

**SCHEDULE 9  
PERFORMANCE MECHANISM**

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**PART 1  
DEFINITIONS**

**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:

**“Contract Year”** means each period of 12 consecutive Performance Periods, provided that the first Contract Year shall commence on the Effective Date and the last Contract Year shall end on the Total Completion Date.

**“NCE Points Balance”** has the meaning given in Section 5.2(c) [Calculation of NCE Points Balance] of this Schedule.

**PART 2  
PAYMENT OBLIGATIONS OF PRIMARY CONTRACTOR**

**2.1 Obligation to make Performance Incentive Payments**

- (a) The Primary Contractor shall pay to the Province a Performance Incentive Payment in respect of each Performance Period any portion of which occurs during the period commencing on the Effective Date and ending on the Total Completion Date.
- (b) The Primary Contractor shall pay to the Province a Performance Incentive Payment in respect of each Performance Period falling within paragraph (b) of the definition thereof in Section 1.1 [Definitions] of Schedule 1.
- (c) Subject to the provisions of Part 12 [Payments], each such Performance Incentive Payment shall be determined in accordance with Section 2.2 [Calculation of Performance Incentive Payments] of this Schedule and shall be paid in accordance with Part 7 [Due Dates for Performance Incentive Payments] of this Schedule.

**2.2 Calculation of Performance Incentive Payments**

- (a) The Performance Incentive Payment payable in respect of Performance Period *p* during the period described in Section 2.1(a) of this Schedule shall be determined by adding together the following amounts:
  - (i) the **Non-Compliance Disruption Event Payment** payable in respect of such Performance Period *p*, determined in accordance with Part 3 [Calculation of Non-Compliance Disruption Event Payments] of this Schedule; and
  - (ii) the **Non-Compliance Points Event Payment** payable in respect of such Performance Period *p*, determined in accordance with Part 4 [Calculation of Non-Compliance Points Event Payments] of this Schedule.

- (b) The Performance Incentive Payment payable in respect of Performance Period  $p$  that is a Performance Period referred to in Section 2.1(b) of this Schedule shall be equal to the SkyTrain Service Disruption Payment payable in respect of such Performance Period  $p$ , determined in accordance with Section 3.10 [Calculation of SkyTrain Service Disruption Payments] of this Schedule.

### **2.3 Performance Incentive Payment Obligation Cumulative**

The obligation of the Primary Contractor to make Performance Incentive Payments under this Part 1 [Payment Obligations of Primary Contractor] of this Schedule is cumulative and in addition to, and not in substitution for or to the exclusion of, each or any other payment obligation of the Primary Contractor under this Agreement, and no amount that may from time to time be or become owing by the Province to the Primary Contractor under this Agreement may be set off against any amount payable by the Primary Contractor to the Province in respect of any such payment obligation of the Primary Contractor.

## **PART 3 CALCULATION OF NON-COMPLIANCE DISRUPTION EVENT PAYMENTS**

### **3.1 Calculation of Non-Compliance Disruption Event Payments**

The Non-Compliance Disruption Event Payment payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule shall be determined by adding together the following amounts:

- (a) the **Traffic Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.2 [Calculation of Traffic Disruption Payments] of this Schedule; and
- (b) the **Pedestrian and Cyclist Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.3 [Calculation of Pedestrian and Cyclist Disruption Payments] of this Schedule; and
- (c) the **Access Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.4 [Calculation of Access Disruption Payments] of this Schedule; and
- (d) the **Parking Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.5 [Calculation of Parking Disruption Payments] of this Schedule; and
- (e) the **WCE Station Entrance Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.6 [Calculation of WCE Station Entrance Disruption Payments] of this Schedule; and

- (f) the **WCE Park & Ride Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.7 [Calculation of WCE Park & Ride Disruption Payments] of this Schedule; and
- (g) the **Off-Street Bus Exchange Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.8 [Calculation of **Off-Street Bus Exchange** Disruption Payments] of this Schedule; and
- (h) the **SkyTrain Station Entrance Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.9 [Calculation of SkyTrain Station Entrance Disruption Payments] of this Schedule; and
- (i) the **SkyTrain Service Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.10 [Calculation of SkyTrain Service Disruption Payments] of this Schedule; and
- (j) the **Hours of Work Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.11 [Calculation of Hours of Work Disruption Payments] of this Schedule; and
- (k) the **Construction Noise Disruption Payment** payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, determined in accordance with Section 3.12 [Calculation of Construction Noise Disruption Payments] of this Schedule.

**3.2 Calculation of Traffic Disruption Payments**

- (a) Subject to Sections 3.2(c) through 3.2(e) of this Schedule, the amount of the Traffic Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

$$\text{Traffic Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{TrafficAmount}_t$$

where:

$T$  = the number of Non-Permitted Traffic Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{TrafficAmount}_t$  = the TrafficAmount in respect of Non-Permitted Traffic Disruption Event  $t$  determined in accordance with this Section 3.2

$$\text{TrafficAmount}_t = \text{TrafficDED}_t \times \text{TrafficDEC}_t$$

where:

$\text{TrafficAmount}_t$  = the TrafficAmount in respect of Non-Permitted Traffic Disruption Event  $t$

$\text{TrafficDED}_t$  = the duration in minutes of Non-Permitted Traffic Disruption Event  $t$

$\text{TrafficDEC}_t$  = the Traffic Disruption Event Charge in respect of Non-Permitted Traffic Disruption Event  $t$ , determined in accordance with Section 3.2(b) of this Schedule

- (b) The Traffic Disruption Event Charge for each Non-Permitted Traffic Disruption Event  $t$  shall be [REDACTED] per minute (or part thereof; for certainty, without pro-rating).
- (c) A Non-Permitted Traffic Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Traffic Disruption Event within each such Performance Period.
- (d) If the occurrence of a Non-Permitted Traffic Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted

Traffic Disruption Event before the Province did so, then the TrafficAmount in respect of that Non-Permitted Traffic Disruption Event will be multiplied by a factor of two.

- (e) No TrafficAmount is payable in respect of a Non-Permitted Traffic Disruption Event that is the direct result of a Supervening Event.

**3.3 Calculation of Pedestrian and Cyclist Disruption Payments**

- (a) Subject to Sections 3.3(c) through 3.3(e) of this Schedule, the amount of the Pedestrian and Cyclist Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

$$\text{Pedestrian and Cyclist Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{PedCyclistAmount}_t$$

where:

$T$  = the number of Non-Permitted Pedestrian and Cyclist Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{PedCyclistAmount}_t$  = the PedCyclistAmount in respect of Non-Permitted Pedestrian and Cyclist Disruption Event  $t$  determined in accordance with this Section 3.3

$$\text{PedCyclistAmount}_t = \text{PedCyclistDED}_t \times \text{PedCyclistDEC}_t$$

where:

$\text{PedCyclistAmount}_t$  = the PedCyclistAmount in respect of Non-Permitted Pedestrian and Cyclist Disruption Event  $t$

$\text{PedCyclistDED}_t$  = the duration in minutes of Non-Permitted Pedestrian and Cyclist Disruption Event  $t$

$\text{PedCyclistDEC}_t$  = the Pedestrian and Cyclist Disruption Event Charge in respect of Non-Permitted Pedestrian and Cyclist Disruption Event  $t$ , determined in accordance with Section 3.3(b) of this Schedule

- (b) The Pedestrian and Cyclist Disruption Event Charge for each Non-Permitted Pedestrian and Cyclist Disruption Event  $t$  shall be ████ per minute (or part thereof; for certainty, without pro-rating).
- (c) A Non-Permitted Pedestrian and Cyclist Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Pedestrian and Cyclist Disruption Event within each such Performance Period.

- (d) If the occurrence of a Non-Permitted Pedestrian and Cyclist Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted Pedestrian and Cyclist Disruption Event before the Province did so, then the PedCyclistAmount in respect of that Non-Permitted Pedestrian and Cyclist Disruption Event will be multiplied by a factor of two.
- (e) No PedCyclistAmount is payable in respect of a Non-Permitted Pedestrian and Cyclist Disruption Event that is the direct result of a Supervening Event.



**3.4 Calculation of Access Disruption Payments**

- (a) Subject to Sections 3.4(c) through 3.4(e) of this Schedule, the amount of the Access Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

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|---|
| $\text{Access Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{AccessAmount}_t$ |
|---|

where:

$T$  = the number of Non-Permitted Access Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{AccessAmount}_t$  = the AccessAmount in respect of Non-Permitted Access Disruption Event  $t$  determined in accordance with this Section 3.4

|  |
|--|
| $\text{AccessAmount}_t = \text{AccessDED}_t \times \text{AccessDEC}_t$ |
|--|

where:

$\text{AccessAmount}_t$  = the AccessAmount in respect of Non-Permitted Access Disruption Event  $t$

$\text{AccessDED}_t$  = the duration in minutes of Non-Permitted Access Disruption Event  $t$

$\text{AccessDEC}_t$  = the Access Disruption Event Charge in respect of Non-Permitted Access Disruption Event  $t$ , determined in accordance with Section 3.4(b) of this Schedule

- (b) The Access Disruption Event Charge for each Non-Permitted Access Disruption Event  $t$  shall be ████ per minute (or part thereof; for certainty, without pro-rating).
- (c) A Non-Permitted Access Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Access Disruption Event within each such Performance Period.
- (d) If the occurrence of a Non-Permitted Access Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted

Access Disruption Event before the Province did so, then the AccessAmount in respect of that Non-Permitted Access Disruption Event will be multiplied by a factor of two.

- (e) No AccessAmount is payable in respect of a Non-Permitted Access Disruption Event that is the direct result of a Supervening Event.

**3.5 Calculation of Parking Disruption Payments**

- (a) Subject to Sections 3.5(c) through 3.5(e) of this Schedule, the amount of the Parking Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

$$\text{Parking Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{ParkingAmount}_t$$

where:

$T$  = the number of Non-Permitted Parking Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{ParkingAmount}_t$  = the ParkingAmount in respect of Non-Permitted Parking Disruption Event  $t$  determined in accordance with this Section 3.5

$$\text{ParkingAmount}_t = \text{ParkingDED}_t \times \text{ParkingDEC}_t$$

where:

$\text{ParkingAmount}_t$  = the ParkingAmount in respect of Non-Permitted Parking Disruption Event  $t$

$\text{ParkingDED}_t$  = the duration in minutes of Non-Permitted Parking Disruption Event  $t$

$\text{ParkingDEC}_t$  = the Parking Disruption Event Charge in respect of Non-Permitted Parking Disruption Event  $t$ , determined in accordance with Section 3.5(b) of this Schedule

- (b) The Parking Disruption Event Charge for each Non-Permitted Parking Disruption Event  $t$  shall be [REDACTED] per minute (or part thereof; for certainty, without pro-rating).
- (c) A Non-Permitted Parking Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Parking Disruption Event within each such Performance Period.
- (d) If the occurrence of a Non-Permitted Parking Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted

Parking Disruption Event before the Province did so, then the ParkingAmount in respect of that Non-Permitted Parking Disruption Event will be multiplied by a factor of two.

- (e) No ParkingAmount is payable in respect of a Non-Permitted Parking Disruption Event that is the direct result of a Supervening Event.

**3.6 Calculation of WCE Station Entrance Disruption Payments**

- (a) Subject to Sections 3.6(c) through 3.6(e) of this Schedule, the amount of the WCE Station Entrance Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

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| $\text{WCE Station Entrance Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{WCEEntranceAmount}_t$ |
|--|

where:

$T$  = the number of Non-Permitted WCE Station Entrance Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{WCEEntranceAmount}_t$  = the  $\text{WCEEntranceAmount}$  in respect of Non-Permitted WCE Station Entrance Disruption Event  $t$  determined in accordance with this Section 3.6

|   |
|---|
| $\text{WCEEntranceAmount}_t = \text{WCEEntranceDED}_t \times \text{WCEEntranceDEC}_t$ |
|---|

where:

$\text{WCEEntranceAmount}_t$  = the  $\text{WCEEntranceAmount}$  in respect of Non-Permitted WCE Station Entrance Disruption Event  $t$

$\text{WCEEntranceDED}_t$  = the duration in minutes of Non-Permitted WCE Station Entrance Disruption Event  $t$

$\text{WCEEntranceDEC}_t$  = the WCE Entrance Disruption Event Charge in respect of Non-Permitted WCE Station Entrance Disruption Event  $t$ , determined in accordance with Section 3.6(b) of this Schedule

- (b) The WCE Entrance Disruption Event Charge for each Non-Permitted WCE Station Entrance Disruption Event  $t$  shall be ██████████ per minute (or part thereof; for certainty, without pro-rating).
- (c) A Non-Permitted WCE Station Entrance Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted WCE Station Entrance Disruption Event within each such Performance Period.

- (d) If the occurrence of a Non-Permitted WCE Station Entrance Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted WCE Station Entrance Disruption Event before the Province did so, then the WCEEntranceAmount in respect of that Non-Permitted WCE Station Entrance Disruption Event will be multiplied by a factor of two.
- (e) No WCEEntranceAmount is payable in respect of a Non-Permitted WCE Station Entrance Disruption Event that is the direct result of a Supervening Event.

**3.7 Calculation of WCE Park & Ride Disruption Payments**

- (a) Subject to Sections 3.7(c) and 3.7(d) of this Schedule, the amount of the WCE Park & Ride Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formula:

$$\text{WCE Park \& Ride Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{WCEParkRideAmount}_t$$

where:

$T$  = the number of Non-Permitted WCE Park & Ride High Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{WCEParkRideAmount}_t$  = the WCEParkRideAmount in respect of Non-Permitted WCE Park & Ride High Disruption Event  $t$  determined in accordance with Section 3.7(b) of this Schedule

- (b) The WCEParkRideAmount in respect of Non-Permitted WCE Park & Ride High Disruption Event  $t$  shall be [REDACTED] per day (or part thereof; for certainty, without pro-rating).
- (c) If the occurrence of a Non-Permitted WCE Park & Ride High Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted WCE Park & Ride High Disruption Event before the Province did so, then the WCEParkRideAmount in respect of that Non-Permitted WCE Park & Ride High Disruption Event will be multiplied by a factor of two.
- (d) No WCEParkRideAmount is payable in respect of a Non-Permitted WCE Park & Ride High Disruption Event that is the direct result of a Supervening Event.

**3.8 Calculation of Off-Street Bus Exchange Disruption Payments**

- (a) Subject to Sections 3.8(c) through 3.8(f) of this Schedule, the amount of the Off-Street Bus Exchange Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

|  |   |
|--|---|
| <p><i>Off-Street Bus Exchange Disruption Payment</i> payable in respect of Performance Period <math>p</math></p> | $= \sum_{t=1}^T \text{Off-StreetBusExchangeAmount}_t$ |
|--|---|

where:

$T$  = the number of Non-Permitted Off-Street Bus Exchange Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

*Off-StreetBusExchangeAmount<sub>t</sub>* = the Off-StreetBusExchangeAmount in respect of Non-Permitted Off-Street Bus Exchange Disruption Event  $t$  determined in accordance with this Section 3.8

|   |  |
|---|--|
| <p><i>Off-StreetBusExchangeAmount<sub>t</sub></i></p> | $= \text{Off-StreetBusExchangeDED}_t \times \text{Off-StreetBusExchangeDEC}_t$ |
|---|--|

where:

*Off-StreetBusExchangeAmount<sub>t</sub>* = the Off-StreetBusExchangeAmount in respect of Non-Permitted Off-Street Bus Exchange Disruption Event  $t$

*Off-StreetBusExchangeDED<sub>t</sub>* = the duration in minutes of Non-Permitted Off-Street Bus Exchange Disruption Event  $t$

*Off-StreetBusExchangeDEC<sub>t</sub>* = the Off-Street Bus Exchange Disruption Event Charge in respect of Non-Permitted Off-Street Bus Exchange Disruption Event  $t$ , determined in accordance with Section 3.8(b) of this Schedule

- (b) Subject to Section 3.8(c) of this Schedule, the Off-Street Bus Exchange Disruption Event Charge for each Non-Permitted Off-Street Bus Exchange Disruption Event  $t$  shall be [REDACTED] per minute (or part thereof; for certainty, without pro-rating).



- (c) If, in any minute (or part thereof), more than four Non-Permitted Off-Street Bus Exchange Events subsist in relation to any one Off-Street Bus Exchange, for the purposes of calculating the OffStreetBusExchangeAmount in respect of any such Non-Permitted Off-Street Bus Exchange Event at the affected Off-Street Bus Exchange, the Off-Street Bus Exchange Disruption Event Charge for such minute (or part thereof; for certainty, without pro-rating) shall be:
  - (i) for the four such Non-Permitted Off-Street Bus Exchange Events that would (but for this Section 3.8(c)) attract the highest Off-Street Bus Exchange Disruption Event Charge (as determined in accordance with Section 3.8(b) or (e), as applicable, of this Schedule) for such minute (or part thereof), the amount per minute (or part thereof; for certainty, without pro-rating) determined in accordance with Section 3.8(b) or (e), as applicable, of this Schedule; and
  - (ii) for all other such Non-Permitted Off-Street Bus Exchange Events subsisting at the affected Off-Street Bus Exchange during such minute (or part thereof). ■■■■
- (d) A Non-Permitted Off-Street Bus Exchange Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Off-Street Bus Exchange Disruption Event within each such Performance Period.
- (e) If the occurrence of a Non-Permitted Off-Street Bus Exchange Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted Off-Street Bus Exchange Disruption Event before the Province did so, then the Off-StreetBusExchangeAmount in respect of that Non-Permitted Off-Street Bus Exchange Disruption Event will be multiplied by a factor of two.
- (f) No Off-StreetBusExchangeAmount is payable in respect of a Non-Permitted Off-Street Bus Exchange Disruption Event that is the direct result of a Supervening Event.

**3.9 Calculation of SkyTrain Station Entrance Disruption Payments**

- (a) Subject to Sections 3.9(c) through 3.9(e) of this Schedule, the amount of the SkyTrain Station Entrance Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

|  |   |  |
|--|---|--|
| <p><i>SkyTrain Station Entrance Disruption Payment</i> payable in respect of Performance Period <math>p</math></p> | = | $\sum_{t=1}^T \text{SkyTrainEntranceAmount}_t$ |
|--|---|--|

where:

$T$  = the number of Non-Permitted SkyTrain Station Entrance Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

*SkyTrainEntranceAmount<sub>t</sub>* = the SkyTrainEntranceAmount in respect of Non-Permitted SkyTrain Station Entrance Disruption Event  $t$  determined in accordance with this Section 3.9

|  |   |  |
|--|---|--|
| <p><i>SkyTrainEntranceAmount<sub>t</sub></i></p> | = | <p><i>SkyTrainEntranceDED<sub>t</sub></i> × <i>SkyTrainEntranceDEC<sub>t</sub></i></p> |
|--|---|--|

where:

*SkyTrainEntranceAmount<sub>t</sub>* = the SkyTrainEntranceAmount in respect of Non-Permitted SkyTrain Station Entrance Disruption Event  $t$

*SkyTrainEntranceDED<sub>t</sub>* = the duration in minutes of Non-Permitted SkyTrain Station Entrance Disruption Event  $t$

*SkyTrainEntranceDEC<sub>t</sub>* = the SkyTrain Station Entrance Disruption Event Charge in respect of Non-Permitted SkyTrain Station Entrance Disruption Event  $t$ , determined in accordance with Section 3.9(b) of this Schedule

- (b) The SkyTrain Station Entrance Disruption Event Charge for each Non-Permitted SkyTrain Station Entrance Disruption Event  $t$  shall be [REDACTED] per minute (or part thereof; for certainty, without pro-rating).

- (c) A Non-Permitted SkyTrain Station Entrance Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted SkyTrain Station Entrance Disruption Event within each such Performance Period.
- (d) If the occurrence of a Non-Permitted SkyTrain Station Entrance Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted SkyTrain Station Entrance Disruption Event before the Province did so, then the SkyTrainEntranceAmount in respect of that Non-Permitted SkyTrain Station Entrance Disruption Event will be multiplied by a factor of two.
- (e) No SkyTrainEntranceAmount is payable in respect of a Non-Permitted SkyTrain Station Entrance Disruption Event that is the direct result of a Supervening Event.

**3.10 Calculation of SkyTrain Service Disruption Payments**

- (a) Subject to Sections 3.10(c) and 3.10(d) of this Schedule, the amount of the SkyTrain Service Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Sections 2.1(a) or (b) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

$$\text{SkyTrain Service Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{SkyTrainServiceAmount}_t$$

where:

$T$  = the number of Non-Permitted SkyTrain Service Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule, or, as applicable, that is a Performance Period referred to in Section 2.1(b) of this Schedule

$\text{SkyTrainServiceAmount}_t$  = the SkyTrainServiceAmount in respect of Non-Permitted SkyTrain Service Disruption Event  $t$  determined in accordance with this Section 3.10

$$\text{SkyTrainServiceAmount}_t = \text{SkyTrainServiceDED}_t \times \text{SkyTrainServiceDEC}_t$$

where:

$\text{SkyTrainServiceAmount}_t$  = the SkyTrainServiceAmount in respect of Non-Permitted SkyTrain Service Disruption Event  $t$

$\text{SkyTrainServiceDED}_t$  = the duration, measured in Delay Minutes, of Non-Permitted SkyTrain Service Disruption Event  $t$

$\text{SkyTrainServiceDEC}_t$  = the SkyTrain Service Disruption Event Charge in respect of Non-Permitted SkyTrain Service Disruption Event  $t$ , determined in accordance with Section 3.10(b) of this Schedule

- (b) Subject to Section 3.10(f) of this Schedule, the SkyTrain Service Disruption Event Charge for each Non-Permitted SkyTrain Service Disruption Event  $t$  shall be [REDACTED] per Delay Minute (or part thereof; for certainty, without pro-rating).

- (c) A Non-Permitted SkyTrain Service Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted SkyTrain Service Disruption Event within each such Performance Period.
- (d) No SkyTrainServiceAmount is payable in respect of a Non-Permitted SkyTrain Service Disruption Event that is the direct result of a Supervening Event.
- (e) The Primary Contractor agrees that, unless it disputes a report of BCRTC within 10 Business Days of receipt of such report (which dispute shall be resolved in accordance with the Dispute Resolution Procedure), it shall be bound by any determinations of BCRTC in accordance with the BCRTC Service Delay Allocation Methodology as to;
  - (i) whether any delay in or to the operation in passenger service of the Existing SkyTrain System or the Integrated SkyTrain System, as applicable, was caused by the Primary Contractor or any person for whom the Primary Contractor is in law responsible; or
  - (ii) the calculation of Delay Minutes allocated to any such delay caused by the Primary Contractor or any person for whom the Primary Contractor is in law responsible.
- (f) The maximum aggregate SkyTrain Service Disruption Payments payable by the Primary Contractor under this Section 3.10 in respect of Non-Permitted SkyTrain Service Disruption Events which are solely and directly caused by Thales or any Subcontractor of Thales shall be 5% of the Contract Price (as defined in the ATC Supply Contract).

**3.11 Calculation of Hours of Work Disruption Payments**

- (a) Subject to Sections 3.11(c) through 3.11(e) of this Schedule, the amount of the Hours of Work Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

$$\text{Hours of Work Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{HoursofWorkAmount}_t$$

where:

$T$  = the number of Non-Permitted Construction Hours of Work Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{HoursofWorkAmount}_t$  = the HoursofWorkAmount in respect of Non-Permitted Construction Hours of Work Disruption Event  $t$  determined in accordance with Section 3.11(b) of this Schedule

- (b) The HoursofWorkAmount in respect of each Non-Permitted Construction Hours of Work Disruption Event  $t$  shall be [REDACTED] per event.
- (c) A Non-Permitted Construction Hours of Work Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Construction Hours of Work Disruption Event within each such Performance Period.
- (d) If the occurrence of a Non-Permitted Construction Hours of Work Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted Construction Hours of Work Disruption Event before the Province did so, then the HoursofWorkAmount in respect of that Non-Permitted Construction Hours of Work Disruption Event will be multiplied by a factor of two.
- (e) No HoursofWorkAmount is payable in respect of a Non-Permitted Construction Hours of Work Disruption Event that is the direct result of a Supervening Event.

**3.12 Calculation of Construction Noise Disruption Payments**

- (a) Subject to Sections 3.12(c) through 3.12(e) of this Schedule, the amount of the Construction Noise Disruption Payment payable in respect of each Performance Period  $p$  in respect of which a Performance Incentive Payment is payable in accordance with Section 2.1(a) [Obligation to make Performance Incentive Payments] of this Schedule shall be determined in accordance with the following formulae:

$$\text{Construction Noise Disruption Payment payable in respect of Performance Period } p = \sum_{t=1}^T \text{ConstructionNoiseAmount}_t$$

where:

$T$  = the number of Non-Permitted Construction Noise Disruption Events occurring in Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$\text{ConstructionNoiseAmount}_t$  = the ConstructionNoiseAmount in respect of Non-Permitted Construction Noise Disruption Event  $t$  determined in accordance with this Section 3.12

$$\text{ConstructionNoiseAmount}_t = \text{ConstructionNoiseDED}_t \times \text{ConstructionNoiseDEC}_t$$

where:

$\text{ConstructionNoiseAmount}_t$  = the ConstructionNoiseAmount in respect of Non-Permitted Construction Noise Disruption Event  $t$

$\text{ConstructionNoiseDED}_t$  = the duration in minutes of Non-Permitted Construction Noise Disruption Event  $t$

$\text{ConstructionNoiseDEC}_t$  = the Construction Noise Disruption Event Charge in respect of Non-Permitted Construction Noise Disruption Event  $t$ , determined in accordance with Section 3.12(b) of this Schedule

- (b) The Construction Noise Disruption Event Charge for each Non-Permitted Construction Noise Disruption Event  $t$  shall be [REDACTED] per minute (or part thereof; for certainty, without pro-rating).
- (c) A Non-Permitted Construction Noise Disruption Event which spans portions of two or more Performance Periods shall be treated as a separate Non-Permitted Construction Noise Disruption Event within each such Performance Period.

- (d) If the occurrence of a Non-Permitted Construction Noise Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Non-Permitted Construction Noise Disruption Event before the Province did so, then the ConstructionNoiseAmount in respect of that Non-Permitted Construction Noise Disruption Event will be multiplied by a factor of two.
- (e) No ConstructionNoiseAmount is payable in respect of a Non-Permitted Construction Noise Disruption Event that is the direct result of a Supervening Event.

**PART 4  
CALCULATION OF NON-COMPLIANCE POINTS EVENT PAYMENTS**

**4.1 Calculation of Non-Compliance Points Event Payments**

The amount of the Non-Compliance Points Event Payment payable by the Primary Contractor in respect of each Performance Period  $p$  (or portion thereof, as the case may) during the period described in Section 2.1(a) of this Schedule shall be determined in accordance with the following formula:

$$\text{Non-Compliance Points Event Payment}_p = \sum_{d=1}^D \text{Non-Compliance Points Event Amount}_d$$

where: *Non-Compliance Points Event Payment<sub>p</sub>* equals the Non-Compliance Points Event Payment payable in respect of Performance Period  $p$  during the period described in Section 2.1(a) of this Schedule

$D$  equals the number of days in Performance Period  $p$

*Non-Compliance Points Event Amount<sub>p</sub>* equals the Non-Compliance Points Event Amount in respect of day  $d$  of Performance Period  $p$ , calculated as follows:

$$\text{[Redacted]} \times [\text{the greater of (i) } (NCE\ Points_d - 15) \text{ and (ii) } 0]$$

where:

$NCE\ Points_d$  is the NCE Points Balance on day  $d$

**PART 5  
NCE POINTS AND DEFAULT POINTS**

**5.1 Assignment of NCE Points**

- (a) Upon any occurrence of a Non-Compliance Points Event during the period described in Section 2.1(a) of this Schedule, whether such occurrence is first identified and reported to the other party by the Primary Contractor or the Province, NCE Points shall be assigned



on the basis set out in Appendix A [Assignment of NCE Points] of this Schedule and in accordance with this Section 5.1.

- (b) If the occurrence and / or continued subsistence of a Non-Compliance Points Event is first identified in a Nonconformity Report issued by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence and / or continued subsistence of the Non-Compliance Points Event before the Province did so, the Province may assign an additional number of NCE Points in respect of that Non-Compliance Points Event equal to the number of NCE Points assigned in accordance with Section 5.1(a) and / or, as applicable, Sections 5.1(d) or (e) of this Schedule.
- (c) No NCE Points shall be assigned in respect of a Non-Compliance Points Event that is the direct result of a Supervening Event.
- (d) In respect of a Non-Compliance Points Event for which the Points Reassignment Period as set out in Appendix A [Assignment of NCE Points] of this Schedule is 24 hours then, for each complete 24 hour period that such Non-Compliance Points Event continues to subsist, measured from the point of initial occurrence, an additional number of NCE Points in respect of such Non-Compliance Points Event shall be assigned. The number of additional NCE points assigned in accordance with this Section 5.1(d) for each such 24 hour period shall be equal to the number of NCE Points initially assigned in respect of such Non-Compliance Points Event in accordance with Section 5.1(a) of this Schedule.
- (e) In respect of a Non-Compliance Points Event for which the Points Reassignment Period as set out in Appendix A [Assignment of NCE Points] of this Schedule is 28 days then, for each complete 28 day period that such Non-Compliance Points Event continues to subsist, measured from the point of initial occurrence, an additional number of NCE Points in respect of such Non-Compliance Points Event shall be assigned. The number of additional NCE Points assigned in accordance with this Section 5.1(e) for each such 28 day period shall be equal to the number of NCE Points initially assigned in respect of such Non-Compliance Points Event in accordance with Section 5.1(a) of this Schedule multiplied by the relevant Compounding Factor determined in accordance with this Section 5.1(e).

The Compounding Factor used to calculate the number of NCE Points assigned in accordance with this Section 5.1(e) shall be equal to:

1 + [the number of each complete 28 day period that such Non-Compliance Points Event subsists since the initial occurrence of the Non-Compliance Points Event to which the calculation relates]

- (f) The Province shall notify the Primary Contractor of the assignment by the Province of any NCE Points pursuant to this Section 5.1 promptly after such assignment.
- (g) The Primary Contractor shall be entitled to dispute the assignment of any NCE Points only if:

- (i) the number of such NCE Points assigned by the Province pursuant to Section 5.1(a), 5.1(d) or 5.1(e) of this Schedule in respect of a Non-Compliance Points Event is greater than the number of NCE Points identified by the Primary Contractor in the relevant report delivered under Part 6 [Reports] of this Schedule as being assignable in respect of that Non-Compliance Points Event in accordance with this Section 5.1; or
- (ii) it is disputing the reasonableness of the Province's determination pursuant to Section 5.1(b) of this Schedule; and

the Primary Contractor refers any such dispute referred to in Section 5.1(g)(i) or (ii) of this Schedule to the Dispute Resolution Procedure within 10 Business Days after its receipt from the Province of notice of such assignment.

- (h) The Province expressly reserves the right to refrain from assigning all or any portion of the NCE Points assignable in accordance with this Section 5.1 in respect of any Non-Compliance Points Event, and the Province may do so without prejudice to any of its other available rights and remedies in respect of that Non-Compliance Points Event, and without prejudice to its right to assign NCE Points, and to exercise any of its other available rights and remedies, in respect of any other Non-Compliance Points Event. Any such refraining by the Province from assigning any NCE Points shall not excuse the Primary Contractor from performing, nor otherwise affect the Primary Contractor's obligation to perform, all of its obligations under this Agreement, including the rectification of any relevant Non-Compliance Points Event.
- (i) The assignment of NCE Points as contemplated by this Section 5.1 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Project Documents or at law or in equity, and the Province may have recourse to any one or more of all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

## **5.2 Calculation of NCE Points Balance**

- (a) In respect of remediable Non-Compliance Points Events, for the purposes of Section 5.2(c) of this Schedule, NCE Points that have been assigned pursuant to Section 5.1 [Assignment of NCE Points] of this Schedule shall subsist for the duration of the period from the time of occurrence of the Non-Compliance Points Event in respect of which such NCE Points have been assigned until the time at which the Nonconformity Report in respect of such Non-Compliance Points Event is "closed" in accordance with Section 7.1(i) [Nonconformity Reporting Process] of Schedule 6.
- (b) In respect of irremediable Non-Compliance Points Events, for the purposes of Section 5.2(c) of this Schedule, NCE Points that have been assigned pursuant to Section 5.1 [Assignment of NCE Points] of this Schedule shall subsist for a duration of 240 hours from the point of initial occurrence of the relevant Non-Compliance Points Event.

- (c) For the purposes of Section 4.1 [Calculation of Non-Compliance Points Event Payments] of this Schedule, the NCE Points Balance (the “**NCE Points Balance**”) in respect of day *d* shall be the aggregate number of NCE Points assigned pursuant to Section 5.1 [Assignment of NCE Points] of this Schedule at any time after the Effective Date and that continue to subsist as at the end of day *d* in accordance with Sections 5.2(a) and 5.2(b) of this Schedule.
- (d) At all times, the Parties shall maintain a record of:
  - (i) the aggregate number of NCE Points assigned pursuant to Section 5.1 [Assignment of NCE Points] of this Schedule at any time during the period after the Effective Date until such time (for certainty, including any NCE Points that have ceased to subsist in accordance with Sections 5.2(a) and 5.2(b) of this Schedule); and
  - (ii) the NCE Points Balance.

### **5.3 Assignment of Default Points**

Default Points shall be assigned to the Primary Contractor on the basis set out in this Section 5.3.

- (a) For each 150 NCE Points assigned to the Primary Contractor pursuant to Section 5.1 [Assignment of NCE Points] of this Schedule during a Contract Year the Province shall assign to the Primary Contractor one Default Point.
- (b) If the Primary Contractor fails to perform or observe any of its material obligations under this Agreement (other than its obligations referred to in Section 5.3(c) of this Schedule, but including First Nations Requirements) then the Province may, in its discretion, assign to the Primary Contractor up to a maximum of 5 Default Points for each such failure.
- (c) If there occurs:
  - (i) a Nonconformity in respect of a Quality Audit of the Quality Management System, and such Nonconformity is not remedied within the required time set out in the relevant Nonconformity Report; or
  - (ii) a Nonconformity in respect of a Quality Audit of the Quality Management System (a “**Repeat Nonconformity**”) that relates to a requirement in respect of which a Nonconformity has occurred previously, whether or not such Repeat Nonconformity is remedied; or
  - (iii) a commitment designated as “Severe” in Appendix B [Table of Commitments] of Schedule 5; or
  - (iv) a Nonconformity in respect of performance measure PE2.6(a) [Fisheries Authorization] in Schedule 5; or

- (v) a Nonconformity in respect of performance measure PE3.11(a)-2 [Construction Environmental Management Plan] in Schedule 5; or
- (vi) a Nonconformity in respect of performance measure PE4.4(a) [Notification to Province] in Schedule 5; or
- (vii) a Nonconformity in respect of performance measure PE4.5(a) [Notification to Environmental Authorities] in Schedule 5; or
- (viii) a Nonconformity resulting from a failure by the Primary Contractor to comply with its obligations under Article 3.4.2 [Emergency Response Agencies] of Part 4 of Schedule 4; or
- (ix) a Nonconformity in respect of a non-permitted disruption to a Planned Event; or
- (x) a Nonconformity resulting from a failure by the Primary Contractor to comply with its obligations under Article 3.1.2 [Special Event] of Part 4 of Schedule 4;

then the Province may, in its discretion, assign to the Primary Contractor up to a maximum of 3 Default Points for each such Nonconformity or Repeat Nonconformity, as the case may be.

- (d) No Default Points shall be assigned in respect of any failure referred to in Section 5.3(b) of this Schedule or any Nonconformity that, in either case, is the direct result of a Supervening Event.
- (e) For each successive 24 hour period that a Nonconformity described in Sections 5.3(c)(viii) through 5.3(c)(x) of this Schedule subsists after the time of occurrence of such Nonconformity, the Province may, in its discretion, assign to the Primary Contractor 1 Default Point for each successive 24 hour period that the Nonconformity remains unresolved.
- (f) Once assigned pursuant to this Section 5.3, Default Points shall subsist for the remainder of the Term.
- (g) At all times, the Parties shall maintain a record of the aggregate number of Default Points assigned pursuant to this Section 5.3 at any time during the period from the Effective Date until such time (the “**Default Points Balance**”).
- (h) The Province shall notify the Primary Contractor of the assignment of any Default Points pursuant to this Section 5.3 promptly after such assignment.
- (i) The Primary Contractor shall be entitled to dispute the assignment of any Default Point only if (i) the number of such Default Points assigned by the Province in respect of any Performance Period is greater than the number of Default Points identified by the Primary Contractor in the relevant report delivered under Part 6 [Reports] of this Schedule as being assignable during that Performance Period in accordance with this Section 5.3 and (ii) the Primary Contractor refers such dispute to the Dispute Resolution

Procedure within 10 Business Days after its receipt from the Province of notice of such assignment.

- (j) The Province expressly reserves the right to refrain from assigning all or any portion of the Default Points assignable in accordance with this Section 5.3, and the Province may do so without prejudice to any of its other available rights and remedies in respect of the event or circumstance that entitled the Province to assign such Default Points, and without prejudice to its right to assign Default Points, and to exercise any of its other available rights and remedies, in respect of any other event or circumstance that entitles the Province to assign Default Points. Any such refraining by the Province from assigning any Default Points shall not excuse the Primary Contractor from performing, nor otherwise affect the Primary Contractor's obligation to perform, all of its obligations under this Agreement, including the rectification of any relevant failure referred to in Section 5.3(b) of this Schedule or relevant Nonconformity.
- (k) The Province's right to assign Default Points as contemplated by this Section 5.3 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Project Documents or at law or in equity, and the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

## **PART 6 REPORTS**

### **6.1 Reports**

- (a) No later than 5 Business Days following the end of a Performance Period, the Primary Contractor shall deliver to the Province's Representative a written report setting out the Primary Contractor's calculation of the Performance Incentive Payment payable by it in respect of that Performance Period in accordance with Section 2.1 [Obligation to make Performance Incentive Payments] of this Schedule, together with, if applicable, the other matters specified in Sections 6.1(a)(ii) to (xiii) of this Schedule. Specifically, the report shall show the Primary Contractor's calculation of each of the following (each stated separately):
  - (i) any Performance Incentive Payment payable in respect of that Performance Period;
  - (ii) any Non-Compliance Disruption Event Payment payable in respect of that Performance Period including the calculation of each of the following (each stated separately):
    - (A) any Traffic Disruption Payment payable in respect of that Performance Period;

- (B) any Pedestrian and Cyclist Disruption Payment payable in respect of that Performance Period;
- (C) any Access Disruption Payment payable in respect of that Performance Period;
- (D) any Parking Disruption Payment payable in respect of that Performance Period;
- (E) any WCE Station Entrance Disruption Payment payable in respect of that Performance Period;
- (F) any WCE Park & Ride Disruption Payment payable in respect of that Performance Period;
- (G) any Off-Street Bus Exchange Disruption Payment payable in respect of that Performance Period;
- (H) any SkyTrain Station Entrance Disruption Payment payable in respect of that Performance Period;
- (I) any SkyTrain Service Disruption Payment payable in respect of that Performance Period;
- (J) any Hours of Work Disruption Payment payable in respect of that Performance Period;
- (K) any Construction Noise Disruption Payment payable in respect of that Performance Period;
- (iii) any Non-Compliance Points Event Payment payable in respect of that Performance Period;
- (iv) the NCE Points assignable in respect of each Non-Compliance Points Event that occurred during that Performance Period (which shall be the aggregate of the number of NCE Points set out in Appendix A [Assignment of NCE Points] of this Schedule assignable in respect of such Non-Compliance Points Event and the additional number of NCE Points assignable in accordance with Sections 5.1(b), 5.1(d) and / or 5.1(e), as applicable, of this Schedule in respect of such Non-Compliance Points Event);
- (v) the total of all NCE Points assignable in respect of all Non-Compliance Points Events that occurred during that Performance Period;
- (vi) the NCE Points Balance as at the end of each day of that Performance Period;
- (vii) the total of all NCE Points assigned during the relevant Contract Year as at the end of that Performance Period;

- (viii) the total of all Default Points assignable to the Primary Contractor during that Performance Period (which shall be the aggregate Default Points assignable to the Primary Contractor in accordance with Section 5.3 [Assignment of Default Points] of this Schedule);
  - (ix) the Default Points Balance as at the end of that Performance Period;
  - (x) GST (if any) payable in respect of any of the Performance Incentive Payments referred to in paragraphs (i) through (iii) above in respect of that Performance Period;
  - (xi) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Performance Incentive Payments made by the Primary Contractor during the period prior to that Performance Period (for which adjustment has not already been made);
  - (xii) any interest payable in respect of any amounts that have become due and payable under this Schedule; and
  - (xiii) the net amount owing by the Primary Contractor to the Province or by the Province to the Primary Contractor in respect of the Primary Contractor's obligation to make Performance Incentive Payments pursuant to Section 2.1 [Obligation to make Performance Incentive Payments] of this Schedule.
- (b) A report delivered pursuant to this Section 6.1 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

## **6.2 Province can issue Reports and Invoices**

If the Primary Contractor fails to deliver any report or invoice within the time period required pursuant to this Part 6 [Reports], the Province may itself prepare and deliver to the Primary Contractor such report or invoice. Any such report or invoice delivered pursuant to this Section 6.2 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

## **PART 7 DUE DATES FOR PERFORMANCE INCENTIVE PAYMENTS**

### **7.1 Due Dates for Performance Incentive Payments**

- (a) If a report delivered pursuant to Section 6.1 [Reports] of this Schedule shows a net amount owing by the Primary Contractor to the Province then, without prejudice to Section 12.15 [Payment of Disputed Amounts], the Primary Contractor shall pay and remit to the Province such amount simultaneously with the delivery of such report to the Province except to the extent that the Province in its discretion has elected to deduct the whole or any part of such amount from any payments payable by the Province to the

Primary Contractor pursuant to Part 12 [Payments] or any other provision of this Agreement.

- (b) If any report delivered pursuant to Section 6.1 [Reports] of this Schedule shows a net amount owing by the Province to the Primary Contractor, it shall be accompanied by an invoice from the Primary Contractor to the Province in respect of such amount (which invoice will separately identify any GST included in the calculation of such amount). Without prejudice to Section 12.15 [Payment of Disputed Amounts], the Province shall pay to the Primary Contractor the amount of any such invoice issued by the Primary Contractor not later than the later of:
- (i) the last day of the Performance Period following the Performance Period (or part thereof, as the case may be) to which the invoice relates; or
  - (ii) the 10<sup>th</sup> Business Day after the Province has received both the said invoice and the report in respect of such Performance Period (or part thereof, as the case may be).



**APPENDIX A  
ASSIGNMENT OF NCE POINTS**

| <b>Performance Requirement</b>                  | <b>Performance Category</b> | <b>Basis of Assessment</b>   | <b>NCE Points Assignable</b> | <b>Points Re-assignment Period</b> |
|---|-----------------------------|--|------------------------------|------------------------------------|
| <b>Project Agreement and All Schedules</b>      |                             |  |                              |                                    |
| Document Deliverables submitted to the Province | Timeliness                  | As specified in this Agreement (including the relevant Schedules)  |                              | 28 days                            |
|   | Completeness                | Either a Review Procedure submission resulting in repeat 'comments' on re-submitted submission documents specified in this Agreement (including the relevant Schedules), or a Consent Procedure submission resulting in repeat 'rejected' (other than a "deemed" rejection under Section 2.2(e) of Schedule 2 or a rejection on the merits of a submission) on submission documents specified in this Agreement (including the relevant Schedules) |                              | 28 days                            |
| <b>Schedule 4: Design and Construction</b>      |                             |  |                              |                                    |
| Traffic Management                              | Implementation              | Where a Non-Permitted Patrol Disruption Event occurs   |                              | n/a                                |
| Traffic Management                              | Implementation              | Where a Nonconformity occurs in relation to a failure to provide notice to each person to whom the Primary Contractor is required to provide notice in accordance with the requirements of Part 4 of Schedule 4 (other than Article 4.1.2(c) of such Part) (provided that the maximum number of NCE Points assignable in relation to a failure to notify in respect of the occurrence of a single event shall be three NCE Points)                 |                              | n/a                                |
| Transit   | Implementation              | Where a Non-Permitted WCE Park & Ride Low Disruption Event occurs  |                              | n/a                                |
| Transit   | Implementation              | Where a Non-Permitted WCE Park & Ride Medium Disruption Event occurs   |                              | n/a                                |
| Transit   | Implementation              | Where a Non-Permitted WCE Passenger Access Disruption Event occurs   |                              | 24 hours                           |
| <b>Schedule 5: Environmental Obligations</b>    |                             |  |                              |                                    |
| Environmental Commitments & Assurances          | Implementation              | As designated as "Minor" in Schedule 5, Appendix B   |                              | 28 days                            |
|   |                             | As designated as "Moderate" in Schedule 5, Appendix B  |                              | 28 days                            |

**EVERGREEN LINE RAPID TRANSIT PROJECT  
PROJECT AGREEMENT  
SCHEDULE 9: PERFORMANCE MECHANISM**

**Execution**

|  |                                    |   |  |         |
|--|------------------------------------|---|--|---------|
|  |                                    | As designated as “Major” in Schedule 5, Appendix B  |  | 28 days |
| Performance Measures                                     | Environmental Performance Measures | All measures (identified as PEXXX) specified in Schedule 5 but excluding PE2.6(a), PE3.11(a)-2, PE4.4(a) and PE 4.5(a)  |  | 28 days |
| <b>Schedule 6: Quality Management</b>                    |                                    |   |  |         |
| Reporting Nonconformities                                | Implementation                     | Where the occurrence of a Nonconformity that is not a Non-Compliance Points Event or a Non-Compliance Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Primary Contractor ought to have identified and reported the occurrence of the Nonconformity before the Province did so |  | 28 days |
| Unresolved NCRs  | Implementation                     | Where a Nonconformity is not resolved within the response time specified in accordance Section 7.1(c) of Schedule 6   |  | 28 days |
| Performance Measures                                     | Quality Performance Measures       | All measures (identified as PQXXX) specified in Schedule 6  |  | 28 days |
| <b>Schedule 8: Communication and Community Relations</b> |                                    |   |  |         |
| Performance Measures                                     | Quality Performance Measures       | All measures (identified as PCXXX) specified in Schedule 8  |  | 28 days |