

## SOUTH FRASER PERIMETER ROAD PROJECT

**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:

“**AASHTO**” means American Association of State Highway and Transportation Officials.

“**Accepted Independent Remedial Information**” has the meaning given in Section 3.4 [Further Investigations on Termination For Concessionaire Default] of Schedule 13.

“**Access**” means, for the purposes of Schedule 23 [Privacy Protection], disclosure by the provision of access.

“**Active Construction Zone**” means an area in which surveying, construction, maintenance or utility activities take place on or adjacent to a roadway, to the extent that the passage of public traffic may be influenced and includes:

- (a) prior to the Total Completion Date, the entire Project Site; and
- (b) following the Total Completion Date, those areas of the Project Site within which the Concessionaire is then carrying out any Rehabilitation, Reinstatement Work, End of Term Work or other Construction Activities.

“**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 scheduled under the Initial Senior Lending Agreements (as at the Effective Date) to be outstanding at that date, 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 [Notification Regarding Additional Permitted Borrowing] of the Lenders’ Remedies Agreement;

and provided further that any such excess amount of principal:

- (c) advanced as financing that is approved by the Province as part of any Supervening Event, Province Change or Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes]; or
- (d) outstanding from time to time as a result of advances of principal under the Senior Lending Agreements that do not increase the principal amount of Senior Debt outstanding under the Senior Lending Agreements to an amount greater than the aggregate of:
  - (i) the Original Senior Commitment; and

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- (ii) any increases in the principal amount of all funding for the Project committed under the Senior Lending Agreements, referred to in Section 5.14(c)(iii);

shall be deemed not to constitute Additional Permitted Borrowing (and, for greater certainty, shall be deemed to constitute Senior Debt).

**“Additional Permitted Borrowing Limit”** means an amount equal to:

- (a) 10% of the Original Senior Commitment at the Effective Date, for any Additional Permitted Borrowing during the period from the Effective Date to the date on which the principal amount outstanding under the Senior Lending Agreements is reduced to 50% or less of the Original Senior Commitment at the Effective Date; and thereafter;
- (b) the higher of:
  - (i) 5% of the Original Senior Commitment at the Effective Date; and
  - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in subsection (a) of this definition.

**“Adjusted Estimated Fair Value”** means the Estimated Fair Value, adjusted as follows:

- (a) the aggregate, without duplication, of the following amounts will be deducted from the Estimated Fair Value:
    - (i) the Bid Costs; and
    - (ii) an amount equal to the aggregate amount of all payments paid by the Province to the Concessionaire under Sections 4.9 [Post Termination Service Payments] and 5.8 [Post Termination Service Payments] of Schedule 13, plus an amount equal to interest on the amount of each such payment calculated from the date of payment thereof by the Province to the date of payment of the Adjusted Estimated Fair Value at a rate of interest per annum equal to the No Default Interest Rate;
  - (b) the aggregate, without duplication, of the following amounts will be added to the Estimated Fair Value:
    - (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the Estimated Fair Value is calculated; and
    - (ii) any insurance proceeds and other amounts that are owing to the Concessionaire (and that the Concessionaire is entitled to retain), to the extent not included in subsection (b)(i) of this definition;
- to the extent that:
- (iii) the amounts referred to in subsections (b)(i) and (ii) of this definition have not been directly taken into account in the calculation of the Estimated Fair Value

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and will not be adjusted in the adjustment referred to in Section 7.3 [Adjustment for Net Balance] of Schedule 13; and

- (iv) the Province has received such amounts in accordance with this Agreement and is entitled to retain them.

**“Adjusted Highest Compliant Bid Price”** means the Highest Compliant Bid Price, adjusted as follows:

- (a) the aggregate, without duplication, of the following amounts will be deducted from the Highest Compliant Bid Price:
  - (i) the Bid Costs; and
  - (ii) an amount equal to the aggregate amount of all payments paid by the Province to the Concessionaire under Section 4.9 [Post Termination Service Payments] of Schedule 13, plus an amount equal to interest on the amount of each such payment calculated from the date of payment thereof by the Province to the date of payment of the Adjusted Highest Compliant Bid Price at a rate of interest per annum equal to the No Default Interest Rate; and
  - (iii) an amount equal to all reasonable and proper costs and expenses incurred by the Province during the Post Termination Province Cost Accounting Period to carry out and perform, or procure the carrying out and performance of, in the manner and to the standards contemplated by this Agreement, obligations, responsibilities, activities and work that would, but for the termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of Schedule 13 applies, have been the responsibility and obligation of the Concessionaire under this Agreement including, without limitation, the Project Work and the rectification and mitigation of all defaults by the Concessionaire under this Agreement occurring prior to such termination;
- (b) the aggregate, without duplication, of the following amounts will be added to the Highest Compliant Bid Price:
  - (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the highest priced Compliant Bid is received or, if no Compliant Bid is received, on the final date for the submission of bids pursuant to the Bidding Process; and
  - (ii) any insurance proceeds and other amounts that are owing to the Concessionaire (and that the Concessionaire is entitled to retain), to the extent not included in subsection (b)(i) of this definition;

to the extent that:

- (iii) the amounts referred to in subsections (b)(i) and (ii) of this definition have not been directly taken into account in that Compliant Bid and will not be adjusted in the adjustment referred to in Section 7.3 [Adjustment for Net Balance] of Schedule 13; and

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- (iv) the Province has received such amounts in accordance with this Agreement and is entitled to retain them.

“**Advisory Signing Plan**” means the sub-plan of the Traffic Management Plan described in Section 7.2.4 [Advisory Signing Plan] of 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) as at the date of this Agreement (excluding any subsequent amendment to such definition and notwithstanding the provisions of Section 2.6 [References to Statutes and Reference Documents] of this Schedule);

and in addition includes:

- (c) in the case of the Concessionaire:
  - (i) each Partner;
  - (ii) each Parent Partner; and
  - (iii) any person that is an “affiliate” of any Partner or Parent Partner within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) as at the date of this Agreement;
- (d) in the case of a Partner:
  - (i) any Parent Partner of such Partner; and
  - (ii) any person that is an “affiliate” of a Parent Partner of such Partner within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) as at the date of this Agreement; and
- (e) in the case of a Principal Contractor that is not a corporation, each corporation or person that is a member of the joint venture or partnership that comprises such Principal Contractor, and each person that is an “affiliate” of a member of the joint venture or partnership that comprises such Principal Contractor within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) 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

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security for the Senior Debt from time to time in accordance with the Senior Lending Agreements and of which notice in writing is given to the Province.

“**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.

“**Alligator Cracking**” means, for the purposes of Schedule 5 [OMR and End of Term], cracks which form a network of multi-sided blocks resembling the skin of an alligator. Block size can range in size which indicates the depth of failure taking place. The pattern of cracking is usually longitudinal, originating in the wheel paths, but can occur transversely due to frost heaves or settlement and also along the centre line on narrow two lane roads.

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

“**AP Holdback**” has the meaning given in Section 6.7 [Availability Payments Holdback at End of Term] of Schedule 10.

“**Applicant**” has the meaning given in Section 8.1(a).

“**Arbitration Dispute Notice**” has the meaning given in Section 4.1 [Referral to Arbitration] of Schedule 16.

“**Arbitrator**” has the meaning given in Section 4.5 [No Conflict for Arbitrator] of Schedule 16.

“**Architect**” means a person having a Certificate of Practice with the Architectural Institute of British Columbia.

“**Asphalt Cement Price Adjustment**” means a payment payable pursuant to Section 1.4 [Obligation to make Asphalt Cement Price Adjustment] of Schedule 10.

“**Asset Management**” means, for the purpose of Schedule 5 [OMR and End of Term], the provision of the desired level of the Operation, the Maintenance and the Rehabilitation in the most cost effective manner during the Term.

“**Asset Management Plan**” means the plan prepared by the Concessionaire in accordance with Section 4.4 [Asset Management Plan] of Appendix B to Schedule 5.

“**Asset Preservation Performance Measures**” or “**APPMs**” has the meaning given in Section 1.4(c)(ii) of Schedule 5 [OMR and End of Term].

“**ASTM**” means the American Society for Testing and Materials.

“**Availability Payments**” means, together, the Availability Payments for Both Segments and the Availability Payments for the Eastern Segment.

“**Availability Payments for Both Segments**” means the payments paid or payable by the Province to the Concessionaire pursuant to Section 1.3(b) of Schedule 10 [Performance Mechanism].

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“**Availability Payments for the Eastern Segment**” means the payments paid or payable by the Province to the Concessionaire pursuant to Section 1.3(a) of Schedule 10 [Performance Mechanism].

“**Base Senior Debt Termination Amount**” means, subject to Section 5.14 [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) by the Concessionaire to the Senior Lenders under the Senior Lending Agreements in respect of Permitted Borrowing (including 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 (exclusive of amounts referred to in subsection (b) of this definition), 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 Concessionaire the undisputed portion of the Province Default Termination Sum or the Non-Default Termination Sum, whichever is applicable; and
- (b) all amounts (including Hedge Termination Amounts, make whole payments in respect of public bond financings and other breakage costs, but excluding premiums and prepayment charges, fees or penalties under any debt financing or on early redemption of bonds, notes or other evidence of indebtedness (provided that, for greater certainty, such exclusion shall not apply to any such make whole payments)) payable by the Concessionaire 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 Concessionaire 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 Base Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts held by or on behalf of the Concessionaire or any of the Partners on the Termination Date with the exception only of the “Distribution Account” as defined in the Credit Agreement referred to in paragraph 1 of Part 1 of Schedule 25 [Financing and Partnership Agreements] and the “Debtor’s Separate Bank Account” as defined in each of the General Security Agreements referred to in paragraphs 6 and 7 of Part 1 of Schedule 25 [Financing and Partnership Agreements];
- (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 Concessionaire 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;
- (f) any Additional Permitted Borrowing and any interest and Default Interest on such Additional Permitted Borrowing; and

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- (g) 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 Concessionaire, 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 or the Non-Default 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.

“**BCERMS**” or “**British Columbia Emergency Response Management Systems**” means the Province’s comprehensive management system based upon the Incident Command System that ensures a coordinated and organized response and recovery to all emergency incidents and disasters and provides the framework for a standardized emergency response in British Columbia.

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

“**BC Rail**” means British Columbia Railway Company and includes BCR Port Subdivision Ltd.

“**Bearing**” means, for the purposes of Schedule 5 [OMR and End of Term], the Superstructure support elements between the Bridge seats and the Bridge Superstructure and composed of steel, rubber or other materials and separated into two general categories as follows:

- (a) fixed, allowing only rotational movements; and
- (b) expansion, allowing longitudinal as well as rotational movements,

referring to drawings for specific Bridges.

“**Best Management Practices**” means, for the purposes of Schedule 6 [Environmental Obligations], the environmental best management practices applicable for highway construction, maintenance and operations, including but not limited to Good Industry Practice and the Reference Documents.

“**Bid Costs**” means the reasonable and proper costs incurred by the Province in carrying out the Bidding Process and/or in connection with any calculation of the Estimated Fair Value, and includes the reasonable and proper costs incurred to obtain the Independent Remedial Information.

“**Bidding Process**” means the process by which the Province:

- (a) requests bid proposals from any third parties interested in acquiring, 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, as provided in Part 4 [Rebidding Procedure] of Schedule 13; and



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- (b) evaluates the responses from those interested parties with a view to entering into a New Concession Agreement with a New Concessionaire in accordance with Part 4 [Rebidding Procedure] of Schedule 13.

“**Bidding Process Monitor**” has the meaning given in Section 4.3(d) of Schedule 13.

“**Bidding Process Period**” means the period commencing on the day following the Termination Date and ending on the second anniversary of the Termination Date, plus an additional amount of time (calculated from the date a dispute is referred to the relevant dispute resolution procedure to the date of final resolution of the dispute) equal to the amount of time required to resolve any disputes regarding:

- (a) whether or not any Independent Remedial Information is reasonable; or
- (b) whether or not there is a Liquid Market; or
- (c) whether or not any other conditions in Section 3.2 [Province Election of Valuation Procedure] of Schedule 13 to the applicability of Part 4 [Rebidding Procedure] of Schedule 13 have been or were satisfied.

“**Black Ice**” means, for the purposes of Schedule 5 [OMR and End of Term], a very dangerous, Slippery condition on a pavement surface created by transparent ice on the dark asphalt, which is found at times in such locations as in shaded areas and is not normally noticeable in advance of driving onto highway sections with such a condition.

“**BMIS**” or “**Bridge Management Information System**” means the Ministry’s corporate structure asset management application that is used to maintain inventory and condition data for Structures to support the Ministry programs.

“**BNSF**” means BNSF Railway Company.

“**BNSF Master Agreement**” means the railway master agreement between the Province and BNSF, a draft copy of which is dated January 26, 2010 in folder 0345.10.15.05 of the Data Room, as executed by the parties thereto, and thereafter as amended, supplemented or replaced from time to time.

“**Both Segments**” means, together, the Eastern Segment and the Western Segment.

“**Bridge**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], a structure providing a means of transit for pedestrians and/or vehicles above the land and/or water surface of a valley, arroyo, gorge, river, stream, lake, canal, tidal inlet, gut or strait, above a highway, railway or other obstruction, whether natural or artificial and consisting of the following essential parts:

- (a) the Substructure consisting of its abutments and pier or piers supporting the Superstructure;
- (b) the Superstructure slab, girder, truss, arch or other span or spans supporting the highway loads and transferring to them the Substructure; and
- (c) the highway and its incidental parts functioning to receive and transmit traffic loads.

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“**Bridge Deck**” means, for the purposes of Schedule 4 [Design and Construction], the structural element under the deck wearing surface system that transfers loads from the deck surface to the Bridge’s Superstructure or Substructure components.

“**Bridge Structural Engineer**” means a Professional Engineer specializing in Bridge structural design, construction, maintenance and rehabilitation.

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

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

“**CEAA**” means the Canadian Environmental Assessment Agency.

“**CEAA Screening Report and Decision Letter**” means the screening recommendation and decision summary, Canadian Environmental Assessment Registry File No.: 06-01-24060, dated July 28, 2008 provided by the CEAA at the conclusion of the CEAA screening assessment conducted as part of the harmonized federal/provincial review undertaken for the EA Application review processes and as attached as Appendix B [CEAA Screening Report and Decision Letter] to Schedule 6.

“**Certificate of Substantial Completion**” means the certificate issued by the Independent Certifier in accordance with Article 6 [Construction Certification] of Part 3 of Schedule 4 confirming the achievement of Substantial Completion for the Relevant Components referred to therein.

“**Certificate of Total Completion**” means the certificate issued by the Independent Certifier in accordance with Article 6 [Construction Certification] of Part 3 of Schedule 4 confirming the achievement of Total Completion for the Relevant Components referred to therein.

“**Change Certificate**” has the meaning given in Section 2.8 [Change Certificate] of Schedule 11.

“**Change in Control**” of a person (in this definition, the “**Subject Person**”) means a change, directly or indirectly, in the person(s) having, directly or indirectly, Control of the Subject Person.

“**Change in Costs**” means, in respect of any Province Change or Supervening Event, the net amount, which may be positive or negative, of:

- (a) all additional costs (including direct and indirect costs, capital expenditure costs and financing costs) which the Concessionaire reasonably expects to incur in order to implement such Province Change or as a result of such Supervening Event, as the case may be, including Availability Payments that would otherwise have been payable to the Concessionaire but for such Province Change or Supervening Event, as the case may be; and
- (b) any cost savings which the Concessionaire can realize from the implementation of such Province Change or as a result of such Supervening Event, as the case may be.

“**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 amendment to or repeal of any 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) and any change in the interpretation of

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any Law other than a judgement of a relevant Court which changes binding precedent in British Columbia) which is binding on the Concessionaire, but excluding any such new Law, amendment or repeal:

- (a) 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;
- (b) relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Permit; or
- (c) consisting of an amendment, replacement or repeal of any of the Reference Documents.

“**Change Report**” has the meaning given in Section 2.3 [Preparation of Change Report] of Schedule 11.

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

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

“**Classification**” and “**Class**” designates, for the purposes of Schedule 5 [OMR and End of Term], the kinds and levels of maintenance services to be provided according to the amount and type of service a highway is expected to provide, and is, for each individual highway or portion of highway, the Class designated in accordance with the following tables.

<b>Classification – Summer</b>	
<b>Class</b>	<b>A.D.T. (average daily traffic) Vehicles per Day</b>
<b>1</b>	Over 10,001
<b>2</b>	5,001 - 10,000
<b>3</b>	1,001 - 5,000
<b>4</b>	501 - 1,000
<b>5</b>	101 – 500
<b>6*</b>	11 – 100
<b>7*</b>	0 – 10
<b>8</b>	A highway, typically without a constructed road but for which maintenance responsibilities exist for such things as danger tree removal and drainage, and which may also have other improvements to maintain such as pedestrian and bicycle paths.

\* Roads classed 6 or 7 with heavy industrial use will be increased on Class 1 RIMS.

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Classification – Winter	
Class	Definition
<b>A</b>	High volume traffic (over 5,000 winter average daily traffic count) or commuter routes and certain expressways and freeways through mountain passes, as determined by the Minister. They are heavy commuter traffic routes extended to include the bulk of vehicles commuting daily to a center and cut-off where traffic drops below 2,500 winter average daily traffic count. Very high volume ski hill and commuter routes.
<b>B</b>	All trunk and main routes (or portion thereof as designated by the Minister) not included in Class A, with a cut-off traffic volume of 1,000 winter average daily traffic count. Lower volume ski hill and commuter routes.
<b>C</b>	All school bus routes and industrial (truck) traffic routes (more than 25% trucks) not included in Class A and B.
<b>D</b>	All other regularly maintained winter routes.
<b>E</b>	All other irregularly maintained winter routes.
<b>F</b>	Roads not maintained in the winter, or not open, or not maintained by the Minister.

“**Clear Zone**” has the meaning, for the purposes of Schedule 4 [Design and Construction], as set out in the BC Supplement to TAC.

“**Clock-face Hour**” means the period of 60 minutes which, for any relevant hour xx, starts with xx:00 and ends with xx:59.

“**Closure**” means any 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:

- (a) that is instigated by the Concessionaire;
- (b) that is required for any works by a Governmental Authority or for any inspection, investigation or survey (whether carried out by the Concessionaire, the Province, or any other Governmental Authority or any other person);
- (c) that results from an Incident;
- (d) that is instigated by the Police or other Relevant Authority for health, safety or emergency reasons or that results from Protest Action; or
- (e) that materially affects the ability to use that highway or such part thereof in a safe manner resulting from the build up of snow or ice or from any other natural event physically affecting the highway,

but excluding a Stoppage, and provided also that any traffic congestion or slowing of the flow of traffic in a lane or lanes within the highway will not by itself be considered to be a Closure (including where the same results from speed restrictions properly imposed from time to time as a direct result of adverse weather conditions or seasonal restrictions for the time being affecting the highway, but excluding where the standard of construction and/or condition of the highway has contributed to the need for such speed restrictions).

“**CMS**” means changeable message signs.

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“**CN Rail**” means Canadian National Railway Company.

“**Collateral Agreement**” means an agreement to be entered into between the Province, BCTFA, each Principal Contractor and the Concessionaire in the form set out in Schedule 19 [Collateral Agreements], each as amended, supplemented or replaced from time to time in accordance with this Agreement.

“**Committed Standby Facility**” means any credit facility established by or for the benefit of the Concessionaire for the sole purpose of funding any cost overruns, increased expenses or loss of revenue incurred by the Concessionaire in connection with the Project, provided that funds advanced under any such facility are not used in substitution for other non-standby sources of committed funding designated for those purposes, and includes any such facility established as a result of the Concessionaire complying with its obligation under Section 8.4(d)(i).

“**Communications Director**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

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

- (a) the circumstances referred to in Section 2.15(e)(i) as constituting a Compensation Event;
- (b) a breach by the Province of Section 3.1 [Provision of Project Site], or a discrepancy specified in Section 2.15(e)(ii) except as otherwise provided in:
  - (i) Section 2.15(e)(ii); and
  - (ii) Section 1.7(b) of Schedule 8 [Lands];
- (c) the existence as at the Financial Submittal Date of any Project Site Agreement, Railway Crossing Agreement, Railway Order, Encumbrance or Utility Agreement, or amendment thereto, affecting any Specified Concession Lands or Specified Other Highway Lands or any Infrastructure on any Specified Concession Lands or Specified Other Highway Lands, that:
  - (i) is a Project Site Agreement, Railway Crossing Agreement, Railway Order, Encumbrance or Utility Agreement, or amendment thereto, that:
    - (A) is not described in Appendix C [Utility Agreements] to Schedule 4 or in any of Appendices A [Specified Concession Lands], B [Specified Other Highway Lands] or C [Certain Project Site Encumbrances] to Schedule 8;
    - (B) is not registered in the Land Title Office against title to any Specified Concession Lands or Specified Other Highway Lands as at the Financial Submittal Date; and
    - (C) the Concessionaire does not otherwise have knowledge of, could not have discovered through the exercise of reasonable due diligence, and could not have reasonably anticipated from an analysis of all relevant

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information available to the Concessionaire (including the Disclosed Data) as at the Financial Submittal Date, having regard to the opportunity afforded the Concessionaire to conduct such due diligence and analysis before 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);

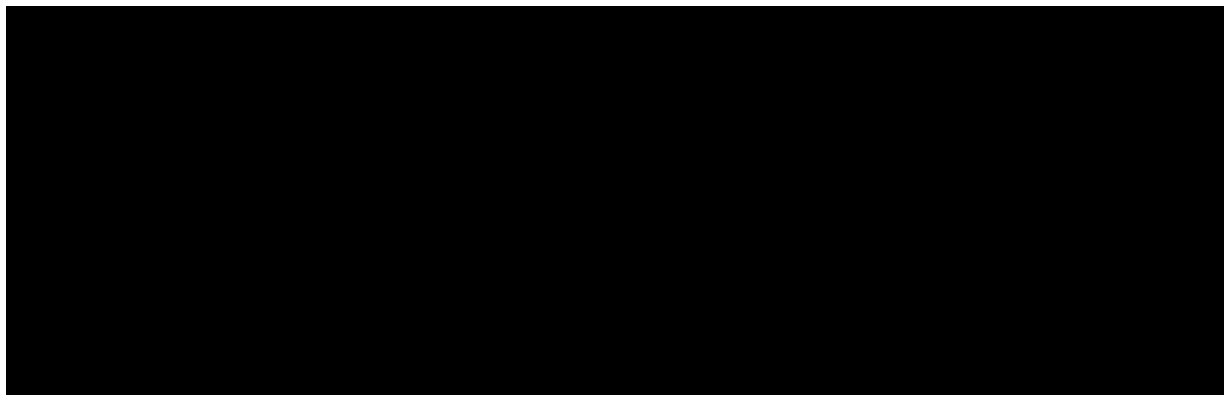
or

- (ii) is an Encumbrance registered in the Land Title Office against title to any Specified Concession Lands or Specified Other Highway Lands as at the Financial Submittal Date and consists of a mortgage, an assignment of rents, a right of first refusal to purchase or to lease, or an option to purchase or to lease; or
- (iii) is a lease, other than a lease in respect of Utilities, and other than a Utility Agreement;
- (d) an amendment of the BNSF Master Agreement from the form thereof dated January 26, 2010 in folder 0345.10.15.05 of the Data Room between the Effective Date and the date of execution and delivery of the BNSF Agreement by the parties thereto, and thereafter, the termination of the BNSF Master Agreement or any amendment to the BNSF Master Agreement which in any case adversely affects the rights, obligations or liabilities of the Concessionaire under this Agreement;
- (e) 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;
- (f) any defect in the Environmental Assessment Certificate other than in connection with changes or amendments to the Environmental Assessment Certificate that are the responsibility and risk of the Concessionaire pursuant to Section 1.4 [Environmental Impacts and Changes to Environmental Assessment Certificate] of Schedule 6;
- (g) the circumstances referred to in Section 4.20(c) as constituting a Compensation Event;
- (h) delay by the Province in authorizing and directing the Insurance Trustee to disburse Property Damage Insurance Proceeds in accordance with Section 6.18(c) or Section 6.18(d), as applicable, after all conditions to such authorization and direction have been satisfied, beyond the relevant time periods provided for in those Sections;
- (i) the circumstances referred to in Section 11.1(a)(iv) as constituting a Compensation Event;
- (j) the circumstances referred to in Section 11.2(c) as constituting a Compensation Event;
- (k) the circumstances referred to in Section 11.3(c) as constituting a Compensation Event;
- (l) the circumstances referred to in Section 11.4(d) as constituting a Compensation Event;

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- (m) the circumstances referred to in Section 11.5(c) as constituting a Compensation Event;
- (n) the circumstances referred to in Section 17.3(e) as constituting a Compensation Event;
- (o) the existence of any Province Subsequent Contamination, except to the extent:
  - (i) any actions required to be taken by the Concessionaire pursuant to Part 3 [Contamination and Hazardous Substances] of Schedule 6 in respect of such Province Subsequent Contamination are required to be taken as a result of or in connection with the Concessionaire or any person for whom the Concessionaire is in law responsible causing, contributing to or exacerbating any such Province Subsequent Contamination; or
  - (ii) any such Province Subsequent Contamination is caused, contributed to or exacerbated by the Concessionaire or any person for whom the Concessionaire is in law responsible;



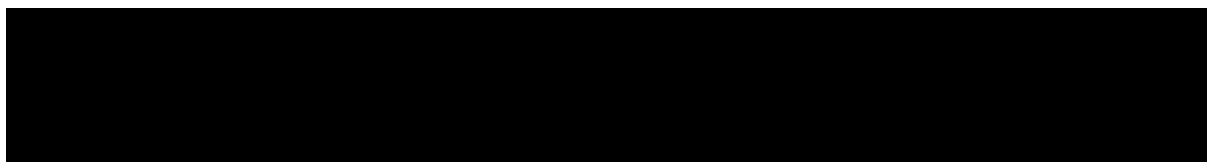
- (q) the carrying out of any Province Work either:
  - (i) after the date listed as the relevant “Completion Date” for such Province Work in Appendix I [Province Work] to Schedule 4; or
  - (ii) other than in accordance with the documents, if any, listed as “Relevant Documents” for such Province Work in Appendix I [Province Work] to Schedule 4, other than a Third Party Segment Defect or a Latent Defect;
- (r) the circumstances referred to in Section 2.2(d)(i) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] as constituting a Compensation Event;
- (s) the circumstances referred to in Section 1.6(b) of Schedule 21 [Delegated Obligations, Rights, Powers and Functions] as constituting a Compensation Event;
- (t) subject to Section 8.9(a), a Protest Action;
- (u) a Discriminatory Change in Law;

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- (v) 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 and destruction of Project Infrastructure caused by the Seismic Event exceeds \$5,000,000 (index linked) for a single Seismic Event;
  - (ii) if such Seismic Event occurs after the Eastern Segment Substantial Completion Date and prior to the Western Segment Substantial Completion Date, all seismic design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure within the Eastern Segment have been complied with and implemented by the Concessionaire; and
  - (iii) if such Seismic Event occurs after the Western Segment Substantial Completion Date, all seismic design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure have been complied with and implemented by the Concessionaire,

the onus of establishing which shall be on the Concessionaire;



- (x) any study, test or trial conducted by the Province in respect of the Project Work;
- (y) acts or omissions of any Third Party Contractor on or about the Project Site occurring on or after the Effective Date;
- (z) the deletion, pursuant to Section 7.1 of a Gravel License, of any of the Gravel Pits (as defined in such Gravel License) from such Gravel License;
- (aa) the existence of a Nonconformity caused solely by a Province Non-Excusable Event;
- (bb) any fire or explosion occurring within the Landfill Closure Area;
- (cc) it has been determined by a court of competent jurisdiction, without any further rights of appeal, that:
  - (i) a part of the Project Site that consists of Concession Lands or Other Highway Lands, is not a “highway” as defined by the *Transportation Act* (British Columbia); and
  - (ii) the *Builders Lien Act* (British Columbia) applies to that part of the Project Site;
- (dd) the delay or failure of the Province or BCTFA to obtain a License to Construct or such other rights, including all necessary approvals, as may be required in order to enable the Concessionaire to obtain, at no cost to the Concessionaire or its Principal Contractors or



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Subcontractors (other than costs of the Concessionaire performing its obligations under Section 5.10 [Licenses to Construct]), access to any of the Excavated Material Placement Areas for the purposes of the placement as permitted in accordance with this Agreement of the amount of excavated materials within such Excavated Material Placement Area as set out in the definition thereof; or

- (ee) the delay or failure of the Province to issue to the Concessionaire a Gravel License as contemplated in Appendix E [Gravel Pits and Form of Gravel License] to Schedule 8 for the Surrey Pit (as described therein), or any interference to the Concessionaire in its extraction of gravel at the Surrey Pit caused by any third party exercising its rights at the Surrey Pit, or any shortfall in the volume of gravel available to the Concessionaire at the Surrey Pit as described in Appendix E [Gravel Pits and Form of Gravel License] to Schedule 8.

**“Complete License”** means, in respect of any licensed personal property, a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sublicensable, transferable and assignable license, for the Province, BCTFA, their employees, contractors, consultants, advisors, sublicensees, successors and assigns to:

- (a) reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use such licensed property;
- (b) use, make, have made, sell, offer to sell, import and otherwise exploit any product or service based on, embodying, incorporating or derived from such licensed property; and
- (c) exercise any and all other present or future rights in such licensed property.

**“Competitive Tender Requirements”** means, in respect of any work involved in a Minor Works or other Province Change pursuant to Schedule 11 [Changes], all applicable requirements of:

- (a) Laws;
- (b) the agreement entitled Agreement on Internal Trade made July 1, 1995 among the Province, the Federal Government and the governments of the other provinces and territories of Canada, as amended by the First through Ninth Protocols of Amendment, and as further amended, supplemented or replaced from time to time;
- (c) the agreement entitled Trade, Investment and Labour Mobility Agreement made April 28, 2006 between the Province and the government of Alberta, as amended, supplemented or replaced from time to time; and
- (d) any additional or successor treaties or agreements to the agreements referred to in paragraphs (b) and (c) above entered into by the Province from time to time.

**“Compliant Bid”** means a bid proposal submitted by a Compliant Bidder in the Bidding Process that meets all of the qualification criteria and other requirements and terms of the Bidding Process of which notice is given by the Province to the Concessionaire under Section 4.3 [Rebidding Procedure] of Schedule 13.

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“**Compliant Bidder**” means a bidder who, to the reasonable satisfaction of the Province:

- (a) is not a Restricted Person;
- (b) has the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under the New Concession Agreement; and
- (c) has the technical competence, experience and financial standing, and the technical and financial resources (including employees with appropriate qualifications, experience and technical competence, committed financial resources, and contracts), sufficient to enable it to perform the obligations of the New Concessionaire under the New Concession Agreement;

but does not include the Concessionaire or any of its Affiliates unless the Province otherwise agrees.

“**Component Condition Rating**” or “**Condition Rating**” means, for the purposes of Schedule 5 [OMR and End of Term], the Performance Measure ranging from 1 (Excellent Condition) to 5 (Very Poor) that is defined for each Structure Component and is calculated as per the BMIS Data Dictionary, which refers to it as the “Component BCI”.

“**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 TIA 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 in any Specified Concession Lands or Specified Other Highway Lands forming or intended to form part of the Project Site, but does not include any Railway Order.

“**Concept Review**” means, for the purposes of Schedule 4 [Design and Construction], a concept review of Design Data in accordance with Bylaw 14(b) [Quality Management] of the APEGBC Bylaws and in accordance with the APEGBC Concept Review Guidelines.

“**Concession Highway**” at any time means the Concession Lands and the Concession Infrastructure at that time.

“**Concession Infrastructure**” at any time means the Original Concession Infrastructure at that time and the New Concession Infrastructure at that time.

“**Concession Lands**” at any time means the lands and interests in land described in Appendix A [Specified Concession Lands] to Schedule 8 that, before that time, have been made available to the Concessionaire as provided in Section 1.3 [Commencement of Land License] of Schedule 8, provided that “Concession Lands” excludes:

- (a) any Removed Lands;
- (b) any Temporary Land Rights that have terminated or expired; and
- (c) any Land Rights (other than fee simple interests) that have been terminated.

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“**Concessionaire Default**” has the meaning given in Section 12.1 [Concessionaire Default].

“**Concessionaire Director**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Concessionaire Funded Eligible Costs**” means the Eligible Costs funded by the \$200 million of financing to be provided by the Concessionaire.

“**Concessionaire Indemnified Person**” means:

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

“**Concessionaire Insolvency Event**” means the occurrence of any of the following:

- (a) any resolution of the Concessionaire or any Partner is passed for the dissolution, liquidation or winding-up of any of the Concessionaire or any Partner, or for the suspension of operations of any of the Concessionaire or any Partner, 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 Concessionaire or any Partner bankrupt or insolvent, or ordering the winding-up or liquidation of the Concessionaire or any Partner, or approving any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Concessionaire or any Partner 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 Concessionaire or any Partner for any of the foregoing and such action or proceeding against the Concessionaire or the Partner 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 Concessionaire or any Partner for any of the foregoing;
- (c) if execution, distress, sequestration or any analogous process is issued, filed or levied against the Concessionaire or any Partner or against all or a substantial part of the property or assets of the Concessionaire or any Partner 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 Concessionaire of its obligations under this Agreement;

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- (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 Concessionaire or any Units or any Partner or in respect of all or a substantial portion of the property and assets of the Concessionaire or any Partner, or any creditor takes control of the Concessionaire or of any Units or of a Partner or of all or a substantial portion of the property and assets of the Concessionaire or any Partner, or any action or proceeding is commenced or instituted against the Concessionaire or any Partner for any of the foregoing and such action or proceeding against the Concessionaire or any Partner 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 Concessionaire or any Partner for any of the foregoing;
- (e) the Concessionaire or any Partner 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 Concessionaire or any Partner 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 Concessionaire or any Units or any Partner or in respect of all or a substantial portion of the property or assets of the Concessionaire or any Partner; or
- (f) the Concessionaire or a Partner 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 Concessionaire or any Partner is incorporated, formed, domiciled or resident.

**“Concessionaire Non-Excusable Event”** means any of the following:

- (a) any wrongful act, wrongful omission, negligent act, negligent omission or wilful misconduct; or
- (b) any breach in the due performance or observance of any of the Concessionaire’s obligations under this Agreement or any other Project Document,

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

**“Concessionaire Proposal”** means any of the following as initiated by the Concessionaire:

- (a) a variation in the design, quality or scope of the Primary Infrastructure Components, or the construction thereof;

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- (b) a variation in the quality or scope of the Operation, the Maintenance or the Rehabilitation; or
- (c) any other variation in the Project Requirements or this Agreement,

or any other matter which, by the terms of this Agreement, is stated to constitute a Concessionaire Proposal or in respect of which the provisions of Section 7.2 [Concessionaire Proposals] are stated to be applicable.

**“Concessionaire’s Environmental Obligations”** means:

- (a) the obligations of the Concessionaire under this Agreement to comply with and carry out all requirements of Environmental Laws and the Environmental Assessment Certificate in connection with the Project Work; and
- (b) the obligations of the Concessionaire under Schedule 6 [Environmental Obligations], including with respect to:
  - (i) the Environmental Assessment Certificate; and
  - (ii) remediation of Contamination on Concession Lands or Other Highway Lands.

**“Concessionaire’s Representative”** means the person appointed by the Concessionaire pursuant to Section 3.1 [Concessionaire’s Representative] of Schedule 2 or such substitute as may be appointed by the Concessionaire pursuant to Section 3.2 [Change of Concessionaire’s Representative] thereof.

**“Condition Measure”** means, for the purposes of Schedule 5 [OMR and End of Term], a measure of the limits of asset condition throughout the Term which defines the level of service.

**“Condition State”** means, for the purposes of Schedule 5 [OMR and End of Term], the condition state observed or determined from a site inspection of component of the relevant Structure and recorded as an item/input on an inspection form in one of the following five categories:

- (a) Excellent Condition - as-built condition, no observed defects;
- (b) Good Condition - normal wear and deterioration;
- (c) Fair Condition - minor loss in condition or minor observed defects;
- (d) Poor Condition - advanced loss in condition or significant defects; or
- (e) Very Poor Condition - serious loss in condition or serious defects,

as such categories of condition state may be varied for the full range of Structure attributes and components in accordance with the RIMS Data Collection Definitions for Drainage Structures and Debris Control Structures, or in accordance with the BMIS User Manual for other Structures.

**“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 another party pursuant to or relating to this Agreement (including the terms of this Agreement and any

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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 another 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.

“**Consequential Losses**” means any damages or losses that would be considered under applicable British Columbia law to constitute consequential damages or losses.

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

“**Construction**” means:

- (a) the performance of all construction, completion, testing, commissioning and other services and activities required to construct and complete the Primary Infrastructure Components in accordance with the Final Design for the Primary Infrastructure Components in order to achieve Total Completion of the Primary Infrastructure Components;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing;
- (c) the supply 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 Concessionaire in respect of the foregoing,

all as set out and described in and in accordance with the Project Requirements, including the Design and Construction Requirements, the Design and Certification Procedure and this Agreement.

“**Construction Activities**” means the Construction, the Rehabilitation, any Reinstatement Work, any End of Term Work, any rectification work in respect of a Latent Defect or Third Party Segment Defect to be carried out by the Concessionaire pursuant to Section 17.3(d), and any other component of the Project Work that:

- (a) comprises the alteration, augmenting, upgrading, construction, completion, testing or commissioning of any part of the Project Infrastructure;
- (b) comprises the assessment of any Structure or other Infrastructure forming part of the Project Infrastructure; or
- (c) may affect the structural integrity of any Structures, pavement, or other Infrastructure forming part of the Project Infrastructure,

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and including any such component of the Project Work carried out as part of any Supervening Event, Province Change, or Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes].

“**Construction Certificate**” means a certificate in respect of the Construction or any other Construction Activities as provided by the Concessionaire pursuant to the Design and Certification Procedure.

“**Construction Communication Period**” means the period commencing with the Effective Date and ending on (and including) the Western Segment Substantial Completion Date.

“**Construction Landscaping Plan**” has the meaning given in Section 9.3.7(b) of Part 2 [Design and Construction] of Schedule 4.

“**Construction Plant**” means plant, materials, tools, implements, equipment, machinery, vehicles, buildings, structures, necessary for or used or to be used in the performance of the Project 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 Concessionaire in accordance with Appendix C [Construction Quality Management Plan] to Schedule 7.

“**Construction Records**” means, for the purposes of Schedule 4 [Design and Construction], all documents of any kind which record the as-built features of the New Infrastructure.

“**Constructor**” means FTG Constructors, a general partnership comprised of Dragados Canada, Inc., Ledcor CMI Ltd., BelPacific Excavating & Shoring Limited Partnership and Vancouver Pile Driving Ltd., or any assignee or replacement permitted under this Agreement.

“**Contact Information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

“**Contamination**” means the presence of any Hazardous Substance in the environment, 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 Partners or their Affiliates, in respect of financial obligations owed to the Concessionaire 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.

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

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“**Contract Year**” means each period of 12 calendar months commencing on January 1 and ending on December 31 during the Term, provided that:

- (a) the first Contract Year shall be the period from the Effective Date to the next following December 31; and
- (b) the last Contract Year shall be the period ending on the Termination Date and beginning on the next preceding January 1.

“**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) as at the date of this Agreement (excluding any subsequent amendment to such definition and notwithstanding the provisions of Section 2.6 [References to Statutes] of this Schedule).

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

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

“**CPI**” means the All-items Consumer Price Index for Canada, not seasonally adjusted, as published by Statistics Canada (or its successor government department or agency), or such substitute index as is formally designated by the Government of Canada, or if no index is published or designated by the Government of Canada in substitution therefor, such substitute index as is agreed by the Province and the Concessionaire (and, failing such agreement, as determined in accordance with the Dispute Resolution Procedure) as most closely approximating the All-items Consumer Price Index for Canada. Whenever the Official Time Base (currently 2002=100) is changed or a substitute index is designated, historical value will be rebased through the use of a conversion factor as published by the Government of Canada or, in



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the absence of such publication, such conversation factor as is agreed by the Province and the Concessionaire (and, failing such agreement, as determined in accordance with the Dispute Resolution Procedure) to achieve comparability.

“**CSA**” means the Canadian Standards Association.

“**Cumulative Concessionaire Funded Eligible Costs**” means, in respect of any month, the Cumulative Eligible Costs minus the sum of the cumulative total of all Provincial Milestone Payments payable to the Concessionaire by the Province in respect of all months up to and including that month and the Cumulative Federal Milestone Payments.

“**Cumulative Eligible Costs**” means, in respect of any month, the cumulative total of all Eligible Costs incurred by the Concessionaire from the Effective Date to and including the last day of that month.

“**Cumulative Federal Milestone Payments**” means, in respect of any month, the cumulative total of all Federal Milestone Payments payable to the Concessionaire by the Province from the Effective Date to and including the last day of that month.

“**CWS**” means the Canadian Wildlife Service.

“**Danger Tree**” means, for the purposes of Schedule 5 [OMR and End of Term], any tree that is hazardous to people or facilities because of location, lean, physical damage, overhead hazards, deterioration of limbs, stem or root system or any combination of such factors.

“**Data Room**” means the secure website established by the Ministry for the Project prior to the date of this Agreement containing or referring to materials, documents, information and data in respect of the Project provided that, without limiting the generality of the foregoing and for record purposes, the content of the said secure website, as at each of the Financial Submittal Date and the Effective Date, has been copied onto a computer hard drive and three identical copies of such computer hard drive have been distributed (one to the Concessionaire and two to the Province) and signed by the parties for the purposes of identification.

“**Debris**” means, for the purposes of Schedule 5 [OMR and End of Term], litter, rubbish, vegetation, fallen rocks, dead animals, spilled materials, brush, branches or other tree components or other items or materials, which are not an intended part of the Concession Highway.

“**Debris Control Structures**” mean, for the purposes of Schedule 5 [OMR and End of Term], any Structure which incorporates one or more of a trash rack, lined channel or deposit area/storage basin, and which by design and/or function acts to control the flow of, or contain, Debris or Debris flows, including but not limited to Debris impound basins, avalanche berms, avalanche deflector mounds and basins associated with snowsheds.

“**Debris Event**” means, for the purposes of Schedule 5 [OMR and End of Term], an event in which Debris flows may impact the structural integrity of a Structure.

“**Deck**” means, for the purposes of Schedule 5 [OMR and End of Term], the portion of a Bridge that supports the highway, from the top of the major structural members to the Wearing Surface, and designed to distribute loads evenly across the Bridge.

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**“Deductions Month”** means a month (or part thereof) in respect of which Non-Availability Event Deductions are required to be made pursuant to Section 5.1 [Non-Availability Event Deductions to be made] of Schedule 10 and/or Non-Compliance Event Deductions are required to be made pursuant to Section 4.1 [Non-Compliance Event Deductions to be made] of Schedule 10.

**“Deemed New Concession Agreement”** means agreements on substantially the same terms and conditions as this Agreement and the other Province Project Documents as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the Eastern Segment Substantial Completion Date, then the Eastern Segment Required Substantial Completion Date will be extended by a period reasonably required to allow a New Concessionaire (had one been appointed) to achieve Substantial Completion of the Eastern Segment by such extended Eastern Segment Required Substantial Completion Date;
- (b) if this Agreement is terminated prior to the Western Segment Substantial Completion Date, then the Western Segment Required Substantial Completion Date will be extended by a period reasonably required to allow a New Concessionaire (had one been appointed) to achieve Substantial Completion of the Western Segment by such extended Western Segment Required Substantial Completion Date;
- (c) the term of such agreements shall commence on the day following the Termination Date and end at 11:59 p.m. on the Expiry Date, subject to earlier termination as provided therein, and the New Concessionaire (had one been appointed) shall be entitled to all the rights and shall assume all the obligations of the Concessionaire under this Agreement and the other Province Project Documents except as otherwise provided in this definition; and
- (d) any accumulated NCE Points and Default Points shall be re-set to zero.

**“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 Concessionaire in accordance with Section 10.4 [Assignment of Default Points] of Schedule 10.

**“Default Points Balance”** has the meaning given in Section 10.4(e)(ii) of Schedule 10 [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 change by the same amount at the same time.

**“De-icing Chemical”** means, for the purposes of Schedule 5 [OMR and End of Term], material used to remove or assist, by chemical means, the removal of ice and compacted snow from the pavement surface.

**“Delegated Obligations”** means the obligations identified in Section 2.1 [Delegated Obligations] of Schedule 21.

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“**Delegated Rights, Powers or Functions**” means the rights, powers or functions identified in Section 3.1 [Delegated Rights, Powers and Functions] of Schedule 21.

“**Design**” means:

- (a) the design of the Primary Infrastructure Components, including the preparation of all construction drawings and as-built drawings for the Primary Infrastructure Components;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing;
- (c) the supply of all Plant, Construction Plant, other property and workers for the carrying out of the foregoing;
- (d) all other work, services and activities to be provided by the Concessionaire in respect of the foregoing,

all as set out and described in and in accordance with the Project Requirements, including the Design and Construction Requirements, the Design and Certification Procedure and this Agreement.

“**Design and Build Director**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Design and Certification Procedure**” means the procedure defined in Part 3 [Design and Certification Procedure] of Schedule 4 for the review of Design Data in connection with the Project Work.

“**Design and Construction Requirements**” means the standards, specifications, procedures, design criteria, design guidelines and other requirements applicable to all design activities included within the Project Work and to all Construction Activities, 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-Build Contract**” means the design and construction agreement entered into on or about the date of execution of this Agreement between the Concessionaire and the Constructor, as amended, supplemented or replaced from time to time in accordance with this Agreement.

“**Design Certificate**” means a certificate in respect of the Design or any other design activities in respect of the other Construction Activities as provided by the Concessionaire pursuant to the Design and Certification Procedure.

“**Design Data**” means all calculations, designs, design or construction information, standards, specifications, plans, 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 Project Requirements, used, prepared or to be prepared by or on behalf of the Concessionaire and/or any of the Concessionaire’s agents, employees, Principal Contractors or Subcontractors or the Province relating to the Project Work or to any Province Change or Concessionaire Proposal.

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“**Designer**” means Stantec Inc. or any assignee or replacement permitted under this Agreement.

“**Design Life**” has the meaning given to that term in CAN/CSA-S6-06.

“**Design Management Plan**” means the Design Management Plan submitted by the Concessionaire in accordance with Section 1.1 [Submission of Design Management Plan] of Part 3 of Schedule 4.

“**Design Manager**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Design Quality Management Plan**” or “**DQMP**” means the plan for the quality management of the Design prepared by the Concessionaire in accordance with Appendix B [Design Quality Management Plan] to Schedule 7.

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

“**Detailed Design**” means the detailed design to be developed from the preliminary design shown in the Design and Construction Requirements in respect of each part of the Project Work so as to allow construction of that part in accordance with the Design and Construction Requirements and so as to comply with, fulfill and satisfy the requirements of the Design and Construction Requirements.

“**Detour Route**” means, for the purposes of Schedule 4 [Design and Construction], 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.

“**DFO**” means the Department of Fisheries and Oceans of the Federal Government.

“**Direct Losses**” means Losses other than Indirect 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 Concessionaire or its representatives or to any Principal Contractor or Subcontractor or their representatives, in connection with or pertaining to the Project, the Project Work, the Project Site, the Project Infrastructure, the requirements of any Governmental Authority, traffic records and forecasts or any obligations undertaken by the Concessionaire under this Agreement, and whether disclosed, provided or made available before, on or after the Effective Date, and including without limitation:

- (a) any Design Data provided or made available by the Province;
- (b) 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 without limitation volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data including, without limitation, any of the foregoing stored electronically or on computer-related media);

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- (c) any and all information relating to the Existing Contamination;
- (d) the Geotechnical and Survey Data;
- (e) the data, reports and documents referred to in this Agreement including in any Schedule;
- (f) any of the foregoing provided in connection with the Request for Qualifications and/or the Request for Proposals;
- (g) anything contained in the Data Room before, on or after the Effective Date, and any information, data, report or document specifically referred to in the Data Room; and
- (h) the Land Identification AutoCAD Drawings, the Land Identification Sheets, and the information contained thereon.

**“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 bridge or highway projects whose design, construction, financing, operation, maintenance or rehabilitation are procured on a basis similar to the Project;
- (b) the Concessionaire and not to any other persons; or
- (c) the Concessionaire and other persons that have contracted with the Province or any other Governmental Authority under concession agreements pursuant to the TIA and not to any other person.

**“Dispute Resolution Procedure”** means the procedure set out in Schedule 16 [Dispute Resolution Procedure].

**“Distribution”** means:

- (a) whether in cash or in kind, any:
  - (i) dividend or other distribution to any Partner or Partners in respect of Units or Partner Capital;
  - (ii) reduction of Partner Capital, redemption or purchase of Units, or any other reorganization or variation to Partner Capital;
  - (iii) payments on account of Junior Debt or under Junior Lending Agreements (whether of fees, principal, interest, breakage costs or otherwise and whether or not such payments are included in or excluded from the definition of Junior Debt);
  - (iv) 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 Concessionaire or a Partner

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after the date of this Agreement and is not in the ordinary course of business or is not on commercially reasonable terms, including to or with any Relevant Person;

- (v) giving or conferring by the Concessionaire or a Partner 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
  - (vi) 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 Units or Partner Capital or other securities of or interest in the Concessionaire if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing, or any Change in Control of the Concessionaire; or
- (b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

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

**“Drainage Appliances”** means, for the purposes of Schedule 5 [OMR and End of Term], parts of the Infrastructure designed to carry water away from the Road Base including ditches, culverts, spillways, dyking, flumes and drains.

**“Drainage Structures”** mean, for the purposes of Schedule 5 [OMR and End of Term], the parts of the Infrastructure designed to carry water away from the Road Base, including ditches, culverts, spillways, dyking, flumes, and drains, and further defined as follows:

- (a) on highway features: curb and gutters, catch basins (including Sumps and Grates) and Manholes;
- (b) adjacent highway features: drainage ditches (lined and unlined), spillways and half round flumes; and
- (c) under highway features: all culverts less than 3m in diameter or span, trash racks at inlets on minor culverts, fish passage features and Subsoil systems (pipes or filter layers).

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

**“Earthquake”** means, for the purposes of Schedule 5 [OMR and End of Term], the sudden release of stored elastic energy caused by the sudden fracture and movement of rocks along a fault, with some of the energy released being in the form of seismic waves that cause the ground to shake.

**“Eastern Segment”** means, collectively, the Primary Infrastructure Components in respect of the following Road Sections:

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- (a) in the period prior to and excluding the Western Segment Substantial Completion Date, Road Section 4e and Road Section 1w as described in Table 1 set out in Appendix E [Schedule of Road Sections] to Schedule 10; and
- (b) in the period from and including the Western Segment Substantial Completion Date, Road Section 4e and Road Section 1w as described in Table 2 set out in Appendix E [Schedule of Road Sections] to Schedule 10.

**“Eastern Segment Required Substantial Completion Date”** means December 31, 2012.

**“Eastern Segment Substantial Completion Date”** means the date on which Substantial Completion occurs in respect of the Eastern Segment, as established by the relevant Certificate of Substantial Completion.

**“Eastern Segment Substantial Completion Longstop Date”** means at any time the date that is twelve months after the Eastern Segment Required Substantial Completion Date, as such first mentioned date may be extended pursuant to this Agreement.

**“Economic Sustainability Route”** has the meaning, for the purposes of Schedule 4 [Design and Construction], given in the Seismic Retrofit Manual.

**“Effective Date”** means the date of this Agreement.

**“Electrical Systems”** mean, for the purposes of Schedule 5 [OMR and End of Term], the Concession Infrastructure designed to be electrically run, including but not limited to luminaires, sign lights, structure lights, structure decks and other heating systems, electrical message signs and all components of each of the above.

**“Eligible Costs”** has the meaning given in Appendix A [Eligible Costs] to Schedule 10.

**“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 as users of the Project Infrastructure or otherwise;
  - (ii) the environment; or
  - (iii) the safety or integrity of the Project Infrastructure or any property adjacent to or in the vicinity of the Project Site;
- (b) any event or circumstance that prevents or unjustifiably restricts the use of the Project Infrastructure as a public highway; and
- (c) any event or circumstance in respect of the Project Infrastructure or the Project Site that prevents the Province, BCTFA 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 Project Site.

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**“Emergency Response”** means, for the purposes of Schedule 5 [OMR and End of Term], the response to an unforeseen event, including an Emergency, which directly or indirectly affects the Project Site or the Project Infrastructure and causes or has the potential to cause disruption to the free flow of traffic on the Project Infrastructure or threatens the safety of the public or is an immediate or imminent threat to the long term integrity of any part of the Project Site or the Project Infrastructure or to land adjacent to the Project Site or likely to be affected by events on the Project Site or the Project Infrastructure.

**“Emergency Response Plan”** means the plan prepared by the Concessionaire in accordance with Section 12.1 [Emergency Response Planning] of Appendix A to Schedule 5, and also comprising a sub-plan of the Traffic Management Plan described in Section 7.2.2 [Emergency Response Plan] of Part 4 of Schedule 4.

**“Emergency Site”** means, for the purposes of Schedule 5 [OMR and End of Term], a geographically limited location where damage from an event, including an Emergency, is limited by the bounds of undisturbed road structure, provided that:

- (a) if a road parallels a stream that has eroded the road in several different locations, such locations shall be considered different Emergency Sites;
- (b) if a road parallels a stream that has flooded at a location and the water has returned to the stream at one or more other locations, causing one or more Washouts, then all such affected locations shall be considered one Emergency Site;
- (c) a stream paralleling a road and producing separated floods and water returns shall be considered different Emergency Sites;
- (d) a slide originating at one location and impacting on the road at one or more other locations shall be considered one Emergency Site;
- (e) slides originating at different locations shall be considered different Emergency Sites;
- (f) a subsequent event causing damage to a previous Emergency Site that had been fully reconditioned to its original state shall generate a new Emergency Site; and
- (g) an event or events that cause further damage to an existing Emergency Site that has not been fully remedied shall, if such further events occur within the response time of the pertinent specifications, be considered as an extension of the original Emergency Site.

**“Employee Termination Payments”** means termination payments that are required under applicable Laws or lawful contracts of employment to be made to employees of the Concessionaire and are reasonably and properly incurred by the Concessionaire arising as a direct result of termination of this Agreement (provided that the Concessionaire 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 Concessionaire arising out of:

- (a) contracts of employment or other agreements entered into by the Concessionaire to the extent that such contracts of employment or agreements were not entered into exclusively in connection with the Project; or



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- (b) contracts of employment or other agreements entered into by the Concessionaire 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.

**"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, 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.

**"End of Term Certificate"** has the meaning given in Section 7.5(b)(i) [Final End of Term Audit and Certificate] of Schedule 7.

**"End of Term Completion Amount"** has the meaning given in Section 7.5(d) [Final End of Term Audit and Certificate] of Schedule 7.

**"End of Term Work"** has the meaning given in Section 7.2(a)(i) [End of Term Program] of Schedule 7, as revised from time to time in accordance with Section 7.4 [Revised End of Term Program] of Schedule 7.

**"End of Term Work Amount"** has the meaning given in Section 7.2(a)(iii) [End of Term Program] of Schedule 7, as revised from time to time in accordance with Section 7.4 [Revised End of Term Program] of Schedule 7.

**"End of Term Work Schedule"** has the meaning given in Section 7.2(a)(ii) [End of Term Program] of Schedule 7, as revised from time to time in accordance with Section 7.4 [Revised End of Term Program] of Schedule 7.

**"Environmental Assessment Certificate"** means environmental assessment certificate #T08-02 issued pursuant to the *Environmental Assessment Act* (British Columbia) on July 24, 2008 and attached as Appendix A [Environmental Assessment Certificate] to Schedule 6, 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 Director"** 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

**"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

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- (c) all applicable judicial, administrative or regulatory judgments, orders, decisions, certificates and exemptions, including without limitation 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 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 without limitation 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 Management Plan**” or “**EMP**” means the plan described in Section 2.5 [Environmental Management Plan] of Schedule 6.

“**Environmental Manager**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Environmental Quality Management Plan**” or “**EQMP**” means the plan for the quality management of the Concessionaire’s Environmental Obligations prepared by the Concessionaire in accordance with Appendix F [Environmental Quality Management Plan] to Schedule 7.

“**Equity IRR**” means at any time the nominal after tax projected blended rate of return over the full term of this Agreement, having regard to Distributions made and projected to be made, calculated at that time strictly in accordance with the methodology used to calculate Equity IRR in the Financial Model as at the Effective Date.

“**Escrow Agreement**” means the documents escrow agreement dated as of March 19, 2010 among the Province, Miller Thomson LLP, Fraser Transportation Group, Iridium Concesiones de Infraestructuras, S.A. and Ledcor Industrial/Mining Group Ltd., to which ACS Infrastructure Canada Inc. became a party in substitution for Iridium Concesiones de Infraestructuras, S.A. pursuant to an agreement to be bound dated as of April 1, 2010, and South Fraser Construction Limited Partnership became a party in substitution for Ledcor Industrial/Mining Group Ltd., and the Concessionaire became a party, both pursuant to an agreement to be bound dated on or about July 9, 2010, and as amended, supplemented or replaced from time to time.

“**Estimated Fair Value**” means the estimated amount that a third party would pay to the Province as the Fair Value of a Deemed New Concession Agreement as determined in accordance with Part 5 [Estimated Fair Value Procedure] of Schedule 13.

“**Estimated Fair Value Balance of Term**” means the period of time commencing on 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 Schedule 13 applies, and ending on the Expiry Date.

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“**Estimated Fair Value Forecast Performance Related Payments and Deductions**” means the amount forecast in accordance with Section 5.2(b)(iii) of Schedule 13 [Compensation on Termination] for the Estimated Fair Value Balance of Term.

“**Estimated Fair Value Forecast Project Costs**” means the reasonable and proper costs and expenses forecast in accordance with Section 5.2 [Determination of Estimated Fair Value] of Schedule 13 to be incurred during the Estimated Fair Value Balance of Term by the Province to carry out and perform, or procure the carrying out and performance of, during such period, in the manner and to the standards contemplated by this Agreement, all obligations, responsibilities, activities and work that would, but for the termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of Schedule 13 applies, have been the responsibility and obligation of the Concessionaire under this Agreement including, without limitation, the Project Work and the rectification and mitigation of all defaults by the Concessionaire under this Agreement occurring prior to such termination.

“**Excavated Material Placement Areas**” means, collectively, the following:

<b>Area</b>	<b>Available Capacity</b>
(W-E) 125A Street to 132 Street/ (N-S) CN Railway to 115B Avenue	23,600 m <sup>3</sup>
(W-E) 80 Street to 96 Street ditch/ (N-S) BNSF Railway to Burns Bog perimeter ditch	292,200 m <sup>3</sup>
(W-E) 96 Street ditch to Nordel Way/ (N-S) River Road to Burns Bog perimeter ditch	248,000 m <sup>3</sup>
(W-E) Grace Road to King George Highway/ (N-S) CN-CP-BNSF Railway to Scott Road	89,100 m <sup>3</sup>
(W-E) Industrial Road to 125A Street/ (N-S) Industrial Road to King George Highway	31,800 m <sup>3</sup>
(W-E) 125A Street to 132 Street/ (N-S) CN Railway to 115B Avenue	24,800 m <sup>3</sup>
(W-E) Port Mann Bridge to east limit of Surrey Landfill/ (N-S) CN Railway to south limit of Surrey Landfill	210,500 m <sup>3</sup>

“**Excess Non-Availability Event Deductions**” has, for the purposes of Section 12.3(d) of Schedule 10 [Performance Mechanism], the meaning given in that subsection and, for the purposes of Section 12.3(e) of Schedule 10 [Performance Mechanism], the meaning given in that subsection.

“**Excluded Event**” means a Non-Availability Event or a Traffic Disruption Event, as the case may be, that is:

- (a) directly attributable to a Province Non-Excusable Event;
- (b) directly attributable to a Police Incident not caused or permitted to occur by the Concessionaire;

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- (c) directly attributable to a Non-Police Incident of less than 30 minutes' duration not caused or permitted to occur by the Concessionaire;
- (d) directed by a Governmental Authority having jurisdiction, in response to some event or circumstance not caused or permitted to occur by the Concessionaire;
- (e) directed by the Province, in response to some event or circumstance not caused or permitted to occur by the Concessionaire;
- (f) directly attributable to a Compensation Event;
- (g) required solely to permit the conduct of work by or on behalf of a Utility Supplier or Railway, other than Utility Work;
- (h) directly attributable to, and resulting unavoidably from, a Latent Defect or a Third Party Segment Defect;
- (i) directly attributable to any Special Event specified by the Province and of the duration required by the Province; or
- (j) directly attributable to a Flood, but only during the period while the Project Site or portion thereof is submerged as a result of such Flood.

**“Exempt Junior Lending Matter”** means any of the following, provided any such action or transaction does not constitute or result in a breach of Section 5.15 [Restricted Persons Prohibited]:

- (a) the exercise under the Junior Lending Agreements of rights, waivers, consents and similar actions which relate to administrative and supervisory matters (including conditions to advances) under the Junior Lending Agreements;
- (b) any amendment, variation or supplement of any agreement that is approved by the Province as part of any Supervening Event, Province Change or Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes]; or
- (c) any amendment, assignment and assumption, or novation of any Junior Lending Agreement that is made solely to reflect a change in a party (other than the Concessionaire) thereto resulting from a Change in Control, or to a reduction in the ownership interest in the Concessionaire of South Fraser Construction Limited Partnership to less than 25% of all the Units issued and outstanding, that is permitted in accordance with Sections 16.6 [Change in Control of Concessionaire Before One Year After Substantial Completion], 16.7 [Change in Control of Concessionaire After One Year After Substantial Completion] and 16.8 [Consent to Change in Control Not Required in Certain Cases], and not effecting any other change in the terms of such agreement.

**“Exempt Partnership Matter”** means any of the following, provided any such action or transaction does not constitute or result in a breach of Section 5.15 [Restricted Persons Prohibited]:

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- (a) the exercise under the Partnership Agreements of rights, waivers, consents and similar actions which relate to administrative and supervisory matters under the Partnership Agreements;
- (b) any amendment, variation or supplement of any agreement that is approved by the Province as part of any Supervening Event, Province Change or Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes]; or
- (c) any amendment, assignment and assumption, or novation of any Partnership Agreement that is made solely to reflect a change in a party (other than the Concessionaire) thereto resulting from a Change in Control, or to a reduction in the ownership interest in the Concessionaire of South Fraser Construction Limited Partnership to less than 25% of all the Units issued and outstanding, that is permitted in accordance with Sections 16.6 [Change in Control of Concessionaire Before One Year After Substantial Completion], 16.7 [Change in Control of Concessionaire After One Year After Substantial Completion] and 16.8 [Consent to Change in Control Not Required in Certain Cases], and not effecting any other change in the terms of such agreement.

**“Exempt Principal Contractor Matter”** means any of the following, provided any such action or transaction does not constitute or result in a breach of Section 16.12 [Restricted Persons Prohibited]:

- (a) the exercise under the Principal Contracts of rights, waivers, consents and similar actions which relate to administrative and supervisory matters under the Partnership Agreements; or
- (b) any amendment, variation or supplement of any agreement that is approved by the Province as part of any Supervening Event, Province Change or Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes].

**“Exempt Refinancing”** means any of the following, provided any such action or transaction does not constitute or result in a breach of Section 5.15 [Restricted Persons Prohibited]:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP;
- (b) the exercise under the Senior Lending Agreements of rights, waivers, consents and similar actions which relate to administrative and supervisory matters (including conditions to advances) 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 Principal Contracts in accordance with Section 16.10 [Restrictions on Changes to Principal Contracts], or amendments to Subcontracts;

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- (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Lending Agreements);
  - (vi) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Lending Agreements can be advanced to the Concessionaire under the Senior Lending Agreements, that are imposed as a result of any failure by the Concessionaire to ensure that the Project 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 Concessionaire to ensure that the Project Work is performed in accordance with the Project Schedule;
  - (viii) failure by the Concessionaire to obtain any consents from Governmental Authorities required by the Senior Lending Agreements;
  - (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Lending Agreements; or
  - (x) application by the Concessionaire for, and the making of, advances to the Concessionaire under the Senior Credit Facilities in accordance with the Initial Senior Lending Agreements, provided that if any such advance is made under any Committed Standby Facility, such advance must be made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Concessionaire incurs, and provided that such funds must not be used in substitution for other sources of committed funding designated for those purposes;
- (c) 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 Concessionaire Proposal accepted by the Province in accordance with Schedule 11 [Changes];
  - (d) any sale of Junior Debt or Units in the Concessionaire by Partners or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights and/or interests attaching to Junior Debt or Units in the Concessionaire;
  - (e) any Qualifying Bank Transaction; or
  - (f) 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 Concessionaire) thereto resulting from a Change in Control, or to a reduction in the ownership interest in the Concessionaire of South Fraser Construction Limited Partnership to less than 25% of all the Units issued and outstanding, that is permitted in accordance with Sections 16.6 [Change in Control of Concessionaire Before One Year After Substantial Completion], 16.7 [Change in Control of Concessionaire After One Year After Substantial Completion] and 16.8 [Consent to Change in Control Not

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Required in Certain Cases], and not effecting any other change in the terms of such agreement.

**“Exempt Transaction”** means:

- (a) in the case of a Senior Lending Agreement, an Exempt Refinancing;
- (b) in the case of a Junior Lending Agreement, an Exempt Junior Lending Matter; and
- (c) in the case of a Partnership Agreement, an Exempt Partnership Matter.

**“Existing Contamination”** means any Contamination that is situated in, on, under or over, or affects:

- (a) any parcel of Specified Concession Lands or Specified Other Highway Lands; or
- (b) any Infrastructure or other improvements on or to any parcel of Specified Concession Lands or Specified Other Highway Lands;

as at the day immediately preceding the Handover Date for such parcel.

**“Existing Railway Lands”** means Railway Lands in respect of which a Railway Crossing Agreement or a Railway Order or equivalent permission is held by the Province or BCTFA as at the Effective Date.

**“Expert”** has the meaning given in Section 3.1 [Referral to Expert] of Schedule 16.

**“Expert Dispute Notice”** has the meaning given in Section 3.1 [Referral to Expert] in Schedule 16.

**“Expiry Date”** means June 30, 2034, as such date may be extend pursuant to Section 8.4(d).

**“Extensible Reinforcement”** means, for the purposes of Schedule 4 [Design and Construction], reinforcement elements that are within the soil for mechanically stabilized earth walls and are subject to long term creep, including geogrids.

**“Extent of Network Component Condition”** means, for the purposes of Schedule 5 [OMR and End of Term], the Performance Measure assigned to network components calculated on a percentage basis using BMIS data.

**“External Quality Audit”** means either or both:

- (a) a second party Quality Audit conducted by parties having an interest in the relevant organization, such as customers; and
- (b) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.

**“Extraordinary Traffic”** means extraordinary traffic as defined in the *Transportation Act* (British Columbia).

**“Fair Value”** means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale.

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“**Federal Cost Contribution Agreement**” means the agreement entitled Canada – British Columbia Asia-Pacific Gateway Corridor Transportation Infrastructure Fund Contribution Agreement for South Fraser Perimeter Road made September 3, 2008 and executed on behalf of the Federal Government by the Minister of Transport, Infrastructure and Communities on September 3, 2008, and by the Province on September 2, 2008, as amended, supplemented or replaced from time to time.

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

“**Federal Milestone Payments**” means the payments paid or payable by the Province to the Concessionaire pursuant to Section 1.1(a) of Schedule 10 [Performance Mechanism].

“**Final Design**” means the final design in respect of a component of the Project Work produced by the Concessionaire in accordance with Article 2 [Design Submissions, Review and Reports] of Part 3 of Schedule 4.

“**Final End of Term Audit**” has the meaning given in Section 7.5 [Final End of Term Audit and Certificate] of Schedule 7.

“**Financial Base Date**” means January 1, 2009.

“**Financial Model**” means the computer spreadsheet model and software for the Project incorporating statements of the Concessionaire’s cash flows including all expenditures and revenues (including on a gross basis), financing and taxation of the Project Work together with the profit and loss accounts and balance sheets for the Concessionaire throughout the Term, 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 12 [Financial Model]. If there are updates to the Financial Model from time to time after the Effective Date in accordance with Section 2.18, references to the “Financial Model” shall mean the Financial Model as so updated, unless a contrary intention is indicated.

“**Financial Submittal Date**” means March 19, 2010.

“**First ES Date**” has the meaning given in Section 12.3(a) of Schedule 10 [Performance Mechanism].

“**First Nations Requirements**” has the meaning given in Section 1.1 [First Nations Requirements] of Schedule 22.

“**Fisheries Authorization**” means all authorizations required to be obtained (whether in the name of either or both the Concessionaire and the Province) under subsection 35(2) or any other provisions of the *Fisheries Act* (Canada) in respect of the Project and the Project Work, but does not include the Province Fisheries Authorization.

“**Flood**” means:

- (a) for the purposes of Schedule 5 [OMR and End of Term], peak flow within a period of 100 years, computed from hydrological data, watershed information and historical annual peak flow data; and



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- (b) for all purposes other than as provided in subsection (a), 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.

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

“**Footing**” means, for the purposes of Schedule 5 [OMR and End of Term], the portion of the Substructure resting on the ground.

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

- (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 of Section 3.1 [Provision of Project Site].

“**Forecast Concessionaire Funded Eligible Costs**” means the total amount of Eligible Costs forecast in the Financial Model as at the Effective Date to be funded by the \$200 million of financing to be provided by the Concessionaire, being [REDACTED]. ← Section 21

“**Forecast Eligible Costs**” means the total amount of Eligible Costs forecast by the Concessionaire in the Financial Model as at the Effective Date, being [REDACTED].

↑ Section 21

“**Foundation**” means:

- (a) for the purposes of Schedule 4 [Design and Construction], the structure required to transfer load from a pier or abutment into the supporting soils, including pile caps, pile footings, caissons and drilled shafts; and
- (b) for the purposes of Schedule 5 [OMR and End of Term], the supporting soil material upon which the structural portion of the Bridge is placed and portions of the Bridge (usually below ground) which distribute the pressure to the soil or artificial supports, and is similar to Footing.

“**Full Closure**” means a Closure affecting all of the lanes in one or both travelling directions within a Road Section, an Other Provincial Highway, Specified Road, Other Street or Interchange Ramp.

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“**Future Railway Lands**” means Railway Lands (other than Existing Railway Lands), the approximate locations of which as at the Effective Date are shown on the Land Identification AutoCAD Drawings as “Approximate Limit of Future Railway Lands to form part of Concession Lands” or “Approximate Limit of Future Railway Lands to form part of Other Highway Lands”, in respect of which a Railway Crossing Agreement or a Railway Order is required to be obtained pursuant to Part 6 [Railway Agreements] of Schedule 8.

“**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.

“**Geotechnical Engineer**” means a Professional Engineer specializing in geotechnical matters.

“**Geotechnical and Survey Data**” means only the:

- (a) borehole and test pit logs and associated survey point data; and
- (b) Preload Settlement Data,

provided as part of the Disclosed Data, and for greater certainty excludes the reports and other information associated with such logs and data and the documents and all appendices and attachments thereto listed on Appendix B [Geotechnical and Survey Data Exclusions] to this Schedule.

“**Golden Ears Connector**” means the Infrastructure to be constructed by a Third Party Contractor from 100 m east of the CN Rail Access/104 Avenue intersection along Daly Road to connect to the portion of TransLink’s new roadway connecting between approximately 96 Avenue/Highway 15 in the west and the Golden Ears Bridge project in the east near 184 Street.

“**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 any of the design, construction, operation, maintenance and rehabilitation of bridges and roads similar in type to the Concession Highway, the Other Highway Facilities, the Port Facilities and the Municipal Facilities, seeking in good faith to comply with all applicable Laws and the same contractual obligations as the contractual obligations of the Concessionaire under this Agreement and under the same or similar circumstances and conditions.

“**Governmental Authority**” means:

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

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- (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 Project Work, or the Project Site or the Project Infrastructure.

“**Grass Areas**” means, for the purposes of Schedule 5 [OMR and End of Term], those areas in and along the Concession Highway designated as Class 1 Grass or Class 2 Grass in accordance with Section 9.5.2 [Landscaping Classes] of Appendix A to Schedule 5.

“**Gravel License**” has the meaning given in Section 4.5(b) of Schedule 8 [Lands].

“**Gravel Pits**” means the gravel pits, stockpile sites, staging/aggregate processing areas and quarries identified in Section A of Appendix E [Gravel Pits and Form of Gravel License] to Schedule 8.

“**Guardrail**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], a barrier fastened to the edge of a Bridge Deck to prevent vehicles from running over the side of the Bridge.

“**Handover Date**” means, in respect of a parcel of Specified Concession Lands, Concession Lands, Specified Other Highway Lands or Other Highway Lands, the date such parcel is made available to the Concessionaire as provided in Section 1.3 [Commencement of Land License] of Schedule 8.

“**Hard Surfaced Highways**” means, for the purposes of Schedule 5 [OMR and End of Term], all highways which do not have a dirt or gravel surface.

“**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 without limitation:

- (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 such substance defined as or included in the definitions of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous

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materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “special waste”, “waste” or words of similar import under any applicable Environmental Laws, including without limitation 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 Laws**” means all Laws relating to occupational health and safety, including the *Workers Compensation Act* (British Columbia), the OHS Regulation and the *Railway Safety Act* (Canada).

“**Health and Safety Program**” has the meaning given in Section 4.13 [Health and Safety Program].

“**Hedge Termination Amounts**” means the net amount (if any) payable under the Hedging Agreements on termination of the hedging transaction(s) entered into under the Hedging Agreements.

“**Hedging Agreements**” means the Initial Hedging Agreements and any other interest rate hedging or consumer price index hedging agreements referred to in subsection (b) of the definition of Lending Agreements in this Section entered into after the Effective Date in accordance with this Agreement, as supplemented and amended in accordance with this Agreement.

“**High Occupancy Vehicle**” or “**HOV**” means a Motor Vehicle which is entitled to use a High Occupancy Vehicle Lane.

“**High Occupancy Vehicle Lane**” or “**HOV Lane**” means a high occupancy vehicle lane as defined in the *Motor Vehicle Act* (British Columbia).

“**High Visibility Markings**” means, for the purposes of Schedule 5 [OMR and End of Term], light reflective surfaces or striping.

“**Highest Compliant Bid Price**” means the highest bid price offered in the Compliant Bids of Compliant Bidders (if any) in the Bidding Process and, if no Compliant Bids are received within the time for submission of bids pursuant to the Bidding Process, zero.

“**Highway Running Surfaces**” means, for the purposes of Schedule 5 [OMR and End of Term], the major asset group including Paved Traffic Lanes, Paved Shoulders, Paved Medians, Paved Pullouts, rest areas, entrance and exit ramps, and paved and gravel side roads.

“**Highway 17 to Highway 99 Segment**” means that portion of the Concession Highway to be constructed on the parcels of Specified Concession Lands identified by numbers 10 through and including 31 in Table A.1 [Specified Concession Lands Exceptions] to Schedule 8.

“**Highway Surface**” means, for the purposes of Schedule 5 [OMR and End of Term], the top surface of the highway and the area between the outside edge of the top surface and the bottom of the ditch, known as the side slopes, with the dirt and gravel highway edge being the breakpoint between the extreme outside edge of the top surface and the side slopes.

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“**Holdback Month**” has the meaning given in Section 6.7 [Availability Payments Holdback at End of Term] of Schedule 10.

“**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) as at the date of this Agreement (excluding any subsequent amendment to such definition and notwithstanding the provisions of Section 2.6 [References to Statutes] of this Schedule).

“**HST**” means the goods and services tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor or replacement tax therefor.

“**IAERC**” means the Inter-Agency Environmental Review Committee, as described in the Terms of Reference therefor contained in the EA Application, to be established by the parties as contemplated in Schedule 6 [Environmental Obligations].

“**ICS**” or “**Incident Command System**” means the system used as a basis for emergency response planning and incident management by many government agencies and industry in British Columbia.

“**Identified First Nations**” means the

 **Section 16**

“**Implementation Plan**” means the sub-plan of the Traffic Management Plan described in Section 7.2.3 [Implementation Plan] of Part 4 of Schedule 4.

“**Incident**” means any motor vehicle collision, motor vehicle breakdown or parking, flooding, Release of a Hazardous Substance, Debris, Emergency or other unplanned event or circumstance of any nature whatsoever occurring on, over, across or in relation to the Project Infrastructure that results in the potential occurrence or the occurrence of a Closure.

“**Independent Certifier**” means the independent firm of Professional Engineers selected by the Province and the Concessionaire pursuant to Article 3 [Independent Certifier] of 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 Concessionaire and the Independent Certifier pursuant to Section 3.2 [Independent Certifier Contract] of Part 1 of Schedule 4, as amended, supplemented or replaced from time to time.

“**Independent Engineer**” means the Independent Engineer retained by the Province under the Federal Cost Contribution Agreement.

“**Independent Remedial Information**” has the meaning given in Section 3.4 [Further Investigations on Termination for Concessionaire Default] of Schedule 13.

“**Indirect Losses**” means:

- (a) any loss of revenue and loss of profits that might have been, or might be, obtained or received from a source other than the Concession Highway and the Project; and

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- (b) any loss of business opportunity with respect to a source other than the Concession Highway and the Project; and
- (c) in the case of obligations of the Concessionaire to the Province or BCTFA, Consequential 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 (including any liability of the Province or BCTFA in respect of Consequential Losses) 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 Concessionaire or the Concessionaire’s Representative prior to entering into the Province Contractual Commitment; or
    - (C) consulted with any Affiliate, agent or representative of the Concessionaire prior to entering into the Province Contractual Commitment in the case of a Province Contractual Commitment entered into prior to the date of this Agreement; and
  - (iii) the Province Contractual Commitment was entered into for reasons other than the *bona fide* pursuit of:
    - (A) completion of a Relevant Component;
    - (B) performance of the Project Work; or
    - (C) furtherance of the Concessionaire’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 (including any liability of the Province or BCTFA in respect of Consequential Losses) 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

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Commitment and all relevant circumstances at the time any such Province Contractual Commitment was entered into;

and

- (d) in the case of obligations of the Province or BCTFA to the Concessionaire, any of the following:
- (i) Consequential Losses suffered by any Principal Contractor or Subcontractor;
  - (ii) Consequential Losses suffered by any Affiliate or former Affiliate of a Principal Contractor or Subcontractor;
  - (iii) Consequential Losses suffered by any Relevant Person; and
  - (iv) Consequential Losses suffered by any third party (other than a person referred to in any of subsections (d)(i), (d)(ii) and (d)(iii) of this definition) for which the Concessionaire, a Principal Contractor or a Subcontractor is, pursuant to a contractual commitment entered into by the Concessionaire, a Principal Contractor or a Subcontractor with such third party, liable to indemnify such third party (in this definition, a “**Concessionaire Contractual Commitment**”) where:
    - (A) the entering into by the Concessionaire, Principal Contractor or Subcontractor of the Concessionaire Contractual Commitment was avoidable with the exercise of reasonable diligence and foresight; or
    - (B) the nature, scope, extent and terms of the indemnification provisions contained in the Concessionaire Contractual Commitment (including any liability of the Concessionaire, Principal Contractor or Subcontractor in respect of Consequential Losses) were, at the time such Concessionaire Contractual Commitment was entered into, not on reasonable arm’s length commercial terms or otherwise not in the ordinary course of business; or
    - (C) the Concessionaire Contractual Commitment was entered into for a reason other than:
      - (1) the *bona fide* pursuit of completion of a Relevant Component;
      - (2) the performance of the Project Work; and
      - (3) the furtherance of the Concessionaire’s obligations in respect of the Project.

“**Inflation Index**” means, for the purposes of Schedule 10 [Performance Mechanism], the annual inflation index for a Contract Year, calculated in accordance with Section 11.1 [Calculation of Inflation Index] of Schedule 10.

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“**Infrastructure**” means all road and highway infrastructure including roadways, hard shoulders, slip roads, side roads, access roads, pavement, bridges, tunnels and other highway structures whether over or under the travelled surface, together with all related supporting infrastructure, buildings, improvements and amenities, including all intelligent traffic systems, fences and barriers, curbs, culverts, drainage systems including outfalls and balancing ponds, grassed areas, hedges and trees, planted areas, footways, road markings, road traffic signs, road traffic signals, road lighting, communications installations, weigh stations, washrooms and rest areas, picnic sites, pullouts, embankments, retaining walls and cuttings.

“**Initial End of Term Audit**” has the meaning given in Section 7.1 [Initial End of Term Audit] of Schedule 7.

“**Initial Hedging Agreements**” means the interest rate hedging and consumer price index hedging agreements relating to Senior Debt forming part of the Initial Senior Lending Agreements and described in item 2 in Part 1 [Initial Senior Lending Agreements] of Schedule 25.

“**Initial Junior Lending Agreements**” means the agreements and instruments described in Part 2 [Initial Junior Lending Agreements] of Schedule 25.

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

“**Initial Parent Partners**” means:

- (a) in the case of South Fraser Construction Limited Partnership:
  - (i) South Fraser Construction Inc., a company incorporated under the *Business Corporations Act* (Alberta), as general partner; and
  - (ii) Ledcor Developments Ltd., a company incorporated under the *Business Corporations Act* (Alberta), as limited partner; and
- (b) in the case of FTG Holdings Limited Partnership:
  - (i) FTG Fraser Transportation Group Inc., a company incorporated under the *Business Corporations Act* (British Columbia), as general partner; and
  - (ii) ACS Infrastructure Canada Inc., a company incorporated under the *Canada Business Corporations Act*, as limited partner.

“**Initial Partners**” means South Fraser Construction Limited Partnership, a limited partnership formed under the *Partnership Act* (British Columbia), and FTG Holdings Limited Partnership, a limited partnership formed under the *Partnership Act* (British Columbia).

“**Initial Partnership Agreements**” means the agreements described in Part 3 [Initial Partnership Agreements] of Schedule 25.

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



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“**Initial Senior Lending Agreements**” means the agreements and instruments described in Part 1 [Initial Senior Lending Agreements] of Schedule 25.

“**Initiating Party**” has the meaning, for the purposes of Schedule 16 [Dispute Resolution Procedure], given in Section 4.1 [Referral to Arbitration] of Schedule 16.

“**Inspection and Test Plan**” or “**I TP**” means a detailed spreadsheet of all major on and off Project Site inspection and test activities for Project Work performed by the Concessionaire and that of its Principal Contractors and Subcontractors.

“**Insurance Trust Agreement**” means the agreement to be entered into between the Province, the Agent, the Insurance Trustee and the Concessionaire in the form set out in Schedule 18 [Insurance Trust Agreement], as amended, supplemented or replaced from time to time.

“**Insurance Trustee**” means the trustee to be appointed under the Insurance Trust Agreement.

“**Insured Business Interruption Risk**” means a risk normally insured against by Specified Business Interruption Insurance.

“**Intellectual Property**” means 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 brand names, product names, logos and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locators (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

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

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask work rights;
- (b) trademark and trade name rights and similar rights;
- (c) trade secret rights;
- (d) patent and industrial property rights;
- (e) 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.

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“**Interchange Ramp**” means, for the purposes of Part 4 [Traffic Management] of Schedule 4 and Schedule 10 [Performance Mechanism], that portion of any entrance or exit ramp connecting the Concession Highway to an Other Provincial Highway.

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

“**Interim Design**” means an interim design for a component of the Project Work produced by the Concessionaire in accordance with Article 2 [Design Submissions, Review and Reports] of Part 3 of Schedule 4.

“**Internal Quality Audit**” means a first party Quality Audit of an organization’s own processes conducted by or on behalf of the relevant organization.

“**Invoicing Month**” has the meaning given in Section 12.3(c) of Schedule 10 [Performance Mechanism].

“**IRI**” or “**International Roughness Index**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], the measure of the pavement smoothness based on the longitudinal profile of the pavement surface as defined in the World Bank Paper 46.

“**Irrevocability Agreement**” means the irrevocability agreement dated as of March 19, 2010 among the Province, Fraser Transportation Group, Iridium Concesiones de Infraestructuras, S.A., Ledcor Industrial/Mining Group Ltd., Dragados S.A., Ledcor CMI Ltd., BelPacific Excavating & Shoring Limited Partnership and Vancouver Pile Driving Ltd., to which ACS Infrastructure Canada Inc. became a party in substitution for Iridium Concesiones de Infraestructuras, S.A. and Dragados Canada, Inc. became a party in substitution for Dragados S.A., both pursuant to an agreement to be bound dated as of April 1, 2010, and South Fraser Construction Limited Partnership became a party in substitution for Ledcor Industrial/Mining Group Ltd., and the Concessionaire became a party, both pursuant to an agreement to be bound dated on or about July 9, 2010, and as amended, supplemented or replaced from time to time.

“**ISO 9000:2005 Standard**” means the ISO 9000:2005 International Standard, Quality Management Systems – Fundamentals and Vocabulary, 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, acting reasonably.

“**ISO 9001:2008 Standard**” means the ISO 9001:2008 International Standard, 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, acting reasonably.

“**ISO 9001 Lead Auditor Course**” means a accredited ISO 9001 course for lead auditors that meets the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors.

“**ISO 9004:2000 Standard**” means the ISO 9004:2000 International Standard, Quality Management Systems – Guidelines for Performance Improvements, 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, acting reasonably.

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“**ISO 14001:2004 Standard**” means the ISO 14001:2004 International Standard – Environmental Management Systems – Requirements with Guidance for Use, 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, acting reasonably.

“**ISO 19011:2002 Standard**” means the ISO 19011:2002 International Standard, Guidelines for Quality and/or Environmental Management Systems Auditing, 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, acting reasonably.

“**Junior Credit Facilities**” means any credit facility provided to the Concessionaire by an Affiliate of the Concessionaire.

“**Junior Debt**” means any or all of the debt of the Concessionaire to the extent that it is properly incurred by the Concessionaire under the Junior Credit Facilities pursuant to and in accordance with the Junior Lending Agreements, provided however that “**Junior Debt**” will exclude:

- (a) all amounts not actually paid to the Concessionaire by cash advance;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by the Concessionaire; and
- (c) capitalized interest, and interest on overdue interest.

“**Junior Lenders**” means all or any of the persons who provide credit facilities in respect of the Project or the Project Work under the Junior Credit Facilities.

“**Junior Lending Agreements**” means the Initial Junior Lending Agreements and any other agreement for the provision of a Junior Credit Facility, each as supplemented, amended or replaced from time to time in accordance with this Agreement.

“**Key Individuals**” means the individuals specified by the Concessionaire in Section 3.3(a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], as changed from time to time in accordance with Sections 3.3(b) and (c) of Schedule 2 [Representatives, Review Procedure and Consent Procedure].

“**Key Performance Measures**” or “**KPMs**” has, for the purposes of Schedule 5 [OMR and End of Term], the meaning given in Section 1.4(b) of Schedule 5 [OMR and End of Term].

“**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 the highway construction industry in British Columbia and/or the highway operation and maintenance industry in British Columbia.

“**Landfill Closure Area**” means, collectively, the parcels of Specified Concession Lands identified by numbers 33 through and including 66 in Table A.1 [Specified Concession Lands Exceptions] to Schedule 8.

“**Land Identification AutoCAD Drawings**” means collectively the AutoCAD drawings entitled either:

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- (a) SFPR\_LIAD\_P1\_Delta\_June10.dwg; or
- (b) SFPR\_LIAD\_P2\_Surrey\_June10.dwg;

contained on the CD attached as Appendix G [CD Containing Land Identification AutoCAD Drawings] to Schedule 8. The Land Identification AutoCAD Drawings are provided solely for the purpose of delineating the boundaries of the Specified Concession Lands and the Specified Other Highway Lands, in each case excluding Future Railway Lands, and the approximate locations of the Future Railway Lands. All information contained on the Land Identification AutoCAD Drawings constitutes Disclosed Data and is subject to the provisions of this Agreement including Sections 2.14 [Site Inspection and Investigations] and 2.15 [Disclosed Data].

“**Land Identification Sheets**” means the PDF version of the Land Identification AutoCAD Drawings. The Land Identification Sheets are for convenience of reference only and shall not determine or affect the rights and obligations of the parties. The Land Identification AutoCAD Drawings shall govern as to the delineation of the boundaries of Specified Concession Lands and the Specified Other Highway Lands, in each case excluding Future Railway Lands, and as to the approximate locations of the Future Railway Lands. The information contained on the Land Identification Sheets constitutes Disclosed Data and is subject to the provisions of this Agreement including Sections 2.14 [Site Inspection and Investigations] and 2.15 [Disclosed Data].

“**Land License**” means the license granted in Section 2.5 [Grant of Land License].

“**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, without limitation, a fee simple interest, a leasehold estate, a statutory right of way, an easement, a license, a permit or a Railway Order.

“**Lane Closure**” means any Closure affecting a lane or lanes within a Road Section or within an Other Provincial Highway, Specified Road, Other Street or Interchange Ramp, but excludes a Full Closure.

“**Lane Shift**” means, for the purposes of Schedule 4 [Design and Construction], 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.

“**Latent Defect**” means any defect:

- (a) in any Original Concession Infrastructure, provided that at the time of the discovery of such defect the Original Concession Infrastructure containing such defect has not been disturbed by the carrying out of the Project Work by the Concessionaire (other than only to the extent such disturbing is necessary to discover the existence, nature and extent of such defect), the onus of establishing which shall be on the Concessionaire, existing as at the Effective Date which the Concessionaire is not aware of as at the Effective Date, and which could not reasonably have been discovered, ascertained or anticipated as at the Effective Date by a competent person acting in accordance with Good Industry Practice during a visual examination of the Original Concession Infrastructure on or before the Financial Submittal Date (including the Disclosed Data as it exists as at the Financial Submittal Date) having regard to the opportunity afforded the Concessionaire to conduct such inspection, examination and analysis before the Financial Submittal Date;

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- (b) in any component of the Third Party Segments existing as at the date of the joint inspections referred to in Section 17.2 [Joint Inspection of Third Party Segments] and not included in the relevant Third Party Segment Defect List; or
- (c) in any component of the Landfill Closure Area existing as at the relevant Handover Date for such Landfill Closure Area.

“**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 Project Work, the Project Site, the Project Infrastructure, the Concessionaire or the Province, as the case may be, including, for greater certainty, those related to the issuance of Permits and any building codes.

“**Lenders’ Remedies Agreement**” means the agreement to be entered into between the Province, BCTFA, the Agent on behalf of the Senior Lenders, and the Concessionaire, in the form set out in Schedule 14 [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 of the agreements or instruments entered into or to be entered into by the Concessionaire or any of its Affiliates relating to the debt financing of the Project or the Project Work, including:

- (a) the Initial Lending Agreements including any amendments and supplements thereto, and any agreements or instruments (including any agreement or instruments creating or evidencing security interests in respect of the obligations owed or owing in respect of Senior Debt or Junior Debt from time to time) entered into by the Concessionaire or any of its Affiliates to raise additional or substitute financing or credit facilities of any form or relating to the rescheduling of its indebtedness or the re-financing of the Project or the Project Work; and
- (b) any and all agreements or instruments entered into by the Concessionaire or any of its Affiliates for the purpose of facilitating the hedging of any exposure to fluctuations of interest rates on Senior Debt or fluctuations in the consumer price index, including the Initial Hedging Agreements, and including any amendments or supplements thereto;

in each case provided they have been entered into in accordance with this Agreement.

“**License to Construct**” has the meaning given in Section 5.10(c) of Schedule 8 [Lands]. For certainty, a License to Construct may only be granted over License to Construct Eligible Lands, and shall not constitute a Project Site Agreement or a Railway Agreement.

“**License to Construct Areas**” means those License to Construct Eligible Lands or parts thereof over which the Province or BCTFA obtains a License to Construct as contemplated by Section 5.10 [Licenses to Construct] of Schedule 8. For certainty, License to Construct Areas shall not form part of any Concession Lands, Other Highway Lands, Port Lands or Municipal Lands, and shall not form part of the Project Site.

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**“License to Construct Eligible Lands”** means:

- (a) the Excavated Material Placement Areas; and
- (b) any lands that do not fall in any of the following categories:
  - (i) Specified Concession Lands;
  - (ii) Specified Other Highway Lands;
  - (iii) Non-Province Controlled Lands;
  - (iv) Port Lands;
  - (v) Municipal Lands; or
  - (vi) any lands that are owned or held by or under the control of any of the Railways or any other railway,

**“Licensed Lands”** at any time means:

- (a) the Concession Lands at that time; and
- (b) the Other Highway Lands at that time;

provided that, after the Total Completion Date, **“Licensed Lands”** means only the Concession Lands at that time and excludes all Other Highway Lands.

**“Limited Notice to Proceed Agreement”** means the agreement made as of June 29, 2010 among the Province, Fraser Transportation Group, ACS Infrastructure Canada Inc., Ledcor Industrial/Mining Group Ltd., Dragados Canada, Inc., Ledcor CMI Ltd., BelPacific Excavating & Shoring Limited Partnership and Vancouver Pile Driving Ltd., as amended, supplemented or replaced from time to time.

**“Liquid Market”** means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Compliant Bidder) in the market for agreements for the provision of services (where such agreements are the same as or similar to this Agreement and/or provide for the performance of work or any material component of work similar to those required under this Agreement) for a price that, through the rebidding process in Part 4 [Rebidding Procedure] of Schedule 13, is likely to be a reliable indicator of Fair Value for the New Concession Agreement, provided that any vehicle established and controlled by the Senior Lenders specifically for the purposes of this Project and to which this Concession Agreement may be transferred pursuant to Part 6 [Senior Lender Replacement of Concessionaire] of the Lenders’ Remedies Agreement will be disregarded in assessing whether there are sufficient willing bidders in the market for such purposes.

**“Livestock”** has the meaning given in the *Livestock Act* (British Columbia).

**“Longitudinal Wheel Path Cracking”** means, for the purposes of Schedule 5 [OMR and End of Term], cracks which follow a course predominantly parallel to the pavement centre line and located at or near the centre of the wheel path.

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“**Longitudinal Joint Cracking**” means, for the purposes of Schedule 5 [OMR and End of Term], cracks which occur along or in the immediate adjacent vicinity of the longitudinal centre line pavement joint.

“**Losses**” means any and all damages, losses, loss of revenue (including lost Availability Payments), loss of profit, liabilities, charges, judgments, court orders, penalties, fines, assessments, costs and expenses (including legal and other professional charges and expenses on a full indemnity basis and including reasonable costs of mitigation) 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.

“**Maintenance**” means:

- (a) the maintenance and repair of the Project Infrastructure as required to ensure that the Project Infrastructure is maintained and repaired to meet the Asset Preservation Performance Measures throughout the Term and to meet the requirements set out in Appendix C [End of Term Specification] to Schedule 5 as at the Expiry Date;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing;
- (c) the supply 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 Concessionaire in respect of the foregoing,

all as set out and described in and in accordance with the Project Requirements, including the OMR Requirements, and this Agreement.

“**Major Culverts**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], structures 3 metres or more in diameter or span constructed of various materials (typically corrugated iron) and required to convey watercourses under the highway.

“**Major Retaining Wall**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], a structure whose purpose is to structurally retain earth and which are inventoried as Structures by the Ministry when the wall face is greater than 45 degrees and the maximum exposed wall height exceeds 2.0m, with the primary purpose of the structure not being to support Bridge abutments and rock fall or avalanche catchments.

“**Major Sign Structures**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], overhead sign support structures typically of truss construction with the horizontal members either supported at both ends or cantilevered over the Travelled Lanes.

“**Mark-up**” means, for the purposes of Schedule 11 [Changes], any margin, mark-up, overhead charge, premium or other increase over or above the any actual amount incurred for salary, wages, machinery, equipment, tools or any other input.

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“**Maximum Availability Payments**” means the payments calculated in accordance with Section 3.2(b) of Schedule 10 [Performance Mechanism].

“**Maximum Availability Payments for the Eastern Segment**” means the payments calculated in accordance with Section 3.1(b) of Schedule 10 [Performance Mechanism].

“**Maximum Response Time**” means, for the purposes of Schedule 5 [OMR and End of Term], the maximum permissible period of time within which the Concessionaire must complete the remedial action from the earlier of the time of observation of the defect by the Concessionaire or any of its Principal Contractors or Subcontractors and the time of notification of the defect by the Province’s Representative or the public to the Concessionaire or any of its Principal Contractors or Subcontractors.

“**Meandering Longitudinal Cracking**” means, for the purposes of Schedule 5 [OMR and End of Term], cracks which wander from edge to edge of the pavement or run parallel to the centre line, situated near the middle of the lane and which usually consist of single cracks but which may develop secondary cracks.

“**Minimum Condition**” means, for the purposes of Schedule 5 [OMR and End of Term], the least onerous permissible standard in respect of Asset Preservation Performance Measures that the Concessionaire must comply with throughout the Term.

“**Minister**” means the member of the Executive Council of the Province who is charged from time to time with the administration of the TIA and 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.

“**Ministry of Forests Protocol Agreement**” means the Protocol Agreement between the Ministry of Forests and the Ministry of Transportation and Highways signed by the Deputy Minister of Forests on September 9, 1992 and by the Deputy Minister of Transportation and Highways on August 8, 1992, as supplemented by the unsigned draft Protocol Agreement between the Ministry of Forests and the Ministry of Transportation dated May 25, 2002, as further supplemented July 26, 2005.

“**Ministry Standards**” means all standards and specifications referred to or identified in Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term] or elsewhere in this Agreement, including the Reference Documents, issued or adopted by the Province as applicable generally to the design, construction, operation, maintenance and/or rehabilitation of roads, highways, Bridges and related Structures, systems and improvements, or specifically to the Project Work or to all or any parts or components of the Project Infrastructure and the Project Site, in each case as at the Effective Date or as subsequently amended or revised after the Effective Date.

“**Minor Works**” has the meaning given in Section 7.3 [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 11, of the net amount of all Changes in Costs incurred by the Concessionaire to implement a Province Change or Concessionaire Proposal, with all future forecast amounts being discounted to the estimated date of payment or saving at a discount rate that is 1% per annum over the Prime Rate.



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

“**Motor Vehicle**” means a motor vehicle as defined in the *Motor Vehicle Act* (British Columbia).

“**Multiplate**” means, for the purposes of Schedule 5 [OMR and End of Term], a steel culvert three metres or more in diameter, fully or partially factory assembled or field assembled by bolting together a number of corrugated steel plates and provided that, when less than three metres in diameter, it shall be considered to be a culvert.

“**Municipal Facilities**” at any time means the Municipal Lands and the Municipal Infrastructure at that time.

“**Municipal Infrastructure**” at any time means the Original Municipal Infrastructure and the New Municipal Infrastructure at that time.

“**Municipalities**” means the Corporation of Delta and the Corporation of the City of Surrey, and “**Municipality**” means either one of them.

“**Municipal Lands**” at any time means any Non-Province Controlled Lands, access to which has, before that time, been given by the municipality or highway authority having ownership or control of such lands to the Concessionaire, a Principal Contractor or a Subcontractor, for the purpose of the construction thereon of any Infrastructure, as part of the carrying out of the Project Work, but does not include any such lands with respect to which, at that time, the Concessionaire, the Principal Contractors and the Subcontractors are no longer entitled to exercise such right of access for such purpose (and, for certainty, “**Municipal Lands**” does not include any Specified Concession Lands or Specified Other Highway Lands).

“**NCE Points**” means those points assigned to the Concessionaire in accordance with Section 10.1 [Assignment of NCE Points] of Schedule 10.

“**NCE Points Balance**” has the meaning given in Section 10.2(b)(ii) of Schedule 10 [Performance Mechanism].

“**NCE Points (Default) Balance**” has the meaning given in Section 10.3(b) of Schedule 10 [Performance Mechanism].

“**Net Present Value**” means, in respect of a Refinancing, the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR.

“**New Concession Agreement**” means agreements on substantially the same terms and conditions as this Agreement and the other Province Project Documents as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the Eastern Segment Substantial Completion Date, then the Eastern Segment Required Substantial Completion Date will be extended by a period reasonably required to allow a New Concessionaire (if one is appointed) to achieve Substantial Completion of the Eastern Segment by such extended Eastern Segment Required Substantial Completion Date;

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- (b) if this Agreement is terminated prior to the Western Segment Substantial Completion Date, then the Western Segment Required Substantial Completion Date will be extended by a period reasonably required to allow a New Concessionaire (if one is appointed) to achieve Substantial Completion of the Western Segment by such extended Western Segment Required Substantial Completion Date;
- (c) the term of such agreements shall commence on the day following the Termination Date and end at 11:59 p.m. on the Expiry Date, subject to earlier termination as provided therein, and the New Concessionaire (if one is appointed) shall be entitled to all the rights and shall assume all the obligations of the Concessionaire under this Agreement and the other Province Project Documents except as otherwise provided in this definition;
- (d) any accumulated NCE Points and Default Points shall be re-set to zero;
- (e) the Province may not terminate any of such agreements for reasons which arose prior to the Termination Date so long as the New Concessionaire is using all reasonable efforts to remedy any breach of this Agreement or any of the other Province Project Documents that arose prior to the Termination Date and is capable of being remedied; and
- (f) any other amendments that do not adversely affect the Concessionaire as may be specified by the Province.

**“New Concessionaire”** means:

- (a) in the case of a New Concession Agreement, the person who would enter into the New Concession Agreement with the Province, if the Province were to actually enter into such agreement; and
- (b) in the case of a Deemed New Concession Agreement, the person who would enter into the Deemed New Concession Agreement with the Province, if such agreement was actually entered into.

**“New Concession Infrastructure”** at any time means the Infrastructure (including Original Concession Infrastructure) situated in, on, under or over any part of the Concession Lands, as such Infrastructure is altered, upgraded and augmented at that time by the carrying out of the Project Work, including upgraded as well as new Infrastructure, but excluding Utilities of Utility Suppliers, Infrastructure and other property of Railways, and Third Party Facilities.

**“New Infrastructure”** means the New Concession Infrastructure, the New Municipal Infrastructure, the New Other Highway Infrastructure and the New Port Infrastructure.

**“New Municipal Infrastructure”** at any time means the Infrastructure (including the Original Municipal Infrastructure but excluding Utilities of Utility Suppliers) situated in, on, under and over any part of the Municipal Lands access to which has been given by the municipality or highway authority that controls or owns such part to the Concessionaire, a Principal Contractor or a Subcontractor, for the purpose of the construction thereon of any Infrastructure as part of the carrying out of the Project Work (but only for so long as the Concessionaire, a Principal Contractor or a Subcontractor is entitled to exercise such right of access to such Municipal Lands for such purpose), as such Infrastructure is altered, upgraded and

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augmented at that time by the carrying out of the Project Work, and may include upgraded as well as new Infrastructure.

**“New Other Highway Infrastructure”** at any time means the Infrastructure (including the Original Other Highway Infrastructure) situated in, on, under or over any part of the Other Highway Lands, as such Infrastructure is altered, upgraded and augmented at that time by the carrying out of the Project Work, including upgraded as well as new Infrastructure, but excluding Utilities of Utility Suppliers and Third Party Facilities.

**“New Port Infrastructure”** at any time means the Infrastructure (including the Original Port Infrastructure but excluding Utilities of Utility Suppliers) situated in, on, under and over any part of the Port Lands access to which has been given by the authority that controls or owns such part to the Concessionaire, a Principal Contractor or a Subcontractor, for the purpose of the construction thereon of any Infrastructure as part of the carrying out of the Project Work (but only for so long as the Concessionaire, a Principal Contractor or a Subcontractor is entitled to exercise such right of access to such Port Lands for such purpose), as such Infrastructure is altered, upgraded and augmented at that time by the carrying out of the Project Work, and may include upgraded as well as new Infrastructure.

**“No Default Interest Rate”** means at any time the non-default interest rate provided for in respect of the Senior Credit Facilities in the Senior Lending Agreements at that time, provided that if at that time there is more than one non-default interest rate so provided for, the **“No Default Interest Rate”** means the lowest of such non-default interest rates at that time.

**“Non-Availability Event”** means the Closure, for any reason, of a lane within any of the Road Sections.

**“Non-Availability Event Deductions”** means the deductions to be made from Maximum Availability Payments for the Eastern Segment or from Maximum Availability Payments, as applicable, pursuant to Section 5.1 [Non-Availability Event Deductions to be made] of Schedule 10.

**“Non-Compliance Event”** or **“NCE”** means a failure by the Concessionaire to meet a specific performance measure, or the occurrence of a Non-Permitted (Points) Traffic Disruption Event, described in Appendix D [Assignment of NCE Points] to Schedule 10.

**“Non-Compliance Event Deductions”** means the deductions to be made from Maximum Availability Payments pursuant to Section 4.1 [Non-Compliance Event Deductions to be made] of Schedule 10.

**“Non-Compliance Event Payments”** means the payments paid or payable by the Concessionaire to the Province pursuant to Section 9.1 [Calculation of Non-Compliance Event Payments] of Schedule 10.

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

- (a) a Non-Compliance Event;
- (b) defective workmanship or repairs not in compliance with the requirements of this Agreement;

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- (c) use of materials and/or equipment not in compliance with the requirements of this Agreement;
- (d) deficient, incomplete and/or illegible Quality Records;
- (e) inadequate and/or ineffective defect identification processes;
- (f) failure to achieve documented response time requirements;
- (g) failure to comply with Quality Management System processes;
- (h) failure to take Corrective Action or Preventative Action against any such Nonconformity within the required time; and
- (i) failure to meet the Concessionaire's reporting obligations under this Agreement,

but excluding any such failure arising after the Western Segment Substantial Completion Date in respect of:

- (j) the Construction of the New Other Highway Infrastructure;
- (k) the Construction of the New Municipal Infrastructure; and
- (l) the Construction of the New Port Infrastructure.

**“Nonconformity Report”** means a document issued by either the Province's Representative or the Concessionaire pursuant to Section 6.1 [Nonconformity Reporting Process] of Schedule 7 detailing the description of an identified Nonconformity and the proposed rectification and 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 Concessionaire as set out in Section 6.2 [Nonconformity Report Tracking System] of Schedule 7.

**“Non-Default Termination Sum”** has the meaning given in Section 2.2 [Calculation] of Schedule 13.

**“Non-Operational Vehicle”** means, for the purposes of Schedule 5 [OMR and End of Term], a vehicle used for going from point A to B without stopping on the road or on the side of the road to perform or inspect work or to transport workers to the work site.

**“Non-Permitted (Payment) Traffic Disruption Event”** means a Non-Permitted Traffic Disruption Event described in any of:

- (a) Section 2.6 [Non-Permitted Traffic Disruption Events on Other Provincial Highways] of Part 4 of Schedule 4;
- (b) Section 3.6 [Non-Permitted Traffic Disruption Events on Interchange Ramps] of Part 4 of Schedule 4;

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- (c) Section 4.6 [Non-Permitted Traffic Disruption Events on Specified Roads] of Part 4 of Schedule 4, if occurring on the River Road/South Fraser Way corridor between 96 Street and 112 Avenue that is existing as at the Effective Date.

**“Non-Permitted (Points) Traffic Disruption Event”** means a Non-Permitted Traffic Disruption Event described in either of:

- (a) Section 4.6 [Non-Permitted Traffic Disruption Events on Specified Roads] of Part 4 of Schedule 4, if occurring on an Specified Road other than the River Road/South Fraser Way corridor between 96 Street and 112 Avenue that is existing as at the Effective Date; or
- (b) Section 5.6 [Non-Permitted Traffic Disruption Events on Other Streets] of Part 4 of Schedule 4.

**“Non-Permitted Traffic Disruption Event”** means a Traffic Disruption Event described in any of Section 2.6 [Non-Permitted Traffic Disruption Events on Other Provincial Highways], Section 3.6 [Non-Permitted Traffic Disruption Events on Interchange Ramps], Section 4.6 [Non-Permitted Traffic Disruption Events on Specified Roads] or Section 5.6 [Non-Permitted Traffic Disruption Events on Other Streets] of Part 4 of Schedule 4.

**“Non-Police Incident”** means an Incident as a result of which the Police do not require closure of all or part of any Road Section.

**“Non-Province Controlled Lands”** means:

- (a) any land (other than Specified Concession Lands and Specified Other Highway Lands) that is owned or held by or under the control of a municipality or a highway authority other than the Province and BCTFA; and
- (b) any land (other than Specified Concession Lands and Specified Other Highway Lands) that is owned or held by or under the control of the Federal Government or any Port Authority under the *Canada Marine Act*;

and for greater certainty does not include any lands owned or held by or under the control of any of the Railways or any other railway.

**“Non-Province Controlled Lands Access Delay Event”** means a failure by the municipality, highway authority or other authority having ownership or control of any Non-Province Controlled Lands on which any Non-Province Controlled Lands Work is required to be carried out as part of the Project Work to give access to the required Non-Province Controlled Lands to the Concessionaire, the Principal Contractors or Subcontractors for the purpose of carrying out that Non-Province Controlled Lands Work within a reasonable time (not to be less than 60 days) following a written request by the Concessionaire for such access accompanied by all such designs, plans, drawings, specifications, proof of insurance and other documents and information as the municipality, highway authority or other authority shall reasonably require, but in each case only to the extent such failure is not caused by or resulting from or contributed to by, directly or indirectly, any Concessionaire Non-Excusable Event;

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**“Non-Province Controlled Lands Contamination Delay Event”** means, with respect to any Non-Province Controlled Lands on which any Non-Province Controlled Lands Work is required to be carried out as part of the Project Work, all of the following:

- (a) the existence on such Non-Province Controlled Lands of any Contamination not caused by the Concessionaire or any person for whom the Concessionaire is in law responsible; and
- (b) a requirement of applicable Laws that the Contamination be remediated as a condition of, or prior to, the carrying out of the Non-Province Controlled Lands Work on such Non-Province Controlled Lands; and
- (c) a failure by the municipality, highway authority or other authority having ownership or control of such Non-Province Controlled Lands to carry out or cause to be carried out such remediation or to make arrangements with the Concessionaire satisfactory to the Concessionaire acting reasonably for the carrying out of such remediation, within a reasonable time following a written request by the Concessionaire therefor;

but in each case only to the extent not caused by or resulting from or contributed to by, directly or indirectly, any Concessionaire Non-Excusable Event.

**“Non-Province Controlled Lands Delay Event”** means any Non-Province Controlled Lands Access Delay Event and any Non-Province Controlled Lands Contamination Delay Event.

**“Non-Province Controlled Lands Work”** means the construction, alteration, upgrading or augmenting of any Infrastructure on any Non-Province Controlled Lands required as part of the Project Work for the proper functioning of the Primary Infrastructure Components in accordance with the Final Design.

**“No Threshold Compensation Event”** means each of the Compensation Events referred to in subsections (a), (b), (f), (h), (i), (j), (k), (l), (m), (o), (p), (r), (u), (z), (dd) or (ee) of the definition of Compensation Event in this Section.

**“Notice of Intention to Terminate”** has the meaning given in Section 14.7(a).

**“Notice of Project”** has the meaning given in Section 4.12(b)(ii)(B).

**“Noxious Weed”** means a noxious weed as defined in the *Weed Control Act* (British Columbia).

**“Objectives”** has the meaning given in Section 1.4(a) of Schedule 5 [OMR and End of Term].

**“Off-take”** means, for the purposes of Schedule 5 [OMR and End of Term], the extension of ditches away from the line of the highway and toward the highway right-of-way boundary or low ground for the purpose of de-watering a highway Road Base or eliminating excessive Roadside water flow and erosion.

**“OHS Regulation”** means the *Occupational Health and Safety Regulation* (British Columbia) promulgated pursuant to the *Workers Compensation Act* (British Columbia).

**“OMR Monthly Report”** means the monthly report produced by the Concessionaire pursuant to Section 4.4 [OMR Monthly Report] of Appendix A to Schedule 5.

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“**OMR Requirements**” means the standards, specifications, procedures and other requirements applicable to the Operation, the Maintenance and the Rehabilitation activities included within the Project Work, 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.

“**176 Street Extension**” means the Infrastructure to be constructed by a Third Party Contractor from Barnston Drive to 250 m west of the future intersection with SFPR/104 Avenue, and including:

- (a) the 176 Street/SFPR/104 Avenue intersection; and
- (b) the CN Rail Access/104 Avenue intersection.

“**Open Graded Asphalt**”, “**OGA**”, “**Open Graded Friction Course**” or “**OGFC**” each means, for the purposes of Schedule 4 [Design and Construction], asphalt pavement which feature an open aggregate structure in which larger sized aggregate is bound together by asphalt cement.

“**Operating Communication Period**” means the period commencing on the day following the Western Segment Substantial Completion Date and ending on the Termination Date.

“**Operation**” means:

- (a) the routine operation of the Project Infrastructure;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing;
- (c) the supply 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 Concessionaire in respect of the foregoing,

all as set out and described in and in accordance with the Project Requirements, including the OMR Requirements, and this Agreement.

“**Operation and Maintenance Plan**” means the plan prepared by the Concessionaire in accordance with Section 4.3 [Operation and Maintenance Plan] of Appendix A to Schedule 5.

“**Operation, Maintenance and Rehabilitation Quality Management Plan**” or “**OMRQMP**” means the plan for the quality management of the Operation, the Maintenance and the Rehabilitation prepared by the Concessionaire in accordance with Appendix D [Operation, Maintenance and Rehabilitation Quality Management Plan] to Schedule 7.

“**Operational Performance Measures**” or “**OPMs**” has the meaning set out in Section 1.4(c)(i) of Schedule 5 [OMR and End of Term].

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“**Operations Director**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Original Concession Infrastructure**” means Infrastructure, including Structures, situated in, on, under or over any parcel of Concession Lands at the Handover Date for such parcel, but excludes Utilities of Utility Suppliers, Infrastructure and other property of Railways, and Third Party Facilities.

“**Original Municipal Infrastructure**” means Infrastructure (excluding Utilities of Utility Suppliers and Infrastructure of Railways) including Structures situate in, on, under or over any part of the Municipal Lands at the time access to such part is given by the municipality or highway authority that controls or owns such part to the Concessionaire, a Principal Contractor or a Subcontractor, for the purpose of the construction thereon of any Infrastructure as part of the carrying out of the Project Work, but only for so long as the Concessionaire, a Principal Contractor or a Subcontractor is entitled to exercise such right of access to such Municipal Lands for such purpose.

“**Original Other Highway Infrastructure**” means Infrastructure including Structures situated in, on, under or over any parcel of Other Highway Lands at the Handover Date for such parcel, but excluding Utilities of Utility Suppliers, Infrastructure and other property of Railways, and Third Party Facilities.

“**Original Port Infrastructure**” means Infrastructure (excluding Utilities of Utility Suppliers and Infrastructure of Railways) including Structures situate in, on, under or over any part of the Port Lands at the time access to such part is given by the authority that controls or owns such part to the Concessionaire, a Principal Contractor or a Subcontractor, for the purpose of the construction thereon of any Infrastructure as part of the carrying out of the Project Work, but only for so long as the Concessionaire, a Principal Contractor or a Subcontractor is entitled to exercise such right of access to such Port Lands for such purpose.

“**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 Highway Facilities**” at any time means the Other Highway Lands and the Other Highway Infrastructure at that time.

“**Other Highway Infrastructure**” at any time means the Original Other Highway Infrastructure at that time and the New Other Highway Infrastructure at that time.

“**Other Highway Lands**” at any time means the lands and interests in land described in Appendix B [Specified Other Highway Lands] to Schedule 8 that, before that time, have been made available to the Concessionaire as provided in Section 1.3 [Commencement of Land License] of Schedule 8, provided that “**Other Highway Lands**” excludes:

- (a) any Temporary Land Rights that have terminated or expired; and
- (b) any Land Rights (other than fee simple interests) that have been terminated.



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“**Other Land**” means any land other than the Specified Concession Lands, the Specified Other Highway Lands, Non-Province Controlled Lands, Municipal Lands, Port Lands and any License to Construct Areas.

“**Other Provincial Highways**” means Highway 99, Highway 91 and Highway 17.

“**Other Streets**” means all roads other than the Concession Highway, Other Provincial Highways, Interchange Ramps and Specified Roads.

“**Overhead**” means, for the purposes of Schedule 5 [OMR and End of Term], a Bridge carrying a highway over either a railway or a railway and another facility.

“**Overpass**” means a grade separated Structure carrying a highway over a road, a highway, a railway or a watercourse.

“**Panel**” has the meaning given in Section 3.2(a) of Schedule 16 [Dispute Resolution Procedure].

“**Participants**” has the meaning given in Section 8.8(a) [Responsibility for Participants and Trespassers].

“**Parent Partner**” means any of the Initial Parent Partners and any person from time to time holding units or other equity interests of any class in the capital of a Partner or any other ownership interest in a Partner, including a holder of securities issued by a Partner that are convertible into any such units or equity interests or ownership interests, and includes, for greater certainty, any general partner of a Partner and any limited partner of a Partner, and “**Parent Partners**” means any or all such persons.

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

“**Partner**” means any of the Initial Partners and any person from time to time holding a Unit or Units including a holder of securities issued by the Concessionaire that are convertible into a Unit or Units, and “**Partners**” means any or all such persons.

“**Partner Capital**” means at any time the amount actually paid to the Concessionaire for Units that are issued and outstanding at that time.

“**Partnership Agreements**” means each of the Initial Partnership Agreements and any other agreement or agreements among, without limitation, any of the Partners or among any of the Partners and the Concessionaire relating in any way to Units or to the Partners’ ownership interests in or rights and powers with respect to the Concessionaire, including any agreement relating to the subscription for Units or equity (or other funding) by any person including Partners, the Concessionaire or any Affiliate of the Concessionaire or a Partner, as supplemented, amended or replaced in accordance with this Agreement.

“**Partnerships BC**” means Partnerships British Columbia Inc.

“**Paved Medians**” means, for the purposes of Schedule 5 [OMR and End of Term], the asphalt surface between the painted Shoulder lines on the outside travel lanes of multilane highways.

“**Paved Pullouts**” means, for the purposes of Schedule 5 [OMR and End of Term], the asphalt surface Travelled Lane for acceleration and deceleration lanes.

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“**Paved Shoulders**” means, for the purposes of Schedule 5 [OMR and End of Term], the asphalt surface portion as indicated for Shoulders.

“**Paved Traffic Lanes**” means, for the purposes of Schedule 5 [OMR and End of Term], the surface of a highway falling within subsections (a) or (b) of the definition of a Travelled Lane in this Section.

“**Pavement Distress Index**” or “**PDI**” means, for the purposes of Schedule 5 [OMR and End of Term], a composite measure of the overall pavement surface condition (including cracking, Rutting and defects) based on the combination of specific distress, severity and density condition ratings that exist calculated using the mathematical model set out in the Pavement Surface Condition Rating Manual.

“**Pavement Edge Cracking**” means, for the purposes of Schedule 5 [OMR and End of Term], cracks which occur parallel to and within 0.6 metres of the inside and outside of the fog line, with such cracks being crescent shaped cracks or other fairly consistent cracks which intersect the pavement edge.

“**Pavement Marking**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], a retro-reflective mechanism such as paint used to delineate a profile, such as a road.

“**Payment Month**” means a month (or part thereof) in respect of which an Availability Payment is payable pursuant to Section 1.3 [Obligation to make Availability Payments] of Schedule 10.

“**Performance Based Connection**” means an intersection or roundabout in respect of which the traffic performance criteria set out in Section 1.5.4 [Traffic Engineering Design and Performance Criteria] of Part 2 of Schedule 4 are required to be met.

“**Performance Measures**” or “**PMs**” has, for the purposes of Schedule 5 [OMR and End of Term], the meaning given in Section 1.4(c) of Schedule 5 [OMR and End of Term].

“**Performance Incentive Payments**” means, collectively, the payments paid or payable by the Concessionaire to the Province pursuant to Part 7 [Payment Obligations of Concessionaire] of Schedule 10.

“**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 Project 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, any Project Site Agreement or any Project Site Encumbrance (and for greater certainty does not include any Railway Agreements or permits thereunder).

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**“Permitted Borrowing”** means, without double counting, any:

- (a) advance to the Concessionaire under the Senior Credit Facilities in accordance with the Senior Lending Agreements, provided that such advance is not made under any Committed Standby Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to the Concessionaire under any Committed Standby Facility that is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue that the Concessionaire incurs, provided that such funds are not used in substitution for other non-standby sources of committed funding designated for those purposes; and
- (d) interest and, in respect of the Initial Senior Lending Agreements only (prior to any subsequent amendment), other amounts accrued or payable as Senior Debt;

except where any amount referred to in any of subsections (a) to (d) inclusive of this definition is, or is being used to fund, a payment of Default Interest on any Additional Permitted Borrowing.

**“person”** means a legal entity, individual, corporation, body corporate, partnership, joint venture, association, trust, syndicate, limited liability company, pension fund, union, 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 Concessionaire as a result of this Agreement or any previous agreement between the Province or BCTFA and the Concessionaire dealing with the same subject matter as this Agreement.

**“Person Year”** means 2,080 hours of employment less vacation and statutory holiday entitlement.

**“Plant”** means plant, goods, products, commodities, materials, supplies, machinery, equipment, apparatus and other tangible property:

- (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 Project Site or actually incorporated into or permanently affixed to real property forming part of the Project Site.

**“Plantation Areas”** means, for the purposes of Schedule 5 [OMR and End of Term], those areas in and along the Concession Highway designated as Class 1 Plantation, Class 2 Plantation or Class 3 Plantation in accordance with Section 9.5.2 [Landscaping Classes] of Appendix A to Schedule 5.

**“PMH1 DB Agreement”** means the design-build agreement dated March 17, 2009 between Transportation Investment Corporation and the PMH1 DB Contractor.

**“PMH1 DB Contractor”** means Kiewit/Flatiron General Partnership, a general partnership established under the laws of the Province of British Columbia, comprised of Peter Kiewit Sons Co., a corporation

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amalgamated under the laws of the Province of Nova Scotia, and Flatiron Constructors Canada Limited, a corporation incorporated under the laws of the Province of British Columbia.

“**PMH1/SFPR Common Site**” means the Specified Concession Lands and/or the Specified Other Highway Lands described in Appendix H [Description of PMH1/SFPR Common Site] to Schedule 8.

“**Police**” means any of:

- (a) the Royal Canadian Mounted Police;
- (b) 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 Project Site or any part thereof from time to time;
- (c) a member of the Royal Canadian Mounted Police or any other law enforcement body or related governing body referred to in subsection (b) above; and
- (d) 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 operation of, the Project Infrastructure, the Project Site or any part thereof from time to time.

“**Police Incident**” means any Incident as a result of which the Police require closure of all or part of any Road Section.

“**Ponding**” means, for the purposes of Schedule 5 [OMR and End of Term], large puddles of water trapped on a Travelled Lane.

“**Portal**” means, for the purposes of Schedule 5 [OMR and End of Term], the clear unobstructed space of a through Bridge forming the entrance to the Bridge, with the entire portal member of the top chord bracing fixing the uppermost limit of the vertical clearance.

“**Port Facilities**” at any time means the Port Lands and the Port Infrastructure at that time.

“**Port Infrastructure**” at any time means the Original Port Infrastructure and the New Port Infrastructure at that time.

“**Port Lands**” at any time means any Non-Province Controlled Lands, access to which has, before that time, been given by the Federal Government or any Port Authority under the *Canada Marine Act* having ownership or control of such lands to the Concessionaire, a Principal Contractor or a Subcontractor, for the purpose of the construction thereon of any Infrastructure, as part of the carrying out of the Project Work, but does not include any such lands with respect to which, at that time, the Concessionaire, the Principal Contractors and the Subcontractors are no longer entitled to exercise such right of access for such purpose (and, for certainty, “**Port Lands**” does not include any Specified Concession Lands or Specified Other Highway Lands).

“**Post Termination Actual Project Costs**” means, in respect of a Post Termination Payment Period, all reasonable and proper costs and expenses incurred by the Province for or in respect of such Post

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Termination Payment Period to carry out and perform, or procure the carrying out and performance of, during such period, in the manner and to the standards contemplated by this Agreement, obligations, responsibilities, activities and work that would, but for the termination of this Agreement to which Section 3.1 [Obligation to Pay Compensation on Concessionaire Default] of Schedule 13 applies, have been the responsibility and obligation of the Concessionaire under this Agreement including, without limitation, the Project Work and the rectification and mitigation of all defaults by the Concessionaire under this Agreement occurring prior to such termination.

**“Post Termination Payment Period”** means each calendar month that ends:

- (a) within the Post Termination Service Term; and
- (b) not later than 15 days before the last day of the Post Termination Service Term.

**“Post Termination Performance Deduction Amount”** means for any Post Termination Payment Period an amount equal to the aggregate of the Non-Availability Event Deductions and the Non-Compliance Event Deductions made in or applicable to the last full calendar month immediately preceding the Termination Date, less an amount equal to any such Non-Availability Event Deductions or Non-Compliance Event Deductions resulting from or attributable to circumstances existing during the last full calendar month immediately preceding the Termination Date that have subsequently been rectified, whether as a result of the Province incurring Post Termination Actual Project Costs or otherwise.

**“Post Termination Province Cost Accounting Period”** means the period commencing on 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 Schedule 13 applies, and ends on the earliest of:

- (a) the payment date referred to in Section 4.4(a) of Schedule 13;
- (b) the date on which the Province gives notice to the Concessionaire that the Adjusted Highest Compliant Bid Price is zero or a negative amount pursuant to Section 4.5 [No Payment by the Province if a Negative Amount] of Schedule 13 or, if the Concessionaire disputes in accordance with the Dispute Resolution Procedure the determination that the Adjusted Highest Compliant Bid Price is zero or a negative amount, such later date on which it is agreed by the parties or determined according to the Dispute Resolution Procedure that the Adjusted Highest Compliant Bid Price is zero or a negative amount;
- (c) the payment date referred to in Section 4.6(a) of Schedule 13;
- (d) the payment date referred to in Section 4.7(a)(i) of Schedule 13;
- (e) the payment date referred to in Section 4.7(b)(i) of Schedule 13; and
- (f) the date of payment by the Province of an undisputed portion of the Adjusted Highest Compliant Bid Price pursuant to Part 4 [Rebidding Procedure] of Schedule 13;

**“Post Termination Service Amount”** means, for each Post Termination Payment Period, an amount (which may be greater than, equal to or less than zero) determined by subtracting from the Maximum

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Availability Payments that would have been payable in respect of the Post Termination Payment Period under this Agreement had this Agreement not been terminated the aggregate of:

- (a) the Post Termination Actual Project Costs in respect of such Post Termination Payment Period;
- (b) the Post Termination Performance Deduction Amount for such Post Termination Payment Period; and
- (c) the amount, if any, by which the Post Termination Service Amount in respect of the immediately preceding Post Termination Payment Period was negative.

**“Post Termination Service Term”** means the period of time commencing on 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 Schedule 13 applies, and ending on:

- (a) except if subsection (b) of this definition applies, the earliest of:
  - (i) the later of the payment date referred to in Section 4.4(a) of Schedule 13 and the date of payment by the Province of the amount referred to in that Section;
  - (ii) the date on which the Province gives notice to the Concessionaire that the Adjusted Highest Compliant Bid Price is zero or a negative amount pursuant to Section 4.5 [No Payment by the Province if a Negative Amount] of Schedule 13 or, if the Concessionaire disputes in accordance with the Dispute Resolution Procedure the determination that the Adjusted Highest Compliant Bid Price is zero or a negative amount, such later date on which it is agreed by the parties or determined according to the Dispute Resolution Procedure that the Adjusted Highest Compliant Bid Price is zero or a negative amount;
  - (iii) the later of the payment date referred to in Section 4.6(a) of Schedule 13 and the date of payment by the Province of the amount referred to in that Section;
  - (iv) the later of the payment date referred to in Section 4.7(a)(i) of Schedule 13 and the date of payment by the Province of the amount referred to in that Section;
  - (v) the payment date referred to in Section 4.7(b)(i) of Schedule 13; and
  - (vi) the date of payment by the Province of an undisputed portion of the Adjusted Highest Compliant Bid Price pursuant to Part 4 [Rebidding Procedure] of Schedule 13;
- (b) if Section 5.8 [Post Termination Service Payments] of Schedule 13 applies, the earliest of:
  - (i) the later of the payment date referred to in Section 5.4(b) of Schedule 13 and the date of payment by the Province of the amount referred to in that Section;

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- (ii) the date on which the Province gives notice to the Concessionaire that the Adjusted Estimated Fair Value is zero or a negative amount pursuant to Section 5.5 [No Payment by the Province if a Negative Amount] of Schedule 13 or, if the Concessionaire disputes in accordance with the Dispute Resolution Procedure the determination that the Adjusted Estimated Fair Value is zero or a negative amount, such later date on which it is agreed by the parties or determined according to the Dispute Resolution Procedure that the Adjusted Estimated Fair Value is zero or a negative amount;
- (iii) the payment date referred to in Section 5.6(b) of Schedule 13; and
- (iv) the date of payment by the Province of an undisputed portion of the Adjusted Estimated Fair Value pursuant to Part 5 [Estimated Fair Value Procedure] of Schedule 13.

**“Pot-hole”** means, for the purposes of Schedule 5 [OMR and End of Term]:

- (a) on a paved or Sealed highway, an area where a piece of pavement has broken free and been removed, leaving a hole, usually the depth of the asphalt pavement layer; and
- (b) on a gravel highway, a hole in which water puddles.

**“Preload Settlement Data”** means the fill thickness, settlement, pore pressure and lateral displacement data for the preload placed on the Project Site prior to the Effective Date, all measured at specific locations and dates and provided as part of the Disclosed Data.

**“Pre-Refinancing Equity IRR”** means in respect of a Refinancing the nominal after-tax Equity IRR calculated immediately prior to the Refinancing, but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing, to be earned over the remaining term of this Agreement.

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

**“Preventative Maintenance”** means, for the purposes of Schedule 5 [OMR and End of Term], the proactive care and servicing by the Concessionaire for the purpose of maintaining assets in satisfactory operating condition by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects.

**“Primary Infrastructure Components”** means the New Infrastructure resulting from the carrying out of the Project Work in accordance with Part 2 [Design and Construction Requirements] of Schedule 4 and in accordance with the Concessionaire’s Final Design in respect thereof.

**“Prime Contractor”** means a “prime contractor” as defined and described in the *Workers Compensation Act* (British Columbia) and the OHS Regulation, respectively.

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**“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 Contract”** means an agreement between the Concessionaire and one or more Principal Contractors for or relating to the provision of all or part of the Project Work, each as amended, supplemented or replaced from time to time in accordance with this Agreement and the Collateral Agreements.

**“Principal Contractor”** means the Constructor and any other person engaged directly or indirectly by the Concessionaire to perform a significant part of the Project Work (other than solely by way of a guarantee), and any substitute contractor for any such contractor, as may be permitted by this Agreement.

**“Principal Contractor Breakage Costs”** means, subject to Section 16.18 [Principal Contract Changes Not to Increase Province’s Liability], without duplication, amounts reasonably and properly payable by the Concessionaire to a Principal Contractor under the terms of the relevant Principal Contract, to compensate such Principal Contractor for Direct Losses sustained by the Principal 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 Project and in respect of the performance of the Project 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 Project Work in the future;
  - (iii) demobilisation costs, including the cost of any relocation of Construction Plant used in connection with the Project Work; and
  - (iv) termination payments that are required under applicable Laws or under lawful contracts of employment to be made to employees of the Principal Contractor and are reasonably and properly incurred by the Principal Contractor arising as a direct result of termination of this Agreement (provided that the Principal 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 Principal Contractor arising out of:
    - (A) contracts of employment or other agreements entered into by the Principal Contractor to the extent that such contracts of employment or agreements were not entered into substantially in connection with the Project; or
    - (B) contracts of employment or other agreements entered into by the Principal 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;



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- (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;
- (c) the Concessionaire and such Principal Contractor have each used all reasonable efforts to mitigate the Direct Losses; and
- (d) the Concessionaire is not otherwise able or entitled (for default or otherwise) to terminate the Principal Contract without payment or for reduced payment;

and provided that any compensation for loss of future profits of the Principal Contractor that would otherwise be included pursuant to the foregoing shall not exceed the future profits that the Principal Contractor could reasonably have been expected to earn:

- (e) for any Principal Contractor performing Operation or Maintenance after the Total Completion Date, for the three years immediately following the Termination Date or from the Termination Date to the end of the applicable Principal Contract, whichever is shorter; and
- (f) for all other Principal Contractors, in the first year immediately following the Termination Date.

**“Principal Insured Risk”** means a risk normally insured against by policies for the insurance referred to in any of Sections 2.1(a), (b) and (c) and Section 3.1(a) of Schedule 15 [Insurance Requirements], but excludes earthquake, delay in start up, extra expense, business interruption, loss of income and loss of profits insurance.

**“Privacy Code”** has the meaning given in Section 15.2(b).

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

**“Project”** has the meaning given in Section 2.1 [The Project].

**“Project Documents”** means:

- (a) this Agreement;
- (b) the constating documents for the Concessionaire and each of the Partners, including the Partnership Agreements;
- (c) the Lending Agreements including the Senior Lending Agreements and the Junior Lending Agreements;
- (d) the Lenders’ Remedies Agreement;
- (e) the Principal Contracts;
- (f) the Collateral Agreements with the Principal Contractors;

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- (g) the Proponent Agreement;
- (h) the Irrevocability Agreement;
- (i) the Escrow Agreement; and
- (j) the Insurance Trust Agreement,

and all other documents executed and delivered by or on behalf of the parties pursuant to Section 2.17 [Execution and Delivery of Project Documents] and Schedule 24 [Closing Deliveries].

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

- (a) the Concession Infrastructure at that time;
- (b) the Other Highway Infrastructure at that time;
- (c) the Municipal Infrastructure at that time; and
- (d) the Port Infrastructure at that time;

provided that, after the Total Completion Date, **“Project Infrastructure”** at any time:

- (e) means only the Concession Infrastructure at that time, and any Infrastructure on Municipal Lands or Port Lands on which the Concessionaire is obligated under Section 2.6(e) to perform work after the Total Completion Date, but only so long as such lands are Municipal Lands or Port Lands and in any event only until completion of such work; and
- (f) excludes all Other Highway Infrastructure and all other Municipal Infrastructure and Port Infrastructure.

**“Project Intellectual Property”** means the Intellectual Property (including the Design Data, the Traffic Data and the Records), and all Intellectual Property Rights therein, which is created, brought into existence, acquired, licensed or used by the Concessionaire, any Principal Contractor or any Subcontractor, directly or indirectly, for the purposes of the design or construction of the New Infrastructure, the Operation, the Maintenance, the Rehabilitation or otherwise for the purposes of the Project Work or this Agreement, but does not include the Financial Model.

**“Project Requirements”** means all standards, specifications, procedures, design criteria, design guidelines and other requirements applicable to the Project Work, including the Design, the Construction, the Operation, the Maintenance, the Rehabilitation and all other design activities and Construction Activities, 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, and includes the Design and Construction Requirements and the OMR Requirements.

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

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**“Project Site”** at any time means:

- (a) the Concession Lands at that time;
- (b) the Other Highway Lands at that time;
- (c) any Municipal Lands at that time; and
- (d) any Port Lands at that time;

provided that, after the Total Completion Date, **“Project Site”** at any time:

- (e) means only the Concession Lands at that time, and any Municipal Lands or Port Lands on which the Concessionaire is obligated under Section 2.6(e) to perform work after the Total Completion Date, but only so long as such lands are Municipal Lands or Port Lands and in any event only until completion of such work; and
- (f) excludes all Other Highway Lands and all other Municipal Lands and Port Lands.

**“Project Site Agreements”** means any and all agreements and instruments setting out terms and conditions on which Land Rights in any parcel of Specified Concession Lands or Specified Other Highway Lands that are less than a fee simple interest are at any time, on or after the date of this Agreement, area held by the Province or BCTFA including:

- (a) Land Rights described in the column titled “Land Rights if other than a Fee Simple Interest or Highway” in Table A.1 in Appendix A [Specified Concession Lands] to Schedule 8; and
- (b) Land Rights described in the column titled “Land Rights if other than a Fee Simple Interest or Highway” in Table B.1 in Appendix B [Specified Other Highway Lands] to Schedule 8;

and any amendments thereto, but does not include any Railway Agreements or any Compulsory Acquisition Orders.

**“Project Site Encumbrances”** means any and all Encumbrances from time to time charging, encumbering or affecting any Specified Concession Lands, Specified Other Highway Lands, Port Lands or Municipal Lands on or after the date of this Agreement, and any amendments thereto, and including:

- (a) any such Encumbrances described in Appendix C [Certain Project Site Encumbrances] to Schedule 8;
- (b) any such Encumbrances disclosed in the Disclosed Data;
- (c) any such Encumbrances registered in the Land Title Office against title to any Specified Concession Lands, Specified Other Highway Lands, Port Lands or Municipal Lands; and
- (d) any permit issued in replacement for a statutory right of way registered in the Land Title Office against title to any Specified Concession Lands or Specified Other Highway Lands

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that is cancelled on cancellation of a certificate of title in the Land Title Office for any parcel of Specified Concession Lands or Specified Other Highway Lands.

**“Project Work”** means all activities of or required of the Concessionaire (and/or any of the Concessionaire’s employees, Principal Contractors and Subcontractors) in connection with the performance of any obligations of the Concessionaire under this Agreement, and the conduct of all work and operations of the Concessionaire (and/or any of the Concessionaire’s employees, Principal Contractors and Subcontractors) on or in relation to the Project, the Project Site and the Project Infrastructure including, without limitation, the Design, the Construction, the Operation, the Maintenance, the Rehabilitation, the Reinstatement Work, the End of Term Work and all other design activities and Construction Activities.

**“Property Damage Insurance Proceeds”** has the meaning given in Section 6.18(b).

**“Proponent Agreement”** means the proponent agreement dated as of January 21, 2009 among the Province, Fraser Transportation Group, Iridium Concesiones de Infraestructuras, S.A. and Zachary American Infrastructure, to which Ledcor Industrial/Mining Group Ltd. became a party in substitution for Zachary American Infrastructure pursuant to an agreement to be bound dated February 4, 2010, ACS Infrastructure Canada Inc. became a party in substitution for Iridium Concesiones de Infraestructuras, S.A. pursuant to an agreement to be bound dated as of April 1, 2010, and South Fraser Construction Limited Partnership became a party in substitution for Ledcor Industrial/Mining Group Ltd., and the Concessionaire became a party, both pursuant to an agreement to be bound dated on or about July 9, 2010, and as amended, supplemented or replaced from time to time.

**“Proposal”** means:

- (a) the technical submittal dated December 18, 2009; and
- (b) the financial submittal dated the Financial Submittal Date,

each submitted by the Concessionaire to the Province in response to the Request for Proposals, together with all amendments and supplements to such technical proposal and financial proposal.

**“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 Project (including the construction of the Project Infrastructure) or against the construction or operation of highways and bridges in general, occurring after the Effective Date, but excluding any Labour Dispute or any other strike, lockout, industrial relations dispute or job action by, of or against workers carrying out any part of the Project Work.

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

- (a) a variation in the design, quality or scope of the Primary Infrastructure Components, or the construction thereof;
- (b) a variation in the quality or scope of the Operation, the Maintenance or the Rehabilitation; or
- (c) any other variation in the Project Requirements or this Agreement,

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or 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 7.1 [Province Changes] are stated to be applicable.

“**Province Default**” has the meaning given in Section 13.1 [Province Default].

“**Province Default Termination Sum**” has the meaning given in Section 1.2 [Calculation] of Schedule 13 [Compensation on Termination].

“**Province Fisheries Authorization**” means Authorization File # 04-HPAC-PA1-00004 issued August 28, 2008 and amended December 23, 2009, June 19, 2009, February 8, 2010 and June 14, 2010, issued by Fisheries and Oceans Canada and obtained by the Province under subsection 35(2) of the *Fisheries Act* (Canada).

“**Province Indemnified Person**” means:

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

“**Province Non-Excusable Event**” means any of the following:

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

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 Concessionaire pursuant to Part 1 [Payment Obligations of Province] of Schedule 10.

“**Province Permits**” means the Permits listed in Appendix B [Province Permits] to Schedule 4.

“**Province Project Documents**” means this Agreement, the Lenders’ Remedies Agreement, the Collateral Agreements, the Proponent Agreement, the Irrevocability Agreement, the Escrow Agreement, the Insurance Trust Agreement and, when executed and delivered in accordance with this Agreement, the Independent Certifier Agreement.

“**Province’s Representative**” means Geoff Freer or such substitute as may be appointed by the Province pursuant to Section 1.2 [Change of Province’s Representative] of Schedule 2.

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“**Province Subsequent Contamination**” means any Subsequent Contamination caused by the Province or any person for whom the Province is in law responsible, on any part of the Project Infrastructure or the Project Site.

“**Province Work**” means the work described in Appendix I [Province Work] to Schedule 4.

“**Provincial Highways Condition Centre**” or “**PHCC**” means, for the purposes of Schedule 5 [OMR and End of Term], the centre established by the Province for provincial highways which provides road condition reporting to road users.

“**Provincial Milestone Payments**” means the payments paid or payable by the Province to the Concessionaire pursuant to Section 1.2(a) of Schedule 10 [Performance Mechanism].

“**PST**” means the tax that is imposed pursuant to the *Social Service Tax Act* (British Columbia) as at the Financial Submittal Date, and any successor or replacement tax therefor.

“**QMS 2000 Auditor**” means a quality auditor certified by the International Register of Certified Auditors in the “QMS 2000 Auditor” grade of certification.

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

- (a) the Province or any ministry or department of the Province;
- (b) any person having the legal capacity, power and authority to become a party to and to perform the Province’s or, as the case may be, BCTFA’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;
- (c) the Federal Government provided it has the legal capacity, power and authority to become a party to and to perform the Province’s or, as the case may be, BCTFA’s obligations under this Agreement and the other Province Project Documents; and
- (d) any person having the legal capacity, power and authority to become a party to and to perform the Province’s or, as the case may be, BCTFA’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

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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.

**“Qualified Refinancing”** means any Refinancing, other than an Exempt Refinancing, that is identified as a Qualified Refinancing in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit], is proposed to be carried out pursuant to Section 5.16 [Qualified Refinancing], and:

- (a) is carried out and closed in accordance with Section 5.16 [Qualified Refinancing]:
  - (i) on or at any time after the date for that Refinancing specified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit]; or
  - (ii) up to three years prior to the date for that Refinancing specified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit], provided that, if the date specified for that Refinancing in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] is after the Western Segment Substantial Completion Date, then the Refinancing may not be closed on or before the Western Segment Substantial Completion Date;

or at such other time as may be consented to by the Province’s Representative in its discretion;

- (b) when carried out does not increase the principal amount of all funding for the Project committed under the Senior Lending Agreements by more than the amount shown as the “Maximum Permitted Increase in Committed Funding” for that Refinancing in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit], or by such greater amount as may be consented to by the Province’s Representative in its discretion;
- (c) is carried out by means of financing instruments (including hedging instruments) commonly in use in project financings in United States, European Union and/or Canadian project finance markets at the time of the Refinancing, that provide for liabilities on early termination or prepayment of the financing that are consistent with (and not worse for the borrower than) common market practice for project financings in United States, European Union and/or Canadian project finance markets for instruments of such type at the time of the Refinancing, or such additional or substitute financing instruments as may be consented to by the Province’s Representative in its discretion; and
- (d) does not constitute or result in a breach of Section 5.15 [Restricted Persons Prohibited];

**“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 subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1:

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- (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 Concessionaire, 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 Audit**” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.



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“**Quality Audit Plans**” means the Concessionaire’s audit plans defining the Internal Quality Audits and External Quality Audits that the Concessionaire shall perform or cause to be performed on its own processes and the processes of its Principal Contractors and Subcontractors.

“**Quality Director**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Quality Documentation**” means all documentation required in accordance with Schedule 7 [Quality Management] which together constitutes and describes the Quality Management System, including the Quality Manual, Quality Management Plans, Work Method Statements and Quality Audit Plans.

“**Quality Management Plan**” or “**QMP**” means each detailed quality management plan of the Concessionaire detailing which procedures and associated resources shall be applied by whom and when for each aspect of the Project Work required in accordance with this Agreement, including the Design Quality Management Plan, the Construction Quality Management Plan, the Traffic Quality Management Plan, the Operation, Maintenance and Rehabilitation Quality Management Plan and the Environmental Quality Management Plan.

“**Quality Management System**” means the Concessionaire’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 Project Work in accordance with this Agreement.

“**Quality Manual**” means the Concessionaire’s quality manual meeting the requirements set out in Appendix A [Quality Manual] to Schedule 7 and:

- (a) outlining the Quality Management System for all aspects of the Project Work, and for the complete organization (including the Concessionaire and its Principal Contractors and Subcontractors) involved in performing the Project Work;
- (b) establishing Quality Policy and Quality Objectives; and
- (c) outlining the means by which the Concessionaire shall establish, implement, control and continually improve processes to achieve that Quality Policy and those Quality Objectives.

“**Quality Objectives**” means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with Schedule 7 [Quality Management], provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to applicable Quality Policy expressed or recorded in the Quality Manual.

“**Quality Policy**” means the overall intentions and direction of the Concessionaire related to quality applicable to the overall organization (including the Concessionaire and its Principal Contractors and Subcontractors) involved in performing the Project Work which are to be formally expressed and recorded in the Quality Manual in accordance with Schedule 7 [Quality Management], provided that, alternatively, each Quality Manual Plan may have its own Quality Policies which are directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.

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“**Quality Records**” has the meaning given in Section 5.8 [Quality Records] of Schedule 7.

“**Railway Agreements**” means the BNSF Master Agreement, and any and all Railway Crossing Agreements, Railway Construction/Entry Permits and Railway Orders from time to time.

“**Railway Construction/Entry Permits**” means all consents, approvals, permissions and agreements, and amendments thereto, required to be obtained from a Railway pursuant to a Railway Crossing Agreement, a Railway Order or applicable Laws, for the carrying out of Project Work on Railway Lands, but does not include any Railway Crossing Agreements or Railway Orders.

“**Railway Crossing**” means, for the purposes of Schedule 5 [OMR and End of Term], the highway prism (including ditches) on a Railway’s property.

“**Railway Crossing Agreement**” means any agreement (and amendments thereto) entered into by the Province and/or BCTFA with a Railway allowing or providing for:

- (a) Infrastructure comprising or to comprise Project Infrastructure to be located upon and across Railway Lands; and
- (b) the construction, maintenance and use of such Infrastructure upon and across such land and/or improvements;

and includes any such agreement described or referred to in the column entitled “Land Rights if other than a Fee Simple Interest or Highway” in Table A.1 in Appendix A [Specified Concession Lands] or Table B.1 in Appendix B [Specified Other Highway Lands] to Schedule 8 in respect of any Railway Lands described therein.

“**Railway Crossing Approach**” means, for the purposes of Schedule 5 [OMR and End of Term], the highway prism (including ditches) on a Railway’s property from the Railway Crossing outward to the edge of the Railway’s property.

“**Railway Lands**” means Specified Concession Lands or Specified Other Highway Lands, and improvements thereon, that are owned or held by or under the control of any of the Railways.

“**Railway Order**” means an order of the Canadian Transportation Agency (or its predecessor the National Transportation Agency) or a certificate or order issued pursuant to the *Railway Act* (British Columbia) and/or the *Railway Safety Act* (British Columbia):

- (a) granted or issued in favour of the Province and/or BCTFA allowing or providing for:
  - (i) Infrastructure comprising or to comprise Project Infrastructure to be located upon and across Railway Lands; and
  - (ii) the construction, maintenance and use of such Infrastructure upon and across such land and/or improvements; or
- (b) for the carrying out of Project Work on Railway Lands, excluding any such order contemplated by subsection (a) of this definition;

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and amendments thereto, and includes any such order and any certificate or order issued pursuant to the *Railway Act* (British Columbia) and/or the *Railway Safety Act* (British Columbia) described or referred to in the column entitled “Land Rights if other than a Fee Simple Interest or Highway” in Appendix A [Specified Concession Lands] or Appendix B [Specified Other Highway Lands] to Schedule 8 in respect of any Railway Lands described therein.

“**Railways**” means BC Rail, BNSF, CN Rail and SRY and “**Railway**” means any one of them.

“**Rain Storm Event**” means, for the purposes of Schedule 5 [OMR and End of Term], an event when a heavy rain event in excess of 50 mm in a 24-hour period occurs, as reported by Environment Canada or recorded at a weather station along the length of the Concession Highway.

“**Records**” has the meaning given in Section 1.1 [Concessionaire Records] of Schedule 17.

“**Records Management Protocol**” means the protocol developed by the Concessionaire pursuant to Section 1.3 [Records Management Protocol] of Schedule 17.

“**Reference Concept**” means the Reference Concept dated December 2008 in folder 0902.10 of the Data Room.

“**Reference CPI**” means:

- (a) for the first day of any calendar month, the CPI published in the month that is two months prior to such calendar month (for example, the Reference CPI for December 1 in any year will be the CPI published in October in that year); and
- (b) for any other day in a month, a number calculated by linear interpolation between the Reference CPI applicable to the first day of the month in which such day falls as determined according to subsection (a) above and the Reference CPI applicable to the first day of the month immediately following the month in which such day falls as determined according to subsection (a) above. For the purpose of carrying out this linear interpolation, calculations will be carried to six decimal places and rounded, such that the results will be expressed to five decimal places (with numbers of 5 or more rounded up).

“**Reference Documents**” means the references, codes, 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.

“**Refinancing**” means:

- (a) the execution and delivery by the Concessionaire or any of the Partners of any agreement or instrument relating in any way to the financing of the Project or the Project Work, other than the Initial Senior Lending Agreements, the Junior Lending Agreements and the Partnership Agreements;
- (b) any amendment, variation, novation, supplement or replacement of any Senior Lending Agreement or Senior Credit Facilities, or any refinancing of Senior Debt;

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- (c) the exercise of any right, or the grant of any waiver or consent, under any Senior Lending Agreement;
- (d) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Lending Agreements, or the creation or granting of any other form of benefit or interest in either the Senior Lending Agreements or the contracts, revenues or assets of the Concessionaire, whether by way of security or otherwise; or
- (e) any other arrangement put in place by the Concessionaire or any of its Affiliates or another person that has an effect that is similar to any of subsections (a) through (d) above or that has the effect of limiting the ability of the Concessionaire or any of its Affiliates to carry out any of the actions referred to in subsections (a) through (d) above.

**“Refinancing Gain”** means, with respect to a Refinancing, other than an Exempt Refinancing, an amount equal to the greater of zero and  $[(A-B)-C]$ , where:

- A = the Net Present Value of the aggregate Distributions (net of taxes (which may be positive or negative in accordance with the methodologies and assumptions contained in the Financial Model) payable on these amounts at the Parent Partner level), projected immediately prior to the Refinancing (taking into account the effect of the Refinancing including the costs of the Refinancing referred to in Section 5.13 [Refinancing Costs], and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;
- B = the Net Present Value of the aggregate Distributions (net of taxes (which may be positive or negative in accordance with the methodologies and assumptions contained in the Financial Model) payable on these amounts at the Parent Partner level), projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing or the costs of the Refinancing referred to in Section 5.13 [Refinancing Costs], and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing; and
- C = an amount, if any, required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR calculated as a single payment to be paid as a Distribution on the date of the Refinancing.

**“Refurbish”** means, for the purposes of Schedule 5 [OMR and End of Term] and with respect to the Maintenance of Sign Systems only, to:

- (a) remove the Sign from the field to a Sign shop, strip the old Sign face by a chemical or grinding process, and add a new face to the Sign blank; or
- (b) perform Sign overlaying at the Sign shop.

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**“Rehabilitation”** means:

- (a) the rehabilitation of the Project Infrastructure as required to ensure that the Project Infrastructure is rehabilitated to meet the Asset Preservation Performance Measures throughout the Term and to meet the requirements set out in Appendix C [End of Term Specification] to Schedule 5 as at the Expiry Date;
- (b) all design, including the preparation of all construction drawings and as-built drawings, required for the carrying out of the foregoing;
- (c) the performance of all project management, quality management, environmental management, communications management and other management services and activities required for the carrying out of the foregoing;
- (d) the supply of all Plant, Construction Plant, other property and workers for the carrying out of the foregoing; and
- (e) all other work, services and activities to be provided by the Concessionaire in respect of the foregoing,

all as set out and described in and in accordance with the Project Requirements, including the OMR Requirements, and this Agreement.

**“Rehabilitation Strategy”** means, for the purposes of Schedule 5 [OMR and End of Term], the plan developed to ensure that the specified level of service is achieved that considers the management of risks associated with defects (including deterioration and damage), and with physical work remediation possibly including Maintenance, repair, Rehabilitation and replacement.

**“Reinstatement Plan”** has the meaning given in Section 6.16 [Reinstatement Plan].

**“Reinstatement Work”** has the meaning given in Section 6.15 [Restoration and Reinstatement of Damage or Destruction].

**“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 Project Work or which has any authority or right in respect of the Project, the Project Infrastructure, the Project Site or any part thereof under any Laws and includes Governmental Authorities.

**“Relevant Components”** means each of the following:

- (a) for the purposes of the certification of Substantial Completion thereof, the Eastern Segment;
- (b) for the purposes of the certification of Substantial Completion thereof, the Western Segment;

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- (c) for the purposes of the certification of Total Completion thereof, collectively, the Primary Infrastructure Components; and
- (d) individually, the relevant component or components of the New Infrastructure resulting from the completion of any discrete element of other Construction Activities carried out by the Concessionaire after the Total Completion Date, including the Rehabilitation, any Reinstatement Work and any End of Term Work.

**“Relevant Non-Availability Event”** means a Non-Availability Event, other than an Excluded Event.

**“Relevant Persons”** means:

- (a) the Partners;
- (b) persons who formerly were Partners;
- (c) the holders of Junior Debt;
- (d) persons who formerly were holders of Junior Debt;
- (e) the lenders under Junior Lending Agreements;
- (f) persons who formerly were lenders under Junior Lending Agreements;
- (g) Affiliates of the Concessionaire or of any person described in any of subsections (a) to (f) inclusive of this definition; and
- (h) persons who formerly were Affiliates of the Concessionaire or of any person described in any of subsections (a) to (f) inclusive of this definition.

**“Relevant Property”** means any property that is not within the boundary of the Specified Concession Lands, the Specified Other Highway Lands or any Non-Province Controlled Lands that at any time become Municipal Lands or Port Lands under this Agreement, that is affected:

- (a) by any Existing Contamination or Province Subsequent Contamination in, on, under or over:
  - (i) any Specified Concession Lands or Specified Other Highway Lands; or
  - (ii) any Concession Infrastructure or Other Highway Infrastructure;or
- (b) by any migration or leaching of Existing Contamination or Province Subsequent Contamination from:
  - (i) any Specified Concession Lands or Specified Other Highway Lands; or
  - (ii) any Concession Infrastructure or Other Highway Infrastructure.

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**“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 Province Subsequent Contamination in, on, under or over:
    - (A) any Specified Concession Lands or Specified Other Highway Lands; or
    - (B) any Concession Infrastructure or Other Highway Infrastructure;
  - or
  - (ii) migration or leaching of any Existing Contamination or Province Subsequent Contamination into or onto the Relevant Property from:
    - (A) any Specified Concession Lands or Specified Other Highway Lands; or
    - (B) any Concession Infrastructure or Other Highway Infrastructure;
- and
- (b) any person who suffers damage, injury or other harm caused by any Existing Contamination or Province Subsequent Contamination in, on or under any Relevant Property from time to time to the extent such Existing Contamination or Province Subsequent Contamination constitutes Existing Contamination or Province Subsequent Contamination which has migrated or leached into or onto the Relevant Property from:
  - (i) any Specified Concession Lands or Specified Other Highway Lands; or
  - (ii) any Concession Infrastructure or Other Highway Infrastructure;

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 Concessionaire 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 Concessionaire to obtain:
  - (i) a required Permit (other than any Permit referred to in subsection (l) of this definition); or
  - (ii) a required renewal or extension of any required Permit (including, for greater certainty, any Permits referred to in subject (l) of this definition),

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due (in the case of (i) or (ii)) to any unreasonable delay by a Relevant Authority, provided that the Concessionaire has made all reasonable efforts to obtain such Permit, renewal or extension, including making complete and timely application and, to the extent practicable, considering modifications to the applicable design;

- (c) the failure by BNSF to comply with its material obligations under the BNSF Master Agreement where such compliance is necessary or desirable in connection with performance of the Project Work and provided that the Concessionaire has made all reasonable efforts to cause BNSF to so comply;
- (d) the inability of the Concessionaire to obtain a required Railway Construction/Entry Permit or a required renewal or extension thereof due to any unreasonable delay by a Railway, provided that the Concessionaire has made all reasonable efforts to obtain such Railway Construction/Entry Permit, renewal or extension, including making complete and timely application and, to the extent practicable, considering modifications to the applicable design;
- (e) fire, explosion, lightning or storm affecting the Project Site or the Project Infrastructure, other than a fire or explosion constituting a Compensation Event;
- (f) 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 is less than or equal to \$5,000,000 (index linked) for a single Seismic Event; and
  - (ii) if such Seismic Event occurs after the Eastern Segment Substantial Completion Date and prior to the Western Segment Substantial Completion Date, all seismic design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure within the Eastern Segment have been complied with and implemented by the Concessionaire; and
  - (iii) if such Seismic Event occurs after the Western Segment Substantial Completion Date, all seismic design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure have been complied with and implemented by the Concessionaire,

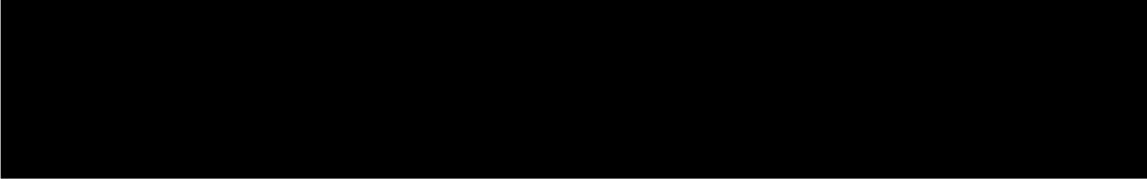
the onus of establishing which shall be on the Concessionaire;













- (g) damage to or destruction of the Project Infrastructure or part thereof caused by a Flood, provided that the cost to repair and restore the damage to or destruction of Project Infrastructure caused by the Flood is less than or equal to \$5,000,000 (index linked) for a single Flood, the onus of establishing which shall be on the Concessionaire;
- (h) a Labour Dispute;
- (i) blockade or embargo falling short of a Protest Action or a Force Majeure Event;



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- (j) the occurrence of a Change in Law other than:
  - (i) a Discriminatory Change in Law;
  - (ii) a Change in Law relating to Taxes; or
  - (iii) a Change in Law occurring prior to the Total Completion Date and affecting only the Project Requirements relating to the Construction Activities;
- (k) the discovery of any Undisclosed Utilities; and

(l) 

	Column 1	Column 2
1		
1		
1		
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1		
1		

Section 17 

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Section 17



	Column 1	Column 2
7	[Redacted]	[Redacted]
█	[Redacted]	[Redacted]
█	[Redacted]	[Redacted]
█	[Redacted]	[Redacted]
█	[Redacted]	[Redacted]
█	[Redacted]	[Redacted]

“**Removed Lands**” has the meaning given in Section 1.8(b) of Schedule 8 [Lands].

“**Reports**” has the meaning given in Section 2.1 [Required Reports] of Schedule 17.

“**Request for Proposals**” means the request for proposals in respect of the Project issued by the Province on April 9, 2009, 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 29, 2008, together with all amendments, supplements and addenda thereto.

“**Required Insurance**” means the insurance required pursuant to Sections 6.1(a), (b), (c), (d), (e) and (f), 6.3 [Particular Requirements of Policies], 6.4 [Deductibles], 6.5 [Concessionaire Insurance Primary], 6.8 [Policies and Copies] and 6.9 [Renewal], and Schedule 15 [Insurance Requirements].

“**Required Province Change**” means a Province Change contemplated in any of the following:

- (a) Section 2.16(a)(ii);
- (b) Section 1.2(b) of this Schedule;
- (c) Section 5.5(c) of Part 1 [General Provisions] of Schedule 4;

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- (d) Section 5.10 [New and Amended Utility Agreements] of Part 1 of Schedule 4;
- (e) Sections 9.3.7(c) and 9.3.7(d) of Part 2 [Design and Construction Requirements] of Schedule 4;
- (f) Section 1.1 of Schedule 6 [Environmental Obligations];
- (g) Section 1.3(b) of Schedule 6 [Environmental Obligations];
- (h) Section 2.5(b) of Schedule 6 [Environmental Obligations];
- (i) Sections 4.4(b) and 4.4(c) of Schedule 6 [Environmental Obligations];
- (j) Section 2.2 [Extension of Specified Handover Date by Province] of Schedule 8;
- (k) Section 5.5 [Additions or Changes by Province Change] of Schedule 8; and
- (l) Section 2.1 [Other Agreements with First Nations] of Schedule 22.

**“Requirements of Interested Parties”** means the requirements of Interested Parties which are legally enforceable against any or all of the Province, BCTFA and the Concessionaire, 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 Concessionaire otherwise had knowledge of, could have discovered through the exercise of reasonable due diligence, or could have reasonably anticipated from an analysis of all relevant information available to the Concessionaire (including the Disclosed Data) as at the Financial Submittal Date, having regard to the opportunity afforded the Concessionaire to conduct such due diligence and analysis before the Financial Submittal Date.

**“Responding Party”** has the meaning, for the purposes of Schedule 16 [Dispute Resolution Procedure], given in Section 4.1 [Referral to Arbitration] of Schedule 16.

**“Response Measure”** means, for the purposes of Schedule 5 [OMR and End of Term], a time-based measure which defines a level of service.

**“Response Time”** means, for the purposes of Schedule 5 [OMR and End of Term], a response time and maximum time measured from the time the particular deficiency was detected by or reported to the Concessionaire.

**“Restricted Periods”** means those periods of time, as set out in Section 2.2 [Restricted Periods for Other Provincial Highways], Section 3.2 [Restricted Periods for Interchange Ramps], Section 4.2 [Restricted Periods for Specified Roads] and Section 5.2 [Restricted Periods for Other Streets] of Part 4 of Schedule 4, during any Construction Activity for an identified location within the Active Construction Zone, during which there are restrictions on the Concessionaire’s available Traffic Management measures in accordance with Part 4 [Traffic Management] of Schedule 4.

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“**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 to the effective date of any proposed transaction;
- (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 transfer 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 Concessionaire of its obligations under this Agreement; or
- (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).

“**Retaining Structure**” means, for the purposes of Schedule 5 [OMR and End of Term], a vertical Structure designed to resist the horizontal earth pressures of a fill or other material.

“**Retention Account**” means the account contemplated by Section 6.1 [Establishment of Retention Account] of Schedule 10.

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

“**Revised Senior Debt Termination Amount**” means, subject to Section 5.14 [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) by the Concessionaire to the Senior Lenders under the Senior Lending Agreements in respect of Permitted Borrowing (including any such amounts that are in respect of Additional Permitted Borrowing), together with per diem interest on so

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much thereof as is due and payable from time to time under the Senior Lending Agreements (exclusive of amounts referred to in subsection (b) of this definition) 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 Concessionaire the undisputed portion of the Province Default Termination Sum, the Non-Default Termination Sum or the Special Termination Sum, whichever is applicable;

- (b) all amounts (including Hedge Termination Amounts, make whole payments in respect of public bond financings and other breakage costs, but excluding premiums and prepayment charges, fees or penalties under any debt financing or on early redemption of bonds, notes or other evidence of indebtedness (provided that, for greater certainty, such exclusion shall not apply to any such make whole payments)) payable by the Concessionaire 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 Concessionaire 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 Revised Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts held by or on behalf of the Concessionaire or any of the Partners on the Termination Date with the exception only of the “Distribution Account” as defined in the Credit Agreement referred to in paragraph 1 of Part 1 of Schedule 25 [Financing and Partnership Agreements] and the “Debtor’s Separate Bank Account” as defined in each of the General Security Agreements referred to in paragraphs 6 and 7 of Part 1 of Schedule 25 [Financing and Partnership Agreements];
- (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 Concessionaire as a result of 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;
- (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 Concessionaire, 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); and
- (g) an amount equal to the aggregate of all Distributions made during the period during which any Additional Permitted Borrowing is subsisting, up to an amount equal to the amount of the Additional Permitted Borrowing outstanding on the Termination Date.

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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.

“**RIMS**” or “**Road Inventory and Maintenance System**” means the Ministry’s corporate asset management system that maintains road asset and inventory information for the provincial highway network and through its multiple linear referencing provides the basis to integrate with other Ministry asset management systems.

“**Risk Assessment Plan**” means the sub-plan of the Traffic Management Plan described in Section 7.2.5 [Risk Assessment Plan] of Part 4 of Schedule 4.

“**Road Base**” means, for the purposes of Schedule 5 [OMR and End of Term], the portion of highway subsurface on which the travelling surface or wearing surface is placed.

“**Road Safety Audit**” means an audit carried out in accordance with Article 11 [Road Safety Audit] of Part 2 of Schedule 4.

“**Road Safety Audit Team**” means a group of individuals appointed from time to time in accordance with the Design and Certification Procedure to carry out road safety audits in respect of the Project Work.

“**Road Safety Audit Certificate**” has the meaning given in Section 4.3 [Road Safety Audit Certificates] of Part 3 of Schedule 4.

“**Road Section**” means:

- (a) in the period prior to and excluding the Western Segment Substantial Completion Date, any of the “Road Sections” of the Concession Highway identified in Table 1 set out in Appendix E [Schedule of Road Sections] to Schedule 10; and
- (b) in the period from and including the Western Segment Substantial Completion Date, any of the “Road Sections” of the Concession Highway identified in Table 2 set out in Appendix E [Schedule of Road Sections] to Schedule 10.

“**Roadside**” means, for the purposes of Schedule 5 [OMR and End of Term], that part of the public highway between the edge of the Shoulder and the highway right-of-way boundary, excluding the Shoulder.

“**Roughness**” means, for the purposes of Schedule 5 [OMR and End of Term], a measure of the riding comfort experienced by the road user, where the roughness may be due to deficiencies with the original construction or the result of deterioration from traffic and environmental conditions, with the extent of the pavement distortion combined with a vehicle’s suspension and operating speed all contributing to the ride quality.

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“**RPMS**” or “**Roadway Pavement Management System**” means the Ministry’s corporate pavement asset management application that is used for monitoring the condition of paved highways to support the planning, programming and delivery of the annual resurfacing plan.

“**Rutting**” means, for the purposes of Schedule 5 [OMR and End of Term], deformation of the surface of the road in the vehicle Wheel Path due to repetitive passes of vehicle tires.

“**RWIS**” means the Road Weather Information System that provides real time reporting of pavement and weather information.

“**Safety Management and Intervention Plan**” means the plan, which may be a sub-plan of the Operation and Maintenance Plan, prepared by the Concessionaire in accordance with Section 17.1 [Safety Management Requirements] of Appendix A to Schedule 5.

“**Salt Management Plan**” means a plan prepared by the Concessionaire in accordance with Section 8.4 [Salt Management Plan] of Appendix A to Schedule 5.

“**Sealed**” means, for the purposes of Schedule 5 [OMR and End of Term], a gravel highway surface on which emulsified oil and aggregate has been alternatively spread, including compaction for particle set, building up an asphaltic pavement layer, or/a paved highway surface on which asphaltic products have been used to seal cracks, extend life expectancy of the paved highway and create a skid resistant surface.

“**Second End of Term Audit**” has the meaning given in Section 7.3 [Second End of Term Audit] of Schedule 7.

“**Second ES Date**” has the meaning given in Section 12.3(b) of Schedule 10 [Performance Mechanism].

“**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. More than one earthquake shock occurring within any 168 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 but, for greater clarity, does not include any Junior Credit Facilities and does not include any equity bridge financing.

“**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 and other amounts 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

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Agreements or in respect of the amounts referred to in subsections (a) and (b) of this definition.

“**Senior Debt Service Costs**” means interest and debt service costs incurred in respect of the Senior Lending Agreements less:

- (a) sums that are in arrears; and
- (b) all sums reserved by the Concessionaire or for which reserves are established under the Senior Lending Agreements, that the Concessionaire is entitled to use to make payment of such interest and debt service costs without breaching the Senior Lending Agreements.

“**Senior Lenders**” means all or any of the persons who provide credit or hedging facilities in respect of the Project or the Project 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 Life**” has the meaning given to that term:

- (a) for the purposes of Schedule 4 [Design and Construction], in Section 3.3.1.2(b) of Part 2 of Schedule 4; and
- (b) for the purposes of Schedule 5 [OMR and End of Term], in CAN/CSA-S6-06.

“**SFPR**” means the South Fraser Perimeter Road.

“**SFPR Extension**” means the Project Infrastructure consisting of:

- (a) approximately 1500 m of the Concession Highway along the south side of the CN Rail intermodal yard west of 104 Avenue; and
- (b) the Structure over the wetlands at the north end of the CN Rail intermodal yard near 168 Street,

to be constructed on the parcels of Specified Concession Lands identified by numbers 93 through and including 95 in Table A.1 [Specified Concession Lands Exceptions] to Schedule 8.

“**Shoulder**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], the area between the edge of the outside traffic lane and the ditch, including the components of Shoulder top, Shoulder edge and Shoulder side slope, and with the Shoulder edge being the breakpoint between the Shoulder top and the Shoulder side slope.

“**Shoving**” means, for the purposes of Schedule 5 [OMR and End of Term], a longitudinal displacement of a localized area of a pavement surface, generally caused by braking or accelerating vehicles and usually located on hills and at intersections.



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“**Side Protection**” means, for the purposes of Schedule 5 [OMR and End of Term], the railing, parapets or barriers of the Bridge Structure.

“**Sight Distance**” means, for the purposes of Schedule 5 [OMR and End of Term], driver visibility of the highway, Signs and intersections at minimum distance to safely drive the highway at these locations and determined as follows:

- (a) for the purposes of removing all movable obstructions (including brush, tall grass and vehicles) from the highway right-of-way, the following minimum Sight Distances shall be met:

- (i) for vehicles travelling on any travelled portion of a highway, the minimum Sight Distance shall be:

Summer Highway Classification	Minimum Sight Distance
1, 2, 3	330 m
4 & 5	200 m
6 & 7	75 m

- (ii) for vehicles stopped at an intersection a distance of 2 metres behind the applicable legal stopping position for the highway at that point and intersection, the minimum Sight Distance in both directions to the travelled portion of the highway shall be:

Summer Highway Classification	Minimum Sight Distance
1, 2, 3	300 m
4 & 5	200 m
6 & 7	100 m

- (iii) for vehicles travelling on the travelled portion of the highway the minimum Sight Distance to highway Signs shall be:

Summer Highway Classification	Minimum Highway Sight Distance
1	500 m
2 & 3	300 m
4 & 5	150 m
6 & 7	75 m

- (b) the Sight Distance for Traffic Control requirements shall be defined as the length of unobstructed highway visible to the driver and the following values (as a function of the posted speed limit) shall be the minimum distances acceptable, with Sight Distances less than those set out below requiring additional control as defined in the Manual of Standard Traffic Signs and Pavement Markings:

- (i) 50 kilometres per hour: 80 metres
- (ii) 60 kilometres per hour: 110 metres
- (iii) 70 kilometres per hour: 130 metres

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- (iv) 80 kilometres per hour: 170 metres
- (v) 90 kilometres per hour: 200 metres
- (vi) 100 kilometres per hour: 250 metres
- (vii) 110 kilometres per hour: 300 metres

“**Sign**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], a lettered board, message or other display which includes all regulatory, warning, guide or informational, advisory, construction and maintenance, route markers and all special or other messages/displays under provincial jurisdiction as defined by the Province but excluding electronically controlled messages/displays, but including the sign face overlay.

“**Sign Bridge**” means, for the purposes of Schedule 5 [OMR and End of Term], an overhead Sign support Structure, typically of truss construction, with the horizontal member either supported at both ends or cantilevered over the Travelled Lanes, provided that Type L, M or H galvanized post davits are not considered to be Sign Bridges.

“**Sign System**” means, for the purposes of Schedule 5 [OMR and End of Term], all regulatory, warning, guide or informational, advisory, construction and maintenance, route marker Signs, Sign Bridges, avalanche gates, delineators, hazard markers, Signs, sign face overlays, posts, hardware (including nuts, bolts, washers and rivets) and all special Signs, under other provincial jurisdictions, as defined by the Province but excluding electronically controlled signage.

“**Site Condition Rating**” has the meaning given in Section 4.8(d) of Schedule 7.

“**Site Materials**” means all materials, including soil, aggregates, gravel, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Project Work on the Concession Lands and the Other Highway Lands.

“**Site Superintendent**” means, for the purposes of Schedule 4 [Design and Construction], a person appointed by the Concessionaire, any Principal Contractor or any Subcontractor to direct the work on the Project Site.

“**Slippery**” means, for the purposes of Schedule 5 [OMR and End of Term], any surface condition which causes an increase in normal dry surface stopping distances as a result of buildup including but not limited to frost, ice, slush or snow.

“**Slump**” means, for the purposes of Schedule 5 [OMR and End of Term], a measure of the workability and flowability of concrete, varying with water, air, and admixture content and the temperature of the concrete.

“**Special Termination Sum**” has the meaning given in Section 6.1 [Obligation to Pay Special Termination Sum] of Schedule 13.

“**Special Events**” has the meaning given in Section 1.6 [Special Events] of Part 4 of Schedule 4.

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“**Specialty Fences**” means, for the purposes of Schedule 5 [OMR and End of Term], all fences other than those installed on the Concession Highway for the purposes of containing Livestock.

“**Specified Business Interruption Insurance**” means insurance obtained from Qualified Insurers on or after the Eastern Segment Substantial Completion Date against:

- (a) loss of Availability Payments during the Specified Business Interruption Insurance Indemnity Period arising as a result of loss or damage insured under the insurance referred to in Section 3.1(a) of Schedule 15 [Insurance Requirements] including physical loss or damage that would be indemnifiable but for the application of any deductible; and
- (b) the additional expenditures necessarily and reasonably incurred by the Concessionaire for the purpose of avoiding or reducing the loss of Availability Payments that, without such expenditure, would have taken place during the Specified Business Interruption Insurance Indemnity Period;

but only to the extent any such insurance provides coverage for (and not exceeding) the estimated Unavoidable Fixed Costs and Senior Debt Service Costs that would be incurred during the Specified Business Interruption Insurance Indemnity Period, such insurance to specify a waiting period of 30 days.

“**Specified Business Interruption Insurance Indemnity Period**” means an indemnity period for the Specified Business Interruption Insurance of not more than 12 months.

“**Specified Concession Lands**” means the lands and interests in land described in Appendix A [Specified Concession Lands] to Schedule 8.

“**Specified Handover Date**” in respect of a parcel of Specified Concession Lands means the date specified as the “Specified Handover Date” for the parcel in Appendix A [Concession Lands] to Schedule 8, and in respect of a parcel of Specified Other Highway Lands means the date specified as the “Specified Handover Date” for the parcel in Appendix B [Other Highway Lands] to Schedule 8.

“**Specified Other Highway Lands**” means the lands and interests in land described in Appendix B [Specified Other Highway Lands] to Schedule 8.

“**Specified Road**” means each of Highway 10/Ladner Trunk Road, River Road, Nordel Way, South Fraser Way, Tannery Road, Old Yale Road, Scott Road, Timberland Road, Bridge Road, King George Highway, Industrial Road, 116 Avenue, Bridgeview Drive, King Road and Surrey Road.

“**SRY**” means Southern Railway of British Columbia.

“**Sta.**” or “**Station**” means, for the purposes of Schedule 4 [Design and Construction], Station as a measure, in metres, from a given starting point, as referenced on construction drawings.

“**Stakeholder**” means, for the purposes of Schedule 9 [Communication and Consultation], commuters, local residents, business and goods movers and the list of audience and stakeholders referred to in section 2 of the Strategic Communications and Consultation Plan.

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

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“**Stock Condition Index**” means, for the purposes of Schedule 5 [OMR and End of Term], an Asset Preservation Performance Measure for Structures of the same age grouping that is calculated using the algorithm below for each age group for the full age range (or specific groups such as Bridges and other Structures) of the Structures in the Concession Highway and, in general terms, being the average Structure Condition Index determined for each Structures sub-category features in the same age group at the time of the rating inspections and ranging from 1 (Excellent) to 5 (Very Poor):

$$\text{Stock Condition Index}_{(\text{Age}=t)} = \frac{\sum_t^n \text{Structure\_Condition\_Index}}{n}$$

where n = the number of Structures with “age = t” for which a Structure Condition Index has been determined within a particular Structures sub-category.

“**Stoppage**” means an occasional, temporary interruption of traffic flow on an Other Provincial Highway, Specified Road, Other Street or Interchange Ramp caused or directed by the Concessionaire for the purpose of facilitating Construction Activities.

“**Strategic Communications and Consultation Plan**” means the South Fraser Perimeter Road Project Communications and Consultation Plan dated December 15, 2008, as amended, supplemented or replaced by the Province from time to time as contemplated in Section 3.1 [Strategic Communications and Consultation Plan] of Schedule 9.

“**Structures**” means any (temporary or permanent):

- (a) Tunnel, Major Culvert, Major Retaining Wall, Major Sign Structure;
- (b) multi-span Bridge, tunnel or culvert having a cumulative span of 5 metres or more;
- (c) Bridge, tunnel or culvert (other than of corrugated metal) having a span of 1.8 metres or more and where the cover to the road surface is less than 1 metre;
- (d) corrugated metal Bridge or culvert having a span of 0.9 metres or more (irrespective of cover to the road surface);
- (e) pedestrian or cycle underpass (irrespective of span and cover to the road surface);
- (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;
- (g) Sign or signal gantry or high mast for lighting, television cameras, catenary lighting systems or intelligent transportation system equipment;
- (h) buildings and weigh stations;
- (i) facing panel systems more than 1.5 metres in height; and
- (j) noise walls,

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forming part of the Project Infrastructure.

“**Structure Component**” means, for the purposes of Schedule 5 [OMR and End of Term], specific parts of an asset having independent physical or functional identity and having specific attributes such as different life expectancy, maintenance regimes, risk or criticality.

“**Structure Condition Index**” means, for the purposes of Schedule 5 [OMR and End of Term], an Asset Preservation Performance Measure that is calculated:

- (a) for Drainage Structures and Debris Control Structures, by averaging the Component Condition Ratings for such Structures as follows:
  - (i) catch basin arithmetic average of the cracking, gouging and crumbling attribute conditions;
  - (ii) curb and gutter arithmetic average of the erosion, bank sloughing and vegetation attribute conditions;
  - (iii) ditch / drain arithmetic average of the pipe/flume corrosion, pipe/flume damage, erosion and pavement condition attribute conditions;
  - (iv) spillway / flume arithmetic average of the pipe/flume corrosion, pipe/flume damage, erosion and pavement condition attribute conditions;
  - (v) culvert arithmetic average of the sag, corrosion, breaks, leakage, pipe damage and erosion and bank protection attribute conditions; and,
  - (vi) Debris Control Structure arithmetic average of the attribute conditions for the trash racks, lined channels and storage basin/deposit area combination appropriate for each Debris Control Structure; and
- (b) for other Structures, using the algorithm and weightings defined in the BMIS User Manual for the Bridge Condition Index for specific Structure types.

“**Subcontract**” means any contract entered into by a Subcontractor in relation to the carrying out of any Project Work.

“**Subcontractor**” means any party (other than the Concessionaire or any Principal Contractor) that enters into a contract for the carrying out of any Project Work (including any contract for the supply of any Plant or Construction Plant) with:

- (a) a Principal Contractor; or
- (b) any subcontractor of any tier of a Principal Contractor; or

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- (c) the Concessionaire.

**“Subsequent Contamination”** means:

- (a) any Contamination, other than Existing Contamination, that is situated in, on, under or over, or affects:
    - (i) any parcel of Specified Concession Lands or Specified Other Highway Lands; or
    - (ii) any Infrastructure or other improvements on or to any parcel of Specified Concession Lands or Specified Other Highway Lands;
- and
- (b) any Contamination caused by the Concessionaire or any person for whom the Concessionaire is in law responsible in, on, under or over:
    - (i) any Non-Province Controlled Lands while they are Municipal Lands or Port Lands under this Agreement; or
    - (ii) any Infrastructure or other improvements on or to any Non-Province Controlled Lands while they are Municipal Lands or Port Lands under this Agreement.

**“Substantial Completion”** means, in respect of any of the Relevant Components, the satisfactory completion, in accordance with the Design and Certification Procedure, of all Project Work required in respect of such Relevant Components in accordance with all Laws, Permits, applicable Project Requirements and other requirements applicable to such Relevant Components referred to or set out in this Agreement, to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of such Relevant Components, including but not limited to:

- (a) paving of all road surfaces contained within such Relevant Components;
- (b) completion of all Structures and drainage systems contained within such Relevant Components;
- (c) full operation of all traffic lighting and signalization contained within such Relevant Components;
- (d) all permanent Pavement Markings at all intersections and on all major roads contained within such Relevant Components;
- (e) installation of all regulatory, warning and guide signing contained within such Relevant Components;
- (f) installation of all median and Roadside barrier and other safety devices contained within such Relevant Components;

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- (g) completion of all Utility Work related to such Relevant Components and all work with respect to Infrastructure or other property of Railways related to such Relevant Components;
- (h) all construction staging areas for such Relevant Components located on the Project Site have been returned to their original condition or a condition otherwise acceptable to the Province; and
- (i) all Debris, superfluous materials and equipment have been removed from the portion of the Project Site containing such Relevant Components, and such portion of the Project Site has been satisfactorily cleared,

in each case in accordance with the Project Requirements and this Agreement, and “**Substantially Completed**”, “**Substantially Completing**” and “**Substantially Complete**” have corresponding meanings, provided that, if the Concessionaire, having complied with Section 2.6 [Non-Province Controlled Lands], has been unable, by reason of any Non-Province Controlled Lands Delay Event, to carry out on any Non-Province Controlled Lands any Non-Province Controlled Lands Work intended to form part of:

- (j) the Eastern Segment, such that, by the date (in this definition the “**Eastern Segment Subject Date**”) that is the later of the Eastern Segment Required Substantial Completion Date and the date all of the Eastern Segment would have been Substantially Completed but for the parts thereof located on such Non-Province Controlled Lands, the Concessionaire has been unable to substantially complete the parts of the Eastern Segment intended to be located on such Non-Province Controlled Lands solely as a result of such Non-Province Controlled Lands Delay Event (the onus of establishing which shall be on the Concessionaire), then, as at the Eastern Segment Subject Date, without prejudice to the Concessionaire’s rights and obligations under Section 2.6 [Non-Province Controlled Lands], the parts of the Eastern Segment intended to be located on such Non-Province Controlled Lands shall be excluded from the determination of whether or not the Eastern Segment has been Substantially Completed, and a Certificate of Substantial Completion may be issued for the Eastern Segment without regard to the state of completion of those parts of the Eastern Segment on such Non-Province Controlled Lands; and
- (k) the Western Segment, such that, by the date (in this definition the “**Western Segment Subject Date**”) that is the later of the Western Segment Required Substantial Completion Date and the date all of the Western Segment would have been Substantially Completed but for the parts thereof located on such Non-Province Controlled Lands, the Concessionaire has been unable to substantially complete the parts of the Western Segment intended to be located on such Non-Province Controlled Lands solely as a result of such Non-Province Controlled Lands Delay Event (the onus of establishing which shall be on the Concessionaire), then, as at the Western Segment Subject Date, without prejudice to the Concessionaire’s rights and obligations under Section 2.6 [Non-Province Controlled Lands], the parts of the Western Segment intended to be located on such Non-Province Controlled Lands shall be excluded from the determination of whether or not the Western Segment has been Substantially Completed, and a Certificate of Substantial Completion may be issued for the Western Segment without regard to the state of

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completion of those parts of the Western Segment on such Non-Province Controlled Lands.

“**Substructure**” means, for the purposes of Schedule 5 [OMR and End of Term], abutments, piers, their Foundations and protective works which form the Bridge Substructure supporting the Superstructure above.

“**Suitable Substitute Concessionaire**” has the meaning given in the Lenders’ Remedies Agreement.

“**Superelevation**” means, for the purposes of Schedule 5 [OMR and End of Term], the vertical rise in elevation from the outside edge of a highway surface, to the inside edge on a curving section of highway.

“**Superpave**” means, for the purposes of Schedule 4 [Design and Construction], hot mixed asphalt pavement designed and constructed in accordance with DBSS Sections 501 and 502, as modified in Schedule 4 [Design and Construction].

“**Superstructure**” means, for the purposes of Schedule 5 [OMR and End of Term], the entire Structure of a Bridge resting on the piers and abutments, consisting of stringers, decking, trusses, sidewalks, Wearing Surface and railing.

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

“**Supervening Event Notice**” has the meaning given in Section 8.2(a).

“**Surface Distress**” means, for the purposes of Schedule 5 [OMR and End of Term], a measure of the overall, pavement surface deterioration.

“**Surveillance Quality Audit**” means Quality Audits conducted by or on behalf of the Province as contemplated in Section 4.3.2(a) of Schedule 7 [Quality Management].

“**Table of Commitments and Assurances**” means the document attached as Appendix B [Table of Commitments and Assurances] to Schedule 6, as amended, supplemented or replaced from time to time after the Effective Date.

“**TAF**” means a technical appraisal form substantially in the format attached as Appendix F [Sample Contents for a Structural TAF] to Schedule 4, and submitted by the Concessionaire to the Province’s Representative in accordance with the Design and Certification Procedure.

“**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,



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payments, assessments, withholdings, dues and other charges, and includes all PST and HST except where stated to the contrary.

“**Temporary Land Rights**” means any Land Rights (other than fee simple interests) in any Concession Lands or Other Highway Lands that have a scheduled expiry date that will occur before the Expiry Date.

“**Temporary Works**” means all works and things of a temporary nature of every kind required in or about the execution and completion of the Project Work.

“**Term**” means the period commencing on the Effective Date and ending at 11:59 p.m. on the Termination Date.

“**Termination Date**” means the earlier of:

- (a) the Expiry Date; and
- (b) the effective date of termination of this Agreement according to its terms.

“**Termination Date Discount Rate**” means a discount rate equal to the Project Risk Premium plus the Termination Date Benchmark Canada Bond Yield, where:

“**Project Risk Premium**” means [REDACTED] (being the difference between [REDACTED] and [REDACTED] being the yield as determined by the parties at financial close on the Effective Date, on the Government of Canada [REDACTED] Bond maturing [REDACTED]); and

“**Termination Date Benchmark Canada Bond Yield**” means the yield to maturity on a benchmark Government of Canada Bond of the same maturity as the average life of the outstanding Senior Debt, Junior Debt and equity on the Termination Date.

  
**Section 17**

“**Third Party Contractor**” means any contractor (excluding the Concessionaire and any person for whom the Concessionaire 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 Project Site, including the Third Party Segment Work and the other Province Work, and includes an Other Prime Contractor as defined in Section 4.16(a) (but excluding the PMH1 DB Contractor in connection with the PMH1/SFPR Common Site).

“**Third Party Segment Defect**” means any defect (other than a Latent Defect) in a Third Party Segment directly resulting from a failure of the relevant Third Party Contractor to complete the relevant work in accordance with the relevant contract.

“**Third Party Segment Defect List**” has the meaning given in Section 17.3(b).

“**Third Party Segment Inspection Plan**” has the meaning given in Section 7.1(a) of Part 1 [General Provisions] of Schedule 4.

“**Third Party Segments**” means, collectively, the SFPR Extension and the Highway 17 to Highway 99 Segment.

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“**Third Party Segment Work**” means the design and construction of the Third Party Segments pursuant to, and as described in, the relevant contracts for such Third Party Segments.

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

“**Threshold Equity IRR**” means the nominal projected blended rate of return over the full term of this Agreement, having regard to Distributions projected to be made, calculated according to the Financial Model as at the Effective Date, being [REDACTED]. ← Section 17

“**TIA**” means the *Transportation Investment Act* (British Columbia).

“**Total Completion**” means:

- (a) in respect of the Primary Infrastructure Components, the satisfactory full and final completion, in accordance with the Design and Certification Procedure, of all Project Work required in respect of the Design and Construction of the Primary Infrastructure Components in accordance with all Laws, Permits, applicable Project Requirements and other requirements applicable to the Primary Infrastructure Components referred to or set out in this Agreement; and
- (b) in respect of any other of the Relevant Components, the satisfactory full and final completion, in accordance with the Design and Certification Procedure, of all Project Work required in respect of the design and construction of such Relevant Components in accordance with all Laws, Permits, applicable Project Requirements and other requirements applicable to such Relevant Components referred to or set out in this Agreement,

and “**Totally Completed**”, “**Totally Completing**” and “**Totally Complete**” have corresponding meanings, provided that, if the Concessionaire, having complied with Section 2.6 [Non-Province Controlled Lands], has been unable, by reason of any Non-Province Controlled Lands Delay Event, to carry out on any Non-Province Controlled Lands any Non-Province Controlled Lands Work intended to form part of the Primary Infrastructure Components, such that by the date (in this definition the “**Subject Date**”) that is the later of the Total Completion Target Date and the date all of the Primary Infrastructure Components would have been Totally Completed but for the parts thereof located on such Non-Province Controlled Lands, the Concessionaire has been unable to totally complete the parts of the Primary Infrastructure Components intended to be located on such Non-Province Controlled Lands solely as a result of such Non-Province Controlled Lands Delay Event (the onus of establishing which shall be on the Concessionaire), then, as at the Subject Date, without prejudice to the Concessionaire’s rights and obligations under Section 2.6 [Non-Province Controlled Lands], the parts of the Primary Infrastructure Components intended to be located on such Non-Province Controlled Lands shall be excluded from the determination of whether or not the Primary Infrastructure Components have been Totally Completed, and a Certificate of Total Completion may be issued for the Primary Infrastructure Components without regard to the state of completion of those parts of the Primary Infrastructure Components on such Non-Province Controlled Lands.

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**“Total Completion Date”** means the date on which Total Completion occurs in respect of the Primary Infrastructure Components, as established by the relevant Certificate of Total Completion.

**“Total Completion Target Date”** means the date that is 180 days after the Western Segment Substantial Completion Date, as such first mentioned date may be extended pursuant to this Agreement.

**“Traffic Control”** means the placement or erection of Signs, signals, Pavement Markings or other installations, and the use of flaggers and other personnel, for the purpose of regulating, warning or guiding traffic.

**“Traffic Control Plan”** or **“TCP”** means the sub-plan or sub-plans of the Traffic Management Plan prepared by the Concessionaire in accordance with Section 7.2.1 [Traffic Control Plans] of Part 4 of Schedule 4.

**“Traffic Control Supervisor”** or **“TCS”** means a person appointed by the Concessionaire in accordance with Section 8.4 [Traffic Control Supervisors] of Part 4 of Schedule 4.

**“Traffic Crash”** means, for the purposes of Schedule 5 [OMR and End of Term], sudden and unexpected vehicle collision which results in damage and/or injury, or loss of control.

**“Traffic Data”** means all information relating to traffic:

- (a) in the Reports submitted by the Concessionaire pursuant to Schedule 17 [Records and Reports]; and
- (b) obtained by the Province by direct interrogation of the measurement equipment provided by the Concessionaire as part of the Project Work.

**“Traffic Disruption Event”** means a Closure or Stoppage occurring:

- (a) on an Other Provincial Highway, Interchange Ramp, Specified Road or Other Street:
  - (i) within the Eastern Segment; or
  - (ii) caused or directed by the Concessionaire for the purpose of facilitating Construction Activities within the Eastern Segment,on or before the Eastern Segment Substantial Completion Date; or
- (b) on an Other Provincial Highway, Interchange Ramp, Specified Road or Other Street:
  - (i) within the Western Segment; or
  - (ii) caused or directed by the Concessionaire for the purpose of facilitating Construction Activities within the Western Segment,on or before the Western Segment Substantial Completion Date.

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“**Traffic Engineer**” means the person appointed by the Concessionaire in accordance with Section 8.3 [Traffic Engineer] of 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 Communications Plan**” means the plan prepared by the Concessionaire in accordance with Part 4 [Traffic Management Communications] of Schedule 9.

“**Traffic Management Payments**” means the payments to be made by the Concessionaire to the Province pursuant to Section 8.1 [Calculation of Traffic Management Payments] of Schedule 10.

“**Traffic Management Plan**” or “**TMP**” means the plan prepared by the Concessionaire in accordance with Article 7 [Traffic Management Plan] of Part 4 of Schedule 4.

“**Traffic Manager**” 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 designated by the Concessionaire pursuant to Section 3.3 [Key Individuals] of Schedule 2.

“**Traffic Quality Management Plan**” or “**TQMP**” means the plan for the quality management of the Traffic Management for the Concession Highway prepared by the Concessionaire in accordance with Appendix E [Traffic Quality Management Plan] to Schedule 7.

“**TransLink**” means South Coast British Columbia Transportation Authority.

“**Transverse Cracking**” means, for the purposes of Schedule 5 [OMR and End of Term], cracks that are predominantly perpendicular to the pavement centreline and may extend fully or partially across the roadway.

“**Travelled Lane**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], the surface of a highway:

- (a) between the painted Shoulder line on one side and the painted Shoulder line on the other side; or
- (b) in the absence of Shoulder lines, from asphalt edge to asphalt edge; or
- (c) in the absence of hard surfacing, as defined for a dirt and gravel highway, including the trafficable portions of rest areas, pullout areas, parking areas, weigh scale areas, and any other vehicle-accessible portions within the highway right-of-way.

“**Trespassers**” has the meaning given in Section 8.8(a).

“**Tunnels**” means, for the purposes of Schedule 4 [Design and Construction] and Schedule 5 [OMR and End of Term], any buried structure intended to convey pedestrian, wild life, farm animals or vehicular traffic, with a minimum dimension of 3 meters and including Snowsheds with respect to inspection and performance requirements.

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**“Unavoidable Fixed Costs”** means the fixed costs incurred by the Concessionaire that first fall due for payment by the Concessionaire during the Specified Business Interruption Insurance Indemnity Period but excluding:

- (a) Senior Debt Service Costs;
  - (b) costs that could have reasonably been mitigated or avoided by the Concessionaire;
  - (c) payments to Relevant Persons;
  - (d) payments that are not entirely at arm’s length;
  - (e) payment of any financing costs other than Senior Debt Service Costs;
  - (f) Indirect Losses suffered or allegedly suffered by any person;
  - (g) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;
  - (h) payments that the Concessionaire can recover in contract or in respect of which the Concessionaire has a remedy against another person in respect of the same liability;
  - (i) payments to the extent that the Concessionaire has available to it:
    - (i) reserves that the Concessionaire can draw upon without breaching the Senior Lending Agreements; or
    - (ii) standby or contingent facilities under Senior Credit Facilities or funds of Senior Debt, Junior Debt or equity that the Concessionaire is entitled to have available;
- and
- (j) Distributions or any payments representing any profits of or from the Project or any Project Work.

**“Underpass”** means a Structure carrying a road, a highway, a railway or pedestrians over a highway.

**“Undisclosed Utilities”** means any Utilities located on, in, under or over the Project Site and the Project Infrastructure, the existence or actual location of which, as at the Financial Submittal Date:

- (a) was not disclosed to the Concessionaire in the Disclosed Data as at the Financial Submittal Date; and
- (b) the Concessionaire does not otherwise have knowledge of, could not have discovered through the exercise of reasonable due diligence, and could not have reasonably anticipated from an analysis of all relevant information available to the Concessionaire (including the Disclosed Data) as at the Financial Submittal Date, having regard to the opportunity afforded the Concessionaire to conduct such due diligence and analysis before the Financial Submittal Date.

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“**Uninsurable**” means, in relation to a risk to be insured against under the Required Insurance, or in respect of an Insured Business Interruption Risk under Specified Business Interruption Insurance that the Concessionaire has obtained and is in effect, that:

- (a) insurance is not available in the worldwide insurance market in respect of that risk from Qualified Insurers; or
- (b) the insurance premiums payable or terms and conditions for insuring that risk with Qualified Insurers in the worldwide insurance market from time to time are such that the risk is not generally being insured against with Qualified Insurers in the worldwide market.

“**Uninsurable Risk**” has the meaning given in Section 6.21 [Consequences of Risks Becoming Uninsurable].

“**Units**” means units or other equity interests of any class in the capital of the Concessionaire, and any other ownership interests in the Concessionaire.

“**Unusual Event**” means:

- (a) any Non-Availability Event;
- (b) any Police Incident or Non-Police Incident, whether or not resulting in a Non-Availability Event; or
- (c) a Statutory Holiday.

“**Urban**” means, for the purposes of Schedule 5 [OMR and End of Term], within a municipality as the term is defined in the *Local Government Act* (British Columbia) or within a distance of 3 kilometres of a municipal boundary, or extending out to the limit of residential or commercial development, whichever comes first.

“**Utilities**” means privately, publicly or cooperatively owned 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, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related Infrastructure.

“**Utility Agreements**” means the agreements listed in Appendix C [Utility Agreements] to Schedule 4, 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 Project Infrastructure and the Project 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.

“**Utility Supplier**” means the owner of any Utility.

“**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 Project Work or on the Project Site

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during the Term, including installation, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works.

“**Value Engineering Proposal**” has the meaning given in Section 7.4 [Value Engineering Proposals].

“**Warranty Period**” means two years following the earlier of:

- (a) the Western Segment Substantial Completion Date; and
- (b) the Termination Date.

“**Washout**” means, for the purposes of Schedule 5 [OMR and End of Term], a channel produced by the erosion of a relatively soft surface by a sudden gush of water.

“**Wearing Surface**” means, for the purposes of Schedule 5 [OMR and End of Term], the surface portion of a Bridge Deck directly in contact with the wheels of vehicles.

“**Weather Event**” means, for the purposes of Schedule 5 [OMR and End of Term], any meteorological condition that permits the development of hazardous Slippery surface conditions which requires the application of Winter Abrasives, anti-icing or De-icing Chemicals and/or snow removal procedures to maintain or re-establish safe winter driving conditions.

“**Website**” means the website or websites established pursuant to Section 2.16(c).

“**Weigh-in-motion Sites**” means, for the purposes of Schedule 5 [OMR and End of Term], a facility that uses sensors in the pavement for weighing vehicles while they are in motion.

“**Western Segment**” means, collectively, the Primary Infrastructure Components in respect of the following Road Sections:

- (a) in the period prior to and excluding the Western Segment Substantial Completion Date:
  - (i) Road Sections 1e, 2e and 3e; and
  - (ii) Road Sections 2w, 3w and 4w,in each case, as described in Table 1 set out in Appendix E [Schedule of Road Sections] to Schedule 10; and
- (b) in the period from and including the Western Segment Substantial Completion Date:
  - (i) Road Sections 1e, 2e and 3e; and
  - (ii) Road Sections 2w, 3w and 4w,in each case, as described in Table 2 set out in Appendix E [Schedule of Road Sections] to Schedule 10.

“**Western Segment Required Substantial Completion Date**” means June 30, 2014.

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“**Western Segment Substantial Completion Date**” means the date on which Substantial Completion occurs in respect of the Western Segment, as established by the relevant Certificate of Substantial Completion.

“**Western Segment Substantial Completion Longstop Date**” means at any time the date that is eighteen months after the Western Segment Required Substantial Completion Date, as such first mentioned date may be extended pursuant to this Agreement.

“**Wheel Path**” means, for the purposes of Schedule 5 [OMR and End of Term], where there are two wheel paths per traffic lane with the outside wheel path closest to the Shoulder and the inside wheel path closest to the centre line or median.

“**Wildlife**” has the meaning given in the *Wildlife Act* (British Columbia).

“**Winter Abrasive**” means, for the purposes of Schedule 5 [OMR and End of Term], the sand or fine gravel applied to highway surfaces during winter snow and ice conditions to provide traction for vehicles, which may or may not contain De-Icing Chemicals.

“**Winter Maintenance**” means, for the purposes of Schedule 5 [OMR and End of Term], all activities required for the removal of snow and ice and the provision of adequate traction for users of the Concession Highway including but not limited to highway snow removal, Winter Abrasive and chemical snow and ice control, and Roadside snow and ice control.

“**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 Concessionaire 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 *Workers Compensation Act* (British Columbia).

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

“**WS Date**” has the meaning given in Section 12.3(d) of Schedule 10 [Performance Mechanism].

“**WS Month**” has the meaning given in Section 12.3(d) of Schedule 10 [Performance Mechanism].

**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 Concessionaire shall at all times during the Term comply with the then most current versions of all Reference Documents, provided that, if and to the extent that any



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amendment, supplement or replacement of or to any Reference Document after the Financial Submittal Date impacts the design, quality or scope of the Primary Infrastructure Components, or the construction 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 Concessionaire's continued compliance with Laws (the onus of establishing which shall be on the Concessionaire), but without limiting the Concessionaire'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 7 [Province Changes and Concessionaire Proposals] shall apply accordingly; and
- (ii) in all other cases, the Concessionaire 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 7 [Province Changes and Concessionaire Proposals] shall apply accordingly.

**PART 2  
INTERPRETATION**

This Agreement will 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 Concession Agreement for Purposes of the TIA**

This Agreement, together with:

- (a) the Lenders' Remedies Agreement;
- (b) the Collateral Agreements; and
- (c) subject to the terms of the TIA, including any requirement to obtain approvals under the TIA, such other related agreements as may from time to time be specified as forming part of the concession agreement;

constitute the concession agreement for the purposes of and as contemplated in the TIA.

**2.2 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.

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**2.3 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 will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.

**2.4 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 of this Agreement, to a Part, Article or Section refers to the applicable Part, Article or Section in this Agreement (excluding the Schedules), unless reference to a Part, Article or Section of a particular Schedule of this Agreement is indicated.

**2.5 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 or Schedule of this Agreement.

**2.6 Reference to Statutes and Reference Documents**

- (a) Unless a reference to a statute is expressly limited to a statute in effect at a particular 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 and include any regulations, bylaws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute.
- (b) Unless a reference to a Reference Document is expressly limited 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 limitation), 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.

**2.7 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).

**2.8 Reference to Right or Duty of a Governmental Body**

A reference to any right, power, obligation, duty or responsibility of any department, ministry, agency, board, commission, corporation or other entity of any Governmental Authority is to the

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department, ministry, agency, board, commission, corporation or other entity of the Governmental Authority that, pursuant to Laws, has such right, power, obligation or responsibility at the relevant time.

**2.9 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.

**2.10 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.

**2.11 Number**

Words importing the singular include the plural and vice versa.

**2.12 Gender**

Words importing a particular gender include all genders.

**2.13 Reference to Office of a Governmental Body**

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

**2.14 Reference to Public Organizations**

Any reference to a public organization will 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.

**2.15 Persons for Whom Concessionaire is Responsible**

A reference to a person or persons for whom the Concessionaire is in law responsible means and is limited to: the Concessionaire's Representative; the Concessionaire's Contracting Affiliates, employees, agents, professional advisors; any person for whom the Concessionaire is responsible in law or by the terms of this Agreement; any person over whom the Concessionaire could reasonably be expected to exercise control; and the Principal Contractors and the Subcontractors and their respective officers, employees, consultants and agents.

**2.16 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, but only in respect of performing functions in relation to the Project, the Project Site, the Project Infrastructure or this Agreement;

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- (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 (which may include Third Party Contractors) in all cases only while performing functions of, or on behalf of, the Province in relation to the Project, the Project Site, the Project Infrastructure or this Agreement;

but excludes the Concessionaire and any person for whom the Concessionaire is in law responsible pursuant to Section 2.15 [Persons for Whom Concessionaire is Responsible] of this Schedule.

**2.17 Reference to Corporate Entity**

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

**2.18 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.

**2.19 Indexation**

Except as otherwise expressly provided, references to amounts or sums being "**indexed**" or "**index linked**" are references to amounts or sums which have been or are to be adjusted to reflect the effects of inflation as measured by changes in the Reference CPI from the value applicable for the Financial Base Date. Such adjustment will be calculated by applying the following formula to the amounts or sums to be adjusted:

$$\text{Adjusted amount or sum} = \text{amount or sum} \times \frac{\text{Reference CPI}_m}{\text{Reference CPI}_{bd}}$$

where Reference CPI<sub>m</sub> is the Reference CPI for the date of the calculation, and Reference CPI<sub>bd</sub> is the Reference CPI for the Financial Base Date.

**2.20 Costs**

Without limiting Section 9.10 [Costs and Expenses], whenever this Agreement obliges the Province to pay any amount to the Concessionaire in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Concessionaire:

- (a) such obligation will 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 Concessionaire), so much of them as are proper and reasonable; and
- (b) the Concessionaire will, when requested by the Province, provide reasonable supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums.

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**2.21 Knowledge of Province**

The Province will 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 Project Work.

**2.22 Knowledge of Concessionaire**

Without limiting the extent of its actual knowledge, the Concessionaire will for all purposes of this Agreement be deemed to have such knowledge in respect of the Project and the Project Work as is held (or ought reasonably to be held) by all persons involved in carrying out the Project or the Project Work including the Concessionaire, the Partners, the Principal Contractors and any Subcontractors, and their respective officers, employees, consultants and agents.

**2.23 Performance to Standards**

Any requirement for any thing or action to be "in accordance with" or "in compliance with" any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation.

**2.24 Words of Inclusion**

The words "**include**", "**includes**" or "**including**" are to 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.

**2.25 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.

**2.26 Trade Meanings**

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

**2.27 Decisions of the Province**

- (a) Where in this Agreement the Province, 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 its discretion" or "in the discretion" of the Province or BCTFA or the Minister or the Province's Representative or words of similar import, such expressions shall be interpreted to mean

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in the sole, absolute and unfettered discretion of the Province, BCTFA, the Minister or the Province's Representative, as the case may be.

- (b) Where in this Agreement the Province, 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, and there is neither express language conferring discretion as provided in Section 2.27(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, the Province, BCTFA, the Minister or the Province's Representative, as the case may be, shall be entitled to make the decision or determination or to grant or withhold the consent, approval or acceptance or to exercise judgement, as the case may be, having regard solely to what it considers to be its own best interests or the best interests of the Province.

**2.28 All Reasonable Efforts**

- (a) The expression "**all reasonable efforts**", when used in connection with an obligation of Concessionaire, 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 Concessionaire's obligations hereunder to mitigate delays and additional costs to the Province and BCTFA, 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 Concessionaire, 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, as determined by the Province in its discretion; or
  - (ii) 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.

**2.29 Accounting Terms**

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

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**2.30 Severability**

Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will 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 will 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.

**2.31 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 should not be interpreted in a manner as to result in any 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 will prevail and such provision will 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 will be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.

**2.32 Joint and Several**

- (a) If the Concessionaire is comprised of more than one legal entity, the obligations and liabilities of the Concessionaire under this Agreement shall be the obligations and liabilities of each legal entity comprising the Concessionaire, jointly and severally with each other such legal entity.
- (b) If the Concessionaire is a general partnership, the obligations and liabilities of the Concessionaire under this Agreement shall be the obligations and liabilities of the Concessionaire and each of the Partners, jointly and severally with each other.

**2.33 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, the following principles will apply:

- (a) the provisions establishing the higher quality, manner or method of performing the Project Work, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, durability, performance and service will govern; and
- (b) in the case of any other conflict, ambiguity or inconsistency, the Province and the Concessionaire will endeavour in good faith to agree upon which provision will prevail and, if the matter has not been resolved to their mutual satisfaction within 10 Business Days from the identification of the conflict, ambiguity or inconsistency, then either the Province or the Concessionaire may refer the matter for resolution in accordance with the Dispute Resolution Procedure applying accepted rules of contract interpretation.

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**2.34 No Additional Payments or Time**

The Concessionaire will not be entitled to any additional payment, reduction in remittances or extension of time under this Agreement as a result of the existence of any conflict, ambiguity or inconsistency referred to in Section 2.33 [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 2.33 [Principles for Resolving Conflicts within Documents] of this Schedule (whether by the terms of Section 2.33 [Principles for Resolving Conflicts within Documents] of this Schedule, by agreement between the Province and the Concessionaire, or pursuant to the Dispute Resolution Procedure).

**2.35 Section 5 of the TIA**

The Concessionaire acknowledges that it is aware of the provisions of Section 5 of the TIA. Specifically, the Concessionaire acknowledges and agrees that any provision in this Agreement, including Schedule 10 [Performance Mechanism], that stipulates a drawback, penalty or remittance for failure by the Concessionaire to perform a condition of this Agreement, or to fulfil a covenant or promise in this Agreement, must not be construed as punitive, but as importing an assessment by mutual consent of the Province and the Concessionaire of the damages caused by such failure.

**2.36 Financial Model**

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



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**APPENDIX A**  
**REFERENCE DOCUMENTS**

<b>Short Form</b>	<b>Document Name</b>
AASHTO Policy on Geometric Design	AASHTO <i>A Policy on Geometric Design of Highways and Streets, Fifth Edition</i> 2004.
AASHTO Roadside Design Guide	AASHTO <i>Roadside Design Guide</i> , 2002.
AASHTO Specifications for Segmental Bridges	AASHTO <i>Guide Specifications for Design and Construction of Segmental Highway Bridges</i> , 2003.
AASHTO Standard Specifications	AASHTO <i>Standard Specifications for Highway Bridges, 17th Edition</i> , 2002, (including interim revisions).
AASHTO Structural Design of Sound Barriers	AASHTO <i>Guideline Specifications for Structural Design of Sound Barriers</i> , 1989 with 1992 and 2002 Interims.
Air Emissions – EC Best Practices for Reduction	Cheminfo Services Ltd. for Environment Canada, Transboundary Issues Branch <i>Best Practices for the Reduction of Air Emissions From Construction and Demolition Activities</i> , March 2005.
Amphibians and Reptiles BMPs	BC Ministry of Environment <i>Best Management Practices for Amphibians and Reptiles in Urban and Rural Environments in British Columbia</i> , November 2004.
APEGBC Bylaws	APEGBC <i>Bylaws of the Association</i> , Amended December 2005.
APEGBC Concept Review Guidelines	APEGBC <i>Guideline for Professional Structural Concept Review</i> , August 1994.
Archaeological Handbook	BC Ministry of Small Business, Tourism and Culture, Archaeology Branch <i>British Columbia Archaeological Resource Management Handbook</i> , February 1998.
Archaeological Impact Assessment Guidelines	BC Ministry of Small Business, Tourism and Culture, Archaeology Branch <i>BC Archaeological Impact Assessment Guidelines</i> , October 1998.
Archaeological Impacts and Mitigation Strategy – St. Mungo and Glenrose Cannery	Gateway Program: South Fraser Perimeter Road <i>Archaeological Impacts and Mitigation Strategy – St. Mungo and Glenrose Cannery</i> , May 2009.
ASCE Guidelines	American Society of Civil Engineers <i>Guidelines for the Design of Cable-Stayed Bridges</i> , 1991.
Asphalt Institute MS-2	Asphalt Institute <i>Mix Design Methods for Asphalt Concrete and Other Hot-Mix Types</i> , Sixth Edition, Reprinted 1997.
Asphalt Institute MS-17	Asphalt Institute <i>Asphalt Overlays for Highway and Street Rehabilitation</i> , Second Edition, 2000.
Asphalt Institute SP-2	Asphalt Institute <i>Superpave Level 1 Mix Design</i> , Third Edition, Revised 2001.
Asphalt Overlays Manual	Asphalt Institute <i>Asphalt Overlays for Highway and Street Rehabilitation</i> , Manual Series No. 17 (MS-17), 2000.
Asset Management Plan Development Guide	BC Ministry of Transportation <i>Guide for Developing an Asset Management Plan for Highway Concessions</i> , April 2007.
ASTM A416	ASTM A416, <i>Standard Specifications for Steel Strand, Uncoated Seven-Wire for Prestressed Concrete</i> , 2006.
ASTM C117	ASTM C117, <i>Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing</i> , 2004.
ASTM C136	ASTM C136, <i>Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates</i> , 2006.

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Short Form	Document Name
ASTM D1621	ASTM D1621, <i>Method A, Standard Test Method for Comprehensive Properties of Rigid Cellular Plastics</i> , 2004.
ASTM D2244	ASTM D2244, <i>Standard Practice for Calculation of Color Tolerances and Color Differences from Instrumentally Measured Color Coordinates</i> , 2007.
ASTM D3035	ASTM D3035, <i>Standard Specification for Polyethylene (PE) Plastic Pipe (DR-PR) Based on Controlled Outside Diameter</i> , 2006.
ASTM D3203	ASTM D3203 <i>Standard Test Method for Percent Air Voids in Compacted Dense and Open Bituminous Paving Mixtures</i> , 2005.
ASTM D4694	ASTM D4694 <i>Standard Test Method for Deflections with a Falling-Weight-Type Impulse Load Device</i> , 2003.
ASTM D4956	ASTM D4956, <i>Standard Specification for Retroreflective Sheeting for Traffic Control</i> , 2007.
ASTM D6359	ASTM D6359, <i>Standard Specification for Minimum Retro-reflectance of Newly Applied Pavement Marking Using Portable Hand-Operated Instruments</i> , 1999.
ASTM D698	ASTM D698 <i>Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12 400 ft-lbf/ft<sup>3</sup> (600 kN-m/m<sup>3</sup>))</i> , 2007.
ASTM D913	ASTM D913, <i>Standard Test Method for Evaluating Degree of Resistance to Wear of Traffic Paint</i> , 2003.
ASTM F714	ASTM F714, <i>Standard Specification for Polyethylene (PE) Plastic Pipe (SDR-PR) Based on Outside Diameter</i> , 2006.
ASTM V6	American Society for Testing Materials V6.
ATC-32	ATC-32 <i>Improved Seismic Design Criteria for California Bridges: Provisional Recommendations</i> , 1996
ATC-49	ATC-49 <i>Recommended LRFD Guidelines for the Seismic Design of Highway Bridges</i> , 2003
BC Building Code	<i>British Columbia Building Code</i> , 2006 as revised through to and including Revision 7 (effective February 1, 2010)
BC Supplement to CAN/CSA-S6-06	BC Ministry of Transportation <i>Bridge Standards and Procedures Manual – Volume 1 – Supplement to CAN/CSA-S6-06</i> , 2007.
BC Supplement to TAC	BC Ministry of Transportation <i>Supplement to TAC Geometric Design Guide (BCTAC)</i> , 2007.
BMIS Data Dictionary	BC Ministry of Transportation <i>BMIS Data Dictionary</i>
BMIS User Manual	BC Ministry of Transportation <i>Bridge Management Information System User Manual</i> , 2006.
Bridge Standards and Procedures Manual	BC Ministry of Transportation <i>Bridge Standards and Procedures Manual – Volumes 1 to 4</i> , 2007.
Burns Bog Hydrology Mitigation Monitoring Plan	Gateway Program: South Fraser Perimeter Road <i>Burns Bog Hydrology Mitigation Monitoring Plan</i> , February 2009.
CAN/CSA-A23.1-04/A23.2-04	CAN/CSA-A23.1-04/A23.2-04, <i>Concrete Materials and Methods of Concrete Construction/Methods of Test and Standard practices for Concrete</i> , 2004.
CAN/CSA-B72-M87	CAN/CSA-B72-M87, <i>Installation Guide for Lightning Protection Systems</i> , 1987 (reaffirmed 2003)

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Short Form	Document Name
CAN/CSA-G164-M92	CAN/CSA-G164-M92 (R2003) <i>Hot Dip Galvanizing of Irregularly Shaped Articles</i> , 2003
CAN/CSA-S6-06	<i>Canadian Highway Bridge Design Code</i> , CAN/CSA-S6-06, November 2006.
CAN/CSA-W47.1	CAN/CSA-W47.1, <i>Certification of Companies for Fusion Welding of Steel</i> , 2003.
CAN/CSA-W59	CAN/CSA-W59, <i>Welded Steel Construction (Metal Arc Welding)</i> , 2003.
CAN/ULC-S102.2-03-EN	CAN/ULC-S102.2-03-EN <i>Method of Test for Surface Burning Characteristics of Flooring, Floor Coverings, and Miscellaneous, Underwriters' Laboratories of Canada, 2005 Catalogue of ULC Standards.</i>
Canutec Emergency Response Guidebook	Transport Canada Response and Operations Division <i>Canutec Emergency Response Guidebook</i> , 2004.
CAPA IPP Standards	Canadian Access and Privacy Association <i>Information and Privacy Professional (IPP), Professional Standards/Competencies</i> , March 27, 2007.
CMT Handbook	BC Ministry of Small Business, Tourism and Culture, Archaeology Branch <i>Culturally Modified Trees in British Columbia</i> , March 2001.
Commercial Vehicle Inspection Station Design Guide	BC Ministry of Transportation and Infrastructure <i>Commercial Vehicle Inspection Station Design Guide</i> , Updated April 2009.
Count Station Guidelines	BC Ministry of Transportation <i>Count Station Installation and Maintenance Guidelines</i> , January 2004.
Counterflow Operations Manual	BC Ministry of Transportation <i>Counterflow Operations Manual</i> , July 11, 2007.
CRTC Customer Service Standards	Canadian Radio-television and Telecommunications Commission <i>Decision CRTC 2000-24 Final standards for quality of service indicators for use in telephone company regulation and other related matters</i> , January 20, 2000, <i>Decision CRTC 2005-17 Retail quality of service rate adjustment plan and related issues</i> , March 24, 2005, <i>Decision CRTC 2005-20 Finalization of quality of service rate rebate plan for competitors</i> , March 31, 2005 and <i>8660 Reports on Quality of Service Indicators and Reporting Letters</i> .
CTA Cost Apportionment Guidelines	Canadian Transport Agency <i>Guidelines on Apportionment of Costs of Grade Separations</i>
Culvert and Fish Passage Fact Sheet	BC Ministry of Transportation <i>Culvert and Fish Passage Fact Sheet</i> , October 2000
Cycling Guide	BC Ministry of Transportation <i>Cycling Guide</i> , 2000.
DBSS	BC Ministry of Transportation and Infrastructure <i>2009 Design Build Standard Specifications for Highway Construction</i> , Adopted June 2009.
Design Firm Ground Response Spectra and Ground Motions (New Port Mann Bridge)	BC Ministry of Transportation <i>Design Firm-Ground (Class C) Response Spectra and Ground Motions, Proposed New Port Mann Bridge, Port Coquitlam/Surrey</i> , July 24, 2007.
DFO Fish Habitat Policy	Department of Fisheries and Oceans, Canada <i>Policy for the Management of Fish Habitat</i> , 1986.
DFO Habitat Guidelines	Department of Fisheries and Oceans, Canada <i>Habitat Conservation and Protection Guidelines</i> , 1998.
DFO Pacific Region Operational Statements	Department of Fisheries and Oceans, Canada <i>Pacific Region Operational Statements</i> , February 2008.
DFO Practitioners Guide to Habitat Compensation	Department of Fisheries and Oceans, Canada <i>Practitioners Guide to Habitat Compensation for DFO Habitat Management Staff</i> , 2002.

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<b>Short Form</b>	<b>Document Name</b>
DFO Urban Stormwater Guidelines	Department of Fisheries and Oceans, Canada <i>Urban Stormwater Guidelines and BMPs for Protection of Fish and Fish Habitat</i> , 2005.
Drainage Structures Rating Guidelines	BC Ministry of Transportation <i>Drainage and Debris Control Structures Rating Guidelines (Draft)</i> .
DriveBC User Manual	BC Ministry of Transportation <i>DriveBC User Manual</i> , Spring 2007 Release.
Electrical and Signing Materials Standards	BC Ministry of Transportation <i>Electrical and Signing Materials Standards (Draft)</i> , 2003.
Electrical and Traffic Engineering Manual	BC Ministry of Transportation <i>Electrical and Traffic Engineering Manual – Guidelines for the Design of Lighting, Signal and Sign Installation</i> , December 2003.
Electrical Maintenance Specifications	BC Ministry of Transportation <i>Performance Based Electrical Maintenance Specifications</i> , March 2007.
Environmental Management Plan Framework	Gateway Program: South Fraser Perimeter Road <i>Environmental Management Plan Framework</i> , July 2008.
Explosive Spill Plan	BC Ministry of Environment <i>British Columbia Marine Oil Spill Response Plan, British Columbia Inland Oil Spill Response Plan and British Columbia Hazardous Material Response Plan</i> , all January 2007.
FHWA Circular No. 7	U.S. Department of Transportation Federal Highway Administration <i>Geotechnical Engineering Circular No. 7: Soil Nail Walls</i> , March 2003.
FHWA Guidelines	U.S. Department of Transportation Federal Highway Administration <i>Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines, Publication No. FHWA-NHI-00-043</i> , March 2001.
Guidelines for Environmental Monitoring at Landfills	BC Ministry of Environment <i>Guidelines for Environmental Monitoring at Municipal Solid Waste Landfills</i> , 1996.
Guide to Rural Subdivision Approvals	BC Ministry of Transportation <i>Guide to Rural Subdivision Approvals</i> , May 2, 2006.
GVRD Best Management Practices for Stormwater	Greater Vancouver Regional District <i>Best Management Practices for Stormwater</i> , October 1999
Heavy Metal Memorandum of Understanding	BC Ministry of Transportation and BC Ministry of Environment <i>Clarification of Independent Remediation Requirements for Selected Heavy Metals at Ministry of Transportation Active Roadway Sites</i> , July 11, 2001.
Highway Capacity Manual	Transportation Research Board, Washington, D.C. <i>Highway Capacity Manual Special Report 209, 3rd Edition</i> , revised 1997.
Highway Engineering Design Manual	BC Ministry of Transportation and Highways <i>Highway Engineering Design Manual</i> , 1995.
Highway Maintenance Activities BMPs	BC Ministry of Transportation <i>Best Management Practices for Highway Maintenance Activities</i> , July 2004.
Hydrology Workplan (Burns Bog)	Gateway Program: South Fraser Perimeter Road <i>Hydrology Workplan Version 3.2</i> , December 3, 2008.
IHO S-44	International Hydrographic Organization <i>IHO Standards for Hydrographic Surveys</i> , 4th Edition, 1998.
Instream Works – Standards and Best Practices	BC Ministry of Water, Land and Air <i>Standards and Best Practices for Instream Works</i> , March 2004.

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Short Form	Document Name
Instream Work Windows	BC Ministry of Environment, Lower Mainland Region <i>Guidelines for Reduced Risk Instream Work Windows</i> , March 2006.
ITE Temporary Traffic Control Guidelines	Institute of Transportation Engineers <i>Guidelines for In-Service Road Safety Operational Review of Temporary Traffic Control</i> , 2004.
Land Development Guidelines	Department of Fisheries and Oceans Canada and Ministry of Environment, Lands and Parks <i>Land Development Guidelines for the Protection of Aquatic Habitat</i> , 1992.
Landfill Closure Plan	Golder Associates <i>SFPR Landfill Closure Report, 96th Street Ditch to West Boundary of Middle, Alpha Delta, BC</i> , October 23, 2009.
Land Remediation Section Guidance Documents	BC Ministry of Environment, documents available at <a href="http://www.env.gov.bc.ca/epd/remediation/guidance/index.htm">http://www.env.gov.bc.ca/epd/remediation/guidance/index.htm</a> .
Landscape Irrigation Standards	Irrigation Industry Association of British Columbia <i>Standards for Landscape Irrigation Systems</i> , January 2008.
Landscape Policy and Design Standards	BC Ministry of Transportation <i>Landscape Policy and Design Standards</i> , 1991
LED Open/Closed Sign Functional Specification	BC Ministry of Transportation <i>LED Open/Closed Sign Functional Specification Revision 2.0</i> May 2006.
LMD 8000 Programming Guide	BC Ministry of Transportation <i>LMD-8000 Programming Guide</i> , June 1999.
Manual of Aesthetic Design Practice	BC Ministry of Transportation <i>Manual of Aesthetic Design Practice</i> , 1991.
Manual of Control of Erosion and Shallow Slope Movement	BC Ministry of Transportation <i>Manual of Control of Erosion and Shallow Slope Movement, Vancouver Island Highway Project</i> , August 22, 1997
Manual of Standard Traffic Signs and Pavement Markings	BC Ministry of Transportation <i>Manual of Standard Traffic Signs and Pavement Markings</i> , September 2000.
Middle Alpha to Quantum Landfills Concept Drawing	<i>SFPR Alignment – Middle Alpha Landfill to Quantum Landfill</i> , November 23, 2009.
Ministry Jurisdictional Atlas	BC Ministry of Transportation <i>Lower Mainland – Howe Sound District Jurisdictional Atlas, Corporation of Delta and City of Surrey</i>
MMCD	<i>Master Municipal Construction Document – General Condition, Specifications, and Standard Detail Drawings</i> , 2000.
National Building Code	National Research Council of Canada <i>National Building Code of Canada</i> , 2005.
NCHRP Report 350	<i>National Cooperative Highway Research Program (NCHRP) Report 350</i> .
Noise Policy	BC Ministry of Transportation <i>Revised Policy for Mitigating the Effects of Traffic Noise from Freeways and Expressways</i> , November 1993.
NTCIP	<i>National Transportation Communications for ITS Protocol</i> .
Nursery Stock Standards	Canadian Nursery Landscape Association <i>Canadian Standards for Nursery Stock</i> , 8th Edition, 2006.
Oregon F-Mix Interim Report	Oregon Department of Transportation <i>Interim Report SPR 371 Development of Maintenance Practices for Oregon F-Mix</i> , August 1999.
Pacific Water Shrew – Best Management Practices Guidelines	BC Ministry of Environment, Ecosystem Standards and Planning Biodiversity Branch <i>Best Management Practices Guidelines for Pacific Water Shrew in Urban and Rural Areas [Working Draft]</i> , September 2007.
Pavement Surface Condition Rating Manual	BC Ministry of Transportation <i>Pavement Surface Condition Rating Manual</i> , March 2002.

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<b>Short Form</b>	<b>Document Name</b>
Pedestrian Crossing Control Manual	BC Ministry of Transportation <i>Pedestrian Crossing Control Manual for British Columbia</i> , 1994.
Perm Count Stations Maintenance Training Strategy	BC Ministry of Transportation <i>Maintenance of Perm Count Stations Training Strategy and Outline</i> ,
Pile Driving BMPs	Department of Fisheries and Oceans Canada and BC Marine and Pile Driving Contractors Association <i>Best Management Practices for Pile Driving</i> , May 2005.
Portland Cement Specification	Ontario Ministry of Transportation <i>Manual for Condition Rating of Rigid Pavements SP-026 for Concrete Surfaces</i>
Protocols for Rare Plants Surveys	E-Flora BC: Electronic Atlas of the Plants of British Columbia [www.eflora.bc.ca] Lab for Advanced Spatial Analysis, Department of Geography, University of British Columbia <i>Protocols for Rare Vascular Plant Surveys</i> , 2008.
PTI Guide	Post-Tensioning Institute <i>Recommendations for Stay-Cable Design, Testing and Installation</i> , October 2007.
Raptor Conservation BMPs	BC Ministry of Environment <i>Best Management Practices for Raptor Conservation during Urban and Rural Land Development in British Columbia</i> , March 2003.
Recognized Products List	BC Ministry of Transportation <i>Recognized Products List</i> , October 2007 Edition.
RIMS Meta Data Specifications	BC Ministry of Transportation <i>Roadway Information Management System (RIMS) Inventory Data - Detailed Meta Data Specifications</i> , November 2004.
Road Safety Audit Guidelines	BC Ministry of Transportation <i>Road Safety Audit Guidelines</i> , April 1, 2004.
Road Salt Code of Practice	Environment Canada <i>Code of Practice for the Environmental Management of Road Salts</i> , April 2004.
RPMS Data File Definitions	BC Ministry of Transportation <i>RPMS Pavement Condition Data File Definitions</i> , September 2006.
Seismic Retrofit Manual	BC Ministry of Transportation <i>Bridge Standards and Procedures Manual – Volume 4 – Seismic Retrofit Design Criteria</i>
SFPR Air Quality Management Plan (Burns Bog Segment)	Gateway Program: South Fraser Perimeter Road (Burns Bog Segment) <i>Air Quality Management Plan</i> , December 2008.
SFPR – Conceptual Design of Hydrology Mitigation for Burns Bog	Gateway Program: South Fraser Perimeter Road <i>Conceptual Design of Hydrology Mitigation for Burns Bog (Rev.2)</i> , February 18, 2009.
SFPR Design Hour Traffic Volumes	Gateway Program, South Fraser Perimeter Road, <i>Design Hour Traffic Volumes</i> , November 2009.
SFPR Guide Signage Strategy	Gateway Program: South Fraser Perimeter Road <i>Guide Signage Strategy</i> , February 2009.
SFPR – Preliminary Design of 80th Street Hybrid Peat Berm	EBA Engineering Consultants Ltd. <i>Technical Memo: South Fraser Perimeter Road – Preliminary Design of 80th Street Hybrid Peat Berm</i> , October 15, 2009.
SFPR Roundabout Traffic Modelling Requirements	Gateway Program: South Fraser Perimeter Road <i>Roundabout Traffic Modelling and Analysis Requirements</i> , February 2009.
SFPR Stormwater Management Plan Outline	Gateway Program: South Fraser Perimeter Road <i>SFPR Stormwater Management Plan Outline</i> , July 2007.
SFPR Vegetation and Wildlife Mitigation Monitoring Plan	Gateway Program: South Fraser Perimeter Road <i>Vegetation and Wildlife Mitigation Monitoring Plan</i> , September 2008.

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<b>Short Form</b>	<b>Document Name</b>
SFPR Wildlife and Wildlife Habitat Mitigation Plan	Gateway Program: South Fraser Perimeter Road <i>Wildlife and Wildlife Habitat Mitigation Plan</i> , September 2008.
Sign Pattern Manual	BC Ministry of Transportation <i>Sign Pattern Manual</i> , February 2003.
Standard Bridge Drawings	BC Ministry of Transportation <i>Bridge Standards and Procedures Manual – Volume 3 – Standard Drawings</i>
Standard Electrical Equipment Maintenance Manual	BC Ministry of Transportation <i>Maintenance Manual for Standard Electrical Equipment</i> , March 2001.
Standard Highway Sign Specifications	BC Ministry of Transportation <i>Specifications for Standard Highway Sign Materials, Fabrication and Supply</i> , 2004.
Step 508 Accessibility Standards	<i>Section 508 of the Rehabilitation Act of 1973, as amended</i> (29 U.S.C. 794d).
Stormwater Design Guidelines - GVRD	Greater Vancouver Regional District <i>Stormwater Source Control Design Guidelines</i> , April 2005
Stormwater Planning Guidebook	BC Ministry of Water, Land and Air Protection <i>Stormwater Planning: A Guidebook for British Columbia</i> , May 2002
TAC Bikeway Traffic Control Guidelines	Transportation Association of Canada <i>Bikeway Traffic Control Guidelines for Canada</i> , 1999.
TAC Geometric Design Guide	Transportation Association of Canada <i>Geometric Design Guide for Canadian Roads</i> , 1999.
TAC Manual of Uniform Traffic Control Devices	Transportation Association of Canada <i>Manual of Uniform Traffic Control Devices</i> , 2000.
TAC Road Safety Audit Guide	Transportation Association of Canada <i>Canadian Road Safety Audit Guide</i> , 2001.
TAC Roadway Lighting Design Guide	Transportation Association of Canada <i>Guide for the Design of Roadway Lighting</i> , 2006.
TAC Salt Management Guide	Transportation Association of Canada <i>Salt Management Guide</i> , 1999.
Technical Bulletin TE-2000-03	BC Ministry of Transportation <i>Sign Illumination</i> , Technical Bulletin TE-2000-03
Technical Bulletin TE-2001-02	BC Ministry of Transportation <i>Advance Warning Sign Placement and Timing in Construction Zones</i> , Technical Bulletin TE-2001-02
Technical Bulletin TE-2001-06	BC Ministry of Transportation <i>Clarification of the Use of Reflective Tape Borders on Traffic Signal Backboards</i> , Technical Bulletin TE-2001-06
Technical Bulletin TE-2001-07	BC Ministry of Transportation <i>Vehicle Underpass Lighting</i> , Technical Bulletin TE-2001-07
Technical Bulletin TE-2001-08	BC Ministry of Transportation <i>Design Criteria for All Cantilever, Sign Bridge and Custom Pole Structures</i> , Technical Bulletin TE-2001-08
Technical Bulletin TE-2002-01	BC Ministry of Transportation <i>Audible Effects of High Visibility Delineation</i> , Technical Bulletin TE-2002-01
Technical Bulletin TE-2002-03	BC Ministry of Transportation <i>Post Mounted Flasher Application</i> , Technical Bulletin TE-2002-03
Technical Bulletin TE-2004-01	BC Ministry of Transportation <i>Revisions to Electrical and Traffic Engineering Manual (December 2003)</i> , Technical Bulletin TE-2004-01
Technical Bulletin TE-2005-02	BC Ministry of Transportation <i>Revisions to Electrical and Traffic Engineering Manual (December 2003)</i> , Technical Bulletin TE-2005-02

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<b>Short Form</b>	<b>Document Name</b>
Technical Bulletin TE-2005-04	BC Ministry of Transportation <i>Web Camera Design, Installation and Commissioning Specifications</i> , Technical Bulletin TE-2005-04
Technical Bulletin TE-2005-05	BC Ministry of Transportation <i>Lane Use Signs and Pavement Markings at Multi-Lane Roundabouts</i> , Technical Bulletin TE-2005-05
Technical Bulletin TE-2005-07	BC Ministry of Transportation <i>Clarification of the Use of Green Arrow Signal Displays on Traffic Signals at Interchanges</i> , Technical Bulletin TE-2005-07
Technical Bulletin TE-2005-09	BC Ministry of Transportation <i>Revisions to Electrical and Traffic Engineering Manual (December 2003)</i> , Technical Bulletin TE-2005-09
Technical Bulletin TE-2006-01	BC Ministry of Transportation <i>Uninterruptible Power Supplies (UPS) at Signalized Intersections and at Traffic Control or Warning Devices Interconnected with Railways</i> , Technical Bulletin TE-2006-01
Technical Bulletin TE-2006-03	BC Ministry of Transportation <i>Traffic Signal Uninterruptible Power Supply Material Standards</i> , Technical Bulletin TE-2006-03
Technical Bulletin TE-2006-04	BC Ministry of Transportation <i>Traffic Signal Uninterruptible Power Supply Maintenance Standards</i> , Technical Bulletin TE-2006-04
Technical Bulletin TE-2006-05	BC Ministry of Transportation <i>Use of Countdown Pedestrian Signals</i> , Technical Bulletin TE-2006-05
Technical Bulletin TE-2007-02	BC Ministry of Transportation <i>Traffic Signal/Railway Signal Interconnects</i> , Technical Bulletin TE-2007-02.
Technical Bulletin TE-2007-03	BC Ministry of Transportation <i>Communication Conduit</i> , Technical Bulletin TE-2007-03.
Technical Circular T-01/04	BC Ministry of Transportation <i>Pavement Structure Design Guidelines</i> , Technical Circular T-01/04
Technical Circular T-01/06	BC Ministry of Transportation <i>Text Based “Do Not Enter” and “Wrong Way” Signs – Application at Interchanges</i> , February 15, 2006.
Technical Circular T-02/04	BC Ministry of Transportation <i>Road Safety Audit (RSA) Policy</i> , March 8, 2004 and <i>Clarification Road Safety Audit (RSA) Policy</i> , March 17, 2004
Technical Circular T-02/05	BC Ministry of Transportation <i>Specifications for Work Zone Sign Substrate Material - Ministry of Transportation (MoT) Projects</i> , February 24, 2005
Technical Circular T-04/07	BC Ministry of Transportation <i>Guidelines on the Use of Portable Traffic Signals (PTS)</i> , August 3, 2007
Technical Circular T-05/05	BC Ministry of Transportation <i>Policy Manual for Supplemental Signs</i> , July 14, 2005.
Technical Circular T-06/08	BC Ministry of Transportation <i>Roundabout Policy (update)</i> , November 12, 2008.
Technical Circular T-07/05	BC Ministry of Transportation <i>Signing and Markings for Multi-lane Roundabouts</i> , July 27, 2005.
Technical Circular T-08/05	BC Ministry of Transportation <i>Policy for use of “Keep Right Except to Pass” Sign</i> , August 17, 2005.
Technical Circular T-08/08	BC Ministry of Transportation <i>Idle Reduction Signs</i> , November 14, 2008.
Technical Circular T-09/05	BC Ministry of Transportation <i>Traffic Control Manual for Work on Roadways - Safety Apparel and Traffic Control Retro-Reflectivity Specifications</i> , Issued September 16, 2005, Revised March 2, 2006.



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<b>Short Form</b>	<b>Document Name</b>
Technical Circular T-10/04	BC Ministry of Transportation <i>ARD Testing at Quarry and Rock Cut Sites</i> , November 2004.
Technical Circular T-15/04	BC Ministry of Transportation <i>Wire Rope Safety Fence (WRSF)</i> , December 2, 2004.
Technical Circular T-15/06	BC Ministry of Transportation <i>New Standard for Sign Fonts (Clearview Type Font) and Update to Sheeting reflectivity standards on Guide and Custom Signs (ASTM Type 9/3 and ASTM Type 9/9)</i> , September 5, 2006.
Technical Circular T-16/06	BC Ministry of Transportation <i>Guidelines for the Operation of Changeable Message Signs (CMSs) and Portable Changeable Message Signs (PCMSs)</i> , September 6, 2006.
Technical Circular T-17/06	BC Ministry of Transportation <i>Use of Hog Fuel for Road Construction Purposes</i> , October 2006.
Traffic Control Manual	BC Ministry of Transportation <i>Traffic Control Manual for Work on Roadways</i> , Revised and Consolidated 1999
Traffic Controller Assembly Manual	BC Ministry of Transportation <i>Traffic Controller Assembly Manual</i> , January 2004.
Traffic Controller Design Manual	BC Ministry of Transportation <i>Traffic Controller Design Manual</i> , January 2004.
Traffic Management Guidelines	BC Ministry of Transportation <i>Traffic Management Guidelines for Work on Roadways</i> , September 2001.
Traffic Sign Catalogue	BC Ministry of Transportation <i>Traffic Sign Catalogue</i> , 2006.
Trans Canada Highway Manual	BC Ministry of Transportation <i>Trans Canada Highway – Freeway Service Patrol Operations and Procedures</i> , February 1999.
TransLink Infrastructure Design Guidelines	Greater Vancouver Transportation Authority <i>Transit Infrastructure Design Guidelines</i> , January 2002.
Transport Canada Railway Clearance Standard	Transport Canada <i>Standard Respecting Railway Clearance</i> , May 1992.
Transport Canada RTD-10	Transport Canada <i>Road-Railway Grade Crossings Technical Standards and Inspection, Testing and Maintenance Requirements</i> , March 2002.
TRB Sign Maintenance Manual	US Transportation Research Board, National Research Council <i>Maintenance Management of Street and Highway Signs NCHRP Synthesis 157</i> , ISSN 0547-5570, ISBN 0-309-04910-5
Urban Stormwater Guidelines	Department of Fisheries and Oceans Canada <i>Urban Stormwater Guidelines and Best Management Practices for the Protection of Fish and Fish Habitat (Draft Discussion Document Revision 4)</i> , 2005
Utility Policy Manual	BC Ministry of Transportation <i>Utility Policy Manual</i> , March 1995.
Water Quality Guidelines - Approved	BC Ministry of Environment <i>British Columbia Approved Water Quality Guidelines</i> , 2006 Edition.
Water Quality Guidelines - Working	BC Ministry of Environment <i>British Columbia Working Water Quality Guidelines</i> , 2006 Edition.
Wildlife at Risk – EA Best Practice Guide	Canadian Wildlife Service – Environment Canada <i>Environmental Assessment Best Practice Guide for Wildlife at Risk in Canada</i> , February 2004.
Working In and Around Water – User’s Guide	BC Ministry of Environment <i>A User’s Guide to Working In and Around Water; Understanding the Regulation under British Columbia’s Water Act</i> , May 2005.

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<b>Short Form</b>	<b>Document Name</b>
World Bank Paper 46	World Bank <i>Technical Paper Number 46: Guidelines for Conducting and Calibrating Road Roughness Measurements</i> , 1986.

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**APPENDIX B  
GEOTECHNICAL AND SURVEY DATA EXCLUSIONS**

1. Records by Golder Associates Ltd., re: Alex Fraser Bridge – Borehole Records, dated September to November 1981. Project No. 812 – 1058; Bore holes GA 106, 107, 108, 110, 114, 115, 116
2. Drawing by Golder Associates Ltd., re: Alex Fraser Bridge – Borehole Location Site Plan – Figure 2, dated May 1983.
3. Report by L.J. deBoer, BC Ministry of Transportation, re: Construction on the Fraser River Delta, dated June 1983.
4. Records by Golder Associates Ltd., re: Alex Fraser Bridge, Borehole Records, dated June 1983. Project No. 832-1014. Bore holes GA 217, 218, 219, 220.
5. Report by N.D. Lea and Associates submitted to the Ministry of Transportation and Highways, re: Bridge Approach Fills for the Annacis Highway, dated July 1983. N.D. Lea Project No. 8361.
6. Report by Thurber Consultants Ltd. submitted to B.C. Transit, re: Detailed Geotechnical Investigation for Proposed ALRT Fraser River Crossing, dated January 7, 1985. BC Transit Library No. 3121. Thurber File No. 15-35-0.
7. Report by N.R. Zapf, L. deBoer, R.L. Chapman, P. Brown submitted to Roads and Transportation Association of Canada Conference, re: Fraser River Crossing at Annacis Island Roadways Development, Geotechnical Considerations and Construction Phase. Ministry of Transportation and Highways Library No. TA 710.4 C22 B7 F7 1985.
8. Report by Thurber Consultants Ltd. submitted to Lea and Associates Ltd., re: Geotechnical Investigation for Pattullo/Scott Road Interchange, dated June 2, 1986. Thurber File No. 17-604-29.
9. Report by Thurber Consultants Ltd. submitted to N.D. Lea and Associates Ltd., re: Geotechnical Investigation for Skytrain Phase II –Surrey Guideway STA. 23 + 707 to 24 + 656, dated December 22, 1986. Thurber File No. 17-604-37. BC Transit Library No. 3124.
10. Drawings by Dayton & Knight Ltd., re: District of Surrey – Port Mann Landfill – North Slope Leachate Barrier, dated March 8, 1989. Contract No. MS 65-747.
11. Report by Thurber Consultants Ltd. submitted to B.C. Transit, re: Geotechnical Investigation for Skytrain Phase III – Whalley Extension STA. 24 + 656 to Haddom Road, dated December 15, 1989. Thurber File No. 15-35-2. BC Transit Library No. 3152.
12. Report by City of Richmond, Permits and Licenses Department, re: Earthquake Design in the Fraser Delta – Task Force Report, dated July 17, 1991.
13. Report by HBT Agra Ltd. Submitted to WEB Engineering Ltd., re: Geotechnical Study - South Fraser Perimeter Road – Surrey, B.C., November 6, 1992. HBT Agra File No. VG-06-187.
14. Report by Golder Associates Ltd. submitted to Kerr Wood Leidal Associates Ltd., re: Geotechnical Input to D5 Bridgeview – Catchment Drainage Study – British Columbia, dated October 6, 1993. Golder File No. 932 1146.

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15. Report by Golder Associates Ltd. submitted to Kerr Wood Leidal Associates Ltd., re: Geotechnical Investigation and Design Input – Proposed Royal City Pump Station – Surrey, BC, dated March 1, 1994. Golder File No. 932 1210.
16. Report by Agra Earth & Environmental submitted to WEB Engineering Ltd., re: Geotechnical Assessment - South Fraser Perimeter Road – Grace Road to 112A Avenue, Surrey, B.C., dated November 8, 1994. Agra File No. VG 06644.
17. Report by Thurber Engineering Ltd. submitted to PBK Engineering Ltd., re: South Fraser Perimeter Road – 168 Street to 104 Avenue, dated March 1, 1995. Thurber File No. 17-171-45.
18. Report by Golder Associates Ltd. submitted to DelCan Corporation, re: Preliminary Results – Geotechnical Investigation – SFPR – Alex Fraser Bridge to 96th Avenue, Delta, B.C., dated March 22, 1995. Golder File No. 952-5004.
19. Report by Golder Associates Ltd. submitted to Vancouver Port Corporation, re: Geotechnical Input to Detailed Design - Arthur Drive and Farm Crossing - Underpasses - Deltaport Way Extension - Delta BC, dated August 30, 1995. Golder File No. 942-1182.
20. Report by Golder Associates Ltd. submitted to Alpin & Martin Consultants Ltd., re: Draft Report on Geotechnical Investigation Input to Preliminary Design – Surrey Road to 156th Street, Surrey, B.C., dated December 22, 1995. Golder File No. 952-5028.
21. Report by Alpin & Martin Consultants Ltd. submitted to the City of Surrey, re: 1995 Advance Design Package R-305 – King Road to 156 Street, Surrey. Preliminary Engineering Report, dated January 10, 1996. City of Surrey File No. 1796-053/01. Alpin & Martin File No. 95804.
22. Letter from Agra Earth and Environmental to Brian Snow (Web Engineering), re: Geotechnical Evaluation for Road Upgrade Westminster Way (at River Road), Surrey BC. Agra File No. VG 07036.
23. Letter from J.A. Hull (Agra Earth & Environmental Ltd.) to Brian Snow (WEB Engineering Ltd.), re: Embankment Failure, Zone 3 – Tannery Road to Old Yale Road – South Fraser Perimeter Road, Surrey, B.C., dated January 31, 1997. Agra File No. VG-06644.
24. Letter from J.A. Hull (Agra Earth & Environmental Ltd.) to Brian Snow (WEB Engineering Ltd.), re: Geotechnical Assessment for Perimeter Road Upgrade – Old Yale Road to 112 Avenue, South Fraser Perimeter Road, Surrey, B.C., dated February 19, 1997. Agra File No. VG 06644.
25. Letter from R.W. Williams (Agra Earth & Environmental Ltd.) to Brian Snow (WEB Engineering Ltd.), re: Geotechnical Assessment for Perimeter Road Upgrade – British Columbia Southern Railway – South Fraser Perimeter Road, Surrey, B.C., dated February 21, 1997. Agra File No. VG 07083.
26. Letter from J.A. Hull (Agra Earth & Environmental Ltd.) to Brian Snow (WEB Engineering Ltd.), re: Preload Fill – Impact On Ground Water Regime, South Fraser Perimeter Road, Surrey, BC, dated April 4, 1997. Agra Earth & Environmental File No. VG 06644 Ground Water Table Effects.
27. Report by Macleod Geotechnical Ltd. submitted to Corporation of Delta, re: Slope Erosion Study – Collings Way, Delta, B.C., dated June 10, 1997. Macleod Geotechnical File No. Y58.

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28. Letters from James Lau (Terra Engineering Ltd.) to Bill Hancock (Northmark Projects Inc.), Claire Normand (Northmark Construction Ltd.), re: Proposed Industrial Development – 104 Avenue & 174 Street, Surrey, B.C. – Grade Restoration at Lowland Area, dated September 19, 1997. Terra Engineering Ltd. File No. 971 0583.
29. Drawings by WEB Engineering Ltd., re: City of Surrey Roads Package R16/96 – 1997 Preload Construction “Grace Road Project”, Drawing NOS. 1156-P-00 to P-11, 1156-P-102 to P-105, 1156-P-400 to P-411, various dates November 1996 to January 1997 (date stamped October 14, 1997). City of Surrey Project No. 1796-016.
30. Report by Alpin & Martin submitted to City of Surrey, re: South Fraser Perimeter Road – King Road to 156 Street – Preliminary Engineering Report, dated January 1998. Alpin & Martin Project No. 95804. Municipal Project No. 1794-305.
31. Letter from Ateesh Roop (Golder Associates Ltd.) to Norm D’Andrea (Associated Engineering (BC) Ltd.), re: Geotechnical Considerations - South Fraser Perimeter Road - Nordel Way to Highway 15, Surrey/Delta, B.C., dated January 18, 1999. Golder File No. 982-1169.
32. Drawings by Aplin & Martin submitted to GVS&DD, re: Preloading for Replacement of North Surrey Interceptor – 156th Street Section, dated May 1999. District File No. SF-2237.
33. Report by Aplin & Martin submitted to City of Surrey, re: South Fraser Perimeter Road – 115A Avenue to King Road Study, dated May 1999. City of Surrey Project No. 97166.
34. Letter from Ateesh Roop (Golder Associates Ltd.) to Norm D’Andrea (Associated Engineering (BC) Ltd.), re: Preliminary Geotechnical Considerations -Proposed South Fraser Perimeter Road - Delta/Surrey, B.C., dated August 6, 1999. Golder File No. E/99/289, 982-1169.
35. Letter from Ateesh Roop (Golder Associates Ltd.) to Norm D’Andrea (Associated Engineering (BC) Ltd.), re: Preliminary Geotechnical Considerations - Proposed South Fraser Perimeter Road - Delta/Surrey, B.C., dated August 6, 1999. Golder File No. E/99/289, 982-1169.
36. Report by Agra Earth and Environmental Ltd. submitted to RPA Projects Ltd., re: Native Soil Conditions – Burns Bog and Surrounding Lands, Burns Bog Eco System Review, dated December 17, 1999. Agra Earth and Environmental File No. VE 51007.
37. Report by Stantec Consulting Ltd., re: North Bluff Drainage and Slope Stability Assessment - Final Report – Appendix A,B,C, & D, dated March 31, 2000. Santec Project No. 1-17-26000.
38. Letter from Ateesh Roop (Golder Associates) to Tom Smith (Greater Vancouver Regional District), re: Expected Settlements – Phase 1 and Phase 2 Preload South Fraser Perimeter Road GVS & DD North Surrey Interceptor – 156th Street Section, Surrey, BC. April 6, 2000. Golder File No. E/00/136, 962-1236.
39. Email from Tom Smith (Greater Vancouver Regional District) to Ateesh Roop (Golder Associates), re: Settlement Gauges at Port Mann Landfill, dated July 21, 2000. City of Surrey File No. 1799-010/21.

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**Appendix B: Geotechnical and Survey Data Exclusions**

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40. Email from Tom Smith (Greater Vancouver Regional District) to Ateesh [Ateesh Roop (Golder Associates Ltd.)], re: NSI [North Surrey Interceptor] Settlement Gauge Readings, dated December 27 2000. City of Surrey File No. 1799-010/21.
41. Letter from Ateesh Roop (Golder Associates Ltd.) to Norm D'Andrea (Associated Engineering (BC) Ltd.), re: Preliminary Geotechnical Considerations - Proposed South Fraser Perimeter Road Delta/Surrey, B.C., dated August 3, 2001. Golder File No. E/01/1233, 982-1169.
42. Report by Golder Associated Ltd. submitted to Greater Vancouver Regional District, re: Demolition, Land Clearing and Construction Waste Landfill Study, dated November 1, 2001. Golder File No. 002-1194.
43. Letter from Malcolm Cowley (Greater Vancouver Regional District) to Ron Weibe (City of Surrey), re: Progress Report No.5 for Preloading for Replacement of the 156th Street Section of the North Surrey Interceptor and Adjacent Portion of the SFPR. City of Surrey File No. 1799-010/21.
44. Letter from Malcolm Cowley (Greater Vancouver Regional District) to Ron Wiebe (City of Surrey), re: Progress Report No. 5 – Tender 99011 - Preloading for Replacement of the 156th Street Section of the North Surrey Interceptor and adjacent portion of the South Fraser Perimeter Road (SFPR), dated May 13th, 2002. City of Surrey File No. 1799-010/21
45. Report by Golder Associates Ltd. submitted to Greater Vancouver Regional District, re: Feasibility Stage Geotechnical and Environmental Investigation, Realignment of North Surrey Interceptor, 156 Street Section - 115A Avenue Extension, Surrey, B.C., dated July 25, 2002. Golder File No. 022-5020.
46. Letters and Email Letters from EBA Engineering Consultants Ltd., re: 7672 Progress Way, October 6, 2004. EBA File No. 7825195.
47. Report by EBA Engineering Consultants Ltd., re: Revised Geotechnical Report – 76th Street and Progress Way, Delta B.C., dated October 22, 2004. EBA File No. 7825195.
48. Report by GeoPacific Consultants Ltd., re: Proposed New Loading Docks at 9924 River Road, Delta, dated February 8, 2005. Report prepared for AMJ Campbell Van Lines, 8028 River Way, Delta, BC.
49. Letter from Curtis Cloutier (Fraser River Port Authority) to Ron Lepage (Ministry of Transportation), re: Geotechnical Reports, Various Locations, dated December 15 2006. Thurber Engineering Limited Files 14-53-25, 14-53-22, 19-2810-0. Golder Associates File No. E/02/0982, 022-1064. Morrison Beaty Limited File No. 585-871.