

PORT MANN/HIGHWAY 1 PROJECT

**SCHEDULE 2
REPRESENTATIVES, REVIEW PROCEDURE AND CONSENT PROCEDURE**

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PART 1

AUTHORITY'S REPRESENTATIVE

1.1 Appointment of Authority's Representative

- (a) The Authority has appointed the Authority's Representative to act as its agent in relation to the Project, including in relation to Design and Construction of the DB Work. The Authority's Representative shall be entitled to exercise the functions set out in Section 1.3 [Functions of Authority's Representative] of this Schedule.
- (b) During any period when there is no Authority's Representative, the functions which would otherwise be performed by the Authority's Representative shall be carried out by such other person as the Authority may designate by notice to the Constructor, and such other person shall be treated in all respects as the Authority's Representative under this Agreement during such period. The Authority shall use all reasonable efforts to give reasonable advance notice of any such designation to the Constructor where practicable.
- (c) Except as expressly stated in this Agreement, the Authority's Representative does not have any authority to relieve the Constructor of any of its obligations under this Agreement or any other Authority Project Document.
- (d) The Constructor and the Design Build Director, except as otherwise notified by the Authority to the Constructor and subject to Section 1.1(e) of this Schedule, are entitled to treat any act of the Authority's Representative which is authorized by this Agreement or any other Authority Project Document as being expressly authorized by the Authority, and shall not be required to determine whether any express authority has in fact been given.
- (e) Any decision by the Authority's Representative is specific to the circumstances to which it relates, and shall not be construed as binding on, or limiting any other decision to be made by, the Authority's Representative, whether in the same or similar circumstances or otherwise.
- (f) In the exercise of any of its functions the Authority's Representative may:
 - (i) refer any matter to the Authority or any other person contemplated in Section 2.3 [Referral by Authority's Representative] of this Schedule for advice or determination;
 - (ii) rely upon any advice received or determination made following a reference pursuant to Section 1.1(f)(i) of this Schedule;
 - (iii) rely on any other advice that the Authority's Representative considers necessary or appropriate in the circumstances; and
 - (iv) designate any other person to attend any inspection, test or other activity that is permitted to be attended by the Authority's Representative under the terms of this Agreement.
- (g) The Authority's Representative shall work together with the Design Build Director in the spirit of partnering and cooperation.

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1.2 Change of Authority's Representative

The Authority may at any time and from time to time by notice to the Constructor terminate the appointment of any Authority's Representative or appoint one or more substitute Authority's Representatives. Any such notice shall specify the effective date of such termination or substitution, and the Authority shall use all reasonable efforts to give reasonable advance notice of any such appointment to the Constructor where practicable.

1.3 Functions of Authority's Representative

The functions which may be performed by the Authority's Representative under this Agreement include the following:

- (a) monitor the Project, and the Constructor's performance of the DB Work in accordance with the DB Requirements, by any means, including the system of inspection, testing, surveys, certification, review and audits set out in this Agreement, including in Part 11 [Authority's Access, Monitoring and Step-In Rights], Schedule 4 [Design and Construction], Schedule 7 [Quality Management] and Schedule 17 [Records and Reports];
- (b) attend site and other progress and technical meetings (including in the company of such other Authority representatives, consultants, contractors and/or advisors as the Authority's Representative considers appropriate) and receive and review minutes and reports;
- (c) monitor and review the obtaining and, where applicable, renewal or extension by the Constructor of Permits pursuant to Section 4.18 [Permits], and the compliance by the Constructor with Laws, Permits and the Requirements of Interested Parties;
- (d) request Authority Changes, including Minor Works, in accordance with Section 7.1 [Authority Changes], receive and consider Constructor Proposals, including Minor Works, in accordance with Section 7.2 [Constructor Proposals], and negotiate and make all consequential decisions on behalf of the Authority, including countersign Change Certificates, under Schedule 11 [Changes] in respect of such Authority Changes and Constructor Proposals;
- (e) make and receive claims of Supervening Events pursuant to Part 8 [Supervening Events], and negotiate and make all consequential decisions on behalf of the Authority in respect of such claims;
- (f) monitor the performance by the Constructor of the Constructor's Environmental Obligations;
- (g) audit and monitor the Constructor's Quality Management System;
- (h) inspect and audit the Records;
- (i) monitor the performance by the Constructor of the First Nations Requirements;

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- (j) perform all such functions as may be ascribed to the Authority's Representative under this Agreement or any other Authority Project Document, or otherwise under the DB Requirements;
- (k) receive and deal with all matters submitted to the Review Procedure or the Consent Procedure pursuant to any provision of this Agreement or any other Authority Project Document or otherwise under the DB Requirements;
- (l) perform any other functions under this Agreement or any other Authority Project Document or otherwise under the DB Requirements, which are to be carried out by the Authority; and
- (m) perform such other functions in respect of this Agreement or any other Authority Project Document as the Authority may notify to the Constructor from time to time.

**PART 2
REVIEW PROCEDURE AND CONSENT PROCEDURE**

2.1 Review Procedure

Any proposed document (including any Design Data) or proposed course of action on the part of the Constructor which, under the terms of this Agreement or any other Authority Project Document, either:

- (a) is expressly required to be submitted to the Authority's Representative pursuant to the Review Procedure or to the Authority's Representative for review in accordance with or pursuant to the Review Procedure; or
- (b) unless the parties agree otherwise, in the case of Schedule 4 [Design and Construction], Schedule 6 [Environmental Obligations] or Schedule 7 [Quality Management], is required to be submitted to the Authority's Representative for consideration, without specifying whether such submission is to be under the Review Procedure or the Consent Procedure,

shall be submitted to the Authority's Representative accompanied by the proposed document (including any Design Data) or statement of a proposed course of action, and the following procedures (together, the "**Review Procedure**") shall apply (provided, in the case of any document or proposed course of action submitted to the Review Procedure in accordance with the Design and Certification Procedure, any specific procedures set out therein shall also apply).

- (c) The Authority's Representative shall as soon as practicable and, subject to Section 2.4 [Request for Further Information] of this Schedule, in any event within 14 days of actual receipt thereof (or such other period as may be specified in this Agreement or other Authority Project Document, as the case may be, for any particular case) return one copy of the relevant submission document endorsed "received" or (subject to Sections 2.5 [Objection or Rejection in Authority's Discretion], 2.6 [General Grounds for Objection or Rejection] and 2.7 [Specific Grounds for Objection or Rejection] of this Schedule as applicable in each case) "received with comments" or "comments". In the case of any submission document returned endorsed "received with comments" or "comments", the

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Authority's Representative shall also provide with such returned document such comments.

- (d) The Constructor may proceed to implementation in the case of a submission document endorsed "received".
- (e) The documents or proposed course of action accompanying a submission document endorsed "received with comments" shall be amended by the Constructor in accordance with such comments (but need not be re-submitted to the Authority's Representative except by their issuance to the Authority's Representative pursuant to Section 2.1(j) of this Schedule) and once so amended the Constructor shall proceed to implementation, unless the Constructor disputes that any such comment is on grounds permitted by Sections 2.6 [General Grounds for Objection or Rejection] or 2.7 [Specific Grounds for Objection or Rejection] of this Schedule if applicable to such submission document, in which case either the Constructor or the Authority's Representative may refer the matter to the Dispute Resolution Procedure within 10 days of the Constructor's receipt of such comments. If it is then resolved in accordance with the Dispute Resolution Procedure that any such comment was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed "received", and otherwise such submission document shall thereupon be revised by the Constructor pursuant to this Section.
- (f) The documents or proposed course of action accompanying a submission document endorsed "comments" shall be revised by the Constructor and re-submitted to the Authority's Representative pursuant to this Section within 14 days of the Constructor's receipt of such comments (or such other time period as agreed in writing by the Authority's Representative), together with the relevant submission document, unless the Constructor disputes that any such comment is on grounds permitted by Sections 2.6 [General Grounds for Objection or Rejection] or 2.7 [Specific Grounds for Objection or Rejection] of this Schedule if applicable to such submission document, in which case either the Constructor or the Authority's Representative may refer the matter to the Dispute Resolution Procedure within 10 days of the Constructor's receipt of such comments. If it is then resolved in accordance with the Dispute Resolution Procedure that any such comment was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed "received", and otherwise such submission document shall thereupon be revised by the Constructor and re-submitted to the Authority's Representative pursuant to this Section.
- (g) If, subject to Section 2.4 [Request for Further Information] of this Schedule, the Authority's Representative fails to return any such submission document (including any re-submitted submission document) duly endorsed within 14 days of actual receipt thereof (or such other period as may be specified in this Agreement or other Authority Project Document, as the case may be, for any particular case), then it shall be deemed to have returned such submission document to the Constructor marked "received".
- (h) A reference in this Agreement or other Authority Project Document to there being "no objection" under the Review Procedure in relation to a particular matter means that such matter has been submitted in accordance with the provisions of this Section and returned (or deemed returned) with an endorsement of "received" or returned with an endorsement

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“received with comments”, in the latter case the matter having been amended in accordance with such comments.

- (i) Documents or courses of action that are the subject of a submission pursuant to this Section and are returned (or deemed returned) endorsed:
 - (i) “received” shall be adhered to; or
 - (ii) “received with comments” shall, once amended in accordance with the comments, be adhered to,

except to the extent that there has been no objection to any subsequent change or amendment thereto submitted in accordance with this Section.

- (j) The Constructor shall ensure that one copy and electronic versions of all documents, including all drawings, numbered appendices, specifications and schedules, that have been modified by the Constructor in accordance with the Review Procedure are issued to the Authority’s Representative prior to the commencement of any DB Work to which such documents relate, except in the circumstances provided for in Section 2.9 [Early Commencement of DB Work] of this Schedule.
- (k) Once all applicable disputes arising in respect of any decision made by the Authority’s Representative under the Review Procedure have been resolved in accordance with this Section, such decision shall, subject only to Section 2.13 [Review, Approval, Inspection and Audit by the Authority], be final.

2.2 Consent Procedure

Any proposed document or proposed course of action on the part of the Constructor which, under the terms of this Agreement or other Authority Project Document, is required to be submitted to the Authority’s Representative pursuant to the Consent Procedure or to the Authority’s Representative for consent in accordance with or pursuant to the Consent Procedure, shall be submitted to the Authority’s Representative, accompanied by the proposed document or statement of a proposed course of action, and the following procedures (together, the “**Consent Procedure**”) shall apply.

- (a) The Authority’s Representative shall as soon as practicable and, subject to Section 2.4 [Request for Further Information] of this Schedule, in any event within 30 days of actual receipt thereof (or such other period as may be specified in this Agreement or other Authority Project Document, as the case may be, for any particular case) return one copy of the relevant submission document endorsed “accepted” or (subject to Sections 2.5 [Objection or Rejection in Authority’s Discretion], 2.6 [General Grounds for Objection or Rejection] and 2.7 [Specific Grounds for Objection or Rejection] of this Schedule as applicable in each case) “rejected”. In the case of any submission document returned endorsed “rejected”, the Authority’s Representative shall also provide with such returned document the grounds for such rejection.
- (b) The Authority’s Representative shall have the right at its option to impose conditions to the acceptance of a submission document pursuant to Section 2.2(a) of this Schedule, which conditions shall be required to be reasonable having regard to the relevant

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circumstances save in the case of an acceptance to which Section 2.5 [Objection or Rejection in Authority's Discretion] of this Schedule applies.

- (c) The Constructor may proceed to implementation in the case of a submission document endorsed "accepted".
- (d) Unless otherwise specified in this Agreement or other Authority Project Document, as the case may be, for any particular case, the documents or proposed course of action accompanying a submission document endorsed "rejected" shall not be implemented by the Constructor unless revised by the Constructor and re-submitted to the Authority's Representative pursuant to this Section within 14 days of the Constructor's receipt of such comments (or such other time period as agreed in writing by the Authority's Representative) together with the relevant submission document and it is subsequently returned endorsed "accepted", unless the Constructor disputes that any such rejection (including a deemed rejection pursuant to Section 2.2(e) of this Schedule) is on grounds permitted by Sections 2.6 [General Grounds for Objection or Rejection] or 2.7 [Specific Grounds for Objection or Rejection] of this Schedule if applicable to such submission document, in which case either the Constructor or the Authority's Representative may refer the matter to the Dispute Resolution Procedure within 10 days of the Constructor's receipt of such rejection. If it is then resolved in accordance with the Dispute Resolution Procedure that any such rejection or deemed rejection:
 - (i) was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed "accepted", and the rejection or deemed rejection of such submission document on grounds that were not such permitted grounds shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply; or
 - (ii) was on such permitted grounds, then such submission document shall not be implemented by the Constructor unless revised by the Constructor and re-submitted to the Authority's Representative pursuant to this Section and subsequently returned endorsed "accepted".
- (e) If, subject to Section 2.4 [Request for Further Information] of this Schedule, the Authority's Representative fails to return any such submission document (including any re-submitted submission document) duly endorsed within 30 days of actual receipt thereof (or such other period as may be specified in this Agreement or other Authority Project Document, as the case may be, for any particular case), then it shall be deemed to have returned such submission document to the Constructor marked "rejected", and such rejection shall be deemed to have been made by the Authority's Representative in reliance upon grounds set out in Sections 2.5 [Objection or Rejection in Authority's Discretion], 2.6 [General Grounds for Objection or Rejection] and 2.7 [Specific Grounds for Objection or Rejection] of this Schedule as applicable to such submission document.
- (f) Documents or courses of action that are the subject of a submission pursuant to this Section and are returned (or deemed returned) endorsed "accepted", including any conditions imposed by the Authority's Representative under Section 2.2(b) of this Schedule, shall be adhered to, except to the extent that there has been "acceptance" of any subsequent change or amendment thereto submitted in accordance with this Section.

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- (g) The Constructor shall ensure that one copy and electronic versions of all documents, including all drawings, numbered appendices, specifications and schedules, that have been modified by the Constructor in accordance with the Consent Procedure are issued to the Authority's Representative prior to the commencement of any DB Work to which such documents relate.
- (h) Once all applicable disputes arising in respect of any decision made by the Authority's Representative under the Consent Procedure have been resolved in accordance with this Section, such decision shall, subject only to Section 2.13 [Review, Approval, Inspection and Audit by the Authority], be final.

2.3 Referral by Authority's Representative

The Authority's Representative may, in reviewing and dealing with any matter, refer such matter to the Authority or any of its employees, agents, advisors, consultants, or contractors or subcontractors of any tier, and any review, consideration, decision, belief, opinion or determination referred to herein in relation to the Authority's Representative may be that of the Authority's Representative or any such person upon whose review, consideration, decision, belief, opinion or determination the Authority's Representative relies. The Authority's Representative may also, by written notice to the Constructor from time to time, designate an employee, advisor, consultant, contractor or other person to whom any specific submission or class of submissions is to be delivered by the Constructor and the Constructor shall comply with any such designation in making submissions under the Review Procedure and the Consent Procedure, as applicable, and, where a submission is delivered in accordance with any such designation, shall provide the Authority's Representative with a copy of the transmittal of the submission to the designated person at the same time as the submission is delivered to that person.

2.4 Request for Further Information

- (a) The Authority's Representative, acting reasonably and without unreasonable delay, may request in writing, and if so requested the Constructor shall promptly and in any event no later than 15 Business Days following such request submit, any further or other information, data and documents which may be required by the Authority's Representative for a full appreciation of a submission under Section 2.1 [Review Procedure] or Section 2.2 [Consent Procedure] of this Schedule and its implications, and shall take all such steps as may be required to satisfy the Authority's Representative that the proposed document or proposed course of action complies with this Agreement or other Authority Project Document, as the case may be, and is appropriate.
- (b) If the Authority's Representative makes a written request for further or other information, data and/or documents under this Section, then the time periods referred to in Section 2.1 [Review Procedure] or Section 2.2 [Consent Procedure] of this Schedule, as the case may be, shall not commence to run until such time as the Constructor has submitted the requested information, data and/or documents to the Authority's Representative in satisfaction of the request.

2.5 Objection or Rejection in Authority's Discretion

Subject to Sections 2.6 [General Grounds for Objection or Rejection] and 2.7 [Specific Grounds for Objection or Rejection] of this Schedule, or as may otherwise be expressly provided in this Agreement

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or other Authority Project Document, the Authority's Representative may make comments in relation to or reject, as applicable, any Review Procedure or Consent Procedure submission in its discretion.

2.6 General Grounds for Objection or Rejection

For each submission listed in Section 2.7 [Specific Grounds for Objection or Rejection] of this Schedule, or any other submission in respect of which it is expressly provided in this Agreement or other Authority Project Document that the Authority's Representative will act reasonably, the Authority's Representative may, acting reasonably, make comments in relation to or reject, as applicable, any Review Procedure or Consent Procedure submission on any of the following grounds:

- (a) that the Constructor has not provided all information, data and documents required (including any information, data and documents required by the Authority's Representative pursuant to Section 2.4 [Request for Further Information] of this Schedule) in respect of such submission;
- (b) that the adoption of the proposed document or proposed course of action would or might reasonably be expected to:
 - (i) conflict or be inconsistent with the statutory, public or other duties or functions of the Authority, the Province or BCTFA;
 - (ii) conflict with or be inconsistent with any provisions of this Agreement or any other Authority Project Document; or
 - (iii) give rise to a breach, or be in breach, of any Laws; or
- (c) any other reasonable grounds, provided that all of the specific grounds set out in Section 2.7 [Specific Grounds for Objection or Rejection] of this Schedule shall be deemed to be reasonable grounds,

and the Authority's Representative shall always be entitled to make such comments or reject, as the case may be, on the foregoing grounds notwithstanding any other provision in this Agreement or any other Authority Project Document.

2.7 Specific Grounds for Objection or Rejection

Without limiting the generality of Section 2.6 [General Grounds for Objection or Rejection] of this Schedule, it shall be reasonable for the Authority's Representative to make comments in relation to or reject, as applicable, the following Review Procedure or Consent Procedure submissions on any of the following grounds:

- (a) [Intentionally Deleted]
- (b) [Intentionally Deleted]
- (c) in relation to a Reinstatement Plan submitted to the Authority's Representative pursuant to Section 6.16 [Reinstatement Plan], on any of the following grounds:

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- (i) that the Reinstatement Work described in the Reinstatement Plan is not adequate to restore the Project Infrastructure and the Project Site to substantially the same condition they were in prior to the occurrence of the relevant damage or destruction (subject, where applicable, to any Authority Change) with a minimum of traffic disruption, delay or inconvenience to users of the Concession Highway, or are not in accordance with the DB Requirements and Good Industry Practice;
- (ii) that the estimate of the cost to carry out the Reinstatement Work set out in the Reinstatement Plan and/or the Constructor's determination of whether or not there are sufficient funds available to the Constructor from all sources to allow the Constructor to complete the Reinstatement Work;
- (iii) that the schedule for the execution of the Reinstatement Work set out in the Reinstatement Plan is not a reasonable schedule having regard to all relevant circumstances including the Requirements of Interested Parties and the public interest in restoring the Project Infrastructure and the Project Site to a condition safe for use by the public without traffic restrictions as soon as reasonably possible, or would or might reasonably be expected to adversely affect the performance by the Constructor of its obligations under Section 1.1 [Diligent Performance of DB Work] of Schedule 3;
- (iv) that the implementation of the Reinstatement Plan would or might reasonably be expected to materially and adversely affect any right or obligation of the Authority under this Agreement or any other Project Document, or the ability of the Authority to enforce any such right or to perform any of its obligations under this Agreement or any other Project Document, or the ability of the Authority, the Province, BCTFA or any other Governmental Authority to carry out any statutory or public duty or function;
- (v) without limiting Section 2.7(c)(iv) of this Schedule, that the implementation of the Reinstatement Plan would or might reasonably be expected to increase any liability of the Authority, whether actual or contingent, present or future, known or unknown, including any liability under Schedule 13 [Compensation on Termination] or Schedule 11 [Changes] (and causing an obligation or liability of the Authority to occur earlier, or increasing the risk of a contingent obligation or liability of the Authority occurring at all, or occurring earlier, shall be determined to be an increase in the liability of the Authority);
- (vi) that the implementation of the Reinstatement Plan would or might reasonably be expected to adversely affect the safety of users of the Concession Highway or others;
- (vii) that the implementation of the Reinstatement Plan would require amendments to the Traffic Management Plan in respect of which the Authority's Representative would be entitled to object pursuant to either or both Section 2.6 [General Grounds for Objection or Rejection] and Section 2.7(s) of this Schedule; or

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- (viii) that the implementation of the Reinstatement Plan would not be in accordance with the DB Requirements or would be inconsistent with or result in non-compliance with any other provision of this Agreement;
- (d) in relation to any submittal for payment for Reinstatement Work submitted to the Authority's Representative pursuant to Section 6.18(c) or 6.18(d), on any of the following grounds:
 - (i) in the case of a submittal under Section 6.18(c)(i) or 6.18(d)(i), that the amount claimed, when added to any deductible amounts applicable to the damage or loss in respect of which the Insurance Proceeds (as defined therein) were payable, together with all amounts previously claimed and paid out in respect of the Reinstatement Work, exceed the value of the Reinstatement Work completed as at the date of the invoice referred to in Section 6.18(c)(i)(A) or the date of the certificate referred to in Section 6.18(d)(i)(A), whichever is applicable;
 - (ii) in the case of a submittal under Section 6.18(c)(ii) or 6.18(d)(ii), that the Reinstatement Work has not been Totally Completed in accordance with the DB Requirements;
 - (iii) in the case of any such submittal, that there has been non-compliance in any material respect with the Design and Certification Procedure or any of the DB Requirements, or any non-compliance with any Laws, in connection with the execution of the Reinstatement Work that, in either case, has not been rectified;
 - (iv) in the case of any such submittal, that there is any other default in the execution of the Reinstatement Work in accordance with the requirements of this Agreement (including the relevant Reinstatement Plan); or
 - (v) in the case of a submittal under Section 6.18(c)(i) or 6.18(d)(i), that the Insurance Proceeds (as defined therein) remaining in the hands of the Province following payment of the amount claimed would be insufficient to cover the reasonably estimated remaining cost to complete the Reinstatement Work;
- (e) in relation to any Constructor Proposal for Temporary Works submitted to the Authority's Representative pursuant to Section 7.2 [Constructor Proposals], on the grounds that that the conduct of the Temporary Works in accordance with such Constructor Proposal may endanger public or worker safety or the structural integrity of any related primary Structures or any adjacent Structures;
- (f) in relation to the initial or an amended Privacy Code submitted to the Authority's Representative pursuant to Section 15.2(c), on the grounds that the Privacy Code does not comply with the requirements of all applicable Laws or would not comply with or would be inconsistent with the requirements set out in Schedule 23 [Privacy Protection] or any other provisions of this Agreement;
- (g) [Intentionally Deleted]
- (h) [Intentionally Deleted]

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- (i) in relation to the initial or an amended Complaints Protocol submitted to the Authority's Representative pursuant to Section 18.2(b), on the grounds that the proposed Complaints Protocol or amendment will not meet the requirements of the Provincial Ombudsman or Good Industry Practice or the reasonable requirements of the Authority, or would not comply with or would be inconsistent with the requirements set out in Section 18.2(b) or any other provisions of this Agreement;
- (j) in relation to a proposed change in the appointment of any Key Individual submitted to the Authority's Representative pursuant to Section 3.3(b) of this Schedule, on any of the following grounds:
 - (i) that such appointment is not in accordance with Good Industry Practice;
 - (ii) that the person intended to be so appointed does not have the independence and integrity to carry out and fulfil the functions of such appointment;
 - (iii) that the person intended to be so appointed does not meet the requirements stipulated for that role in this Agreement or is not, in the reasonable opinion of the Authority's Representative, suitably qualified or does not have sufficient experience, expertise or resources to properly fulfil the functions of such appointment;
 - (iv) that the person intended to be so appointed or any person Controlled by such person is a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1; or
 - (v) that such appointment shall have the effect of being likely to materially prejudice the Authority's rights and/or entitlements under this Agreement or the effectiveness of enforcement of such rights and/or entitlements;
- (k) in relation to an amended Project Schedule submitted to the Authority's Representative pursuant to Section 1.2 [Project Schedule] of Schedule 3, on the grounds that the amended Project Schedule:
 - (i) is not practicable;
 - (ii) would or might reasonably be expected to, if complied with, not comply with or be inconsistent with the requirements set out in Section 1.2 [Project Schedule] of Schedule 3; or
 - (iii) would or might reasonably be expected to, if complied with, breach any other obligation of the Constructor under this Agreement;
- (l) in relation to the initial or an amended Works Schedule submitted to the Authority's Representative pursuant to Section 1.3 [Works Schedule] of Schedule 3, on the grounds that the initial or amended Works Schedule (as the case may be):
 - (i) is not practicable;

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- (ii) would or might reasonably be expected to, if complied with, not comply with or be inconsistent with the requirements set out in Section 1.3 [Works Schedule] of Schedule 3;
- (iii) would or might reasonably be expected to, if complied with, breach any other obligation of the Constructor under this Agreement; or
- (iv) would or might reasonably be expected to, if complied with, be inconsistent with the Requirements of Interested Parties;
- (m) in relation to a proposed Design Management Plan submitted to the Authority's Representative pursuant to Section 1.1 [Submission of Design Management Plan] of Part 3 of Schedule 4, on the grounds that the proposed Design Management Plan does not include the components and information (including with respect to submissions of drawings and other Design Data and design reviews, meetings, audits and progress reports) required by, or otherwise would not comply with or would be inconsistent with the requirements set out in, the Design and Construction Requirements;
- (n) in relation to a TAF or an addendum to a TAF submitted to the Authority's Representative pursuant to Section 1.4 [TAF Submission Requirements] of Part 3 of Schedule 4, on any of the following grounds:
 - (i) that the TAF is incomplete;
 - (ii) that the proposals in the TAF are not in accordance with the DB Requirements or the other provisions of this Agreement; or
 - (iii) that the Design Data included with the TAF is not in accordance with Good Industry Practice;
- (o) in relation to Design Data submitted to the Authority's Representative pursuant to the Design and Certification Procedure, on the grounds that such Design Data:
 - (i) is not in accordance with the DB Requirements or with Good Industry Practice;
 - (ii) if implemented would or might reasonably be expected to adversely affect the safety of users of the Concession Highway or others; or
 - (iii) does not comply with any other provision of this Agreement;
- (p) in relation to a proposal for a category for a Structure submitted to the Authority's Representative pursuant to Section 3.4 [Category Proposal] of Part 3 of Schedule 4, on the grounds that the proposal is not consistent with the category definitions set out in Section 3.2 [Categories of Structures] of Part 3 of Schedule 4;
- (q) in relation to a proposal for the Checking Team submitted to the Authority's Representative pursuant to Section 3.6 [Checking Team] of Part 3 of Schedule 4, on any of the following grounds:

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- (i) that the proposed Checking Team is not independent of the Designer and the Constructor;
 - (ii) that the proposed Checking Team does not have sufficient knowledge and experience relating to the type of Structure to be examined properly to perform the check; or
 - (iii) that, in respect of the proposed terms and conditions of employment of such proposed Checking Team, such proposed terms and conditions are not in accordance with Good Industry Practice or the provisions of this Agreement;
- (r) in relation to a proposed Lane Closure, Full Closure, Major Stoppage or variation to the Restricted Periods submitted to the Authority's Representative pursuant to Part 4 [Traffic Management Requirements] of Schedule 4, on any of the following grounds:
- (i) that such proposal is not in accordance with the DB Requirements, the Traffic Management Plan or any other provisions of this Agreement;
 - (ii) that there has been material non-compliance by the Constructor with the requirements of this Agreement regarding liaison between the Constructor and any other person, including any Interested Party, with respect to Traffic Management;
 - (iii) that such proposal would or might reasonably be expected to be inconsistent with any statutory or public duty or function (including as a highway authority, street authority or traffic authority) of the Authority, the Province, BCTFA or any other Governmental Authority;
 - (iv) that the rescheduling of such proposed Lane Closure, Full Closure, Major Stoppage or variation to the Restricted Periods, as the case may be, would or might reasonably be expected to materially ameliorate any adverse effect thereof on traffic flow on any highways outside of the Project Site providing access to and from the Project Site (whether or not the Authority, the Province or BCTFA is the highway authority for such other highways); or
 - (v) that the duration of the proposed Lane Closure, Full Closure, Major Stoppage or variation to the Restricted Periods, as the case may be, exceeds the period reasonably required for the carrying out of the relevant components of the DB Work to which it relates;
- (s) in relation to the initial or an amended Traffic Management Plan (including any initial or amended sub-plan included in the Traffic Management Plan) submitted to the Authority's Representative pursuant to Section 4.1 [General Requirements] of Part 4 of Schedule 4, on any of the following grounds:
- (i) that the proposed Traffic Management Plan or amendment would not comply with or would be inconsistent with the requirements set out in the Traffic Quality Management Plan or any other DB Requirements or relevant provisions of this Agreement;

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- (ii) that there has been non-compliance in any material respect by the Constructor with the requirements of this Agreement regarding liaison between the Constructor and any other person, including any Interested Party, with respect to Traffic Management;
- (iii) that the proposed Traffic Management Plan or amendment is inconsistent with any statutory or public duty or function (including as a highway authority, street authority or traffic authority) of the Authority, the Province, BCTFA or any other Governmental Authority; or
- (iv) that the proposed Traffic Management Plan or amendment is not in accordance with Good Industry Practice or would or might reasonably be expected to be prejudicial to the safety of users of the Concession Highway;
- (t) [Intentionally Deleted]
- (u) in relation to the initial or an amended Environmental Management Plan submitted to the Authority's Representative pursuant to Section 2.7 [Environmental Management Plan] of Schedule 6, on any of the following grounds:
 - (i) that the proposed Environmental Management Plan or amendment would not comply with or would be inconsistent with the requirements set out in Schedule 6 [Environmental Obligations]; or
 - (ii) that management of the Project in accordance with the proposed Environmental Management Plan or amendment would be inconsistent with any of the Constructor's obligations under, or any other provision of, this Agreement or would not be conducive to achieving compliance with the Constructor's Environmental Obligations and the DB Requirements or otherwise would or might reasonably be expected to not result in the delivery of the Project in the manner and to the quality and standards contemplated by this Agreement;
- (v) in relation to any Quality Documentation or any amendment to any Quality Documentation submitted to the Authority's Representative pursuant to Schedule 7 [Quality Management], on the grounds that such Quality Documentation or amendment, or the Quality Management System which they reflect, would not comply with or would be inconsistent with the requirements set out in Schedule 7 [Quality Management] or any other provision of this Agreement;
- (w) [Intentionally Deleted]
- (x) in relation to any plan or any amendment to any plan submitted to the Authority's Representative pursuant to Schedule 9 [Communication and Consultation] (a "**Communication Plan**"), on the grounds that such Communication Plan or amendment would not comply with or would be inconsistent with the requirements set out in Schedule 9 [Communication and Consultation] or any other provisions of this Agreement;

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- (y) in relation to the initial or an amended Records Management Protocol submitted to the Authority's Representative pursuant to Section 1.3 [Records Management Protocol] of Schedule 17, on the grounds that such initial or amended Records Management Protocol (as the case may be) would not be in accordance with Good Industry Practice or the reasonable requirements of the Authority, or would not comply with or would be inconsistent with the requirements set out in Part 1 [Records] of Schedule 17 or any other provisions of this Agreement;
- (z) [Intentionally Deleted]
- (aa) in relation to a proposed amendment of the First Nations Requirements submitted to the Authority's Representative pursuant to Section 1.2 [Amendment of First Nations Requirements] of Schedule 22, on the grounds that the proposed amendment would not comply with or would be inconsistent with the requirements set out in Schedule 22 [First Nations] or any other provisions of this Agreement.

2.8 Optional Standards

- (a) If any Ministry Standards or other standards or specifications which are incorporated into the DB Requirements contain options from which a choice can be made, any choice by the Constructor of any one option set out therein shall satisfy the DB Requirements in that regard, and the Authority's Representative shall not object to the choice of such option on that basis, unless:
 - (i) such Ministry Standards or other standards or specifications comprise seismic design requirements, in which case the Constructor shall comply with the most conservative solution so that the relevant aspect of the DB Work is carried out to the highest and safest standard from among the available options; or
 - (ii) any such option is otherwise excluded or limited by the terms of the DB Requirements.
- (b) If following a choice by the Constructor between Ministry Standards or other standards or specifications in accordance with Section 2.8(a) of this Schedule, as expressed or reflected in a submission to the Authority's Representative:
 - (i) the Constructor proposes to substitute another such option, the Constructor shall make a Constructor Proposal under Section 7.2 [Constructor Proposals]; or
 - (ii) the Authority's Representative requires another such option to be adopted which the Constructor has not chosen, the Authority's Representative shall request an Authority Change under Section 7.1 [Authority Changes].

2.9 Early Commencement of DB Work

- (a) The Constructor may proceed with a component of the DB Work which is the subject of a submission under the Review Procedure prior to the completion of the Review Procedure in accordance with Section 2.1 [Review Procedure] of this Schedule, provided that:

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- (i) in the case of any Construction Activities, the requirements set out in Section 2.13 [No Construction] of Part 3 of Schedule 4 shall have been satisfied in respect of such component of the DB Work; and
 - (ii) in all cases, any such action shall be taken at the sole risk of the Constructor and the Constructor shall in any event remain responsible for complying with the outcome of the Review Procedure, once it is completed in accordance with Section 2.1 [Review Procedure] of this Schedule, at the Constructor's sole cost and expense, including any and all reconstruction, alterations, modifications or other remedial work to DB Work already completed as may be necessary to comply with such outcome.
- (b) In no circumstances shall the Constructor proceed with any component of the DB Work in respect of which a submission has been made under the Consent Procedure prior to the completion of the Consent Procedure in accordance with Section 2.2 [Consent Procedure] of this Schedule.

PART 3

DESIGN BUILD DIRECTOR, KEY INDIVIDUALS AND OWNERSHIP

3.1 Design Build Director

- (a) The Constructor shall appoint a competent and qualified person to act as the Design Build Director and therefore its agent in connection with the DB Work. Such appointment shall be subject to acceptance by the Authority's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld.
- (b) The Design Build Director shall:
 - (i) serve as the single point of contact for the Constructor to the Authority and the Authority's Representative for all purposes under this Agreement and all other Authority Project Documents;
 - (ii) be an employee of, or an independent contractor directly engaged by, the Constructor;
 - (iii) reside in the vicinity of the Project Site and be located at the Project Site; and
 - (iv) devote all working time, energy and skill to the Project and to carrying out the duties of the Design Build Director.
- (c) The Design Build Director shall be directly responsible for and fully engaged in, and shall not, except in accordance with Section 3.2 [Change of Design Build Director], abdicate or delegate to any other employee or representative of the Constructor the performance of the Constructor's obligations under this Agreement and the other Authority Project Documents and all aspects of the DB Work, including:
 - (i) the stewardship of the Constructor and of the DB Work; and

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- (ii) the contract management of any Subcontractors contracting directly with the Constructor, and the oversight of the contract management of all other Subcontractors, including addressing and communicating to the Authority's Representative any issues raised by the Subcontractors in respect of the DB Work.
- (d) The Design Build Director shall have full authority to act on behalf of the Constructor for all purposes of the DB Work, and the Authority and the Authority's Representative:
 - (i) are entitled to treat any act of the Design Build Director in connection with this Agreement or any other Authority Project Document as being expressly authorized by the Constructor, and shall not be required to determine whether any express authority has in fact been given; and
 - (ii) may refuse to recognize any act in connection with this Agreement or any other Authority Project Document of any employee or representative of the Constructor other than the Design Build Director.
- (e) The Design Build Director shall work together with the Authority's Representative in the spirit of partnering and cooperation.

3.2 Change of Design Build Director

- (a) The Constructor shall appoint, with the prior acceptance of the Authority's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld, a substitute Design Build Director to serve in the place and stead of the Design Build Director during any temporary absence of the Design Build Director to ensure that at all times during the DB Term there is an accepted Design Build Director available and located at the Project Site.
- (b) The appointment of the Design Build Director shall not be terminated for any reason without prior notice to and the prior acceptance, not to be unreasonably withheld, of the Authority's Representative pursuant to the Consent Procedure to both such termination and to the appointment of a substitute Design Build Director, provided that, in the case of death or serious illness of the Design Build Director, such notice to and acceptance by the Authority's Representative shall take place as soon as practicable upon the Design Build Director ceasing to act.

3.3 Key Individuals

- (a) The Constructor represents to the Authority that the following are the Key Individuals for the Project as at the Effective Date:
 - (i) Design Manager: [REDACTED]
 - (ii) Environmental Manager: [REDACTED] and
 - (iii) Traffic Manager: [REDACTED]

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- (b) For each of the Key Individuals, such Key Individual shall:
- (i) be an employee of, or an independent contractor directly engaged by, the Constructor;
 - (ii) report directly to the Design Build Director;
 - (iii) be specifically designated for the purpose of such role; and
 - (iv) be instructed and enabled by the Constructor to act in a fair and impartial manner in carrying out such role,

and the Constructor shall not, without the prior acceptance of the Authority's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld:

- (v) change any such Key Individual or any such Key Individual's job specification or responsibilities;
 - (vi) permit any such Key Individual to be employed or engaged, as the case may be, by any person in connection with the DB Work other than the Constructor, including by any Subcontractor; or
 - (vii) permit any such Key Individual to be located at any location other than the Project Site.
- (c) [Intentionally Deleted]
- (d) The Key Individuals shall be required at all times during the DB Term.
- (e) During the Construction Period, no one person may act as more than one Key Individual at any one time.