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**ALLIANCE DEVELOPMENT AGREEMENT**

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**[PROJECT NAME]**

**[OWNER]**

**- AND -**

**[MEMBERS]**

**CONFIDENTIAL**

**Contents**

- 1. Definitions and interpretation .....1**
  - 1.1 Definitions .....1
  - 1.2 Interpretation.....7
  - 1.3 Business Day .....8
  - 1.4 Ambiguities and inconsistencies .....8
  - 1.5 Future procurement and contracting opportunities.....8
- 2. Purpose and scope of AD Phase.....8**
- 3. Commitments .....9**
  - 3.1 ADA Principles .....9
  - 3.2 Record keeping.....10
  - 3.3 Proponent’s obligations .....10

<b>4.</b>	<b>Role of the Owner .....</b>	<b>11</b>
4.1	Owner's Team .....	11
4.2	The Owner Representative .....	11
<b>5.</b>	<b>Term.....</b>	<b>11</b>
<b>6.</b>	<b>Project Proposal.....</b>	<b>12</b>
6.1	Development of Project Proposal .....	12
6.2	Proponent's warranties .....	12
6.3	Conflict of Interest.....	13
<b>7.</b>	<b>Provision of information.....</b>	<b>13</b>
7.1	Limits on provision of information .....	13
7.2	Provision of information by the Owner.....	13
7.3	Jointly required information.....	13
7.4	Site Information.....	14
<b>8.</b>	<b>Independent advisors .....</b>	<b>14</b>
<b>9.</b>	<b>Selection of Preferred Proponent.....</b>	<b>15</b>
9.1	Consideration of Project Proposal .....	15
9.2	Acknowledgements.....	15
9.3	Project Alliance Agreement .....	16
<b>10.</b>	<b>Alliance Mobilization.....</b>	<b>16</b>
<b>11.</b>	<b>Payments .....</b>	<b>16</b>
11.1	Payment to Proponent .....	16
11.2	Payment to Proponent .....	17
11.3	Payment not evidence .....	18
11.4	No entitlement to payment.....	18
11.5	Survival .....	18
<b>12.</b>	<b>Insurances .....</b>	<b>18</b>
12.1	Insurances .....	18
12.2	Commercial general liability insurance .....	18
12.3	Workers' compensation .....	19
12.4	Evidence of insurance .....	19
12.5	Obligation to assist .....	19
<b>13.</b>	<b>Limit of liability .....</b>	<b>19</b>
13.1	No liability for Consequential Loss .....	19
13.2	Limit of liability .....	19
<b>14.</b>	<b>Intellectual Property.....</b>	<b>20</b>
14.1	Ownership.....	20
14.2	New developments .....	20
14.3	Intellectual Property infringement .....	21
14.4	Survival .....	21
<b>15.</b>	<b>Termination.....</b>	<b>21</b>
15.1	Termination for convenience .....	21
15.2	Default.....	21
15.3	Termination for Default .....	21

15.4	Consequences of termination .....	22
15.5	Rights preserved.....	22
15.6	Survival .....	22
<b>16.</b>	<b>Notices .....</b>	<b>22</b>
16.1	How and where Notices may be sent .....	22
16.2	When Notices are taken to have been given and received .....	23
<b>17.</b>	<b>Confidentiality .....</b>	<b>23</b>
17.1	Confidentiality .....	23
17.2	IBC as third party beneficiaries.....	24
17.3	Publicity or media statements.....	24
17.4	Survival .....	24
<b>18.</b>	<b>General .....</b>	<b>25</b>
18.1	Governing law and jurisdiction.....	25
18.2	Severability .....	25
18.3	Further assurances.....	25
18.4	Waiver.....	25
18.5	Amendments.....	25
18.6	Entire agreement .....	25
18.7	Changes in the Proponent, assignment and novation.....	25
18.8	Relationship of the Parties.....	26
18.9	Corporate power and authority .....	26
18.10	Financial difficulties.....	26
18.11	Owner's statutory functions .....	26
18.12	Successors and assigns .....	27
18.13	Costs.....	27
18.14	Counterparts .....	27
	<b>Schedule 1 Agreement Particulars .....</b>	<b>29</b>
	<b>Schedule 2 Final Draft Project Alliance Agreement.....</b>	<b>32</b>
	<b>Schedule 3 Alliance Mobilization Agreement.....</b>	<b>33</b>
	<b>Schedule 4 Key Individuals .....</b>	<b>34</b>

## ALLIANCE DEVELOPMENT AGREEMENT

THIS AGREEMENT dated as of [◆], 2021 is entered into:

BETWEEN:

**[Name of Owner]** (Owner)

AND

**[Insert names of each Member which form the Proponent]**

(together, jointly and severally, the **Proponent**).

### Background

- A. The Owner intends to develop a **[Insert Type of Facility/Infrastructure]** at a site in **[Insert Location]**.
- B. As a general summary, the project (the **Project**) consists of **[Insert Project Description]**.
- C. The Owner has issued a Request for Qualifications seeking RFQ Submissions for the performance of the Works.
- D. The Proponent and others submitted an RFQ Submission in response to the Request for Qualifications.
- E. The Proponent and others were selected by the Owner to participate in the ADA RFP and submitted an ADA Submission in response to that ADA RFP.
- F. The Proponent has been selected by the Owner to participate in the AD Phase in accordance with this Agreement, the Request for Qualifications, the ADA RFP and the ADP RFP.
- G. The Other Proponent has also been selected to participate in the AD Phase in accordance with the Other Alliance Development Agreement, the Request for Qualifications, the ADA RFP and the ADP RFP.

That in consideration of, among other things, the mutual promises contained in this Agreement, the Parties agree as set out in the Operative part of this Agreement.

### Operative provisions

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

The meanings of terms used in this Agreement are set out below.

**ADA Principles** means the principles set out in Section 3.1.

**ADA RFP or Alliance Development Agreement Request for Proposals** has the meaning given in Schedule 1.

**AD Payment Amount** means the amount of \$[Insert Amount], exclusive of GST, which is the Proponent's maximum entitlement to payment for submitting the Project Proposal and performing the Services in accordance with this Agreement.

**AD Phase** means the phase of the Competitive Alliance Selection Process as described in the Request for Qualifications, the ADA RFP, the ADP RFP, and as set out in this Agreement, which commences on the Commencement Date and ends on the earlier of:

- (a) the date of execution of the Project Alliance Agreement by the Owner and the Proponent;
- (b) the date of execution of the Project Alliance Agreement by the Owner and the Other Proponent (as notified by the Owner to the Proponent); and
- (c) the date of termination of this Agreement.

**ADP RFP or Alliance Development Phase Request for Proposals** is the request for proposals governing the AD Phase to be issued to the Proponent and the Other Proponent on [◆], as amended from time to time.

**Agreement** means this Alliance Development Agreement.

**Affiliate** means, in relation to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where "control" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

**Alliance Mobilization Works** means any works or services including design and documentation development which may otherwise be Works and which the Proponent or the Owner performs as set out in Section 10.

**Best for Project** means an approach, determination, decision, method, solution, interpretation, outcome or resolution that is consistent with the Project Alliance Objectives.

**Business Day** means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

**Commencement Date** means the date of this Agreement.

**Competitive Alliance Selection Process** means the process described collectively by the Request for Qualifications, the ADA RFP, the ADP RFP and this Agreement.

**Confidential Information** means any information of a Party or IBC that the Party (or in the case of information of IBC, the Owner), has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the date of the Agreement), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other Party and includes all analyses, compilations, studies and other documents whether prepared

by or on behalf of a Party or IBC which contain or otherwise reflect or are derived from such designated information.

**Conflict of Interest** has the meaning given in Section 6.3.

**Consequential Loss** means loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation or pure economic loss, but does not include any entitlement of the Proponent to payment under this Agreement.

**Default** has the meaning given in Section 15.2.

**Design Development Payment** means the amount of \$[Insert Amount], exclusive of GST.

**Diligence** means the exercise of the degree of skill, care, expertise, diligence and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar type as the Services.

**Facility** means the buildings, related structures, utility connections, landscaping and other work to be constructed by the Participants pursuant to the Project Alliance Agreement.

**Fairness Reviewer** means the person appointed to act as the fairness reviewer in respect of the Competitive Alliance Selection Process, as more fully described in the RFQ and RFP.

**Financial Auditor** means the person appointed by the Owner for the purposes of this Agreement and the Project Alliance Agreement.

**Final Draft Project Alliance Agreement** means the draft Project Alliance Agreement to be issued by the Owner prior to the Submission Date, reflecting the results of the AD Phase.

**Good Faith** in the context of this Agreement means:

- (a) acting in accordance with the ADA Principles both in a literal sense and with their intent;
- (b) undertaking, adopting and implementing all things reasonably necessary to ensure a Best For Project outcome; and
- (c) acting fairly, reasonably, honestly and with integrity at all times.

**Governmental Authority** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of:

- (a) all or part of the Works or the Works;
- (b) a Member or the Proponent;
- (c) the Site; or
- (d) any land external to the Site on which Works or the Works may be carried out.

**GST** means the goods and services tax imposed pursuant to Section IX of the *Excise Tax Act* (Canada).

**Insolvency Event** means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Proponent or any Member;
- (b) any proceedings with respect to the Proponent or any Member being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against the Proponent or any Member and are disputed by the Proponent or any Member, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days;
- (c) the Proponent or any Member making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Proponent or any Member under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against the Proponent or any Member and are disputed by the Proponent or any Member, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) the Proponent or any Member ceasing to carry on business.

**Infrastructure BC or IBC** means Infrastructure BC Inc.

**Intellectual Property** means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world.

**Interactive Process Guide** means the protocols to be complied with by the Proponent when performing the Services and to be released to the Proponent pursuant to the ADP RFP.

**Interim Draft Project Alliance Agreement** means the draft Project Alliance Agreement included as Schedule 2 to this Agreement

**Key Individuals** means the individuals listed in Schedule 4.

**Key Performance Indicators or KPIs** are to be developed as part of the AD Phase.

**Laws** means the common law and any and all laws, statutes, enactments, by-laws, regulations, rules, orders, directives, policies, permits, licences, codes and rulings of any government, and any ministries, agencies, board, commission or tribunal of any government, as amended from time to time, whether or not existing at the Commencement Date.

**Liable Party** has the meaning given in Section 13.2(a).

**Limit of Liability** has the meaning given in Section 13.2.

**Member** means any person comprising the Proponent.

**Notice** has the meaning given in Section 16.1.

**Other Alliance Development Agreement** means an agreement between the Owner and the Other Proponent on terms substantially similar to this Agreement.

**Other Proponent** means any other Proponent selected by the Owner under the ADA RFP to participate in the AD Phase.

**Owner's Representative** has the meaning given in Schedule 1.

**Owner's Team** means the Owner's team and employees who will, among other things, perform the functions set out in Section 4.1(a)(i).

**Participants** has the meaning given in the Final Draft Project Alliance Agreement.

**Parties** is a reference to the Owner and the Proponent collectively and **Party** means either one of them, as the context requires.

**Preferred Proponent** means the Proponent or the Other Proponent selected by the Owner to enter into the Project Alliance Agreement with the Owner.

**Project** has the meaning given in paragraph B of the Background of this Agreement.

**Project Alliance Agreement** means the alliance agreement for the Project to be entered into between the Owner and the Proponent (if the Project Proposal is accepted by the Owner in accordance with this Agreement), substantially in the form of the Final Draft Project Alliance Agreement.

**Project Alliance Objectives** means the objectives for the Project and the Alliance set out in the Final Draft Project Alliance Agreement.

**Project Proposal** means the proposal for the Project which is developed by the Proponent and submitted to the Owner in accordance with Section 6 or, depending on the context, by the Other Proponent under its Alliance Development Agreement.

**Pro Rata AD Payment Amount** means a sum, exclusive of GST, determined as ((Actual AD Days ÷ Planned AD Days) x AD Payment Amount), up to a maximum of the AD Payment Amount, where:

- (a) Actual AD Days means the inclusive number of Business Days from the Commencement Date to the date of termination of this Agreement under Section 15.1; and
- (b) Planned AD Days means the inclusive number of Business Days from the Commencement Date to the Submission Date.

**Proponent's Contact Representative** has the meaning given in Schedule 1.

**Relevant Period** means the period commencing on the Commencement Date and ending on:

- (a) a date agreed by the Owner and the Proponent; or
- (b) failing agreement, the date necessary to ensure that the Parties comply with any Law relating to record keeping.

**Request for Qualifications** or **RFQ** has the meaning given in Schedule 1.

**RFQ Submission** means a submission provided by the Proponent in response to the RFQ.

**Services** means the following services, to be performed by the Proponent during the AD Phase in accordance with this Agreement:

- (a) preparation of the Project Proposal for submission to the Owner in accordance with the terms of this Agreement; and
- (b) participation in the process set out in the Interactive Process Guide.

**Site** means any lands or areas made available by the Owner, the Proponent or a third party with the consent of the Owner for the purposes of performing Works and any land which a Participant under the Project Alliance Agreement enters in or on, or occupies, for the purposes of Works or the Works.

**Submission Date** has the meaning given in Schedule 1.

**Target Cost Estimate** or **TCE** means the target cost estimate developed by the Proponent during the AD Phase.

**Target Outturn Cost** or **TOC** means the target outturn cost in the Project Proposal developed in accordance with Section 6.1.

**Third Party Intellectual Property Rights** means all Intellectual Property Rights of any person which is not a member of, or a related party to, a Member.

**Works** means the Alliance Works as defined in the Final Draft Project Alliance Agreement.

## 1.2 Interpretation

In this Agreement:

- (a) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (b) words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Authority as well as an individual;
- (e) each reference to a Section or Schedule, unless otherwise indicated, is a reference to a Section of, or Schedule to, this Agreement;
- (f) a Schedule includes all of the sub-schedules, appendices and other attachments attached to that Schedule;
- (g) a reference to this Agreement includes any Section, schedule, attachment, annexure and exhibit;
- (h) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (i) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provisions of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (j) a covenant or agreement on the part of the Proponent binds the Members jointly and severally to the Owner, with the exception of the covenant of the Proponent under Section 12 to take out certain insurances which will bind the Members severally only and not jointly to the Owner;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (m) the words "include", "includes" and "including" are not to be read as limiting;
- (n) no rule of law will apply that would construe this Agreement or any part of it against the party who (or whose counsel) drafted, prepared or put forward the Agreement or any part of it;

- (o) each reference to time of day is a reference to Pacific Standard Time or Pacific Daylight Saving Time, as the case may be;
- (p) general words are not given a restrictive meaning:
  - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
  - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (q) capitalized terms used but not otherwise defined in this Agreement shall have the meanings set out in the Final Draft Project Alliance Agreement; and
- (r) whenever any matter is stated to be at the discretion of the Owner, the Owner may act in its absolute and unfettered discretion, which may be exercised for purposes connected with this Agreement, the ADP RFP or otherwise in the interests of the Owner.

### **1.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### **1.4 Ambiguities and inconsistencies**

- (a) If the Proponent discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Agreement and any other document expressly incorporated into this Agreement or the Alliance Development Phase Request for Proposals:
  - (i) it will notify the Owner of this in writing; and
  - (ii) the Owner will direct the Proponent as to the interpretation to be followed by the Proponent in performing its obligations under this Agreement.
- (b) If the Owner discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Agreement and any other document expressly incorporated into this Agreement or the Alliance Development Phase Request for Proposals, the Owner will direct the Proponent as to the interpretation to be followed by the Proponent in performing its obligations under this Agreement.
- (c) The Proponent is not entitled to any additional costs by reason of a direction from the Owner under this Section 1.4.

### **1.5 Future procurement and contracting opportunities**

The Proponent acknowledges and agrees that the Proponent’s performance under this Agreement may be taken into account by the Owner and any other government agency when considering the Proponent (and any or all of the Members of the Proponent) for future procurement and contracting opportunities.

## **2. PURPOSE AND SCOPE OF AD PHASE**

- (a) The purpose and scope of the AD Phase is:

- (i) for the Proponent to perform the Services in accordance with this Agreement (including the Interactive Process Guide);
  - (ii) without limiting the Owner's rights under the Alliance Development Phase Request for Proposals, to enable the Proponent to do everything it can, within the requirements of this Agreement and the Alliance Development Phase Request for Proposals, to become the Preferred Proponent;
  - (iii) to provide a competitive and fair environment for the Owner to select either the Proponent or the Other Proponent as the Preferred Proponent;
  - (iv) to enable the Owner to observe and experience the reality of working collaboratively with the Proponent;
  - (v) to enable the Proponent to demonstrate how it will participate in the alliance with the Owner (if the Project Alliance Agreement is entered into by the Owner and the Proponent in accordance with this Agreement); and
  - (vi) to enable the Parties to do all things necessary to allow the Owner and the Proponent (if it is the Preferred Proponent) to enter into the Project Alliance Agreement, including conducting a financial establishment audit.
- (b) The Proponent acknowledges and accepts that while the Owner and IBC will co-operate with and assist the Proponent to perform the Services, the Owner and IBC will simultaneously be co-operating with and assisting the Other Proponent to provide its Services under the Other Alliance Development Agreement.
- (c) The Proponent and each Member releases each of the Owner, the Owner's Representative and the Owner's Team from any losses, damages, claims, costs or expenses arising out of or in connection with:
- (i) any co-operation or assistance provided, or any failure to provide any co-operation or assistance, by the Owner, the Owner's Representative or the Owner's Team to the Proponent under this Agreement; and
  - (ii) any co-operation or assistance provided, or any failure to provide any co-operation or assistance, by the Owner, the Owner's Representative or the Owner's Team to the Other Proponent under the Other Alliance Development Agreement.
- (d) None of the Owner and IBC are liable for any losses, damages, claims, costs or expenses suffered by the Proponent or any Member arising from the Proponent not being selected as the Preferred Proponent except, in respect of the Owner only, for the payment of the AD Payment Amount or the Pro Rata AD Payment Amount, as applicable, in accordance with Section 11.

### **3. COMMITMENTS**

#### **3.1 ADA Principles**

The Parties agree that in performing their respective obligations under this Agreement:

- (a) they will act in Good Faith;
- (b) they will develop and foster a culture of trust, collaboration and innovation;

- (c) communication between them will be open and honest; and
- (d) all dealings between them will be ethical.

### 3.2 Record keeping

- (a) The Proponent commits to:
  - (i) maintain, for at least the Relevant Period, all of their records and other documentation referred to in this Agreement that relate to the Services in accordance with, where applicable, good accounting practices, standards and procedures;
  - (ii) make their records and other documentation referred to in this Agreement that relate to the Services available to the Owner (or the Owner's nominated auditor) on request; and
  - (iii) make available to the Owner (or the Owner's nominated auditor) any existing documentation or information in whatever form relating to the Services.
- (b) The obligation to make records and documentation available does not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer/client communications.
- (c) For the purposes of this Section 3.2, all of the references to the nominated auditor of the Owner will include the Auditor General of British Columbia.

### 3.3 Proponent's obligations

The Proponent will:

- (a) at all times be suitably qualified and experienced and ensure that the Members' employees, contractors and consultants are so qualified and experienced;
- (b) comply with the provisions of the ADP RFP;
- (c) act in accordance with the Interactive Process Guide;
- (d) between them, keep the Key Individuals engaged in relation to the Services and not remove or replace the Key Individuals without the prior written consent of the Owner;
- (e) exercise due skill, care and diligence in the performance of the Services and its other obligations under this Agreement;
- (f) ensure that the Services and the Project Proposal are fit for the purpose of entering into an alliance agreement for the Project; and
- (g) develop a Project Proposal taking into account all of the above and the other requirements of this Agreement.

## 4. ROLE OF THE OWNER

### 4.1 Owner's Team

- (a) The Proponent acknowledges and agrees that:
  - (i) the Owner has nominated the Owner's Team to:
    - (1) co-ordinate and administer the AD Phase up to the execution of the Project Alliance Agreement with the Preferred Proponent;
    - (2) provide documents and information to the Proponent to assist it in performing the Services;
    - (3) participate in the various activities to be performed in the AD Phase as set out in the Interactive Process Guide; and
    - (4) assist in the consideration and evaluation of the Project Proposal under Section 9.1 and the Alliance Development Phase Request for Proposals;
  - (ii) while the Owner's Team will co-operate with and assist the Proponent to perform the Services, the Owner's Team will simultaneously be co-operating with and assisting the Other Proponent to provide its Services under the Other Alliance Development Agreement.
- (b) In resourcing the Owner's Team, the Owner will ensure that the Owner's Team is suitably qualified to perform the role set out in Section 4.1(a)(i).
- (c) The Owner will use reasonable efforts to maintain consistency within the members of the Owner's Team.

### 4.2 The Owner Representative

- (a) The Owner will perform its obligations under this Agreement through a representative appointed in writing by the Owner from time to time.
- (b) The Proponent will provide all assistance necessary to ensure the Owner's Representative can fulfil those responsibilities, perform those roles and functions and exercise those rights.
- (c) The Owner has initially selected the person named in Schedule 1 as its representative for the purposes of this Agreement. The Owner may, from time to time, change its representative by giving notice in writing to the Proponent.

## 5. TERM

- (a) This Agreement commences on the Commencement Date and, subject to the termination rights set out in this Agreement, terminates:
  - (i) if the Proponent is selected as the Preferred Proponent in accordance with this Agreement, on the date the Project Alliance Agreement is executed by the Owner and the Proponent; or

- (ii) if the Proponent is not selected as the Preferred Proponent in accordance with this Agreement, until the date that is 120 days from the Submission Date.

## **6. PROJECT PROPOSAL**

### **6.1 Development of Project Proposal**

- (a) The Proponent is responsible for developing the Project Proposal in accordance with this Section 6 and otherwise in accordance with this Agreement, noting the co-operation of the Owner's Team as set out in Section 4.1.
- (b) In developing the Project Proposal, the Proponent will:
  - (i) address the Project Alliance Objectives, the requirements of the Final Draft Project Alliance Agreement and the responsibilities of the Participants under the Final Draft Project Alliance Agreement;
  - (ii) prepare the Project Proposal in a diligent and timely manner so that:
    - (1) it complies with the requirements of this Agreement, the Project Alliance Objectives and all Laws; and
    - (2) the design and specification of the Works set out in the Project Proposal meets the Project Alliance Objectives and ensures the Works conform to all Laws.
- (c) The Project Proposal will, as a minimum, incorporate the information, details and documentation required by the Alliance Development Phase Request for Proposals.
- (d) At any time prior to the Submission Date, the Owner may advise the Proponent in writing of any additional documents or further information that the Owner requires to be incorporated into the Project Proposal and the Proponent will incorporate the additional documents or further information into the Project Proposal.
- (e) Once the Project Proposal has been developed by the Proponent, the Proponent will submit the Project Proposal to the Owner for approval (or otherwise) by no later than the Submission Date.

### **6.2 Proponent's warranties**

The Proponent warrants that it will:

- (a) exercise proper professional skill, care and Diligence in the development of all aspects of the Project Proposal, and that it will ensure that its Members' employees, contractors and consultants are qualified and experienced and exercise such professional skill, care and Diligence;
- (b) examine and verify the Project Alliance Objectives to the extent necessary for the preparation and submission of the Project Proposal under this Agreement; and
- (c) prepare a Project Proposal that the Proponent honestly and genuinely believes, if the Proponent is selected as the Preferred Proponent, will achieve the Project Alliance Objectives and fairly represents the cost of achieving the Project Alliance Objectives.

### 6.3 Conflict of Interest

- (a) The Proponent represents and warrants that none of its Members nor any of their Affiliates have any interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Proponent's ability to perform the Services and its other obligations under this Agreement in Good Faith and otherwise fairly, objectively and independently (**Conflict of Interest**).
- (b) The Proponent will not have, and will take all reasonable measures to ensure its Members do not have, a Conflict of Interest.
- (c) Conflicts of Interest will be managed in accordance with the terms of the Alliance Development Phase Request for Proposals.

## 7. PROVISION OF INFORMATION

### 7.1 Limits on provision of information

The Owner:

- (a) shall determine:
  - (i) the extent to which any information should be disclosed to the Proponent and/or the Other Proponent; and
  - (ii) the scope and form of any presentations to the Proponent and/or the Other Proponent; and
- (b) shall not provide the Proponent nor the Other Proponent with any commercial advantage by the disclosure of information in respect of any aspect of the other's Project Proposal or the Project.

### 7.2 Provision of information by the Owner

- (a) Subject to Section 7.1, the Owner intends to disclose material information to both the Proponent and the Other Proponent.
- (b) The Owner may, at any time and from time to time, make presentations (or arrange for others to make presentations) to the Proponent of information relevant to the preparation of the Project Proposal or the Project.

### 7.3 Jointly required information

- (a) If the Proponent intends to obtain any information (including any geotechnical information) which:
  - (i) is also likely to be required by the Other Proponent; and
  - (ii) it is reasonable for both the Proponent and the Other Proponent to share,

the Proponent may request the Owner to procure the relevant information on behalf of the Proponent and the Other Proponent.
- (b) The Owner shall give due consideration to a request made under Section 7.3(a) and shall:

- (i) have the right to refuse or agree (including subject to any conditions) to such a request made under Section 7.3(a); and
- (ii) if it agrees, procure the information and provide it to the Proponent and the Other Proponent at the Owner's cost and expense.

#### **7.4 Site Information**

- (a) If the Proponent wishes to carry out site investigations that are confidential to its proposed design, it may request access to the site in order to carry out such investigations at its own cost.
- (b) The Owner shall give due consideration to a request made under Section 7.4(a) and shall have the right to refuse or agree (including subject to any conditions) to such a request.
- (c) The Owner may choose to carry out such investigations itself and provide the resulting information to both Proponents.

#### **8. INDEPENDENT ADVISORS**

- (a) The Proponent acknowledges and accepts that the Owner will appoint advisors including:
  - (i) a Fairness Reviewer;
  - (ii) a Financial Auditor;
  - (iii) a Third Party Estimator;
  - (iv) an alliance advisor;
  - (v) one or more architectural, construction, engineering or technical reviewers;
  - (vi) commercial advisors; and
  - (vii) legal advisors,

each a Restricted Party as defined in the Alliance Development Phase Request for Proposals, to be accountable independently and directly to the Owner to validate the Project Proposal, to perform any task required by the Owner, and to provide independent reports and validation of any aspect of the Project Proposal.

- (b) The Owner has engaged Infrastructure BC to provide advice and assistance in relation to the procurement process for the Project and to provide ongoing advice in the administration of the Project Alliance Agreement. The Owner anticipates that a senior employee of Infrastructure BC will be a member of the Alliance Leadership Team and that other Infrastructure BC employees will form part of the Wider Project Team.
- (c)
- (d) The Proponent agrees, in the spirit of the commitments it has made in Section 3 and elsewhere in this Agreement, to:
  - (i) provide the Owner's independent advisors with full access to all records and the basis of all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations

and contingencies referred to above during the investigations and the preparation of the TOC; and

- (ii) fully co-operate with and assist the Owner's advisors to ensure that such advisors are able to effectively and expeditiously carry out their duties.
- (e) In preparing the Project Proposal, the Proponent commits to an 'open book' approach, meaning that the Owner can have access to all records, information and data in the possession of the Proponent and each of its Members which in any way has a bearing on the TOC, the Target Cost Estimate, the KPIs, and any other aspects of the Project Proposal. This aspect of the open book philosophy will be carried forward by the Proponent into all aspects of costing and accounting.
- (f) The Owner will bear all of the costs of any independent advisors appointed under this Section 8.

## **9. SELECTION OF PREFERRED PROPONENT**

### **9.1 Consideration of Project Proposal**

- (a) After the Submission Date the Owner will, in accordance with the Alliance Development Phase Request for Proposals, review and evaluate the Project Proposal which has been developed by the Proponent and submitted to the Owner.
- (b) The Proponent will honestly and openly answer any questions that the Owner and its advisors may have in connection with the Project Proposal (including the TOC) in a manner consistent with the Proponent's commitments under Section 3 of this Agreement.
- (c) The Owner will, in accordance with the Alliance Development Phase Request for Proposals, notify the Proponent whether or not it has been selected as the Preferred Proponent.

### **9.2 Acknowledgements**

The Proponent acknowledges and agrees that:

- (a) it is involved in a competitive evaluation and selection process and there is no guarantee that the Proponent or the Other Proponent will be selected as the Preferred Proponent;
- (b) there are a number of authorizations that are required to be obtained by the Owner prior to the selection of the Preferred Proponent and execution by the Owner of the Project Alliance Agreement (if that occurs) which may not be given or which may be given on terms which are not acceptable to the Owner, in which case, in the Owner's discretion, the Project Alliance Agreement will not be executed by the Owner and the Project will not proceed, although the Owner will remain obliged to pay the AD Payment Amount to the extent Section 11.1 applies;
- (c) the Project Proposal and the Proponent's commitments and obligations under this Agreement remain unaffected notwithstanding:
  - (i) the Owner's co-operation and participation in the development of the Project Proposal, including the involvement of the Owner's Representative, the Owner's Team and any independent advisors appointed by the Owner;
  - (ii) any receipt or review of, or comment or direction on, the development of the Project Proposal or any of the inputs into the Project Proposal by the Owner, the Owner's Team, the Owner's Representative or anyone acting on behalf of the Owner, during the AD

Phase or at any other time, or any failure by the Owner, the Owner's Representative or anyone acting on behalf of the Owner to receive or review or provide comment or direction on the development of the Project Proposal or any of the inputs into the Project Proposal; and

- (iii) the Owner's co-operation with and assistance given to the Other Proponent to develop its Project Proposal under the Other Alliance Development Agreement;
- (d) the Owner may select the Other Proponent as the Preferred Proponent, and proceed to execution of a Project Alliance Agreement with the Other Proponent in accordance with the Other Alliance Development Agreement; and
- (e) nothing in this Agreement may be construed as an indication or representation to the Proponent by the Owner that the Proponent will be selected as the Preferred Proponent. The Owner is not liable for any loss or damage suffered by the Proponent arising from the Proponent not being selected as the Preferred Proponent except for the payment of costs in accordance with Section 11.

### **9.3 Project Alliance Agreement**

- (a) The Proponent confirms its agreement to the form of the Interim Draft Project Alliance Agreement, subject only to the finalization of information that is expressly identified in the Interim Draft Project Alliance Agreement and the development of certain Schedules to the Project Alliance Agreement through the AD Phase.
- (b) The Proponent will submit, as part of its Project Proposal, the Project Alliance Agreement, which shall be in the form of the Final Draft Project Alliance Agreement as completed with information from the remainder of the Project Proposal and which must be executed by each Member and, subject to any amendments as may be required pursuant to Section [◆] of the Alliance Development Phase Request for Proposals, ready for execution by the Owner.

## **10. ALLIANCE MOBILIZATION**

- (a) If the Owner selects the Proponent as the Preferred Proponent, the Parties may agree to commence mobilization for the Works.
- (b) If the Parties agree to commence mobilization, they will agree on the scope and maximum amount payable by the Owner for the Alliance Mobilization Works and will execute an agreement for such Alliance Mobilization Works substantially in the form set out in Schedule 3.

## **11. PAYMENTS**

### **11.1 Payment to Proponent**

- (a) If:
  - (i) the Proponent has submitted the Project Proposal on or before the Submission Date; and
  - (ii) the Owner is satisfied, acting reasonably, that:
    - (1) the Proponent has complied in all material respects with the requirements of this Agreement and the Alliance Development Phase Request for Proposals; and

- (2) the Project Proposal has been submitted in accordance with this Agreement and the Mandatory Requirements (as defined in the Alliance Development Phase Request for Proposals),

the Owner will pay the Proponent the AD Payment Amount in accordance with this Section 11.

- (b) If:
- (i) the Owner terminates this Agreement pursuant to Section 15.1 prior to the Submission Date; and
  - (ii) the Owner is satisfied, acting reasonably, that the Proponent has complied with the requirements of this Agreement and the Alliance Development Phase Request for Proposals to the extent requested or required of the Proponent,

the Owner will pay the Proponent the Pro Rata AD Payment Amount in accordance with this Section 11.

- (c) Simultaneously with entering into the Project Alliance Agreement with the Preferred Proponent the Owner will pay the Preferred Proponent the Design Development Payment in accordance with this Section 11.
- (d) Unless otherwise expressly provided in this Agreement, no matter what events, circumstances, contingencies, conditions or degree of difficulty is encountered by the Proponent in performing the Services or otherwise performing its obligations under this Agreement the Parties agree that:
- (i) the Proponent's only entitlement to payment under this Agreement is for the AD Payment Amount or the Pro Rata AD Payment Amount, as applicable, and, if applicable, the Design Development Payment, each in accordance with this Section 11; and
  - (ii) the AD Payment Amount is fixed and will not be increased for any reason whatsoever.

## 11.2 Payment to Proponent

- (a) If the requirements under either Section 11.1(a) or 11.1(b) are satisfied:
- (i) the Owner will notify the Proponent of that fact within five Business Days of, as relevant, execution of the Project Alliance Agreement or the termination of this Agreement pursuant to Section 15.1;
  - (ii) the Proponent will promptly submit an invoice to the Owner for the AD Payment Amount or the Pro Rata AD Payment Amount, as applicable, together with any supporting documentation which the Owner may reasonably require.
- (b) The Owner will within 20 Business Days of the Proponent submitting the invoice under Section 11.2(a)(ii), review the invoice and issue a payment schedule to the Proponent setting out the AD Payment Amount or the Pro Rata AD Payment Amount, as applicable.
- (c) The Owner will pay the AD Payment Amount or the Pro Rata AD Payment Amount, as applicable, into an account nominated by the Proponent within 20 Business Days of the issue of a payment schedule under Section 11.2(b).

- (d) The Owner will pay the Design Development Payment to the Preferred Proponent simultaneously with enter into the Project Alliance Agreement with the Preferred Proponent.

### 11.3 Payment not evidence

Payment of moneys is not evidence of the value of the Services, or that the Services have been executed satisfactorily, or an admission of liability, but is payment on account only.

### 11.4 No entitlement to payment

- (a) If the Proponent has not satisfied the requirements under Section 11.1(a):
  - (i) the Owner will notify the Proponent of that fact as soon as practicable;
  - (ii) the Owner is entitled to terminate this Agreement; and
  - (iii) the Proponent will have no entitlement to payment under this Agreement.
- (b) If the Proponent commits a Default which causes the Owner to terminate this Agreement, then:
  - (i) the Proponent is not entitled to any payment under this Agreement; and
  - (ii) the Proponent will reimburse the Owner, on demand, all payments (if any) previously made by the Owner to the Proponent under this Agreement.

### 11.5 Survival

This Section 11 survives the termination of this Agreement.

## 12. INSURANCES

### 12.1 Insurances

- (a) Throughout the AD Phase, each Member will effect and maintain commercial general liability insurance and workers' compensation insurance in accordance with this Section 12, with insurers and for coverage on terms approved by the Owner, which approval will not be unreasonably withheld.
- (b) It is acknowledged that each Member is free to use its existing insurance policies for the purposes of this Section 12.
- (c) The Proponent will ensure that any subcontractor engaged by the Proponent or any Member in respect of the performance of the Services effects and maintains insurance which meets the requirements set out in this Section 12.

### 12.2 Commercial general liability insurance

Each Member will effect and maintain a commercial general insurance policy for an amount not less than **[Insert amount]** dollars (\$**[Insert amount]**) arising from any one occurrence in respect of bodily injury, personal injury and property damage and including liability assumed under this Agreement.

### 12.3 Workers' compensation

Each Member must comply with, and must ensure that any subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Member's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

### 12.4 Evidence of insurance

By no later than 10 Business Days after the Commencement Date, the Proponent will produce evidence to the satisfaction of the Owner for each Member, whether by certificate of currency or otherwise, that the insurances referred to in this Section 12 are taken out and maintained.

### 12.5 Obligation to assist

The Proponent will provide the Owner, and any person nominated by the Owner (including the Owner's insurance advisor), with all assistance and cooperation that the Owner reasonably considers is necessary (including providing all information and making available relevant personnel) to enable the Owner to procure and implement the insurance policies which the Owner will effect and maintain under the Project Alliance Agreement.

## 13. LIMIT OF LIABILITY

### 13.1 No liability for Consequential Loss

Except to the extent that Consequential Loss is covered and is recoverable under a policy of insurance taken out under this Agreement, in which case a Party will be liable, no Party will be liable to another Party for any Consequential Loss sustained by a Party, whether caused by that Party's breach of this Agreement, negligence or otherwise.

### 13.2 Limit of liability

- (a) The total liability of a Party (**Liable Party**) to the other Party for any losses, damages or claims arising out of, or in connection with, this Agreement is limited in the aggregate to the greater of:
- (i) the AD Payment Amount; and
  - (ii) the amount which the Liable Party and any Member (if the Liable Party is the Proponent) is able to recover or would have been able to recover under a policy of insurance required to be taken out or maintained by the Liable Party or the Member (whether separately or together) under this Agreement,
- (Limit of Liability).**
- (b) The Limit of Liability is an aggregate limit of liability for all losses, damages or claims arising in relation to, or in connection with, this Agreement.
- (c) The Limit of Liability does not apply where the loss, damage or claim:
- (i) relates to any death, personal injury or damage to property;
  - (ii) arises out of fraud of the Liable Party or its officers, agents, contractors or employees or any Member (if the Liable Party is the Proponent);

- (iii) a breach of Section 17 (Confidentiality) of this Agreement;
- (iv) arises out of an infringement by a Party of any third party's Intellectual Property Rights; or
- (v) where the Liable Party is the Proponent:
  - (1) arises from the abandonment of the whole or a substantial part of the Services by the Proponent; or
  - (2) arises from a repudiation of this Agreement by the Proponent.

## **14. INTELLECTUAL PROPERTY**

### **14.1 Ownership**

- (a) This Agreement does not assign ownership of any Intellectual Property existing on the Commencement Date and neither Party may assert ownership of all or any part of the other Party's pre-existing Intellectual Property.

### **14.2 New developments**

- (a) If the Proponent enters into the Project Alliance Agreement with the Owner, the terms of that agreement will govern any Intellectual Property developed by the Proponent or any of its subcontractors in the course of the Parties performing their obligations under this Agreement.
- (b) If Section 14.2(a) does not apply:
  - (i) the Owner will not have an ownership interest in any Intellectual Property developed by the Proponent or any of its Members or any of their respective subcontractors in the course of the Parties performing their obligations under this Agreement;
  - (ii) the Proponent grants to the Owner, and will cause all of its Members and their subcontractors to grant to the Owner, an irrevocable, non-exclusive, perpetual, sub-licensable, assignable, royalty-free, fully-paid licence without restriction giving the Owner the non-exclusive right to use any Intellectual Property developed in the course of providing services under this Agreement or otherwise contained in the Project Proposal; and
  - (iii) the Proponent will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Owner may reasonably request to effect and record the licence referred to in Section 14.2(b)(ii).
- (c) The Proponent and its Members will not be responsible or liable for any use by the Owner or any sub-licensee or assignee of the Owner of the Intellectual Property referred to in Section 14.2(b)(ii).
- (d) The licence referred to in Section 14.2(b)(ii) does not extend to Third Party Intellectual Property Rights to non-specialized third-party technology and software that are generally commercially available. The Proponent represents to the Owner that it owns or has, and will continue to own or have at the time of submission of its Project Proposal, all necessary rights to all Third Party Intellectual Property Rights contained in the Project Proposal and, subject to the foregoing exceptions, has the right to grant a licence of such Third Party Intellectual Property Rights in accordance with Section 14.2(b)(ii).

### 14.3 Intellectual Property infringement

- (a) Each Member of the Proponent indemnifies the Owner against any loss, damage, claim, cost or expense that the Owner may suffer or incur as a result of any design, materials, document, processes or methods of work applied in the development of the Project Proposal or incorporated into the Project Proposal infringing or misappropriating, directly or indirectly, a third party's Intellectual Property rights.
- (b) The Owner will give the Proponent notice of any such claim referred to in Section 14.3(a) that it receives or of any proceedings in relation to such a claim being threatened or served on the Owner.
- (c) The Owner will permit the Proponent (at the Proponent's expense) to conduct the defence of any such claim and all negotiations for its settlement. The Proponent will keep the Owner fully informed of all steps taken in the defence of a claim.

### 14.4 Survival

This Section 14 survives the termination of this Agreement.

## 15. TERMINATION

### 15.1 Termination for convenience

- (a) The Owner may, at any time, in its discretion and with immediate effect, terminate this Agreement by giving the Proponent a written notice of termination.
- (b) Subject to any rights the Owner has arising out of or in connection with this Agreement (including any right to set off payments), if the Owner terminates this Agreement under Section 15.1(a), the Owner will pay the Proponent the Pro Rata AD Payment Amount subject to the terms of Section 11.1(b).
- (c) The Proponent's entitlement under Section 15.1(b) is limited to the amount of the Pro Rata AD Payment Amount. Other than as described in this Section 15.1, the Owner is not required to make any other payment to the Proponent if it terminates this Agreement under this Section 15.1 and is not liable for any claim or liability suffered or incurred by the Proponent arising from any decision by the Owner to terminate this Agreement under this Section 15.1.

### 15.2 Default

A Default for the purposes of this Section 15 occurs where the Proponent (or any Member):

- (a) commits a material breach of this Agreement or the Alliance Development Phase Request for Proposals;
- (b) submits a Project Proposal that the Owner, acting reasonably, considers fails to satisfy the requirements of Section 11.1(a); or
- (c) is the subject of an Insolvency Event.

### 15.3 Termination for Default

- (a) If:

- (i) the Proponent (or any Member) commits a Default other than a Default pursuant to Section 15.2(b), which Default remains unremedied 10 Business Days after receipt of notice by the Proponent from the Owner containing details of the Default, including the Owner's reasons if Section 15.2(b) applies, and requiring the Default to be remedied to the Owner's reasonable satisfaction, or
- (ii) the Proponent (or any Member) commits a Default pursuant to Section 15.2(b),

the Owner may terminate this Agreement by serving a notice under this Section 15.3 which notice specifies the Default.

- (b) A Default by any Member is deemed to be a Default by the Proponent.
- (c) Where the Owner has terminated this Agreement under this Section 15.3, the Parties will have the same rights, remedies and liabilities as if the Proponent repudiated this Agreement and the Owner elected to treat this Agreement to be at an end and recover damages, provided that in the case of a Default under Section 15.2(c), if the Proponent has submitted a Project Proposal that satisfies the requirements of Section 11.1(a), the Owner will pay the Proponent the AD Payment Amount.

#### 15.4 Consequences of termination

- (a) On termination of this Agreement:
  - (i) the Proponent will promptly return to the Owner all copies of information and documentation provided by the Owner (including by the Owner's Team) for the purposes of this Agreement; and
  - (ii) subject to Section 14, the Owner may, at no cost, use any of the work, documentation or information developed by the Proponent under this Agreement for any purpose whatsoever, and the Proponent will provide any such work, documentation or information to the Owner within 10 Business Days of the Owner's reasonable request for it to do so;
- (b) The Proponent warrants, notwithstanding the termination of this Agreement, that it will not do, or omit to do, anything to prevent the Owner from carrying out the Project.

#### 15.5 Rights preserved

The expiry or termination of this Agreement will not affect any rights of a Party against the other Party in respect of any act, omission, matter, or thing occurring or under this Agreement prior to that expiry or termination.

#### 15.6 Survival

This Section 15 survives the termination of this Agreement.

### 16. NOTICES

#### 16.1 How and where Notices may be sent

A notice or other communication under this Agreement (**Notice**) will be in writing and delivered by hand or transmitted by electronic transmission to a Party at the address or the email address for that Party set out in Schedule 1 or as otherwise specified by a Party by Notice.

## 16.2 When Notices are taken to have been given and received

A Notice will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if sent by electronic transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
  - (i) the receiving party has, by electronic transmission, by hand delivery or by facsimile transmission, acknowledged to the notifying party that it has received such notice; or
  - (ii) within 24 hours after sending the notice, the notifying party has also sent a copy of such notice to the receiving party by hand delivery or facsimile transmission.
- (c) Delivery by mail will not be considered timely notice under this Agreement.

## 17. CONFIDENTIALITY

### 17.1 Confidentiality

- (a) Subject to Section 17.1(b), the Parties agree that this Agreement, and any Confidential Information, is confidential, and that they will not disclose the Agreement, or any Confidential Information to any person, unless that disclosure or that Confidential Information:
  - (i) is at the material time in the public domain, otherwise than through any disclosure prohibited by this Agreement;
  - (ii) is required by any Law to be communicated to a person who is authorized by any Law to receive it, including disclosure pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia);
  - (iii) is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Party concerned first obtains from each other party to those proceedings an undertaking, enforceable by any Party, that each party will similarly not divulge or communicate, without the Owner's written consent, any information referred to in this Section;
  - (iv) is required to be disclosed to any Governmental Authority whether in connection with the granting of any licence or otherwise;
  - (v) is to a servant, employee, agent or contractor of the Parties, when that disclosure is reasonably necessary for the conduct of this Agreement; or
  - (vi) was consented to in writing by each of the other Parties.

- (b) The Proponent acknowledges and agrees that the Owner may publish the name of the Proponent and the Members, amount of the Target Outturn Cost for the Preferred Proponent (if any) and details of the Proposal of the Preferred Proponent (if any).
- (c) Section 17.1(a) shall not prevent:
  - (i) the Proponent and each Member from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform the Services;
  - (ii) the Owner from disclosing or granting access to such information to any provincial ministry, IBC, and any other Governmental Authority that requires the information in relation to the Project and any other project; and
  - (iii) the Owner from enforcing Section 17 on behalf of IBC.
- (d) Without prejudice to any other rights and remedies that the other Party may have, each of the Parties agrees that damages may not be an adequate remedy for a breach of Section 17.1 and that the other Party or IBC may be irreparably harmed if any provision of Section 17.1 were not performed by the Party or any party to whom the Party provides Confidential Information, and that any such harm could not be compensated reasonably or adequately in damages. In such case, the other Party or IBC, as applicable, will be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1 subject, in the case of a claim for any such remedy against the Owner or IBC to the provisions of the *Crown Proceeding Act* (British Columbia).

## **17.2 IBC as third party beneficiary**

- (a) The provisions of Sections 17.1(a) to 17.1(d) and each other provision of this Agreement which is expressed to be for the benefit of IBC are:
  - (i) intended for the benefit of IBC; and
  - (ii) are in addition to, and not in substitution for, any other rights that IBC may have in contract or otherwise.
- (b) The Owner shall hold the rights and benefits of Sections 17.1(a) to 17.1(d) and each other provision of this Agreement which is to the benefit of IBC in trust for and on behalf of IBC and the Owner hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of IBC.

## **17.3 Publicity or media statements**

- (a) The Proponent acknowledges and accepts that it will not issue any information, publication, document or article relating to this Agreement, the Project or the Services without the prior written approval of the Owner.
- (b) The Proponent will immediately refer to the Owner any media enquiries relating to this Agreement, the Project or the Services.

## **17.4 Survival**

This Section 17 survives the termination of this Agreement.

## **18. GENERAL**

### **18.1 Governing law and jurisdiction**

This Agreement will be governed by and construed in accordance with the Laws of the Province of British Columbia and the Laws of Canada applicable therein, and the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of British Columbia and any courts entitled to hear appeals from the courts of British Columbia.

### **18.2 Severability**

If any term or part of this Agreement is or becomes for any reason illegal, void or unenforceable at law, then in that event, that term or part of this Agreement will be and be hereby deemed to be severed from this Agreement without thereby affecting the remainder of this Agreement and the remainder of this Agreement will continue to be valid and enforceable in all things.

### **18.3 Further assurances**

Each Party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as may be necessary for the purpose of giving effect to this Agreement.

### **18.4 Waiver**

- (a) No waiver by either Party of a right of that Party or any breach by the other Party in the performance of any of its obligations under this Agreement is effective unless it is in writing.
- (b) No waiver of any right or obligation is a waiver of any other right or obligation under this Agreement.
- (c) Failure to notify, or a delay in notifying, the other Party of an act or failure of the other Party or to declare the other Party in default, irrespective of how long the failure or delay continues, does not constitute a waiver by the Party of any of its rights against the other Party.

### **18.5 Amendments**

Amendment of this Agreement will be in writing and signed by the Parties.

### **18.6 Entire agreement**

Subject to the Alliance Development Phase Request for Proposals and the Competitive Alliance Selection Process, this Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### **18.7 Changes in the Proponent, assignment and novation**

- (a) The provisions of Section [6.11] of the ADP RFP will apply to any changes to the Proponent and its Members.
- (b) If as a result of an approved change under Section [6.11] of the ADP RFP:

- (i) the Proponent adds a new Member, the parties and such new Member will enter into an acknowledgement agreement under which the new Member will become a Member under this Agreement; or
  - (ii) a Member ceases to be a member of the Proponent, the parties will enter into an agreement releasing that Member from further rights or obligations under this Agreement.
- (c) The Proponent (or any Member) will not assign, transfer or novate to any third party any of their obligations or entitlements under this Agreement.
  - (d) The Owner may assign, transfer or novate its rights or obligations to any person or entity that the Owner can demonstrate has the resources to perform the Owner's obligations or entitlements under this Agreement.

### **18.8 Relationship of the Parties**

- (a) Nothing in this Agreement gives a Party authority to bind any other Party in any way.
- (b) The Proponent is, and the Members are, an independent contractor of the Owner. The employees, agents and subcontractors of the Proponent (or of any Member) will not be deemed to be employees, agents or subcontractors of the Owner and each Party will pay all costs associated with its employees.
- (c) This Agreement is not intended to create, nor will it be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the Parties.

### **18.9 Corporate power and authority**

Each Party represents and warrants to the others that it has full power to enter into and perform its obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations under its terms.

### **18.10 Financial difficulties**

A Party will immediately notify the other Parties in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to this Agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

### **18.11 Owner's statutory functions**

Nothing contained in or implied by this Agreement or any document contemplated by this Agreement has the effect of:

- (a) constraining or placing any fetter on the Owner's statutory rights, duties, powers and functions, including those contained or referred to in any Law; and
- (b) constraining the Auditor General for British Columbia or placing any fetter on its statutory rights, duties, powers and functions.

**18.12 Successors and assigns**

This Agreement enures to the benefit of and binds the Owner, its successors and its assigns and the Proponent (and each Member) and their respective successors and permitted assigns.

**18.13 Costs**

Each Party will pay its own legal and other costs and expenses of negotiating this Agreement and in preparing, drafting, executing and performing its obligations under this Agreement, any amendments to this Agreement or any agreement replacing this Agreement.

**18.14 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. A Party may deliver an executed copy of this Agreement by email or other electronic means.

*[Signature page to follow]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the Commencement Date.

**[OWNER]**

\_\_\_\_\_  
Signature of duly authorized signatory

\_\_\_\_\_  
Full name of duly authorized signatory

***[Note: insert execution block of relevant Member]***

**[Member]**

\_\_\_\_\_  
Signature of duly authorized signatory

\_\_\_\_\_  
Full name of duly authorized signatory

\_\_\_\_\_  
Signature of duly authorized signatory

\_\_\_\_\_  
Full name of duly authorized signatory

**Schedule 1  
Agreement Particulars**

No.	Reference	Description	Particular
1	Section 1.1	ADA RFP	the document entitled Request for Proposals, Alliance Development Agreement issued by the Owner on [Insert Date].
2		Owner's contact details	Address:  Email:  Attention:
3		Proponent's contact details	Member:  Address:  Email:  Attention:  Member:  Address:  Email:  Attention:  Member:  Address:  Email:  Attention:

			<p>Member:</p> <p>Address:</p> <p>Email:</p> <p>Attention:</p>
4	Section 1.1	Owner's Representative	a representative nominated by the Owner, from time to time, in writing to the Proponent for the purposes of Section 4.2.
5	Section 1.1	Proponent's Contact Representative	the person who under the RFQ for the Proponent was the "Respondent's Representative" (as such term is used in the RFQ), as such person may be changed from time to time by the Proponent by written notice to the Owner, and who is fully authorized to represent the Proponent in any and all matters related to this Agreement.
6	Section 1.1	Request for Qualifications	the document entitled Request for Qualifications [Name of RFQ] issued by the Owner on [Date of Issuance].
7	Section 1.1	Submission Date	the date for submission by the Proponent of the Project Proposal to the Owner, being the date stated in the ADP RFP, or the date resulting from any extension of that date

			by the Owner.
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**Schedule 2**  
**Final Draft Project Alliance Agreement**

**Schedule 3**  
**Alliance Mobilization Agreement**

**Schedule 4  
Key Individuals**