

**SCHEDULE 5**

**PROJECT WORK DEFECTS AND WARRANTIES**

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**PART 1  
PROJECT WORK DEFECTS**

**1.1 Representation, Warranty and Covenant as to Project Work**

Project Co represents and warrants to and covenants with the Province and BCTFA that:

- (a) all Design, Construction and Project Work provided, performed or carried out by or on behalf of Project Co pursuant to this Agreement and (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) all Project Infrastructure shall conform to, comply with and satisfy all of the requirements of this Agreement (and with respect to the ATC Equipment, the Final ATC Requirements Specification, as defined in the ATC Supply Contract), Good Industry Practice and all professional engineering principles generally accepted as standards of the industry in the Province of British Columbia;
- (b) (except in the case of Systems Software, to which Section 2.4 [Systems Software Warranty] of this Schedule shall apply) the Project Work and (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) the Project Infrastructure shall be free of defects, including design defects, errors and omissions;
- (c) all materials and Equipment furnished under this Agreement shall be of good quality and fit for the intended purpose;
- (d) each item of Equipment (excluding Systems Software, to which Section 2.4 of this Schedule will apply) shall, under normal use and maintenance:
  - (i) conform to and perform in accordance with the specifications, requirements and standards set out therefor in the Design and Construction Requirements and, in the case of ATC Equipment, the Final ATC Requirements Specification (as defined in the ATC Supply Contract), in accordance with this Agreement; and
  - (ii) be free from defects in manufacturing, materials and workmanship, provided that (unless Project Co is already aware or ought reasonably to be aware of such defects) Project Co is notified of the defects in writing within 25 Business Days after the defects are discovered by the Province;
- (e) all installation and repair workmanship performed by Project Co or any Principal Contractor or Subcontractor as part of the Project Work and any corrective action shall be performed diligently and shall meet the specifications, requirements and standards set out therefor in the Design and Construction Requirements and, in the case of ATC Work, the Final ATC Requirements Specification (as defined in the ATC Supply Contract); and

- (f) all Equipment which has been manufactured by suppliers other than Project Co has been obtained through authorized commercial distribution channels for use in Canada and Project Co has the right to incorporate such Equipment in the Project Work and transfer such Equipment to the Province on the terms and conditions set out in this Agreement.

## **1.2 Project Work Defects**

- (a) Any defect which Project Co is obligated to repair and remediate pursuant to this Agreement and any deficiency, defect or error in the Project Work (including any failure of any component, reproducible malfunction or anomaly in any Systems Software, and Harmful Code) or (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) the Project Infrastructure or non-compliance with the requirements of this Agreement (including the representations, warranties and covenants in Section 1.1 [Representation, Warranty and Covenant as to Project Work] of this Schedule) shall be referred to as a “**Project Work Defect**”.
- (b) For certainty, Epidemic Defects, Latent Project Work Defects, and any breach of any representation or warranty made by Project Co in respect of Systems Software in Section 2.4 [Systems Software Warranty] of this Schedule, shall be Project Work Defects.

## **PART 2 WARRANTIES**

### **2.1 Project Work Defect Warranty**

Without limiting or derogating from the other warranty obligations of Project Co contained in this Agreement (including this Schedule), Project Co, at its own cost and expense, shall correct to the satisfaction of the Province, acting reasonably, as required by and in accordance with Section 2.6 [Correction of Project Work Defects] of this Schedule, all Project Work Defects (other than Epidemic Defects) arising during the General Project Work Defect Warranty Period and of which the Province notifies Project Co within thirty days following the end of the General Project Work Defect Warranty Period.

### **2.2 Latent Project Work Defect Warranty**

- (a) At least three months prior to the end of the General Project Work Defect Warranty Period (prior to any extension contemplated in the definition thereof), the Province and Project Co shall jointly inspect all of the Project Work to identify all Project Work Defects which are identifiable on visible inspection and in order to compile a list of any such Project Work Defects, which shall be corrected by Project Co in accordance with Section 2.6 [Correction of Project Work Defects] of this Schedule. Project Co shall prepare and submit such list to the Province’s Representative, pursuant to the Consent Procedure, within ten Business Days following the completion of such joint inspection.

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- (b) Without limiting or derogating from the other warranty obligations of Project Co contained in this Agreement, but subject to Section 2.2(c) of this Schedule, Project Co, at its own cost and expense shall correct to the satisfaction of the Province, acting reasonably, as required by and in accordance with Section 2.6 [Correction of Project Work Defects] of this Schedule, any and all Project Work Defects that become apparent during the Latent Project Work Defect Warranty Period which were not identified, and could not reasonably have been identified in accordance with Good Industry Practice, during the inspection contemplated by Section 2.2(a) of this Schedule (each a “**Latent Project Work Defect**”), provided that the Province gives Project Co written notice of each Latent Project Work Defect within the Latent Project Work Defect Warranty Period.
- (c) Without limiting or derogating from Section 2.3 [Epidemic Defect Warranty] of this Schedule, the warranty in respect of Latent Project Work Defects contained in this Section 2.2 does not extend to any Latent Project Work Defect in any System or any Epidemic Defect.
- (d) The Province will use all reasonable efforts to provide notice of a Latent Project Work Defect to Project Co within a reasonable period of time following the Province becoming aware of such Latent Project Work Defect, provided that no delay by the Province in providing such notice shall relieve Project Co of its obligation to remedy such Latent Project Work Defect in accordance with Section 2.6 [Correction of Project Work Defects] of this Schedule.
- (e) For greater certainty, Project Co acknowledges and agrees that the notice obligation imposed under Section 2.2(d) of this Schedule does not apply to Project Work Defects that are not Latent Project Work Defects.

**2.3 Epidemic Defect Warranty**

Without limiting and in addition to any other rights of the Province under this Agreement:

- (a) if an Epidemic Defect appears under normal use and maintenance during the period from the Substantial Completion Date to and including:
  - (i) in the case of an Epidemic Defect described in paragraph (a) or (b) of the definition thereof in Section 1.1 [Definitions] of Schedule 1, the expiry of the General Project Work Defect Warranty Period; and
  - (ii) in the case of an Epidemic Defect described in paragraph (c) of the definition thereof in Section 1.1 [Definitions] of Schedule 1, the expiry of the Epidemic Defect Warranty Period,

and Project Co is notified in writing within 25 Business Days of the discovery of such Epidemic Defect, or Project Co otherwise becomes aware of the Epidemic Defect, then Project Co, at its own cost and expense, shall perform or cause to be performed all remedial Project Work required to correct and remedy such Epidemic Defect in all like subsystems, components or subcomponents that are subject to the Epidemic Defect, whether or not such Epidemic Defect has manifested itself in all such subsystems,

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components or subcomponents. Such remedial Project Work shall be undertaken by Project Co in accordance with a mutually agreed upon schedule which shall avoid any disruption to the passenger service of the Integrated SkyTrain System or any part thereof, if such correction or remedy may be carried out without disruption to passenger service, and otherwise with the minimum possible disruption; and

- (b) if and so often as Project Co or its Principal Contractors or Subcontractors fail to commence performing remedial Project Work to correct and eliminate any Epidemic Defect when Project Co becomes aware of the Epidemic Defect in accordance with the agreed upon schedule or, if no schedule has been agreed, within 35 Business Days after receipt of written notice or, if after commencing such remedial Project Work, Project Co or its Principal Contractors or Subcontractors fail to prosecute and complete all necessary remedial Project Work diligently in accordance with the schedule agreed pursuant to Section 2.3(a) of this Schedule or otherwise as may be agreed by the parties and without disruption to passenger service, if such correction or remedy may be carried out without disruption to passenger service, and otherwise with the minimum possible disruption then, notwithstanding anything to the contrary contained in this Agreement and, without limiting the right of the Province pursuant to Part 11 [Province's Access, Monitoring and Step-In Rights], the Province may, upon seven Business Days' written notice to Project Co, perform some or all of the necessary remedial Project Work to correct or eliminate such Epidemic Defect, either through its own forces or through the use of contractors designated by the Province, in which case all reasonable and actual direct costs (including costs for the Province's own personnel and services) of such remedial Project Work performed by or through the Province shall, upon demand, be immediately paid by Project Co, provided that:

- (i) if, prior to the expiry of the General Project Work Defect Warranty Period, Project Co fails on demand either to pay any such costs to the Province or satisfy any Claim made by the Province pursuant to Section 9.1 of this Agreement (including Section 9.1(d)(viii)) in respect of an Epidemic Defect, the Province shall be entitled to discharge the relevant claim by:

(A) applying an amount from the Warranty Holdback (or the Non-Default Warranty Holdback, as the case may be) (whether, in accordance with this Agreement, deducted from the Substantial Completion Payment or taken into account in the calculation of any termination sum in accordance with Schedule 13 [Compensation on Termination]); and/or

(B) if a Warranty Holdback Letter of Credit (or the Non-Default Warranty Holdback Letter of Credit, as the case may be) has been provided by Project Co, making a demand under such Letter of Credit;

up to an amount in aggregate equal to the amount of such costs or the relevant Claim; and

- (ii) Project Co's obligation to pay such costs or indemnify the Province, as the case may be, shall only be discharged to the extent of the amount so applied and/or demanded by the Province.

**2.4 Systems Software Warranty**

- (a) Project Co represents and warrants to the Province that:
- (i) notwithstanding Section 2.4(a)(iii) of this Schedule, throughout the General Project Work Defect Warranty Period, the Systems Software will function as required for all Systems to successfully operate in conformity with all applicable Design and Construction Requirements and, in the case of the ATC Software, the Final ATC Requirements Specification (as defined in the ATC Supply Contract);
  - (ii) neither Project Co nor any of its Principal Contractors or Subcontractors has any knowledge of problems with Systems Software which affect other systems supplied by Project Co or its Principal Contractors or Subcontractors anywhere in the world which may be reproducible on or affect the safety of the relevant System; and
  - (iii) all Systems Software developed or licensed from third parties will be warranted only to the extent of the applicable original supplier's warranty.
- (b) Project Co warrants that neither its personnel nor the personnel of any Principal Contractor or Subcontractor have introduced or will intentionally introduce Harmful Code into any Systems Software.
- (c) Without limiting or derogating from its representations and warranties in Section 2.4(a) of this Schedule, Project Co does not warrant that the Systems Software shall be error free.
- (d) Project Co warrants that all Systems Software developed by or licensed from third parties has been obtained through authorized commercial distribution channels for use in Canada and that Project Co has, where required, purchased or will purchase for the benefit of the Province (and in the case of the ATC Software, any Authorized User as defined in the ATC Supply Contract) or otherwise obtained or will obtain the right to sub-license such Systems Software to the Province (and in the case of the ATC Software, any Authorized User, as defined in the ATC Supply Contract) on the terms and conditions set out in this Agreement.

Project Co shall notify in writing the Province, TransLink, or any Qualified Governmental Entity or Authorized User (as defined in the ATC Supply Contract) to whom the Province may assign the warranties under this Agreement, of its knowledge of any Systems Software issues affecting any similar system world-wide that may be reproducible on or affect the safety of the Project Work supplied hereunder. In such event during the General Project Work Defect Warranty Period, Project Co shall cause a safety assessment to be conducted in accordance with the standards set out in Section 1.3 of Appendix G [Systems General Requirements] of Schedule 4 [Design and Construction] to determine the need for any action regarding the Systems Software for the relevant System, and where safety considerations reasonably warrant, Project Co shall recommend the action to be taken to implement a solution for the relevant Project Work. At the written request of the Province, TransLink or any Qualified Governmental Entity

to whom the Province may assign the warranties under this Agreement, Project Co shall, subject to the parties' mutual agreement on the terms and conditions thereof, cause the recommended action to be implemented, as applicable to the relevant System, at the sole cost of Project Co during the General Project Work Defect Warranty Period.

- (e) During the General Project Work Defect Warranty Period, the Province shall notify Project Co in writing of any non-conformity of Systems Software to the requirements of this Agreement within 28 Business Days after the non-conformity is discovered.

## **2.5 Exclusions from Warranties**

The warranties by Project Co set out in this Part shall not apply to:

- (a) Systems Equipment, Systems Software or Systems Project Work that has been modified, repaired or reworked by any person other than Project Co or its Principal Contractors or Subcontractors or any other person for whom Project Co is responsible in law without the prior written consent of Project Co, with the exception of modifications, repairs or rework in the form of temporary Systems Software patches that are deployed on Systems (other than the BSP ATC System) by TransLink or a TransLink Party on a temporary basis to correct or avoid an Emergency or Critical Failure (including any such deployment pursuant to the provisions of Section 11.4 [Province's Emergency and Critical Failure Step-In Rights] of this Agreement); or
- (b) defects in Systems Equipment, Systems Software or Systems Project Work that are the result of or caused by:
  - (i) any negligence, improper storage, mishandling or misuse of the Systems Equipment or Systems Software by the Province, BCTFA or TransLink;
  - (ii) any use of the Systems Equipment or Systems Software by the Province, BCTFA or TransLink in conjunction with other equipment or software that is electronically or mechanically incompatible or of an inferior quality, and not approved by Project Co;
  - (iii) modifications made by the Province, BCTFA or TransLink to the interface requirements described in the Design and Construction Requirements (and in the case of the ATC Software, the Final ATC Requirements Specification as defined in the ATC Supply Contract), as the case may be, not agreed by Project Co,
  - (iv) any damage which occurs after the Substantial Completion Date to the Systems Equipment, Systems Software or Systems Project Work by power failure, fire, explosion or any act of God or other cause beyond the control of Project Co or its Principal Contractors or Subcontractors or their respective employees or any other person for whom Project Co is responsible in law;
  - (v) installation not performed in accordance with Project Co's procedures or instructions; or

- (vi) Harmful Code not introduced to the Systems Software by Project Co or its Principal Contractors or Subcontractors or any of their respective employees or any other person for whom Project Co is responsible in law.

## **2.6 Correction of Project Work Defects**

- (a) This Section 2.6(a) shall apply to all Project Work Defects required to be corrected pursuant to Section 2.1 [Project Work Defect Warranty] or Section 2.2 [Latent Project Work Defect Warranty] of this Schedule. Project Co shall initiate an on-site investigation into a Project Work Defect within 24 hours after the earlier to occur of Project Co becoming aware of a Project Work Defect and receipt by Project Co of written notice from the Province specifying such Project Work Defect. As soon as reasonable practicable thereafter, Project Co shall submit to the Province's Representative a report describing the workaround that Project Co proposes to implement as a temporary solution until Project Co finally corrects the Project Work Defect. If the Province's Representative accepts such workaround by written notice to Project Co, then Project Co will promptly implement such workaround.
- (b) If the correction of any Project Work Defect requires changes to Systems Software or Equipment then as soon as reasonably practicable, and in any event within 10 Business Days after the earlier to occur of Project Co becoming aware of a Project Work Defect required to be corrected pursuant to Section 2.1 [Project Work Defect Warranty] or Section 2.2 [Latent Project Work Defect Warranty] of this Schedule and receipt by Project Co of written notice from the Province specifying such Project Work Defect, Project Co shall submit a draft plan (the "**Draft Defect Correction Plan**") to the Province's Representative that includes the following information:
  - (i) description of the Project Work Defect;
  - (ii) description of the root cause of the Project Work Defect;
  - (iii) description of the proposed solution to correct the Project Work Defect;
  - (iv) proposed implementation plan for the solution to resolve the Project Work Defect to the satisfaction of the Province, acting reasonably, and in such manner and at such times as to avoid and, if it is not possible to avoid, minimize disruption to the operation of the Integrated SkyTrain System, including changes to Records Documentation, software description documents, installation details, cut-over requirements, testing, commissioning and certification; and
  - (v) timeline to correct the Project Work Defect.

As soon as reasonably practicable and in any event within five Business Days after delivery of the Draft Defect Correction Plan to the Province, the Province shall provide Project Co with any comments it may have on the Draft Defect Correction Plan. As soon as reasonably practicable and in any event within five Business Days after receipt of the Province's comments, Project Co shall deliver to the Province a revised Draft Defect Correction Plan that incorporates the comments received from the Province and is



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satisfactory to the Province, acting reasonably (the “**Final Defect Correction Plan**”). Project Co shall promptly implement and comply with the Final Defect Correction Plan. Notwithstanding anything in this Section 2.6(b), in case of an Emergency or a Critical Failure requiring immediate corrective action, the Province may exercise its rights under the provisions of Section 11.4 [Province's Emergency and Critical Failure Step-In Rights].

- (c) If Project Co becomes aware of a Project Work Defect of which it has not been previously notified by the Province, Project Co shall notify the Province thereof in writing within five Business Days unless Project Co has remedied such Project Work Defect within such five Business Day period.
- (d) This Section 2.6(d) shall apply to all Project Work Defects required to be corrected pursuant to Section 2.1 [Project Work Defect Warranty] or Section 2.2 [Latent Project Work Defect Warranty] of this Schedule. If Project Co does not correct a Project Work Defect in accordance with Section 2.6(b) of this Schedule within the time set out in the Final Defect Correction Plan or in accordance with the Final Defect Correction Plan, or if Project Co fails to deliver a Draft Defect Correction Plan or Final Defect Correction Plan to the Province within the timelines set out in Section 2.6(b) of this Schedule, notwithstanding anything to the contrary contained in this Agreement and without limiting the rights of the Province pursuant to Part 11 [Province's Access, Monitoring and Step-In Rights], the Province may, upon five Business Days' written notice to Project Co, perform some or all of the remedial Project Work required to correct or eliminate such Project Work Defect, either through its own forces, through the use of contractors designated by the Province, or through TransLink or a TransLink Party, in which case all reasonable direct costs incurred by the Province (including costs of the Province's own personnel, materials and services) in remedying such Project Work Defect shall, on demand, be payable by Project Co to the Province, provided that:
  - (i) if, prior to the expiry of the General Project Work Defect Warranty Period, Project Co fails on demand either to pay any such costs to the Province or satisfy any Claim made by the Province pursuant to Section 9.1 of this Agreement (including Section 9.1(d)(viii)) in respect of a Project Work Defect (other than an Epidemic Defect, to which Section 2.3(b)(i) of this Schedule shall apply), the Province shall be entitled to discharge the relevant claim for such costs by:
    - (A) applying an amount from the Warranty Holdback (or the Non-Default Warranty Holdback, as the case may be) (whether, in accordance with this Agreement, deducted from the Substantial Completion Payment Amount or taken into account in the calculation of any termination sum in accordance with Schedule 13 [Compensation on Termination]); and/or
    - (B) if a Warranty Holdback Letter of Credit (or the Non-Default Warranty Holdback Letter of Credit, as the case may be) has been provided by Project Co, making a demand under such Letter of Credit;

up to an amount in aggregate equal to the amount of such costs or the relevant Claim; and

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- (ii) Project Co's obligation to pay such costs or indemnify the Province, as the case may be, shall only be discharged to the extent of the amount so applied and/or demanded by the Province.
- (e) Project Co shall at all times promptly replenish, at Project Co's cost and expense, any Spare Parts taken (whether by Project Co, TransLink, or a TransLink Party) from the Province's inventory of Spare Parts for use in correcting any Project Work Defects (including, for certainty, any Epidemic Defects or Latent Project Work Defects) with the identical or better model of Spare Part taken.
- (f) If, at the expiry of the General Project Work Defect Warranty Period, any Project Work Defect (including, for certainty, any Epidemic Defect) has been identified by the Province that has not been corrected by Project Co in accordance with, as applicable, Section 2.3 [Epidemic Defect Warranty] of this Schedule or this Section 2.6 (other than any Project Work Defect in respect of which the Province has applied an amount from the Warranty Holdback (or the Non-Default Warranty Holdback, as the case may be) and/or made a demand under a Warranty Holdback Letter of Credit (or the Non-Default Warranty Holdback Letter of Credit, as the case may be) in accordance with Section 2.3(b) or Section 2.6(d) of this Schedule), then the Province shall be entitled to:
  - (i) retain from the Warranty Holdback (or the Non-Default Warranty Holdback, as the case may be) (whether, in accordance with this Agreement, deducted from the Substantial Completion Payment Amount or taken into account in the calculation of any termination sum in accordance with Schedule 13 [Compensation on Termination]); and/or
  - (ii) if a Warranty Holdback Letter of Credit (or the Non-Default Warranty Holdback Letter of Credit, as the case may be) has been provided by Project Co, make a demand under such Letter of Credit;up to an amount in aggregate equal to 200% of the Province's reasonable estimate of the costs for remedying each such Project Work Defect (unless the Project Work Defect relates to ATC Software, ATC Equipment or ATC Work that falls within the definition of ATC Work in the ATC Supply Contract, in which case such aggregate amount shall be equal to 100% of the Province's estimate of the costs for remedying such Project Work Defect), provided that, following the correction of any such Project Work Defect by the Province, the Province shall pay (without interest) to Project Co the excess (if any) of the amount so retained or demanded over the actual costs incurred by the Province in remedying such Project Work Defect.
- (g) Project Co acknowledges and agrees that:
  - (i) TransLink will operate the BSP from and after the Substantial Completion Date; and
  - (ii) if a Project Work Defect in the nature of a component failure occurs on or after the Service Commencement Date then, regardless of whether such Project Work Defect constitutes an Emergency or a Critical Failure:

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- (A) TransLink or any TransLink Party may correct such Project Work Defect by replacing the failed component with Spare Parts from the inventory of Spare Parts; and
  - (B) subject to Section 2.5 of this Schedule, such correction will not in any way void, limit or affect the warranty obligations of Project Co contained in this Agreement.
- (h) During the General Project Work Defect Warranty Period, except as otherwise provided herein or otherwise agreed by the Parties:
- (i) the Province, TransLink or a TransLink Party, as the case may be, shall be responsible for first line maintenance;
  - (ii) Project Co shall be responsible for all transportation and insurance costs for shipping defective Equipment and Systems Software to the applicable Subcontractor or supplier;
  - (iii) Project Co shall be responsible for all transportation and insurance costs for shipping repaired or replacement Equipment and Systems Software to the location designated by the Province, TransLink or a TransLink Party, as the case may be;
  - (iv) the Province, TransLink or a TransLink Party, as the case may be, shall be responsible for the installation of Spare Parts for the Equipment and removal of defective Equipment and the reinstallation of repaired or replacement Equipment; and
  - (v) Project Co shall be responsible for the installation and reinstallation of all repaired or replacement Systems Software.

**2.7 Terms of Principal Contractor and Subcontractor Warranties**

Without limiting or derogating from any warranty obligations of Project Co contained in this Agreement, but subject to any express terms or conditions agreed in any Collateral Agreement with any Principal Contractor or as otherwise agreed by the Province, in its discretion, Project Co shall:

- (a) ensure that all Principal Contracts and Subcontracts contain provisions which:
  - (i) impose on the relevant Principal Contractor or Subcontractor the same warranties as are contained in this Agreement in relation to all Design, Construction and Project Work provided, performed or carried out and materials and Equipment supplied by such Principal Contractor or Subcontractor; and
  - (ii) acknowledge that such warranties are for the benefit of the Province, BCTFA and their respective assignees as well as Project Co or, as the case may be, the Principal Contractor or Subcontractor that is the beneficiary of any warranties

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contained in the relevant Principal Contract or Subcontract, as applicable, and are assignable in accordance with the terms of this Agreement;

- (b) obtain or cause to be obtained any industry standard warranties which may be available as at the Financial Submittal Date which exceed the requirements of Section 2.7 of this Schedule (including in respect of the term of such warranties), including against defects in materials and workmanship from each Principal Contractor and Subcontractor in respect of Design, Construction and Project Work provided, performed or carried out and materials and Equipment supplied by that Principal Contractor or Subcontractor under its Principal Contract or Subcontract; and
- (c) at the request of the Province or BCTFA, cooperate with and assist the Province or BCTFA in the enforcement of any claims under warranties contained in any Principal Contract or Subcontract or otherwise given by a Principal Contractor or Subcontractor.

**2.8 Assignment of Warranties to Province**

- (a) Project Co:
  - (i) hereby absolutely assigns, on the terms set out in Section 2.8(b) of this Schedule, to the Province all warranties contained in any Principal Contract or Subcontract to which Project Co is a party; and
  - (ii) shall cause, by ensuring that relevant Principal Contractors and Subcontractors include relevant provisions in all Principal Subcontracts and Subcontracts to which Project Co is not a party, all warranties contained in any such Principal Subcontract or Subcontract to be absolutely assigned to the Province, on the terms set out in Section 2.8(b) of this Schedule.
- (b) Notwithstanding the provisions of Sections 2.8(a)(i) and (ii) of this Schedule, Project Co or the Principal Contractor or Subcontractor that is the beneficiary of any warranties contained in the relevant Principal Subcontract or Subcontract, as the case may be, shall be permitted to enjoy the benefit of and enforce the warranties referred to in, respectively, Sections 2.8(a)(i) and (ii) of this Schedule as if the assignment made in Section 2.8(a)(i) of this Schedule and any assignments made pursuant to Section 2.8(a)(ii) of this Schedule had not been made until (subject to and without prejudice to the rights of the Secured Parties under, and as defined in, the Lenders' Remedies Agreement) the earlier of (i) the date on which the Province gives Project Co or the relevant Principal Contractor or Subcontractor, as the case may be, a written notice stating that a Project Co Default has occurred and that the Province is exercising its rights pursuant to the relevant assignment, (ii) the Termination Date, and (iii) the Expiry Date.
- (c) Prior to, and as a condition of the release of, the Warranty Holdback Letter of Credit (or the Non-Default Warranty Holdback Letter of Credit, as the case may be), Project Co will deliver to the Province a list, description and copy of all Principal Contracts and Subcontracts pursuant to which the benefit of any warranty has been assigned to the Province as required by Section 2.8(a) of this Schedule.

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- (d) Without limiting the provisions of Section 18.7 [Further Assurances] of this Agreement, Project Co shall:
  - (i) cause to be included in any Principal Contract or Subcontract to which it is a party a notice from Project Co to the relevant Principal Contractor or Subcontractor of the assignment made in Section 2.8(a)(i) of this Schedule and an acknowledgment of such notice from the relevant Principal Contractor or Subcontractor; and
  - (ii) cause to be included in any Principal Contract or Subcontract to which it is not a party a notice from the Principal Contractor or Subcontractor that is the beneficiary of any warranties contained in the relevant Principal Subcontract or Subcontract to the Principal Contractor or Subcontractor that is the provider of such warranties of the assignment made pursuant to Section 2.8(a)(ii) of this Schedule and an acknowledgment of such notice from the Principal Contractor or Subcontractor that is the provider of such warranties.

**2.9 Warranty – Third Party Beneficiary**

Project Co acknowledges and agrees that:

- (a) TransLink, including BCRTC, are third party beneficiaries to the Project Warranties;
- (b) from and after the Substantial Completion Date all of the Project Warranties may be administered and enforced directly by TransLink or BCRTC to the same extent the Project Warranties may be administered and enforced by the Province under this Agreement.

**2.10 Survival**

Notwithstanding any other provision of this Agreement, the provisions of this Part 2 will survive the expiry or any earlier termination of this Agreement.