or may compromise the reputation or integrity of the Province or the BCTFA or the delivery of public transit services in British Columbia, so as to affect public confidence in those services.

“**Review Procedure**” means the procedure defined in Section 2.1 [Review Procedure] of Schedule 2 whereby submissions for review are made by the Primary Contractor to the Province’s Representative.

“**Rework**” means an action that makes a detected Nonconformity conform to the Design-Build Requirements.

“**SCADA**” means supervisory control and data acquisition.

“**Schedules**” means the schedules to this Agreement.

“**SCPA Lien Holdback Amount**” has the meaning given in Section 12.4(k).

“**Seismic Event**” means an earthquake and includes snowslide, landslide or other earth movements occurring concurrently with and directly resulting from an earthquake shock, but does not include flood (meaning waves, tides, tidal waves, and the rising of, breaking out or the overflow of any body of water, whether natural or man made, whether or not caused by or attributable to an earthquake). More than one earthquake shock occurring within any 168 consecutive hours shall be deemed a single earthquake.

“**Senior Credit Facilities**” means the Initial Senior Credit Facilities and any other credit facilities provided for in Senior Lending Agreements.

“**Senior Debt**” means:

- (a) the principal amount of all amounts advanced from time to time by the Senior Lenders under the Senior Credit Facilities pursuant to and in accordance with the Senior Lending Agreements, to the extent such principal amounts remain outstanding and unpaid to the Senior Lenders;
- (b) all interest owing from time to time to the Senior Lenders under the Senior Lending Agreements in respect of the principal amounts referred to in subsection (a) of this definition; and
- (c) all commitment fees, standby fees and other fees, and all costs and expenses, and any other amounts, owing from time to time to the Senior Lenders under the Senior Lending Agreements or in respect of the amounts referred to in subsections (a) and (b) of this definition.

“**Senior Debt Termination Amount**” means, subject to Section 5.7 [Changes Not to Increase Province’s Liability], the aggregate, without duplication, of:

- (a) all Senior Debt owing at the Termination Date (including interest and Default Interest accrued as at that date) (exclusive of amounts included in paragraph (b) or expressly excluded from paragraph (b)) by the Primary Contractor to the Senior Lenders under the Senior Lending Agreements in respect of Permitted Borrowing (including, for certainty, any such amounts that are in respect of Additional Permitted Borrowing), together with per diem interest on so much thereof as is due and payable from time to time under the Senior Lending Agreements at the No Default Interest Rate, calculated from the Termination Date until 60 Business Days after the Termination Date or such earlier date as the Province pays to the Primary Contractor the undisputed portion of the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum; and
- (b) all amounts (including (i) Hedge Termination Amounts, (ii) the Makewhole Amount (as defined in the Credit Agreement) and (iii) other breakage costs (but such other breakage costs shall exclude premiums and prepayment charges, fees or penalties under any debt financing or on early redemption of bonds, notes or other evidence of indebtedness)) payable by the Primary Contractor to the Senior Lenders as a result of a prepayment under the Senior Lending Agreements of Senior Debt owing in respect of Permitted Borrowing, or as a result of early termination of Hedging Agreements, caused by early

termination of this Agreement, subject to the Primary Contractor and the Senior Lenders mitigating all such amounts to the extent reasonably possible;

LESS, to the extent it is a positive amount, the aggregate of (without double-counting in relation to the calculation of the Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts in respect of the Project held by or on behalf of the Primary Contractor on the Termination Date;
- (d) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (e) all amounts, including Hedge Termination Amounts and other breakage costs payable by the Senior Lenders to the Primary Contractor as a result of prepayment under the Senior Lending Agreements of Senior Debt owing in respect of Permitted Borrowing, or as a result of earlier termination of Hedging Agreements, caused by early termination of this Agreement; and
- (f) all other amounts received by the Senior Lenders, the Agent or any security trustee or agent of the Senior Lenders, on or after the Termination Date and before the last date on which any compensation is payable by the Province to the Primary Contractor, as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Lending Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement).

The parties acknowledge that the Hedging Agreements in effect on the Termination Date might not be terminated until the date of payment by the Province of the undisputed portion of the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum, whichever is applicable, and agree that any net payments or net receipts under any Hedging Agreements in the period from the Termination Date to and including the date of such payment shall be taken into account as part of and in the calculation of the Hedge Termination Amounts.

“**Senior Lenders**” means all or any of the persons who provide credit or hedging facilities in respect of the Project or the Work under the Senior Lending Agreements.

“**Senior Lending Agreements**” means the Initial Senior Lending Agreements (including any Initial Hedging Agreements relating to Senior Debt) as supplemented, amended or replaced from time to time in accordance with this Agreement, and any other Hedging Agreement relating to Senior Debt.

“**Service Commencement**” means the commencement by TransLink of passenger service on the Operational Evergreen Line following the issuance of the Operating Permit.

“**Service Commencement Date**” means the date on which Service Commencement occurs.

“**Service Commencement Target Date**” means the date that is 30 days after the Substantial Completion Date.

“**Share Capital**” means at any time the amount actually paid to the Primary Contractor for fully paid up Shares that are issued and outstanding at that time.

“**Shareholder**” means any legal and/or beneficial holder from time to time of any Share or Shares that are issued and outstanding, it being acknowledged that on the Effective Date the sole Shareholder is Holdco.

“**Shares**” means shares in the capital of the Primary Contractor.

“**Site**” means, at any time, the Project Lands, access to which has been made available to the Primary Contractor at or before that time, or (as the context requires) is required to be made available to the Primary Contractor, in any such case, pursuant to Section 2.5(a)(i) or 2.5(c), as the case may be.

“**Site Encumbrances**” means any and all Encumbrances from time to time charging, encumbering or affecting any lands comprising part of the Site on or after the Effective Date, and any amendments thereto, including:

- (a) any such Encumbrances described in:
 - (i) Table A-1 or Table A-2 of Appendix A [Project Lands] to Schedule 7; or
 - (ii) Appendix B [Site Encumbrances] to Schedule 7;
- (b) any such Encumbrance that is a permitted Encumbrance (howsoever described) under or in respect of any agreement or instrument pursuant to which Land Rights in any part of the Site are, at any time, on or after the Effective Date, held by the Province and BCTFA, or either of them that has been disclosed to the Primary Contractor or the existence of which is otherwise known to the Primary Contractor based on information available to the Primary Contractor and its Subcontractors as at the Financial Submittal Date];
- (c) any such Encumbrances disclosed in the Disclosed Data (including the Conditions of Access);
- (d) any such Encumbrances registered in the Land Title Office against title to any lands comprising part of the Site; and
- (e) any permit issued in replacement of a statutory right of way registered in the Land Title Office against title to any part of the Site that is cancelled on cancellation of a certificate of title in the Land Title Office for any part of the Site.

“**Site Requirements**” means:

- (a) the Conditions of Access;
- (b) the Site Encumbrances;
- (c) the CPR Requirements;
- (d) the Municipal Requirements; and

- (e) any amendments to any of the Site Requirements referred to in any of paragraphs (a) to (d) of this definition.

“SkyTrain Service Disruption Payment” means the amount in respect of each Performance Period determined in accordance with Section 3.10(a) [Calculation of SkyTrain Service Disruption Payments] of Schedule 9 [Performance Mechanism].

“SkyTrain Station Entrance Disruption Payment” means the amount in respect of each Performance Period determined in accordance with Section 3.9(a) [Calculation of SkyTrain Station Entrance Disruption Payments] of Schedule 9 [Performance Mechanism].

“SLI” means SNC-Lavalin Inc.

“SLCW” means SNC-Lavalin Constructors (Western) Inc.

“SLCW/SELI JV Amending Agreement” means the amending agreement dated in December, 2012 to the joint venture agreement (503564-JVA-004) dated August 24, 2012 among SLCW and SELI Canada Inc. relating, among other things, to the performance of such parties’ obligations under the Principal Subcontract referred to in paragraph (c) of the definition thereof.

“Smart Card and Faregates Work” means the works that are to be designed, constructed and completed by the relevant Concurrent Work Contractor as contemplated in Article 14.1.2, Part 2 of Schedule 4.

“Smart Card and Faregates Work Target Date” means the date that is 104 days prior to the Substantial Completion Date.

“SNC Group” means SNC-Lavalin Group Inc.

“Spare Parts” means spare parts, expendables, consumables, special tools and specialized equipment required for the operation and maintenance of the Evergreen Line which are different from those required for the operation and maintenance of the Existing Skytrain System and, for certainty, does not include the Station Spare Parts.

“Special Termination Sum” has the meaning given in Section 4.1 [Obligation to Pay Special Termination Sum] of Schedule 12 [Compensation on Termination].

“Specified Access Date” means, in respect of any parcel of Project Lands, the date specified as the “Specified Access Date” for such parcel in Tables A-1 or A-2 of Appendix A [Project Lands] to Schedule 7 [Lands] (including as a result of any update thereto pursuant to Section 3.2A [Additional Lands for Relevant Utility Work or Fisheries Work] or 3.2B [Additional Lands for Province Infrastructure], both of Schedule 7) or such other date as is otherwise determined to be a Specified Access Date pursuant to Schedule 7 [Lands].

“Spill Prevention and Emergency Response Plan” or **“SREMP”** means the plan described in Section 3.12 [Component Plans] of Schedule 5.

“SRW” means a statutory right of way under section 218 of the *Land Titles Act* (British Columbia).

“**Statement of Progress**” has the meaning given in Section 12.2(d).

“**Station Spare Parts**” means the Station fitting and finishing spare parts to be supplied by the Primary Contractor pursuant to Article 3.6.1(a) [Station Spare Parts], Part 3 of Schedule 4.

“**Stations**” means Lougheed Town Centre Station, Burquitlam Station, Port Moody Central Station, Ioco Station, Coquitlam Central Station, Lincoln Station and Douglas College Station.

“**Statutory Authority**” means, in defence of a Nuisance Claim, a finding by the court that the Primary Contractor has established that, at common law, private and/or public nuisance, as applicable, was an inevitable result of the exercise of statutory authority by the Province and/or BCTFA in the construction of the Evergreen Line.

“**Statutory Holiday**” means a holiday as defined in the *Interpretation Act* (British Columbia).

“**Stoppage**” means an occasional, temporary interruption of Traffic flow on a road caused or directed by the Primary Contractor for the purpose of facilitating Construction activities.

“**Structures**” means any:

- (a) elevated Guideway;
- (b) at-grade Guideway;
- (c) Tunnel including Bored Tunnel and Transition Tunnel;
- (d) bridge, tunnel or culvert having a span of 1.8 metres or more;
- (e) Fixed Facilities;
- (f) retaining wall, including reinforced earth, anchored earth and cribwall systems with slope between 45° and 90° to the horizontal, where the level of the fill at the back of the wall is greater than 1.5 metre above the finished ground level in front of the wall; and
- (g) corrugated metal bridge or culvert having a span of 0.9 metres or more (irrespective of cover to the road surface),

forming part of the Province Infrastructure (to the extent that any infrastructure referred to in any of paragraphs (a) to (g) of this definition is required to be constructed, installed, altered, upgraded or augmented by the carrying out of the Work).

“**Subcontract**” means any contract entered into by a Subcontractor in relation to the provision, performance or carrying out of any Work or supply of materials (including any contract for the supply of any Plant, Construction Plant or Intellectual Property).

“**Subcontract Certificate of Completion**” means a certificate of completion duly completed and executed by the designated “payment certifier” in respect of a completed Subcontract in accordance with section 7 of the Builders Lien Act.

“**Subcontract Release Amount**” has the meaning given in Section 12.4(c)(i).

“**Subcontract Release Contribution Amount**” has the meaning given in Section 12.4(i).

“**Subcontractor**” means any party (other than the Primary Contractor) that enters into a contract for the provision, performance or carrying out of any Work or supply of materials (including any contract for the supply of any Plant, Construction Plant or Intellectual Property) with:

- (a) the Primary Contractor; or
- (b) any subcontractor of any tier of the Primary Contractor.

“**Sub-Plans**” has the meaning given in Article 1.2.1(c) [Traffic Management Plan Requirements], Part 4 of Schedule 4.

“**Subsequent Contamination**” means any Contamination, other than Existing Contamination, that is situated in, on, under or over, or affects any Designated Project Lands or any infrastructure or other improvements on or to any such Designated Project Lands.

“**Substantial Completion**” means the satisfactory completion and fulfillment of all Work and activities described in Article 4.1.1 [Required Activities], Part 3 of Schedule 4, in accordance with the Design-Build Requirements, the Design and Construction Certification Procedures and all Laws, Permits and other requirements applicable to the Work referred to or set out in this Agreement and “**Substantially Completed**” and “**Substantially Complete**” have corresponding meanings.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs, as established by the Certificate of Substantial Completion.

“**Substantial Completion Longstop Date**” means, at any time, the date that is twelve months after the then current Substantial Completion Target Date, as such first mentioned date may be extended pursuant to Section 2.16(g)(ii), 9.3(c)(ii), 9.4(b)(ii) and/or 9.5(b)(ii).

“**Substantial Completion Payment Amount**” means the amount determined by subtracting from the Contract Price as at the end of the Payment Period which ends immediately prior to the Substantial Completion Date, the following amounts (without duplication):

- (a) the aggregate of all Progress Payments for all Payment Periods up to and including the Payment Period which ends immediately prior to the Substantial Completion Date;
- (b) if Section 12.4(k) or 12.4(m) applies, the portions of the Base Lien Holdback Amounts, the Additional Work Lien Holdback Amounts and, if any, the Supervening Event Lien Holdback Amounts which in any such case have not been previously paid to the Primary Contractor in respect of a Subcontract that has been the subject of a Subcontract Certificate of Completion and are held by the Province as of the date on which the Substantial Completion Payment Amount becomes due and payable to the Primary Contractor (provided that, for certainty, if Section 12.4(l) applies, the Substantial Completion Payment Amount shall include the amount of the PA Release Contribution Amount);

- (c) the cumulative total of the Additional Work Lien Holdback Amounts paid to the Primary Contractor in respect of one or more completed Subcontracts pursuant to Section 12.4(h) prior to the date on which the Substantial Completion Payment Amount becomes due and payable;
- (d) the Cost to Complete;
- (e) the amount of \$30,000,000.00 (the “**Availability Demonstration Completion Payment Amount**”), provided that, at the option of the Primary Contractor, such retained amount (or any portion thereof) may be replaced by a Letter of Credit in the amount of \$30,000,000.00 (or such portion thereof) (which Letter of Credit shall remain in full force and effect until the date that is 18 months after the Substantial Completion Date, notwithstanding any termination of this Agreement prior to such expiry date, but subject to any obligation of the Province to return such Letter of Credit to the Primary Contractor prior to such expiry date) and, upon receipt by the Province of such Letter of Credit, the Province shall pay to the Primary Contractor an amount equal to the retained amount that the Letter of Credit is replacing;
- (f) the amount of \$10,000,000.00 (the “**TIDS Performance Demonstration Completion Payment Amount**”), provided that, at the option of the Primary Contractor, such retained amount (or any portion thereof) may be replaced by a Letter of Credit in the amount of \$10,000,000.00 (or such portion thereof) (which Letter of Credit shall remain in full force and effect until the date that is 18 months after the Substantial Completion Date, notwithstanding any termination of this Agreement prior to such expiry date, but subject to any obligation of the Province to return such Letter of Credit to the Primary Contractor prior to such expiry date) and, upon receipt by the Province of such Letter of Credit, the Province shall pay to the Primary Contractor an amount equal to the retained amount that the Letter of Credit is replacing; and
- (g) the amount that is equal to 1% of the Contract Price, provided that, at the option of the Primary Contractor, such retained amount (or any portion thereof) may be replaced by a Letter of Credit in the amount that is equal to 1% of the Contract Price (or such portion thereof) (which Letter of Credit shall remain in full force and effect until the date that is 26 months after the Substantial Completion Date, notwithstanding any termination of this Agreement prior to such expiry date) and, upon receipt by the Province of such Letter of Credit, the Province shall pay to the Primary Contractor an amount equal to the retained amount that the Letter of Credit is replacing.

“**Substantial Completion Payment Application**” has the meaning given in Section 12.5(b).

“**Substantial Completion Target Date**” means July 29, 2016, as such date may be postponed pursuant to Section 2.16(g)(i), 9.3(c)(i), 9.4(b)(i) and/or 9.5(b)(i) or as specified in a Change Certificate.

“**Successful Defence**” means, with respect to a Nuisance Claim, a final judgment of dismissal in favour of the Primary Contractor, which dismissal shall be based on Statutory Authority. In no event shall the term “**Successful Defence**” apply to a Nuisance Claim made against the Primary Contractor for which settlement has occurred unless:

- (a) as a term of such settlement the plaintiff(s) agree to a dismissal of such Nuisance Claim based on Statutory Authority;
- (b) the settlement was entered into in good faith by the Primary Contractor; and
- (c) the Primary Contractor had obtained the prior written consent of the Province, in its discretion, to such settlement.

“**Suitable Substitute Primary Contractor**” has the meaning given in Section 1.1 [Definitions] of the Lenders’ Remedies Agreement.

“**Supervening Event**” means any of a Compensation Event, a Relief Event or a Force Majeure Event.

“**Supervening Event Lien Holdback Amount**” has the meaning given in Section 12.3(d) and “**Supervening Event Lien Holdback Amounts**” means the Supervening Event Lien Holdback Amount in respect of more than one Payment Period.

“**Supervening Event Notice**” has the meaning given in Section 9.2(a).

“**Supplementary Project Lands**” means the lands described in Table A-2 of Appendix A [Project Lands] to Schedule 7, including as a result of any update thereto in accordance with Section 3.2A(c)(i)(A) or 3.2B(b)(i)(A) of Schedule 7 [Lands].

“**Systems**” means, as applicable, the following electronic, electrical and mechanical systems as required for the Evergreen Line, as identified in Table 1 [Systems] of Appendix G to Schedule 4 and as described in the following articles of Part 2 of Schedule 4 of this Agreement:

- (a) the Evergreen ATC System;
- (b) the communications system described in Article 13.6 [Communications], Part 2 of Schedule 4;
- (c) central control room systems at the OMC described in Article 13.7 [Operations and Maintenance Centre], Part 2 of Schedule 4;
- (d) the supervisory and control data acquisitions systems described in Article 13.8 [Supervisory Control and Data Acquisition], Part 2 of Schedule 4;
- (e) the power distribution and back-up power system described in Article 13.9 [Power Distribution and Back-Up Power], Part 2 of Schedule 4;
- (f) the Guideway equipment system described in Article 13.10 [Guideway Equipment], Part 2 of Schedule 4;
- (g) the Station equipment system described in Article 13.11 [Station Equipment], Part 2 of Schedule 4; and

- (h) the Vehicle borne equipment system, to the extent required to be modified in accordance with 13.5.10.4 [Vehicle On Board Computer], Part 2 of Schedule 4.

“Systems Equipment” means all hardware (including ATC Equipment) for any System supplied by the Primary Contractor as part of the Systems Work, including Spare Parts.

“Systems Software” means any software (including ATC Software) developed or provided by the Primary Contractor or any Subcontractor for any Systems, whether under a limited license or sublicense, for use in or with the Operational Evergreen Line, whether owned by the Primary Contractor, a Subcontractor or by a third party.

“Systems Work” means any Work (including ATC Work) in connection with the performance of any obligations of the Primary Contractor under this Agreement in relation to any Systems.

“Table of Commitments” or **“TOC”** means Schedule B of the Environmental Assessment Certificate known as the “Proponent Table of Commitments”, as supplemented by the addition of the column entitled “Delivered By” and the column entitled “Performance Mechanism Index”, and corresponding details, a copy of which is attached as Appendix B [Table of Commitments] to Schedule 5, as amended, supplemented or replaced from time to time after the Effective Date.

“Tax” or **“Taxes”** means, from time to time, all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, deductions, withholdings, assessments and similar impositions imposed, levied, rated, collected, charged, withheld or assessed by or payable to any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, deductions, withholdings, assessments and similar impositions), and any other payments imposed by any Governmental Authority in lieu of any of the foregoing, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges, and includes all GST and PST except where stated to the contrary.

“Temporary Project Lands” means the lands identified as “Temporary Project Lands” in Tables A-1 and A-2 of Appendix A [Project Lands] to Schedule 7 and identified as Temporary Project Lands on the Project Lands Drawings.

“Term” means the period commencing on the Effective Date and ending at 11:59 p.m. on the date that is the later of:

- (a) the end of the Latent Work Defect Warranty Period; and
- (b) the completion of any work performed by the Primary Contractor to correct any Work Defects pursuant to Part 6 [Work and Warranties].

“Termination Date” means the effective date of termination of this Agreement according to its terms.

“Termination Release Amount” has the meaning given in Section 5.10(a) of Schedule 12.

“**Termination Release Contribution Amount**” has the meaning given in Section 5.10(h) of Schedule 12.

“**Thales**” means Thales Canada Inc. and includes any of its associates and affiliates who may be involved with the design or delivery of the Evergreen ATC System.

“**Third Party Contractor**” means any contractor (excluding the Primary Contractor and any person for whom the Primary Contractor is in law responsible) that, on behalf of the Province or BCTFA, has carried out or will carry out work after the Effective Date in respect of the Project Infrastructure or otherwise on the Site, including, for certainty, any Concurrent Work Contractor and any Other Prime Contractor referred to in Section 4.11(h)(i)(A).

“**Third Party Facilities**” means bus shelters, telephone facilities, kiosks, Utilities and other facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Site or areas adjacent to the Site by any transit authority, communications provider, Utility Supplier or other third party.

“**Third Party Technology**” means Intellectual Property, that is owned by persons other than the Primary Contractor, any Principal Subcontractor or any Affiliate of any thereof and is or will be embedded in or used in connection with the Project Intellectual Property or in the preparation or development of the Project Intellectual Property, or necessary or desirable to exploit the Project Intellectual Property, but which was not created or brought into existence for any of the Project Intellectual Property Purposes.

“**TIDS**” means track intrusion detection at Stations.

“**TIDS Demonstration Letter of Credit**” has the meaning given in paragraph (b) of the definition of Letter of Credit in this Section 1.1.

“**TIDS Liquidated Damages**” has the meaning given in Section 3(a) of Schedule 24 [Liquidated Damages].

“**TIDS Performance Demonstration**” has the meaning given in Article 13.4.3 [TIDS Performance Demonstration], Part 2 of Schedule 4.

“**TIDS Performance Demonstration Completion**” means the satisfaction, to the satisfaction of the Province, of the “false trips” test for the TIDS Demonstration as specified in Article 13.4.3 [TIDS Performance Demonstration], Part 2 of Schedule 4.

“**TIDS Performance Demonstration Completion Date**” means the date on which TIDS Performance Demonstration Completion occurs, as established by the test report prepared by the Primary Contractor in accordance with Article 13.4.3 [TIDS Performance Demonstration], Part 2 of Schedule 4 and endorsed by the Province’s Representative “received” in accordance with the Review Procedure.

“**TIDS Performance Demonstration Completion Payment Amount**” has the meaning given in paragraph (d) of the definition of Substantial Completion Payment Amount in this Section 1.1.

“**TIDS Performance Demonstration Completion Payment Application**” has the meaning given in Section 12.6.B(b).

“**TIDS Performance Demonstration Completion Target Date**” means the date that is the first anniversary of the Service Commencement Date, as such date may be postponed pursuant to Section 9.3(d), 9.4(c) and/or 9.5(c) provided that, if it is agreed or determined that, for any period of time (a “Relevant Period”) during the period from the Service Commencement Date until the TIDS Performance Demonstration Completion Date, either:

- (a) the Operational Evergreen Line was not available for passenger service as a direct result of either:
 - (i) TransLink not having either ordered a particular item on the Final Spare Parts List or purchased such item from any other person in accordance with Article 3.6.2(e), Part 3 of Schedule 4; or
 - (ii) any other cause to the extent not directly or indirectly attributable to any Primary Contractor Non-Excusable Event or any other act or omission of the Primary Contractor or any person for whom the Primary Contractor is in law responsible; or
- (b) Vehicles are not able to run in passenger service on the Evergreen Line as a result of Thales not having completed the Evergreen ATC Work in accordance with the terms of, and as defined in, the ATC Supply Contract;

then:

- (c) the TIDS Performance Demonstration Completion Target Date shall be postponed by the number of calendar days in any Relevant Period, provided that the maximum aggregate postponement in respect of all postponements pursuant to this paragraph (c) shall be twelve months;
- (d) the Project Schedule shall be amended accordingly to reflect any such postponement; and
- (e) no TIDS Liquidated Damages shall be payable by the Primary Contractor unless the TIDS Performance Demonstration Completion Date does not occur on or before the TIDS Performance Demonstration Completion Target Date (taking into account any postponement(s) pursuant to Part 9 [Supervening Events] and paragraph (c) of this definition).

“**Total Completion**” means the satisfactory full and final completion of all Work and activities described in Article 4.2.1(a) [Required Activities], Part 3 of Schedule 4, in accordance with the Design-Build Requirements, the Design and Construction Certification Procedures and all Laws, Permits and other requirements applicable to the Work referred to or set out in this Agreement, and “**Totally Completed**” and “**Totally Complete**” have corresponding meanings.

“**Total Completion Date**” means the date on which Total Completion occurs, as established by the Certificate of Total Completion.

“**Total Completion Payment Amount**” means the amount referred to in paragraph (d) of the definition of Substantial Completion Payment Amount in this Section 1.1.

“**Total Completion Payment Application**” has the meaning given in Section 12.8(b).

“**Total Completion (Reinstatement Work)**” means the satisfactory full and final completion of all Work in respect of the Reinstatement Work set out in a Reinstatement Plan, in accordance with:

- (a) the applicable Reinstatement Plan;
- (b) the Design-Build Requirements where the Design-Build Requirements do not conflict with the applicable Reinstatement Plan;
- (c) the Design and Construction Certification Procedures, as applicable; and
- (d) all Laws, Permits and other requirements applicable to the Reinstatement Work referred to or set out in this Agreement,

and “**totally completed the Reinstatement Work**” has a corresponding meaning.

“**Total Completion Target Date**” means the date that is the last day of the month which is the third complete calendar month to end after the month in which the Substantial Completion Date occurs, as such first mentioned date may be postponed pursuant to Section 9.3(d), 9.4(c) and/or 9.5(c).

“**Traffic**” means the movement of vehicles, pedestrians (including persons with disabilities) and cyclists, within the Site.

“**Traffic Disruption**” means a Closure, Lane Closure, Full Closure, Stoppage or Detour Route affecting a road or Transit exchange caused or directed by the Primary Contractor for the purpose of facilitating construction activities.

“**Traffic Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.2(a) [Calculation of Traffic Disruption Payments] of Schedule 9 [Performance Mechanism].

“**Traffic Engineer**” means the Key Individual appointed by the Primary Contractor pursuant to Section 3.3(b) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], and having the qualifications required by Section 1.6.3 [Traffic Engineer], Part 4 of Schedule 4.

“**Traffic Management**” means the recognition of the various situations where traffic control and guidance are required, and the implementation of effective procedures, including traffic control, to safely control and guide traffic with minimal interruptions and delays.

“**Traffic Management Block Marker Drawings**” means the drawings contained in Appendix I [Traffic Management Drawings] of Schedule 4 which are labelled “Traffic Management Block Marker Drawings”.

“**Traffic Management Communications Plan**” has the meaning given in Section 1.1 of Schedule 8 [Communications and Community Relations].

“**Traffic Management Plan**” or “**TMP**” means the plan prepared by the Primary Contractor in accordance with Article 1.2 [Traffic Management Plan], Part 4 of Schedule 4.

“**Traffic Manager**” means the Key Individual appointed by the Primary Contractor pursuant to Section 3.3(b) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], or such replacement as may be appointed by the Primary Contractor in accordance with Section 3.3(c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].

“**Traffic Media**” means traffic reporters at print and broadcast media outlets in Metro Vancouver.

“**Traffic Quality Management Plan**” or “**TQMP**” means the plan for the quality management of the Traffic Management for the Project prepared by the Primary Contractor in accordance with Appendix D [Traffic Quality Management Plan] of Schedule 6 [Quality Management].

“**Train**” means two or more Vehicles operating as one unit.

“**Transit Facility Construction Integration Plan**” mean each of the plans to be developed and submitted by the Primary Contractor in accordance with Article 18.2.1 [General], Part 2 of Schedule 4, for each Existing Transit Facility.

“**Transit Operators**” means, collectively, BCRTC, West Coast Express and Coast Mountain Bus Company.

“**Transition Payment Period**” means the Payment Period during which the Aggregate Payment Milestone Eligible Costs exceed \$763,888,888.

“**Transition Payment Period Base Amount**” means the amount equal to the greater of:

- (a) zero; and
- (b) the amount, if any, by which:
 - (i) \$275,000,000; exceeds
 - (ii) the aggregate Base Amounts for all Payment Periods which end prior to the Transition Payment Period.

“**Transition Tunnel**” means the portions of the Guideway to be designed and constructed in accordance with Article 4 [Structures], Part 2 of Schedule 4 consisting of transition and portal structures between the Bored Tunnel and, at the north end of the Bored Tunnel, the elevated Guideway and, at the south end of the Bored Tunnel, the at-grade Guideway.

“**TransLink**” means South Coast British Columbia Transportation Authority, as 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*, and its successors.

“**Trespassers**” has the meaning given in Section 9.8(a).

“**Trial Running**” has the meaning given in Section 13.6.2 [Trial Running] of Appendix G [Systems General Requirements] of Schedule 4.

“**Tunnel**” means, collectively, the Bored Tunnel, the Transition Tunnel and the Cross Passages.

“**Tunnel Boring Machine**” or “**TBM**” means the tunnelling machine used by the Primary Contractor in the performance of the Work in relation to the Bored Tunnel, which machine shall:

- (a) provide full excavation face support with excavated soil modified with conditioning agents and completely filling the working chamber, under pressure generally;
- (b) be either a slurry tunnel boring machine or an earth pressure balance tunnel boring machine;
- (c) include the entire system of tunnel boring equipment, including auxiliary and support equipment comprising the tunnel boring machine, backup gear and all equipment and materials affixed thereto; and
- (d) comply with the other requirements of this Agreement, including the Construction Specifications.

“**Tunnel Ventilation System**” or “**TVS**” means the ventilation system required for the Tunnel as contemplated in Article 7.4.2 [Tunnel Ventilation] of Part 2 of Schedule 4, and includes all Plant and Intellectual Property necessary for the proper functioning thereof as required by this Agreement.

“**Undisclosed Utilities**” means any Utilities (other than any Utility Service Connections) located under the Site and the Project Infrastructure, the existence of which:

- (a) was not disclosed to the Primary Contractor in the Disclosed Data as at the Financial Submittal Date; and
- (b) the Primary Contractor does not otherwise have knowledge of as at the Financial Submittal Date, could not have discovered through the exercise of reasonable due diligence prior to the Financial Submittal Date, and could not reasonably have been anticipated from any analysis of all relevant information available to the Primary Contractor (including the Disclosed Data) as at the Financial Submittal Date.

“**Upgrade Contracts**” means the documents between Thales and TransLink entitled “SkyTrain ATC System Upgrades, Schedule C Technical Specifications”, dated September 15, 2008 and “SkyTrain Remote Control Interface Unit System Replacement Contract, Schedule C, Technical Specifications”, dated December 20, 2007.

“**Use**” means each activity defined as “use” and “adoption” in the *Trade-Marks Act*, R.S.C. 1985, c.T-13 and all additional activities related to use and adoption, including reproduction, display, communication and promotion, regardless of whether such additional activities are in relation to wares or services.

“**Use As Is**” means that no action to eliminate a detected Nonconformity is needed.

“**Utilities**” means lines, facilities or systems for transmitting or distributing electricity, data, communications, gas, oil and petroleum products, water and sewage or other similar commodity which serve the public directly or indirectly and are owned or operated by a Municipality, GVRD, any other Governmental Authority or a Regulated Utility Supplier (including (i) storm drainage and underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, (ii) all related and ancillary infrastructure and (iii) all Utility Service Connections but excluding (iv) any infrastructure or other item or component referred to in Article 9.1.2(a)(i), Part 2 of Schedule 4).

“**Utility Agreements**” means the GVRD Utility Works Agreement and any other agreement entered into by the Province or BCTFA with a Utility Supplier in connection with the construction, installation, operation, repair, preservation, relocation and/or maintenance of Utilities in, on, under, over or adjacent to the Site or any part thereof, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time but shall exclude the Municipal Agreements, the Advance Work Contracts, the Concurrent Work Contracts and the GVRD Accommodation Agreement.

“**Utility Service Connections**” means:

- (a) the direct connections to the point of the utility mains (including to transmission or distribution mains) that specifically provide utility service to privately-owned properties, which include any properties owned in fee simple by a public agency or road dedication where a public agency has an agreement to operate a service within such road dedication (such as the park and ride and bus exchange facility at Port Moody WCE Station); and
- (b) any private utilities within such privately-owned properties, which include any properties owned in fee simple by a public agency or road dedication where a public agency has an agreement to operate a service within such road dedication.

“**Utility Supplier**” means the owner of any Utility including any person listed in Attachment A to Article 8 [Utilities], Part 2 of Schedule 4.

“**Utility Work**” means temporary and permanent installation, protection, removal and relocation works relating to Utilities carried out in connection with or as part of the Work, and related and ancillary works and for certainty Utility Work shall include any Municipal Works and CPR Lands Works that in either such case relate to Utilities.

“**Value Engineering Proposals**” has the meaning given in Section 8.4 [Value Engineering Proposals].

“**Vehicle**” means a single Mark I vehicle or Mark II vehicle as used on the Existing SkyTrain System and as will be used on the Integrated SkyTrain System and which is, in either case, not capable of independent operation.

“**Vehicle Storage Facility**” or “**VSF**” means the vehicle storage and maintenance facility for the Operational Evergreen Line located south of Barnet Highway and east of Falcon Drive.

“Warranty Holdback”

- (a) subject to paragraphs (b) and (c), means the amount referred to in paragraph (g) of the definition of Substantial Completion Payment Amount in this Section 1.1; or
- (b) if Section 1.1(c) of Schedule 12 applies means an amount equal to:
 - (i) the amount referred to in paragraph (g) of the definition of Substantial Completion Payment Amount in this Section 1.1;
less
 - (ii) the amount by which the amount referred in Section 1.1(b)(i)(A) of Schedule 12 exceeds the greater of:
 - (A) zero; and
 - (B) the amount by which the aggregate of the amounts referred to in Sections 1.1(b)(i)(A), (B) and (C) of Schedule 12 exceeds the aggregate of the amounts referred to in Sections 1.1(b)(ii)(A) and (B) of Schedule 12; or
- (c) if Section 2.1(c) of Schedule 12 applies means an amount equal to:
 - (i) the amount referred to in paragraph (g) of the definition of Substantial Completion Payment Amount in this Section 1.1;
less
 - (ii) the amount by which the amount referred in Section 2.1(b)(i)(A) of Schedule 12 exceeds the greater of:
 - (A) zero; and
 - (B) the amount by which the aggregate of the amounts referred to in Sections 2.1(b)(i)(A), (B), (C) and (D) of Schedule 12 exceeds the aggregate of the amounts referred to in Sections 121(b)(ii)(A), (B) and (C) of Schedule 12.

“Warranty Holdback Letter of Credit” has the meaning given in paragraph (c) of the definition of Letter of Credit in this Section 1.1.

“Warranty Holdback Payment Application” has the meaning given in Section 12.9 [Warranty Holdback].

“WCA” means the *Workers Compensation Act* (British Columbia).

“**WCE Park & Ride Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.7(a) [Calculation of WCE Park & Ride Disruption Payments] of Schedule 9 [Performance Mechanism].

“**WCE Station Entrance Disruption Payment**” means the amount in respect of each Performance Period determined in accordance with Section 3.6(a) [Calculation of WCE Station Entrance Disruption Payments] of Schedule 9 [Performance Mechanism].

“**West Coast Express**” or “**WCE**” means the West Coast Express commuter train and bus service operated by TransLink under that name linking Mission, Port Haney, Maple Ridge, Pitt Meadows, Port Coquitlam, Coquitlam and Port Moody with downtown Vancouver.

“**Work**” means all work and activities of or required of the Primary Contractor and the Subcontractors in connection with the performance of any obligations of the Primary Contractor under this Agreement including, without limitation, the Design, the Construction and the Reinstatement Work and, for the avoidance of doubt, includes all Work performed by the Primary Contractor and the Subcontractors pursuant to the Limited Notice to Proceed Agreement.

“**Work Defect**” has the meaning given in Section 6.1 [Representation, Warranty and Covenant as to Work].

“**Work Method Statements**” or “**WMS**” means written management plans for critical and complex activities, processes or plans where the absence of written instructions could have a negative impact on worker safety, quality, consistency, cost or schedule, which constitute commitments of the Primary Contractor and describe how work shall be performed, inspected or tested and shall include a checklist to confirm that work is being conducted in accordance with the appropriate standard, code, specification or plan in accordance with this Agreement.

“**Workers’ Compensation Board**” means the Board defined in and continued under the WCA.

1.2 Reference Documents

- (a) The Reference Documents are referenced in this Agreement by the “Short Form” identified on Appendix A [Reference Documents] to this Schedule.
- (b) The Primary Contractor shall at all times comply with the then most current versions of all Reference Documents, provided that, if and to the extent that any amendment, supplement or replacement of or to any Reference Document after the Financial Submittal Date impacts the design, quality or scope of the Work or the Construction of the Project Infrastructure or any part thereof:
 - (i) if and to the extent that compliance with such amendment, supplement or replacement of or to such Reference Document is required for the Primary Contractor’s continued compliance with Laws (the onus of establishing which shall be on the Primary Contractor), but without limiting the Primary Contractor’s obligation to comply with Laws, the Province shall issue a Province Change to require compliance with such amendment, supplement or replacement

of or to such Reference Document and the provisions of Part 8 [Province Changes and Primary Contractor Proposals] shall apply accordingly; and

- (ii) in all other cases, the Primary Contractor shall not be required to comply with such amendment, supplement or replacement of or to such Reference Document unless the Province has issued a Province Change to require such compliance, in which case the provisions of Part 8 [Province Changes and Primary Contractor Proposals] shall apply accordingly.
- (c) To the extent that any Laws, codes or standards enacted after the Effective Date require a change to the ATC Technical Requirements (as defined in the ATC Supply Contract), the Province shall issue a Province Change to require compliance with such enacted Law, code or standard and the provisions of Part 8 [Province Changes and Primary Contractor Proposals] shall apply accordingly.

PART 2 INTERPRETATION

This Agreement shall be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

2.1 Waiver of Contra Proferentum

The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same, or against the party benefiting from such terms or provisions.

2.2 Headings

The table of contents, headings and sub-headings, and references to them, in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.

2.3 Cross References

All references to Parts, Articles, Sections, subsections, paragraphs and Schedules are references to the relevant Parts, Articles, Sections, subsections, paragraphs and Schedules of this Agreement unless reference is made to another Agreement. Without limiting the generality of the foregoing, reference in this Agreement, or in a Schedule to this Agreement, to a Part or Section refers to the applicable Part or Section in this Agreement (excluding the Schedules) unless reference to a Part, Article, Section, subsection or paragraph of a particular Schedule to this Agreement is indicated.

2.4 Internal References

The words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Part, Article, Section, subsection, paragraph or Schedule to this Agreement.

2.5 Reference to Statutes and Reference Documents

- (a) Unless a reference to a statute or statutory provision (including any subordinate legislation) refers expressly to a statute or statutory provision in effect at a particular time (in which case the reference is to the statute or statutory provision in effect at that time), references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same. References to any statute or statutory provision include any applicable orders, regulations, bylaws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- (b) Unless a reference to a Reference Document refers expressly to a Reference Document in effect at a particular time (and provided that the reference to a particular name, date, edition, version or similar description as a “Document Name” identified for a particular Reference Document on Appendix A [Reference Documents] to this Schedule shall not constitute such an express reference), but subject to Section 1.2(b) of this Schedule, references to any Reference Document include any document which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same.

2.6 Reference to Statutory or Public Duties or Functions

References to statutory or public duties or functions are references to such duties or functions (including powers and discretions) from time to time and include any common law duties and functions (including powers and discretions).

2.7 Reference to Right or Duty of a Governmental Body

A reference to any right, power, obligation, duty or responsibility of any Governmental Authority or of any board or commission of any Governmental Authority is to the Governmental Authority or the board or commission that, pursuant to Laws, has such right, power, obligation or responsibility at the relevant time.

2.8 Time

All references to time of day are references to Pacific Standard time or Pacific Daylight Saving time, as the case may be, in Vancouver, British Columbia.

2.9 Time of the Essence

Time is of the essence of this Agreement, and remains of the essence in respect of any extension of time given.

2.10 Number

Words importing the singular include the plural and vice versa.

2.11 Gender

Words importing a particular gender include all genders.

2.12 Reference to Office of a Governmental Body

Each reference to a minister, ministry, office, branch, agency, board, commission or similar body of any Governmental Authority shall be deemed to be a reference to any successor or replacement in function of such minister, ministry, office, branch, agency, board, commission or similar body.

2.13 Reference to Public Organizations

Any reference to a public organization shall be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization.

2.14 Persons for Whom Primary Contractor is Responsible

A reference to a person or persons for whom the Primary Contractor is in law responsible means and is limited to: the Key Individuals; the Primary Contractor's Contracting Affiliates, officers, employees, consultants, agents, professional advisors (including legal and financial advisors) and invitees; any person over whom the Primary Contractor could reasonably be expected to exercise control; the Subcontractors and the Guarantors and their respective officers, employees, consultants and agents; and any other person for whom the Primary Contractor is responsible in law or by the terms of this Agreement.

2.15 Persons for Whom Province is Responsible

A reference to a person or persons for whom the Province is in law responsible means and is limited to:

- (a) BCTFA;
- (b) the Province's Representative in its capacity as such under this Agreement; and
- (c) employees, agents, professional advisors (including legal and financial advisors) and contractors of the Province or BCTFA (which may include Third Party Contractors) in all cases only while performing functions of, or on behalf of, the Province or BCTFA in relation to the Project, the Site, the Project Infrastructure or this Agreement;

but excludes the Primary Contractor and any person for whom the Primary Contractor is in law responsible pursuant to Section 2.14 [Persons for Whom Primary Contractor is Responsible] of this Schedule.

2.16 Reference to Corporate Entity

Any reference to a corporate or other legal entity includes and is also a reference to any entity that is a successor to such entity.

2.17 Currency

All monetary amounts are expressed in Canadian dollars and all amounts to be calculated and paid pursuant to this Agreement are to be calculated and paid in Canadian dollars.

2.18 Costs

Without limiting Section 11.11 [Costs and Expenses], whenever this Agreement obliges the Province to pay any amount to the Primary Contractor in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Primary Contractor:

- (a) such obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including when the payment is made to an Affiliate of the Primary Contractor), so much of them as are proper and reasonable; and
- (b) the Primary Contractor shall, when requested by the Province, provide reasonable supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums and of the actions taken by the Primary Contractor to mitigate the same.

2.19 Knowledge of Province

The Province shall not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of the Province's Representative or within the actual knowledge of those of the Province's employees and agents who have responsibilities in connection with the conduct of the Project or the Work.

2.20 Knowledge of Primary Contractor

Without limiting the extent of its actual knowledge, the Primary Contractor shall for all purposes of this Agreement be deemed to have such knowledge in respect of the Project and the Work as is held (or ought reasonably to be held) by all persons involved in carrying out the Project and the Work, including the Primary Contractor, any Subcontractors and any other persons for whom the Primary Contractor is in law responsible, and any Proponent Team Member of the Preferred Proponent (as such terms are defined in the RFP).

2.21 Performance to Standards

Any requirement for any thing or action to be “in accordance with”, “in conformity with” or “in compliance with” any standard, code, criteria, specification or other requirement or stipulation, and any requirement expressed using words or phrases of similar import, means that such thing or action is to exceed or at least equal that standard, code, criteria, specification or other requirement or stipulation.

2.22 Words of Inclusion; Mandatory Provisions

The words “**include**”, “**includes**” or “**including**” shall be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively, and the words following “include”, “includes” and “including” shall not be considered to set forth an exhaustive list.

The words “**will**” and “**shall**” are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.

2.23 General Meanings Not Restricted

General words are not given a restrictive meaning:

- (a) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
- (b) by reason of the fact that they are followed by particular examples intended to be embraced by those general words.

2.24 Trade Meanings

Unless otherwise defined in this Agreement or the context otherwise requires, words or abbreviations which have well-known and accepted trade meanings are used in accordance with those meanings.

2.25 Decisions of the Province or Province’s Representative

Where in this Agreement:

- (a) the Province, the BCTFA, the Minister or the Province’s Representative is entitled to make a decision or determination or to grant or withhold any consent, approval or acceptance or to exercise any judgement (in this Section, any such decision, determination, grant, withholding or exercise is referred to as a “**Province Decision**”) “in its discretion” or “in the discretion of” the Province, BCTFA, the Minister or the Province’s Representative, as the case may be, or words of similar import; or
- (b) the Province, BCTFA, the Minister or the Province’s Representative is entitled to make a Province Decision and there is neither express language conferring discretion as contemplated by Section 2.25(a) of this Schedule nor express language requiring the Province, BCTFA, the Minister or the Province’s Representative, as the case may be, to act reasonably or not to act unreasonably;

the Province, BCTFA, the Minister or the Province's Representative, as the case may be, shall be entitled to make the relevant Province Decision in its sole, absolute, unfettered and subjective discretion.

2.26 All Reasonable Efforts

- (a) The expression "**all reasonable efforts**", when used in connection with an obligation of the Primary Contractor, means taking all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account the Primary Contractor's obligations hereunder to mitigate delays and additional costs to the Province, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit.

- (b) The expression "**all reasonable efforts**", when used in connection with an obligation of the Province, means taking all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account the Province's obligations hereunder to mitigate delays and additional costs to the Primary Contractor, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit, provided that the foregoing shall not require the Province to:
 - (i) take any action which is contrary to the public interest or decline, refrain, or abstain from taking any action which is in the public interest, as determined by the Province in its discretion;
 - (ii) exercise or refrain, decline or abstain from exercising any statutory or administrative law power, authority or discretion; or
 - (iii) undertake any mitigation measure that might be available arising out of its status as the Crown or as a legislative or public body that would not normally be available to a private commercial party.

2.27 Accounting Terms

All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied.

2.28 Severability

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties shall promptly

endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

2.29 No Derogation from Laws

No provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and no provision of this Agreement shall be interpreted in a manner as to result in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws, the applicable Laws shall prevail and such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any Laws, then such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.

2.30 [Intentionally Not Used]

2.31 Principles for Resolving Conflicts within Documents

In the case of any conflict, ambiguity or inconsistency between or among any of the provisions within the main body of this Agreement or any of the Schedules hereto, including any conflict, ambiguity or inconsistency between or among any of the provisions within Schedule 4 or any of the Design-Build Requirements, the following principles shall apply:

- (a) in the case of any conflict, ambiguity or inconsistency relating to the quality, manner or method of performing the Work, the provisions (including any part of the Proposal Extracts) establishing the higher quality, manner or method of performing the Work, using the more stringent standards, or the broader scope of the Work shall prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, durability, performance and service will govern;
- (b) in the case of any conflict, ambiguity or inconsistency relating to the application of any codes and standards referred to in the Design-Build Requirements, the Primary Contractor shall promptly provide the Province's Representative with written notice including full particulars of the conflict, ambiguity or inconsistency and the conflict, ambiguity or inconsistency shall be resolved in accordance with a written direction given by the Province's Representative to the Primary Contractor, which shall be given as soon as reasonably practicable after, and in any event within 15 Business Days after, receipt by the Province's Representative of such notice from the Primary Contractor;
- (c) in the case of any conflict, ambiguity or inconsistency between or among the Proposal Extracts and any other provision of this Agreement, the provision of this Agreement or the relevant part or parts thereof shall prevail unless in the discretion of the Province and by written direction given by the Province Representative to the Primary Contractor (which direction shall be given as soon as reasonably practicable after, and in any event within 15 Business Days after, the Province's Representative receives written notice of such conflict, ambiguity or inconsistency from the Primary Contractor) the Province

Representative confirms that the relevant Proposal Extract or the relevant part or parts thereof shall prevail; and

- (d) in the case of any dispute regarding any other conflict, ambiguity or inconsistency, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.

2.32 No Additional Payments or Time

The Primary Contractor shall not be entitled to any additional payment, reduction in any payment to be made by the Primary Contractor or extension of time under this Agreement as a result of the existence of any conflict, ambiguity or inconsistency referred to in Section 2.31 [Principles for Resolving Conflicts within Documents] of this Schedule or as a result of giving effect to any resolution of any such conflict, ambiguity or inconsistency pursuant to Section 2.31 [Principles for Resolving Conflicts within Documents] of this Schedule.

2.33 Financial Model

Except where expressly referred to, the Financial Model and its contents shall not be used to interpret this Agreement and shall not affect the meaning of this Agreement.

2.34 Stationing References

All stationing referred to in this Agreement relates to the stationing shown on the “Guideway Control Line” provided in the Project Lands Drawings.