

SOUTH FRASER PERIMETER ROAD PROJECT

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COMPENSATION ON TERMINATION**

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PART 1 - COMPENSATION ON TERMINATION FOR PROVINCE DEFAULT

1.1 Obligation to Pay Province Default Termination Sum

If the Province terminates this Agreement pursuant to Section 14.2(a), or if the Concessionaire terminates this Agreement pursuant to Section 13.3(a) or Section 13.3(b), the Province shall pay to the Concessionaire the Province Default Termination Sum as set out in Section 1.2 [Calculation of Province Default Termination Sum] of this Schedule, subject to adjustment pursuant to Sections 1.3, 1.4 and 1.5 and Part 7 [General Provisions] of this Schedule.

1.2 Calculation of Province Default Termination Sum

Subject to Sections 1.3 [Adjustment to Revised Senior Debt Termination Amount], 1.4 [Adjustment for Non-Compliant Distributions] and 1.5 [Adjustment for Overstated Credit Balances] of this Schedule, the “**Province Default Termination Sum**” shall be an amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount;
- (b) an amount which when taken together with all Distributions made on or before the Termination Date, including:
 - (i) Distributions paid by the Concessionaire on or in respect of Units or Partner Capital on or before the Termination Date; and
 - (ii) interest, principal, fees, breakage costs and other amounts paid by the Concessionaire in respect of Junior Debt or under Junior Lending Agreements on or before the Termination Date;

taking account of the actual timing of all such Distributions, gives an internal rate of return on the Partner Capital paid in respect of then issued and outstanding Units and the principal amounts advanced as Junior Debt then outstanding, equal to the Threshold Equity IRR;

- (c) any Employee Termination Payments; and
- (d) any Principal Contractor Breakage Costs.

1.3 Adjustment to Revised Senior Debt Termination Amount

If the Province Default Termination Sum calculated in accordance with Section 1.2 [Calculation of Province Default Termination Sum] of this Schedule is less than the aggregate of the Revised Senior Debt Termination Amount and the amounts referred to in Sections 1.2(c) and (d) of this Schedule, then the Province Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amounts referred to in Sections 1.2(c) and (d) of this Schedule, provided always that the amounts referred to in Sections 1.2 (c) and (d) of this Schedule shall only be paid to the extent that the Concessionaire has demonstrated to the reasonable satisfaction of the Province that the amounts will not be paid in payment (in whole or in part) of any Distribution.

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1.4 Adjustment for Non-Compliant Distributions

If a Distribution is made while any Additional Permitted Borrowing has been advanced and is outstanding and the Concessionaire has wilfully, or through gross negligence, failed to comply with its obligations under Section 2.7(b)(i) of the Lenders' Remedies Agreement with respect to that Distribution, then, in addition to the deduction of the Distributions referred to in subsection (g) of the definition of "Revised Senior Debt Termination Amount" in Section 1.1 [Definitions] of Schedule 1, the Province shall be entitled to deduct the value of that Distribution a second time from the Province Default Termination Sum, provided that, except for reductions pursuant to Section 7.1 [No Compensation to Extent of Insurance] of this Schedule, the amount of the Province Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

1.5 Adjustment for Overstated Credit Balances

If the Concessionaire has wilfully or through gross negligence failed to comply with its obligations under Section 2.7(b)(ii) of the Lenders' Remedies Agreement and there has been an overstatement by the Concessionaire of the credit balances in its accounts which has caused the Province to reasonably believe that it would be required to pay a lesser sum as the Province Default Termination Sum than it actually is required to pay under the terms of this Part 1 [Compensation on Termination for Province Default] of this Schedule, then the Province Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that, except for reductions pursuant to Section 7.1 [No Compensation to Extent of Insurance] of this Schedule, the amount of the Province Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

1.6 Date for Payment of Province Default Termination Sum

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

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

provided that, if there is a dispute as to the calculation of the Province Default Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 1.6(a) of this Schedule and any remainder shall be paid on or before the payment date referred to in Section 1.6(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate calculated from the payment date referred to in Section 1.6(a) of this Schedule until the date of payment.

PART 2 - COMPENSATION ON NON-DEFAULT TERMINATION

2.1 Obligation to Pay Non-Default Termination Sum

If the Province terminates this Agreement pursuant to Section 6.21(a)(i), 6.21(b)(ii), 8.4(c) or 8.7(b)(ii), or if either the Concessionaire or the Province terminates this Agreement pursuant to Section 8.4(d)(iii)(b)(2)(II), 8.6(a) or 8.7(a)(iv), the Province shall pay to the Concessionaire the Non-Default

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Termination Sum as set out in Section 2.2 [Calculation of Non-Default Termination Sum] of this Schedule, subject to adjustment pursuant to Sections 2.3, 2.4 and 2.5 and Part 7 [General Provisions] of this Schedule.

2.2 Calculation of Non-Default Termination Sum

Subject to Sections 2.3 [Adjustment to Revised Senior Debt Termination Amount], 2.4 [Adjustment for Non-Compliant Distributions] and 2.5 [Adjustment for Overstated Credit Balances] of this Schedule, the “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount;
- (b) all principal amounts advanced as Junior Debt at any time on or before the Termination Date, less an amount equal to the aggregate of all Distributions on account of Junior Debt or under Junior Lending Agreements (whether of interest, breakage costs or otherwise) made on or before the Termination Date;
- (c) all amounts paid to the Concessionaire for Units at any time on or before the Termination Date, less an amount equal to the aggregate of all Distributions in respect of Units or Partner Capital made on or before the Termination Date;
- (d) any Employee Termination Payments; and
- (e) any Principal Contractor Breakage Costs;

less the amount of all Distributions other than those deducted under Sections 2.2(b) and (c) of this Schedule. If the amount referred to in Section 2.2(b) of this Schedule or the amount referred to in Section 2.2(c) of this Schedule is less than zero, then, for the purposes of the calculation in this Section 2.2 [Calculation of Non-Default Termination Sum], such amount shall be deemed to be zero.

2.3 Adjustment to Revised Senior Debt Termination Amount

If the Non-Default Termination Sum calculated in accordance with Section 2.2 [Calculation of Non-Default Termination Sum] of this Schedule is less than the aggregate of the Revised Senior Debt Termination Amount and the amounts referred to in Sections 2.2(d) and (e) of this Schedule, then the Non-Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amounts referred to in Sections 2.2(d) and (e) of this Schedule, provided always that the amounts referred to in Sections 2.2(d) and (e) of this Schedule shall only be paid to the extent that the Concessionaire has demonstrated to the reasonable satisfaction of the Province that the amounts will not be paid in payment (in whole or in part) of any Distribution.

2.4 Adjustment for Non-Compliant Distributions

If a Distribution is made while any Additional Permitted Borrowing has been advanced and is outstanding and the Concessionaire has wilfully, or through gross negligence, failed to comply with its obligations under Section 2.7(b)(i) of the Lenders’ Remedies Agreement with respect to that Distribution, then, in addition to the deduction of the Distributions referred to in subsection (g) of the definition of “Revised Senior Debt Termination Amount” in Section 1.1 [Definitions] of Schedule 1, the Province shall be entitled to deduct the value of that Distribution a second time from the Non-Default Termination Sum,

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provided that, except for reductions pursuant to Section 7.1 [No Compensation to Extent of Insurance] of this Schedule, the amount of the Non-Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

2.5 Adjustment for Overstated Credit Balances

If the Concessionaire has wilfully or through gross negligence failed to comply with its obligations under Section 2.7(b)(ii) of the Lenders' Remedies Agreement and there has been an overstatement by the Concessionaire of the credit balances in its accounts which has caused the Province to reasonably believe that it would be required to pay a lesser sum as the Non-Default Termination Sum than it actually is required to pay under the terms of this Part 2 [Compensation on Non-Default Termination] of this Schedule, then the Non-Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that, except for reductions pursuant to Section 7.1 [No Compensation to Extent of Insurance] of this Schedule, the amount of the Non-Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

2.6 Date for Payment of Non-Default Termination Sum

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

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

provided that, if there is a dispute as to the calculation of the Non-Default Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 2.6(a) of this Schedule and any remainder shall be paid on or before the payment date referred to in Section 2.6(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate calculated from the payment date referred to in Section 2.6(a) of this Schedule until the date of payment.

PART 3 - COMPENSATION ON TERMINATION FOR CONCESSIONAIRE DEFAULT

3.1 Obligation to Pay Compensation on Concessionaire Default

Except where Part 6 [Compensation on Termination for Special Circumstances] of this Schedule applies, if the Province terminates this Agreement pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(b), 12.3(d)(ii) and 12.4 [Termination for Failure to Remedy According to Program], the Province shall pay to the Concessionaire either the Adjusted Highest Compliant Bid Price determined in accordance with Part 4 [Rebidding Procedure] of this Schedule or the Adjusted Estimated Fair Value determined in accordance with Part 5 [Estimated Fair Value Procedure] of this Schedule, whichever is applicable in accordance with Sections 3.2 [Province Election of Valuation Procedure], 3.3 [Subsequent Election to Change Valuation Procedure] and 4.8 [Bidding Process Not Completed] of this Schedule.

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3.2 Province Election of Valuation Procedure

Except where Part 6 [Compensation on Termination for Special Circumstances] of this Schedule applies, if the Province terminates this Agreement pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(b), 12.3(d)(ii) and 12.4 [Termination for Failure to Remedy According to Program], the Province may elect either to pay the Adjusted Highest Compliant Bid Price determined in accordance with Part 4 [Rebidding Procedure] of this Schedule or to pay the Adjusted Estimated Fair Value determined in accordance with Part 5 [Estimated Fair Value Procedure] of this Schedule, provided that any election by the Province to pay the Adjusted Highest Compliant Bid Price determined in accordance with Part 4 [Rebidding Procedure] of this Schedule shall only be effective, and the provisions of Part 4 [Rebidding Procedure] of this Schedule shall only apply, if:

- (a) the Province notifies the Concessionaire on or before the date that is 30 Business Days after the Termination Date that the Province elects to pay the Adjusted Highest Compliant Bid Price determined in accordance with Part 4 [Rebidding Procedure] of this Schedule; and
- (b) either:
 - (i) there is a Liquid Market as determined by agreement between the Concessionaire and the Province or, failing such agreement, by the Dispute Resolution Procedure, and:
 - (A) the Agent has no further right of step in under the Lenders' Remedies Agreement, and the Agent has not exercised such right to step in or, if it has exercised such right, it has subsequently exercised its right to step out under the Lenders' Remedies Agreement or its right of step in has otherwise terminated in accordance with the Lenders' Remedies Agreement; and
 - (B) the Agent has no further right under the Lenders' Remedies Agreement to effect a transfer of the Concessionaire's rights and liabilities under this Agreement or the other Province Project Documents to a Suitable Substitute Concessionaire, and the Agent has not effected the transfer of the Concessionaire's rights and liabilities under this Agreement or the other Province Project Documents to a Suitable Substitute Concessionaire in accordance with the provisions of the Lenders' Remedies Agreement;
 - or
 - (ii) the Agent gave a No Liquid Market Notice (as defined in the Lenders' Remedies Agreement) pursuant to Section 3.10(a) of the Lenders' Remedies Agreement and it was determined by agreement between the Agent and the Province or by dispute resolution under the Lenders' Remedies Agreement that a Liquid Market existed or exists;

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and otherwise the Province shall pay the Adjusted Estimated Fair Value determined in accordance with Part 5 [Estimated Fair Value Procedure] of this Schedule and the provisions of Part 5 [Estimated Fair Value] of this Schedule shall apply.

3.3 Subsequent Election to Change Valuation Procedure

If the Province makes an effective election in accordance with Section 3.2 [Province Election of Valuation Procedure] of this Schedule to pay the Adjusted Highest Compliant Bid Price, the Province shall have the right, at any time before receiving a Compliant Bid pursuant to the Bidding Process, to elect by notice in writing to the Concessionaire to pay the Adjusted Estimated Fair Value determined in accordance with Part 5 [Estimated Fair Value Procedure] of this Schedule, in which event the provisions of Part 5 [Estimated Fair Value Procedure] of this Schedule shall apply and the provisions of Part 4 [Rebidding Procedure] of this Schedule shall cease to apply.

3.4 Further Investigations on Termination For Concessionaire Default

Except where Part 6 [Compensation on Termination for Special Circumstances] of this Schedule applies, if the Province terminates this Agreement pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(b), 12.3(d)(ii) and 12.4 [Termination for Failure to Remedy According to Program], the Province shall be entitled to commission from duly qualified independent third parties such investigations, studies, reports, recommendations, designs, drawings and specifications, which shall be addressed to both the Province and the Concessionaire (collectively, the “**Independent Remedial Information**”) as the Province shall reasonably require with respect to:

- (a) if the Termination Date is before the Total Completion Date:
 - (i) the feasibility of Totally Completing the Primary Infrastructure Components based on the Design Data prepared by the Concessionaire and the Project Work performed by the Concessionaire up to the Termination Date; and
 - (ii) what further investigations, testing, design, re-design, construction, rectification and other work is required to Totally Complete the Primary Infrastructure Components to the standards required by this Agreement and the Project Requirements to achieve the Total Completion Date;
- and
- (b) what further investigations, testing, design, re-design, construction, rectification and other work is required to carry out the Operation, Maintenance, Rehabilitation and any further known Construction Activities for the Term and to the standards required by this Agreement and the Project Requirements.

The Concessionaire shall have 15 Business Days after receipt of any particular Independent Remedial Information within which to dispute in accordance with the Dispute Resolution Procedure whether the Independent Remedial Information is reasonable. The Concessionaire shall not have any right to dispute any independent Remedial Information on any other grounds. If the Concessionaire does not so dispute any particular Independent Remedial Information, such Independent Remedial Information shall be deemed to have been accepted by the Concessionaire as being reasonable. Any Independent Remedial Information accepted by the Concessionaire as being reasonable, or deemed to have been accepted by the

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Concessionaire as being reasonable, or determined by the Dispute Resolution Procedure to be reasonable (collectively, the “**Accepted Independent Remedial Information**”) may be made available to third parties from whom bid proposals are sought pursuant to Part 4 [Rebidding Procedure] of this Schedule, and shall be taken into account in the determination of the Estimated Fair Value pursuant to Part 5 [Estimated Fair Value Procedure] of this Schedule.

3.5 Adjustment to Amount Payable

Notwithstanding anything to the contrary in this Part 3 [Compensation on Termination for Concessionaire Default], Part 4 [Rebidding Procedure] or Part 5 [Estimated Fair Value Procedure] of this Schedule, the amount payable by the Province as the Adjusted Highest Compliant Bid Price or the Adjusted Estimated Fair Value, whichever is payable pursuant to this Part 3 [Compensation on Termination for Concessionaire Default], Part 4 [Rebidding Procedure] and Part 5 [Estimated Fair Value Procedure] of this Schedule, shall be subject to adjustment pursuant to Part 7 [General Provisions] of this Schedule.

PART 4 - REBIDDING PROCEDURE

4.1 Application of Rebidding Procedure

If the Province makes an effective election in accordance with Section 3.2 [Province Election of Valuation Procedure] of this Schedule to pay the Adjusted Highest Compliant Bid Price, then the Province shall seek bid proposals from third parties interested in acquiring with effect as of the day following the Termination Date in respect of a termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of this Schedule applies, pursuant to the terms of a New Concession Agreement, the rights of the Concessionaire under this Agreement and the other Province Project Documents, subject to the obligations and liabilities of the Concessionaire under this Agreement and the other Province Project Documents, and subject to the then existing condition and state of repair of the Project Site and the Project Infrastructure and the then existing status of the Project Work, and the provisions of this Part 4 [Rebidding Procedure] of this Schedule shall apply. The provisions of this Part 4 [Rebidding Procedure] of this Schedule shall not apply except in the circumstances described above in this Section.

4.2 Objectives of the Rebidding Procedure

The objective of the rebidding procedure shall be to establish through the Bidding Process the Highest Compliant Bid Price as at the day following the Termination Date in respect of a termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of this Schedule applies.

4.3 Conduct of Rebidding Procedure

The Province shall (subject to any legal requirements preventing it from doing so) use all reasonable efforts to complete the Bidding Process as soon as practicable and the following shall apply:

- (a) the Province shall as soon as reasonably practicable notify the Concessionaire of the qualification criteria and the other requirements and terms of the Bidding Process (which terms shall include a requirement that each bidder must bid a price that is payable by way

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- of a single payment on closing), including the timing of the Bidding Process, and shall act reasonably in setting such requirements and terms;
- (b) the Concessionaire authorizes the release of any information by the Province under the Bidding Process which would otherwise be prevented under Section 15.1 [Confidentiality] that is reasonably required as part of the Bidding Process;
 - (c) the Province may make available to bidders the Accepted Independent Remedial Information;
 - (d) the Concessionaire may, at its own cost, appoint a person (the “**Bidding Process Monitor**”) to monitor the Bidding Process for the purpose of monitoring and reporting to the Concessionaire and the Senior Lenders on the Province’s compliance with the Bidding Process and making representations to the Province. The Bidding Process Monitor shall not disclose any confidential information to the Concessionaire or any other person (and shall as a condition of its appointment enter into a confidentiality agreement with the Province in form and substance acceptable to the Province acting reasonably) but shall be entitled to advise the Concessionaire and the Senior Lenders as to whether it considers that the Province has acted in accordance with the Bidding Process and has correctly determined the Highest Compliant Bid Price;
 - (e) the Bidding Process Monitor shall be entitled to attend all meetings relating to the Bidding Process, inspect copies of all bid documentation (including any Accepted Independent Remedial Information) and bids and make written representations to the Province regarding compliance with the Bidding Process. All such representations shall be made by the Bidding Process Monitor in a timely manner as the Bidding Process proceeds. The Province shall not be bound to consider or act upon any such representations, but acknowledges that such representations may be referred to by the Concessionaire in the event that the Concessionaire refers a dispute relating to the Highest Compliant Bid Price to dispute resolution in accordance with the Dispute Resolution Procedure;
 - (f) the Province shall have the right after the Termination Date to perform or procure the performance of any activities, work and operations in the nature of Project Work;
 - (g) the Province shall have the right to elect, pursuant to and in accordance with the terms of Section 3.3 [Subsequent Election to Change Valuation Procedure] of this Schedule, or may be obligated pursuant to the terms of Section 4.8 [Bidding Process Not Completed] of this Schedule, not to complete the Bidding Process, and in any event (but subject to Section 4.7 [Failure of the Province to Accept Any Compliant Bid] of this Schedule) the Province shall not be obligated to accept the Compliant Bid with the Highest Compliant Bid Price or any Compliant Bid, or to enter into a New Concession Agreement with any New Concessionaire;
 - (h) as soon as practicable after the expiration of the time for submission of bids pursuant to the Bidding Process, the Province shall (acting reasonably) determine the Compliant Bids (if any) and shall notify the Concessionaire of the Highest Compliant Bid Price and the Adjusted Highest Compliant Bid Price;

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- (i) if there is any dispute relating to the Highest Compliant Bid Price or the Adjusted Highest Compliant Bid Price, irrespective of such dispute, the Province shall be entitled to enter into a New Concession Agreement with a New Concessionaire; and
- (j) in addition to the other rebidding procedures, the following principles shall apply to the Bidding Process:
 - (i) the New Concessionaire shall not be entitled to receive the benefit of, and shall not assume or be responsible for, any amounts adjusted between the Province and the Concessionaire under Section 14.9(c); and
 - (ii) the obligations of the New Concessionaire under the New Concession Agreement shall include the repair and restoration of damage to or destruction of the Project Infrastructure occurring at or before the Termination Date, in accordance with the Project Requirements and the New Concession Agreement and on the basis that any proceeds of insurance payable or paid in respect of damage or destruction, and any amounts payable by the Province pursuant to Section 6.21(b)(i), in each case to the extent not paid to the Concessionaire or paid toward the cost of such repair or restoration, shall be made available for that purpose as provided in Sections 6.15 [Restoration and Reinstatement of Damage or Destruction] to 6.19 [Repayment of Insurance Proceeds] inclusive, and provided that the New Concessionaire shall be responsible for any deductible amounts in respect of such insurance to the extent such deductible amounts have not already been expended or borne by the Concessionaire or the Province;

and to the extent there is any variance from any of those principles, the adjustments to the Highest Compliant Bid Price to obtain the Adjusted Highest Compliant Bid Price shall include appropriate further adjustments to reflect such variance.

4.4 Payment by the Province if a Positive Amount

Subject to Sections 4.5 [No Payment by the Province if a Negative Amount], 4.6 [Payment by the Concessionaire if a Negative Amount], 4.7 [Failure of the Province to Accept Any Compliant Bid] and 4.8 [Bidding Process Not Completed] of this Schedule, the Province shall pay to the Concessionaire an amount equal to the Adjusted Highest Compliant Bid Price on or before the later of:

- (a) the date that is 30 Business Days after the date of execution and delivery of the New Concession Agreement by the Province and a New Concessionaire; and
- (b) the date that is 30 Business Days after the date on which all disputes regarding the Adjusted Highest Compliant Bid Price are finally determined by agreement of the Province and the Concessionaire or by the Dispute Resolution Procedure;

provided that, if there is a dispute as to the Adjusted Highest Compliant Bid Price, any undisputed amount shall be paid on or before the payment date referred to in Section 4.4(a) of this Schedule, and any remainder shall be paid on or before the payment date referred to in Section 4.4(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the Prime Rate calculated from the payment date referred to in Section 4.4(a) of this Schedule until the date of payment.

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4.5 No Payment by the Province if a Negative Amount

If the Adjusted Highest Compliant Bid Price is zero or a negative amount, then the Province shall have no obligation to make any payment to the Concessionaire, and with effect from the time that the Province gives notice to the Concessionaire that the Adjusted Highest Compliant Bid Price is zero or a negative amount (but without prejudice to any right of the Concessionaire to dispute any determination that the Adjusted Highest Compliant Bid Price is zero or a negative amount), the provisions of Section 7.5 [Full and Final Settlement] of this Schedule shall apply.

4.6 Payment by the Concessionaire if a Negative Amount

Subject to Section 4.7 [Failure of the Province to Accept Any Compliant Bid] of this Schedule, if the Adjusted Highest Compliant Bid Price is a negative amount, then the Concessionaire shall pay to the Province the amount by which the Adjusted Highest Compliant Bid Price is negative on or before the later of:

- (a) the date that is 30 Business Days after the date of execution and delivery of the New Concession Agreement by the Province and a New Concessionaire; and
- (b) the date that is 30 Business Days after the date on which all disputes regarding the Adjusted Highest Compliant Bid Price are finally determined by agreement of the Province and the Concessionaire or by the Dispute Resolution Procedure;

provided that, if there is a dispute as to the Adjusted Highest Compliant Bid Price, any undisputed amount shall be paid on or before the payment date referred to in Section 4.6(a) of this Schedule, and any remainder shall be paid on or before the payment date referred to in Section 4.6(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the Prime Rate calculated from the payment date referred to in Section 4.6(a) of this Schedule until the date of payment.

4.7 Failure of the Province to Accept Any Compliant Bid

If within the time for the submission of bids pursuant to the Bidding Process the Province receives at least one Compliant Bid but decides not to enter into a New Concession Agreement with a New Concessionaire that tendered a Compliant Bid, the Province shall, as soon as reasonably practicable after it has made such decision, notify the Concessionaire of that decision (provided that, if the Province and a New Concessionaire that tendered a Compliant Bid have not executed and delivered a New Concession Agreement within 180 days after the determination of the Highest Compliant Bid Price, the Province shall be deemed to have decided not to enter into a New Concession Agreement with a New Concessionaire that tendered a Compliant Bid and to have notified the Concessionaire of that decision) and:

- (a) if the Adjusted Highest Compliant Bid Price is greater than zero, the Province shall pay to the Concessionaire an amount equal to the Adjusted Highest Compliant Bid Price on or before the later of:
 - (i) the date that is 30 Business Days after the date of such notification; and

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- (ii) the date that is 30 Business Days after the date on which all disputes regarding the Adjusted Highest Compliant Bid Price are finally determined by agreement of the Province and the Concessionaire or by the Dispute Resolution Procedure;

provided that, if there is a dispute as to the Adjusted Highest Compliant Bid Price, any undisputed amount shall be paid on or before the payment date referred to in Section 4.7(a)(i) of this Schedule, and any remainder shall be paid on or before the payment date referred to in Section 4.7(a)(ii) of this Schedule with interest on such remainder at a rate of interest per annum equal to the Prime Rate calculated from the payment date referred to in Section 4.7(a)(i) of this Schedule until the date of payment; and

- (b) if the Adjusted Highest Compliant Bid Price is a negative amount, the Concessionaire shall pay to the Province the amount by which the Adjusted Highest Compliant Bid Price is negative on or before the later of:
 - (i) the payment date referred to in Section 4.7(a)(i) of this Schedule; and
 - (ii) the payment date referred to in Section 4.7(a)(ii) of this Schedule;

provided that, if there is a dispute as to the Adjusted Highest Compliant Bid Price, any undisputed amount shall be paid on or before the payment date referred to in Section 4.7(a)(i) of this Schedule, and any remainder shall be paid on or before the payment date referred to in Section 4.7(a)(ii) of this Schedule with interest on such remainder at a rate of interest per annum equal to the Prime Rate calculated from the payment date referred to in Section 4.7(a)(i) of this Schedule until the date of payment.

4.8 Bidding Process Not Completed

Except where Section 4.5 [No Payment by the Province of a Negative Amount], Section 4.6 [Payment by the Concessionaire of a Negative Amount] or Section 4.7 [Failure of the Province to Accept any Compliant Bid] of this Schedule applies, if the Province has not paid the Adjusted Highest Compliant Bid Price to the Concessionaire by the later of:

- (a) the end of the Bidding Process Period; and
- (b) the date that is 30 Business Days after the date on which all disputes regarding the Adjusted Highest Compliant Bid Price are finally determined by agreement of the Province and the Concessionaire or by the Dispute Resolution Procedure;

the provisions of this Part 4 [Rebidding Procedure] of this Schedule shall cease to apply, and the Province shall pay the Adjusted Estimated Fair Value determined in accordance with Part 5 [Estimated Fair Value Procedure] of this Schedule, and the provisions of Part 5 [Estimated Fair Value Procedure] of this Schedule shall apply.

4.9 Post Termination Service Payments

If the Termination Date in respect of a termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of this Schedule applies occurs after the Western Segment Substantial Completion Date, and if the Province has made an effective election in

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accordance with Section 3.2 [Province Election of Valuation Procedure] to pay the Adjusted Highest Compliant Bid Price (and there is no unresolved dispute with respect thereto, whether under this Agreement or the Lenders' Remedies Agreement), then within 14 days after the end of each Post Termination Payment Period falling within the Post Termination Service Term (or, if the foregoing conditions to payment under this Section have not been satisfied by that time, as soon as reasonably practicable after satisfaction of such conditions), the Province shall pay to the Concessionaire the Post Termination Service Amount for such Post Termination Payment Period to the extent (if any) such Post Termination Service Amount is greater than zero, provided however that the Province shall be entitled to withhold any such payment if the Province reasonably believes that the aggregate of such payment and all previous payments made under this Section would reduce the Adjusted Highest Compliant Bid Price to zero or less. To the extent such Post Termination Service Amount is a negative amount, the amount by which it is negative will be used in the calculation of the Post Termination Service Amount for the next Post Termination Payment Period as provided in subsection (c) of the definition of Post Termination Service Amount in Section 1.1 [Definitions] of Schedule 1.

PART 5 - ESTIMATED FAIR VALUE PROCEDURE

5.1 Application of Estimated Fair Value Procedure

If:

- (a) the Province is not entitled to elect in accordance with Section 3.2 [Province Election of Valuation Procedure] of this Schedule to pay the Adjusted Highest Compliant Bid Price or the Province makes such election but it is not effective pursuant to the terms of Section 3.2 [Province, Election of Valuation Procedure]; or
- (b) the Province elects in accordance with Section 3.2 [Province Election of Valuation Procedure] of this Schedule to pay the Adjusted Estimated Fair Value; or
- (c) pursuant to Section 4.8 [Bidding Process Not Completed] of this Schedule the Province is required to pay the Adjusted Estimated Fair Value;

then the Estimated Fair Value shall be determined with effect as of the day following the Termination Date in respect of a termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of this Schedule applies, by agreement of the Province and the Concessionaire or, failing such agreement, by the Dispute Resolution Procedure, and the provisions of this Part 5 [Estimated Fair Value Procedure] of this Schedule shall apply. The provisions of this Part 5 [Estimated Fair Value Procedure] of this Schedule shall not apply except in the circumstances described above in this Section.

5.2 Determination of Estimated Fair Value

- (a) The Estimated Fair Value shall be determined, with effect as of the day following the Termination Date in respect of a termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of this Schedule applies, by deducting from the aggregate of:

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- (i) an amount equal to Pre-Completion Milestone Payments unpaid to the Concessionaire as at the Termination Date, adjusted if applicable pursuant to Section 5.2(b)(iv);
- (ii) an estimate of the Maximum Availability Payments that would be payable over the Estimated Fair Value Balance of Term; and
- (iii) any amounts that are known at the Termination Date and that would, but for the termination of this Agreement, have been payable by the Province to the Concessionaire during the Estimated Fair Value Balance of Term as a result of any Supervening Event, Province Change, or Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes], occurring prior to the Termination Date, excluding any such amounts that resulted in an adjustment to any of the Availability Payments before the Termination Date and are reflected in the Maximum Availability Payments referred to in Section 5.2(a)(ii) of this Schedule;

the aggregate of:

- (iv) the Estimated Fair Value Forecast Project Costs; and
 - (v) the Estimated Fair Value Forecast Performance Related Payments and Deductions.
- (b) In determining the Estimated Fair Value, the following principles shall be followed:
- (i) any Accepted Independent Remedial Information shall be taken into account in forecasting the Estimated Fair Value Forecast Project Costs and the Estimated Fair Value Forecast Performance Related Payments and Deductions;
 - (ii) the Estimated Fair Value Forecast Project Costs shall include (without double-counting):
 - (A) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the Financial Model;
 - (B) the costs of performing or causing the performance of, over the Estimated Fair Value Balance of Term, in accordance with the Deemed New Concession Agreement, the obligations, responsibilities, activities, work and operations that would, but for the termination of this Agreement, have been the responsibility and obligation of the Concessionaire as Project Work (provided that changes and variations shall be taken into account where defects or deficiencies have been identified by the Accepted Independent Remedial Information or otherwise, to the extent such changes and variations are reasonably required to carry out such activities, work and operations without such defects and deficiencies over the Estimated Fair Value Balance of Term), which costs shall also include any transaction, procurement or other costs

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in performing or causing the performance of such activities, work and operations as provided in this subsection; and

- (C) any repair, replacement and rectification costs required to deliver to the standards required by the Deemed New Concession Agreement the activities, work and operations that would, but for the termination of this Agreement, have been the responsibility and obligation of the Concessionaire as Project Work (including any costs forecast to be incurred to complete construction or development work or to repair or replace damage or destruction, and additional operating costs required to restore operating services standards), less any insurance proceeds received or which will be received by the Province, and any amounts still payable by the Province pursuant to Section 6.21(b)(i), in respect of costs included in the calculation of such repair, replacement or rectification costs;

in each case such costs to be forecast at a level that will deliver the activities, work and operations that would, but for the termination of this Agreement, have been the responsibility and obligation of the Concessionaire as Project Work, to the standards required by the Project Requirements and the Deemed New Concession Agreement so as to achieve performance of such activities, work and operations without unreasonable Performance Incentive Payments, Non-Availability Events Deductions and Non-Compliance Events Deductions under the Deemed New Concession Agreement;

- (iii) the Estimated Fair Value Forecast Performance Related Payments and Deductions shall be estimated and forecast for the Estimated Fair Value Balance of Term based on historical Performance Incentive Payments, Non-Availability Events Deductions and Non-Compliance Events Deductions (but excluding historical Performance Incentive Payments if the Substantial Completion Date has occurred), and forecast operating plans to achieve during the Estimated Fair Value Balance of Term performance to the standards contemplated by this Agreement of the activities, work and operations that would, but for the termination of this Agreement, have been the responsibility and obligation of the Concessionaire as Project Work;
- (iv) the determination of the amounts referred to in Sections 5.2(a)(i) and (ii) shall have regard to the forecast timing of all such payments and shall include:
 - (A) a reasonable risk assessment of any delays in achieving Substantial Completion of the Eastern Segment by the Eastern Segment Required Substantial Completion Date, if Substantial Completion of the Eastern Segment has not occurred;
 - (B) a reasonable risk assessment of any delays in achieving Substantial Completion of the Western Segment by the Western Segment Required Substantial Completion Date, if Substantial Completion of the Western Segment has not occurred;

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- (C) a reasonable risk assessment of any delays in achieving Total Completion of the Primary Infrastructure Components by the Total Completion Target Date, if Total Completion of the Primary Infrastructure components has not occurred; and
- (D) a reasonable risk assessment of delays in achieving milestones required for Pre-Completion Milestone Payments;
- (v) all amounts referred to in Section 5.2(a) of this Schedule shall be calculated in nominal terms at current prices, recognizing the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast dates of payment, receipt or expenditure, as the case may be; and
- (vi) all amounts referred to in Section 5.2(a) of this Schedule shall be discounted back to the day following the Termination Date at the Termination Date Discount Rate.

5.3 Failure to Agree

If the Province and the Concessionaire do not agree on both the Estimated Fair Value and the Adjusted Estimated Fair Value within 60 Business Days after the Termination Date, then the Estimated Fair Value and/or the Adjusted Estimated Fair Value, as the case may be, shall be determined in accordance with the Dispute Resolution Procedure.

5.4 Payment by the Province if a Positive Amount

Subject to Sections 5.5 [No Payment by the Province if a Negative Amount] and 5.6 [Payment by the Concessionaire if a Negative Amount] of this Schedule, the Province shall pay to the Concessionaire an amount equal to the Adjusted Estimated Fair Value on or before the latest of:

- (a) the date that is 60 Business Days after the Termination Date;
- (b) the date that is 60 Business Days after the date on which this Part 5 [Estimated Fair Value Procedure] of this Schedule becomes applicable if the Province elects to pay the Adjusted Highest Compliant Bid Price determined according to Part 4 [Rebidding Procedure] of this Schedule and thereafter:
 - (i) the Province elects in accordance with Section 3.3 [Subsequent Election to Change Valuation Procedure] of this Schedule to pay the Adjusted Estimated Fair Value determined according to Part 5 [Estimated Fair Value Procedure] of this Schedule; or
 - (ii) it is agreed by the Province and the Concessionaire or determined by the Dispute Resolution Procedure that the Province's election to pay the Adjusted Highest Compliant Bid Price was not effective in accordance with Section 3.2 [Province Election of Valuation Procedure] of this Schedule; or
 - (iii) the Province is required pursuant to Section 4.8 [Bidding Process Not Completed] of this Schedule to pay the Adjusted Estimated Fair Value

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determined according to Part 5 [Estimated Fair Value Procedure] of this Schedule; and

- (c) the date that is 30 Business Days after the date on which the Adjusted Estimated Fair Value is finally determined by agreement of the Province and the Concessionaire or by the Dispute Resolution Procedure;

provided that, if there is a dispute as to the Adjusted Estimated Fair Value, any undisputed amount shall be paid on or before the payment date referred to in Section 5.4(a) of this Schedule or the payment date referred to in Section 5.4(b) of this Schedule, whichever is later, and any remainder shall be paid on or before the payment date referred to in Section 5.4(c) of this Schedule with interest on such remainder at a rate of interest per annum equal to the Prime Rate calculated from the payment date referred to in Section 5.4(a) of this Schedule or the payment date referred to in Section 5.4(b) of this Schedule, whichever is later, until the date of payment.

5.5 No Payment by the Province if a Negative Amount

If the Adjusted Estimated Fair Value is zero or a negative amount, then the Province shall have no obligation to make any payment to the Concessionaire, and with effect from the time that the Province gives notice to the Concessionaire that the Adjusted Estimated Fair Value is zero or a negative amount (but without prejudice to any right of the Concessionaire to dispute any determination that the Adjusted Estimated Fair Value is zero or a negative amount), the provisions of Section 7.5 [Full and Final Settlement] of this Schedule shall apply.

5.6 Payment by the Concessionaire if a Negative Amount

If the Adjusted Estimated Fair Value is a negative amount, then the Concessionaire shall pay to the Province the amount by which the Adjusted Estimated Fair Value is negative on or before the latest of:

- (a) the date that is 60 Business Days after the Termination Date; and
- (b) the date that is 60 Business Days after the date on which this Part 5 [Estimated Fair Value Procedure] of this Schedule becomes applicable if the Province first elects to pay the Adjusted Highest Compliant Bid Price determined according to Part 4 [Rebidding Procedure] of this Schedule and thereafter:
 - (i) the Province elects in accordance with Section 3.3 [Subsequent Election to Change Valuation Procedure] of this Schedule to pay the Adjusted Estimated Fair Value determined according to Part 5 [Estimated Fair Value Procedure] of this Schedule; or
 - (ii) it is agreed by the Province and the Concessionaire or determined by the Dispute Resolution Procedure that the Province's election to pay the Adjusted Highest Compliant Bid Price was not effective in accordance with Section 3.2 [Province Election of Valuation Procedure] of this Schedule; or
 - (iii) the Province is required pursuant to Section 4.8 [Bidding Process Not Completed] of this Schedule to pay the Adjusted Estimated Fair Value

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determined according to Part 5 [Estimated Fair Value Procedure] of this Schedule; and

- (c) the date that is 30 Business Days after the date on which the Adjusted Estimated Fair Value is finally determined by agreement of the Province and the Concessionaire or by the Dispute Resolution Procedure;

provided that, if there is a dispute as to the Adjusted Estimated Fair Value, any undisputed amount shall be paid on or before the payment date referred to in Section 5.6(a) of this Schedule or the payment date referred to in Section 5.6(b) of this Schedule, whichever is later, and any remainder shall be paid on or before the payment date referred to in Section 5.6(c) of this Schedule with interest on such remainder at a rate of interest per annum equal to the Prime Rate calculated from the payment date referred to in Section 5.6(a) of this Schedule or the payment date referred to in Section 5.6(b) of this Schedule, whichever is later, until the date of payment.

5.7 Conduct of Work

If the provisions of this Part 5 [Estimated Fair Value Procedure] of this Schedule apply pursuant to Section 5.1 [Application of Estimated Fair Value Procedure] of this Schedule, the Province shall have the right after the Termination Date to perform or procure the performance of any activities, work and operations in the nature of Project Work, and the value of such activities, work and operations shall not be taken into account for the purposes of determining the Estimated Fair Value.

5.8 Post Termination Service Payments

If, after the Province becomes obligated to make payments to the Concessionaire under Section 4.9 [Post Termination Service Payments] of this Schedule, the provisions of Part 5 [Estimated Fair Value Procedure] become applicable to the calculation of the compensation payable to the Concessionaire on a termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] applies, then within 14 days after the end of each Post Termination Payment Period falling within the Post Termination Service Term, the Province shall pay to the Concessionaire the Post Termination Service Amount for such Post Termination Payment Period to the extent (if any) such Post Termination Service Amount is greater than zero, provided however that the Province shall not be required to make any payments under this Section 5.8 [Post Termination Service Payments] of this Schedule in respect of a Post Termination Payment Period if a payment was made in respect of that Post Termination Payment Period under Section 4.9 [Post Service Termination Payments] of this Schedule, and provided further that the Province shall be entitled to withhold any payment under this Section 5.8 [Post Termination Service Payments] of this Schedule if the Province reasonably believes that the aggregate of such payment and all previous payments made under this Section and all previous payments made under Section 4.9 [Post Termination Service Payments] would reduce the Adjusted Estimated Fair Value to zero or less. To the extent such Post Termination Service Amount is a negative amount, the amount by which it is negative will be used in the calculation of the Post Termination Service Amount for the next Post Termination Payment Period as provided in subsection (c) of the definition of Post Termination Service Amount in Section 1.1 [Definitions] of Schedule 1.

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PART 6 - COMPENSATION ON TERMINATION FOR SPECIAL CIRCUMSTANCES

6.1 Obligation to Pay Special Termination Sum

If the Province terminates this Agreement pursuant to Section 12.3(a) as a result of any Concessionaire Default referred to in Section 12.1(f), or pursuant to Section 12.3(e) or Section 14.1(a), the Province shall pay to the Concessionaire a termination sum (the “**Special Termination Sum**”) equal to the Revised Senior Debt Termination Amount, subject to adjustment pursuant to Part 7 [General Provisions] of this Schedule.

6.2 Date for Payment

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

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

provided that, if there is a dispute as to the calculation of the Special Termination Sum, any undisputed amount shall be paid on or before the payment date referred to in Section 6.2(a) of this Schedule, and any remainder shall be paid on or before the payment date referred to in Section 6.2(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate calculated from the payment date referred to in Section 6.2(a) of this Schedule until the date of payment.

PART 7 - GENERAL PROVISIONS

7.1 No Compensation to Extent of Insurance

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

- (a) that:
 - (i) the Concessionaire recovers or is entitled to recover under any Required Insurance, or would have been able to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) there are insurance proceeds available to the Concessionaire in respect of the Project, or that would have been available to the Concessionaire in respect of the Project under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement;

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Concessionaire or of any person for whom the Concessionaire is in law responsible (including, but not limited to,

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- by reason of non-disclosure or under-insurance or failure or insolvency of the insurer), or for any other reason, excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies; or
- (b) that the Concessionaire recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Concessionaire has in fact taken out and maintained; or
- (c) that the Province has made or authorized payment to or for the account of or on behalf of the Concessionaire or the Concessionaire is entitled to receive proceeds of insurance, under any of Sections 6.18(b), (c), (d) and (e) (or, in respect of insurance proceeds that in accordance with such Sections would have been payable by insurers had the relevant insurance continued to be in effect, under Section 6.21(b)(i)), and such payments were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or
- (d) of any amounts in respect of deductibles and waiting periods under any of the insurance referred to in either of Sections 7.1(a) and (b), provided there shall be no reduction under this subsection (d) if it would reduce the amount of any Province Default Termination Sum or Non-Default Termination Sum below the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, whichever is applicable.

7.2 Gross Up of Termination Payments

- (a) For the purpose of this Section:
- (i) **“Deemed Corporate Concessionaire”** means a fictional fully taxable single purpose British Columbia resident corporation that:
- (A) is, and has since the date of this Agreement been, a subsidiary of a public corporation carrying on an active business with the same fiscal year end as the Concessionaire; and
- (B) has had the same revenues and expenses as the Concessionaire and has taken all exemptions, relief, allowances, deductions, set offs and credits permitted under Laws relating to Income Taxes (including any that would be available in relation to the Project) since the date of this Agreement so as to minimize its Income Tax payable;
- (ii) **“Income Tax”** means any Tax imposed on the income of a person by any Governmental Authority within Canada; and
- (iii) **“Taxable Shareholder Portion”** means:
- (A) 100% if the Concessionaire is a taxable entity with respect to Income Tax; or

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- (B) where subsection (A) above does not apply, that percentage, measured as at the Termination Date, of the total equity interests of the Concessionaire that are not owned, directly or indirectly, by persons that (1) are described in Section 149 of the *Income Tax Act* (Canada), or the equivalent section if there are changes to the *Income Tax Act* (Canada), and (2) are not subject to the payment of Income Tax in respect of payments by the Concessionaire from proceeds of compensation on termination.
- (b) If any amount payable by the Province as compensation on termination under Part 1 [Compensation on Termination For Province Default], Part 2 [Compensation on Non-Default Termination] or Part 6 [Compensation on Termination for Special Circumstances] of this Schedule, as such amount may be increased or decreased pursuant to the other provisions of this Part 7 [General Provisions] of this Schedule, would be in the hands of a Deemed Corporate Concessionaire (if the Deemed Corporate Concessionaire were being paid the amount payable on termination), subject to Income Tax payable to a Governmental Authority within Canada that would not have been payable but for the fact that such amount is payable as compensation on termination (the “**Excess Income Tax**”), then the Province shall pay to the Concessionaire the Taxable Shareholder Portion of the additional amount that would be required to be paid to the Deemed Corporate Concessionaire (if the Deemed Corporate Concessionaire were being paid the amount payable on termination) to put the Deemed Corporate Concessionaire in the same financial position after Income Tax as it would have been in had the amount payable on termination (or portion thereof) not been subject to any such Excess Income Tax, taking account of any exemption, relief, allowances, deductions, setoffs or credits in respect of Income Tax (whether available by choice or not) that would be available to the Deemed Corporate Concessionaire to reduce the Income Tax to which the amount payable on termination, or any portion thereof, would be subject.

7.3 Adjustment for Net Balance

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

- (a) increased by any net balance owing by the Province or BCTFA pursuant to Section 14.9(c); or
- (b) reduced by any net balance owing by the Concessionaire to the Province or BCTFA pursuant to Section 14.9(c).

7.4 Rights of Set-Off

- (a) Subject to Section 7.4(b) of this Schedule, any amount that is payable by the Province to the Concessionaire pursuant to this Schedule shall be reduced by any amount the Province is entitled to set off under Section 10.4 [Province Right of Set Off] (provided this right of set off shall not apply to an amount payable by the Concessionaire to the Province pursuant to Section 14.9(c) where the amount payable by the Province as compensation on termination has been reduced pursuant to Section 7.3 [Adjustment for

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Net Balance] of this Schedule by the amount payable by the Concessionaire to the Province pursuant to Section 14.9(c)).

- (b) Where compensation on termination is payable pursuant to Part 1 [Compensation on Termination for Province Default], Part 2 [Compensation on Non-Default Termination] or Part 6 [Compensation on Termination for Special Circumstances] of this Schedule, subject to the provisions of Section 38 of the *Financial Administration Act* (British Columbia), the right of set off under Section 10.4 [Province Right of Set Off], and any adjustment contemplated by Section 7.3(b) of this Schedule, may only be exercised against any such payment of compensation if and to the extent that such compensation exceeds the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, whichever is applicable, at that time.
- (c) To any extent that:
- (i) any amount the Province is entitled to set off referred to in Section 7.4(a) of this Schedule; or
 - (ii) any net balance owing by the Concessionaire referred to in Section 7.3(b) of this Schedule;

is not fully paid and satisfied by deduction from or reduction of any amounts payable by the Province to the Concessionaire under this Schedule, whether by reason of Section 7.4(b) of this Schedule, or because the amount referred to in Section 7.4(c)(i) or Section 7.4(c)(ii) of this Schedule is greater than the amount of compensation on termination payable by the Province under this Schedule, or because no compensation on termination is payable by the Province under this Schedule, or for any other reason, the Concessionaire shall pay to the Province on demand the amount remaining unpaid and unsatisfied.

7.5 Full and Final Settlement

Either:

- (a) payment of the amount payable by the Province pursuant to this Schedule in respect of a termination of this Agreement; or
- (b) a determination under Section 4.5 [No Payment by the Province if a Negative Amount] or Section 5.5 [No Payment by the Province if a Negative Amount] of this Schedule that the Province has no obligation to make any payment to the Concessionaire;

shall be in full and final satisfaction of all Claims that, in relation to any Supervening Events, or breaches or defaults under, or termination of, this Agreement, or any other cause, matter or thing whatsoever with respect to this Agreement, can be made or bought against the Province or BCTFA by the Concessionaire, whether under contract, tort, restitution or otherwise, except for any liability of the Province or BCTFA to the Concessionaire that arose prior to the Termination Date (but not from the termination itself) and has not already been compensated for, or taken into account, in determining the relevant compensation amount and adjustments thereto. The right to compensation payable under this Schedule is the sole and exclusive remedy of the Concessionaire against the Province and BCTFA for any termination of this

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Agreement and the Concessionaire is excluded from all other rights or remedies in respect thereof. Without limiting the generality of the foregoing, the Concessionaire shall have no Claim against the Province or BCTFA in respect of any Project Work performed up to the Termination Date, or for any refund or repayment of all or any part of the Performance Incentive Payments, Non-Availability Events Deductions or Non-Compliance Events Deductions, apart from any compensation payable by the Province pursuant to this Schedule, except for any liability of the Province or BCTFA to the Concessionaire that arose prior to the Termination Date (but not from the termination itself) and has not already been compensated for, or taken into account, in determining the relevant compensation amount and adjustments thereto. The Concessionaire acknowledges and agrees that the provisions of this Schedule do not constitute or result in a penalty or forfeiture.

7.6 Outstanding Senior Debt Amounts

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

7.7 Payment to Senior Lenders

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

7.8 Calculation of Compensation

- (a) Promptly after the giving of:
- (i) any Notice of Intention to Terminate; or
 - (ii) any notice of termination pursuant to a right to terminate the validity of which is or has been determined or accepted in accordance with Section 14.7(b) or Section 14.7(c);

in respect of a termination of this Agreement to which any of Sections 1.1 [Obligation to Pay Province Default Termination Sum], 2.1 [Obligation to Pay Non-Default Termination Sum] and 6.1 [Obligation to Pay Special Termination Sum] of this Schedule applies, the Concessionaire shall determine in accordance with the provisions of this Agreement the amount of compensation payable as of the actual Termination Date if known and as of an estimated Termination Date otherwise, and shall provide to the Province's Representative notice of such amount and the details of the calculation of each component thereof, including:

- (iii) the most current Financial Model in accordance with Section 2.18 [Financial Model];

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- (iv) certificates of the Agent as to the amount of the Base Senior Debt Termination Amount and the Revised Senior Debt Termination Amount, including particulars of the calculation of the various components thereof;
- (v) where applicable, certificates of senior officers of the Junior Lenders as to the principal amounts advanced as Junior Debt then outstanding, the amount of all principal repayments of Junior Debt, and the amount of all payments of interest and other Distributions in respect of Junior Debt;
- (vi) certificates of senior officers of each Principal Contractor as to the amount and calculation of the components of any Principal Contractor Breakage Costs incurred by such Principal Contractor where Principal Contractor Breakage Costs are payable and being claimed as a component of the compensation on termination;
- (vii) certificates from senior officers or directors of the Partners as to:
 - (A) the amount and calculation of the components of any Employee Termination Payments where Employee Termination Payments are payable and being claimed as a component of the compensation on termination;
 - (B) the amount of Partner Capital paid in respect of then issued and outstanding Units;
 - (C) the amount of all Distributions paid in respect of Units or Partner Capital;
 - (D) the amount of all other Distributions; and
 - (E) the matters referred to in subsections (iii), (v) and (vi) above;

together with all such documents and information that the Province's Representative may from time to time in a timely manner reasonably request for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable.

- (b) If the amount of compensation calculated pursuant to subsection (a) above was determined as of an estimated Termination Date, promptly after the actual Termination Date the Concessionaire shall provide to the Province's Representative the calculation, information and documents referred to in subsection (a) above as of the actual Termination Date, together with an explanation (with supporting calculations, certificates and documents) of the difference between the amount of compensation calculated as of the estimated Termination Date and the amount of compensation calculated as of the actual Termination Date.
- (c) In respect of a termination of this Agreement referred to in subsection (a) above, within 30 days after the latest of:

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- (i) the date of receipt by the Province's Representative of a notice of a compensation amount with supporting details of the calculation of each component thereof, certificates and other documents as provided in subsection (a) above;
- (ii) if applicable, the date of receipt by the Province's Representative of the additional explanation, calculations, information, certificates and documents referred to in subsection (b) above; and
- (iii) the date of receipt by the Province's Representative of any other documents and information reasonably requested by the Province's Representative in a timely manner for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable;

the Province's Representative shall by notice to the Concessionaire either:

- (iv) confirm its agreement with the calculation of amount of compensation payable; or
 - (v) confirm its disagreement with the calculation of the amount of compensation payable and provide an explanation and reasonable particulars as to the basis for such disagreement.
- (d) Where the Province confirms its disagreement with the calculation of the amount of compensation payable, the matter shall be referred to and resolved according to the Dispute Resolution Procedure.

7.9 Obligation Arises

Without limiting any other provision of this Agreement or any Law by or under which an obligation of the Province under this Agreement is or may be terminated, limited or otherwise affected, for the purposes of Section 10(1)(a.1) of the TIA, the obligations of the Province, if any, to make any payment pursuant to this Schedule 13 [Compensation on Termination], arise before termination of this Agreement.

7.10 Condition Precedent to Payment

Notwithstanding any other provision of this Schedule or this Agreement, it shall be a condition precedent to any payment by the Province to the Concessionaire of any compensation on termination in excess of an amount equal to the Revised Senior Debt Termination Amount at that time that the Concessionaire shall have complied in all material respects with its obligations under Sections 14.11 [Transfer of Assets] and 14.12(b) to (f) inclusive.