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**PART 1
COMPENSATION ON TERMINATION FOR PROVINCE DEFAULT**

1.1 Obligation to Pay Province Default Termination Sum

If the Province terminates this Agreement pursuant to Section 14.2(a) of the Agreement, or if Project Co terminates this Agreement pursuant to Section 13.3(a) or Section 13.3(b) of this Agreement, the Province shall pay to Project Co the Province Default Termination Sum as set out in Section 1.2 [Calculation of Province Default Termination Sum] of this Schedule, subject to adjustment pursuant to Section 1.3, and Part 5 [General Provisions] of this Schedule.

1.2 Calculation of Province Default Termination Sum

Subject to Section 1.3 of this Schedule, the “**Province Default Termination Sum**” shall be an amount equal to the aggregate of:

- (a) the Senior Debt Termination Amount;
- (b) any Employee Termination Payments; and
- (c) any Principal Contractor Breakage Costs.

1.3 Adjustments to Province Default Termination Sum

- (a) If a Distribution is made while any Additional Permitted Borrowing has been advanced and is outstanding and Project Co has wilfully, or through gross negligence, failed to comply with its obligations under Section 2.7(b)(iii) of the Lenders’ Remedies Agreement with respect to that Distribution, then the Province Default Termination Sum shall be reduced by the amount of the Distribution.
- (b) If Project Co has wilfully or through gross negligence failed to comply with its obligations under Section 2.7(b)(iv) of the Lenders’ Remedies Agreement and there has been an overstatement by Project Co of the credit balances in its accounts which has caused the Province to reasonably believe that it would be required to pay a lesser sum as the Province Default Termination Sum than it actually is required to pay under the terms of this Part 1, then the Province Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date).
- (c) If the amount of the Province Default Termination Sum calculated in accordance with Sections 1.2, 1.3(a) and 1.3(b) of this Schedule is less than the Senior Debt Termination Amount, the Province Default Termination Sum shall be deemed to be an amount equal to the Senior Debt Termination Amount.

**PART 2
COMPENSATION ON NON-DEFAULT TERMINATION**

2.1 Obligation to Pay Non-Default Termination Sum

If the Province terminates this Agreement pursuant to Section 8.4A(a) or 8.7(b)(ii) of the Agreement, or if either Project Co or the Province terminates this Agreement pursuant to Sections 8.4A(b), 8.6(a) or 8.7(a)(iv) of this Agreement, the Province shall pay to Project Co the Non-Default Termination Sum as set out in Section 2.2 [Calculation of Non-Default Termination Sum] of this Schedule, subject to adjustment pursuant to Sections 2.3 and Part 5 [General Provisions] of this Schedule.

2.2 Calculation of Non-Default Termination Sum

Subject to Section 2.3 of this Schedule, the “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:

- (a) the Senior Debt Termination Amount;
- (b) any Employee Termination Payments; and
- (c) any Principal Contractor Breakage Costs,

less, unless the Warranty Holdback has already been retained by the Province pursuant to Schedule 10 [Payment and Performance Mechanism], the Non-Default Warranty Holdback.

2.3 Adjustment to Non-Default Termination Sum

- (a) If a Distribution is made while any Additional Permitted Borrowing has been advanced and is outstanding and Project Co has wilfully, or through gross negligence, failed to comply with its obligations under Section 2.7(b)(iii) of the Lenders’ Remedies Agreement with respect to that Distribution, then the Non-Default Termination Sum shall be reduced by an amount equal to the value of the Distribution.
- (b) If Project Co has wilfully or through gross negligence failed to comply with its obligations under Section 2.7(b)(iv) of the Lenders’ Remedies Agreement and there has been an overstatement by Project Co of the credit balances in its accounts which has caused the Province to reasonably believe that it would be required to pay a lesser sum as the Non-Default Termination Sum than it actually is required to pay under the terms of this Part 2, then the Non-Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date).
- (c) If the amount of the Non-Default Termination Sum calculated in accordance with Sections 2.2, 2.3(a) and 2.3(b) of this Schedule is less than the Senior Debt Termination Amount, the Non-Default Termination Sum shall be deemed to be an amount equal to the Senior Debt Termination Amount.

**PART 3
COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT**

3.1 Obligation to Pay Compensation on Project Co Default

Except where Part 4 [Compensation on Termination for Special Circumstances] of this Schedule applies, if the Province terminates this Agreement pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(c)(ii), 12.3(d) and 12.4 [Termination for Failure to Remedy According to Program] of the Agreement, Project Co shall pay to the Province (to the extent it is a negative amount) or the Province shall pay to Project Co (to the extent it is a positive amount), as determined by this Part 3, the termination sum calculated in accordance with this Part 3 (the “**Project Co Default Termination Sum**”), subject to any adjustment in accordance with Part 5 [General Provisions] of this Schedule.

3.2 Components of Project Co Default Termination Sum

Subject to the other provisions of this Part 3, the Project Co Default Termination Sum shall be an amount equal to:

- (a) the aggregate, without duplication, of:
 - (i) the Contract Price; and
 - (ii) any sums not forming part of the Contract Price that have become due and payable from the Province to Project Co prior to the Termination Date in accordance with this Agreement but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid; and
- (b) less the aggregate, without duplication, of the following amounts:
 - (i) to the extent that such amounts have been paid by the Province to Project Co on or before the Termination Date:
 - (A) all Progress Payments;
 - (B) the Substantial Completion Payment;
 - (C) On-Time Performance Demonstration Completion Amount; and
 - (D) the TIDS Performance Demonstration Completion Amount;
 - (ii) the Province’s estimate of all costs and expenses paid, payable or that will be payable by the Province associated with the termination of this Agreement including the cost of appointment, mobilisation and installation of a replacement contractor (or procuring the performance of the unfulfilled obligations of Project Co by the Province);

- (iii) the Province's estimate of amounts paid, payable or that will be payable by the Province to any alternative contractor(s) for the performance of obligations equivalent to the unfulfilled obligations of Project Co under this Agreement, including for the avoidance of doubt the cost of remedying any Project Work Defects and obtaining warranties for Project Work in place and to be performed equivalent to those provided for in this Agreement;
- (iv) the Province's estimate of its costs in reinstating any of its assets or other equipment required for the performance of its obligations under this Agreement, to the extent that such reinstatement is required as a result of a breach by Project Co of any of its obligations under this Agreement;
- (v) the Province's estimate of all other Direct Losses incurred or to be incurred by the Province associated with the termination of this Agreement and (to the extent that the Province has not previously been compensated for such Direct Losses) any breach by Project Co of any of its obligations under this Agreement prior to the Termination Date; and
- (vi) any sums that have become due and payable from Project Co to the Province prior to the Termination Date in accordance with this Agreement but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid.

provided that:

- (c) to the extent that any costs, expenses or Direct Losses included in the calculation of the Project Co Default Termination Sum are based on estimates by the Province and the actual costs, expenses or Direct Losses incurred by the Province in respect of the relevant items differ from the estimates by a material amount, the Province and Project Co shall promptly adjust the amount of the Project Co Default Termination Sum or, if the Project Co Default Termination Sum has been paid in accordance with this Schedule prior to the date on which such difference has been established, make payment or repayment accordingly, without interest;
- (d) the calculation of the Project Co Default Termination Sum:
 - (i) shall not, if Section 2.6(f) of Schedule 5 [Project Work Defects and Warranties] applies, take into account any costs or expenses that the Province has incurred or will incur in remedying any Final Deficiency List Deficiency in respect of which as of the Termination Date an amount is being retained by the Province pursuant to Section 2.6(a) of Schedule 5 [Project Work Defects and Warranties] or an amount is outstanding under a Deficiency Letter of Credit provided by Project Co and
 - (ii) shall take into account the amount of any holdback or valid letter of credit held by the Province at the Termination Date pursuant to the Project Agreement such

that any such amounts are not double counted in determining the Project Co Default Termination Sum;

(e) if the Termination Date occurs after the Substantial Completion Date but before either or both of the :

(i) On-Time Performance Demonstration Completion Date; and

(ii) TIDS Performance Demonstration Completion Date,

then for the purposes of the calculation in Section 3.2(b), the Province may (without double counting) include in its Direct Losses and deduct an amount equal to the maximum amount of any On-Time Performance Demonstration Liquidated Damages and any TIDS Performance Liquidated Damages which Project Co would have been obligated to pay to the Province pursuant to Schedule 10 [Payments] to the extent, as the case may be:

(A) the On-Time Performance Demonstration Completion Date did not occur on or before the Termination Date; and

(B) the TIDS Performance Demonstration Completion Date did not occur on or before the Termination Date.

3.3 Timing of Calculation of Project Co Default Termination Sum

The Project Co Default Termination Sum shall be calculated as of the Termination Date.

3.4 Calculation of Project Co Default Termination Sum

If the amount calculated in accordance with:

(a) Section 3.2(b) of this Schedule exceeds the aggregate amount calculated in accordance with Section 3.2(a) of this Schedule, the Project Co Default Termination Sum shall be an amount equal to the excess and shall be payable by Project Co to the Province;

(b) Section 3.2(a) of this Schedule exceeds the aggregate amount calculated in accordance with Section 3.2(b) of this Schedule, the Project Co Default Termination Sum shall be an amount equal to the excess and shall be payable by the Province to Project Co; or

(c) each of Sections 3.2(a) and 3.2(b) of this Schedule are equal, the Project Co Default Termination Sum shall be zero and no amount shall be payable by Project Co to the Province by the Province to Project Co pursuant to this Part 3.

**PART 4
COMPENSATION ON TERMINATION FOR SPECIAL CIRCUMSTANCES**

4.1 Obligation to Pay Special Termination Sum

If the Province terminates this Agreement pursuant to Section 12.3(a) as a result of any Project Co Default referred to in Section 12.1(i) or 12.1(j), or pursuant to Section 12.3(b) of this Agreement, the Province shall pay to Project Co a termination sum (the “**Special Termination Sum**”) equal to the Senior Debt Termination Amount, subject to adjustment pursuant to Part 5 [General Provisions] of this Schedule.

**PART 5
GENERAL PROVISIONS**

5.1 No Compensation to Extent of Insurance

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

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

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of Project Co or of any person for whom Project Co is in law responsible (including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer), or for any other reason, excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies, and any such insurance proceeds recovered by or available to Project Co were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or

- (b) that Project Co recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that Project Co has in fact taken out and maintained, and any such insurance proceeds recovered by or available to Project Co were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or

- (c) that the Province has made or authorized payment to or for the account of or on behalf of Project Co or Project Co is entitled to receive proceeds of insurance, under any of Sections 6.18(b), (c), (d) and (e) of the Agreement and such payments were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or
- (d) of any amounts in respect of deductibles and waiting periods under any of the insurance referred to in either of Sections 5.1(a) and (b) of this Schedule for which Project Co is responsible, provided there shall be no reduction under this subsection (d) if it would reduce the amount of any Province Default Termination Sum or Non-Default Termination Sum below the Senior Debt Termination Amount.

5.2 Gross Up of Termination Payments

- (a) For the purpose of this Section 5.2:
 - (i) **“Deemed Corporate Project Co”** means a fictional fully taxable single purpose British Columbia resident corporation having a permanent establishment only in the Province of British Columbia that:
 - (A) is, and has since the date of this Agreement been, a subsidiary of a public corporation carrying on an active business with the same fiscal year end as Project Co; and
 - (B) has had the same revenues and expenses as Project Co and has taken all exemptions, relief, allowances, deductions, set offs and credits permitted under Laws relating to Income Taxes (including any that would be available in relation to the Project) since the date of this Agreement so as to minimize its Income Tax payable;
 - (ii) **“Income Tax”** means any Tax imposed on the income of a person by any Governmental Authority within Canada; and
 - (iii) **“Taxable Shareholder Portion”** means:
 - (A) 100% if Project Co is a taxable entity with respect to Income Tax; or
 - (B) where subsection (A) above does not apply, that percentage, measured as at the Termination Date, of the total equity interests of Project Co that are not owned, directly or indirectly, by persons that (1) are described in Section 149 of the *Income Tax Act* (Canada), or the equivalent section if there are changes to the *Income Tax Act* (Canada), and (2) are not subject to the payment of Income Tax in respect of payments by Project Co from proceeds of compensation on termination.
- (b) If any amount payable by the Province as compensation on termination under Part 1 [Compensation on Termination for Province Default], Part 2 [Compensation on Non-

Default Termination] or Part 4 [Compensation on Termination for Special Circumstances] of this Schedule, as such amount may be increased or decreased pursuant to the other provisions of this Part 5, would be in the hands of a Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the amount payable on termination), subject to Income Tax payable to a Governmental Authority within Canada that would not have been payable but for the fact that such amount is payable as compensation on termination (the “**Excess Income Tax**”), then the Province shall pay to Project Co the Taxable Shareholder Portion of the additional amount that would be required to be paid to the Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the amount payable on termination) to put the Deemed Corporate Project Co in the same financial position after Income Tax as it would have been in had the amount payable on termination (or portion thereof) not been subject to any such Excess Income Tax, taking account of any exemption, relief, allowances, deductions, setoffs or credits in respect of Income Tax (whether available by choice or not) that would be available to the Deemed Corporate Project Co to reduce the Income Tax to which the amount payable on termination, or any portion thereof, would be subject.

5.3 Adjustment for Net Balance

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

- (a) increased by any net balance owing by the Province or BCTFA pursuant to Section 14.7(c) of the Agreement; or
- (b) reduced by any net balance owing by Project Co to the Province or BCTFA pursuant to Section 14.7(c) of the Agreement.

5.4 Rights of Set-Off

- (a) Subject to Section 5.4(b) of this Schedule, any amount that is payable by the Province to Project Co pursuant to this Schedule shall be reduced by any amount the Province is entitled to set off under Section 10.4 [Province’s Right of Set Off] of the Agreement (provided this right of set off shall not apply to an amount payable by Project Co to the Province pursuant to Section 14.7(c) of the Agreement where the amount payable by the Province as compensation on termination has been reduced pursuant to Section 5.3 [Adjustment for Net Balance] of this Schedule by the amount payable by Project Co to the Province pursuant to Section 14.7(c) of this Agreement).
- (b) Where compensation on termination is payable pursuant to Part 1 [Compensation on Termination for Province Default], Part 2 [Compensation on Non-Default Termination] or Part 4 [Compensation on Termination for Special Circumstances] of this Schedule, subject to the provisions of Section 38 of the *Financial Administration Act* (British Columbia), the right of set off under Section 10.4 [Province’s Right of Set Off] of the Agreement, and any adjustment contemplated by Section 5.3(b) of this Schedule, may only be exercised against any such payment of compensation if and to the extent that such compensation exceeds the Senior Debt Termination Amount.

- (c) To any extent that:
 - (i) any amount the Province is entitled to set off referred to in Section 5.4(a) of this Schedule; or
 - (ii) any net balance owing by Project Co referred to in Section 5.3(b) of this Schedule;

is not fully paid and satisfied by deduction from or reduction of any amounts payable by the Province to Project Co under this Schedule, whether by reason of Section 5.4(b) of this Schedule, or because the amount referred to in Section 5.4(c)(i) or Section 5.4(c)(ii) of this Schedule is greater than the amount of compensation on termination payable by the Province under this Schedule, or because no compensation on termination is payable by the Province under this Schedule, or for any other reason, Project Co shall pay to the Province on demand the amount remaining unpaid and unsatisfied.

5.5 Full and Final Settlement

Notwithstanding any other provision of this Agreement or rule of law or equity to the contrary, payment of the amount payable by the Province pursuant to this Schedule in respect of a termination of this Agreement shall be in full and final satisfaction of all Claims that, in relation to any Supervening Events, or breaches or defaults under, or termination of, this Agreement, or any other cause, matter or thing whatsoever with respect to this Agreement, can be made or brought against the Province or BCTFA by Project Co, whether under contract, tort, restitution or otherwise;

- (a) the right to compensation payable under this Schedule is the sole and exclusive remedy of Project Co against the Province and BCTFA for any termination of this Agreement and Project Co is excluded from all other rights or remedies in respect thereof; and
- (b) without limiting the generality of the foregoing, Project Co shall have no Claim against the Province or BCTFA in respect of any Project Work performed up to the Termination Date, or for any refund or repayment of all or any part of the Performance Incentive Payments, apart from any compensation payable by the Province pursuant to this Schedule,

except, in the case of each of these Sections 5.5(a) and (b), for any liability of the Province or BCTFA to Project Co that arose prior to the Termination Date (but not from the termination itself) and has not already been compensated for, or taken into account, in determining the relevant compensation amount and adjustments thereto payable by the Province pursuant to this Schedule and except, in the case of Section 5.5(a), any liability of the Province or BCTFA to make a payment and/or if applicable release any Letter of Credit pursuant to Section 2.8(c) of Schedule 5 [Project Work Defects and Warranties].

Project Co acknowledges and agrees that the provisions of this Schedule do not constitute or result in a penalty or forfeiture.

5.6 Outstanding Senior Debt Amounts

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

5.7 Payment to Senior Lenders

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

5.8 Calculation of Compensation

- (a) Promptly after the giving of any Notice of Intention to Terminate, or any notice of termination pursuant to a right to terminate the validity of which is or has been determined or accepted in accordance with Section 14.5(b) or Section 14.5(c) of this Agreement, in respect of a termination of this Agreement:
 - (i) to which any of Sections 1.1 [Obligation to Pay Province Default Termination Sum], 2.1 [Obligation to Pay Non-Default Termination Sum] and 4.1 [Obligation to Pay Special Termination Sum] of this Schedule applies, Project Co shall determine in accordance with the provisions of this Agreement the amount of compensation payable as of the actual Termination Date if known and as of an estimated Termination Date otherwise, and shall provide to the Province's Representative notice of such amount and the details of the calculation of each component thereof, including:
 - (A) the most current Financial Model in accordance with Section 2.18 [Financial Model] of the Agreement;
 - (B) certificates of the Agent as to the amount of the Senior Debt Termination Amount, including particulars of the calculation of the various components thereof;
 - (C) where applicable, certificates of senior officers of the Junior Lenders as to the principal amounts advanced as Junior Debt then outstanding, the amount of all principal repayments of Junior Debt, and the amount of all payments of interest and other Distributions in respect of Junior Debt;
 - (D) certificates of senior officers of each Principal Contractor as to the amount and calculation of the components of any Principal Contractor Breakage Costs incurred by such Principal Contractor where Principal

Contractor Breakage Costs are payable and being claimed as a component of the compensation on termination;

- (E) certificates from officers of Project Co as to:
 - (1) the amount and calculation of the components of any Employee Termination Payments where Employee Termination Payments are payable and being claimed as a component of the compensation on termination;
 - (2) the amount of all Distributions; and
 - (3) the matters referred to in subsections (B), (C) and (D) above; or
- (ii) to which Section 3.1 [Obligation to Pay Compensation on Project Co Default] of this Schedule applies, the Province shall give to Project Co a statement setting out the Project Co Default Termination Sum,

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

- (b) If the amount of compensation calculated pursuant to subsection (a) above was determined as of an estimated Termination Date, promptly after the actual Termination Date the applicable party shall provide to the other party the calculation, information and documents referred to in subsection (a) above as of the actual Termination Date, together with an explanation (with supporting calculations, certificates and documents) of the difference between the amount of compensation calculated as of the estimated Termination Date and the amount of compensation calculated as of the actual Termination Date.
- (c) Within 30 days after the latest of:
 - (i) the date of receipt by the applicable party of a notice of a compensation amount from the other party under subsection (a) above with supporting details of the calculation of each component thereof, certificates and other documents as provided in subsection (a) above;
 - (ii) if applicable, the date of receipt by the applicable party of the additional explanation, calculations, information, certificates and documents referred to in subsection (b) above; and
 - (iii) the date of receipt by the applicable party of any other documents and information reasonably requested by the other party in a timely manner for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable;

the applicable party shall by notice to the other party either:

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

5.9 Payment Date

The Province Default Termination Sum, the No-Fault Termination Sum, the Project Co Default Termination Sum or the Special Termination Sum, as the case may be, is payable on or before the later of:

- (a) the date that is 60 Business Days after the Termination Date; and
- (b) the date that is 30 Business Days after the date on which such sum is finally determined by agreement of the Province and Project Co or in accordance with the Dispute Resolution Procedure;

provided that, if there is a dispute as to the calculation of such sum, any undisputed amount shall be paid on or before the payment date referred to in Section 5.9(a) of this Schedule, and any remainder shall be paid on or before the payment date referred to in Section 5.9(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate calculated from the payment date referred to in Section 5.9(a) of this Schedule until the date of payment.

5.10 Condition Precedent to Payment

Notwithstanding any other provision of this Schedule or this Agreement, it shall be a condition precedent to any payment by the Province to Project Co of any compensation on termination in excess of an amount equal to the Senior Debt Termination Amount at that time that Project Co shall have complied in all material respects with its obligations under Sections 14.9 [Transfer of Assets] and 14.10(b) to (f) of this Agreement inclusive.