

**SCHEDULE 15  
DISPUTE RESOLUTION PROCEDURE**

<b>DEFINITIONS .....</b>	<b>1</b>
Definitions.....	1
<b>GENERAL.....</b>	<b>1</b>
Resolution of Disputes.....	1
No Joinder.....	2
Survival.....	2
<b>REFERRAL TO EXPERT .....</b>	<b>2</b>
Referral to Expert .....	2
Expert Panels .....	3
Retention Payments to Expert Panel Members.....	3
No Conflict for Expert .....	3
Selection of Expert .....	4
Procedure for Expert Review.....	5
Decision of Expert .....	6
Confidentiality of Expert .....	6
Costs of Expert Review.....	6
Decision of Expert .....	6
<b>[INTENTIONALLY NOT USED] .....</b>	<b>7</b>
<b>INDEPENDENT CERTIFIER.....</b>	<b>7</b>
Decisions of Independent Certifier.....	7
<b>NO REFERRAL TO EXPERT.....</b>	<b>7</b>
Decisions of Independent Certifier.....	7
<b>[INTENTIONALLY NOT USED] .....</b>	<b>7</b>
<b>REFERRAL TO ARBITRATION.....</b>	<b>7</b>
Referral to Arbitration .....	7
Initiation of Court Proceedings rather than Arbitration .....	8
Commercial Arbitration Act .....	9
Appointment of Arbitrator .....	9
No Conflict for Arbitrator .....	9
Qualifications of Arbitrator .....	9
No Discovery .....	9
Meetings and Hearings of Arbitrator.....	9
Admissibility of Prior Decisions.....	10
Decision of Arbitrator .....	10
Arbitrator’s Powers.....	10
Costs of Arbitration .....	11
<b>COURT PROCEEDINGS.....</b>	<b>11</b>
Court Proceedings.....	11
<b>CONTINUING PERFORMANCE.....</b>	<b>12</b>
Compliance with Agreement .....	12
Payment Disputes.....	12

**EVERGREEN LINE RAPID TRANSIT PROJECT  
PROJECT AGREEMENT  
SCHEDULE 15: DISPUTE RESOLUTION PROCEDURE**

**Execution**

**Part 1**

**DEFINITIONS**

**Part 1.1 Definitions**

In this Schedule, in addition to the definitions set out in Schedule 1 [Definitions and Interpretation], and unless otherwise specified or the context otherwise requires, the following words and expressions have the following meanings:

“**Arbitration Dispute Notice**” has the meaning given in Section 8.1(a) of this Schedule.

“**Arbitrator**” has the meaning given in Section 8.5 of this Schedule.

“**Design and Construction Panel**” has the meaning given in Section 3.2(a)(i) of this Schedule.

“**Expert**” has the meaning given in Section 3.1 of this Schedule.

“**Expert Dispute Notice**” has the meaning given in Section 3.1 of this Schedule.

“**General Panel**” has the meaning given in Section 3.2(a)(ii) of this Schedule.

“**Initiating Party**” has the meaning given in Section 8.1(a) of this Schedule.

“**Panel**” has the meaning given in Section 3.2(a) of this Schedule.

“**Primary Contractor’s Designate**” means the person designated by the Primary Contractor to resolve a dispute.

“**Protest of Decision**” means a written challenge to a decision made by the Expert.

“**Province’s Designate**” means the person designated by the Province to resolve a dispute.

“**Responding Party**” has the meaning given in Section 8.1(a) of this Schedule.

**Part 2**

**GENERAL**

**Part 2.1 Resolution of Disputes**

- (a) Each of the Province and the Primary Contractor agrees that it shall, at all times, provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the resolution of any dispute and make bona fide efforts to:
  - (i) resolve by amicable negotiations any and all disputes arising between the Province and the Primary Contractor;
  - (ii) resolve all disputes at the lowest level of management possible; and
  - (iii) exhaust all reasonable efforts to resolve a dispute at all available levels of management before issuing a notice pursuant to Section 2.1(b) of this Schedule to refer the dispute to any of the escalated dispute resolution processes available pursuant to, and in accordance with, Part 3 [Referral to Expert], Part 8 [Referral to Arbitration] and Part 9 [Court Proceedings] of this Schedule.

2

- (b) If the Province and the Primary Contractor are unable to resolve a dispute pursuant to Section 2.1(a) of this Schedule:
- (i) in the case of a dispute in relation to a decision of the Independent Certifier, within 10 Business Days following the date upon which such decision is communicated by the Independent Certifier to the Province and the Primary Contractor; or
  - (ii) in the case of any other dispute described in Section 19.1(a) [Disputes], within 10 Business Days of the dispute having been identified as such by the Province or the Primary Contractor,

then either the Province or the Primary Contractor may deliver to the Province's Designate or the Primary Contractor's Designate, as applicable, a written notice of dispute which shall constitute, unless otherwise expressly agreed by the Province and the Primary Contractor:

- (A) where the dispute is in relation to a decision of the Independent Certifier, an Arbitration Dispute Notice; or
- (B) for any other dispute, an Expert Dispute Notice.

To be effective, without limiting Section 8.1(b) of this Schedule, any such notice must expressly state that it is an Arbitration Dispute Notice or an Expert Dispute Notice, as the case may be, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the party issuing such notice and be signed by the Province's Designate, if given by the Province, or by the Primary Contractor's Designate, if given by the Primary Contractor.

- (c) Pursuit of the resolution of a dispute under any Part of this Schedule does not relieve the Province or the Primary Contractor of its responsibility to ensure timely performance of its obligations under this Agreement.

### **Part 2.2 No Joinder**

No proceedings to resolve any dispute arising out of or relating to this Agreement in accordance with this Schedule shall include, by consolidation or joinder or in any other manner, any additional person not a party to this Agreement, including any Principal Subcontractor or Subcontractor, except with the written consent of all of the parties to this Agreement and any other person sought to be so joined.

### **Part 2.3 Survival**

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

### **Part 3**

#### **REFERRAL TO EXPERT**

### **Part 3.1 Referral to Expert**

If the parties are unable to resolve a dispute in the manner contemplated in Section 2.1 [Resolution of Disputes] of this Schedule then, subject to Part 6 [No Referral to Expert] of this Schedule,

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a party may at any time by written notice to another party (the “**Expert Dispute Notice**”) require the dispute to be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”) in accordance with this Part.

### **Part 3.2 Expert Panels**

Panels of Experts shall be appointed as follows:

- (a) there shall be two panels of Experts (each, a “**Panel**” and, collectively, the “**Panels**”), as follows:
  - (i) a panel to resolve disputes relating to design and construction matters (the “**Design and Construction Panel**”); and
  - (ii) a panel to resolve all disputes relating to financial and other matters arising under this Agreement (the “**General Panel**”);
- (b) the Design and Construction Panel shall consist of three Experts, each of whom shall have experience with design or construction, or both, and who shall be jointly appointed by the Province and the Primary Contractor within 60 Business Days following the Effective Date;
- (c) the General Panel shall consist of three Experts (at least one of whom shall be a barrister and solicitor duly licensed to practice law in the Province of British Columbia and one of whom shall be a member in good standing of the Institute of Chartered Accountants of British Columbia) who shall be jointly appointed by the Province and the Primary Contractor within 60 Business Days following the Effective Date;
- (d) if any member of a Panel resigns, dies or otherwise withdraws from the Panel at any time, a replacement expert shall be appointed to the relevant Panel by the Province and the Primary Contractor as soon as practicable thereafter; and
- (e) if the parties fail to agree on the identity of any Expert to be appointed to any of the Panels within the 60 Business Day period following the Effective Date or within a reasonable time pursuant to Section 3.2(d) of this Schedule, a party may apply to the BCICAC for appointment of such Expert, in which case the BCICAC shall appoint the Expert at the earliest opportunity in accordance with Article 14 of the BCICAC’s Domestic Commercial Arbitration Rules of Procedure.

### **Part 3.3 Retention Payments to Expert Panel Members**

The Primary Contractor shall be responsible for the payment of retention payments to the members of the Panels, in such amounts and at such times as determined by the parties, each acting reasonably.

### **Part 3.4 No Conflict for Expert**

Unless the parties otherwise agree, no person shall be nominated or appointed to act as a member of any of the Panels who, or any of whose partners, shareholders, unitholders or Affiliates, is or at any time has been involved or interested in the conduct of:

4

- (a) any of the Work on behalf of the Primary Contractor or any of its Principal Subcontractors or Subcontractors; or
- (b) the Project on behalf of the Province.

**Part 3.5 Selection of Expert**

One or more Experts shall be selected to resolve a particular dispute from the Panels established pursuant to Section 3.2 [Expert Panels] of this Schedule as follows:

- (a) the party that issues the Expert Dispute Notice shall designate in such notice the relevant Panel from which the Expert is to be selected;
- (b) when the Design and Construction Panel is designated as the relevant Panel by the party that issues the Expert Dispute Notice, such party shall designate in the Expert Dispute Notice one or more members of the Design and Construction Panel (having qualifications and experience relevant to the issues in the particular dispute for which the Expert is appointed) to serve as Expert;
- (c) if the party that did not issue the Expert Dispute Notice does not agree with the choice of the Design and Construction Panel, or with the choice of a member of the Design and Construction Panel, in each case as designated in the Expert Dispute Notice, it may, by notice in writing delivered to the other party and to the members of the Design and Construction Panel within five Business Days following delivery of the Expert Dispute Notice, refer the matter for resolution by an Expert drawn on a rotational basis from the Design and Construction Panel (provided that in no circumstance shall the member of the Design and Construction Panel designated as Expert in the Expert Dispute Notice resolve any disagreement regarding the choice of himself or herself as Expert), whose decision in relation to such disagreement must be delivered within three Business Days of delivery of such notice. Any such decision shall be final and binding on the parties and not subject to appeal, arbitration, litigation or any other dispute resolution process;
- (d) when the General Panel is designated as the relevant Panel by the party that issues the Expert Dispute Notice, such party shall designate in the Expert Dispute Notice one or more members of the General Panel (having qualifications and experience relevant to the issues in the particular dispute for which the Expert is appointed) to serve as Expert; and
- (e) if the party that did not issue the Expert Dispute Notice does not agree with the choice of the General Panel, or with the choice of a member of the General Panel, in each case designated in the Expert Dispute Notice, it may, by notice in writing delivered to the other party and to the members of the General Panel within five Business Days following delivery of the Expert Dispute Notice, refer the matter for resolution by an Expert drawn on a rotational basis from the General Panel (provided that in no circumstance shall the member of the General Panel designated as Expert in the Expert Dispute Notice resolve any disagreement regarding the choice of himself or herself as Expert), whose decision in relation to such disagreement must be delivered within three Business Days of delivery of such notice. Any such decision shall be final and binding on the parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

**Part 3.6 Procedure for Expert Review**

- (a) Within 10 Business Days following the referral of the dispute to the Expert, the Province and the Primary Contractor shall submit, each to the other and to the Expert:
  - (i) the basis for the entitlement to any claim, including full information regarding any amount being claimed and the remedies sought and the specific provision(s) of this Agreement pursuant to which the claim is made or on which the claim is based;
  - (ii) a list of documents and any other information it believes relevant to the dispute; and
  - (iii) copies of all notices and all other correspondence between it and the other party arising from earlier efforts to resolve the dispute.
  
- (b) The Expert selected pursuant to Section 3.5 [Selection of Expert] of this Schedule shall determine the appropriate process for timely and cost effective resolution of the dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
  - (i) solicit submissions and documents from the parties, and impose deadlines for the receipt of such submissions;
  - (ii) require some or all of the evidence to be provided by affidavit and take evidence from such witnesses and experts as the Expert may deem appropriate, in the presence of the Province and the Primary Contractor;
  - (iii) direct the parties or either of them to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the dispute and rendering of a decision;
  - (iv) require a party to supply or prepare for examination by the Expert(s) and the other parties any document or written or oral information or evidence the Expert considers necessary;
  - (v) inspect the Site, the Work and the Project Infrastructure, giving reasonable notice to each party of the time when, and the place where, the Expert intends to conduct any inspection;
  - (vi) convene meetings of the parties to have the parties discuss the issues in dispute in the presence of the Expert;
  - (vii) take, or require any party to take and provide to the Expert, such measurements, make such calculations, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the dispute; and
  - (viii) seek advice from one or more of the Panels or any other qualified independent professional advisors in respect of the dispute.

- (c) Neither the Province nor the Primary Contractor shall unreasonably delay or impede the Expert in completing its investigation of and with respect to the dispute.

**Part 3.7 Decision of Expert**

The Expert shall render a decision as soon as possible (provided that, if more than one Expert has been selected, the selected Experts shall render a single unanimous decision) and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days (or such longer period of time as agreed to in writing by the parties, acting reasonably) after the Expert has received the parties' information pursuant to Section 3.6(a) of this Schedule and completed its investigations in accordance with Section 3.6(b) of this Schedule. The Expert shall give reasons or a summary of reasons for the decision.

**Part 3.8 Confidentiality of Expert**

The Expert shall keep all information about the dispute confidential and shall not disclose that information to anyone other than the parties and, as required, representatives and advisors of each of them, on an as-needed basis.

**Part 3.9 Costs of Expert Review**

Notwithstanding Section 11.1 [Indemnification by Primary Contractor], Section 11.5 [Indemnification by the Province], Section 11.6 [Limited Indemnity for Existing Contamination] and Section 11.8 [Limited Indemnity for Nuisance] or any other provision of this Agreement, and without limiting Section 3.3 [Retention Payments to Expert Panel Members] of this Schedule, each party shall bear its own costs of the process for resolution of the dispute by the Expert (including all legal fees and expenses). The parties shall share equally, and be responsible for their respective share of, all costs of the Expert as and when due.

**Part 3.10 Decision of Expert**

- (a) Subject to Section 3.10(b) of this Schedule, the decision of the Expert shall be final and binding on the parties unless and until revised, cancelled, varied or overturned by an Arbitrator or Court in accordance with the provisions of this Schedule, and each of the parties expressly waives all rights of appeal in connection with the decision of the Expert except as expressly provided in this Schedule.
- (b) If either the Province or the Primary Contractor disputes the decision of the Expert, that party shall deliver a Protest of Decision to the other party and to the Expert within 10 Business Days following receipt of the written decision of the Expert. A Protest of Decision shall set out the nature of the dispute, the circumstances which gave rise to the dispute, the date on which those circumstances arose, and the date of the notice of dispute issued in accordance with 2.1(b) of this Schedule.



**Part 4**

**[INTENTIONALLY NOT USED]**

**Part 5**

**INDEPENDENT CERTIFIER**

**Part 5.1 Decisions of Independent Certifier**

Any decision of the Independent Certifier to:

- (a) issue or not to issue the Certificate of Substantial Completion or a Certificate of Total Completion (Reinstatement Work); or
- (b) sign or not to sign the Final Deficiency list,

shall be final and binding on the Province and the Primary Contractor unless and until revised, cancelled, varied or overturned by an Arbitrator or Court in accordance with the provisions of this Schedule, and each of the Province and the Primary Contractor expressly waives all rights of appeal in connection with the Independent Certifier's decisions except as expressly provided in this Schedule.

**Part 6**

**NO REFERRAL TO EXPERT**

**Part 6.1 Decisions of Independent Certifier**

Part 3 [Referral to Expert] of this Schedule shall not apply in respect of the resolution of any dispute regarding a decision of the Independent Certifier.

**Part 7**

**[INTENTIONALLY NOT USED]**

**Part 8**

**REFERRAL TO ARBITRATION**

**Part 8.1 Referral to Arbitration**

- (a) Either the Province or the Primary Contractor (the "**Initiating Party**") may commence arbitration proceedings in respect of a dispute by delivering an arbitration dispute notice (an "**Arbitration Dispute Notice**") to the other party (the "**Responding Party**") requiring that the dispute be resolved by arbitration proceedings in accordance with this Part in the following circumstances:
  - (i) a dispute has arisen between the Province and the Primary Contractor in relation to a decision of the Independent Certifier; or
  - (ii) a dispute has arisen between the Province and the Primary Contractor other than in relation to a decision of the Independent Certifier and either:
    - (A) the dispute is the subject of a Protest of Decision and the amount awarded by the Expert to a party is more than \$500,000.00 in aggregate, or the result of the decision of the Expert results in a party doing or not doing something that has a value or consequence to that party or to

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8

another party that is, in the reasonable opinion of the Initiating Party more than \$500,000.00 in aggregate;

- (B) the Expert does not provide a written decision, with reasons, within the time set out in Section 3.7 [Decision of Expert] of this Schedule for any reason; or
  - (C) the dispute is not otherwise resolved either by the Expert or by the Province and the Primary Contractor and they agree in writing to waive their rights to resolve the dispute through reference to an Expert pursuant to Part 3 [Referral to Expert] of this Schedule.
- (b) The Arbitration Dispute Notice shall identify the nature of the dispute, the determination of the Expert(s) (including copies of the Expert Notice of Dispute and the Expert or Experts' written decision with reasons) or of the Independent Certifier (as applicable) that is to be the subject of the arbitration, and any amount involved and the remedy sought.

**Part 8.2 Initiation of Court Proceedings rather than Arbitration**

- (a) If the dispute is one which falls within Section 8.1(a)(ii)(A) of this Schedule and the amount thereof is more than \$2,000,000.00 in aggregate, or the result of the decision of the Expert results in a party doing or not doing something that has a value or consequence to that party or to another party that is, in the reasonable opinion of the party wishing to dispute the Expert's decision, in the amount of more than \$2,000,000.00 in aggregate, then either:
- (i) such party may, instead of issuing an Arbitration Dispute Notice pursuant to Section 8.1(a)(ii) of this Schedule in respect of such dispute, give to the other party written notice that it intends to initiate Court proceedings to resolve the dispute in accordance with Section 9.1(a)(i) of this Schedule; or
  - (ii) if an Arbitration Dispute Notice has been issued pursuant to Section 8.1(a)(ii) of this Schedule in respect of such a dispute, the Responding Party may, within 10 Business Days following receipt of such Arbitration Dispute Notice, give written notice to the Initiating Party that it vetoes the referral of the dispute to be resolved by arbitration in accordance with this Part 8, and may initiate a proceeding in a Court proceeding to resolve the dispute in accordance with Section 9.1(a)(ii) of this Schedule.
- (b) If the Responding Party issues a notice to the Initiating Party pursuant to Section 8.2(a)(ii) of this Schedule then, unless either the Initiating Party gives written notice to the Responding Party within 10 Business Days that it intends to initiate a proceeding in Court proceedings to resolve the dispute in accordance with Section 9.1(a)(iii) of this Schedule or, within such 10 Business Day period the Responding Party has initiated Court proceedings in accordance with Section 9.1(a)(ii) of this Schedule, the Initiating Party shall have no further access to any appeal, arbitration, litigation or other dispute resolution process in respect of such dispute without the express agreement of the Responding Party.

**Part 8.3 Commercial Arbitration Act**

If a dispute is referred to arbitration pursuant to this Part, the *Commercial Arbitration Act* (British Columbia) and the BCICAC's Domestic Commercial Rules of Procedure shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Part or by agreement of the parties.

**Part 8.4 Appointment of Arbitrator**

- (a) Within 15 Business Days following receipt of an Arbitration Dispute Notice by the Responding Party under Section 8.1 [Referral to Arbitration] of this Schedule, and subject to the Responding Party exercising its veto pursuant to Section 8.2(a) of this Schedule, the Initiating Party and the Responding Party shall designate a single arbitrator acceptable to both of them.
- (b) If the parties fail to appoint such a single arbitrator within the period of time and in the circumstances set out in Section 8.4(a) of this Schedule, either party may apply to the BCICAC to select the arbitrator, in which case the BCICAC shall appoint the arbitrator at the earliest opportunity in accordance with Article 14 of the BCICAC's Domestic Commercial Arbitration Rules of Procedure.

**Part 8.5 No Conflict for Arbitrator**

Unless the Province and the Primary Contractor otherwise agree, no person may be nominated or appointed to act as an arbitrator pursuant to Section 8.4 [Appointment of Arbitrator] of this Schedule (the "Arbitrator") who, or any of whose partners, shareholders, unitholders or Affiliates:

- (a) is or at any time has been involved or interested in the conduct of:
  - (i) any of the Work on behalf of the Primary Contractor or any of its Subcontractors;  
or
  - (ii) the Project on behalf of the Province; or
- (b) is a present or former member of a Panel.

**Part 8.6 Qualifications of Arbitrator**

The Arbitrator shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

**Part 8.7 No Discovery**

There shall be no oral discovery unless otherwise ordered by the Arbitrator.

**Part 8.8 Meetings and Hearings of Arbitrator**

Meetings and hearings of the Arbitrator shall take place in Vancouver, British Columbia or in such other place as the Province and the Primary Contractor may agree. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and shall give the Province and the Primary Contractor adequate notice thereof. All meetings and hearings shall be in private unless the Province and the Primary Contractor otherwise agree, and each party may be

represented at any meetings or hearings by legal counsel. Each party may examine and re-examine its witnesses and cross-examine those of the other party at the arbitration.

**Part 8.9 Admissibility of Prior Decisions**

- (a) If a party is entitled to refer a dispute to arbitration pursuant to Section 8.1 [Referral to Arbitration] of this Schedule or otherwise to initiate or pursue any dispute resolution process, appeal or legal proceeding, then unless the Province and the Primary Contractor otherwise expressly agree in writing:
  - (i) all submissions prepared by a party in connection with any proceedings involving the Expert and all information, documents, notes and records prepared by the Expert and all decisions and determinations of the Expert shall be admissible in any arbitration or other such dispute resolution process or Court proceeding; and
  - (ii) all submissions prepared by a party in connection with any proceedings involving the Arbitrator and all information, documents, notes and records prepared by the Arbitrator and all decisions and determinations of the Arbitrator shall be admissible in any other such dispute resolution process or Court proceeding.
- (b) For greater certainty, nothing herein shall prevent the tendering of the same oral or written evidence before a proceeding adjudicated by an Expert and a proceeding adjudicated by an Arbitrator.
- (c) The Expert or any Arbitrator may testify in or in connection with any dispute resolution process or Court proceeding.

**Part 8.10 Decision of Arbitrator**

- (a) Subject to the provisions of the *Commercial Arbitration Act* (British Columbia), the Arbitrator shall send a decision in writing to the Province and the Primary Contractor within 20 Business Days following the conclusion of all hearings referred to in Section 8.8 [Meetings and Hearings of Arbitrator] of this Schedule unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the Province and the Primary Contractor otherwise agree, shall state the reasons for the decision.
- (b) Subject to the rights of appeal that either party may have under the provisions of the *Commercial Arbitration Act* (British Columbia), the decision of the Arbitrator shall be final and binding on the Province and the Primary Contractor.

**Part 8.11 Arbitrator's Powers**

The object of an arbitration hereunder is to ensure the just, expeditious and economical determination of the dispute. Without limiting the jurisdiction or powers of the Arbitrator under the *Commercial Arbitration Act* (British Columbia), a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction and power to:

- (a) determine any question of law arising in the arbitration;
- (b) determine any question as to the Arbitrator's jurisdiction;

11

- (c) determine any question of dishonesty arising in the dispute;
- (d) order either party to furnish further details of its case, in fact or in law to the other party;
- (e) proceed with the arbitration notwithstanding any failure or refusal of a party to comply with these provisions or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving such party reasonable notice that the Arbitrator intends to do so;
- (f) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
- (g) make one or more interim awards;
- (h) hold meetings and hearings and make a decision in British Columbia or elsewhere with the concurrence of the parties;
- (i) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant;
- (j) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of either of the parties; and
- (k) include, as part of any award, the payment of interest at the Prime Rate from an appropriate date as determined by the Arbitrator.

The jurisdiction and powers referred to in this Section shall be exercised at the discretion of the Arbitrator subject only to applicable Laws and the provisions of this Agreement.

#### **Part 8.12 Costs of Arbitration**

Notwithstanding Section 11.1 [Indemnification by Primary Contractor], Section 11.5 [Indemnification by the Province], Section 11.6 [Limited Indemnity for Contamination] and Section 11.8 [Limited Indemnity for Nuisance] or any other provision of this Agreement, each party shall bear its own costs of the process for resolution of any dispute by arbitration (including all legal fees and expenses). The Province and the Primary Contractor shall share equally, and be responsible for their respective share of, all costs of the Arbitrator as and when due.

#### **Part 9**

### **COURT PROCEEDINGS**

#### **Part 9.1 Court Proceedings**

- (a) The Province or the Primary Contractor may initiate a proceeding in a Court to resolve a dispute in the following circumstances:
  - (i) such party has given notice of its intention to initiate proceedings in a Court in accordance with Section 8.2(a)(i) of this Schedule;
  - (ii) such party is the Responding Party and has exercised its veto in accordance with Section 8.2(a)(ii) of this Schedule;

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12

- (iii) such party is the Initiating Party and has given notice to the Responding Party of its intention to initiate proceedings in a Court in accordance with Section 8.2(b) of this Schedule; or
  - (iv) such party is appealing a decision of the Arbitrator in accordance with the provisions of the *Commercial Arbitration Act* (British Columbia).
- (b) No party shall be precluded from initiating a proceeding in a Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager, or as expressly contemplated by Sections 16.4(b)(ii) or 17.1(c).

**Part 10**

**CONTINUING PERFORMANCE**

**Part 10.1 Compliance with Agreement**

- (a) At all times, notwithstanding the existence of any dispute or the referral of any dispute for resolution under this Schedule, except as may otherwise be expressly provided in this Agreement the Province and the Primary Contractor shall continue to comply with, observe and perform all of their respective obligations (including the obligation of the Primary Contractor to proceed with the conduct of the Work) in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.
- (b) To the extent that any such dispute involves a disagreement as to the nature or scope of any of the Work (including as to the performance or method of performance of any of the Work), the Primary Contractor shall comply with all instructions given by the Province's Representative pending the outcome of the dispute, but without prejudice to the rights of the Primary Contractor as ultimately determined in accordance with the Dispute Resolution Procedure.

**Part 10.2 Payment Disputes**

The provisions of Section 12.15 [Payment of Disputed Amounts] shall apply in the event of the submission of a dispute as to the amount of monies owing by the Province or the Primary Contractor to the other to the Dispute Resolution Procedure in accordance with this Schedule.