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**PART 1 OF SCHEDULE 13**

**DEFINITIONS**

In this Schedule 13, unless the context otherwise requires, the following expressions have the following meanings:

“Amended Change Appraisal” has the meaning given in paragraph 4.1.4 of Part 2 of this Schedule.

“Amended Change Notice” has the meaning given in paragraph 4.1.1 of Part 2 of this Schedule.

“Cancellation Notice” has the meaning given in paragraph 6.1.1.3 of Part 2 of this Schedule.

“Capital Cost Increase” means, in relation to a Province Change, Compensation Event or Concessionaire Change, the amount of the Fixed Price or Competitive Price therefor (if any) accepted by the Province and (except insofar as covered by such Fixed Price or Competitive Price) the amount, if any, by which:

- (a) Capital Expenditure (in addition to such Fixed Price or Competitive Price) that is incurred by the Concessionaire in carrying out the Undertakings as a consequence of the Province Change, Compensation Event or Concessionaire Change under consideration, the Concessionaire having taken all reasonable steps to minimize such Capital Expenditure,  
  
exceeds:
- (b) Capital Expenditure which would have been incurred by the Concessionaire in carrying out the Undertakings without the Province Change, Compensation Event or Concessionaire Change under consideration,

provided, however, that, for greater certainty, if a Competitive Price is accepted by the Province, any reasonable additional Capital Expenditure properly incurred and arising under the terms of the Competitive Price will be added subsequently and recovered as a Capital Cost Increase insofar as such costs have been included in the report on Valid Responses contained in the Change Appraisal or Amended Change Appraisal (as applicable) delivered to the Province pursuant to paragraph 3.1 or paragraph 4.1 of Part 2 of this Schedule.

“Capital Cost Saving” means, in relation to a Province Change, Compensation Event or Concessionaire Change, the amount, if any, by which:

- (a) Capital Expenditure that is incurred by the Concessionaire in carrying out the Undertakings as a consequence of the Province Change, Compensation Event, or Concessionaire Change under consideration, the Concessionaire having taken all reasonable steps to minimize such Capital Expenditure,  
  
is less than:

**Definitions**

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- (b) Capital Expenditure which would have been incurred by the Concessionaire in carrying out the Undertakings without the Province Change, Compensation Event or Concessionaire Change under consideration,

provided, however, that, for greater certainty, if a Competitive Price is accepted by the Province, any reasonable additional reduction in Capital Expenditure arising under the terms of the Competitive Price will be added to and recovered subsequently as a Capital Cost Saving insofar as such costs have been included in the report on Valid Responses contained in the Change Appraisal or Amended Change Appraisal (as applicable) delivered to the Province pursuant to paragraph 3.1 or paragraph 4.1 of Part 2 of this Schedule.

“Change Adjustment” means an adjustment to the Performance Payments calculated in accordance with Appendix A to this Schedule

“Change Completion Date” has the meaning given in paragraph 2.1.1.2 of Part 2 of this Schedule.

“Change Appraisal” has the meaning given in paragraph 3.1 of Part 2 of this Schedule.

“Change Directive” means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by the Province’s Representative directing the Concessionaire to proceed with a Province Change pending the finalization and issuance of a Province Change Confirmation for that Province Change.

“Change in Capital Costs” means a Capital Cost Increase or a Capital Cost Saving.

“Change in Recurrent Costs” means a Recurrent Cost Increase or a Recurrent Cost Saving.

“Change in Revenues” means a Revenue Gain or a Revenue Loss.

“Compensable Loss” in respect of a Compensation Event means:

- (a) a Capital Cost Increase; and/or
- (b) a Recurrent Cost Increase; and/or
- (c) a Revenue Loss,

incurred by the Concessionaire as a consequence of the Compensation Event (the Concessionaire having taken all reasonable steps to mitigate such Compensable Loss) to the extent the aggregate amounts referred to in paragraphs (a), (b) and (c) above exceed the aggregate of any Capital Cost Saving, Recurrent Cost Saving, Revenue Gain and any other saving incurred as a consequence of such Compensation Event (the Concessionaire having taken all reasonable steps to maximize the same).

“Compensation Notice” has the meaning given in paragraph 1.1 of Part 4 of this Schedule.

“Competitive Price” means the price set out in the report on Valid Responses referred to in paragraph 4.1.4 of Part 2 of this Schedule.

“Disputed Matter” has the meaning given in paragraph 6.1.1.1 of Part 2 of this Schedule.

“Fixed Price” means a fixed price quotation (excluding financing costs) for the implementation of a Province Change incorporating all such information, including quantities, as is required pursuant to paragraph 3.1.1 of Part 2 of this Schedule 13 or as the Province may reasonably require to enable it to properly evaluate such quotation excluding, for greater certainty, a Competitive Price.

“Payment Amount” has the meaning given in paragraph 1.1.1 of Part 4 of this Schedule.

“Province Change Notice” has the meaning given in paragraph 2.1.1 of Part 2 of this Schedule.

“Recurrent Cost” means any expenditure (whether recurrent or not) which is not a Capital Expenditure.

“Recurrent Cost Increase” means, in relation to a Province Change, Compensation Event or Concessionaire Change, the amount (if any) by which:

- (a) the Recurrent Costs incurred and/or to be incurred by the Concessionaire in carrying out the Undertakings as a consequence of the Province Change, Compensation Event or Concessionaire Change, subject to the Concessionaire taking all reasonable steps (having regard to its continuing obligations under this Agreement) to minimize such Recurrent Costs insofar as they are attributable to such Province Change, Compensation Event or Concessionaire Change,

exceeds:

- (b) the Recurrent Costs which would have been incurred by the Concessionaire in carrying out the Undertakings without the Province Change, Compensation Event or Concessionaire Change.

“Recurrent Cost Saving” means, in relation to a Province Change, Compensation Event or Concessionaire Change, the amount (if any) by which:

- (a) the Recurrent Costs incurred and/or to be incurred by the Concessionaire in carrying out the Undertakings as a consequence of the Province Change, Compensation Event or Concessionaire Change, subject to the Concessionaire taking reasonable steps (having regard to its continuing obligations under this Agreement) to minimize such Recurrent Costs insofar as the Recurrent Costs are attributable to such Province Change, Compensation Event or Concessionaire Change,

is less than:

- (b) the Recurrent Costs which would demonstrably have been incurred by the Concessionaire in carrying out the Undertakings without the Province Change, Compensation Event or Concessionaire Change.

“Refusal Notice” has the meaning given in paragraph 5.1.1 of Part 2 of this Schedule.

“Relevant Consents” has the meaning given in paragraph 3.1.4 of Part 2 of this Schedule.

“Revenue Gain” means a net increase in the Performance Payments or other gain receivable by the Concessionaire in accordance with Section 32.1 [Performance Payments] of this Agreement as a consequence of a Province Change, Compensation Event or Concessionaire Change which would not have been receivable by the Concessionaire but for the Province Change, Compensation Event or Concessionaire Change.

“Revenue Loss” means the absence of, delay in, or a net decrease in the Performance Payments receivable by the Concessionaire in accordance with Section 32.1 [Performance Payments] of this Agreement or any other Loss suffered or incurred by the Concessionaire as a consequence of a Province Change or Compensation Event which would have been payable by the Province or, as the case may be, would not have been suffered or incurred by the Concessionaire but for the Province Change or Compensation Event, provided however that to the extent a Revenue Loss results from a delay in completion of the Works or the Decommissioning resulting from a Province Change or a Compensation Event, the Revenue Loss will be determined on the basis of the Delay Period determined in accordance with Section 12.6.7 of this Agreement.

“Valid Response” means a submission or proposal received by the Concessionaire which complies with the submission or proposal requirements established in accordance with the provisions of paragraph 4.1.2 of Part 2 of this Schedule 13 and notified to proponents by the Concessionaire.

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**PART 2 OF SCHEDULE 13**

**PROVINCE CHANGES**

1.1 General

1.1.1 Subject to the terms and conditions of this Schedule 13 [Changes], the Province will be entitled to propose and require the Concessionaire to carry out and implement a Province Change.

1.1.2 The Concessionaire will not be entitled to any payment, compensation or extension of time for a Province Change except to the extent provided in a Province Change Confirmation or a Change Directive in accordance with this Schedule.

2.1 Procedure for requesting a Province Change

2.1.1 If the Province wishes to make a Province Change, the Province will issue a Notice (a “Province Change Notice”) to the Concessionaire, with a copy to the Agent, specifying:

2.1.1.1 the nature, extent and full details of the Province Change in sufficient detail to reasonably allow the Concessionaire to calculate and provide the Change Appraisal in accordance with paragraph 3.1 of this Part 2;

2.1.1.2 the date as of which the Province wishes the Province Change to be completed (which will be a reasonable date having regard to the nature and extent of the Province Change)(the “Change Completion Date”);

2.1.1.3 whether or not the Province wishes any Capital Cost Increase consequent on a Province Change to be paid for by way of a lump sum payment or payments, or by way of a Change Adjustment (and, if desired by the Province in the case of a Change Adjustment, with a request for the Concessionaire to use all reasonable efforts to obtain financing for all or part of the Province Change, provided, however, that no such request may be made by the Province unless the Province believes that the Capital Cost Increase consequent on the Province Change is reasonably likely to exceed \$250,000 (index linked)), or a combination thereof;

2.1.1.4 where, in the opinion of the Province, it is or would be likely to be required by applicable Laws and Regulations to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Province Change, that the Concessionaire is required to seek and evaluate competitive tenders, bids or proposals (as applicable) or other competitive price quotations for the Province Change and submit a Competitive Price in accordance with the provisions set out

in paragraph 4.1 (provided, however, that references in paragraphs 4.1.2 to 4.1.6 of this Part 2 to “Amended Change Notice” and “Amended Change Appraisal” will be construed for purposes of this paragraph 2.1.1.4 as if they were references to “Province Change Notice” and “Change Appraisal” respectively).

### 3.1 Change Appraisals

Subject to paragraphs 4.1.6 and 5.1 of this Part 2, within 30 Working Days (or such later date as the Province may specify, acting reasonably in the circumstances) of the issuance of a Province Change Notice, the Concessionaire will deliver to the Province a written report (a “Change Appraisal”), which will set out:

3.1.1 the amount of the Fixed Price together with a detailed summary of the prices, costs, charges, overhead amounts, profit and other margins, used to calculate the Fixed Price and a statement of the Concessionaire confirming the matters set out in paragraphs 3.1.1.1 to 3.1.1.6 (inclusive), which statement must be accompanied by sufficient additional information to demonstrate to the Province’s reasonable satisfaction that:

3.1.1.1 the Concessionaire has used all reasonable efforts, including the use of competitive quotations or tenders, to oblige its subcontractors to minimize any increase in costs and to maximize any reduction in costs;

3.1.1.2 subject as provided in the definition of “Fixed Price”, all costs of the Concessionaire and its contractors and subcontractors of any tier in relation to the work required to be carried out to effect the relevant Province Change, so far as the same can be ascertained at the date of the Change Appraisal, are contained therein;

3.1.1.3 where the Province Change occurs on or after the expiry of the Original Service Period or where the Province Change occurs before the expiry of the Original Service Period and does not involve additional capital works to the New Crossing, the margins for profit and overhead for the Concessionaire and its direct contractors included in the calculation of the Fixed Price do not exceed 18.8% in aggregate and no other margins or mark-ups are included by such entities;

3.1.1.3A where the Province Change occurs before the expiry of the Original Service Period and involves additional capital works to the New Crossing, the Fixed Price is no more than that which would result from applying the unit prices set out in the Concessionaire Proposal Extracts (index linked), without additional margins or mark-ups;

3.1.1.4 all costs included in the Fixed Price reflect: (i) labour rates applying in the open market to providers of services similar to those required in

connection with the implementation of the Province Change; (ii) any and all changes in the Technical Requirements arising out of the proposed Province Change; and (iii) any and all changes in risk allocation;

3.1.1.5 the Fixed Price takes into account all reasonably foreseeable Changes in Law;

3.1.1.6 the Concessionaire has complied or will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than the Concessionaire would apply if all costs incurred were to its own account without recourse to the Province;

3.1.2 where relevant, an estimate of the likely:

- (a) Capital Cost Increases or Capital Cost Savings; and/or
- (b) Recurrent Cost Increases or Recurrent Cost Savings; and/or
- (c) Revenue Loss or Revenue Gain,

resulting from the implementation of the Province Change insofar as not covered by the Fixed Price or, where a Competitive Price is required pursuant to paragraph 4.1 of this Part 2, by the Competitive Price (which estimate, for greater certainty, will not be binding on either Party unless expressly agreed to by both Parties);

3.1.3 where the Province Change Notice has specified that the Province wishes the Province Change to be paid for by a Change Adjustment, an estimate of such adjustment calculated in accordance with Appendix A to this Schedule 13 [Changes] (which estimate, for greater certainty, will not be binding on either Party unless expressly agreed to by both Parties) and, where there is a Capital Cost Increase, a report on whether funding for the Capital Cost Increase to which the Change Adjustment relates is available under the Funding Agreements and, if not, whether the Concessionaire has been able to obtain or is likely to obtain funding for such Capital Cost Increase within the time period specified in paragraph 9.1 of this Part 2, including details of steps taken or to be taken to obtain such funding;

3.1.4 a list of any Permits, Licences and Approvals or amendments or revisions to existing Permits, Licences and Approvals which must be obtained (including any Province Permits, Licences and Approvals) before the Province Change can be effected or implemented to give effect to the Province Change (the “Relevant Consents”) and the costs of and anticipated timetable for obtaining the same together with any consequential impact upon the date specified by the Province in paragraph 2.1.1.2 of this Part 2;

- 3.1.5 a detailed description of any anticipated adverse (or beneficial) effect on the Concessionaire's ability to comply with the provisions of this Agreement or perform any of the Undertakings and proposals for mitigating (or enhancing) such effect;
- 3.1.6 the Concessionaire's reasonable assessment of whether the implementation of such a Province Change would require or result in changes, alterations or amendments to any of the Technical Requirements;
- 3.1.7 without prejudice to any of the Concessionaire's obligations pursuant to Section 12.6 [Delay] of this Agreement or Part 5 of this Schedule:
  - 3.1.7.1 a detailed description of any anticipated delay or impediment to completion of the Works or the Decommissioning which has arisen or is likely to arise as a consequence of the Province Changes;
  - 3.1.7.2 a detailed description of any anticipated delay or impediment to the carrying out of any of the Undertakings which has arisen or is likely to arise as a consequence of the Province Change;
- 3.1.8 where the Concessionaire is of the opinion (reasonably held) that implementation of the Province Change may result in the Concessionaire being unable to or being prevented from meeting any of the Technical Requirements and/or any other provisions of this Agreement, details of how such an effect can be mitigated (if at all) and the estimated cost (if any) of doing so;
- 3.1.9 a detailed description of any changes to the Construction Requirements, the O&M Requirements and any other parts of this Agreement which the Concessionaire considers (acting reasonably) would reasonably be required in order to implement the Province Change;
- 3.1.10 if implementing the Province Change will, in the Concessionaire's opinion, result in any of the following events: (i) the Substantial Completion Date not occurring on or before the Scheduled Substantial Completion Date, or (ii) Completion not occurring by the Completion Longstop Date, a statement by the Concessionaire as to whether it would be practicable for the Contractor to accelerate construction so as to eliminate or mitigate the delay and (if it is so practicable) the Concessionaire's estimate of the costs of such acceleration;
- 3.1.11 details as to any land or Rights in respect of land to which the Concessionaire would require access in order to implement the Province Change in respect of which it does not currently have access pursuant to the licence granted to the Concessionaire and those authorized by it under Section 8 [Land] of this Agreement; and



3.1.12 the Concessionaire's proposed schedule for the implementation of the Province Change (which will, *inter alia*, provide, where reasonably and commercially practicable, for completion of the relevant Province Change by not later than the Change Completion Date in respect of that Province Change).

4.1 Competitive Price

4.1.1A The following provisions of this Section 4.1 shall apply:

4.1.1A.1 to all Province Changes that occur on or after the expiry of the Original Service Period; and

4.1.1A.2 to Province Changes that occur before the expiry of the Original Service Period where the Province Change does not involve additional capital works to the New Crossing.

4.1.1 As soon as practicable following the delivery of the Change Appraisal to the Province in accordance with paragraph 3.1 of this Part 2, the Province's Representative will meet with the Concessionaire's Representative to discuss the matters set out in the Change Appraisal. If, following any such discussions, the Province (acting reasonably) is not satisfied that the criteria set out in paragraph 3.1.1 have been met or is otherwise not satisfied that the Fixed Price represents the best value for money obtainable in connection with the implementation of the proposed Province Change, it may, if the Fixed Price set out pursuant to paragraph 3.1.1 of this Part 2 is likely to exceed \$150,000 (index linked), provide an amended Province Change Notice (the "Amended Change Notice") to the Concessionaire requiring it to seek and evaluate competitive tenders or proposals for implementation of the proposed Province Change from appropriately qualified and experienced third parties (each of which must be, as at the date of submission by the Concessionaire of the Amended Change Appraisal referred to in paragraph 4.1.4 of this Part 2, dealing at "arm's length" with the Concessionaire and with one another, as the term "arm's length" is used in the Income Tax Act (Canada) in effect as of the date of this Agreement) and to submit a Competitive Price.

4.1.2 As soon as possible, but in any event no later than 5 Working Days after receipt of the Amended Change Notice, the Province's Representative and the Concessionaire's Representative will meet to discuss and develop the appropriate manner of identifying prospective proponents and the terms of the tender or proposal requirements, which terms must include:

4.1.2.1 a statement of the tender or proposal validity period;

4.1.2.2 details of the tender or proposal evaluation criteria;

4.1.2.3 the terms and conditions under which the relevant services will be contracted by the Concessionaire;

- 4.1.2.4 the information that tenderers or proponents are required to provide; and
  - 4.1.2.5 the minimum number of tenders or proposals that are required to be obtained for the tender or proposal to be valid.
  - 4.1.3 Any Dispute with respect to the matters referred to in paragraph 4.1.2 of this Part 2 will be determined in accordance with the Disputes Resolution Procedure.
  - 4.1.4 Within 30 Working Days of agreement or determination of the matters referred to in paragraph 4.1.2 of this Part 2, the Concessionaire will obtain Valid Responses and submit an amended Change Appraisal (the “Amended Change Appraisal”) containing a report on Valid Responses. Where the Concessionaire has sought proposals as opposed to tenders for the relevant work, the Concessionaire will report to the Province the results of its evaluation of the proposals in accordance with the terms of the proposal call and will provide the Province with copies of the proposals or extracts from them as the Province may reasonably require.
  - 4.1.5 If it is impracticable to obtain Valid Responses in accordance with this paragraph 4.1 and complete the Amended Change Appraisal within 30 Working Days of receiving the Amended Change Notice or such longer period as the Province acting reasonably in the circumstances may allow, the Concessionaire will deliver the Amended Change Appraisal to the Province as soon as reasonably practicable.
  - 4.1.6 If it is impracticable given the nature of the Province Change to obtain a Competitive Price (including the Concessionaire being unable, despite taking all reasonable steps to comply, to meet the time requirements set out in paragraph 4.1.5 of this Part 2), the Concessionaire will be entitled (subject to notifying the Province in writing of its reasons therefor) to decline to submit a Competitive Price in which event the Province may, in its absolute and unfettered discretion, withdraw the Amended Change Notice and cancel the proposed Province Change or accept the Fixed Price provided by the Concessionaire in response to the original Province Change Notice relating to the proposed Province Change.
- 5.1 Circumstances in which the Concessionaire may refuse to deliver a Change Appraisal
- 5.1.1 Subject to providing the Province with written notification (a “Refusal Notice”) no later than 20 Working Days after receipt by the Concessionaire of a Province Change Notice or an Amended Change Notice (whichever is later) which Refusal Notice must contain an explanation of the Concessionaire’s reasons therefor in sufficient detail to permit a considered review thereof by the Province, the Concessionaire may decline to provide a Change Appraisal or implement a Province Change on the basis that:
    - 5.1.1.1 to implement the Province Change would be technically unfeasible or the Province Change would, if implemented, materially and adversely affect

the Concessionaire's ability to perform its obligations under this Agreement; or

5.1.1.2 to implement the Province Change would be contrary to Good Industry Practice; or

5.1.1.3 to implement the Province Change would be contrary to Laws and Regulations; or

5.1.1.4 to implement the Province Change would be illegal or unsafe; or

5.1.1.5 the Concessionaire would be unable (using all reasonable efforts in respect thereof) to obtain any Relevant Consents (other than Relevant Consents that would be the responsibility of the Province) necessary to implement the Province Change or otherwise to allow compliance with the provisions of this Agreement as a consequence of implementation of such a Province Change having regard to the provisions of this Agreement (as amended, where appropriate, to take account of or make provision for the Province Change); or

5.1.1.6 the Province Change would cause any existing Permit, Licence or Approval to be revoked or cancelled or would cause any additional conditions to be imposed in relation to any such Permit, Licence or Approval with which the Concessionaire would be unable to comply cost effectively; or

5.1.1.7 the Concessionaire would be unable (using all reasonable efforts in respect thereof) to obtain any land or Rights in respect of land necessary for the purpose of implementing the Province Change except where the Province obtains such land.

## 5.2 Province Response to Refusal Notice

5.2.1 Within 10 Working Days of receiving a Refusal Notice, the Province will deliver a Notice to the Concessionaire that it: (i) is cancelling the proposed Province Change; or (ii) does not agree that the proposed Province Change properly falls within any of the grounds set out in paragraph 5.1.1 of this Part 2 and is referring the matter for resolution pursuant to the Disputes Resolution Procedure; or (iii) is amending the Province Change Notice.

5.2.2 If the Province fails to deliver to the Concessionaire the Notice referred to in paragraph 5.2.1 of this Part 2 within the time stipulated thereunder, the Concessionaire will deliver a notice to the Province requiring the Province to deliver the Notice referred to in paragraph 5.2.1 of this Part 2 within 5 Working Days, failing which the Province Change Notice will be deemed to have been cancelled.

- 5.2.3 In any circumstances where the Province cancels or is deemed to have cancelled a Province Change pursuant to paragraph 5.2.1 or 5.2.2 of this Part 2, the provisions of paragraph 13.1.1 of this Part 2 will apply.
- 5.2.4 If the Province makes a reference to the Disputes Resolution Procedure as contemplated in paragraph 5.2.1 of this Part 2 and it is determined under the Disputes Resolution Procedure that the Concessionaire was not entitled to refuse to implement the Province Change, the Concessionaire will deliver a Change Appraisal in accordance with paragraph 3.1 of this Part 2 within 20 Working Days of such determination or such longer period as the Province (acting reasonably, given the nature and extent of the Province Change) may agree with the Concessionaire.
- 5.2.5 If the Province amends the Province Change Notice, it may issue the amended notice as a Province Change Notice under paragraph 2.1.1 of this Part 2 and all the provisions dealing with Province Change Notice in this Agreement will apply to such amended notice as if it is a Province Change Notice, except that the time period for delivery of the Change Appraisal by the Concessionaire in paragraph 3.1 of this Part 2 will be reduced from 30 Working Days to 20 Working Days and the time for issue of a Refusal Notice by the Concessionaire in paragraph 5.1 of this Part 2 will be reduced from 10 Working Days to 5 Working Days. The Province may amend a Province Change Notice pursuant to this paragraph 5.2.5 of this Part 2 more than once.

6.1 Procedure following submission of a Change Appraisal

- 6.1.1 The Province will, within 15 Working Days of receiving a Change Appraisal or Amended Change Appraisal, as the case may be (or such longer period as the Parties may agree), notify the Concessionaire whether it:
- 6.1.1.1 disputes any matter or matters whatsoever (a “Disputed Matter”) in the Change Appraisal or Amended Change Appraisal, as the case may be; or
- 6.1.1.2 wishes to proceed with the Province Change on the basis set out in the Change Appraisal or Amended Change Appraisal, as the case may be (a “Province Change Confirmation”); or
- 6.1.1.3 wishes to cancel the Province Change (a “Cancellation Notice”); or
- 6.1.1.4 requires any further clarification or information before making a decision in respect of any of the information set out in the Change Appraisal or Amended Change Appraisal, as the case may be (including, for greater certainty, confirmation whether funding will be available within the period specified in paragraph 9.1 of this Part 2 for the Capital Cost Increases which the Province wishes to pay for (whether in whole or in part) by way of a Change Adjustment), in which case the Concessionaire will supply

such information or clarification within 20 Working Days of such notification and this paragraph 6.1.1 will apply mutatis mutandis as if receipt of such information or clarification were receipt of a Change Appraisal or Amended Change Appraisal (as the case may be) and the full provision of all requested further clarifications or information will be treated as receipt of the Change Appraisal or Amended Change Appraisal (as the case may be) for the purposes of this paragraph 6.1.1; or

6.1.1.5 wishes the Province Change Notice or the Amended Change Notice (as the case may be) to be amended, in which event the Concessionaire will submit a revised Change Appraisal or Amended Change Appraisal (as the case may be) within 20 Working Days of such notification,

failing which the Province will be deemed to have issued a Cancellation Notice.

6.1.2 Within 10 Working Days of notification by the Province as to a Disputed Matter, either Party may refer the Disputed Matter for determination or resolution pursuant to the Disputes Resolution Procedure.

6.1.3 Within 10 Working Days of the final agreement or determination of all Disputed Matters referred to in paragraph 6.1.2 of this Part 2, the Province will serve either a Province Change Confirmation or a Cancellation Notice in respect of the Province Change.

#### **7.1 Province Change Confirmation**

7.1.1 A Province Change Confirmation must, inter alia, specify whether or not (if the same has formed part of the Change Appraisal or Amended Change Appraisal, as the case may be):

- (a) the Province accepts any Fixed Price or Competitive Price submitted by the Concessionaire in respect of a Province Change or any part of a Province Change in which event such Fixed Price or Competitive Price will be binding on the Parties and where the Province accepts a Competitive Price, the Concessionaire will award the contract for the relevant work to the person who submitted that Competitive Price;
- (b) subject to paragraph 9.1 of this Part 2, the Province requires (in the event that the Concessionaire has been able to obtain an acceptable offer of finance to fund all or part of a Capital Cost Increase) the Concessionaire to accept such offer of finance and proceed on the basis of a Change Adjustment in respect of such Capital Cost Increase (or part thereof); and
- (c) failing which the Province will be deemed to have issued a Cancellation Notice in respect of such Province Change.

7.1.2 Where Relevant Consents are required to implement a Province Change, the Concessionaire will not take steps to implement the Province Change until the Relevant Consents have been obtained, except insofar as it is necessary to take any such steps in order to obtain the Relevant Consents. If the Concessionaire (or the Province in the case of Relevant Consents which can only be obtained by it), having used all reasonable efforts, fails within 3 months of the issuance of a Province Change Confirmation or such longer period as the Province may from time to time reasonably specify (having regard to the nature of the Relevant Consents) to obtain such Relevant Consents, the Province will be deemed to have served a Cancellation Notice in respect of that Province Change and paragraph 13.1.1 of this Part 2 will apply with respect thereto.

8.1 Effect of a Province Change

Subject to paragraph 9.1 of this Part 2, a Province Change Confirmation will have the effect of varying the Technical Requirements to the extent specifically and expressly provided in the Change Appraisal or the Amended Change Appraisal (as the case may be) as read with the relevant Province Change Notice or Amended Change Notice (as the case may be) with effect from the date of issuance of the Province Change Confirmation. As soon as practicable thereafter the Concessionaire will implement such Province Change in accordance with the Technical Requirements as so specifically and expressly varied.

9.1 Procurement of an Offer of Finance

If a Province Change Notice or Amended Change Notice (as the case may be) has been issued by the Province in respect of which the Province has stated in such Notice that it wishes any Capital Cost Increase (or any part thereof) to be paid for by way of a Change Adjustment, the Concessionaire will use all reasonable efforts to obtain a commercially acceptable offer of finance to fund the Capital Cost Increase to be incurred in implementing the Province Change on terms reasonably satisfactory to the Concessionaire and the Senior Funders. If the Concessionaire, having used all reasonable efforts, cannot obtain a commercially acceptable offer of finance to fund the Capital Cost Increase on terms reasonably satisfactory to the Concessionaire and the Senior Funders within 30 Working Days of a Province Change Confirmation, or if, having obtained a commercially acceptable offer of finance, the conditions precedent to such offer of finance are not satisfied or such offer is subsequently withdrawn (in either case other than at the request of, or as a consequence of wilful inaction or default by, the Concessionaire), the Concessionaire will notify the Province and the Province will either compensate the Concessionaire for the Capital Cost Increase resulting from the Province Change in accordance with paragraph 10.1 of this Part 2 or, if it is unwilling to compensate the Concessionaire for such Capital Cost Increase, will serve a Cancellation Notice in respect of the Province Change.

10.1 Payment of Capital Cost Increase by Province

If the Province is obliged or agrees to finance a Capital Cost Increase itself (whether in whole or in part), such financing will be by way of lump sum compensation paid to the Concessionaire as and when the costs forming part of such Capital Cost Increase (or any part thereof) are incurred by the Concessionaire. For greater certainty, when the Province compensates the Concessionaire for a Capital Cost Increase pursuant hereto, no Change Adjustment will be made in respect of that Capital Cost Increase except to the extent that the Province Change Notice or Amended Change Notice has stated that the Province intends to pay for the Province Change referred to therein by way of a combination of lump sum payment and Change Adjustment.

11.1 Change Adjustments

Subject to the provisions of Section 12.6.7 of this Agreement, and to paragraphs 10.1 of this Part 2, following commencement of implementation of each Province Change there will be a Change Adjustment in respect of:

11.1.1 any Capital Cost Increase (except to the extent such Capital Cost Increase is being paid for other than by way of an adjustment to the Performance Payments) or Capital Cost Saving; and/or

11.1.2 any Recurrent Cost Increase or Recurrent Cost Saving; and/or

11.1.3 any Revenue Loss or Revenue Gain; and/or

11.1.4 any other loss, expense and/or saving, such that the Concessionaire will be left in a position which is no better or worse position than it would have been in had the relevant Province Change not occurred (the Concessionaire having used all reasonable efforts and taken all reasonable steps to mitigate the adverse effects of such Province Change and to minimize any such loss or expense and to take advantage of any positive or beneficial effects of such Province Change and to maximize any such saving),

resulting from the implementation of a Province Change provided that a Change Adjustment in respect of a change to the Construction Output Specifications will not take effect until the date of issuance of the Substantial Completion Certificate.

12.1 Consequential Amendments

12.1.1 The Concessionaire and the Province's Representative will use their reasonable efforts to reach agreement as to any amendments to the terms of this Agreement (including without limitation the End of Term Requirements) necessary as a consequence of any Province Change. If they are unable to reach agreement within 30 Working Days of issuance of a Province Change Confirmation, then either Party may refer the matter for resolution under the Disputes Resolution

Procedure (provided, however, that in no circumstances will the Contract Period be extended or the End of Term changed pursuant to the Disputes Resolution Procedure without the mutual written consent of the Province and the Concessionaire).

**13.1 Costs and Expenses**

13.1.1 Without prejudice to the Concessionaire's obligations to pay the Province pursuant to paragraph 13.1.3, in any circumstances where the Province cancels or is deemed to have cancelled a Province Change pursuant to paragraph 5.2.1 or 5.2.2 of this Part 2 or where the Province serves or is deemed to have served a Cancellation Notice, such cancellation or deemed cancellation will constitute a Compensation Event in respect of which payment from the Province is due and payable within 20 Working Days of demand, and amounts to be taken into account in the calculation of any such compensation will include the costs, fees and expenses incurred by the Concessionaire (from the date of receipt by the Concessionaire of the Province Change Notice) in considering the Province Change and (if applicable) preparing a Change Appraisal or Amended Change Appraisal and complying, where applicable, with the Concessionaire's obligations under paragraph 7.1.2 of this Part 2.

13.1.2 If the Province makes a reference to the Disputes Resolution Procedure as contemplated in paragraph 5.2.1 of this Part 2 and it is determined under the Disputes Resolution Procedure that the Concessionaire was entitled to refuse to implement the Province Change, the Province will pay within 20 Working Days of demand a sum equal to the costs, fees and expenses reasonably incurred by the Concessionaire (from the date of receipt by the Concessionaire of the Province Change Notice) in considering the Province Change and in connection with the reference to the Disputes Resolution Procedure.

13.1.3 If the circumstances described in paragraph 5.2.4 of this Part 2 occur, the Concessionaire will pay on demand the costs, fees and expenses reasonably and properly incurred by the Province in connection with its consideration of the Refusal Notice and in connection with the reference to the Disputes Resolution Procedure.



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**PART 3 OF SCHEDULE 13**

**CONCESSIONAIRE CHANGES**

**1. Concessionaire Changes**

**1.1 Financial Consequences**

1.1.1 If the Province consents, pursuant to Section 11.4.3 of this Agreement, to a Concessionaire Change involving a change to the Construction Output Specifications or the O & M Output Specifications that would result in Capital Cost Savings or Recurrent Cost Savings there will be a Change Adjustment whereby all Capital Cost Savings (net of any relevant Recurrent Cost Increase) and/or all Recurrent Cost Savings (net of any relevant Capital Cost Increase) resulting from implementation of such Concessionaire Change will be shared equally between the Province and the Concessionaire after deducting the costs actually paid (or to be paid) by the Concessionaire to the Province pursuant to paragraph 1.1.2 of this Part 3, provided that no Change Adjustment will take effect during the Original Service Period.

1.1.2 If the Concessionaire submits a proposal for a Concessionaire Change pursuant to Section 11.4.1 of this Agreement, the Concessionaire will reimburse the Province, within 20 Working Days of demand, for all costs, fees and expenses reasonably incurred by the Province in connection with its consideration and review of such proposal and (where applicable) in documenting any Concessionaire Change whether or not the proposed Concessionaire Change is implemented in accordance with the provisions of Section 11.4 [Concessionaire Changes] of this Agreement.

**1.2 Consequential Amendments**

The Concessionaire and the Province's Representative will use their reasonable efforts to reach agreement as to any amendments to the terms of this Agreement necessary as a consequence of any Concessionaire Change. If they are unable to reach agreement within 30 Working Days of issuance of a Concessionaire Change Certificate by the Concessionaire's Representative duly countersigned by the Province's Representative in accordance with the provisions of Section 11.4.1 of this Agreement, then either Party may refer the matter for resolution under the Disputes Resolution Procedure (provided, however, that in no circumstances will the Contract Period be extended or the End of Term changed or any additional payment or adjustment to the Performance Payment (except be made or pursuant to the Disputes Resolution Procedure without the mutual written consent of the Province and the Concessionaire).

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**PART 4 OF SCHEDULE 13**

**COMPENSATION EVENTS**

1.1 Concessionaire Notification

Without prejudice to Section 12.6.1 of this Agreement, within 7 days of the Concessionaire becoming aware of the occurrence of a Compensation Event it will give Notice of such occurrence to the Province's Representative (unless included in a Notice given by the Concessionaire pursuant to Section 12.6 [Delay] of this Agreement). The provisions of Sections 12.6.2 and 12.6.3 of this Agreement will apply, *mutatis mutandis*, in respect of the contents of any Notice given pursuant to this paragraph 1.1 and the consequences of a failure by the Concessionaire to comply with the requirement to give Notice pursuant to this paragraph 1.1. If the Concessionaire suffers a Compensable Loss as a result of a Compensation Event notified under this paragraph 1.1 or under Section 12.6 [Delay] of this Agreement, the Concessionaire will, within 30 Working Days following the giving of the Notice referred to above in this paragraph 1.1, give a further Notice to the Province (a "Compensation Notice") setting out:

- 1.1.1 a detailed calculation of the [Compensable] Loss (the "Payment Amount") including an explanation as to why the [Compensable] Loss has occurred and the steps taken or to be taken to mitigate such [Compensable] Loss; and
- 1.1.2 the extent and terms and conditions of any offer of additional financing which the Concessionaire (having used all reasonable efforts) has been able to procure to fund any Capital Cost Increase or Revenue Loss included in such Compensable Loss and whether or not such terms and conditions are acceptable to the Concessionaire, acting reasonably.

1.2 Additional Information

The Province may, within 20 Working Days following receipt of a Compensation Notice, request from the Concessionaire such additional information and/or particulars as it may reasonably require to substantiate the Payment Amount or any other matter referred to in the Compensation Notice.

1.3 Province Notification

The Province will, within 30 Working Days following receipt of a Compensation Notice or, if later, within 30 Working Days following receipt of the last of any additional information requested in accordance with paragraph 1.2 of this Part 4:

- 1.3.1 notify the Concessionaire whether or not it agrees to the Payment Amount (having regard, inter alia, to the determination by the Province's Representative, pursuant to Section 12.6.7 of this Agreement or paragraph 1.1.3 of Part 5 of this Schedule (as applicable), as to any Delay Period or other period of delay or impediment in

performance of the Undertakings which has arisen or will arise as a consequence of the Compensation Event, it being expressly acknowledged that any loss suffered by the concessionaire as a result of the relevant Compensation Event may be recovered pursuant to this Part 4 regardless of whether any Delay Period has occurred), failing which the Province will be deemed not to have agreed to the Payment Amount; and

- 1.3.2 to the extent that the Concessionaire has notified the Province in accordance with paragraph 1.1.2 of this Part 4 that it has been able to procure a commercially acceptable offer of finance to fund a Capital Cost Increase or Revenue Loss included in such Compensable Loss, confirm to the Concessionaire whether or not it wishes the Concessionaire to accept such offer of finance. If the Province does not give any confirmation in accordance with this paragraph 1.3.2, the Province will be deemed to have confirmed that it does not wish the Concessionaire to accept the offer of finance and to have elected to compensate the Concessionaire by making a lump sum payment. In the event that the conditions precedent to any offer of finance to which this paragraph 1.3.2 applies have not been satisfied or the offer of finance is subsequently withdrawn (in either case other than at the request of, or as a consequence of wilful inaction or default by, the Concessionaire) prior to acceptance by the Concessionaire then the Province will be deemed to have elected to compensate the Concessionaire by making a lump sum payment.

#### 1.4 Payment

- 1.4.1 Subject to paragraph 1.5 of this Part 4, the Province will pay the Payment Amount:

1.4.1.1 save where paragraph 1.4.1.2 or paragraph 1.4.2 of this Part 4 applies, in the case of any [Compensable] Loss suffered or incurred by the Concessionaire (including, for greater certainty, all costs incurred in mitigating the effect of the Compensation Event, including by reducing any Delay Period associated therewith) within 20 Working Days of receipt by the Province of an invoice from the Concessionaire in respect of the same; and

1.4.1.2 in the case of any Recurrent Cost Increase and/or to the extent that the Concessionaire has secured an offer of finance to fund a Capital Cost Increase and/or Revenue Loss included in such [Compensable] Loss on terms and conditions acceptable to the Province (acting reasonably), by a Change Adjustment.

- 1.4.2 If the Province notifies the Concessionaire within the 30 Working Days referred to in paragraph 1.3 of this Part 4 that it does not agree with the Payment Amount claimed in the Compensation Notice then, unless otherwise agreed by the Parties, the Province will pay to the Concessionaire the undisputed part (if any) of the

Payment Amount in accordance with paragraph 1.4.1 of this Part 4 and either Party will be entitled to refer the determination of the disputed part of the Payment Amount to the Disputes Resolution Procedure.

1.5 Continuing Compensation Event

For greater certainty, where the Compensation Event or the impact of the Compensation Event is continuing the Concessionaire may serve Compensation Notices at such frequency (not less than monthly intervals) as it may, acting reasonably, determine.

1.6 No Liability

The Province will not be liable for any indirect or consequential losses suffered by the Concessionaire in respect of any Compensation Event (other than, for greater certainty, Revenue Loss).

1.7 Consequential Amendments

The Concessionaire and the Province's Representative will use their reasonable efforts to reach agreement as to any amendments to the terms of this Agreement necessary as a consequence of any Compensation Event. If they are unable to reach agreement within 30 Working Days of issuance of a Notice by the Province pursuant to paragraph 1.3.1 of this Part 4, then either Party may refer the matter for resolution under the Disputes Resolution Procedure (provided, however, that in no circumstances will the Contract Period be extended or the End of Term changed pursuant to the Disputes Resolution Procedure without the mutual written consent of the Province and the Concessionaire).

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**PART 5 OF SCHEDULE 13**

**RELIEF**

1.1 Relief

1.1.1 Subject to the provisions of Section 1.9 [General Duty to Mitigate] of this Agreement and of Sections 12.6.7, 12.6.8 and 12.6.9 of this Agreement and of this Part 5, but notwithstanding any other provisions of this Agreement or this Schedule 13 [Changes], the Concessionaire will be relieved from liability under this Agreement and the Province will not be entitled to levy Availability/Performance Deductions to the extent that, by reason of a Province Change or Compensation Event, the Concessionaire is not able to perform its obligations under this Agreement during the Delay Period or during any other period of delay or impediment in performance of the Undertakings in accordance with the requirements of this Agreement, and such relief will be taken into account in relation to any Change Adjustment, lump sum payment or Payment Amount (as applicable) in respect of such Province Change or Compensation Event.

1.1.2 Without limiting the Concessionaire's obligations under paragraph 1.1.1 of this Part 5 or under Sections 12.6.6 or 12.6.2.3 of this Agreement, in the case of any delay or impediment in performance of the Undertakings in accordance with the requirements of this Agreement caused by a Province Change or Compensation Event, the Concessionaire, to the extent it is possible to do so, will take all reasonable steps to avoid the delay or impediment or to reduce the period of the delay or mitigate the effect of the impediment.

1.1.3 Without prejudice to the provisions of Section 12.6.7 of this Agreement, where the Concessionaire may be entitled to any Change Adjustment, lump sum payment or Payment Amount or to any other relief pursuant to Part 2 or Part 4 of this Schedule 13 [Changes], then subject to the Concessionaire:

1.1.3.1 complying with the requirements of Parts 2 and 4 of this Schedule 13 [Changes], as applicable; and

1.1.3.2 putting forward proposals as to the measures it intends to adopt in order to mitigate the consequences of any delay or impediment,

the Province's Representative will, as soon as reasonably practicable, notify the Concessionaire (either prospectively or retrospectively) of its determination in accordance with this paragraph 1.1.3 of the period of the delay or impediment (if any) in performance of the Undertakings which has arisen or will arise as a consequence of the Province Change or Compensation Event. If the Province's Representative determines that no such delay or impediment has arisen or will arise or the Concessionaire considers the period of delay or impediment so

determined to be insufficient, then the Concessionaire may refer the matter to the Disputes Resolution Procedure for determination.

- 1.1.4 The provision of Sections 12.6.8 and 12.6.9 of this Agreement will apply, *mutatis mutandis*, to the determination by the Province's Representative of the period of any delay or impediment in performance of the Undertakings for the purposes of this Part 5.

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APPENDIX A

CHANGE ADJUSTMENT

1. Where pursuant to this Schedule 13 [Changes] a Change Adjustment is to be made, the Performance Payment will be adjusted with effect from the commencement of the next succeeding month following the month in the Contract Year in which the adjustment is calculated such that following the Change Adjustment:
  - (a) the Equity IRR (as calculated in accordance with the Financial Model) remains unchanged before and after modelling the financial consequences of the Province Change or Compensation Event for which the Change Adjustment is to be made; and
  - (b) the loan life cover ratios and the annual debt service cover ratios provided for in the Senior Funding Agreements (for each calculation period, as calculated in accordance with the Financial Model) are not less than they were immediately prior to the date upon which the Change Adjustment is to take effect.
2. In adjusting the Performance Payment:
  - (a) adjustments shall be will be applied proportionately across each element of the Performance Payments;
  - (b) regard shall be had to the timing of the financial consequences and to the date from which the Change Adjustment will take effect.
3. Where the Change Adjustment arises as a consequence of a Province Change or Compensation Event in respect of which:
  - (a) the aggregate Capital Cost Increase is less than \$1,000,000 (index linked); or
  - (b) the aggregate Recurrent Cost Increase is less than \$100,000 (index linked) per annum; or
  - (c) a combination of (a) and (b) would equate to a net present value (calculated as of the date upon which the Change Adjustment is to take effect using a discount rate equal to the Threshold Equity IRR) over a period of ten years or until the End of Term (if earlier) of less than \$1,000,000 (index linked),

the Parties will, acting in good faith, seek to agree the Change Adjustment (either permanently or provisionally, as appropriate having regard to the circumstances) without recourse to running the Financial Model.