

---

**PART 1 OF SCHEDULE 10**

**PERFORMANCE PAYMENTS**

The Province will pay the Concessionaire the Performance Payments determined in accordance with Schedule 10 [Payments].

There is no minimum Performance Payment and no portion of the Performance Payment is guaranteed. Except as expressly stated otherwise, references to amounts in Schedule 10 are not indexed or indexed linked.

Performance Payments will be made during the Enhanced Service Period only.

The Concessionaire will Measure and monitor all elements factored into the calculations of the Performance Payments in accordance with Part 7 of this Schedule 10 [Monitoring and Measurement].

**1. ENHANCED SERVICE PERFORMANCE PAYMENTS**

- 1.1 The Performance Payments during the Enhanced Service Period, the “Enhanced Service Performance Payments”, will accrue from the first day of the Enhanced Service Period until the last day of the Enhanced Service Period.
- 1.2 The Enhanced Service Performance Payment (\$) in respect of a Contract Year  $n$  (“ESPP $_n$ ”) will be calculated in accordance with the following formula:

**Error! Objects cannot be created from editing field codes.**

where:

ESPP $_n$  = The Enhanced Service Performance Payment (\$) for the Contract Year  $n$ .

TVP $_n$  = Traffic Volume Payments (\$) for the Contract Year  $n$  calculated in accordance with Part 2 of Schedule 10 [Traffic Volume Payment].

LAP $_n$  = The Lane Availability Payments (\$) for the Contract Year  $n$ , calculated in accordance with Part 3 of Schedule 10 [Lane Availability Payment].

SPP $_n$  = Safety Performance Payments (\$) for the Contract Year  $n$  calculated in accordance with Part 4 of Schedule 10 [Safety Performance Payment].

---

$USP_n$  = Users Satisfaction Payments (\$) for the Contract Year  $n$  calculated in accordance with Part 5 of Schedule 10 [Users Satisfaction Payment].

$PD_n$  = Performance Deductions (\$) for the Contract Year  $n$  calculated in accordance with Part 8 of Schedule 10 [Performance Deductions].

1.3 If the Enhanced Service Performance Payment for any Contract Year calculated in accordance with the above formula is a negative amount, it will be treated as zero.

**2. PAYMENT OF ENHANCED SERVICES PERFORMANCE PAYMENTS**

2.1 During the Enhanced Service Period, the Province will make monthly instalment payments to the Concessionaire.

2.2 Subject to Part 6 of Schedule 10 [Payment Retentions], the amount of the instalment for month  $m$  in the Enhanced Service Payment Period (“ESPP <sub>$m$</sub> ”) in Contract Year  $n$  will be:

$$ESPP_m = [GLAP_m - UDE_m - PD_m] * [1 + (IF_{LAP} * PPI_{n-1})] + \left[ \frac{TVP_{n-1}}{12} \right]$$

where:

$GLAP_m$  = Has the meaning given in Part 3 of Schedule 10 [Lane Availability Payment].

$UDE_m$  = Has the meaning given in Part 3 of Schedule 10 [Lane Availability Payment].

$PD_m$  = Has the meaning given in Part 8 of Schedule 10 [Performance Deductions].

$IF_{LAP}$  = Has the meaning given in paragraph 2 of Part 3 of Schedule 10 [Lane Availability Payment]

$PPI_{n-1}$  = Performance Price Index for the Contract Year immediately preceding Contract Year  $n$ , determined in the same manner as  $PPI_n$  in Part 2 of Schedule 10 [Traffic Volume Payment] except that all references to Contract Year  $n$  relating to the determination of  $PPI_n$  are replaced with Contract Year  $n-1$ .

---

$TVP_{n-1}$  = The Traffic Volume Payment of the Contract Year immediately preceding Contract Year  $n$ , except that where Contract Year  $n$  is the first Contract Year of the Enhanced Service Period, a traffic forecast of **DELETED** average daily Counted Vehicles will be used for the calculation.

2.3 All monthly instalments payable by the Province under paragraph 2 of this Part 1 are subject to withholding by the Province in accordance with Part 6 of Schedule 10 [Payment Retentions].

2.4 The aggregate of all monthly instalments paid in accordance with paragraph 2 of this Part 1 and all Unavailability Deductions and Performance Deductions in respect of any Contract Year will be taken into account in the Annual Reconciliation Notice of that Contract Year, and adjustments for over-payment or under-payment will be made in accordance with Sections 32 [Calculation of Payment] and 33 [Invoicing and Payment] of this Agreement.

---

**PART 2 OF SCHEDULE 10**

**TRAFFIC VOLUME PAYMENT**

**1. DEFINITIONS**

In this Part 2:

“CV<sub>1</sub>” means, in respect of Contract Year *n*, **DELETED**.

“CV<sub>2</sub>” means:

- (a) in respect of the first Contract Year of the Original Service Period, an amount equal to the aggregate of:
  - (i) **DELETED**; and
  - (ii) the corresponding Traffic Increase Amount;
- (b) in respect of each subsequent Contract Year *n* of the Original Service Period, an amount equal to the aggregate of:
  - (i) CV<sub>2</sub> for the preceding Contract Year; and
  - (ii) the corresponding Traffic Increase Amount;
- (c) in respect of the first Contract Year of the Enhanced Service Period, an amount equal to the aggregate of:
  - (i) CV<sub>2</sub> of the last Contract Year of the Original Service Period; and
  - (ii) the corresponding Traffic Increase Amount; and
- (d) in respect of each subsequent Contract Year *n* of the Enhanced Service Period, an amount equal to the aggregate of:
  - (i) CV<sub>2</sub> of the immediately preceding Contract Year; and
  - (ii) the corresponding Traffic Increase Amount.

“CV<sub>3</sub>” means:

- (a) in respect of the first Contract Year of the Original Service Period, an amount equal to the aggregate of:
  - (i) **DELETED**; and

- 
- (ii) the corresponding Traffic Increase Amount;
  - (b) in each subsequent Contract Year  $n$  of the Original Service Period, an amount equal to the aggregate of:
    - (i)  $CV_3$  for the preceding Contract Year; and
    - (ii) the corresponding Traffic Increase Amount;
  - (c) in respect of the first Contract Year of the Enhanced Service Period, an amount equal to the aggregate of:
    - (i)  $CV_3$  of the last Contract Year of the Original Service Period; and
    - (ii) the corresponding Traffic Increase Amount; and
  - (d) in respect of each subsequent Contract Year  $n$  of the Enhanced Service Period, an amount equal to the aggregate of:
    - (i)  $CV_3$  of the immediately preceding Contract Year; and
    - (ii) the corresponding Traffic Increase Amount.

“ $CV_4$ ” means:

- (a) in respect of the first Contract Year of the Original Service Period, an amount equal to the aggregate of:
  - (i) **DELETED**; and
  - (ii) the corresponding Traffic Increase Amount;
- (b) in each subsequent Contract Year  $n$  of the Original Service Period, an amount equal to the aggregate of:
  - (i)  $CV_4$  for the preceding Contract Year; and
  - (ii) the corresponding Traffic Increase Amount;
- (c) in respect of the first Contract Year of the Enhanced Service Period, an amount equal to the aggregate of:
  - (i)  $CV_4$  of the last Contract Year of the Original Service Period; and
  - (ii) the corresponding Traffic Increase Amount; and

- (d) in respect of each subsequent Contract Year  $n$  of the Enhanced Service Period, an amount equal to the aggregate of:
- (i)  $CV_4$  of the immediately preceding Contract Year; and
  - (ii) the corresponding Traffic Increase Amount.

“Counted Buses” means in service public transit buses operated by the Kelowna Regional Transit System counted in accordance with Part 8 of Schedule 10 [Monitoring and Measurement] and paragraph 2.4 of this Part 2.

“Counted Vehicles” means the aggregate of:

- (a) the number of Motor Vehicles counted in accordance with Part 8 of Schedule 10 [Monitoring and Measurement]; and
- (b)  $14 * \text{the number of Counted Buses}$ .

“Fuel Index” means the annual average of the diesel fuel price index for British Columbia published by Statistics Canada (Statistics Canada Table 329-0047) in respect of a Contract Year or, if not available, of such other similar index agreed between the parties as the most appropriate index for the purposes of this Payment Mechanism or, failing agreement within 21 days, as determined pursuant to the Disputes Resolution Procedure.

“Labour Index” means annual average of the Fixed-weighted Indexes of Average Hourly Earnings, for all Employees, for Selected Industries, Canada, Provinces and Territories: British Columbia (Statistics Canada, Catalogue No. 72-002-XPB – Table 3) in respect of a Contract Year or, if not available, such other similar public sector wage index agreed between the parties as the most appropriate index for the purposes of this Payment Mechanism or, failing agreement within 21 days, as determined pursuant to the Disputes Resolution Procedure..

$PPI_n$  = Performance Price Index in Contract Year  $n$  determined in accordance with the following:

$$PPI_n = \left[ 0.55 * \frac{LI_n - LI_{bd}}{LI_{bd}} \right] + \left[ 0.07 * \frac{FI_n - FI_{bd}}{FI_{bd}} \right] + \left[ 0.38 * \frac{RI_n - RI_{bd}}{RI_{bd}} \right]$$

Where:

$LI_n$  is the Labour Index for Contract Year  $n$ .

---

$LI_{bd}$  is the Labour Index for the month of the year in which the Financial Base Date occurs.

$FI_n$  is the Fuel Index for Contract Year  $n$ .

$FI_{bd}$  is the Fuel Index for the month of the year in which the Financial Base Date occurs.

$RI_n$  is the Residual Index for Contract Year  $n$ .

$RI_{bd}$  is the Residual Index for the month of the year in which the Financial Base Date occurs.

Provided always that if either the Labour, Fuel or Residual Index for a Contract Year is published with a different base from that of the same index for the previous Contract Year, the affected index shall be adjusted so that the index for each Contract Year has a common base prior to including the index in the calculation of the PPI.

“Residual Index” means the annual average of the non-residential building construction price index for Vancouver, British Columbia published by Statistics Canada (Statistics Canada Table 327-0039) in respect of a Contract Year or if not available, of such other similar index agreed between the parties as the most appropriate index for the purposes of this Payment Mechanism or, failing agreement within 21 days, as determined pursuant to the Disputes Resolution Procedure.

“Traffic Increase Amount” in relation to  $CV_2$ ,  $CV_3$  or  $CV_4$ , means:

- (a) in respect of a Contract Year in the Original Service Period, the product of:
  - (i) daily traffic increase amount determined as set out in Table [A] in Appendix 1 by reference to the number of Contract Years since the Commencement Date and  $CV_2$ ,  $CV_3$  or  $CV_4$ , as applicable; and
  - (ii) number of days in that Contract Year divided by 365.25; and
- (b) in respect of a Contract Year in the Enhanced Service Period, the product of:
  - (i) daily traffic increase amount determined by reference to in Table [B] in Appendix 1 to the number of Contract Years since the first day of the Enhanced Service Period and  $CV_2$ ,  $CV_3$  or  $CV_4$ , as applicable; and

- 
- (ii) number of days in that Contract Year divided by 365.25.

“Traffic Volume Change Event” means any of the events described in paragraphs (i), (ii) and (iii) below the occurrence of which is forecasted (taking into account the circumstances then existing and the Concessionaire’s Financial Base Case and Financial Model, as revised and updated, at the time of the forecast) to cause:

- (1) the net present value of the Traffic Volume Payments of the Concessionaire to increase or decrease by more than **DELETED** from the net present value of the Traffic Volume Payments that the Concessionaire would have received if the event does not occur; or
- (2) the annual debt service coverage ratio and average annual debt service coverage ratio of the Concessionaire to deviate by more than 3% from the annual debt service coverage ratio and average annual debt service coverage ratio that the Concessionaire would have if the event does not occur.
  - (i) Capital works undertaken by a Governmental Authority, including:
    - (A) the construction of a second crossing over the Okanagan Lake;
    - (B) the construction or removal of an interchange, intersection, fly-over on Highway 97 between and inclusive of Boucherie Road and Gordon Drive;
    - (C) the widening or narrowing of Highway 97 between and inclusive of Boucherie Road and Gordon Drive; and
    - (D) the addition or removal of one or more lanes on Highway 97 between and inclusive of Boucherie Road and Gordon Drive or the designation of any lane as a restricted lane, such as a high occupancy vehicle lane or transit lane.
  - (ii) Works that are contemplated in the Kelowna Agreement are not constructed or completed in accordance with the Kelowna Agreement.
  - (iii) The MoT Section Works are not constructed or completed in accordance with the MOT Section Contract.

“Traffic Volume Change Event Date” means the date agreed between the Province and the Concessionaire as the date on which the Traffic Volume Change Event is deemed to occur.



---

**2. TRAFFIC VOLUME PAYMENT**

2.1 Traffic Volume Payment for the Contract Year  $n$  (“TVP $_n$ ”) is determined by the following formula:

$$TVP_n = \left[ \sum_{y=1}^5 (B_y * R_y) \right] * [1 + (IF_{TVP} * PPI_n)]$$

where:

$B_1$  = Number of Counted Vehicles in Contract Year  $n$  falling within Band 1 (as described in paragraph 2.2 of this Part 2).

$B_2$  = Number of Counted Vehicles in Contract Year  $n$  falling within Band 2 (as described in paragraph 2.2 of this Part 2).

$B_3$  = Number of Counted Vehicles in Contract Year  $n$  falling within Band 3 (as described in paragraph 2.2 of this Part 2).

$B_4$  = Number of Counted Vehicles in Contract Year  $n$  falling within Band 4 (as described in paragraph 2.2 of this Part 2).

$B_5$  = Number of Counted Vehicles in Contract Year  $n$  falling within Band 5 (as described in paragraph 2.2 of this Part 2).

$R_1$  = The per vehicle rate of **DELETED**.

$R_2$  = The per vehicle rate of **DELETED**.

$R_3$  = The per vehicle rate of **DELETED**.

$R_4$  = The per vehicle rate of **DELETED**.

$R_5$  = The per vehicle rate of **DELETED**.

$IF_{TVP}$  = Indexation factor, being **DELETED**.

---

**2.2 Traffic Bands and Per Vehicle Rate**

The number of Counted Vehicles in Contract Year  $n$  will be divided into 5 traffic bands (“Traffic Bands”). The per-vehicle rate ( $R_1, R_2, R_3, R_4$  and  $R_5$ ) that applies to each Traffic Band during that Contract Year  $n$  will be as follows:

| <b>Traffic Bands</b>                         | <b>Rate per Counted Vehicle (\$) (<math>R_y</math>)</b> |
|--|---|
| $0 \leq \text{Band 1} \leq CV_1 * d_n$       | $R_1$   |
| $CV_1 * d_n < \text{Band 2} \leq CV_2 * d_n$ | $R_2$   |
| $CV_2 * d_n < \text{Band 3} \leq CV_3 * d_n$ | $R_3$   |
| $CV_3 * d_n < \text{Band 4} \leq CV_4 * d_n$ | $R_4$   |
| $CV_4 * d_n < \text{Band 5}$                 | $R_5$   |

Where:

- (a)  $CV_1, CV_2, CV_3$  and  $CV_4$  have the meanings given in paragraph 1 of this Part 2;
- (b)  $R_1, R_2, R_3, R_4$  and  $R_5$  have the meanings given in paragraph 2.1 of this Part 2; and
- (c)  $d_n$  is the number of days in the Contract Year  $n$ .

If a Traffic Volume Change Event occurs, the traffic bands will be adjusted in accordance with paragraph 2.3 of this Part 2.

**2.3 Re-basing**

- 2.3.1 If the Province or the Concessionaire is notified or otherwise becomes aware that an event described in the definition of “Traffic Volume Change Event” may occur, the Province or the Concessionaire, as the case may be, will request the other party to determine jointly whether such event will be a Traffic Volume Change Event, if it occurs. Either the Province or the Concessionaire may commission a mutually approved independent traffic consultant to prepare a report to the Province and the Concessionaire of the change in traffic volumes forecast as a result of such event. The Province and the Concessionaire will share the fees and other charges or cost of such consultant equally.

- 
- 2.3.2 If the Concessionaire and the Province agree that a Traffic Volume Change Event will occur, the parties will negotiate and agree on the Traffic Volume Change Event Date and an adjustment to any one or more of CV<sub>1</sub>, CV<sub>2</sub>, CV<sub>3</sub>, CV<sub>4</sub>, R<sub>1</sub>, R<sub>2</sub>, R<sub>3</sub>, R<sub>4</sub> and R<sub>5</sub> so that there will be no change to the net present value of the Traffic Volume Payments referred to in the definition of “Traffic Volume Change Events” and no change to the Concessionaire’s traffic risks profile.
- 2.3.3 The Financial Base Case and the Financial Model will be revised to reflect changes in traffic forecasts prior to calculating the Traffic Volume Payments.
- 2.3.4 The adjustment to any one or more of CV<sub>1</sub>, CV<sub>2</sub>, CV<sub>3</sub>, CV<sub>4</sub>, R<sub>1</sub>, R<sub>2</sub>, R<sub>3</sub>, R<sub>4</sub> and R<sub>5</sub> will take place on the Traffic Volume Change Event Date.
- 2.3.5 If an independent traffic report referred to paragraph 2.3.1 of this Part 2 has been commissioned and obtained, the traffic projections provided in the report will be used in the Financial Model and Financial Base Case to forecast the Traffic Volume Payments. Otherwise, the parties will procure an independent traffic report in the manner set out in paragraph 2.3.1 of this Part 2, for the purposes of forecasting the traffic volume impact from a Traffic Volume Change Event.
- 2.3.6 Within 30 days of the later of:
- (a) the day the Province and the Concessionaire reach an agreement or a determination is made under the Disputes Resolution Procedure that a Traffic Volume Change Event has occurred;
  - (b) the day the independent traffic consultant provides the report referred to in paragraph 2.3.1 of this Part 2; or
  - (c) a date agreed by both the Province and the Concessionaire;
- the party who wishes to propose an amendment or amendments to the variables listed in paragraph 2.3.2 of this Part 2 will provide the other party with a letter and supporting documents with the suggested amendments (“First Amendments”) to the variables listed in paragraph 2.3.2 of this Part 2 and the proposed Traffic Volume Change Event Date to accomplish the objectives in paragraph 2.3.2 of this Part 2.
- 2.3.7 A party will:
- (i) accept the proposed amendments; or
  - (ii) propose alternative amendments (“Second Amendments”),

---

within 30 days of its receipt of the First Amendments, failing which it will be deemed to have accepted the proposed amendments.

- 2.3.8 If the Province and the Concessionaire are unable to agree on whether an event is a Traffic Volume Change Event, or on the amendment to the variables in paragraph 2.3.2 of this Part 2 or on the Traffic Volume Change Event Date within 60 days of the letter referred to in paragraph 2.3.6 of this Part 2, then either the Province or the Concessionaire may refer the Dispute to the Disputes Resolution Procedure.
- 2.4 The Concessionaire will count all Motor Vehicles using the Concession Highway during the Enhanced Service Period. The Concessionaire will also count all in service public transit buses operated by the Kelowna Regional Transit System using the Concession Highway during the Enhanced Service Period. The Province may accept the use of transit schedules as a reliable source in calculating the usage frequency by such buses or any other information that the Province deems appropriate.
- 2.5 The Concessionaire will calculate and report to the Province the Traffic Volume Payments annually in arrears, the first calculation to be made within 30 days of the expiry of the first Contract Year of the Enhanced Service Period. The Concessionaire will set out calculations of the Traffic Volume Payments in detail in the report referred to in Section 33.1 [Monthly Invoices] of this Agreement.
- 2.6 In the event that an Excepted Closure occurs in respect of any given day, the number of Counted Vehicles for that day will be deemed to be the average number of Counted Vehicles on the same day for the immediately preceding four weeks. The Traffic Volume Payments and the monthly installments in respect of Traffic Volume Payments will be amended to reflect the foregoing.

**PART 3 OF SCHEDULE 10**

**LANE AVAILABILITY PAYMENT**

- In this Part 3, “Unavailability” or “Unavailable” means a Lane Closure unless the Lane Closure is an Excepted Closure.
- Lane Availability Payment for Contract Year  $n$  (“LAP $_n$ ”) in the Enhanced Service Period is calculated as follows:

$$LAP_n = [GLAP_n - UDE_n] * [1 + (IF_{LAP} * PPI_n)]$$

where:

GLAP $_n$  = The Gross Lane Availability Payment (\$) for Contract Year  $n$  determined in accordance with the following formula:

$$GLAP_n = \sum_{m=1}^q GLAP_m$$

where:

q = The number of months in Contract Year  $n$ , rounded to the nearest four decimal places, based, in relation to any past months in such Contract Year, on the number of days in the relevant past months relative to the total number of days in such months.

GLAP $_m$  = The Gross Lane Availability Payment (\$) for month or part of a month  $m$  in Contract Year  $n$  determined in accordance with the following table:

| <b>Contract Year during the Enhanced Service Period (Contract Year <math>n</math>)</b> | <b>Gross Lane Availability Payment (GLAP<math>_m</math>) (\$)</b><br>(If $m$ is less than one month, this amount will be reduced proportionately) |
|--|---|
| 1 <sup>st</sup> – 5 <sup>th</sup> Contract Year  | <b>DELETED</b>  |
| 6 <sup>th</sup> – 10 <sup>th</sup> Contract Year                                       | <b>DELETED</b>  |
| 11 <sup>th</sup> – 15 <sup>th</sup> Contract Year                                      | <b>DELETED</b>  |
| 16 <sup>th</sup> – 20 <sup>th</sup> Contract Year                                      | <b>DELETED</b>  |
| 21 <sup>st</sup> - 25 <sup>th</sup> Contract Year                                      | <b>DELETED</b>  |

---

|   |                |
|---|----------------|
| 26 <sup>th</sup> – 30 <sup>th</sup> Contract Year | <b>DELETED</b> |
|---|----------------|

$IF_{LAP}$  = Indexation factor for Contract Year  $n$ , being **DELETED**

$PPI_n$  = Has the meaning given in paragraph 1 of Part 2 of Schedule 10 [Traffic Volume Payment].

$UDE_n$  = Unavailability Deductions (\$) for the Contract Year  $n$ , in the Enhanced Service Period, calculated as follows:

$$UDE_n = \sum_{m=1}^q UDE_m$$

where:

$q$  = The number of months in Contract Year  $n$ , rounded to the nearest four decimal places.

$UDE_m$  = The Unavailability Deductions (\$) for month or part of a month  $m$  in Contract Year  $n$ , in the Enhanced Service Period, determined in accordance with the following formula:

$$UDE_m = \sum_{i=1}^x UDE_i$$

where:

$x$  = The number of occurrences of Unavailability during month or part of a month  $m$  in the Contract Year  $n$ .

$UDE_i$  = The Unavailability Deduction (\$) for each occurrence of Unavailability during month or part of a month  $m$  in the Contract Year  $n$  in the Enhanced Service Period determined in accordance with the following formula:

$$UDE_i = UDER_i * UDERF_i * DFE_i$$

where:

UDER<sub>i</sub> = Unavailability Deduction Rate (\$/hour) applicable to an occurrence *i* during the Enhanced Service Period determined in accordance with the following:

| <b>Extent of Unavailability</b>  | <b>Period during which the occurrence <i>i</i> occurs</b> | <b>Unavailability Deduction Rate (UDER<sub>i</sub>)/(\$/Hour)</b> |
|--|---|---|
| If Unavailability involves the Closure of the Concession Highway for both the eastbound and westbound traffic  | Peak  | <b>DELETED</b>  |
|  | Shoulder  | <b>DELETED</b>  |
|  | Non-Peak  | <b>DELETED</b>  |
| If Unavailability involves the complete Closure of the Concession Highway for either the eastbound or westbound traffic  | Peak  | <b>DELETED</b>  |
|  | Shoulder  | <b>DELETED</b>  |
|  | Non-Peak  | <b>DELETED</b>  |
| If only two lanes are Available, provided that at least one lane is Available for eastbound traffic, and at least one lane is Available for westbound traffic    | Peak  | <b>DELETED</b>  |
|  | Shoulder  | <b>DELETED</b>  |
|  | Non-Peak  | <b>DELETED</b>  |
| If only three lanes are Available, provided that at least one lane is Available for eastbound traffic, and at least one lane is Available for westbound traffic  | Peak  | <b>DELETED</b>  |
|  | Shoulder  | <b>DELETED</b>  |
|  | Non-Peak  | <b>DELETED</b>  |
| If only four lanes are Available, provided that at least one lane is Available for eastbound traffic, and at least two lanes are Available for westbound traffic | Peak  | <b>DELETED</b>  |
|  | Shoulder  | <b>DELETED</b>  |
|  | Non-Peak  | <b>DELETED</b>  |

“Peak”, “Shoulder” and “Non-Peak” is determined by Vehicles/Hour as follows:

| <b>Time Frame</b> | <b>Vehicles/ Hour</b> |
|-------------------|-----------------------|
| Peak              | DELETED               |
| Shoulder          | DELETED               |
| Non-Peak          | DELETED               |

“Vehicles/Hour” means the average number of Counted Vehicles per hour during the comparable hour on a comparable day within seven days immediately preceding occurrence *i*. If there is no comparable day within such period, then a comparable day within 14 days preceding occurrence *i* will be used. If occurrence *i* takes place on a non-Working Day, the average number of Counted Vehicles per hour during the comparable hour on same non-Working Day in the previous calendar year will be used.

“Working Day” means a day (other than Saturday and Sunday) on which banks are open for business in the City of Kelowna.

$UDERF_i$  = The duration of Unavailability of occurrence *i*, measured in hours, rounded to the nearest two decimal places in respect of any part of an hour.

$DFE_i$  = Deduction Factor applicable to occurrence *i* determined in accordance with the following:

| <b>Duration of Unavailability of occurrence <i>i</i></b> | <b>Deduction Factor (<math>DFE_i</math>)</b> |
|--|--|
| ≤ 20 minutes   | 0  |
| > 20 minutes and ≤ 30 minutes                            | 1.0  |
| > 30 minutes and ≤ 60 minutes                            | 1.5  |
| > 60 minutes and ≤ 90 minutes                            | 2.0  |
| > 90 minutes   | 2.5  |

- The Concessionaire will calculate and report to the Province the Unavailability Deductions monthly in arrears, the first calculation to be made within 10 days of the expiry of one month from the commencement of the Enhanced Service Period. The Concessionaire will report the calculated Unavailability Deductions in writing to the Province, setting out the calculations of the Unavailability Deductions and the



---

information supporting such calculations in detail, together with applicable supporting documents.

**PART 4 OF SCHEDULE 10**

**SAFETY PERFORMANCE PAYMENT**

- The Province will measure safety performance on a three-year rolling average basis. In the first and second Contract Year of the Enhanced Service Period where a three-year rolling average is not available, the Province will use the respective one and two-year average in the calculation and adjust in the third Contract Year, when the information is available.
- The Safety Performance Payment (“SPP<sub>n</sub>”) is determined by the following formula:

$$SPP_n = SPPB * SPPR_n * [1 + (IF_{SPP} * PPI_n)]$$

where:

SPPB = Safety Performance Payment Base (\$), being **DELETED**. If Contract Year *n* is less than one year, this amount will be reduced proportionately by reference to the number of days in the relevant Contract Year relative to 365.25.

SPPR<sub>n</sub> = The applicable Safety Performance Payment Ratio determined in accordance with the following table using the accident frequency and the severity ratio:

|                |            | Accident Frequency |            |            |            |            |
|----------------|------------|--------------------|------------|------------|------------|------------|
|                |            | 0-7                | 8-15       | 16-22      | 23-30      | >30        |
| Severity Ratio | 0-20%      | <b>DEL</b>         | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> |
|                | 20.01-40%  | <b>DEL</b>         | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> |
|                | 40.01-60%  | <b>DEL</b>         | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> |
|                | 60.01-80%  | <b>DEL</b>         | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> |
|                | 80.01-100% | <b>DEL</b>         | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> | <b>DEL</b> |

If Contract Year *n* is less than one year, the accident frequency numbers in the above table will be reduced proportionately by reference to the number of days in the relevant Contract Year relative to 365.25.

IF<sub>SPP</sub> = Indexation factor, being **DELETED**.

---

$PPI_n$  = Has the meaning given in paragraph 1 of Part 2 of Schedule 10 [Traffic Volume Payment].

3. The Province currently classifies all accidents by the following categories; Property damage only, accidents which result in personal injury and accidents which result in fatalities. Safety Performance Payments will be calculated based on a Severity “Ratio” which will be calculated as (the number of fatal accidents plus personal injury accidents) divided by (the total number of accidents).
4. The Province will re-calibrate the Severity Ratio or the Accident Frequency or both set out in the table in paragraph 2 of this Part 2 every five years to adjust for traffic volumes and the general safety performance in British Columbia highways. The benchmark will also be re-calibrated if police accident reporting standards materially change. The recalibration will involve comparing the police reported collisions on the New Highway with other safety data sets that provide a guide to assess the accuracy of the police reported collisions. The other safety data sets may include a reference group of highways located within the area of the New Highway, a group of highways within British Columbia that are considered similar to the New Highway and the ICBC claims-based collisions that are reported in the area of the New Highway.
5. The Concessionaire will calculate and report to the Province the Safety Performance Payments annually in arrears, the first calculation to be made within 30 days of the expiry of the first Contract Year of the Enhanced Service Period. The Concessionaire will set out calculations of the Safety Performance Payments in detail in the Annual Reconciliation Notice of that Contract Year.

---

**PART 5 OF SCHEDULE 10**

**USERS SATISFACTION PAYMENT**

1. In this Part 5, “Survey Results” means the score quantified by the Province on the basis of the results of the survey referred to in paragraph 4 of Section A of Part 7 of Schedule 10 [Monitoring and Measurement].
2. The Province will quantify the results of the survey referred to in paragraph 4 of Section A of Part 7 of Schedule 10 [Monitoring and Measurement] on a score of between 0 and 100 based on the provisions on stakeholder assessment located in Appendix 2 to this Schedule 10 [Payments].
3. The Users Satisfaction Payment (\$) for the Contract Year  $n$  (“USP<sub>n</sub>”) is calculated as follows:

**Error! Objects cannot be created from editing field codes.**

where:

USPB = The Users Satisfaction Payment Base (\$), being **DELETED**. If Contract Year  $n$  is less than one year, this amount will be reduced proportionately by reference to the number of days in the relevant Contract Year relative to 365.25.

USPF<sub>n</sub> = The Users Satisfaction Payments Factor for the Contract Year  $n$ :

(a) **DELETED**

(b) **DELETED;**

(c) **DELETED**

(d) **DELETED**.

IF<sub>USP</sub> = Indexation factor, being **DELETED**.

PPI<sub>n</sub> = Has the meaning given in paragraph 1 of Part 2 of Schedule 10 [Traffic Volume Payment].

- 
4. The Concessionaire will calculate the Users Satisfaction Payments annually in arrears, the first calculation to be made within 30 days of the expiry of the first Contract Year of the Enhanced Service Period. The Concessionaire will set out calculations of the Users Satisfaction Payment in detail in the Annual Reconciliation Notice of that Contract Year, and determine the actual Enhanced Service Performance Payments in respect of that Contract Year.

---

**PART 6 OF SCHEDULE 10**

**PAYMENT RETENTIONS**

1. The Province may withhold from any instalment payment of Enhanced Service Performance Payments due in any month to the Concessionaire:
  - 1.1 an amount, determined in accordance with paragraph 2 of this Part 6, as security for Completion if Completion does not occur on or before the Scheduled Completion Date (“Completion Retention”); and
  - 1.2 an amount, determined in accordance with paragraph 4 of this Part 6, as security for the performance by the Concessionaire of its obligations to maintain the Project Facilities in the condition described in paragraph 4 of this Part 6 (“Asset Condition Retention”) below.
2. The Province may withhold the Completion Retention during the period commencing from the Scheduled Completion Date until Completion occurs. The Completion Retention for a month  $m$  (“ $CR_m$ ”) will be calculated as follows:

$$CR_m = CRR * FCP$$

Where:

CRR = The Completion Retention Rate (\$), being **DELETED** per day.

FCP = The number of days between:

- (a) the Scheduled Completion Date and the first day of month  $m$ , whichever is the later; and
- (b) the last day of the month  $m$  or the Completion Date, whichever is the earlier.

3. The Province will return to the Concessionaire the Completion Retention within 30 days of Completion.
4. If at any time during the Enhanced Service Period, the Project Facilities do not comply with the asset condition requirements set out in the Highway Asset Preservation Performance Measures and Local Area Specifications (the “Specified Condition”), the Province shall withhold the Asset Condition Retention from each monthly instalment of the Enhanced Service Performance Payments during the period commencing from the date on which it is first determined that the Project Facilities do not comply with the Specified Condition until the earlier of:

- 
- (a) the first Monthly Retention referred to in Section 19.7 [Retention Account] of this Agreement; or
- (b) the Project Facilities are brought to a condition that meets or exceeds the Specified Condition.

The Asset Condition Retention for a month  $m$  (“ $ACR_m$ ”) in Contract Year  $n$  will be calculated as follows:

$$ACR_m = (ARE_n * RF) - DACR$$

Where:

$ARE_n$  = The cost of carrying out (or if work is being undertaken, of completing) works of renewal, reconstruction, repair and reinstatement in order to ensure that the Project Facilities will meet or exceed the Specified Condition. The cost will be determined every Contract Year, within the first 30 days of Contract Year  $n$  in accordance with paragraph 5 of this Part 6.

RF = Retention Factor, being **DELETED**.

DACR = The aggregate of all Asset Condition Retentions made in Contract Year  $n$  prior to month  $m$ .

5. Unless otherwise agreed between the parties,  $ARE_n$  will be determined on the basis of the costs of the relevant works set out in the Concessionaire’s annual capital plan for Contract Year  $n$ . If any such cost is not in the annual capital plan, it will be the Province’s reasonable estimate of such cost. If the Concessionaire does not agree with the Province’s estimate of such cost, the Concessionaire will notify the Province in writing giving details of the grounds of its disagreement and the Concessionaire’s estimate of the cost, failing which the Concessionaire will be deemed to have agreed to the Province’s estimate. If no agreement is reached between the Concessionaire and the Province on the amount of such cost within 60 days of the Province’s receipt of the Concessionaire’s estimate, either the Province or the Concessionaire may refer the matter to the Disputes Resolution Procedure for determination of the cost of the works. Within 30 days of the determination of such amount in accordance with the Disputes Resolution Procedure, the Province and the Concessionaire will take such steps as are necessary to adjust for any over or under retention.
6. The Province will return to the Concessionaire the Asset Condition Retention within 30 days of receiving an asset condition report referred to in the Reporting Specifications for Highway Concessions referred to in paragraph 1.8 of Part 1 of Schedule 7 [O&M Output

---

Specifications] or other evidence satisfactory to the Province confirming that the Project Facilities meet or exceeds the Specified Condition.

7. If the aggregate of the Completion Retention and the Asset Condition Retention (“Payment Retention”) in any month exceeds the monthly instalment of the Enhanced Services Performance Payment to which the Concessionaire is otherwise entitled for that month, then the Province will be entitled to set-off the shortfall against any subsequent monthly payments of the Enhanced Services Performance Payment in addition to the Payment Retention that is otherwise to be withheld from such subsequent monthly payments of the Enhanced Services Performance Payment. For greater certainty, such retentions will not be affected by or subject to any readjustment on account of any subsequent reconciliation of the monthly payments of an Enhanced Services Performance Payment pursuant to Section 32 [Calculation Of Payments].
8. The Concessionaire will not be entitled to any interest or compensation on the Payment Retentions.
9. The foregoing provisions of this Part 6 will not apply if and to the extent that the Concessionaire provides the Province with a letter of credit, guarantee or other form of security as security for the Concessionaire’s obligations relating to such Payment Retentions issued by a bank or other institution approved by the Province and in form and substance acceptable to the Province (in each case in the Province’s absolute and unfettered discretion). If the Concessionaire delivers a letter of credit, guarantee or other form of security to the Province in accordance with the aforesaid, the Province will pay the balance of the Payment Retentions then held by the Province to the Concessionaire and will not make any further Payment Retentions.
10. The holding of the Payment Retentions and the estimation of the cost of works by the Province in accordance with this Part 6 will not in any way prejudice or affect any other rights or remedies of the Province for the purpose of ensuring the full performance of Concessionaire’s obligations under this Agreement.
11. If the Province exercises its rights under Section 26.5.1 of this Agreement to remedy the Concessionaire’s failure, the Province shall be entitled to deduct and retain absolutely for its own benefit, from the Payment Retentions then held by the Province, an amount equal to the costs and expenses of remedying such failure.
12. Upon the occurrence of an Event of Default or the termination of this Agreement, the Province may at its option and without prejudice to any of its other rights or remedies apply all or any part of the Payment Retentions then held by the Province in payment of any amount due from the Concessionaire to the Province or becoming due as a consequence of such Event of Default or any termination of this Agreement (including any damages arising from such Event of Default or termination).



---

**PART 7 OF SCHEDULE 10**

**MONITORING AND MEASUREMENT**

**SECTION A**

The Concessionaire will Measure and monitor, and manage and maintain records of the performance of the Undertakings in accordance with the Quality Documentation and the O&M Output Specifications. Such records will include Traffic Volume and Availability, Unavailability events including time, number of lanes and cause. The Province may inspect such records at any time upon reasonable notice.

1. Traffic Volume

The Concessionaire will Measure and record traffic (including calculations of the Counted Vehicles) for each lane of the Concession Highway in accordance with the Quality Documentation.

2. Lane Availability

The Concessionaire must record Unavailability and maintain records of Lane Closure during the entire Contract Period in accordance with Section B of this Part 7. The Concessionaire will keep a record of all Unavailability Deductions and all factors in the calculation of Unavailability Deductions.

3. Safety

Police traffic accident data will be used by the Province to calculate the Safety Performance Payment. The Concessionaire may maintain its own traffic accident records for its own data collection purposes.

4. Users Satisfaction

The Concessionaire will undertake independent annual stakeholder surveys to assess the satisfaction of the users of the Concession Highway and stakeholders with performance of the Concessionaire. The surveys must be consistent with surveys undertaken by the Province and based on the provisions on stakeholder assessment located in Appendix 2 to this Schedule 10.

5. Performance Deductions and Retentions

- 5.1 The Concessionaire will implement a Quality Management System as required in this Agreement and undertake asset condition inspections and deliver reports on such asset condition inspections to the Province in accordance with the Highway Asset Preservation Performance Measures, the Local Area Specifications and the Reporting Specifications for Highway Concessions referred to in paragraph 1.8 of Part 1 of Schedule 7 [O&M Output Specifications].

---

5.2 In addition to the annual inspections, the Concessionaire will undertake a more detailed asset condition report every 5 years and provide a copy of the report to the Province in accordance with the Highway Asset Preservation Performance Measures, Local Area Specifications and the Reporting Specifications for Highway Concessions referred to in paragraph 1.8 of Part 1 of Schedule 7 [O&M Output Specifications].

6. Reporting and Audit

6.1 The Concessionaire will be responsible for reporting all aspects of this Schedule, including traffic, Unavailability, safety incidents, minimum performance specifications and Users satisfaction as set out in Part 2 of Schedule 15 [Reports] and the Local Area Specifications.

6.2 The Province has the right to audit all records relating to the Project and the Project Facilities in accordance with Section 25.2 [Audit and Inspection] of this Agreement, including traffic camera recordings, police reports, operations and maintenance records maintained by the Concessionaire, the records, reports and other information provided by the Concessionaire at any time, any information from police traffic accident records, Insurance Corporation of British Columbia records, camera surveillance and other Traffic Census Equipment, and any document or information relied on or used by the Concessionaire for the calculation of the Performance Payments.

**SECTION B**

Unless otherwise specified, references to paragraphs in Section B of this Part 7 are to the paragraphs of this Section B.

1. Measurement Method

At all times from and after the issue of the Substantial Completion Certificate the traffic using any part of the Concession Highway will be continuously Measured by the Concessionaire at each Measurement Point using the Measuring Equipment.

2. Measurement Points

2.1 Each of the following will be a Measurement Point for the purposes of this Agreement:

2.1.1 each of the points at approximately Station 26+70 and 44+60.

2.1.2 if, as a result of any Subsequent Scheme or Additional Works, the Measurement Points specified in paragraph 2.1.1 are insufficient or

---

inadequate to Measure the traffic using the Concession Highway to a level of accuracy equivalent to that prior to the Subsequent Scheme or Additional Works, such other point or points as necessary to Measure such traffic to such an equivalent level of accuracy.

2.2 If there is any Dispute between the Concessionaire and the Province's Representative as to the need for or location of any Measurement Point referred to in paragraph 2.1.2, such Dispute will at the request of either of them be submitted to the Disputes Resolution Procedure.

2.3 The Province will bear the cost of any additional Measurement Point required pursuant to paragraph 2.1.2 as a result of any Additional Works. The Concessionaire will bear the cost of any other Measurement Point required pursuant to paragraph 2.1.2 as a result of any Subsequent Scheme.

3. Measuring Equipment

3.1 The Concessionaire will provide and install (at its own cost, except as provided in paragraph 2.3) the following equipment (the "Measuring Equipment") at each Measurement Point:

3.1.1 vehicle detection equipment meeting the specification set out in Part 1 of Schedule 5 [Construction Output Specifications], the Local Area Specifications and any other Technical Requirements;

3.1.2 all other measuring and verification equipment (together with necessary housings, appliances and buildings) required to Measure the traffic passing the Measurement Point; and

3.1.3 such cables or other means of electronic data transmission as necessary to connect the equipment referred to in paragraphs 3.1.1 and 3.1.2 to the public service telephone network and so as to enable the Province directly to receive data from the Measuring Equipment.

3.2 The Measuring Equipment will be capable of collecting the following Traffic Data on all lanes:

3.2.1 recording each Vehicle passing the Measurement Point at the intervals specified in Section 2.3.7 of the Local Area Specifications;

3.2.2 classifying each Vehicle passing the Measurement Point into one of length bins specified in Section 2.3.7 of the Local Area Specifications;

3.2.3 recording the time of each Vehicle passing the Measurement Point; and

---

3.2.4 recording the speed of each Vehicle passing the Measurement Point into one of the categories specified in Section 2.3.7 of the Local Area Specifications.

The Measuring Equipment at each Measurement Point will operate in accordance with requirements of this Part 7 for not less than 98% of the time during every 12 month period. The Measuring Equipment will include adequate devices to prevent tampering or interference by unauthorized persons.

3.3 The Measuring Equipment will include such alternative facilities as may reasonably be required to ensure that failure or withdrawal for maintenance or adjustment of any individual component does not materially affect the Measurement of traffic by the Measuring Equipment.

3.4 Prior to the installation or replacement of any component of the Measuring Equipment which may materially affect the accuracy of Measurement of such Measuring Equipment, the Concessionaire will notify the Province's Representative of the design and type of such equipment and such notice will be dealt with under the Review Procedure.

3.5 Without limitation to any other provision of this paragraph 3, the Concessionaire will design, supply, install, test, commission, maintain, repair, replace and operate all Measuring Equipment in accordance with Part 1 of Schedule 5 [Construction Output Specifications], the Local Area Specifications and other Technical Requirements and with Good Industry Practice.

3.6 The Province will be entitled at any time and from time to time to install and operate (at its own expense and risk) at any Measurement Point:

3.6.1 check measuring equipment to check the Measurement of the traffic at such Measurement Point; and/or

3.6.2 equipment linked directly to the Measuring Equipment,

to provide at the Province's premises independent confirmation and/or direct readings of the Measurement of the traffic at such Measurement Point.

3.7 Any equipment installed by the Province pursuant to paragraph 3.6 will be compatible with and will not damage or interfere with the use or operation of the Measuring Equipment.

---

4. Verification

- 4.1 The Concessionaire will develop and submit to the Province's Representative under the Review Procedure a methodology to Verify Traffic Data that:
- 4.1.1 is completely independent of the Measuring Equipment;
  - 4.1.2 will provide a permanent record of verification data collected;
  - 4.1.3 will provide an auditable record such that the Verification can be independently checked; and
  - 4.1.4 will provide sufficient breakdown of data to identify the area in respect of which action needs to be taken when results are unsatisfactory.

The Concessionaire may at any time submit to the Province's Representative in accordance with the Review Procedure any proposed revision to the Verification methodology referred to above (as previously revised in accordance with this paragraph 4.1). The Province's Representative may object to any such proposed revision only on the grounds that the proposed Verification methodology would not meet any of the requirements of set out in this paragraph 4.1. From the date on which there has been no objection to any such revised Verification methodology under the Review Procedure, the Concessionaire will comply with such revised Verification methodology.

- 4.2 The Concessionaire will Verify the Measuring Equipment at each Measurement Point at least once in every 90 days or at such other frequency as may be agreed by the Province's Representative. Without limitation to paragraph 7, the Concessionaire will adjust the Measuring Equipment to read centrally and accurately within the following limits of accuracy (the "Measurement Limits of Accuracy"):
- 4.2.1 (a) the count of the number of Motor Vehicles in each category specified in paragraph 3.2.2 in each direction - plus or minus 2%; and
  - (b) the count of the total number of Motor Vehicles in each lane - plus or minus 2%;
- at (in both cases) 98% confidence interval, without bias to under-recording or over-recording, over every period of 24 hours for all speeds; and
- 4.2.2 the count of the total number of vehicles in each direction in each speed band specified in paragraph 3.2.4 - plus or minus 2% at 98% confidence

---

interval, without bias to under-recording or over-recording, over every period of 24 hours for all speeds.

- 4.3 The Concessionaire will give to the Province's Representative reasonable notice of the date and time of any Verification pursuant to paragraph 4.2 and the Province's Representative will be entitled to attend and witness any such Verification. The Province's Representative may require the Concessionaire to Verify any Measuring Equipment at any other time.
- 4.4 Verifications will be made at the expense of the Concessionaire, except that the Province will bear the costs of the attendance of the Province's Representative at any Verification and the whole expense of any Verification (other than periodic Verification pursuant to paragraph 7) made at the request of the Province's Representative if the Measuring Equipment is found to be registering within the Measurement Limits of Accuracy.

5. Collection of Data

- 5.1 The Concessionaire will ensure that the Traffic Data is collected at such times and in such format as will enable the Concessionaire to prepare the Monthly Report in accordance with Part 2 of Schedule 15 [Reports].
- 5.2 Subject to paragraph 7, if there is more than one set of vehicle detection equipment measuring the same flow of traffic at a Measurement Point, then the traffic passing the Measurement Point during any period will be deemed to be the average of the figures produced by each of such sets of vehicle detection equipment during such period. Such average will be calculated and provided to the Province in the Monthly Report together with the figures produced for each of such sets of vehicle detection equipment.

6. Inspection and Auditing

The Province's Representative will be entitled at all reasonable times to inspect:

- 6.1 any Measuring Equipment; and
- 6.2 any charts or other measurement or test data relating to the Measuring Equipment.

7. Correction of Defects

- 7.1 If at any time any Measuring Equipment is found to be defective or measuring outside the Measurement Limits of Accuracy, the Concessionaire will as soon as practicable adjust such equipment to read centrally and accurately within such limits or (if that is not possible) will replace it with serviceable equipment.

- 
- 7.2 If the Measuring Equipment referred to in paragraph 7.1 (the “Defective Equipment”) comprises only one of two or more sets of vehicle detection equipment at a Measurement Point, then the calculation for the relevant Measurement Point pursuant to paragraph 5 will be retrospectively corrected, excluding from such calculations the data from such defective set of vehicle detection equipment from the time when such set of vehicle detection equipment became defective or (where that time cannot be established) from the time which is the mid-point between the last Verification which indicated that the set of vehicle detection equipment was operating within the Measurement Limits of Accuracy and the next following Verification.
- 7.3 In all other circumstances where there is any Defective Equipment, the Traffic Data from the relevant Measurement Point or (where there are two or more sets of vehicle detection equipment at a Measurement Point) the calculations for the relevant Measurement Point pursuant to paragraph 5 will be retrospectively corrected from the time when such equipment became defective (or where two or more sets of vehicle detection equipment are defective, from the time when the last such set of vehicle detection equipment became defective) or (where that time cannot be established) from the time which is the mid-point between the last Verification which indicated that the equipment was operating within the Measurement Limits of Accuracy and the next following Verification.
- 7.4 Calculations will be corrected for purposes of paragraph 7.3 by applying the methods set out below in the order in which they appear:
- 7.4.1 by using the readings recorded by any check measuring equipment, provided that such equipment was at the relevant time operating within the Measurement Limits of Accuracy. If such equipment was at the relevant time not operating accurately or if no such equipment has been installed, then
- 7.4.2 by correcting the error if the percentage of error is ascertainable to the satisfaction of the Concessionaire and the Province’s Representative by calibration, test or mathematical calculation. If the percentage of error is not so ascertainable, then
- 7.4.3 by using the readings recorded during the comparable period of the immediately preceding month, provided the relevant equipment was operating within the Measurement Limits of Accuracy during such period. If such equipment was not operating accurately or if there are no such readings, then

---

7.4.4 by estimating the number and classification of vehicles by reference to Measurements made under similar circumstances when the Defective Equipment was registering accurately. If there is any Dispute between the Concessionaire and the Province's Representative in respect of any such estimate, then such Dispute shall at the request of either of them be submitted to the Disputes Resolution Procedure.

8. Availability

8.1 The Concessionaire will be responsible for monitoring and recording Availability on the Concession Highway in accordance with the [Quality Documentation].

8.2 The Concessionaire may from time to time during the Contract Period submit proposals for variations, amendments and modifications to the measurement and monitoring of Availability which will be subject to the Review Procedure, provided that any such proposals will:

8.2.1 comply with Good Industry Practice;

8.2.2 provide reliable and verifiable data for use in connection with the calculation of Availability Payments;

8.2.3 be fully costed identifying any reduction or increase in costs; and

8.2.4 provide a system of monitoring which is at least of equivalent value to the Province to that applying immediately prior to the proposals.

8.3 If the Province does not object to a proposal submitted by the Concessionaire in accordance with paragraph 8.2 in accordance with the Review Procedure, the proposal will be implemented by the Concessionaire as soon as reasonably practicable as a Concessionaire Change and any reference to the measurement and monitoring of Availability will thereafter be to the measurement and monitoring of Availability as so amended, varied or modified in accordance with such proposal.

9. Availability Report

The report to be delivered pursuant to Section 33.1.2 of this Agreement will, together with the information required by Section 33.1.3 of this Agreement, include details of all Lane Closures (other than Excepted Closures) affecting the Concession Highway (including the time, date, duration and cause, location and length of each Lane Closure and the number of lanes affected thereby) which have occurred in respect of the month for which the report is produced.



**PART 8 OF SCHEDULE 10**

**PERFORMANCE DEDUCTIONS**

1. Performance Deductions (\$) for the Contract Year  $n$  (“PD $_n$ ”) are calculated as follows:

$$PD_n = \sum_{m=1}^q [PD_m * [1 + (IF_{LAP} * PPI_n)]]$$

where:

$q$  = The number of months in Contract Year  $n$ , rounded to the nearest four decimal places, based, in relation to any past months in such Contract Year, on the number of days in the relevant past months relative to the total number of days in such months.

$PPI_n$  = Has the meaning given in paragraph 1 of Part 2 of Schedule 10 [Traffic Volume Payment].

$IF_{LAP}$  = Has the meaning given in paragraph 2 of Part 3 of Schedule 10 [Lane Availability Payment].

$PD_m$  = The Performance Deductions (\$) for month or part of a month  $m$  in Contract Year  $n$  determined in accordance with the following formula:

$$PD_m = \sum_{d=1}^{d_m} NCRPR_d$$

where:

$d_m$  = The number of days in month or part of a month  $m$  in the Contract Year  $n$ .

$NCRPR_d$  = Nonconformity Report Point Rate (\$) for day  $d$  in month or part of a month  $m$  in the Contract Year  $n$  determined in accordance with the following:

|                  |            |             |              |              |               |
|------------------|------------|-------------|--------------|--------------|---------------|
| NCRP Outstanding | <b>0-5</b> | <b>6-10</b> | <b>11-15</b> | <b>16-20</b> | <b>&gt;20</b> |
| NCRPR $_d$ (\$)  | <b>DEL</b> | <b>DEL</b>  | <b>DEL</b>   | <b>DEL</b>   | <b>DEL</b>    |

“NCRP Outstanding” means the aggregate of all Nonconformity Report Points (“NCRP”) for:

- (a) all outstanding Nonconformity Reports on the Nonconformity Tracking System (as defined in paragraph 9 of Schedule 6 [Quality Management]); and
- (b) all Default Notices issued by the Province in respect of which the Remedial Period (if any) has expired and the relevant failure has not been remedied or the relevant plan of action in respect of any such Default Notice has not been implemented and complied with,

on day *d* in month or part of a month *m* of Contract Year *n*, determined in accordance with the following:

| <b>Item</b>  | <b>Standard</b>   | <b>NonConformity Report Points (“NCRP”)</b> |
|--|---|---|
| Repeat Nonconformity Report  | 2 or more Nonconformity Reports relating to the same occurrence in a rolling 12 month period                        | <b>DELETED</b>                              |
| Failure to identify and record defects   | Inspection regimes are specified in Highway Maintenance Specifications 8-830 to 8-850 including amendments thereto. | <b>DELETED</b>                              |
| Operational performance measures within the limits of the travelled lanes and sealed shoulders | As specified in the O&M Output Specifications and O&M Requirements  | <b>DELETED</b>                              |
| All other Nonconformity relating to operation and maintenance of the Project Facilities        | Technical Requirements  | <b>DELETED</b>                              |
| Repeat Default Notice  | 2 or more Default Notices relating to the same occurrence in a rolling 12 month period                              | <b>DELETED</b>                              |
| Each Default Notice (other than a repeat Default Notice)                                       | The provisions of this Agreement  | <b>DELETED</b>                              |

2. For the purposes of determining what is NCRP outstanding, Nonconformity Reports issued relating to the same occurrence in a rolling 12 month period will be deemed to

---

subsist for a minimum period of 7 days, even if the Concessionaire remedies the relevant failure within 7 days of the issuance of that Nonconformity Report.

3. The Concessionaire will calculate and report to the Province the Performance Deductions monthly in arrears, the first calculation to be made within 10 days of the expiry of one month from the Commencement Date. The Concessionaire will report the calculated Performance Deductions in writing to the Province, setting out the calculations of the Performance Deductions and the information supporting such calculations in detail, together with applicable supporting documents.

APPENDIX 1

TABLE [A] AND TABLE [B]

Table [A]

| Number of Contract Years since the Commencement Date | Original Service Period daily traffic increase amount |                 |                 |
|--|---|-----------------|-----------------|
|  | CV <sub>2</sub>                                       | CV <sub>3</sub> | CV <sub>4</sub> |
| 1  | 600   | 600             | 600             |
| 2  | 600   | 600             | 600             |
| 3  | 700   | 700             | 700             |
| 4  | 700   | 700             | 700             |
| 5  | 700   | 700             | 700             |

Table [B]

| Number of Contract Years since the commencement of the Enhanced Service Period | Enhanced Service Period daily traffic increase amount |                 |                 |
|--|---|-----------------|-----------------|
|  | CV <sub>2</sub>                                       | CV <sub>3</sub> | CV <sub>4</sub> |
| 1  | 1,100   | 4,200           | 7,400           |
| 2  | 900   | 2,500           | 4,500           |
| 3  | 1,100   | 2,700           | 4,400           |
| 4  | 900   | 1,600           | 2,300           |
| 5  | 800   | 1,000           | 1,400           |
| 6  | 800   | 1,100           | 1,500           |
| 7  | 700   | 1,100           | 1,400           |

| Number of Contract Years since the commencement of the Enhanced Service Period | Enhanced Service Period daily traffic increase amount |                 |                 |
|--|---|-----------------|-----------------|
|  | CV <sub>2</sub>                                       | CV <sub>3</sub> | CV <sub>4</sub> |
| 8  | 800   | 1,100           | 1,400           |
| 9  | 800   | 1,100           | 1,400           |
| 10   | 700   | 1,000           | 1,500           |
| 11   | 800   | 1,100           | 1,400           |
| 12   | 600   | 900             | 1,300           |
| 13   | 600   | 900             | 1,400           |
| 14   | 600   | 900             | 1,400           |
| 15   | 500   | 1,000           | 1,300           |
| 16   | 600   | 900             | 1,400           |
| 17   | 400   | 700             | 1,100           |
| 18   | 300   | 700             | 1,000           |
| 19   | 400   | 700             | 1,100           |
| 20   | 300   | 700             | 1,100           |
| 21   | 400   | 700             | 1,100           |
| 22   | 300   | 700             | 1,100           |
| 23   | 400   | 700             | 1,100           |
| 24   | 400   | 700             | 1,000           |
| 25   | 300   | 700             | 1,100           |
| 26   | 400   | 700             | 1,100           |
| 27   | 300   | 800             | 1,100           |
| 28   | 400   | 700             | 1,100           |
| 29   | 300   | 700             | 1,100           |
| 30   | 400   | 700             | 1,100           |
| 31   | 300   | 700             | 1,000           |

| Number of Contract Years since the commencement of the Enhanced Service Period | Enhanced Service Period daily traffic increase amount |                 |                 |
|--|---|-----------------|-----------------|
|  | CV <sub>2</sub>                                       | CV <sub>3</sub> | CV <sub>4</sub> |
| 32   | 400   | 700             | 1,100           |
| 33   | 300   | 700             | 1,100           |
| 34   | 400   | 700             | 1,100           |
| 35   | 300   | 700             | 1,100           |
| 36   | 400   | 700             | 1,100           |
| 37   | 300   | 700             | 1,000           |
| 38   | 400   | 700             | 1,100           |
| 39   | 300   | 700             | 1,100           |
| 40   | 400   | 700             | 1,100           |

**APPENDIX 2****Ministry of Transportation's Quality Plan and Contractor Assessment Program**

The Concessionaire will select a group of 5-6 key stakeholders in each service area, including at least one locally-based RTAC member. The stakeholders must be independent of the Province and the Concessionaire, but should be familiar with at least some aspects of Concessionaire's performance. Typical members might include: the Police, emergency response providers, major trucking firms, major bus lines, school districts, local industry representatives, local politicians, etc. In selecting the stakeholders, care must be taken to ensure a representative cross-section of stakeholders as well as a broad geographic representation.

At the beginning of the Enhanced Service Period, and as new stakeholders become involved with the Project, the Concessionaire will meet with the stakeholders to provide an overview of the purpose and use of the surveys. The Concessionaire will explain that the purpose of the exercise is to assess the Concessionaire's performance and the satisfaction of the Users, and not other Ministry and/or government-related issues; and, explain the points rating system and the ranges for excellent (95-100), good (90-94.9), satisfactory (85-89.9) and fair (75-84.9). At this meeting, the Concessionaire will also review the Concessionaire's obligations and responsibilities under this Agreement; ensure that the stakeholders understand the difference between Province's and the Concessionaire's responsibilities and the scope of the Project. During the Enhanced Service Period, the Concessionaire will change its selection of the stakeholders so that every stakeholder is given an opportunity to participate in the survey. This also provides an opportunity to reflect changing priorities/conditions in a service area.

The Concessionaire will arrange individual interviews with each stakeholder within 60 days of the end of each Contract Year. The first year, it is recommended that there be a face-to-face meeting with each of the stakeholders. In subsequent years, a telephone interview is acceptable.

A standard set of questions is used to ensure consistency across British Columbia. The Concessionaire will ask each question and invite each stakeholder to provide general comments. At the end of the interview, the Concessionaire will ask each stakeholder to provide an overall point rating between 75 and 100. The Concessionaire will complete the result of the interviews on the "Stakeholder Assessments" form set out in Annex 1.

The questions may change over the course of the Enhanced Service Period.

**ANNEX 1  
STAKEHOLDER ASSESSMENT**