

BRITANNIA MINE WATER TREATMENT PLANT PROJECT
PROJECT AGREEMENT
MINISTRY OF SUSTAINABLE RESOURCE MANAGEMENT

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THIS AGREEMENT dated for reference the 12th day of January, 2005.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER
OF SUSTAINABLE RESOURCE MANAGEMENT**

(the "PROVINCE")

AND:

EPCOR BRITANNIA WATER INC. (Incorporation No.
BC0711159) a corporation incorporated under the laws of the
Province of British Columbia)

(the "Operator")

WHEREAS:

A. The Province has requested proposals for the design, construction, finance and operation of the Britannia Mine water treatment plant Project in accordance with the terms of a request for proposals.

B. The Operator has submitted the Operator's Proposal for the design, construction, finance and operation of the Project.

C. The Operator has offered to perform the Work, including design, construction and project management and thereafter, to perform the Operations, including the operation of the Project and its ongoing repair and rehabilitation, and throughout, to finance the Work and the Operations, on the terms and conditions and subject to the limitations set out in this Agreement.

D. The Province has accepted the offer by the Operator on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the promises exchanged in this Contract, and in consideration of payment of \$1.00 by each party to the other and other good and valuable considerations, (the receipt and sufficiency of which are acknowledged by the Province and the Operator), the Province and the Operator covenant and agree with each other as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions will apply to the Contract Documents, unless the context requires otherwise:

- (a) "Abnormal Circumstances" means such circumstances as materially disrupt the Work or the Operations and are beyond the reasonable control of the Operator, including:

- (i) Force Majeure;
- (ii) an Emergency;
- (iii) physical changes within the Workings, after the date of this Agreement, such as collapse or accumulation of debris, which result in changes in the hydraulic behaviour of the Workings and which substantially affect the flow of Contaminated Water at the Point of Responsibility;
- (iv) the chemical characteristics of influent Contaminated Water change so that the chemical characteristics thereof fall outside of the Expected Water Chemistry Range;
- (v) any change in Applicable Law which requires that the Contaminated Water be treated to a standard higher than the Operational Performance Requirements or if the Permits are revoked or cancelled notwithstanding that the Operations are being conducted in accordance with the Operational Performance Requirements and Standards;
- (vi) any interruption of the Implementation Schedule by reason of the discovery of Contaminants which are not disclosed by the Reference Documents;
- (vii) any consequence arising from or related to a requirement imposed on the Operator pursuant to the Dispute Resolution Procedure or by any Governmental Authority with which the Operator does not agree and which the Operator has notified the Province that if the Operator implements the requirement, the Project, Work or Operations, as applicable, will be compromised and why, as contemplated by Section 5.4;
- (viii) any change in the chemistry of Contaminated Water such that the treatment of the Contaminated Water as required by this Agreement results in production of more than 1.4 dry tonnes of solids per hour;
- (ix) any Abnormal Water Event;
- (x) circumstances which are dealt with pursuant to Section 6.4(b);
- (xi) deterioration or failure of the Plug, including any pipes or fittings embedded within the Plug and any failure of the Workings which results in leakage in proximity to the Plug;
- (xii) impacts, delays and damage to the Project caused by the Province, its servants, agents, employees or contractors (excluding the Operator or its Subcontractors) or Other Contractors; and
- (xiii) any other circumstance which the Province, in the Province's sole discretion, designates as an Abnormal Circumstances.

“Abnormal Circumstances” does not, unless expressly stated to the contrary in a provision of this Agreement, include circumstances which are due to:

- (xiv) lack of financial resources on the part of the Operator;
 - (xv) a failure by the Operator or any Subcontractor or any officer, director, employee, contractor or agent of the Operator or a Subcontractor to perform any obligation which is the responsibility of the Operator pursuant to this Agreement, including any duty to mitigate imposed by this Agreement or Applicable Law; or
 - (xvi) conditions accepted by the Operator pursuant to Section 6.3.
- (b) “Abnormal Water” means Contaminated Water, the chemical characteristics of which fall within the Expected Chemistry Range, but which contains one or more chemical substances at above the level specified therefor for Typical Water in Schedule C – Specifications of Contaminated Water.
- (c) “Abnormal Water Event” means the treatment of Abnormal Water for a period of 30 consecutive Days or longer if, in order to meet the Operational Performance Requirements or the Standards, it will be necessary for the Operator, acting reasonably, to incur a Capital Expenditure to install plant or equipment which was not contemplated in the Design for the WTP.
- (d) “Access Road” means the public highway which leads from Highway 99 to the Site, as the same may be modified or relocated from time to time as contemplated by this Agreement.
- (e) “Affiliate” means, in relation to any person, an “affiliate” as that term is used in the *Business Corporations Act* (British Columbia) and “affiliated” has a corresponding meaning.
- (f) “Agreement” means this project agreement, including the Schedules hereto, as the same may be amended from time to time as permitted hereby.
- (g) “Allowance Work” means the following items of the Work:
- (i) Upgrading of the 4100 Adit and Related Workings: Upgrading of the 4100 Adit and workings and the installation of associated infrastructure, in accordance with standards established by the Ministry of Energy and Mines or the Province related to the parts of the 4100 Adit known as the “4100 wye” and/or the “4150 raise”, including management of water draining from these workings. The standard will be dependent, in part, upon the Operator’s approach to the design and operation of facilities installed for water conveyance, measurement and control. For clarity, the water conveyance system from the Plug to the WTP, including all measurement and control systems is not part of this item of Allowance Work.
 - (ii) Fan Facilities: The construction of the Fan Facilities.

- (iii) Storm Water Pumping: A collection system and sump to be installed in or adjacent to the existing storm sewer line that conveys storm water to the existing outfall of Contaminated Water at Britannia Creek; and ancillary equipment and fittings, pumps and pipelines required to convey the storm water to the Outfall and all associated electrical, instrumentation and control systems, including the measuring devices required to satisfy the Operational Performance Requirements.
 - (iv) Marine Section of Outfall: All remaining studies and permit applications related to the portion of the Outfall which extends from mean sea level to the submerged end of the Outfall, as well as the construction of all related facilities and fittings, including the Outfall's pipe commencing at mean sea level and all anchors, fittings and diffusers.
 - (v) Landscaping: The preparation of a landscaping design for the Project and implementation of the approved design, including all plantings, labour, equipment and supplies, on a level graded surface consisting of fill materials. All materials and grading required to obtain a level surface for the installation are part of the Operator's general site obligations and are not part of this item of Allowance Work.
 - (vi) Glory Hole Disposal Permit: The work necessary to prepare and submit on behalf of the Province an application in prescribed form (including any application fees) in order to obtain a permit to dispose of Sludge in the Glory Hole.
 - (vii) Electrical Upgrade: Re-configuration of the 69-35 kV substation to provide 3 phase, 35 kV service, excluding the 35kV overhead line to the WTP, the step-down substation to 600 volts and any further electrical distribution, all of which are included in the Work and are not Allowance Work.
 - (viii) Architectural Enhancements: Architectural enhancements to the WTP over the standard of a basic, pre-engineered building.
- (h) "Applicable Law" means all Permits and all statutes, laws, regulations, by-laws, rules, codes (including building codes), ordinances, judgments, decrees, administrative interpretations, guidelines, protocols, policies, orders, directives, injunctions and the like of any Governmental Authority with which the Province or the Operator is legally obligated to comply, including the common law and the law of equity.
 - (i) "Beneficiary" has the meaning set out in Section 44.3.
 - (j) "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia.
 - (k) "Capital Expenditure" means an expenditure for any improvement, modification or repair to the Project which is a capital expenditure, for the purposes of GAAP, made after the Completion Date.

- (l) “Capital Variation Expenditure” means any Capital Expenditure made pursuant to a Variation Confirmation.
- (m) “Capital Work” means any project or work for which a Capital Expenditure is required.
- (n) “Cash Allowance” has the meaning set out in Section 37.2(a).
- (o) “Certificate of Completion” means the certificate of the Province’s Representative issued pursuant to Section 18.3.
- (p) “Claim” means any notice (including a notice of defect or non-compliance), assessment, reassessment, order, summons, citation, directive, no action letter, ticket, charge, fine, penalty, expense, cost, damage or loss, investigation, letter or other written communication, claim, remediation cost recovery action, demand, suit, action, complaint, grievance, prosecution, petition or proceeding from any person.
- (q) “Commencement Date” means the date upon which the construction phase of the Work is scheduled to commence at the Site, in accordance with the Implementation Schedule.
- (r) “Commissioning Plan” means the plan prepared by the Operator in which the Operator sets out the steps and tests to be undertaken in commissioning the Project prior to the Completion Date in order to confirm that the Operations can be performed continuously to satisfy the Operational Performance Requirements, in conformity with the Standards and to confirm the completion of any additional commissioning which may be required to confirm that the requirements of Total Completion have been met.
- (s) “Commissioning Report” has the meaning set out in Section 18.1.
- (t) “Communication Plan” means the plan for public communications and outreach in respect of the Project as set out in Schedule I – Communication Plan, as the same may be amended from time to time.
- (u) “Completion Date” means the date upon which Substantial Completion of the Project is achieved.
- (v) “Construction Quality Control Plan” means the plan prepared by the Operator for quality control with respect to the Work as required by Section 29(a).
- (w) “Contaminants” means any radioactive materials, hydrocarbons, waste oil, solvents, volatile organic compounds, polychlorinated biphenyls (“PCBs”), PCB-containing equipment or materials, metals, metal hydroxides, gypsum, phenols, historic mine waste, mine waste rock, tailings and dumps, hazardous waste, special waste, waste of any nature, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, or any other solid, liquid, gas, vapour, odour or any combination of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or

Release into the environment of which is prohibited, controlled, regulated or defined under Applicable Law.

- (x) “Contaminated Water” means water in the Workings past the Point of Responsibility, together with groundwater collected from the Fan Area, in both cases, which is acidic above the pH standard or which contains contaminants which are not within the specifications required to be achieved in order to satisfy the Operational Performance Requirements.
- (y) “Contract Documents” means this Agreement, including the Schedules, the Plans and Specifications, Variation Confirmations plus all other documents which are expressly made a part of this Agreement in a provision of the Agreement or Schedules.
- (z) “Core Team” means the key Subcontractors who will be performing Work or Operations under contractual arrangements with or for the Operator, as identified in Section 10.1 or approved by the Province’s Representative as contemplated by Section 10.1.
- (aa) “CPI” means Vancouver Consumer Price Index of a year as established by Statistics Canada in its publication entitled “The Consumer Price Index”, Catalogue 62-001, provided that if such Vancouver Consumer Price Index ceases to be published or if still published, is calculated in a manner which is significantly different from that prevailing as of the date of this Agreement, the parties will agree on a suitable alternative index to establish CPI, and if they are unable to agree, the suitable alternative will be determined pursuant to the Dispute Resolution Procedure.
- (bb) “Day” means a calendar day.
- (cc) “Design” means the design for the Project and all Work comprised in it, that is set out in the Plans and Specifications.
- (dd) “Discharge Permit” means Discharge Permit PE-17469 issued by the Ministry of Water, Land and Air Protection under the *Environmental Management Act* (British Columbia).
- (ee) “Dispute Resolution Procedure” means the procedure for resolving disputes as set out in Section 38.
- (ff) “Diversion” means the diversions constructed by the Province or the Other Contractors in the area of Jane Basin to divert rain water and snow melt from the Workings.
- (gg) “Emergency” means a sudden event affecting the Work or the Operations which requires an immediate response in order to prevent damage or injury, including incidents affecting personal or public safety or which may cause serious violations or anticipated violations of Applicable Law or damage to the environment.

- (hh) “Encumbrance” means any mortgage, lien, charge, security interest, pledge, judgement, execution, restriction, claim, covenant, easement, right of way, encroachment or other encumbrance of any kind whatsoever (including claims by the Workers Compensation Board, Employment Standards Branch, Canada Customs and Revenue Agency or any other Governmental Authority) which affects title to the Project, the Site, the Jane Basin Road, Jane Basin, the Fan Area or the Outfall or the interest of the Operator therein.
- (ii) “EPCOR” means EPCOR Water Services Inc., a corporation organized and subsisting under the laws of Alberta and extra provincially registered in British Columbia or such other person as the Province may agree.
- (jj) “Expected Water Chemistry Range” means the range of individual water chemistry parameters for Contaminated Water set out in Schedule C – Specifications of Contaminated Water.
- (kk) “Fan Area” means the area designated as such on the plan annexed as Schedule H – Drawings and from which Contaminated Water is to be collected and pumped for treatment at the WTP.
- (ll) “Fan Facilities” means that portion of the Project to be constructed on or in relation to the Fan Area as Allowance Work and includes the connection lines from the pumping wells (which will be installed by the Operator pursuant to a Variation Proposal or by Other Contractors), a central collection sump, pumps and pipelines from the collection sump to the WTP and all associated electrical work and instrumentation and control systems, including the measuring devices required to satisfy the Operational Performance Requirements.
- (mm) “Financial Plan” has the meaning set out in Section 36.1.
- (nn) “Force Majeure” means an event or circumstance not reasonably within the control of a person which causes such person to be unable to perform all or a material part of such person’s obligations under this Agreement including:
 - (i) acts of God;
 - (ii) strikes, lockouts or other industrial or labour disturbances, not related to that person;
 - (iii) acts of a public enemy, terrorism, sabotage, wars (declared or undeclared), or the threat thereof;
 - (iv) blockades, insurrections, riots, civil disturbances or other major upheavals;
 - (v) diseases or epidemics;
 - (vi) landslides, lightning, earthquakes, storms, floods, high waters, fires, forest fires or restrictions on access by Governmental Authorities due

to extreme forest fire risk, explosions, power failures, extreme weather conditions, or natural disasters;

- (vii) subsidence, collapse, or washouts; and
- (viii) orders or acts of civil or military authorities.
- (oo) “4100 Adit” means the existing adit, as the same may be modified from time to time, which enters the Mine at what is commonly referred to as the 4100 level and which extends from the opening of such adit on the Site to the Plug;
- (pp) “GAAP” means generally accepted accounting principles in Canada as established by the Canadian Institute of Chartered Accountants in its handbook at the time and for the periods when GAAP is stated to be applied pursuant to this Agreement.
- (qq) “Glory Hole” means the area often referred to as the “East Bluff Glory Hole” of the Mine, which is located in the area of Jane Basin designated as “Jane Basin Disposal Site” in Schedule H – Drawings.
- (rr) “Governmental Authority” means any and all federal, provincial, regional, municipal or local governmental authorities, quasi-governmental authorities, statutorily recognized self-regulatory bodies, courts, tribunals, commissions, boards or other regulatory, administrative or other agencies or any political or other subdivision, department or branch of any of the foregoing which has jurisdiction in any way over this Agreement, the Province, the Operator, the Project, the Work or the Operations.
- (ss) “GST” means any goods and services tax payable by in respect of the provision of goods or services pursuant to the *Excise Tax Act* (Canada) and any new sales, value added or like taxes and capital tax adopted by any authority in addition to or in substitution for GST.
- (tt) “HAZOP” means a structured and operability analysis for the evaluation of a complex process to identify problems associated with the operability and safety of the process.
- (uu) “Implementation Schedule” means the schedule for design and construction of the Work set out in Schedule A – Implementation Schedule, as it may be up-dated from time to time as required by the Agreement.
- (vv) “Indemnifier” has the meaning set out in Section 44.4.
- (ww) “Index Linked” means that the monetary amount with respect to which such term is used (in this definition, the “Price”) is subject to annual adjustment commencing in 2007 based on changes in the CPI, with the Price being adjusted effective on the first day of January in each year of the Term of this Agreement, commencing January 1, 2007, by the percentage increase or decrease of the CPI for the year just past over the immediately preceding year, with such percentage being calculated by dividing the CPI for the year just past by the CPI for the preceding year, multiplying the quotient by 100

and subtracting therefrom 100. By way of example, if an Indexed Linked Price in 2006 is \$100,000 and CPI for 2006 is 137 and for 2007 is 140, the Price will be increased in $((140/137 \times 100) - 100) / 100$, or \$1,449.28.

- (xx) “Innovation Proposal” means an innovation or value engineering proposal, with respect to the Project, which is at any time originated or initiated by either the Operator or the Province before the end of the Term and which is developed by the Operator.
- (yy) “Insurance Conditions” means the insurance requirements set out in Schedule D – Insurance Conditions.
- (zz) “Jane Basin” means the area commonly known as “Jane Basin” located to the east of the Site at the end of the Jane Basin Road.
- (aaa) “Jane Basin Road” means the road which leads from the Site to that area of the Mine commonly known as “Jane Basin”, as such road may be modified or relocated from time to time as contemplated by this Agreement.
- (bbb) “Longstop Date” has the meaning set out in Section 39.1(d).
- (ccc) “Major Event” has the meaning set out in Schedule E-6 of Schedule E – Payment Mechanism.
- (ddd) “Mine” means the closed mine located in the vicinity of the unincorporated village of Britannia Beach on the east shore of Howe Sound, in the Province of British Columbia, Canada.
- (eee) “Mine Manager” means the individual appointed by the Province from time to time to perform, among other functions as designated by the Province, the functions of “manager” in respect of the Mine, as required by Section 21 of the *Mines Act* (British Columbia).
- (fff) “Month” means a calendar month.
- (ggg) “Operating Quality Control Plan” means the plan prepared by the Operator for quality control with respect to the Operations as required by Section 29(b).
- (hhh) “Operational Acceptance Testing” means the testing which establishes that, in the professional opinion of the Operator’s Consultant, the Project has successfully treated Contaminated Water continuously at the rate of at least 1,050 m³ per hour for a period of 30 consecutive Days so as to meet the Operational Performance Requirements and in compliance with the Standards.
- (iii) “Operational Performance Requirements” means the requirements for the performance of the Project as described in Schedule F – Operational Performance Requirements.
- (jjj) “Operations” means the work and services to be provided by the Operator pursuant to this Agreement beginning on the Completion Date, including the

treatment of Contaminated Water and all other work and services which are required in order to achieve the Operational Performance Requirements, in accordance with the Standards, and including any Ordinary Repairs and Replacements and the performance of such work as may be required to fulfil the Financial Plan and any work undertaken pursuant to a Variation Confirmation but excluding any work or action which may be undertaken by the Operator or a Subcontractor which is not contemplated by this Agreement.

(kkk) "Operator's Consultant" means such specialist or specialists as may be employed by the Operator or a Subcontractor including, but not limited to, any architectural or engineering firm or person, including any professional engineer or architect to prepare the Plans and Specifications, conduct Operational Acceptance Testing, issue the Certificate of Completion or the Total Completion Certificate or to otherwise advise the Operator or a Subcontractor on the Project or the Operations.

(III) "Operator's Contaminants" means:

(i) any Contaminant Released by the Operator, a Subcontractor or an Operator's Consultant or any officer, employee, agent or of any of them or any other person for whom any of them may be responsible at law to or at the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit after the date of this Agreement and prior to the expiry or earlier termination of this Agreement;

(ii) any Contaminated Water released by the Operator which does not comply with the Operational Performance Requirements; and

(iii) any Sludge that does not comply with the Operational Performance Requirements,

provided that a Contaminant will not be an Operator's Contaminant if it is Released or becomes a Contaminant wholly or primarily because of Abnormal Circumstances.

(mmm) "Operator's Event of Default" has the meaning set out in Section 39.1.

(nnn) "Operator's Indemnified Parties" has the meaning ascribed to it in Section 44.2.

(ooo) "Operator's Proposal" means the proposal submitted by the Operator on September 3, 2004 in response to the Province's request for proposals in relation to the Project.

(ppp) "Operator's Representative" means the representative of the Operator designated by the Operator as such from time to time under Section 2.1(c) of this Agreement.

(qqq) "Ordinary Repair and Replacement" means a repair or replacement to any component of the Project which is:

- (i) required by the Operating Quality Control Plan;
 - (ii) contemplated or reasonably inferable from the then applicable Financial Plan;
 - (iii) is required to keep the Project or any element of the Project in good working order so as to permit the performance of the Operations; and
 - (iv) is not required solely or primarily due to an Abnormal Circumstance.
- (rrr) “Other Contractor” means any person employed by or having a separate contract directly or indirectly with the Province for Other Contractor’s Work.
- (sss) “Other Contractor’s Work” means work related to the Overall Remediation Plan or the Project which is neither the Work nor the Operations, including the following work and services:
- (i) construction and realignment of the Access Road and the Jane Basin Road;
 - (ii) maintenance of the Jane Basin Road to the extent such repair and maintenance is the responsibility of a person other than the Operator.
 - (iii) construction and maintenance of the Diversions in Jane Basin;
 - (iv) construction of the weather stations in Jane Basin (which weather stations will be monitored, maintained and repaired by the Operator in the performance of the Operations);
 - (v) periodic inspection and maintenance and rehabilitation work undertaken in respect of the Diversions;
 - (vi) periodic inspection and maintenance and rehabilitation work undertaken in the Workings;
 - (vii) demolition of existing structures on the Site and removal of debris;
 - (viii) demolition of the coarse ore bins, removal of material contained therein;
 - (ix) initial rehabilitation of the 4100 Adit and closure of the existing tunnel which branches off from the 4100 Adit;
 - (x) design and construction of BC Hydro substation upgrade;
 - (xi) construction of overflow facilities at the 3250 level adit of the Mine and provision for diversion of Contaminated Water from such overflow facilities;
 - (xii) removal and disposal of Contaminants which are not Operator’s Contaminants; and

- (xiii) work undertaken implementing those portions of the Overall Remediation Plan which are not the Work or the Operations.
- (ttt) “Outfall” means the pipe by which treated Contaminated Water is conveyed from the WTP to Howe Sound, as it may be modified or relocated, as more specifically described in Schedule B – Work.
- (uuu) “Overall Remediation Plan” means the overall plan established for the environmental remediation of the site and surrounding area in the vicinity of the unincorporated village of Britannia Beach, British Columbia as the same may be amended from time to time.
- (vvv) “Payment Adjustment Report” has the meaning set out in Section 37.6(f).
- (www) “Payment Mechanism” has the meaning given in Schedule E – Payment Mechanism.
- (xxx) “Periodic Payment” means a monthly payment paid to the Operator by the Province pursuant to the Payment Mechanism.
- (yyy) “Permits” means the approvals, permits and licences required by any Governmental Authority in connection with the performance of the Work or the Operations, including without limitation those listed on Schedule G – Permits hereto, all as the same may be amended, replaced or renewed from time to time.
- (zzz) “Plans” means the construction plans that are prepared for the Project by or for the Operator as part of the Design and which are submitted to the Province for review and comment from time to time.
- (aaaa) “Plug” means the existing solid concrete plug located at the easterly end of the 4100 Adit, which Plug retains Contaminated Water in the Workings at the Point of Responsibility, and includes any pipes or flanges which are inserted in the body of the Plug, all as the same may be modified, expanded, rehabilitated, rebuilt or relocated in the 4100 Adit.
- (bbbb) “Point of Responsibility” means the point which exists in the 4100 Adit at the flange of the fitting which projects from the downgradient side of the Plug, to which is attached the pipe and valves through which Contaminated Water is conveyed through the 4100 Adit to the WTP.
- (cccc) “Project” means the WTP, the Outfall, the Fan Facilities, the valves and reservoir control systems in the 4100 Adit and all piping systems, valves, monitoring and other equipment used in the Project which is found between the Point of Responsibility and the submerged end of the Outfall, together with all additions, replacements and modifications thereto from time to time, but expressly excludes the Plug and the Workings, on the upgradient side of the Point of Responsibility and also excludes any facilities constructed as Other Contractor’s Work. For clarity, the Plug and fittings contained within the Plug up to and including the flange of the fitting which projects from the Plug are not part of the Project and are not the responsibility of the Operator.

- (dddd) "Prohibited Act" has the meaning set out in Section 45.1.
- (eeee) "Province Indemnified Parties" has the meaning ascribed to it in Section 44.1.
- (ffff) "Province's Permit" means a permit which it is the obligation of the Province to obtain as set out in Schedule G – Permits.
- (gggg) "Province's Representative" means the representative of the Province designated as such by the Province from time to time under Section 2.1(a) of this Agreement.
- (hhhh) "Recovery Amount" has the meaning set out in Section 44.5(f).
- (iiii) "Referee" means the individual appointed as such pursuant to Section 38(a)
- (jjjj) "Reference Documents" means those reports, plans and other documents relating to the Project listed on Schedule L – List of Reference Documents.
- (kkkk) "Regular Business Hours" means, on any Business Day, the hours from and including 8:30 AM until 5:00 PM, Vancouver time.
- (llll) "Release" means releasing, spilling, leaking, pouring, emitting, emptying, discharging, injecting, migrating, escaping, leaching, disposing, dumping, depositing, spraying, burying, abandoning, incinerating, seeping or placing, or any similar action defined in any Applicable Law.
- (mmmm) "Scheduled Completion Date" means January 1, 2006 or such later date as amended pursuant to this Agreement.
- (nnnn) "Schedules" means the schedules "A" to "L" attached to this Agreement.
- (oooo) "Site" means those lands in the vicinity of the unincorporated village of Britannia Beach, British Columbia upon which the Project (other than the Outfall and the 4100 Adit), is constructed and installed, as more particularly shown in the sketch annexed as Schedule H – Drawings.
- (pppp) "Sludge" means any solid or liquid by-products from the treatment of Contaminated Water as part of the Operations.
- (qqqq) "Specifications" means the construction specifications that are prepared for the Project by or for the Operator as part of the Design and which are submitted to the Province for review and comment from time to time.
- (rrrr) "Standards" means the most stringent requirements of any and all Applicable Laws, professional standards and specifications (including Canadian Standards Association standards) applicable to the Work and the Operations as in force from time to time or the latest current version thereof and includes compliance with recommendations of the HAZOP study developed as part of the Design and the standards, practices, methods and procedures, exercised in a diligent and prudent manner, which would be expected from a qualified,

experienced and skilled person engaged in an undertaking such as the Work and the Operations.

- (ssss) “Subcontractor” means a person who is retained by any person other than the Province to perform any part of the Work or the Operations, whether or not such person has a contract directly with the Operator.
- (tttt) “Substantial Completion” occurs when a Certificate of Completion is issued.
- (uuuu) “Term” has the meaning set out in Section 40.1.
- (vvvv) “Termination Date” means the earlier of the date upon which the Term expires and the date upon which this Agreement is terminated in accordance with its terms or by agreement of both the Province and the Operator.
- (wwww) “Termination for Convenience” means a termination of this Agreement by the Province as contemplated by Section 39.8.
- (xxxx) “Title Encumbrance” means any Encumbrance registered against title to the Site, the Outfall, the Fan Area, the Jane Basin Road, the 4100 Adit or Jane Basin as of the date of this Agreement and any future Encumbrance which the Province requires to be recorded in the Land Title Office against title to any of the Site, the Outfall, the Fan Area, the Jane Basin Road, the 4100 Adit or Jane Basin, whether recorded in the Land Title Office or not.
- (yyyy) “Total Completion” occurs when a Total Completion Certificate is issued.
- (zzzz) “Total Completion Certificate” means the certificate of the Operator’s Consultant to be issued pursuant to Section 18.8.
- (aaaaa) “Total Completion Report” has the meaning set out in Section 18.7.
- (bbbbb) “Typical Water” means Contaminated Water which has the chemical characteristics designated as “Typical Water” in Schedule C – Specifications of Contaminated Water.
- (cccc) “Variation” means any material change, alteration, addition, deduction or variance to the Work or the Operations.
- (ddddd) “Variation Confirmation” means the written confirmation by the Province of the authorization of a Variation, in such form as the Province may use for such purpose from time to time.
- (eeee) “Variation Procedure” has the meaning set out in Section 15.2.
- (ffff) “Variation Proposal” means a proposal regarding any change to the Agreement, the Design, the Work, the Operations or the Project that is required as a result of a Variation, which proposal will include details of the proposed valuation of the Variation pursuant to Section 15.2(c), any proposed change in the Project, the Periodic Payments, the cost of Operations, the Implementation Schedule, the Scheduled Completion Date, the Schedule of

Completion, or the Term and any other matters which are materially affected by the Variation.

- (ggggg) “Variation Request” means a request by either the Province or the Operator to effect a Variation.
- (hhhhh) “Work” means the total Design, construction and related design and construction services required by this Agreement and the scope of the Work is as more particularly specified in Schedule B – Work and all Variations confirmed by a Variation Confirmation.
- (iiiiii) “Workings” means the existing and future workings of the Mine, including all stopes, adits, tunnels, pits and excavations, but excluding the Plug and the 4100 Adit.
- (jjjjj) “WTP” means all of the building, system, works, tanks, plant and equipment together with the parking lot, landscaping and other amenities comprising the contaminated water treatment plant to be constructed on or installed at the Site in order to achieve the Operational Performance Requirements in a manner consistent with the Standards.

1.2 Interpretation

In the Contract Documents:

- (a) the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) a particular numbered or lettered section, general condition or lettered Schedule, is a reference to the corresponding numbered or lettered section, general condition or lettered Schedule;
- (c) “approved”, “consented to”, “authorized”, “directed”, “ordered”, “requested”, “required”, “agreed” “sanctioned” and “satisfactory” will, unless some other meaning is obvious from the context, respectively mean approved, authorized, directed, ordered, requested, required, or sanctioned by, or satisfactory to, the Province’s Representative;
- (d) “arm’s length” connotes a relationship between parties who are at “arm’s length” for the purposes of the *Income Tax Act* (Canada);
- (e) an “enactment” means an Act, regulation, order, form, rule, tariff, proclamation, letters patent, commission, warrant, bylaw or other instrument enacted under a statutory power;
- (f) a reference to an enactment is a reference to that enactment as amended, revised or replaced from time to time during the Term;
- (g) a “party” or “parties” is a reference to a party, or the parties, to this Agreement.

- (h) words that have well-known technical or trade meanings and are not specifically defined herein are used in this Agreement in accordance with their recognized meanings;
- (i) the Schedules form an integral part of this Agreement and any reference to this Agreement includes a reference to the Schedules, provided that all obligations contained within the Schedules will be interpreted as obligations which are subject to the provisions of the balance of this Agreement;
- (j) whenever the word “will” is used in relation to a person, it means that the such person is obligated to perform the verb preceded by the word “will”, as a covenant of such person;
- (k) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, will not be limited by the specific enumeration of items, but will in all cases be deemed to be without limitation and construed to mean “includes without limitation” and “including without limitation”;
- (l) a reference to a “person” is to be broadly interpreted and includes an individual, corporation, firm, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization, incorporated organization or association, Governmental Authority, Indian Band, First Nation or aboriginal group, tribal council or other aboriginal organization or any entity which has legal capacity, and includes, as applicable, such person’s heirs, executors and legal representatives;
- (m) any action or obligation imposed by this Agreement or which is necessary in order for the performance of the Work and the Operations is the responsibility of the Operator, unless this Agreement expressly provides that such action or obligation is the responsibility of some other person and unless a cost or risk under this Agreement is stated to be the responsibility or liability of the Province, such cost or risk is the responsibility or liability of the Operator;
- (n) the insertion of headings and the provision of a table of contents are for convenience only and do not form a part of this Agreement or the Contract Documents and will not be used to interpret, define or limit the scope, extent or intent of the Contract Documents; and
- (o) save for defined terms used in this Agreement, the words used in this Agreement will bear their natural meaning; the Parties have each taken such legal advice in relation to this Agreement as they deemed appropriate and their obligations hereunder, and accordingly, no term or provision of this Agreement will be construed *contra proferentum*.

1.3 Reference Documents

The Reference Documents have been made available for the information of the Operator and the Operator confirms that the Operator has made such inspection of the Reference Documents as the Operator deems appropriate for the purposes of the Operator. The Reference Documents do not form part of this Agreement. The Operator acknowledges

that the Reference Documents have been compiled from a number of sources over a period of time. Some of the Reference Documents were prepared with the Project in mind and some were not. The Operator acknowledges that the Reference Documents are provided without warranty of any kind, express or implied, and specifically, the Operator acknowledges and agrees that the Province has not represented that the Reference Documents are accurate, complete or suitable for the purposes of the Operator. Any reliance made by the Operator on the Reference Documents is entirely at the Operator's risk. Notwithstanding the foregoing, the Operator is entitled to rely on the factual data contained within the Reference Documents but not on any opinion on or interpretation of such data.

2. REPRESENTATIVES

2.1 Appointment of Representatives

- (a) The Province hereby designates Mr. Brian D. Clarke, Director, Contaminated Site Management, Ministry of Sustainable Resource Management, as the Province's Representative for the time being for the purposes of this Agreement.
- (b) The Province's Representative is authorized, by notice in writing, to delegate one or more individuals to receive and make communications on behalf of the Province's Representative and to confirm, on behalf of the Province's Representative, the instructions, objections, consent and approvals of the Province's Representative and to issue Variation Confirmations.
- (c) The Operator hereby designates David Rector, Director of Operations, c/o EPCOR Water Services Inc., as the Operator's Representative for the time being for the purposes of this Agreement.

2.2 Province's Representative's Authority

Save as set out in Section 2.3, the Province's Representative will have the authority to represent the Province in all matters relating to this Agreement and the Project or otherwise as specified by the Province in a notice in writing delivered to the Operator and unless the Operator has first received written notice from the Province that such authority of the Province's Representative has been revoked, limited or modified, the Operator may assume that any act, direction or communication by or from the Province's Representative is duly authorized by the Province and is binding upon the Province. The Province reserves the right to revoke the appointment of any Province's Representative by notice in writing to the Operator, provided that at the same time the Province concurrently appoints another individual to be the Province's Representative. The Province's Representative is authorized, by notice in writing, to appoint an alternative individual to perform the functions of the Province's Representative on such terms and for such periods as the Province's Representative may specify by written notice to the Operator.

2.3 Limitations on Authority of Province's Representative

The Province's Representative will not have authority to amend this Agreement save pursuant a Variation Confirmation. The Province's Representative will not have authority

to issue a notice of termination of this Agreement. Any action which the Province's Representative has no authority to take pursuant to this Section 2.3 may only be taken by the Minister or Deputy Minister for the time being of the Ministry of Sustainable Resource Management or the Minister or Deputy Minister of such successor ministry of the Province of British Columbia as has primary responsibility for the Project. Any notice or communication from the Minister or Deputy Minister for the time being of the Ministry of Sustainable Resource Management or the Minister or Deputy Minister of such successor ministry of the Province of British Columbia as has primary responsibility for the Project will supersede a prior notice or communication from the Province's Representative, to the extent of any conflict or inconsistency but may constitute an Abnormal Circumstance.

2.4 Operator's Communication with the Province

The Operator will direct all communication relating to this Agreement from the Operator to the Province by way of the Province's Representative, and the Operator specifically agrees that:

- (a) no communication to or from any other representative of the Province, or any other person will be accepted as notice or communication to or from the Province under this Agreement unless such communication is a written notice from the Province's Representative or the Minister or Deputy Minister of Sustainable Resource Management, or such successor ministry of the Province of British Columbia as then has primary jurisdiction over the Project; and
- (b) the Operator will not at any time attempt to contact or make any representation to any representative of the Province or any other Governmental Authority under the jurisdiction of the Province of British Columbia other than the Province's Representative with respect to the interpretation or implementation of this Agreement or the rights and obligations of the Operator and the Province under this Agreement. The prohibition against contacting Governmental Authorities in this Section 2.4(b) is not intended to affect the right of the Operator to deal with Governmental Authorities in relation to the Permits or other operational matters which must be addressed in order for the Operator to perform the Work and the Operations as required hereby.

2.5 Operator's Representative's Authority

The Operator's Representative will have the authority to represent the Operator in all matters relating to this Agreement and the Project or otherwise as specified by the Operator in a notice in writing delivered to the Province and unless the Province has first received written notice from the Operator that the authority of the Operator's Representative has been revoked, limited or modified, the Province may assume that any act, direction or communication by or from the Operator's Representative is duly authorized by the Operator and is binding upon the Operator. The Operator's Representative is authorized, by notice in writing, to appoint an alternative individual to perform the functions of the Operator's Representative on such terms and for such periods as the Operator's Representative may specify by written notice to the Province.

2.6 Province's Communication with the Operator

The Province will direct all communications relating to this Agreement from the Province to the Operator by way of the Operator's Representative, and the Province specifically agrees that no communication to or from any other representative of the Operator, or any other person will be accepted as notice or communication on the part of the Operator under this Agreement.

3. RELATIONSHIP OF PROVINCE TO OPERATOR

- (a) The Operator is an independent contractor and not the servant, employee, partner, joint venturer or agent of the Province.
- (b) The Operator will not commit or purport to commit the Province to the performance of any obligation or the payment of any money to any person.
- (c) The Province may, from time to time, make such suggestions to the Operator as the Province considers necessary in connection with provision of the Work and the Operations, but the Operator will not be subject to the control of Province with respect to such suggestions.
- (d) All personnel employed by the Operator or a Subcontractor to perform the Work or the Operations will be the employees of the Operator or such Subcontractor and not of the Province. The Operator is solely responsible for arranging all matters arising out of the relationship of employer and employee.

4. THE WORK

4.1 Scope of Work

The Operator will perform the Work, commence Operations and deliver the Project to the Province as required by this Agreement.

4.2 Standard of Work

The Operator will perform the Design and construct the Work so as to at least meet the Operational Performance Requirements and the Standards.

4.3 Correction of Deficiencies

The Operator will correct any deficiencies in the Work which are identified by the Operator or the Province before the date of Total Completion in a timely manner in order that the correction of such deficiencies does not delay Substantial Completion or Total Completion.

4.4 Financing of the Work

The Operator will be solely responsible for obtaining such financing as and when it may be required by the Operator in order for the Operator to perform the Work and the Operations.

4.5 Operator's Representations and Covenants

The Operator represents, warrants and covenants to the Province that, as of the date of this Agreement:

- (a) The Operator is skilled and knowledgeable in the operation of water treatment facilities and has the resources, expertise, skill and judgment required to complete the Design, construct the Work, operate and arrange for the financing of a water treatment plant such as the Project in order to achieve the Operational Performance Requirements and to fulfil the obligations of the Operator pursuant to this Agreement in a manner consistent with the Standards.
- (b) The Operator is a corporation, duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia. All necessary proceedings have been taken to authorize the execution and delivery of this Agreement by the Operator.
- (c) This Agreement has been properly executed by the Operator and is enforceable against the Operator in accordance with its terms, subject only to:
 - (i) the discretionary nature of equitable remedies, such as specific performance and injunction; and
 - (ii) limitations of general application with respect to the enforcement of remedies by reason of laws of bankruptcy, reorganization, insolvency, moratorium and other similar laws affecting creditors' rights generally.
- (d) The Operator has no knowledge of any fact that adversely affects or, so far as the Operator can foresee, is likely to adversely affect, either the Operator's financial condition or that of any Affiliate, in such a way as would impair the ability of the Operator to fulfil its obligations under this Agreement.
- (e) The Operator is a wholly owned subsidiary of EPCOR and EPCOR has effective control of all of the authorized, issued and outstanding voting shares of the Operator. No person has any option, agreement or right to acquire shares in the capital of the Operator.
- (f) The observance and performance of the terms and conditions of this Agreement will not constitute a breach by the Operator or a default by it under
 - (i) current Applicable Law,
 - (ii) its constating documents, or
 - (iii) any contract or agreement to which it is a party.

- (g) To the best of the Operator's knowledge, the Operator is not in breach of Applicable Law in a manner that would have a material impact on the Project.
- (h) The Operator has the corporate authority to perform the Work and the Operations and the Operator is not aware of any legal reason why the Operator would not be entitled to obtain all permits, licenses, consents, and authorizations issued by any Governmental Agency to conduct business and carry on the duties and activities which it is required to do under this Agreement, excluding the Province's Permits;
- (i) The Operator is not aware of any reason why those Permits which remain to be obtained for the Work and the Operations will not be available upon the Operator making the appropriate applications and paying any applicable fees.
- (j) The making of this Agreement and the completion of the transactions contemplated by the Operator and the performance of and compliance by the Operator with the terms of this Agreement do not conflict with or result in a breach of, any judgment, decree, order, rule or regulation of any court or administrative body by which the Operator is bound.
- (k) The Operator has sufficient trained staff, facilities, materials and appropriate equipment available and subcontractual agreements in place to enable the Operator to fully perform the Work and the Operations.
- (l) Without limiting Section 6.3, the Operator acknowledges that it has the responsibility to inform itself of all aspects of the Work and the Operations and to obtain all information necessary to perform the Work and the Operations.
- (m) The Operator has satisfied itself in respect of all labour relations issues related to the performance of the Operator's obligations under this Agreement.
- (n) The Operator has filed all tax, corporate information, and other returns required to be filed by Applicable Law, has complied with all workers' compensation legislation and other similar legislation to which it is subject, and has paid all taxes, fees and assessments due by the Operator under those laws as of the reference date of this Agreement.

The Operator will notify the Province's Representative in the event that the Operator becomes aware that any representation set out in this Section 4.5 ceases to be true in any material respect.

5. PREPARATION OF DESIGN AND SPECIFICATIONS

5.1 Preliminary Design

The Operator will prepare a HAZOP study for the Project and will develop the Design for the Project in light of such HAZOP study.

5.2 Plans and Specifications

- (a) The Operator will deliver Plans and Specifications together with a draft of the Commissioning Plan to the Province's Representative in accordance with the Implementation Schedule. The Design and the Commissioning Plan development will be based on a design review and consultation process between the Province's Representative and the Operator's Representative and their respective consultants, each acting reasonably and their respective engineering and architectural consultants. The submission will include 4 copies of the Plans and Specifications and draft Commissioning Plan.
- (b) Within 5 Business Days of receipt by the Province's representatives of any portion or phase of the Design or the Commissioning Plan, the Province's Representative will give written notice to the Operator if the Province considers that the submitted Plans or Specifications do not comply with the Operational Performance Requirements, do not meet the Standards or otherwise do not fulfil the requirements of this Agreement and will provide reasons for issuing any notice of non compliance. The Operator will, without affecting the Operator's other obligations under this Agreement and without additional payment, take into account those reasons in revising the Plans and Specifications.
- (c) The Operator will deliver to the Province's Representative 2 sets of the final Plans and Specifications. Preparation and delivery of such Plans and Specifications will be as required to meet the Implementation Schedule and will allow for a reasonable period of time for review and comment by the Province and to permit comments of the Province to be considered by the Operator.

5.3 Preparation by Consultant and Professional Certification

The Operator will cause the Design, the Plans and Specifications and the Commissioning Plan to be prepared by, or under the direction of, the Operator's Consultant. All portions and aspects of the Plans and Specifications submitted by the Operator to the Province will be prepared under the direction of, and sealed or certified under the professional seal of a professional engineer or architect registered as such in the Province of British Columbia.

5.4 Operator's Design Responsibility

The Operator will be entirely and completely responsible for all aspects of Design. Nothing in this Agreement makes the Province's Representative, the Province, or any other Governmental Authority (including Partnerships British Columbia) responsible in any way whatsoever for any aspect of the Design, including with respect to compliance of the Plans and Specifications with the Operational Performance Requirements and the Standards, and for greater certainty, notwithstanding any review, commentary, acceptance or non-acceptance by the Province of the Work or other act of the Province or Province's Representative, Partnerships British Columbia or any other person, the Operator will remain liable and responsible for the Design, construction and commissioning of the Project and compliance of the Project and the Plans and Specifications with the Operational Performance Requirements and the Standards

unless the Operator has implemented a requirement imposed on the Operator pursuant to the Dispute Resolution Procedure or by any Governmental Authority with which the Operator does not agree and which the Operator has notified the Province that if the Operator implements the requirement, the Project, Work or Operations, as applicable, will be compromised and why.

6. CONTROL AND SUPERVISION OF THE WORK

6.1 Standard of Control

- (a) The Operator will have complete control of the Work and will direct and supervise the Work and provide project management and construction management, using the Operator's skill and attention, in accordance with the Standards.
- (b) The Operator will at all times take reasonable steps to maintain good order and discipline among the Subcontractors, employees and agents engaged on the Work and will not employ any unfit person on the Work nor anyone not skilled in the task assigned to him or her.
- (c) Subject only to Section 5.4, the Operator will be liable and responsible for all design and all construction and commissioning means, methods, techniques, sequences and procedures with respect to the Work, and for co-ordinating all parts of the Work under the Agreement and for co-ordinating the Work with work performed by Other Contractors.

6.2 Superintendent

- (a) The Operator will employ a competent construction superintendent (who may be the Operator's Representative appointed pursuant to Section 2.1(c)) and necessary assistants. The superintendent or an assistant will be at the Site at all necessary times during the progress of the Work at the Site.
- (b) The Operator will notify the Province's Representative of the identity of the Operator's superintendent by notice in writing on or before the commencement of the Work and the Operator's superintendent will not be changed except for good reason and then only after consultation with the Province.
- (c) The Operator's superintendent will, with respect to the Subcontractors, represent the Operator at the Site and give directions and instructions to all Subcontractors and others having business at the Site.
- (d) Notwithstanding the appointment of the Operator's superintendent, no communications or directions from the Operator to the Province or the Province to the Operator will be effective or binding unless made by or through the Province's Representative or the Operator's Representative, as applicable, as contemplated in Section 2.

6.3 Site Conditions

Subject to any other provision of this Agreement, the Operator acknowledges and agrees that:

- (a) the Operator has had the opportunity to undertake examinations or subsurface investigations, or both, of the Site, the Fan Area, the 4100 Adit, the Plug, the Outfall, the Access Road and the Jane Basin Road and to review and inspect the Reference Documents, in order to satisfy itself as to the conditions at the Site, the Fan Area, the 4100 Adit, the Plug, the Outfall, the Access Road and the Jane Basin Road, including subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil and sediments, groundwater and surface water and the impact these could have on any or all of the Design, Specifications and the Scheduled Completion Date. The Operator accepts the Site, the Fan Area, the Workings, the Outfall, the 4100 Adit, the Plug, the Access Road and the Jane Basin Road on an "as is" basis, as at the date of this Agreement, subject only to the work which this Agreement provides is to be undertaken by Other Contractors and to Abnormal Circumstances;
- (b) the Province and the Province's Representative are not in any way responsible or liable for any conditions at the Site or the Fan Area or in relation to the Outfall, or the 4100 Adit which are actually encountered, including subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil and sediments, groundwater, surface water and the Operator has made its own determinations of such conditions and their effect, if any, on the Design, Specifications and the Scheduled Completion Date; and
- (c) the Operator is not entitled to any adjustment in the Scheduled Completion Date or extension of the Term or reimbursement of additional costs incurred or to any other remuneration or damages whatsoever, in any way connected with existing conditions at the Site, the Fan Area, the 4100 Adit, the Plug or the Outfall, including subsurface conditions, bearing pressure, settlement characteristics and nature and consistency of soil and sediments, groundwater, surface water, whether or not the same would have been apparent to a contractor experienced in work similar to the Work, or projects similar to the Project upon review of the Site and Outfall and the Reference Documents.

6.4 *Heritage Conservation Act or Environmental Management Act*

Notwithstanding any other provision of this Agreement but subject to Section 44.2, the Operator acknowledges and agrees that:

- (a) the Province neither gives nor makes any representation or warranty as to the absence or presence on, in or under the Site or in the lands within the vicinity of the Site of any heritage object as that term is defined in the *Heritage Conservation Act* (British Columbia) or any Contaminants.

- (b) If the Operator, after commencing the Work, encounters or has reason to believe in the existence of any such heritage object or Contaminants on, in or under the Site, the Operator will at once take all reasonable steps, including claiming suspension or termination of the Work, as are necessary to ensure that there is no damage to the heritage object and that no person or property suffers injury, sickness, death, damage or destruction as a result of exposure to, or the presence of, any such object or Contaminants.
- (c) The Operator will immediately report such finding to the relevant Governmental Authorities, if required by law, and in any event give a written report to the Province's Representative.
- (d) Any delay or impact to the Work or the Operations as a result of such findings is deemed to be an Abnormal Circumstance.

7. TIMELINESS OF THE WORK AND DELAYS

7.1 Time of Essence

Time is of the essence of this Agreement.

7.2 Implementation Schedule

The Operator will perform the Work in substantial conformity with the Implementation Schedule.

7.3 Delay Due to Province

If and to the extent that the Operator is delayed or impacted in the performance of the Work or the Operations by reason of the breach by the Province of its obligations under this Agreement (including the obligation of the Province to obtain the Province's Permits so as to permit the Work to proceed in accordance with the Implementation Schedule and the Operations to be performed as required by this Agreement), the Scheduled Completion Date (but not the length of the Term) will be extended by the period of such delay and the Periodic Payments payable pursuant to the Payment Mechanism will be adjusted in accordance with the Payment Mechanism so that the present value of the Periodic Payments to the Operator pursuant to the Payment Mechanism, after due allowance for any costs reimbursed to or other savings made by the Operator in respect of the Province's delay or impact, are equal to the present value of the Periodic Payments which would have been received by the Operator had such delay or impact not occurred. If the parties are unable to agree on the amount of any such adjustment, the disagreement will be resolved pursuant to the Dispute Resolution Procedure.

7.4 Delay Due to Abnormal Circumstances

- (a) If the Operator is delayed or impacted in the performance of the Work or the Operations by Abnormal Circumstances, provided that the Operator has given the Province notice of such Abnormal Circumstances as required by Section 34.6(e), the Scheduled Completion Date and the Term will be extended for a reasonable period of time.

- (b) In such event the Province and the Operator will agree to a reasonable and equitable allocation of the costs and losses suffered because of the Abnormal Circumstances, such that the Operator will be compensated either:
- (i) by proceeds of insurance as described in Schedule D – Insurance Conditions; or
 - (ii) if the loss is not covered by insurance as described in Schedule D – Insurance Conditions, by the Province

for any net loss suffered by reason of the Abnormal Circumstances so that the Operator will be in a substantially similar position as if such Abnormal Circumstance had not occurred.

- (c) If the parties are unable to agree on the amount of any time extension or the allocation of costs and losses arising from Abnormal Circumstances, the disagreement will be resolved pursuant to the Dispute Resolution Procedure.

7.5 Notice of Delay

The Operator will give the Province's Representative written notice of a material delay in the performance of the Work promptly, and in any event, within 10 Business Days of the date the Operator first becomes aware of the circumstances which give rise to such delay. The written notice must be followed within a reasonable time by a written report providing particulars of the cause of the delay, the expected length of the delay and the steps the Operator intends to take to mitigate or overcome the delay. No extension of the Scheduled Completion Date, or other adjustment of the Implementation Schedule, or claim for any adjustment of the costs payable pursuant to the Payment Mechanism will be permitted unless the Operator gives the required written notice and report within the required time. In the case of a continuing, single cause of delay, only one notice is necessary but the Operator will provide periodic and timely reports on the actions being taken in response to such delay.

7.6 Variation Confirmations

A Variation Confirmation will be issued in respect of any change which is required as a result of a delay in the Work as contemplated in this Section 7, and the consequences of such delay, determined in accordance with this Section 7 will be as specified in such Variation Confirmation, as contemplated in Section 15.3.

7.7 General Duty to Mitigate

- (a) Without limiting but in addition to all other obligations to mitigate required by this Agreement, in all cases where the Operator is entitled to receive from the Province any additional compensation, damages or extensions of time, including for or resulting from an Abnormal Circumstance, suspension or termination of some or all parts of the Work or the Operations, the Operator will use all reasonable efforts and all due diligence to mitigate and reduce the amount required under this Agreement to be paid by the Province to the Operator as a consequence of the Abnormal Circumstance, suspension,

termination or the length of any extension of time which may be required as a result thereof.

- (b) The Operator will not be compensated by the Province on account of any costs, loss or damages incurred by the Operator or extensions of time or otherwise to the extent that the Operator could have mitigated against, reduced or otherwise avoided such costs, loss or damages by the exercise of all reasonable efforts and all due diligence as required in accordance with the foregoing provisions of this Section 7.7.
- (c) Upon request from the Province, the Operator will, within a reasonable time, submit a detailed description, supported by all such documentation as the Province may require, of the measures and steps taken by the Operator to mitigate and meet the aforesaid obligations.

8. DEFECTIVE WORK

8.1 Correction of Defective Work

- (a) The Operator will, prior to Total Completion and at its own expense, promptly and properly remove, replace and re-execute any and all defective Work which fails to conform to the requirements of this Agreement, whether the result of poor design, poor workmanship, use of defective materials or damage through carelessness or other acts of the Operator or a Subcontractor, and whether incorporated in the Work or not, and whether the same has first been detected by the Province or otherwise comes to the attention of the Operator.
- (b) Any work or property of the Province or Other Contractors destroyed or damaged by such removals or replacements will be made good by the Operator promptly at the Operator's expense.
- (c) If the Operator does not remove such defective materials or work, or make good any resulting repairs within a reasonable time as determined by the Province's Representative and set out in a written notice to the Operator from the Province's Representative, the Province may remove the same and store or dispose of materials and make good the required repairs, at the expense of the Operator, and deduct such costs from any amounts owing by the Province to the Operator.
- (d) If in the opinion of the Province it is not expedient to correct defective work, as described above, the Province may deduct from any amounts payable to the Operator on the basis of the difference in value between non-conforming work and that called for by this Agreement, in an amount as determined initially by the Province's Representative, acting reasonably, and agreed to by the Operator, and failing agreement, the disagreement will be resolved pursuant to the Dispute Resolution Procedure.
- (e) The failure of the Province or the Operator to identify a deficiency will not relieve the Operator from its obligation to perform the Operations in accordance with the Standards so as to satisfy the Operational Performance

Requirements or to deliver the Project to the Province in the condition required by this Agreement on the Termination Date.

9. SEPARATE CONTRACTS WITH OTHER CONTRACTORS

- (a) The Province reserves the right to enter into separate contracts with Other Contractors in connection with the Project as specifically set out in the definition for Other Contractors or as may be required in connection with the Overall Remediation Plan (other than the Project) and following the Completion Date, as the Province sees fit.
- (b) The Operator will make reasonable efforts to:
 - (i) co-ordinate the Work and the Operations, as applicable, with work by Other Contractors with the goal of connecting and integrating the Work and the Operations with the work of such Other Contractors;
 - (ii) to co-ordinate the performance of the Work with the schedules of Other Contractors.
- (c) The Operator will promptly verbally report to the Province's Representative any apparent deficiencies in Other Contractors' work which could affect the Project as soon as such deficiencies come to the Operator's attention and the Operator will confirm such report in writing in a timely way so as to avoid delays to the Work or the Overall Remediation Plan. The Operator will not be entitled to any time extension for such delays which the Operator could have avoided or mitigated by timely reporting.

10. SUBCONTRACTS

10.1 Core Team

The Operator has proposed the following Subcontractors as the Core Team:

- (a) Lockerbie Stanley Inc.;
- (b) HAZCO Environmental Services Ltd.; and
- (c) Stantec Consulting Ltd.

The Operator will not change the composition of the Core Team save with the approval of the Province's Representative, acting reasonably.

10.2 Additional Subcontractors

The Operator has proposed, and the Province agrees, that the following Subcontractors may perform portions of the Work or the Operations:

- (a) BIOTEQ Environmental Technologies Inc.; and
- (b) Canadian Environmental and Metallurgical Inc.

10.3 Operator Responsible for Subcontractors

- (a) The Operator will preserve and protect the rights of the Province under the Agreement with respect to any Work or Operations to be performed by a Subcontractor, so that the subcontracting does not prejudice the Province's rights under this Agreement, and the Operator will be responsible to the Province for the performance of all Work and Operations by all Subcontractors (whether members of the Core Team or not) and will require the Subcontractors to perform their work in accordance with the terms and conditions of this Agreement. The Operator will be as fully responsible to the Province for acts and omissions of all Subcontractors and of persons directly or indirectly employed by the Subcontractors as for the acts and omissions of the Operator.
- (b) Nothing contained in this Agreement will create any contractual, employment, agency or other relationship between any Subcontractor and the Province or between any employee or agent of a Subcontractor and the Province.

11. UTILITIES

- (a) The Operator will be responsible for making all necessary arrangements, at its own cost as part of the Work, with utility companies, public authorities and the adjacent land owner as may be most appropriate and cost effective, for the supply of electric power, telecommunications, water, sanitary sewer service and any other utilities required for the Work and the Operations, both temporary and permanent. In the event that any temporary systems are installed, the Operator will tie into permanent services as and when they become available. In particular, as and when municipal sanitary or storm water management systems become available, if the Province so requires, the Operator will hook up to same and will disconnect the Project from any septic or storm water management systems which were in use prior to such hook up. The hooking up by the Operator of the Project to municipal sanitary or storm water management systems will constitute a Variation which does not extend the Term and the Operator will be reimbursed for same when such Variation is authorized by a Variation Confirmation.
- (b) Subject to Section 11(a), the Operator will, at its own cost, apply for and obtain all Permits required for all necessary utility connections and services and where work must be undertaken directly by the utility company, the Operator will pay for such work at its own expense.

12. PERMITS

- (a) The Operator acknowledges that it will require the Permits in order to perform the Work and undertake the Operations. Save for the those Permits designated as the Province's Permits in Schedule G – Permits, the Operator will be responsible for obtaining, with the Province's reasonable assistance, all permits and other approvals as and when required in order to comply with the Implementation Schedule and to perform the Work and the Operations.

- (b) The Province will obtain the Province's Permits as required in order to meet the Implementation Schedule and to permit the Operations which are subject to the Province's Permits to be performed as and when required by this Agreement.
- (c) The Province will remain the named licensee on all Permits, regardless of who obtains same, save for routine building Permits which are required for the Work, which may be in the name of the Operator only.
- (d) Any extensions or renewals of the Permits (including Province's Permits) which may be required throughout the Term will be acquired by the Operator, provided that the Province will co-operate with and provide the Operator with administrative assistance in obtaining such extensions and renewals. Any fees or charges incurred by the Operator in obtaining, maintaining, extending and renewing the Permits will be for the account of the Operator, unless such costs are incurred by reason of default or neglect on the part of the Province, in which event and to the extent of the default or neglect, such costs will be paid by the Province.
- (e) The Province will furnish to the Operator a copy of all Permits obtained by the Province and the Operator will furnish to the Province a copy of all Permits obtained by the Operator, in each case as such Permits are obtained. The Operator will provide the Province with copies of all amendments, extensions and renewals of any Permits.
- (f) The Operator acknowledges that despite the fact that the Project will provide services to the Province, the Operator is required to obtain the Permits (other than the Province's Permits), seek inspections, and otherwise comply with all lawful requirements and similarly, the Operator acknowledges that it is not entitled to any greater standard of service relating to issuance of the Permits or the conduct of such inspections by Governmental Authorities having jurisdiction than is available to the general public.

13. OPERATOR'S DISCHARGE OF LIABILITY

13.1 Operator Will Pay Amounts Owing

The Operator will pay all invoices and discharge all liabilities incurred by it for labour, materials or services used or ordered for or reasonably required for use in the performance of this Agreement.

13.2 Operator Will Cause Subcontractors to Pay Amounts Owing

The Operator will require every Subcontractor to pay all invoices and discharge all liabilities incurred for labour, materials or services used or ordered for or reasonably required for use in the performance of each subcontract. Workers employed by a Subcontractor will be paid in full at intervals not less frequently than is required by law.

13.3 Compliance with Applicable Law

The Operator will comply strictly and fully with all Applicable Law, including laws, bylaws, rules, regulations and orders applicable to the Work, the Operations, the Project and the Site including, without limitation, workers compensation and builders lien legislation in force from time to time. The Operator agrees to furnish to the Province, upon request, with such information regarding compliance with Applicable Law as the Province may reasonably request.

14. INNOVATION AND VALUE ENGINEERING

14.1 Value Engineering

- (a) The Operator acknowledges that the Province at all times desires to reduce the Periodic Payments and to reduce the overall cost of the Work and the Operations to the Province and all other Governmental Authorities and to improve the quality of the Contaminated Water which is treated by the Project as well as the handling, storage, disposal and, if possible, utilization, of any Sludge and other by-products of the Operations. The Operator agrees to co-operate with the Province in investigating and considering innovation and value engineering and other cost saving measures in this regard.

14.2 Innovation Proposals

- (a) The Operator may make an Innovation Proposal to the Province.
- (b) The Province may ask the Operator to develop an Innovation Proposal. The Operator is under no obligation to develop an Innovation Proposal requested by the Province, but will give such request fair consideration.
- (c) Any Innovation Proposal must:
 - (i) be set out in sufficient detail to enable the Province to evaluate the Innovation Proposal in full;
 - (ii) specify the Operator's reasons and justification for proposing the Innovation Proposal;
 - (iii) request the Province to consult with the Operator with a view to deciding whether to agree to the Innovation Proposal and, if the Province wishes to proceed with an Innovation Proposal, what Variations and consequential changes the Operator requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including any difference between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to the Operator, the Province and other Governmental Authorities;
 - (v) indicate, in particular, whether any cost savings or a variation to the Periodic Payments, Scheduled Completion Date, Implementation

- Schedule, Term, or some other compensation for the Operator is proposed and, if so, give a detailed cost and value estimate of such proposed Variation and the proposed impact on Periodic Payments, Scheduled Completion Date, Implementation Schedule, Term and any applicable compensation or cost savings;
- (vi) indicate if there are any dates by which a decision by the Province must be made; and
 - (vii) include such other information and documentation as may be reasonably requested by the Province to permit the Province to fully evaluate and consider the Innovation Proposal.
- (d) The Province will evaluate each Innovation Proposal in good faith, taking into account all relevant issues, including whether:
- (i) a change in the Periodic Payments, Scheduled Completion Date, Implementation Schedule, or Term will occur, and whether other compensation will be payable to or recoverable by the Operator or cost savings will be realized;
 - (ii) the Innovation Proposal affects the quality of the Project or the Operations, or the likelihood of successful completion of the Project or delivery of the Operations;
 - (iii) the Innovation Proposal will interfere with the relationship of the Province and other Governmental Authorities with each other or third parties or any of them;
 - (iv) the financial strength of the Operator is sufficient to deliver the changed Project or perform the changed Operations, as applicable;
 - (v) the residual value of the Project is affected;
 - (vi) the Innovation Proposal materially affects the risks or costs to which the Province is exposed; or
 - (vii) any other matter the Province considers relevant.
- (e) The Province may request clarification or additional information regarding the Innovation Proposal, and may request modifications of the Innovation Proposal.
- (f) The Province may in its sole discretion accept or reject any Innovation Proposal.
- (g) If the Province accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal will be documented and evidenced by a written Variation Confirmation in accordance with the Variation Procedure.

- (h) The Operator will be solely responsible for obtaining any Permits required by an Innovation Proposal, and for obtaining any necessary amendments to existing Permits or any new permits. However, the Province will co-operate with the Operator in obtaining such amendments or new permits.

14.3 Innovation Proposals Involving Other Contractors

If the Operator declines to develop an Innovation Proposal requested by the Province, or if the Operator and the Province cannot agree upon the terms of implementation of an Innovation Proposal, the Province may retain Other Contractors to develop or implement such Innovation Proposal and the Operator will co-operate with such Other Contractors and any change to the Work, the Implementation Schedule or the Operations as a result of the work of such Other Contractors will be dealt with as a Variation pursuant to the Variation Procedure.

15. VARIATIONS

15.1 Variations

- (a) Either party may request Variations by making a Variation Request to the other party.
- (b) The Operator must obtain a written Variation Confirmation before proceeding with any work in respect of the Variation, save in the event of an Emergency. The Operator will not be entitled to claim or receive any additional compensation or an extension of the Scheduled Completion Date or the Term for any Variation performed without the prior receipt of a Variation Confirmation.
- (c) The Operator will include in each subcontract to which the Operator is a party, provisions which require each Subcontractor to comply with, the Variation Procedure, to the extent that the Variation Procedure requires the Operator to minimize the cost and impact of Variations.

15.2 Variation Procedure

- (a) Where the Operator receives a Variation Request from the Province or the Operator makes a Variation Request to the Province, the Operator will, within 10 Business Days (or such longer time as is reasonably necessary), provide a Variation Proposal to the Province.
- (b) In preparing the Variation Proposal, the Operator will prepare a budget for the costs and savings which the Operator believes are the responsibility of or will be enjoyed by the Province pursuant to the proposed Variation, including all reasonable and proper amounts payable and all savings likely to be incurred in respect of the work, plant or material, including the following categories, as applicable:
 - (i) payments to Subcontractors and consultants;
 - (ii) labour expenses, based on charge out rates;

- (iii) payments for materials necessary for and incorporated in the Work or the Operations or necessary for and consumed in the performance of the Variation;
 - (iv) payments for rental of tools, other than tools customarily provided by tradesmen, necessary for and used in the performance of the Variation;
 - (v) payments for preparation, inspection, delivery, installation and removal of plant and materials necessary for the performance of the Variation;
 - (vi) assessments payable under any statutory scheme relating to workers' compensation, unemployment insurance or holidays with pay;
 - (vii) payments for renting equipment and plant (but not hand tools) and allowances for equipment (but not hand tools) owned by the Operator, or a Subcontractor necessary for the performance of the Variation, provided that such payments or allowances have been agreed to by the Operator and the Province;
 - (viii) amounts chargeable on account of overhead, profit, capital costs and interest;
 - (ix) any other payments which are necessary for the performance of the Variation, as determined in agreement with the Province;
 - (x) savings which are anticipated to be realized in respect of any item which is charged to the Province pursuant to the Payment Mechanism; and
 - (xi) anything else required to complete the Variation Proposal.
- (c) Within 10 Business Days of receipt of the Variation Proposal (or such longer time as is reasonably necessary), the Province will:
- (i) issue a Variation Confirmation, in which case the Agreement will be deemed to be amended in accordance with the terms of such Variation Proposal;
 - (ii) deliver in writing suggested changes to the Variation Proposal, in which case the Operator may either revise and re-submit the Variation Proposal in accordance with subsection 15.2(a) hereof or terminate the Variation;
 - (iii) issue a Variation Confirmation directing the Operator to proceed with the Variation with compensation for the Variation to be determined in accordance with the costs incurred by the Operator as a result of the Variation plus a fixed or percentage fee as described in Section 15.2(d); or

- (iv) terminate the Variation.
- (d) Where the impact of a Variation is to be valued pursuant to Section 15.2(c)(iii), the cost incurred by the Operator will include all costs actually incurred or legally payable as a result of the Variation, as listed in Section 15.2(b), excluding Section 15.2(b)(viii), plus 15%, after all credits included in the Variation Confirmation have been deducted. In addition, the Operator will keep accurate records of quantities and costs as agreed upon in relation to a Variation and will present an account of the costs of the Variation, together with receipts where applicable, at least once each Month during performance of the Variation, and will present a final account upon completion of the Variation.
- (e) The Province's Representative, acting reasonably, may demand further particulars with respect to any information provided by the Operator pursuant to Section 15.2.

15.3 Variation Due to Abnormal Circumstances

In the event of a delay due to Abnormal Circumstances of which the Province has been notified pursuant to Section 34.6(a), the Operator will be entitled to a Variation modifying the Implementation Schedule and extending the Scheduled Completion Date and the Term, but not otherwise amending this Agreement or the obligations of the Province and the Operator hereunder, as contemplated by Section 7.4.

15.4 Certain Failures of Outfall

- (a) Throughout the Term, the Operator will maintain sufficient materials on hand at the Site to replace those portions of the Outfall which lie below mean sea level.
- (b) In the event that, at any time during the Term, any portion of the Outfall fails, for whatever reason, the Operator will immediately repair or replace such portion of the Outfall.
- (c) Where, pursuant to Section 15.4(b), the Operator is required to repair damage to or a failure of any portion of the Outfall which lies below mean sea level and where such damage or failure is caused by slope failure, subsidence or an Abnormal Circumstance, then notwithstanding Section 15.1(b), the Operator will immediately repair or replace the damaged portion of the Outfall which lies below mean sea level and any work associated therewith will be a Variation.
- (d) Notwithstanding anything in this Agreement, the Operator will not be responsible for the any loss, damage, or other consequences caused by or arising from any failure of a portion of the Outfall which lies below mean sea level, or the repair thereof, provided that the Operator complies with Section 15.4(b).

16. PAYMENT FOR VARIATIONS

16.1 Payment Pursuant to Agreement

The cost of each Variation authorized by a Variation Confirmation will be paid for in accordance with the terms agreed upon by the parties and recorded in each Variation Confirmation.

16.2 Option of Province

- (a) Where the parties are unable to agree upon the method of payment of a Variation, the costs of the Variation will be paid, at the option of the Province: (i) monthly as the work comprising the Variation progresses; (ii) by an adjustment of the overall cost of the Project and paid as a component of the Periodic Payments paid pursuant to the Payment Mechanism; or (iii) by lump sum upon completion of the component of the Work or the Operations which is the subject of the Variation Confirmation.
- (b) The Province will specify the method of payment of each Variation at the time the Province issues the applicable Variation Confirmation.
- (c) If the Province elects to make payment of a Variation in accordance with Section 16.2(a)(ii) or Section 16.2(a)(iii), the amount of such payment or payments will be adjusted to reflect the Operator's cost of capital, including all finance and interest charges, pending payment.
- (d) If the Province elects to pay the cost of a Variation in accordance with Section 16.2(a)(i) or Section 16.2(a)(iii),, such payments will be subject to holdbacks under the *Builders Lien Act* (British Columbia) and such holdbacks will be paid following substantial completion of the changed work and expiry of the lien holdback period in respect of such Variation, provided that no claim for builders lien has been recorded in relation to the changed work which remains outstanding on title to the Site.

17. DISCHARGE OF BUILDERS LIENS

17.1 Builders Liens

If a claim for builders lien arises in relation to any part of the Work or the Operations, the Province may, at its option, after 60 Days written notice to the Operator, pay the amount of the claim into court to discharge the lien, or in the alternative, require the Operator to provide security satisfactory to the Province and make application to discharge the lien. The Province will be entitled to deduct an amount equal to any amount paid by the Province to obtain a discharge of any such claim for builders lien, together with all costs incurred by the Province, including legal costs on a full indemnity basis, from any Periodic Payments or other amounts owing by the Province to the Operator, and until such amounts have been fully recovered by the Province, they will bear interest at the rate set out in Section 37.13.

17.2 Holdback Amounts

Save for amounts held back or offset by the Province pursuant to Section 17.1, Periodic Payments will not be subject to reduction because of holdbacks required to be retained by an owner under the *Builders Lien Act* (British Columbia). If, for any reason, the Province retains a holdback in respect of builders liens that is not specifically permitted by this Agreement, such holdback will not be funded from amounts payable to the Operator and the Periodic Payments will not be reduced as a result thereof.

17.3 Evidence of No Liens

Together with the final Commissioning Report and the Certificate of Completion, and thereafter, following Total Completion, with its invoice for the Payments for the months of June and December during each year of the Term, and whenever else reasonably requested by the Province, the Operator will provide to the Province a Land Title Office title print for the Site as evidence as to whether or not any claims for builders lien have been made in respect of the Work or the Operations.

18. COMPLETION

18.1 Application for Certificate of Completion

The Operator will be entitled to apply for a Certificate of Completion when:

- (a) the Operator's Consultant has provided to the Province's Representative a Commissioning Report certifying that:
 - (i) the Work has been completed so as to be able to treat Contaminated Water in compliance with the Operational Performance Requirements; and
 - (ii) the Work has been completed in accordance with the Design and all pertinent requirements of this Agreement, with only minor defects and deficiencies remaining to be corrected or completed;
- (b) all Permits which are required for the Operations and which are not Province's Permits (which may be temporary or interim Permits, if appropriate) have been obtained and complied with to date; and
- (c) the Operator has provided a certificate confirming that insurance coverage is in place as required pursuant to the Insurance Conditions.

18.2 Initial Commissioning

If the Work does not fulfil the requirements set out in this Section 18.1(a), the Operator will continue to monitor the treatment of Contaminated Water and will cause Commissioning Reports to be issued by the Operator's Consultant from time to time until such time as the Operator's Consultant issues a Commissioning Report which confirms the facts required by Section 18.1(a).

18.3 Certificate of Completion

- (a) Upon receipt of the Commissioning Report, and compliance with the other requirements of Section 18.1, the Province's Representative will promptly make an inspection and assessment of the Work and review the Commissioning Report and other matters referred to in Section 18.1 to verify the validity of the application.
- (b) The Province will have a period of 7 Days to review the Commissioning Report and the matters referred to in Section 18.1 and within such period will accept or reject the Commissioning Report, with written reasons. If the Province's Representative accepts that a Certificate of Completion should be issued, the Province's Representative will issue the Certificate of Completion and the Completion Date will be the date the Certificate of Completion is issued.
- (c) If the Province's Representative rejects the application for a Certificate of Completion, the Province will notify the Operator of the reasons for rejection. If the Operator receives such a notice from the Province's Representative, the Operator will correct the deficiencies identified in the notice and will cause the Operator's Consultant to submit an updated Commissioning Report when such deficiencies are corrected and the Province's Representative will again make such inspections and assessments as are necessary for the Province's Representative to determine if the Certificate of Completion should be issued, and so on until the Province's Representative is satisfied that the Operator is entitled to a Certificate of Completion.
- (d) Any dispute with respect to the issuance of a Certificate of Completion will be resolved pursuant to the Dispute Resolution Procedure.

18.4 Commencement of Periodic Payments

The Operator will be entitled to receive Periodic Payments for the period commencing on the Completion Date, in accordance with the Payment Mechanism.

18.5 List of Deficiencies

Immediately following the issuance of the Certificate of Completion, the Operator's Consultant will meet with the Province's Representative to inspect the Work. The Operator's Consultant, in consultation with the Province's Representative, will issue a list of deficiencies in the Work, and, in consultation with the Province's Representative and the Operator's Representative, will establish a schedule for the completion or correction of all deficiencies, and the Operator will proceed diligently, at the Operator's expense, to complete or correct all such deficiencies.

18.6 Operational Acceptance Testing

- (a) The Operator will provide at least 10 Business Days' prior written notice to the Province's Representative of the date upon which the Operational Acceptance Testing will commence, and if the Province's Representative, acting reasonably, determines that there is insufficient Contaminated Water

flow, or if the Province's Representative or its consultants are unavailable for the Operational Acceptance Testing, the Province's Representative may delay the commencement of Operational Acceptance Testing, provided that if the Province's Representative does so, the Operator will be granted an extension of the period for completing Operational Acceptance Testing equal to the period of such delay.

- (b) Concurrently with the Operational Acceptance Testing, the Province's Representative and consultants will inspect the Project and confirm the correction of any previously identified deficiencies and any new deficiencies in the Work, all of which will be repaired or remedied promptly by the Operator.

18.7 Application for Total Completion Certificate

The Operator will make application within 18 months of the Completion Date, for a Total Completion Certificate. The Operator will be entitled to apply for a Total Completion Certificate when the Operator's Consultant has provided to the Province's Representative a Total Completion Report certifying that:

- (a) Operational Acceptance Testing has been successfully completed;
- (b) all deficiencies have been completed or corrected; and
- (c) the Work is fully commissioned in accordance with the Commissioning Plan.

18.8 Total Completion Certificate

- (a) Upon receipt of the Total Completion Report the Province's Representative will promptly make an inspection and assessment of the Work and review the Total Completion Report to verify the validity of the application.
- (b) The Province will have a period of 7 Days to review the Total Completion Report and within such period will accept or reject the Total Completion Report, with written reasons. If the Province's Representative accepts that a Total Completion Certificate should be issued, the Province's Representative will issue the Total Completion Certificate.
- (c) If the Province's Representative rejects the application for a Total Completion Certificate, the Province will notify the Operator of the reasons for rejection. If the Operator receives such a notice from the Province's Representative, the Operator will correct the deficiencies identified in the notice and will cause the Operator's Consultant to submit an updated Total Completion Report when such deficiencies are corrected and the Province's Representative will again make such inspections and assessments as are necessary for the Province's Representative to determine if the Total Completion Certificate should be issued, and so on until the Province's Representative is satisfied that the Operator is entitled to a Total Completion Certificate.
- (d) Any dispute with respect to the issuance of a Total Completion Certificate will be resolved pursuant to the Dispute Resolution Procedure.

19. LIMITATION OF CERTIFICATES

By issuing or accepting any certificate, whether from the Operator, the Operator's Consultant or any other person, the Province's Representative and the Province do not guarantee, or otherwise become liable or responsible in any way for, the correctness or completeness of the facts set out in the certificate and no certificate makes the Province's Representative or the Province in any way responsible or liable for the adequacy of the Design, the Work or the Operations.

20. WORKERS' COMPENSATION

- (a) The Operator will be, and will assume the responsibilities of, the "prime contractor" for the Project, as required by the *Workers Compensation Act* (British Columbia) and Regulations thereunder, and as such, the Operator acknowledges its responsibilities as the "prime contractor" for co-ordinating safety for the Project, including its own workers as well as those of Subcontractors, utilities providers, suppliers, inspectors, and all other parties performing work on the Site or in the Workings in connection with the Project.
- (b) The Province will include a requirement in all contracts made with Other Contractors that such Other Contractors comply with all reasonable safety requirements of the Operator.
- (c) Prior to commencing the Work, the Operator will provide to the Province's Representative, the name and telephone numbers (including a 24 hour emergency contact number) of the Operator's safety representative responsible for the Project.
- (d) Prior to commencing the Work and prior to receiving any payment pursuant to this Agreement, the Operator will provide to the Province evidence of compliance with all health and safety requirements, including with respect to the *Workers Compensation Act* (British Columbia), and including payments of assessments due by the Operator to the Workers Compensation Board.
- (e) Without limiting the foregoing, the Province's Representative may at any time require the Operator to provide evidence of compliance with all health and safety requirements.
- (f) When required to do so by the Province, the Operator will obtain and provide the Province with evidence of compliance by the Operator and the Subcontractors with all safety requirements of Applicable Law.
- (g) The Operator will at all times engage in safe work practices and procedures and will ensure that all persons under its control or direction have received adequate and appropriate health and safety training.
- (h) The Operator will co-operate with all safety inspections conducted by the Workers' Compensation Board or other Governmental Authority having jurisdiction over health and safety and will promptly remedy any noted deficiencies.

- (i) The Operator will indemnify and save harmless the Province from any and all fines, levies, penalties and the like imposed on the Province by the Workers' Compensation Board or other Governmental Authority having jurisdiction related to or arising from non-compliance with applicable health and safety regulations, whether by the Operator, a Subcontractor or anyone under the Operator's control or direction. This indemnity will not extend to fines, levies, penalties and the like which arise due to non-compliance by the Province, any Governmental Authority, Other Contractor or anyone under any of their control or direction.
- (j) The Province may deduct and set off from any amount payable by the Province pursuant to this Agreement for which the indemnity in Section 20(i) applies an amount equal to the amount of any fine, levy, or penalty imposed on and paid by the Province.

21. PROTECTION OF WORK AND PROPERTY

- (a) Subject to those matters which are the responsibility of the Province under Section 44.2, the Operator will protect the Project and the Province's property on the Site and in the Fan Area as well as the property adjacent to the Site and the Fan Area (including the Access Road and the Jane Basin Road) from damage.
- (b) Should any damage occur to the Project or the Province's property or the property adjoining the Site or the Fan Area for which the Operator is responsible, the Operator will make good such damage at its own expense or will pay all costs incurred by others in making good such damage.
- (c) In the event of any damage to an Other Contractor by the Operator, the Operator will endeavour to settle any reasonable claim by such Other Contractor promptly so as to avoid delays or disruption in the work being performed by such Other Contractor.

22. INSURANCE

22.1 Insurance

The Province and the Operator will obtain and maintain in force for such periods as are designated in Schedule D – Insurance Conditions, the insurance coverages which are allocated to the Province and the Operator respectively, in Schedule D – Insurance Conditions.

22.2 Workers' Compensation Insurance

The Operator will also provide Workers' Compensation Insurance as prescribed by law.

22.3 Insurance Certificates

Each of the Province and the Operator will provide copies of certificates of insurance duly executed by an authorized representative of their respective insurer(s) as the other, acting reasonably, may request.

23. WARRANTY

23.1 Defects in Design

Subject to Section 5.4, the Operator will correct, at the Operator's cost, any defect or deficiency in the Work or any work undertaken as part of the Operations, if the consequence of such defect or deficiency results in the Work not complying with the Design or this Agreement in any way, or otherwise causes the Project to be unable to properly perform the Operations so as to comply with the Operational Performance Requirements and the Standards.

24. PRODUCTS

- (a) Unless otherwise expressly provided in this Agreement, the Operator will provide and pay for all labour, products (including chemicals, reagents, bioactive compounds for start-up testing and commissioning), materials, tools, equipment, plant, machinery, water, heat, light, power, transportation, and all other facilities, things and services whatsoever, without limitation, necessary for the performance of the Work and the Operations.
- (b) All products and materials provided will be new, unless otherwise agreed to by the Province's Representative in writing. Any products that are not specified will be of a quality suited to the purpose required. The Operator is encouraged to use products and materials which are manufactured from recycled products or materials, whenever cost effective and appropriate.

25. USE OF SITE

- (a) The Operator will confine tools, equipment, machinery and plant, storage of materials and products, and operations of its workers and its Subcontractor's workers to the Site and to limits prescribed by Applicable Law and as agreed with the Province, and will not unreasonably encumber the Project or Site.
- (b) The Operator will not load or permit to be loaded any part of the Project with a weight or force that will endanger the safety of the Project.
- (c) The Operator will enforce reasonable instructions of the Province or Province's Representative regarding signs, advertisements, fires and smoking.

26. CLEANUP AND FINAL CLEANING OF PROJECT

- (a) Following Total Completion, the Operator will maintain the Project in a tidy condition, free from the accumulation of waste products and debris. Prior to Substantial Completion, the Operator will maintain the Site in a condition appropriate to a construction project of the type, kind and nature of the Project.
- (b) When the Project reaches Total Completion, the Operator will promptly remove all surplus products, tools, construction machinery and equipment and any waste and debris other than that caused by the Province, Other

Contractors or their employees, and will leave the Project tidy and suitable for use in the Operations.

27. CUTTING AND REMEDIAL WORK

- (a) The Operator will do all cutting and remedial work that may be required to make the several parts of the Work and the Project come together properly. In particular, the Operator will be responsible for integrating the Project with the Workings at the Point of Responsibility in such manner as to permit the controlled flow of Contaminated Water into the Project from the Workings.
- (b) Cutting and remedial work will be performed by specialists familiar with the products and materials affected and will be performed in a manner to neither damage nor endanger the Project.

28. LICENCES AND TITLE

28.1 Project Ownership

The Site and the Project are owned by the Province and nothing herein will vest in the Operator any rights of ownership, title or estate in the Site or the Project.

28.2 Ownership of Tangible Personal Property and License to Use Same

All tangible personal property used at the Project, on the Site or in the Workings which is necessary or advisable for the performance of the Operations, including all equipment of any description, machinery, pumps, but excluding hand tools and motor vehicles, will be the property of the Province. In no event will the Operator lease any tangible personal property which is necessary for the Operations, other than motor vehicles. The Province grants to the Operator an exclusive licence until the Termination Date to use all tangible personal property owned by the Province which is supplied by the Operator for the performance of the Operations.

28.3 Licence to Use the Site

- (a) From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence rights of access to and use of the Site as may be reasonably required by them to perform the Work and the Operations.
- (b) None of the rights granted pursuant to this Section 28.3 will extend beyond the boundaries of the Site, or to any lands other than the Site.

28.4 Licence to Use the Jane Basin Road

- (a) From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence rights of access over the Jane Basin Road from the Site to any landfill site on lands owned by the Province in the vicinity of the Jane Basin portion of the Mine which has

been licensed as a landfill to receive Sludge, as may be reasonably required by them to obtain access to and egress from the Site to such landfill for the purpose of hauling Sludge to and depositing such Sludge in the landfill.

- (b) The Operator acknowledges that the Jane Basin Road is not a dedicated public highway but is an “access road” within the meaning of the *Highway (Industrial) Act* (British Columbia) and the *Mining Right of Way Act* (British Columbia), and as such, is subject to regulation as prescribed by such statutes. The Operator agrees to comply, and to cause all Subcontractors to comply, with all such regulations.
- (c) The Operator acknowledges that portions of the Jane Basin Road may become dedicated public highways and the Operator agrees to comply and to cause all Subcontractors to comply, with all applicable provisions of the *Highway Act* (British Columbia) in relation to the Access Road and those portions of the Jane Basin Road which at any time become a public highway.
- (d) None of the rights granted pursuant to this Section 28.4 will extend beyond the boundaries of the Jane Basin Road, or to any lands other than the Jane Basin Road, save to the extent necessary and as permitted by the Province to permit Sludge to be deposited in a licensed landfill adjoining the Jane Basin Road.
- (e) The Operator will ensure that adequate signs are installed to warn of danger with respect to access over those portions of the Jane Basin Road which are not a dedicated public highway. The Operator will ensure that such signage is consistent throughout and professionally presented, in at least the English language.
- (f) The Operator will be responsible for and will promptly repair at the Operator’s expense any damage caused to the Jane Basin Road by reason of the use of the Jane Basin Road by the Operator and any Subcontractor or their respective carriers.
- (g) The Operator will ensure that all Sludge and any other materials being hauled to and from the Site on the Jane Basin Road is properly tarped and secured. In the event that any material escapes while being hauled to or from the landfill for the Sludge, the Operator will take immediate steps to clean up such materials.
- (h) The Province will be free to relocate the Jane Basin Road and to modify the Jane Basin Road, provided that so long as the Sludge is being deposited at a landfill adjoining the Jane Basin Road, the Jane Basin Road will meet at least the standards applicable to a mine access road which is subject to the *Highway (Industrial) Act* (British Columbia).
- (i) The Province and the Operator will not permit use of the Jane Basin Road by any person who has not entered into an agreement satisfactory to the Province and the Operator, both acting reasonably, to contribute to the maintenance and repair of the Jane Basin Road.

28.5 Licence to Use the Workings

- (a) From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence rights of use and access in respect of the Workings as may be required to store Contaminated Water prior to the treatment of same as required by this Agreement.
- (b) None of the rights granted pursuant to this Section 28.5 will extend beyond the boundaries of the Workings, or to any lands other than the Workings.

28.6 Licence to Use the 4100 Adit and the Plug

- (a) From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence, rights of use and access in respect of the design and construction of the facilities required in the 4100 Adit or as may be part of the Plug as may be required to:
 - (i) permit Contaminated Water to be conveyed, metered and controlled from the Point of Responsibility to the WTP; and
 - (ii) repair or replace any portions of the 4100 Adit which become damaged or require repair or replacement from time to time.
- (b) None of the rights granted pursuant to this Section 28.6 will extend beyond the boundaries of the 4100 Adit or the Point of Responsibility.

28.7 Licence to Use the Outfall

- (a) From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence, rights of use and access in respect of the design, construction, operation, repair and replacement of the Outfall as may be required to:
 - (i) permit Contaminated Water which has been treated pursuant to the Operations or has not been treated but is permitted to be mixed with treated Contaminated Water in accordance with the Operational Performance Requirements, to pass from the Project and into Howe Sound through the Outfall; and
 - (ii) repair or replace any portions of the Outfall which become damaged or require repair or replacement from time to time.
- (b) None of the rights granted pursuant to this Section 28.7 will extend beyond the boundaries of the Outfall.

28.8 Licence to Use the Fan Area and Fan Facilities

- (a) From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence, rights of use and access in respect of the Fan Area and the design, construction, operation, repair and maintenance of the Fan Facilities as may be required to:
 - (i) pump groundwater which is Contaminated Water from the Fan Area and convey such Contaminated Water to the WTP for treatment in accordance with the Operational Performance Requirements; and
 - (ii) repair or replace any portions of the Fan Facilities which become damaged or require repair or replacement from time to time.
- (b) None of the rights granted pursuant to this Section 28.8 will extend beyond the boundaries of the Fan Area.

28.9 License in Respect of Jane Basin

From the date of this Agreement until the Termination Date, the Province will provide the Operator, the Subcontractors and their respective employees, officers, agents and consultants, such non-exclusive licence, rights of use and access in respect of Jane Basin as may be required to:

- (a) Use those areas designated for such purposes by the Province in Jane Basin for disposal of the Sludge as contemplated by Section 34.5; and
- (b) access, monitor, maintain, repair and replace the weather stations in Jane Basin as contemplated in Section 34.3(f) and undertake any other actions in Jane Basin which are reasonably necessary for the performance of the Work or the Operations.

28.10 Licences Generally

- (a) Subject to Section 20, the Operator acknowledges and agrees that the rights granted to the Operator, the Subcontractors and their respective employees, officers, agents and consultants hereunder are non-exclusive and, in particular, that the Province and any person authorized by the Province may enter and occupy the Site and the facilities comprising the Project (including the 4100 Adit, the Plug, the Fan Area and the Outfall) from time to time for the purpose of inspecting same, to study the Operations and the Project and to provide demonstrations of the Project and the Operations or for any other reasonable purpose, provided that such entry and occupation does not unreasonably interfere with the Work or the Operations.
- (b) The Operator will use the Access Road and the Jane Basin Road in such manner as will minimize disruption, inconvenience and danger to other users of the Access Road and the Jane Basin Road.

- (c) The licences provided in this Section 28 will automatically terminate as of the Termination Date.
- (d) The Province, acting reasonably, will permit access to lands owned by the Province which are necessary to permit the reasonable enjoyment of the licenses granted pursuant to this Section 28.

28.11 Consideration for Licences

The Licences are granted by the Province to the Operator in consideration of the Operator undertaking the Work, and it is the intention of the Province and the Operator that, with respect to the Project, any depreciation or capital cost allowance which may be claimed for the improvements comprising the Project will be for the account and benefit of the Operator.

28.12 Limited Public Access to the Project

The Operator agrees that the Operator will construct the Project and the Site so as to permit visits by members of the public, such as educators, scientists, school groups, environmental groups and others to view the Project and the Operations or so much thereof as can be reasonably and safely visited by members of the public without undue impairment of the Operations or inconvenience to the Operator or its employees, and in this regard, the Operator will establish and maintain a visitors' centre at the Project for groups which wish to visit the Project for educational purposes or to study the Operations and the Operator will provide personnel from time to time to conduct tours of the Project for such groups. The Operator will permit such members of the public to inspect the Project and view the Operations, or those portions thereof which are available for public viewing, and will provide a knowledgeable employee to provide tours of the Project and the Operations from time to time, and if the Province so requires, up to 3 times per week of the Term, provided that:

- (a) any visitors to the Project or the Site will comply with all applicable health and safety requirements, including the wearing of any requisite safety clothing, eye and ear protection, helmets or footwear and be accompanied by such guides as are appropriate in the circumstances or required by Applicable Law;
- (b) such visits do not impair or violate the terms of the insurance coverage required to be maintained pursuant to the Insurance Conditions, or materially affect the cost of insurance coverage which is required to be maintained by the Operator; and
- (c) the Operator will be permitted to impose such reasonable rules regarding visits and inspections as may be appropriate to avoid disruption of the Operations and to protect such visitors, the Project and the Site as well as the Operator, Subcontractors and their respective officers, directors, employees, agents or servants.

28.13 Limited Access Areas

For the purposes of safety, operational efficiency or other reasons, effective upon Substantial Completion of the Project, either the Operator or the Province, each acting reasonably and in co-operation with the other, may designate portions of the Site, the Project or the Workings which are subject to limited or restricted access, including to the Operator's personnel, without the prior written consent of the Province, which consent may be granted upon such reasonable conditions as are imposed by the Province.

28.14 Naming and Signage

The Operator acknowledges that the Province reserves all rights to designate the name of the Project and any part of the Project and reserves all rights to signage in relation to the Site and the Project. Such signage will be installed and maintained by the Operator as a component of the Work and the Operations. The Province reserves and retains all trademarks, naming or branding rights regarding the Project and every part of the Project and any benefit derived from such rights by the Operator will be pursuant to licence.

28.15 Title Encumbrances

- (a) The Operator will construct the Project and perform the Operations such that:
 - (i) the Operator will fulfil all obligations of all Title Encumbrances as if the Operator were the fee simple owner of the Site and a party to such Title Encumbrances; and
 - (ii) there will be no action, or omission to act, which gives rise to a right for any person to obtain title to or any interest in the Site or any part of it, except in accordance with the terms of this Agreement.
- (b) The Operator will enter into such acknowledgements as may be reasonably required in favour of any person who is a party to or enjoys the benefit of a Title Encumbrance (including any future Title Encumbrance) so as to permit such person to enjoy the benefit thereof unimpeded by the Operator, provided that such Title Encumbrance does not impair the access by the Operator and the Subcontractors to the Site, the Project, the Workings, the Fan Area, the Outfall or Jane Basin Road as required by the Operator to perform the Work and the Operations.

28.16 No Site Encumbrances by the Operator

The Operator will not create, incur or permit any Encumbrance (including a claim for builders lien) to be filed, issued or registered against the Site or any part thereof. In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance which has not been consented to in writing by the Province by reason of any act or omission of the Operator or a Subcontractor or their respective officers, directors, employees, agents or servants, the Operator will immediately take all necessary steps to remove such Encumbrance. If the Encumbrance is a claim for builders lien, it will be dealt with in accordance with Section 17. If the Operator fails to remove any such Encumbrance which is not a claim for builders lien within 15 Days of its

coming into existence, without prejudice to any other rights or remedies the Province may have, the Province will be at liberty to take whatever steps the Province, acting reasonably, deems necessary and appropriate to remove the Encumbrance. The Operator will, on demand, reimburse all costs properly incurred by Province in removing an encumbrance pursuant to this Section 28.16 and, until so paid, such costs will bear interest as provided by Section 37.13.

28.17 Drainage

- (a) Before commencement of any physical construction on the Site, the Operator must develop, to the satisfaction of the Province's Representative, a storm water management and drainage system plan to ensure that surface water from the Site (including roof, parking lot and landscaped portions of the Project) is handled appropriately in accordance with Applicable Law and without negative impact to existing watercourses in the vicinity of the Site. In the event that any storm water is contaminated by Contaminants which are not Operator's Contaminants so as to require treatment in order to comply with the requirements of this Section 28.17, such treatment will be a Variation and the cost and appropriate method of treatment will be determined pursuant to the Variation Procedure and will be for the account of the Province.
- (b) During construction of the Project, the Operator will strictly follow the storm water management and drainage system plan and will keep all portions of the Work properly and successfully drained and ensure that no silt or other substances wash into drains and that any runoff from the Site does not cause damage beyond the Site.
- (c) The permanent facilities to handle storm water from the site will be constructed as an element of Allowance Work.

29. QUALITY CONTROL AND INSPECTION

- (a) Before commencing any physical construction at the Site and concurrently with the preparation of the Design, the Operator will prepare the Construction Quality Control Plan, which will be submitted to the Province's Representative for review and comment prior to the date the Work commences. The Construction Quality Control Plan will embody reporting provisions on the part of the Operator which are consistent with Schedule F – Operational Performance Requirements, as applicable.
- (b) In conjunction with the preparation of the Commissioning Plan, the Operator will prepare the Operating Quality Control Plan for the purpose of establishing a plan to monitor the performance of the Operations in conformity with the Operational Performance Requirements and Standards so that the Project will be properly maintained, which Operating Quality Control Plan will be submitted to the Province's Representative for review and comment prior to the issuance of the Certificate of Completion. The Operating Quality Control Plan will embody reporting provisions on the part of the Operator which are consistent with Schedule F – Operational Performance Requirements and the "Performance Monitoring Program", as required by the Payment Mechanism,

as applicable. Specifically, the Operating Quality Control Plan will set out the parameters and frequency of testing and reporting to the extent not otherwise stipulated in this Agreement and the Schedules hereto.

- (c) The Operator will diligently implement the approved Construction Quality Control Plan throughout performance of the Work and will diligently implement the approved Operating Quality Control Plan throughout performance the Operations.
- (d) The Operator will require that the Operator's Consultant conduct regular site inspections of the Work and the Project during construction to determine substantial compliance with the Operational Performance Requirements, the Design and Specifications, Standards, the Construction Quality Control Plan, and the Operating Quality Control Plan.
- (e) The Operator will ensure that all materials which the Construction Quality Control Plan or the Operating Quality Control Plan require to be tested for compliance with standards established by the Canadian Standards Association or any similar standards agency are tested by an approved testing agency.
- (f) The Operator will maintain complete files with copies of site inspection reports, material testing reports, and Project record documents, as specified by, as applicable, the Construction Quality Control Plan and the Operating Quality Control Plan.
- (g) The Operator will appoint one or more independent consultants as Operator's Consultant, with the appropriate professional education, skill and experience to carry out and report upon all testing and other quality control activities comprised in the Construction Quality Control Plan and the Operating Quality Control Plan. The Operator will require that the Operator's Consultant monitor the implementation of the Construction Quality Control Plan and the Operating Quality Control Plan, including by reporting to the Province's Representative, as and when required thereby.
- (h) The Province and the Province's Representative will have reasonable access to the Project for inspection during Regular Business Hours. Except as otherwise specified in this Agreement, no inspection by the Province or the Province's Representative or their consultants will relieve the Operator from its responsibility for the quality of the Work or the Operations, commissioning of the Project, compliance with the Operational Performance Requirements, the Design and Specifications or this Agreement or for implementation of and compliance with the Construction Quality Control Plan and the Operating Quality Control Plan.
- (i) If the Operator covers or permits to be covered any of the Work or Capital Work before any required Construction Quality Control Plan or Operating Quality Control Plan testing thereon is completed, the Operator will, as required by such plans, uncover the Work or the Capital Work, have the inspections and testing satisfactorily completed, and make good the Work or Capital Work at its own expense.

- (j) The Operator will cause the Operator's Consultant to certify to the Province, under his or her professional seal, that the Construction Quality Control Plan and the Operating Quality Control Plan, as applicable, have been implemented in every material respect in accordance with its terms and in accordance with all Standards applicable thereto.
- (k) Promptly after Total Completion, the Operator will deliver to the Province all test results taken for, and generated by, implementation of the Construction Quality Control Plan.
- (l) Except as otherwise specified in this Agreement, nothing in this Section 29, or any audit or testing performed and no action or inaction by the Province or the Province's Representative will relieve the Operator from its responsibility for the performance of the Work and the Operations or for compliance with the Operational Performance Requirements, the Standards, the Design, this Agreement and, as applicable, the implementation of and compliance with the Construction Quality Control Plan and the Operating Quality Control Plan. For greater clarity, nothing in this Section 29 will be interpreted to make the Province in any way responsible for the quality of the Work or the Operations.

30. DOCUMENTS ON THE SITE

Throughout the Term, the parties will keep one copy of this Agreement and of all Permits, Plans and Specifications, operating manuals and shop drawings, at the Site (including in respect of any expansion or change in relation to the Project), in good order and available to the parties. Ownership of all such documents will reside with the Province. The Operator, at no cost to the Province, will allow the Province access to the Permits, Plans and Specifications, operating manuals and shop drawings and other material relating to the physical attributes of the Project which are retained by the Operator including those retained in electronic form. The Operator will provide to the Province copies of such Permits, Plans and Specifications, operating manuals and shop drawings, in both paper and electronic format. The Province and the Operator will treat all such information in accordance with Section 46.9.

31. TAXES AND DUTIES

- (a) The Periodic Payments and any other amounts payable by the Province to the Operator under this Agreement include any and all taxes and customs duties for which the Operator may be liable in relation to the Work and the Operations and any other obligation for which the Operator is responsible under this Agreement, and the Operator will pay all taxes and duties for which the Operator is liable as and when due.
- (b) The Province certifies to the Operator that the goods and services to be provided under this Agreement are for the use of and are being purchased by the Province from Crown funds and are therefore not subject to GST. Accordingly, the Operator will not charge the Province GST for any goods or services provided pursuant to this Agreement. If the Province at any time becomes subject to GST or any other tax or duty not in existence at the date of this Agreement, the Province agrees that the Operator will be entitled to

charge such to the Province. Upon request, the Operator will provide to the Province the Operator's GST registration number.

- (c) In the event of an unbudgeted increase or decrease in material or equipment costs to the Operator in the performance of the Work due solely to changes in sales taxes, social service taxes, good and services taxes or duties (specifically excluding income taxes, large corporations taxes, capital taxes or other taxes on the income or capital of the Operator) after the date of the Agreement, the costs payable pursuant to the Payment Mechanism will be increased or decreased accordingly to take into account the variation in such tax rates.
- (d) Where the Operator is or becomes aware that an exemption or refund of taxes, customs duties or excise taxes is available to the Operator in respect of payments under this Agreement upon the Operator applying to obtain such exemptions or refunds or co-operating fully with the Province or any other Governmental Authorities in seeking same, the Operator will, provided the costs of making such application do not exceed the expected refund, make such applications and provide such co-operation and any net refund received will be paid to the Province and the benefit of any exemption, less the reasonable costs of the Operator in obtaining such exemption, will be passed on to the Province.
- (e) In the event the Project or the Site are subject to or become subject to property or similar tax under the *Taxation (Rural Area) Act* (British Columbia) or similar or successor legislation or to local improvement charges or other taxes or levies which are chargeable by reason of ownership, use or occupation of the Site, the Province will be solely responsible for such charges, taxes or levies.

32. INTELLECTUAL PROPERTY

- (a) The Operator will obtain such licences as may be required to operate any technology or other intellectual property which is required to perform the Work or the Operations and the Operator will pay all royalties and patent licence fees required for the performance of this Agreement and will hold the Province harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Operator's performance of this Agreement which are attributable to an infringement or an alleged infringement of any patent of invention by the Operator or anyone for whose acts the Operator may be liable.
- (b) The Operator agrees that the Province is hereby granted an unconditional and irrevocable perpetual licence to use, in whole or in part, all Plans and Specifications and other documents and all technology and models furnished or used by the Operator for any purpose related to the Project and the treatment of Contaminated Water from the Mine and the Fan Area. The licence of the Province to use all Plans and Specifications and all technology and models which relate to the Project and the Contaminated Water from the Mine and the Fan Area as aforesaid will not be affected by the termination of this Agreement for any reason. In the event that the use of any of the Plans

or Specifications, or any technology, know how or other intellectual property required to conduct the Operations requires the permission or licence of any person who is not a party to this Agreement, the Operator will obtain such permission or licence at the Operator's sole expense.

33. TRANSFER OF PLANS

33.1 Transfers at Completion

Before issuance of the Certificate of Completion or a reasonable time thereafter and in any event, before issuance of the Total Completion Certificate, the Operator will provide to the Province the following:

- (a) 2 complete sets of Plans and Specifications, in reproducible form, showing the as-built Work;
- (b) in the event that the Plans have been prepared by CAD technology, one set of disks with the as-built Plans on them; and
- (c) 2 complete sets of maintenance manuals for all equipment comprised in the Work;

33.2 Transfers at Termination

Upon termination, the Operator will be deemed to have assigned to the Province all warranties applicable to improvements and equipment comprised in the Work.

34. GENERAL OPERATIONS

34.1 Scope of Operations

- (a) Following the Completion Date, the Operator will perform the Operations throughout the balance of the Term, subject only to such interruptions as may be permitted by this Agreement.
- (b) The Operations will be conducted throughout the Term under the supervision of a person who is appropriately qualified by virtue of experience and any applicable qualifications to perform such supervisory function and who possesses any professional qualifications which may be required by any Applicable Law.

34.2 Commencement of Operations

The Operator will commence the Operations on the Completion Date and thereafter will continue the Operations on a continuous basis throughout the Term.

34.3 Details of Operating Requirements

In performing the Operations, the Operator will:

- (a) give the Province prior notice of any scheduled or anticipated interruption of the Operations of greater than 1 day as soon as is reasonably possible, and restore service as soon as reasonably possible;
- (b) keep the Province apprised of and up-to-date in respect of the relevant circumstances during each interruption or curtailment of the Operations of more than one day and co-ordinate with any work undertaken by the Province or any other person in order to minimize the impact of any necessary interruption or curtailment;
- (c) without limiting Section 34.1(b), employ staff and employees experienced and with the appropriate certification in water treatment systems operations and maintenance to provide for the proper management, operation and routine maintenance of the Project and to operate the Project;
- (d) monitor all pertinent water parameters as established in the Operations Quality Control Plan continuously in real time through on-line systems available over the world wide web (password protected) and maintain a database of historical records available on-line throughout the Term and for delivery to the Province on the Termination Date on such basis and in such electronic format as the Province and the Operator, both acting reasonably, may agree, provided that if continuous, real time monitoring is unavailable and the Operator is using reasonable efforts to reinstate such monitoring, the Operator may conduct monitoring by means of daily sampling or such more rigorous sampling as may be required by Applicable Law;
- (e) conduct ongoing monitoring of the volume and pressure of Contaminated Water at the Point of Responsibility and notify the Province's Representative in writing immediately if it appears that an obstruction or blockage in the Workings is impairing the flow of Contaminated Water in any material respect or if the chemical characteristics of the Contaminated Water no longer fall within the range of criteria contemplated in Schedule C – Specifications of Contaminated Water, whether or not such changes constitute Abnormal Circumstances;
- (f) inspect, maintain, repair, replace (if need be) and monitor the weather stations located in the Jane Basin as required by the Operational Performance Requirements so as to monitor the precipitation falling (both rain and snow) in the Jane Basin and provide ongoing estimates of the volume of such precipitation and snow melt which is entering the Workings;
- (g) maintain and operate the security systems (including any gates, locks and fences) which are installed as part of the Work;
- (h) complete and perform or cause to be completed and performed throughout the Term all Operations, including Ordinary Repair and Replacement provided for in the Operating Quality Control Plan and Financial Plan from time to time in order that the Project meets the Operational Performance Requirements and the Standards and is maintained in such condition that it performs the Operations as required by and as may be reasonably inferred from this Agreement;

- (i) pay all accounts, expenses, wages, salaries, fees and assessments required to be paid by the Operator on any of its undertakings;
- (j) maintain records of repair and maintenance activities as long as may be required by Applicable Law, and in any event, for at least 7 years, and provide access to such records for inspection by the Province during Regular Business Hours;
- (k) maintain complete and accurate accounting records in respect of the variable costs charged to the Province and retain those records for at least 7 years following the date such costs are invoiced; and upon reasonable notice to the Operator, the Province and the Province's consultants will be provided reasonable access to and the opportunity to copy such accounting records during Regular Business Hours and during the period for which the Operator is required to maintain such records;
- (l) keep tidy and neat all existing and future buildings, structures, landscaping and grounds which comprise the Project, and in this regard, the Operator will obtain written approval of the Province before undertaking any modification or maintenance which materially affects the appearance of the buildings, structures, landscaping or grounds comprising the Project;
- (m) if the Operator wishes, display, at its own expense, the Operator's name and logo on any buildings, structures or grounds under its control, provided that the Province, acting reasonably, has first approved the locations, size and frequency of such signage;
- (n) if the Operator wishes, display the Operator's or a Subcontractor's name and logo on motor vehicles used at the Project, provided that no such motor vehicle will bear the logo or anything else which associates such motor vehicles with the Province;
- (o) provide such reports as are required by the Payment Mechanism and this Agreement;
- (p) not enter the Workings without the prior written consent of the Province's Representative, not to be unreasonably withheld, and then subject always to Applicable Law, including the *Mines Act* (British Columbia) and such reasonable restrictions as may be imposed by the Province, including that whenever required by the *Mines Act* (British Columbia), any such access will be under the supervision of the Mine Manager;
- (q) perform periodic inspections of the 4100 Adit and the Plug, no less frequently than once per Month and notify the Province's Representative of any observed problems or concerns identified in such inspections, provided that such inspections will be conducted in accordance with Applicable Law, including the *Mines Act* (British Columbia) and such reasonable restrictions as may be imposed by the Province, including that whenever required by the *Mines Act* (British Columbia), any such access will be under the supervision of the Mine Manager;

- (r) prepare and assist the Province in submitting applications for renewal of the Permits as required from time to time (including attendance at or preparation for any public hearings relating to such Permits or otherwise relating to the Project), and in this regard, the Operator will be responsible to ensure that any conditions to be met for the renewal of the Permits are satisfied, provided that the Province will be responsible for third party costs of such applications, including reasonable costs and fees for the Operator's legal counsel representation at any such public hearing, unless the Province provides and pays for legal counsel to represent the Province's and Operator's joint interest;
- (s) promptly respond to any Emergency without regard for the time of day, including:
 - (i) any disaster,
 - (ii) any hazardous or unsafe condition,
 - (iii) reporting of any apparent blockage, obstruction or failure of any type in the Workings, the Plug, the 4100 Adit or the Outfall which impairs Operations; and
 - (iv) any condition resulting in degradation of the treated Contaminated Water to contamination levels which exceed the limits allowed by Applicable Law or the Operational Performance Requirements;
- (t) report on the Operations as required by Schedule F – Operational Performance Requirements;
- (u) identify available Federal grants of which the Operator is aware and reasonably assist the Province in preparing and submitting any applications under such funding programs (all of which grants will be the property of or for the benefit of the Province);
- (v) establish an emergency response plan to deal with any Emergencies in consultation with the Province's Representative and the Province's consultants;
- (w) respond, through the Province's Representative, to all correspondence or written inquiries from the Province respecting the Project or its management, operation, maintenance and the state of any repairs;
- (x) respond reasonably, directly, promptly, and courteously to members of the public who contact the Operator directly with concerns, complaints and other observations regarding the Project and the Operations;
- (y) maintain adequate supplies of chemicals and reagents, lubricants, routinely required spare parts and repair supplies so that the Operations are not impaired by shortages of chemicals and reagents, lubricants, and routinely required spare parts and repair supplies;

- (z) maintain and repair those portions of the Site which are roadways together with all parking areas within the Site;
- (aa) maintain the Jane Basin Road to the standard necessary to permit access by the Operator to Jane Basin in order to perform such portion of the Operations as must be performed in Jane Basin;
- (bb) maintain, repair, and if necessary, replace, all utility systems from the point of connection with the utility provider;
- (cc) maintain the Project in standby condition so that it is ready to treat Contaminated Water as required by this Agreement whenever the Project is not treating Contaminated Water as required by this Agreement;
- (dd) collect and divert storm water from the Site to the WTP and from the WTP through the Outfall to Howe Sound so that such storm water is conveyed to Howe Sound by the Outfall on an untreated basis or as may be required by Variation pursuant to Section 28.17(a), and in this regard, the Operator will not use the Workings for the collection or storage of storm water;
- (ee) manage the Workings as a reservoir for Contaminated Water which comes from the Workings in such manner as to maximize the volume of Contaminated Water which is treated at the WTP in accordance with the Standards so as to meet the Operational Performance Requirements; and
- (ff) ensure that the Contaminated Water is treated at the WTP, and that any Contaminated Water which by-passes the WTP is treated so as to comply with the pH requirements of the Discharge Permit.

In the event that the Operator is unable to operate the Project in the manner described above, it must promptly notify the Province and where such inability may adversely affect the health of members of the public or violate any of the Permits, the Operator must also forthwith notify, as applicable, the British Columbia Ministry of Water, Land and Air Protection, Fisheries and Oceans Canada, the local health authority and any other Governmental Authority with jurisdiction over public health and safety as to the extent and nature of the failure.

34.4 Supply Agreements

- (a) All agreements for the provision of goods and services by the Operator the cost or fees whereof are variable expenses which are payable by the Province as a component of the Periodic Payments will be negotiated by the Operator in the ordinary course of business, on arm's length terms and in this regard, the Operator will use commercially reasonable efforts to obtain the best terms as to price and otherwise as may be available. The Operator will not enter into any such agreement with any person who is not at arm's length to the Operator unless such agreement and person have been approved by the Province's Representative.
- (b) Each agreement contemplated in Section 34.4(a) will provide that in the event of the termination of this Agreement for any reason, the Province will have

the right, but not the obligation, to assume such agreement without charge, and further, that if the Province assumes such agreement, the Province may assign the agreement to any future operator of the Project on the same terms and conditions as were negotiated by the Operator.

- (c) The Operator will endeavour to negotiate agreements in respect of the purchase of lime, flocculent, energy, the transportation of Sludge and the supply of other goods and services which are necessary for the Operations on the basis of long term commitments which will protect the Operations from dramatic swings in commodity and utility prices and other similar variables, all in accordance with the Operator's best business judgment. No such agreement will be for a term which extends beyond the Term nor will any such agreement contain a "take or pay" provision which requires the purchase or payment for a good or service, whether or not required, unless the Province, in its discretion agrees thereto.

34.5 Sludge

- (a) The following principles in this Section 34.5 relate specifically to the handling of Sludge and are not intended to diminish or qualify the other obligations of the Operator as set out in Section 34 or elsewhere in this Agreement.
- (b) The Operator will cause the Sludge to comply with the requirements of the Operational Performance Requirements and the applicable Permits and will conduct such tests as may be required by any applicable Permits and the Operating Quality Control Plan to establish that the Sludge complies with the Operational Performance Requirements and the applicable Permits.
- (c) The Sludge will be owned, handled, stored and disposed of in the manner set out in this Section 34.5 and any more detailed procedures set out in the Operating Quality Control Plan. The manner in which Sludge is owned, handled, stored and disposed of will not be changed without the prior written consent of the Province, acting reasonably.
- (d) Subject to this Section 34.5, all Sludge is the property of the Province and ownership of the Sludge will remain with the Province if the Operator delivers the Sludge for deposit in the Glory Hole, or in any other licensed waste disposal facility in accordance with the *Environmental Management Act* (British Columbia) or the Applicable Laws of any other jurisdiction where the Sludge may be accepted for disposal or otherwise lawfully transferred to a user who has been approved by the Province and who accepts such Sludge, unless ownership is transferred to such user.
- (e) Subject to Section 34.5(c) and any directions from the Province, the Operator is solely responsible for the generation, storage, handling, transportation, disposal and use of the Sludge and will remain responsible for the Sludge until it is accepted for disposal at the Glory Hole or a waste management facility in accordance with the *Environmental Management Act* (British Columbia) or the Applicable Laws of any other jurisdiction where the Sludge may be accepted for disposal or otherwise lawfully transferred to a user who has been approved by the Province and who accepts such Sludge.

- (f) The Operator will comply with all Applicable Laws and the Operational Performance Requirements with respect to the handling, storage, transportation and disposal of the Sludge unless prevented from doing so by an Abnormal Circumstance.
- (g) The Operator will develop, professionally manage and execute a comprehensive and efficient program for the disposal of the Sludge as part of the Operating Quality Control Plan. Sludge may be stored at the Site on a temporary basis pending disposal of the Sludge as permitted by this Section 34.5 and the Operating Quality Control Plan.
- (h) The Operator will endeavour to find a user of the Sludge rather than dispose of the Sludge as a waste if use of the Sludge is economically feasible and responsible from an environmental point of view and does not violate Applicable Law. If the Sludge is sold by the Operator and transferred to a buyer in accordance with Applicable Law, such sale will be a Variation in respect of which the Operator will make a Variation Proposal and pursuant to which the Operator will be entitled to the proceeds of sale plus the avoided costs of disposal had the Sludge been dealt with as per the Payment Mechanism, but net of the costs of transportation of the Sludge to the buyer and other costs incurred in connection with the sale of the Sludge.
- (i) If the Operator does not identify a user of the Sludge pursuant to Section 34.5(h), the Operator will ensure that the Sludge is disposed of in a lawful and environmentally responsible manner at a lawful landfill site as may be agreed by the Operator and the Province, both acting reasonably.
- (j) The Operator will obtain all necessary Permits and authorisations which are required by Applicable Law for the handling, storage, transportation and disposition of the Sludge. The Province will be named on all such Permits and authorisations.
- (k) Unless the Sludge is accepted for disposal at a waste management facility by the owner of the waste management facility, in accordance with the *Environmental Management Act* (British Columbia) or the Applicable Laws of any other jurisdiction, the Operator will conduct such due diligence and monitoring as may be appropriate in the circumstances to ensure that any person to whom the Sludge is delivered handles the Sludge in an environmentally responsible manner and in accordance with Applicable Law and obtains all Permits required to this end. The Operator will immediately notify the Province's Representative and any applicable Governmental Authority if the Operator learns that any person transporting, storing, handling or using the Sludge is doing so in violation of Applicable Law.
- (l) The Province will accept all Sludge for disposal at the Glory Hole or a waste management facility owned by the Province, provided that the Sludge meets the Operational Performance Requirements unless the Sludge fails to comply with the Operational Performance Requirements as a result of an Abnormal Circumstance.

- (m) The Operator will provide such reports regarding the Sludge as may be required by the Operating Quality Control Plan, including with respect to the quantity and chemical composition of the Sludge, who has hauled same to a landfill site or other proper place of disposition, to whom the Sludge was delivered, and in this regard, the Operator will maintain such weigh scales and testing equipment as may be necessary for these purposes.
- (n) The Operator will take all reasonable precautions to prevent the spilling or other unauthorised disposition of the Sludge, and in this regard, will ensure that all trucks used for hauling the Sludge from the Site are properly maintained in good working order and driven by duly licensed and experienced drivers, and that such precautions as may be necessary, such as the use of tarpaulins, to prevent the Release of Sludge when hauling the Sludge and that appropriate steps are taken to prevent the Release of Sludge when the Sludge is loaded onto or from such trucks. The Operator will promptly notify the Province's Representative and, if required by Applicable Law, any other pertinent Governmental Authority in the event that the Release of Sludge occurs and will immediately take such action as may be required to limit and remediate the consequence of such Release, and the cost of any such action will be for the account of the Operator unless the cause of the Release of Sludge is due to Abnormal Circumstances, in which case such cost will be for the account of the Province.

34.6 Abnormal Circumstances

- (a) The Operator will notify the Province's Representative in writing as soon as reasonably possible after the Operator becomes aware of any Abnormal Circumstances and in such notice or so soon after giving such notice as is reasonably possible, the Operator will provide to the Province's Representative written particulars of the Abnormal Circumstances sufficient to permit the Province to assess the gravity and impact of the Abnormal Circumstances as well as details of the action taken by the Operator to mitigate same and the action proposed by the Operator to mitigate and, to the extent reasonably possible, to prevent the recurrence of such Abnormal Circumstances in the future.
- (b) In the event that the Operator becomes aware that Contaminated Water has issued from the Workings or the Project in a manner which exceeds the Operational Performance Requirements or Applicable Law, including the Permits, or any other event which requires reporting to any Governmental Authority has occurred, whether of an environmental nature or not and whether or not such event is an Abnormal Circumstance, within a reasonable time of becoming aware of such event, the Operator will notify the Province's Representative and will notify all relevant Governmental Authorities within the time period required by Applicable Law.
- (c) In the event that due to Abnormal Circumstances, the volume of Contaminated Water entering the Workings exceeds the capacity of the Project to treat the Contaminated Water so as to achieve the Operational Performance Requirements in accordance with the Standards, the Operator will store the excess Contaminated Water in the Workings until such

Contaminated Water can be treated in accordance with the Standards so as to meet the Operational Performance Requirements. In the event that the ability of the Project to treat Contaminated Water to comply with the Operational Performance Requirements and the Standards and the storage capacity of the Workings is exceeded by reason of Abnormal Circumstances, the Operator will mix excess untreated Contaminated Water with treated Contaminated Water and allow the mixed treated and untreated Contaminated Water to issue from the Outfall, but in so doing, the Operator will use every reasonable effort to minimize the impact of the untreated Contaminated Water on the environment and ensure that the Operations are resumed in compliance with the Operational Performance Requirements as soon as possible, and in any such event, the mixed Contaminated Water and treated water will comply with the pH requirements of the Discharge Permit.

- (d) Whether or not the Operational Performance Requirements or the requirements of Applicable Law have been met, the Operator will notify the Province's Representative and all relevant Governmental Authorities, including the British Columbia Ministry of Water, Land and Air Protection, immediately after the Operator becomes aware of any Abnormal Circumstance or any other event or circumstance which might reasonably be expected to cause untreated or inadequately treated Contaminated Water to issue from the Workings or the Project in non-compliance with the Operational Performance Requirements or Applicable Law and the Operator will make recommendations to and undertake prudent actions in consultation with the Province's Representative to effect changes so as to cause the Operations to henceforth meet Operational Performance Requirements and Applicable Law.
- (e) Notwithstanding any other provision of this Agreement, the Operator will not be liable for any failure of or delay in performance of its obligations or be in breach of this Agreement if and to the extent such failure or delay is caused by Abnormal Circumstances, nor will the Operator be liable for costs and expenses to the extent caused by Abnormal Circumstances, provided that the Operator gives written notice to the Province of such Abnormal Circumstances as required by Section 34.5(a), and in any event, within 14 Days of first becoming aware of same.
- (f) An Abnormal Circumstance will suspend the contractual obligations impaired or affected by such cause to the extent such Abnormal Circumstance adversely impairs the Operations but will not of itself bring this Agreement or any part of it to an end. Notwithstanding a suspension of contractual obligations because of Abnormal Circumstances, the Payment Mechanism will continue to apply, including in respect of payment adjustments and deductions.
- (g) The Operator and the Province will deal with any action required to be taken by an Abnormal Circumstance as a Variation, and in this regard, the provisions of Sections 7.3 and 15 will apply, provided that notice of the Abnormal Circumstance has been provided as required by this Section 34.5.

35. COMMUNICATION PLAN

35.1 Communication Plan

The Operator will implement the Communication Plan during the Work in accordance with the requirements of Schedule I – Communication Plan, and prior to the Completion Date, working with the Province, the Operator will develop the Communication Plan which is to be in effect during the Operations.

36. FINANCIAL PLAN AND CAPITAL WORK DURING OPERATIONS

36.1 Financial Plan

To enable the Operator to operate, manage and maintain the Project and to fulfil its obligations hereunder, the Operator will establish a financial plan (the “Financial Plan”) in relation to the cost of labour and materials and Ordinary Repair and Replacement (including any Capital Expenditures which are required for the Project), which Financial Plan will be subject to the review and comment of the Province. The Financial Plan will set out priorities for Capital Expenditures which are required and the anticipated costs thereof. If a Capital Variation Expenditure has been authorized pursuant to a Variation Confirmation, the Financial Plan will be amended as and when appropriate to incorporate such Capital Variation Expenditure. The Financial Plan will be prepared on the basis that the Project will be available and the Operations performed so as to comply with the Standards and the Operational Performance Requirements.

36.2 Annual Planning Process

- (a) The Financial Plan will have a 5 year horizon but will be reviewed and updated by the Operator at least annually throughout the Term (including throughout the last 5 years of the Term) and in the event of a significant Capital Variation Expenditure, the Province’s Representative may recommend that the Financial Plan be reviewed and amended as appropriate to take into account such Capital Variation Expenditure and the impact thereof on Operations.
- (b) The annual review of the Financial Plan will occur on or before January 1 in each year of the Term and the Operator, as part of the Financial Plan, will submit to the Province a list of any proposed Capital Work which has not been incorporated into a prior Capital Plan, a rationale for why such Capital Work is required and its priority in relation to other items of proposed Capital Work and a projection of the estimated cost thereof. The Operator will advise whether or not such Capital Work is, in the opinion of the Operator, a Variation. The annual Financial Plan will also identify significant Capital Work required in subsequent years and a projection of the cost to be incurred in relation thereto for the following 4 years.
- (c) The Province and the Operator will discuss the Financial Plan as prepared and revised by the Operator after consideration of the Province’s comments. The Province will provide its comments and concerns regarding each Financial Plan as prepared by the Operator promptly, and in any event so as to permit the finalization of the annual Financial Plan by April 1 of each year.

- (d) Notwithstanding any review by or consultation with the Province of any Financial Plan proposed by the Operator, the Operator is solely responsible for ensuring that the Project is available and the Operations are performed throughout the Term in conformity with the Operational Performance Requirements and the Standards, and without limiting the generality of the foregoing, the Operator will not be entitled to any compensation or financial recovery save as provided in a Variation Confirmation (save for work incurred in response to an Emergency), regardless of any proposals contained in a Financial Plan.

36.3 Capital Work Implementation

- (a) The Operator will be responsible for the Capital Work identified in the Financial Plan for each year. In addition the Operator will be responsible for the management of any Capital Work arising as a result of Abnormal Circumstances, including Emergencies.
- (b) The Operator is required to commence, complete and be responsible for implementation of Capital Work as part of an approved Financial Plan or a Variation Confirmation. The responsibilities of the Operator will include establishing the scope of such Capital Work, engaging engineers and other consultants and monitoring and giving direction to such engineers and consultants, preparing Contract Documents, calling and reviewing of tenders (where required), letting the contracts in the Operator's name, supervising Subcontractors, approving progress and final payments under the contracts, rectifying deficiencies and completing warranty work.

36.4 Capital Work Contracts for Variations

Except as otherwise provided in this Section 36.4, contracts for Capital Work which is a Variation will be let by a competitive procurement process to Subcontractors who are at arm's length to the Operator and who are qualified to undertake the Capital Work in question. In each instance the contract for any such Capital Work will be awarded on a best value basis as determined by the Operator in consultation with the Province. It is acknowledged that in certain circumstances it will be necessary or desirable that the Operator complete Capital Work which is a Variation utilizing the Contractor's own forces without seeking tenders for such work. Accordingly, the Operator may directly perform Capital Work which is a Variation without complying with a tender process if:

- (a) the cost of such Capital Work is less than \$100,000.00, Index Linked;
- (b) the cost of such Capital Work exceeds \$100,000.00, Index Linked and the performance of such Capital Work by the Operator's own forces has been approved in writing by the Province prior to the commencement in the pertinent Variation Confirmation;
- (c) the Capital Work is in response to an Emergency and such Capital Work is required to be completed immediately in order for the Project to comply with Applicable Law or continue to meet the Operational Performance Requirements.

37. PAYMENT

37.1 Periodic Payments

- (a) Subject to and in accordance with this Agreement, including this Section 37 and Schedule E – Payment Mechanism, the Province will pay the Operator for the Work and for the performance of the Operations by means of all-inclusive Periodic Payments, calculated in accordance with the Payment Mechanism.
- (b) Periodic Payments will be paid monthly in arrears, 30 Days after receipt of invoice therefor from the Operator, as hereinafter provided.
- (c) The Province's obligation to pay each Periodic Payment in its entirety will be subject to performance by the Operator of its obligations under this Agreement and any payment adjustments will be as provided for in this Agreement, including Section 37.2 and the Payment Mechanism.

37.2 Cash Allowances

- (a) It is acknowledged that for the purpose of calculating the Periodic Payments in Schedule E – Payment Mechanism, the stated cost of the Allowance Work is the aggregate of the Cash Allowances. A "Cash Allowance" is an amount estimated by the Province which is based on an estimate of the cost of each item of the Allowance Work as set out in Section 1.1(g), which estimate is based on assumptions which may not be correct, as the scope of various items of Allowance Work has not been ascertained as of the date of this Agreement.
- (b) The Cash Allowances for the individual items of Allowance Work as identified in Section 1.1(g) are as follows:
 - (i) upgrading of the 4100 Adit and related workings: \$1,000,000;
 - (ii) Fan Facilities: \$150,000;
 - (iii) storm water pumping: \$150,000;
 - (iv) marine section of the Outfall: \$500,000;
 - (v) landscaping: \$100,000;
 - (vi) Glory Hole disposal permit: \$30,000;
 - (vii) electrical upgrade: \$75,000
 - (viii) architectural enhancement of WTP: not more than \$560,000.
- (c) Before commencing any Allowance Work, the Operator will prepare a budget therefor based on the elements set out in Section 15.2(b) and an allowance for overhead and profit. Provided that the cost of the Allowance Work is in substantial conformity with such budget, the Operator will construct the

Allowance Work in accordance with instructions provided by the Province's Representative. To the extent that the actual cost of the Allowance Work is different from the amount estimated in Section 37.2(b), the Periodic Payment will be adjusted by the amount of the difference pursuant to a Variation Confirmation.

37.3 Payment Adjustments

- (a) The Operator acknowledges that the Province has entered into this Agreement on the basis that the payments to the Operator will be adjusted or subject to holdback and set off in the event that the Operator fails to perform the Work or the Operations as is provided in this Agreement and the Payment Mechanism. The Operator agrees that the Payment Mechanism and this Agreement provide a reasonable basis for such adjustments, and that no such adjustments, holdbacks or set offs would be penal in nature or constitute a forfeiture, provided that the same are calculated and administered in accordance with this Agreement. The Operator agrees that the Operator is and will be estopped from alleging, and will not allege, that any such adjustments, holdbacks or set offs are unenforceable for any reason, provided that the same are calculated and administered in accordance with this Agreement. The Operator confirms to the Province that the Operator has taken into account such possible adjustments, holdbacks and set offs in the Operator's pricing of the Operator's compensation hereunder.
- (b) If for any reason any of the adjustments, holdbacks or set offs under the Payment Mechanism or this Agreement, if calculated and administered as provided in this Agreement, are determined to be invalid and unenforceable and the Province enacts an Applicable Law that is a change in law to recover or to cause such adjustments, holdbacks or set offs to be enforceable, such change in law will be deemed not to be discriminatory and the Operator will not be entitled to any compensation hereunder for such change in law.
- (c) The cost of Ordinary Repair and Replacement in respect of elements of the Project which were constructed or installed as Allowance Work will be established on or before the Completion Date by agreement of the Province and the Operator, each acting reasonably. Such costs will be confirmed by way of Variation Confirmation which does not affect the Term of the Agreement, and the Periodic Payments will be adjusted accordingly.

37.4 Payment Commencement

- (a) Subject to and in accordance with this Agreement, the Province will pay to the Operator the Periodic Payments calculated as being due to the Operator in respect of each Month, with the first Periodic Payment being due on the 30th Day following the issuance of an invoice for a completed Month of Operations following the Completion Date, in accordance with the Payment Mechanism, subject to any payment adjustments made pursuant to this Agreement.

- (b) The Operator will not be entitled to any Periodic Payments for any period prior to the Completion Date or the Scheduled Completion Date.
- (c) The Province will make such other payments as may be required pursuant to this Agreement.

37.5 Adjustments to Payment Periods

If a Periodic Payment relates to any period which is less than a Month, then such Periodic Payment will be subject to a proportionate adjustment to reduce the Periodic Payment applicable to such adjusted Month. If the Completion Date does not fall on the first Day of a Month, the prorated portion of the Periodic Payment payable for such Month will be paid with the instalment of the Periodic Payment due for the next following Month.

37.6 Invoicing and Payment Arrangements

- (a) On a day which is no later than the last Day of each Month, the Operator will issue to the Province an invoice for the amount of the Periodic Payment owing by the Province to the Operator for the preceding Month, as estimated by the Operator on the basis set out in the Payment Mechanism and the best information then available to the Operator. The first such invoice will be submitted to the Province by the last Day of the first complete Month following the Completion Date and if the Completion Date did not occur on the first Day of a Month, the first invoice will therefore pertain to both a full and a partial Month.
- (b) All invoices for Periodic Payments after the first invoice will be accompanied by a Payment Adjustment Report.
- (c) The Operator will comply with all requirements of the Payment Mechanism in respect of invoices and will include with each invoice such supporting documentation as the Province may reasonably require or may be stipulated in the Payment Mechanism.
- (d) Each invoice will be in the form and include all information set out in Schedule E – Payment Mechanism and will include at a minimum, as applicable:
 - (i) the Periodic Payment payable in respect of the preceding Month;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Month that have been approved by the Province;
 - (iii) any other adjustments to reflect over-payments and under-payments, as agreed between the Parties or determined pursuant to the Dispute Resolution Procedure;
 - (iv) any amount owing to the Province under this Agreement;
 - (v) any amount owing to the Operator under this Agreement;

- (vi) the net amount owing by the Province to the Operator, or by the Operator to the Province, as applicable; and
 - (vii) any other amounts to which the Operator or the Province, each acting reasonably, may agree.
- (e) Upon agreement of the Province and the Operator, the form of invoice may be changed from time to time.
- (f) With each invoice for Periodic Payments after the first such invoice, the Operator will submit to the Province a report (a "Payment Adjustment Report") detailing any failures to comply with the Operating Quality Control Plan and setting out any adjustments required between the actual Periodic Payment determined by the Operator to be owing by the Province to the Operator in respect of the Month prior to the Month just ended, as determined in accordance with the Payment Mechanism and the amount that was paid by the Province for such Month. The Operator will include with each Payment Adjustment Report such supporting documentation as the Province may reasonably require to substantiate and confirm to the satisfaction of the Province the adjustments set out in each Payment Adjustment Report.
- (g) The Province will not be obligated to make any payment in respect of any amount claimed by the Operator in the Operator's invoice for a Periodic Payment or pursuant to a Payment Adjustment Report for which documentation or other information as required by this Agreement has not been provided, provided that the Province will only withhold so much of any payment claimed as is not properly documented. In the event that the Operator fails to deliver with an invoice the applicable Payment Adjustment Report, the Province's obligation to pay the pertinent invoice issued by the Operator will be extended by the number of Days by which the Operator is late in delivering the Payment Adjustment Report to the Province.
- (h) The Province's Representative will review the Payment Adjustment Report and within 10 Business Days of receipt by the Province, will:
- (i) determine and advise the Operator that the Payment Adjustment Report is approved by the Province for adjustment of such amounts, in which case the Periodic Payment will be made by the Province in accordance with the amount invoiced by the Operator, and reflecting adjustments set out in the pertinent Payment Adjustment Report; or
 - (ii) if the Province disputes the Operator's entitlement to any part of the amounts set out by the Operator under the Payment Adjustment Report, the Province will notify the Operator in writing of that part of the amount (insofar as at the time of such notice the Province is reasonably able to quantify it) which the Province disputes and submit to the Operator such supporting evidence as the Province may have. In such event,
 - A. only undisputed adjustments will be paid to the Operator as a result of such Payment Adjustment Report; and

- B. the Province will withhold payment of any disputed amount pending agreement or determination of the Operator's entitlement in relation to the disputed amount in accordance with Section 37.10.

37.7 Appropriations

Notwithstanding any other provision of this Agreement, the payment of funds by the Province to the Operator pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (British Columbia), (the "FAA"), to enable the Province, in any fiscal year or part thereof when any payment of money by the Province to the Operator falls due pursuant to this Agreement, to make that payment; and
- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in 37.7(a).

37.8 Electronic Invoicing

The Operator will co-operate with the Province's ministry, or the ministry of any other Governmental Authority of the Province of British Columbia, if so directed by the Province, and will submit the Operator's invoice and all other documentation relating to this Agreement in a form and with structure and content compatible with the Province's information systems, or any of the Governmental Authorities' information systems if so designated by the Province, whether by fax, e-mail or other medium of delivery. For clarity, the Operator will only be required to deliver its invoices and back up documentation to the department of one Governmental Authority.

37.9 Final Payment Periods

At the beginning of each of the final 3 Months during the Term, the Province will estimate, acting reasonably, the adjustments to the Periodic Payment for each such Month. The Province may withhold the amounts that it has reasonably estimated for such adjustments from amounts payable to the Operator during each of the final 3 Months.

Following subsequent receipt by the Province of the applicable Payment Adjustment Report for each of the final 3 Months, the Province's Representative will review such Payment Adjustment Report and within 15 Business Days of receipt by the Province will:

- (a) determine and advise the Operator that the Payment Adjustment Report is approved by the Province, and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount the Province previously paid in respect of the applicable Month, and based on such reconciliation, either the Province or the Operator will pay to the other the amount properly owing in accordance with the amounts set out under the Payment Adjustment Report and such reconciliation; or

- (b) if the Province disputes the Operator's entitlement to any part of the amounts set out by the Operator under the Payment Adjustment Report, notify the Operator in writing of that part of the amount (insofar as at the time of such notice the Province is reasonably able to quantify it) which the Province disputes and submit to the Operator such supporting evidence as the Province may have. In such event, the Province's Representative will perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount the Province previously paid in respect of the applicable Month, and based on such reconciliation either the Province or the Operator will pay to the other the amount properly owing in accordance with the amounts set out under the Payment Adjustment Report, provided that the Province or the Operator may withhold payment of any disputed amount pending agreement or determination of the Province's or the Operator's entitlement in relation to the disputed amount in accordance with Section 37.10.

The Province will make payments of amounts owing pursuant to Payment Adjustment Reports on the date that the next Periodic Payment is due to the Operator or 30 Days following the Termination Date, as applicable, provided that payment of any amount disputed will be paid within of 30 Days of the date the amount in dispute has been resolved.

37.10 Disputes

If either the Province or the Operator, acting in good faith, disputes all or any part of the Periodic Payments payable hereunder, or the determination of the Province's Representative pursuant to Sections 37.6(h) or 37.9(b), such party will provide a notice to the other party disclosing the amount in dispute and a reasonable explanation of the grounds for dispute. The undisputed amount of the Periodic Payment will be paid by the Province. If the Province and the Operator fail to resolve their dispute by the date upon which a Periodic Payment is due, the dispute will be resolved pursuant to the Dispute Resolution Procedure. Following resolution of such dispute, any additional amount agreed or determined to have been payable will be paid forthwith by the Province to the Operator, or vice versa, together with interest on such amount calculated in accordance with Section 37.13.

37.11 Manner of Payment to the Operator

- (a) All payments to the Operator under this Agreement will be made in Canadian dollars and will be electronically transferred, quoting the invoice number against which payment is made, in immediately available funds on the due date to the following single bank account (or to such other single account located in Canada as may be designated by the Operator from time to time by notice in writing to the Province):

Royal Bank of Canada
Main Branch, Edmonton
Bank #003
Transit #03749
Account #104-599-6
Beneficiary: EPCOR

- (b) If the due date is not a banking day in British Columbia, the electronic transfer will be made on the immediately following banking day, without interest on the amount paid from the date otherwise payable to such banking day.

37.12 Payments by the Operator

- (a) The Operator will pay, when due and payable, for all materials, construction equipment, labour and all other things and services used in connection with or for the Project and the Work and the Operations, including all Taxes, assessments and other costs and all amounts properly owing to Subcontractors performing portions of the Work and the Operations. The Operator will require all of its Subcontractors to pay, when due and payable, all persons contracting with the Subcontractors.
- (b) So far as possible, if an amount is owed by the Operator to the Province, such amount will be set off by the Province against other amounts owing by the Province to Operator. In the event that a set off has been claimed by the Province and the parties thereafter agree, or it is determined pursuant to the Dispute Resolution Procedure, that the set off should not have been claimed, the amount set off will be paid to the Operator with interest calculated in accordance with Section 37.13, from the date of set off
- (c) If it appears that the Province will not owe to the Operator sufficient funds to completely set off the amount owed by the Operator to the Province within 2 months, the Operator will pay to the Province the amount due from the Operator to the Province.
- (d) Any payments to the Province under this Agreement will be made in Canadian dollars and will be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to the following single bank account (or to such other single account located in Canada as may be designated by the Province from time to time by notice in writing to the Operator):

Canadian Imperial Bank of Commerce
Douglas and View Branch
1175 Douglas Street
Victoria BC V8W 2E1

Account: #09-67009
Location ID: 48015
- (e) If the due date is not a banking day in the jurisdiction in which the Operator's bank is located, the electronic transfer will be made on the immediately following banking day, without interest on the amount paid from the date otherwise payable to such banking day.

37.13 Interest on Overdue Payments

Each of the Province and the Operator will be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made by the other party

pursuant to the terms of this Agreement from and including the day such payment was due until and excluding the date of payment, at a rate per annum equal to 2% per annum above the prime rate of the Royal Bank of Canada as quoted by it from time to time, compounded monthly.

37.14 Set-Off

In addition to all legal and equitable rights of set-off available to the parties at law or in equity, the Province and the Operator agree that:

- (a) the Province may set-off against any amounts otherwise due to the Operator under this Agreement, any amounts which are due to the Province by the Operator under this Agreement; and
- (b) the Operator may set-off against any amounts otherwise due to the Province under this Agreement, any amounts which are due to the Operator by the Province under this Agreement.

37.15 Effect of Payment

No payment hereunder, nor any taking over or use by the Province of any part of the Project under the terms of this Agreement, nor any acceptance or approval of the Work or the Operations, including the issuance of a Certificate of Completion, Total Completion Certificate or other certificate, will be construed as an acceptance or approval of the Project if incomplete or defective or an acceptance or approval of incomplete, defective or improper Operations or an acceptance or approval of any other matter provided or to be provided by the Operator which is not in conformity with all requirements of this Agreement, nor will the same operate to relieve the Operator from any of its obligations hereunder which have not been performed or which have been improperly performed.

37.16 Audit of Operating Quality Control Plan and Payment

- (a) Without limiting the Province's rights and the Operator's obligations pursuant to Schedule F – Operational Performance Requirements, at any time and from time to time until 180 Days after the Termination Date, the Province may give notice to the Operator requiring an audit of the Construction Quality Control Plan and the Operating Quality Control Plan, any costs incurred or amounts owing in respect of Variations, any Payment Adjustment Reports, and any other records, reports, information, documents or data required to verify their accuracy, correctness and completeness.
- (b) The Operator acknowledges that it is the intention of the Province to conduct an audit of the Operating Quality Control Plan and the Payment Adjustment Reports within 90 Days of the first anniversary of the Completion Date and thereafter within 90 Days of the second, third, fourth and fifth anniversaries of each of the Completion Date. Whether the Province continues to conduct annual audits after the first 5 years of the Term is within the discretion of the Province.

- (c) The Province will appoint a qualified individual or firm to carry out and complete such audits at the Province's cost and expense and pursuant to terms of reference determined by the Province.
- (d) The Operator will, within a reasonable time, make available the Operating Quality Control Plan, any Payment Adjustment Reports, and any other records, reports, information, documents or data reasonably required to the Province's auditor and will otherwise co-operate fully with the Province's auditor.
- (e) The Province will notify the Operator of the results of the audit, and if the Province's auditor discovers any material inaccuracy, incorrectness or incompleteness the Operator will:
 - (i) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Construction Quality Control Plan, Operating Quality Control Plan, Payment Adjustment Reports, and any other relevant records, reports, information, documents or data;
 - (ii) promptly take steps to correct any reports issued pursuant to the Construction Quality Control Plan or the Operating Quality Control Plan to ensure their ongoing accuracy, completeness and correctness;
 - (iii) reimburse the Province for all costs relating to the auditor and audit in relation to the material inaccuracy, incorrectness or incompleteness;
 - (iv) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment by the Province, including of a Periodic Payment or any other payment to the Operator, the amount of such overpayment will be incorporated into the next Payment Adjustment Report(s) and the next Periodic Payment(s) will be reduced accordingly until the amount so overpaid has been reimbursed to the Province, together with interest thereon at the rate set out in Section 37.13 from the date of such overpayment; and
 - (v) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by the Province, including of a Periodic Payment or any other payment to the Operator, the Province will pay to the Operator the amount of such underpayment, together with interest thereon at the rate set out in Section 37.13 from the date of such underpayment.

38. DISPUTE RESOLUTION PROCEDURE

- (a) Prior to the commencement of the Work, the parties will agree upon an independent person with experience in design and construction matters, to be appointed by the parties as the "Referee" under this Agreement to assist with resolution of disputes as provided in this Section 38.

- (b) If there is any dispute between the parties arising out of the Work, including the interpretation, of any provision of this Agreement, or a performance obligation of a party, or an alleged breach of this Agreement, either party may give written notice of the dispute to the other party and the Operator's Representative and the Province's Representative will meet within 2 Business Days after the notice of dispute is given and will attempt in good faith and using reasonable efforts, to resolve the matter. Work or Operations will, as reasonably possible, continue in the event of any dispute and the parties at all times will use reasonable efforts to avoid, or minimize any delay to the Implementation Schedule.
- (c) If the Operator's Representative and the Province's Representative cannot resolve the dispute within 2 Business Days of their meeting, the dispute will be referred to the Referee. The parties will provide the Referee with access to all information and records which the Referee may decide he or she requires to investigate the dispute. Within 7 Days of the referral, or such longer time as the parties may agree, the Referee will provide a written report setting out the Referee's opinion as to the resolution of the dispute.
- (d) If either party disputes the Referee's determination, the disputing party will give written notice to the other party within 10 Days of receipt of the Referee's report, setting out fully the reasons for disagreeing with the Referee, in which event either party may, if the dispute is solely between the parties to this Agreement or if the disputing party obtains the consent of the other party and any necessary third parties to participate, refer the dispute for binding arbitration by a single arbitrator appointed and acting under the *Commercial Arbitration Act* (British Columbia). The arbitration will take place in Vancouver, British Columbia and will be governed by the rules of the British Columbia International Arbitration Centre, except that the Arbitrator will be agreed upon by the parties, and failing agreement by the parties, will be appointed by a Court of competent jurisdiction within the Province of British Columbia.
- (e) The Operator will ensure that Lockerbie Stanley Inc. consents to resolution of any dispute which involves Lockerbie Stanley Inc. pursuant to the Dispute Resolution Procedure, including arbitration, if necessary.
- (f) The costs of the Referee will be shared equally. If a dispute is referred to arbitration, the Arbitrator will determine the responsibility to pay the arbitration costs.
- (g) If a dispute is not subject to arbitration pursuant to Section 38(d), then either party may commence proceedings.

39. TERMINATION AND DEFAULT

39.1 Causes for Immediate Termination

The Province may, upon delivery of written notice of termination from the Province's Representative to the Operator, terminate this Agreement upon the occurrence of any of the following events (an "Operator's Event of Default"):

- (a) either the Operator or EPCOR does not pay its debts to a material degree generally as they become due, or admits its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or commits any act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or equivalent or analogous Applicable Law of any jurisdiction in which it is incorporated or resident), or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of the Operator or EPCOR or any of the property, assets or undertaking of the Operator or EPCOR, or any creditor of the Operator or EPCOR takes control, or takes steps to take control, of the Operator, EPCOR or any of the Operator's or EPCOR's assets, or any proceedings are instituted by or against the Operator or EPCOR seeking to adjudicate either of them a bankrupt or declare either of them insolvent or seeking administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of either of them or with respect to either of them or their respective debts or obligations, whether by voluntary or involuntary process or scheme or otherwise, under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for the Operator or EPCOR or with respect to any of their respective assets, or any resolutions are passed or other corporate actions of the Operator or EPCOR are taken to authorize any of the actions set forth in this Section 39.1;
- (b) the Operator or EPCOR ceases or demonstrates an intention to cease performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or would reasonably be expected to have a material adverse effect on the Operator's ability to fulfil its obligations under this Agreement;
- (c) if any execution, sequestration, extent or other process of any court becomes enforceable against the Operator or EPCOR or if a distress or analogous process is levied against the property of the Operator or EPCOR or any part thereof if such process, in the Province's opinion, exercised reasonably, indicates that the ability of the Operator to perform its obligations under this Agreement are materially impaired or in jeopardy;
- (d) the Operator fails to achieve the Completion Date within a period of 180 Days of the Scheduled Completion Date (the "Longstop Date");
- (e) the Operator fails to achieve Total Completion by July 1, 2007;
- (f) if a Major Event occurs more than 12 times during any 12 Month period or occurs or continues during 3 consecutive Months, unless such failure is because of Abnormal Circumstances;

- (g) the Operator makes any representation or warranty herein or in any report or disclosure made by the Operator to the Province with respect to the Work or the Operations that is false or misleading in any material respect;
- (h) the Operator commits a breach of its obligations under this Agreement which has a material and adverse effect on the Operations, other than where such breach is a consequence of a breach by the Province of its obligations under this Agreement;
- (i) the Operator or a Subcontractor abandons the Work, or evidences the intention to so abandon, other than as a consequence of a breach by the Province of the Province's obligations under this Agreement (and for the purposes of this Section 39.1(i) the Work will be deemed to be abandoned on the expiry of a period of 30 Days during which no material work has been done in connection with the Work or the Project unless the Operator is entitled to a Variation Confirmation in respect of such stoppage;
- (j) the Operator fails to comply with Section 43.1;
- (k) the Operator fails to pay when due any sum or sums due to the Province under this Agreement which sums are not being disputed by the Operator under the Dispute Resolution Procedure which, either singly or in aggregate, exceed(s) \$50,000 (Index Linked) and such failure continues for 30 Days from receipt by the Operator of a notice of non-payment from the Province;
- (l) the Operator fails to comply with Section 45;
- (m) the Operator fails to comply with any determination, order or award made against the Operator pursuant to the Dispute Resolution Procedure, subject to any legal right the Operator may have to appeal a determination, order or appeal made pursuant to the Dispute Resolution Procedure; or
- (n) in the event of a material breach of this Agreement (other than as a consequence of a breach by the Province of the Province's obligations under this Agreement) which results in a criminal conviction or a conviction under the *Workers Compensation Act* (British Columbia) or the *Environmental Management Act* (British Columbia) against the Operator or a Core Team Subcontractor or its or their officers or directors or the Province in relation to the Project, provided however that:
 - (i) such conviction of a Core Team Subcontractor will not constitute a default if, within 30 Days of the conviction (whether or not the conviction is subject to an appeal or any further judicial process), the involvement of such Core Team Subcontractor is terminated and a replacement is appointed by the Operator as permitted by this Agreement; and
 - (ii) in determining whether to exercise any right of termination pursuant to this Section 39.1(n), the Province will act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading

to the conviction and in this regard, the Province will give all due consideration, where appropriate, to action other than termination of this Agreement.

39.2 Notice of Default

- (a) Upon the occurrence of an Operator's Event of Default the Province's Representative may deliver to the Operator written notice of default, giving the Operator 10 Business Days to remedy such default, provided that if the Operator's Event of Default is of the nature set out in Section 39.1(a), or was the result of a deliberate misrepresentation or fraudulently prepared report or disclosure by the Operator or an officer, director or employee of the Operator pursuant to Section 39.1(g), the Province may immediately terminate this Agreement in its notice of default.
- (b) If an Operator's Event of Default can be remedied by the Operator, acting reasonably, within the 10 Business Days of the Operator having notice thereof and is not remedied within such period, the Province will have the right to terminate this Agreement immediately by notice in writing.
- (c) If it lies within the power of the Operator to remedy an Operator's Event of Default, but such Operator's Event of Default cannot reasonably be remedied within 10 Business Days of notice, the Operator will be considered to be in compliance with this Agreement if the Operator:
 - (i) commences to diligently remedy the Operator's Event of Default within 10 Business Days of notice;
 - (ii) provides the Province with a schedule for remedy of the Operator's Event of Default acceptable to the Province's Representative acting reasonably; and
 - (iii) completes the remedy in accordance with such schedule.
- (d) During correction of any Operator's Event of Default, the Operator will continue with the Work or the Operations, as applicable, to the extent that the Operator is able to do so, unless the Province directs, in writing, that the Work or the Operations, as applicable, be stopped. In the circumstances of this Section 39.2 the Province has complete discretion to direct that the Work or the Operations be stopped. In directing that the Work or the Operations be stopped, the Province may consider any factor it considers relevant, including whether the safety or integrity of the Project is at risk, whether the Operator has failed to comply with health and safety or environmental requirements, or whether the Operator has failed to adhere to the Standards.
- (e) If the Operator fails to remedy an Operator's Event of Default within the 10 Business Day notice period or within the approved schedule for remedying the same, at the Province's election and without prejudice to any other right or remedy available to the Province, the Province may upon written notice from the Province's Representative:

- (i) terminate this Agreement; or
- (ii) assume all or any part of the Work or the Operations, as applicable.

39.3 Consequences of Compliance

If after receiving a notice of default from the Province's Representative the Operator corrects the Operator's Event of Default, the Province may not terminate the Agreement by reason of the pertinent Operator's Event of Default, but the Operator will pay the Province for the Province's reasonable and substantiated costs of enforcing this Agreement, including the costs of the Province's staff, overhead costs and costs if any of consultants and contractors retained by the Province (including legal costs, on a full indemnity basis), and for any other costs incurred as a result of the Operator's Event of Default suffered by the Province. In such event the Province will deliver to the Operator a substantiated record of all such costs claimed, and the Province will be entitled to set off the total of such costs from any payment the Province owes to the Operator, and if such total costs incurred by the Province exceed the amount of payments owing by the Province to the Operator, such shortfall will be immediately due and owing by the Operator to the Province.

39.4 Assumption As a Result of Default

- (a) If the Province assumes all or a portion of the Work or the Operations by reason of an Operator's Event of Default:
 - (i) the Province will be entitled to assume such portion of the Work or the Operations as the Province may decide, including engaging Other Contractors to perform such Work or Operations; and
 - (ii) the Periodic Payments will be adjusted on a just and equitable basis to reflect the cost to the Province of the Work or the Operations taken over by the Province and the Periodic Payments will remain so adjusted until such Work or Operations are conferred again upon the Operator, and without prejudice to any other right or remedy available to the Province, the Province will be entitled to set off from any payments owing by the Province to the Operator an amount equal to all costs, losses and damages suffered by the Province by reason of the default of the Operator and by reason of non-performance of the Work or the Operations by the Operator, including the costs of the Province's staff, overhead costs and costs if any of consultants and contractors retained by the Province (including legal costs on a full indemnity basis), and if such total costs incurred by the Province exceed the amount of payments owing by the Province to the Operator, then such shortfall will be immediately due and owing by the Operator to the Province. In the event of a dispute as to the appropriate adjustment to the Periodic Payments to be made in respect of the assumption of a portion of the Work or the Operations by the Province, such dispute will be resolved pursuant to the Dispute Resolution Procedure.

- (b) The assumption of all or any part of the Operations by the Province does not relieve or discharge the Operator from any obligations under the Agreement or imposed upon the Operator by any Applicable Law, except that with respect to such portions of the Work or the Operations which the Province assumes, as between the Province, the Operator and EPCOR, the Province will thereafter be solely responsible for all obligations and liabilities associated with such portions of the Work or the Operations.

39.5 Termination of Agreement for Default

- (a) If the Province terminates the Agreement pursuant to the terms of this Agreement because of an Operator's Event of Default, the Province may, acting in its sole and unfettered discretion:
 - (i) take possession of the Site, material and Project, and utilize the Operator's construction machinery and equipment at the Site (subject to the rights of third parties), and complete the Work or perform the Operations by whatever method the Province may deem expedient, at the Operator's expense; and
 - (ii) set off from any payments owing by the Province to the Operator an amount equal to all costs, losses and damages suffered by the Province by reason of the default of the Operator, including the costs of the Province's staff, overhead costs and costs if any of consultants and contractors retained by the Province (including legal costs on a full indemnity basis) the costs of calculating the costs, losses and damages suffered by the Province, the cost of tendering the Operations or any part thereof to another operator on commercially reasonable terms (if the Province elects to retender same) and the cost of putting the Project in the condition in which it is required to be in accordance with this Agreement at the time of termination and, if such total costs incurred by the Province exceed the amount of payments owing by the Province to the Operator, such shortfall will be immediately due and owing by the Operator to the Province.

39.6 Right to Complete

If for any reason the Province terminates this Agreement pursuant to the Province's rights as provided by this Agreement before completion of the Work, without prejudice to any other remedy available to the Province, the Operator will forthwith deliver to the Province all Plans, Specifications and other details as reasonably required for the completion of the Work and the Operator will exercise any and all of its rights to obtain documents from third parties, including the Operator's Consultant. The Province will have the right to use such documents for the purposes of completing the Work and for the purposes of using, maintaining, repairing and operating the Project. The Operator will remain responsible for all Work which has been undertaken by the Operator. The Operator will not be responsible for Work undertaken by the Province or Other Contractors, save to the extent that such Work fails or is damaged because of deficient Work undertaken by or on behalf of the Operator.

39.7 Province May Suspend Without Default by Operator

Whether or not an Operator's Event of Default has occurred, the Province's Representative may suspend performance of the Work or the Operations if, in the opinion of the Province's Representative, acting reasonably, a suspension of the Work or the Operations is:

- (a) necessary to ensure the safety or life of others, or preserve the Project or neighbouring property;
- (b) required by an order of any court or public authority having jurisdiction; or
- (c) in the judgement of the Province's Representative, required to protect the interests of the Province due to the occurrence of an Emergency or other Abnormal Circumstance.

39.8 Termination for Convenience

The Province may terminate this Agreement at any time after the Completion Date without reasons upon 30 Days' prior written notice, whether or not the Operator is in default and whether or not any of the events or circumstances contemplated by Section 39.7 has occurred.

39.9 Notice of Suspension or Termination

Any notice of suspension or termination from the Province to the Operator will be in writing. The consequence of a notice of termination is set out in Section 40.

39.10 Operator's Response to Notice of Suspension

- (a) The Operator, upon receiving written notice of suspension from the Province in accordance with Section 39.9, will immediately suspend such Work or Operations as the notice of suspension states are to be suspended, except those which, in the Operator's reasonable opinion and as agreed to by the Province, acting reasonably, are necessary for the safety of personnel or for the care and preservation of the Project and associated materials and plant or neighbouring property.
- (b) Subject to any directions in the notice of suspension, in respect of the suspended Work or Operations, the Operator will discontinue ordering materials, will not enter into any further subcontracts (except such subcontracts as are necessary for the safety of personnel or for the care and preservation of the Project and associated materials and plant, as agreed to by the Province).
- (c) During any period of suspension, the Operator will not remove from the Site any component of the Project or any material associated with the Project which is associated with the suspended Work or Operations, without the prior written consent of the Province's Representative.

39.11 Consequences of Suspension

- (a) If the period of a suspension is 90 Days or less, upon the expiration of the period of suspension by written notice from the Province's Representative, the Operator will resume the performance of the suspended Work or the Operations, as the case may be, and the Operator will be paid for all reasonable and substantiated costs reasonably incurred by the Operator in complying with the notice of suspension and the Scheduled Completion Date and Implementation Schedule will be extended by the period of suspension, if the suspension relates to the Work as a whole, or as may be appropriate in the case that the suspension relates to only a portion of the Work. In such case the Scheduled Completion Date will be extended, but not the Term.
- (b) If the period of a suspension is more than 90 Days and relates to a material portion of the Work or the Operations:
 - (i) the Operator may, at its election, terminate this Agreement by written notice to the Province's Representative, or
 - (ii) the Province and the Operator may agree to continue with and complete the Work or continue with the Operations, as applicable, in which case the Operator will resume the Work or Operations, as the case may be, in accordance with any terms and conditions agreed upon by the Province and the Operator, and failing agreement, the disagreement will be resolved pursuant to the Dispute Resolution Procedure.
- (c) If the period of suspension continues more than 120 Days without the Province and the Operator having agreed on the terms and conditions under which the Operator will continue with and complete the Work or continue with the Operations, as the case may be, or such longer period as may be reasonably required for the Province and the Operator to settle such terms and conditions, this Agreement will be deemed to be terminated.
- (d) The provisions of this Section 39.11 do not apply if the suspension or termination is due to an Operator's Event of Default.

39.12 Continuing Obligations

The Operator's obligations as to quality, correction, indemnification and warranty of any portion of the Work or the Operations which is performed by or on behalf of the Operator will continue in force after the suspension or termination under this Section 39, save in respect of matters which arise after the effective date upon which the affected Work or Operations are taken over by the Province.

40. TERM AND TERMINATION

40.1 Term

This Agreement will be binding upon the parties from the date that this Agreement is executed and delivered by the parties and the Province has obtained necessary

Treasury Board approval for its obligations hereunder. Notwithstanding that this Agreement is binding upon the parties and imposes obligations on the parties as provided in this Agreement prior to the Commencement Date, the Term of this Agreement is for a period of 20 years commencing on the Completion Date, unless terminated earlier in accordance with this Agreement.

40.2 Termination

Notwithstanding any provision of this Agreement, upon written notice of termination or on expiry of the Term, this Section 40 will apply and this Agreement will only terminate in accordance with this Section 40.

40.3 Continued Effect – No Waiver

Notwithstanding any breach of this Agreement by either the Province or the Operator, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement without prejudice to any other rights which it may have in relation to such breach. The failure of either the Province or the Operator to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, will not be deemed to be a waiver of such right for any continuing or subsequent breach.

40.4 Continuing Performance

Subject to any exercise by the Province of its rights to perform, or to seek, pursuant to this Agreement, a third party to perform, the obligations of the Operator, the Province and the Operator will continue to perform their respective obligations under this Agreement (including, if applicable, pursuant to Schedule K – Termination Procedure and Compensation, notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective in accordance with this Section 40.

40.5 Title/Transfer to the Province of Assets

- (a) On a written notice of termination, or termination of this Agreement on the expiry of the Term:
 - (i) if termination is prior to the Completion Date, insofar as any transfer is necessary to fully and effectively transfer such property to the Province as has not already been transferred to the Province, the Operator will transfer to, and there will vest in, the Province, free from all Encumbrances, such part of the Work as has been constructed and such items of the plant and equipment as have been procured by the Operator for the Project, together with, if the Province so elects, all plant, equipment and materials on or near to the Site, all of which will remain available to the Province for the purposes of completing the Work subject to payment of the Operator's reasonable charges therefor;
 - (ii) insofar as title has not already passed to the Province pursuant to Section 40.5(a)(i), the Operator will hand over to, and there will vest

in, the Province, free from all Encumbrances, the Project together with all other assets and rights capable of being transferred, necessary for the performance of the Work and the Operations and all facilities and equipment, including the plant, equipment and all inventory on hand for the performance of the Operations, and to the extent that any such assets or rights are not capable of being transferred by the Operator to the Province, the Operator will enter into agreements or make other arrangements in order to permit the use of the assets or rights by the Province in order to enable the Province, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by the Operator if this Agreement had not been terminated;

- (iii) in the case of the termination of this Agreement on the expiry of the Term, the Project and all other assets, facilities, plant and equipment will be in the condition required in accordance with Schedule K – Termination Procedure and Compensation;
- (iv) if the Province so elects, the Operator will ensure that any of the material subcontracts with any of the Subcontractors will be novated with or assigned to the Province or its nominee;
- (v) the Operator will, or will ensure that any Subcontractor will, offer to sell (and if the Province so elects, execute such sale) to the Province at replacement cost, with any disputes as to such replacement cost being determined pursuant to the Dispute Resolution Procedure, free from any Encumbrance, all or any part of the stocks of inventory and other material and other assets, road vehicles, spare parts and other moveable property owned by the Operator or any Subcontractor and reasonably required by the Province in connection with the operation of the Project or the performance of the Operations;
- (vi) the Operator will deliver to the Province (as applicable and so far as have not already delivered to the Province) one complete set of:
 - A. the most recent “as built drawings” in the format that the Province, acting reasonably, considers most appropriate at the time showing all alterations made to the Project since the Completion Date;
 - B. the most recent maintenance, operation and training manuals for the Project; and
 - C. electronic versions of the foregoing;
- (vii) the Operator will use all reasonable efforts to assign, or otherwise transfer, to the Province, free of encumbrances, the benefit of all unexpired warranties of Subcontractors or manufacturers, including all documentation in respect thereof, in respect of all elements of the Project and all plant and equipment used or made available by the

Operator under this Agreement and included in or required for the Project;

- (viii) the Operator will deliver to the Province all information, reports, documents, records and the like referred to in Sections 34.3(j) and 34.3(k), except where such are required by Applicable Law to be retained by the Operator or the Subcontractors (in which case complete copies will be delivered to the Province); and
- (ix) such other documentation as may be in the possession or control of the Operator and relevant to the Project which the Province, acting reasonably, may request.

40.6 Ownership of Information

All information obtained by the Operator, including technical drawings and data, supplier agreements and contracts, chemicals, reagents and utilities consumption information, environmental and technical reports, static building information, lease and licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals pertinent to the Work or the Operations will be the property of the Province and upon termination of this Agreement will be provided to the Province in electronic format acceptable to the Province acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

40.7 Provision in Subcontracts

The Operator will ensure that provision is made in all subcontracts of any description whatsoever to ensure that the Province will be in a position to exercise its rights, and the Operator will be in a position to perform its obligations, under this Section 40.

40.8 Transitional Arrangements

- (a) On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, the Operator will:
 - (i) co-operate fully with the Province and any successors providing to the Province services in the nature of any of the Work or the Operations or any part of the Work or the Operations in order to achieve a smooth transfer of such services and to avoid or mitigate insofar as reasonably practicable any impairment or interruption of the Work or the Operations or damage to the environment or inconvenience or any risk to the health and safety of the users of the Project including Governmental Authorities, employees and visitors to the Project and members of the public;
 - (ii) as soon as practicable, remove from the Site all property belonging to the Operator or any Subcontractor that is not acquired by the Province pursuant to Section 40.5 or otherwise, and if the Operator has not done so within 30 Days after any notice from the Province requiring it to do so, the Province may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and

will hold any proceeds, less all costs incurred, to the credit of the Operator;

- (iii) forthwith deliver to the Province's Representative:
 - A. all keys and any passcards and other devices used to gain access to any part of the Project; and
 - B. without prejudice to the Province's rights pursuant to Section 32, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Project, but excluding computer programs which have been developed or acquired by the Operator or a Subcontractor for its own use and not primarily for the purposes of performance of the Work or the Operations at the Project; and
 - C. as soon as practicable vacate the Site and, without limiting the Operator's obligations under Schedule K – Termination Procedure and Compensation, leave the Site and the Project in a safe, clean and orderly condition, free from any stored Sludge or other by-products of the Operations;
- (b) If the Province wishes to conduct a competition prior to the expiry of the Term with a view to entering into an agreement with any person for the provision of services, which may or may not be the same as, or similar to, the Operations or any of them, following the expiry of this Agreement, the Operator will co-operate with the Province fully in such competition process, including by:
 - (i) providing any information which the Province may reasonably require to conduct such competition, except such information as is of a commercially sensitive nature; and
 - (ii) assisting the Province by allowing any or all participants in such competition process reasonable access to the Site and the Project.
- (c) For the purpose of Section 40.8(b)(i), "commercially sensitive information" will mean information which would, if disclosed to a competitor of the Operator, give that competitor a competitive advantage over the Operator and thereby prejudice the business of the Operator.

40.9 Survival

- (a) Except as otherwise provided in this Agreement, termination of this Agreement will be without prejudice to, and will not affect:
 - (i) any representations, warranties and indemnities of the Operator to the Province under this Agreement; and
 - (ii) any provisions of this Agreement, including the Schedules, which are expressed to survive termination or which are required to give effect

to such provisions which survive termination or to such termination or the consequences of such termination,

all of which will survive the termination of this Agreement, including because of termination on the Termination Date pursuant to Section 40.1.

41. TERMINATION PROCEDURE AND COMPENSATION

41.1 Termination Procedure and Compensation

Upon termination of this Agreement Schedule K – Termination Procedure and Compensation will apply and the Province will make all required payments to the Operator.

41.2 Rights of Set-Off

The Province's obligations to make any payment of compensation to the Operator pursuant to this Section 41, including pursuant to Schedule K – Termination Procedure and Compensation are subject to the Province's right of set-off under this Agreement.

41.3 Full and Final Settlement

- (a) Except as may otherwise be provided in Schedule K – Termination Procedure and Compensation:
 - (i) any compensation paid pursuant to this Section 41, including pursuant to Schedule K – Termination Procedure and Compensation, will be in full and final settlement of any claims, demands and proceedings of the Operator in relation to any termination of this Agreement and the circumstances leading to such termination;
 - (ii) in consideration for any compensation paid pursuant to this Section 41, including pursuant to Schedule K – Termination Procedure and Compensation, the receipt and sufficiency of which is acknowledged by the Operator, if this Agreement is terminated, the Operator for itself and on behalf of its successors and assigns will release, remise and forever discharge the Province, all Governmental Authorities, including Partnerships British Columbia and its and their officers, directors, agents, employees, contractors, administrators, successors and assigns from any and all actions, causes of action, debts, suits, claims, costs and demands arising out of this Agreement prior to or as of the effective date of termination; and
 - (iii) the compensation payable, if any, pursuant to this Section 41, including pursuant to Schedule K – Termination Procedure and Compensation, will be the sole remedy of the Operator and the Operator will not have any other right or remedy in respect of such termination.

Nothing in this Section 41.3 will prevent the Operator from contesting pursuant to the Dispute Resolution Procedure whether the Province has exercised a right of Termination

of this Agreement as permitted hereby or whether the compensation paid by the Province in respect of such Termination was calculated in accordance with Schedule K – Termination Procedure and Compensation.

42. EXPIRY TRANSITION PROCEDURE

42.1 Expiry Transition

The Operator will comply with the requirements of Schedule K – Termination Procedure and Compensation.

43. ASSIGNMENT OF AGREEMENT

43.1 No Assignment without Province's Consent

The Operator will not assign this Agreement or any portion of it or allow the obligations of the Operator under this Agreement to be performed by any other person without the prior written consent of the Province, which consent may be withheld in the Province's sole discretion. In the event that the Province consents to an assignment of this Agreement, such consent may be given upon such terms and conditions as the Province may stipulate. Notwithstanding the foregoing, the Operator may assign this Agreement to an Affiliate of EPCOR without consent, provided that such assignee enters into an agreement with the Province in form and content satisfactory to the Province, acting reasonably, assuming all obligations of the Operator under the Agreement. Unless expressly agreed by the Province, no assignment, whether with or without the consent of the Province, will release the Operator from its obligations under this Agreement.

43.2 Change of Control

Any transaction pursuant to which the Operator ceases to be directly or indirectly, a wholly owned subsidiary of EPCOR or an Affiliate of EPCOR will be deemed to be an assignment of this Agreement which requires the Province's consent.

43.3 Assignment by the Province

The Province may assign this Agreement as it sees fit and without consent of the Operator, however no such assignment will release the Province from its obligations under this Agreement, including without limitation, the obligation to make payments to the Operator, including Periodic Payments, as required by this Agreement.

44. INDEMNITIES

44.1 Operator Indemnities to the Province

- (a) The Operator will indemnify, defend and save harmless the Province and Partnerships British Columbia and each of their respective directors, officers, employees, agents, representatives, consultants, contractors, subcontractors or servants of any tier (collectively, the "Province Indemnified Parties") from and against any and all Claims as a result of, in respect of, or arising out of any one or more of the following:

- (i) any physical loss of or damage to all or any part of the Site, the Project, the Workings, the Fan Area, the Access Road or the Jane Basin Road or to any plant, equipment, assets or other property used by or on behalf of the Province, any Governmental Authority or any Other Contractor, arising, directly or indirectly, out of, or in consequence of, any act or omission of the Operator or any Subcontractor, except to the extent that such physical loss or damage was caused, or contributed to, by Contaminants which are not Operator's Contaminants, the breach of this Agreement by, or any deliberate act or omission of the Province, such Governmental Authority or such Other Contractor or any of the Province Indemnified Parties;
- (ii) any Release of Contaminated Water from any part of the Project which is not permitted by this Agreement, save by reason of and to the extent caused by Abnormal Circumstances;
- (iii) any breach of Applicable Law (including without limitation any breach of laws pertaining to the environment, including the Permits) by the Operator, any Subcontractor or its or their respective directors, officers, employees, contractors or agents, save by reason of and to the extent caused by Abnormal Circumstances;
- (iv) any breach of a representation or warranty of the Operator herein;
- (v) any breach or non-compliance with the provisions of this Agreement by the Operator;
- (vi) the death or personal injury of any person;
- (vii) any physical loss of or damage to property or assets of any third party; and
- (viii) any other loss or damage of any third party,

arising, directly or indirectly, out of, or in consequence of, any breach of this Agreement or any act or omission of the Operator or any Subcontractor or its or their respective directors, officers, employees, contractors or agents, except to the extent caused, or contributed to by Contaminants which are not Operator's Contaminants or the breach of this Agreement by, or any deliberate act or omission of the Province Indemnified Parties.

- (b) This Section 44.1 may be relied upon by the Province Indemnified Parties and may be enforced directly by any of them against the Operator in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Operator.

44.2 Province Indemnities to the Operator

- (a) The Province will indemnify, defend and save harmless the Operator and each of its Affiliates, shareholders, directors, officers, employees, agents,

representatives successors and assigns (the "Operator Indemnified Parties") from and against any and all Claims as a result of, in respect of, or arising out of directly or indirectly any one or more of the following:

- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, any act or omission of the Province or any person over which the Province has jurisdiction in respect of any breach of this Agreement by the Province or such person, or any deliberate act or omission of the Province or such person, except to the extent that such death or personal injury was caused, or contributed to, by Operator's Contaminants or the breach of this Agreement by, or by any act or omission of any of the Operator Indemnified Parties;
 - (ii) any physical loss of or damage to all or any part of any of the Operator's property or assets, arising, directly or indirectly, out of, or in consequence of, breach of this Agreement by the Province or any person over which the Province has jurisdiction, or any deliberate act or omission of the Province or any person over which the Province has jurisdiction, except to the extent that such physical loss or damage was caused, or contributed to, by Operator's Contaminants or the breach of this Agreement by, or by any act or omission of any of the Operator Indemnified Parties;
 - (iii) any physical loss of or damage to property or assets of any third party arising, directly or indirectly, out of, or in consequence of, a breach of this Agreement by the Province or any person over which the Province has jurisdiction, or any deliberate act or omission of the Province or any person over which the Province has jurisdiction, except to the extent that such physical loss or damage was caused, or contributed to, by Operator Contaminants or the breach of this Agreement by, or by any act or omission of any of the Operator Indemnified Parties;
 - (iv) any Contaminants which are not Operator's Contaminants and which are on or in the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road, the 4100 Adit or other lands which are adjacent thereto or which are Released by the Province or any person over which the Province has jurisdiction; and
 - (v) any breach or non-compliance with the provisions of this Agreement by the Province.
- (b) This Section 44.2 may be relied upon by each of the Operator Indemnified Parties and may be enforced directly by each of them against the Province in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Province.
- (c) The Province hereby assumes and will be responsible for any Claims, which the Operator has, may have or will have arising from or in any way related directly or indirectly to:

- (i) the environmental condition of, or any environmental matters or issues related to or involving, the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit, including with respect to or in connection with the presence of any Contaminants including any Contaminants Released to, at or from the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit and any contamination of adjacent properties or waters resulting from or related to such Contaminants, except for claims under Section 44.1 with respect to Operator's Contaminants. The Province will not directly or indirectly commence, assert or pursue or threaten to commence, assert or pursue any type of claim (including an order issued by a Governmental Authority), against any of the Operator Indemnified Parties relating to the environmental condition of or any environmental matter or issue related to or involving the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit including any Contaminants on, in or under the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit or Released to, at or from the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit or contamination of adjacent properties or waters resulting from or related to such Contaminants (other than claims pursuant to Section 44.1 with respect to Operator's Contaminants) including: (i) facilitating, assisting, promoting or encouraging any other person to commence, assert or pursue or threaten to commence, assert or pursue a Claim; (ii) threaten, allege or claim that the Operator Indemnified Parties or any of them are responsible for the environmental condition of or any environmental matter or issue related to or involving the Mine, the Site, the Fan Area, the Outfall, Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit or any such Contaminants or contamination, or (iii) directly or indirectly (including encouraging any person including any Governmental Authority) take any step or do anything that could directly or indirectly circumvent the objective or intent of the foregoing release; and

- (ii) any Claim made in respect of Sludge or any leachate from or component of Sludge which is deposited in the Glory Hole, or in any other licensed waste disposal site owned and operated by the Province, provided that such Sludge conforms (unless prevented by reason of an Abnormal Circumstance) to the Operational Performance Requirements.

44.3 LIMITATIONS ON INDEMNITIES

The indemnities provided in this Section 44 will not:

- (a) extend to any Claim to the extent that there is insurance in place to respond to such Claim; or

- (b) result in any party being entitled to receive indemnification for a Claim which is compensated pursuant to the Payment Mechanism.

44.4 Notice of Indemnified Claims

Any Province Indemnified Party or Operator Indemnified Party making a claim for indemnity pursuant to this Section 44 (a “Beneficiary”) who receives a Claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 44, the Beneficiary will give notice in writing to the Province or the Operator, as applicable (the “Indemnifier”) as soon as reasonably practicable and in any event within 30 Days of receipt of the same. Such notice will specify with reasonable particularity, to the extent that information is available, the factual basis for the Claim and the amount of the Claim. The failure of the Beneficiary to notify the Indemnifier of a Claim will not relieve the Indemnifier of any liability that it may have to the Beneficiary, save to the extent the Indemnifier demonstrates that the Indemnifier was prejudiced by the Beneficiary’s failure to give notice.

44.5 Conduct of Third Party Claims

- (a) This Section 44.5 applies to the conduct of Claims by third parties against Beneficiaries.
- (b) Subject to Sections 44.5(d) 44.5(e) and 44.5(f) on the giving of notice by the Beneficiary as required by Section 44.3, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the Claim, the Indemnifier will (subject to providing the Beneficiary with a secured indemnity to the satisfaction of the Beneficiary, acting reasonably, against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary, at the Indemnifier’s own expense, and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. Where representation of the Indemnifier and Beneficiary would be inappropriate due to any actual or potential conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary will have the right to employ separate counsel in respect of such Claim and the reasonable fees and expenses of such counsel will be for the account of the Indemnifier.
- (c) With respect to any Claim conducted by the Indemnifier:
 - (i) the Indemnifier will keep the Beneficiary fully informed and consult with the Beneficiary about material elements of the conduct of the Claim;
 - (ii) the Indemnifier will not bring the name or reputation of the Beneficiary into disrepute;

- (iii) the Indemnifier will not pay, compromise or settle such Claim without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier will not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier will use all reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the Claim to which this Section 44.5 relates.
- (d) The Beneficiary will be free to pay or settle any such Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (i) the Indemnifier is not entitled to take conduct of the Claim in accordance with Section 44.5(b);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within 30 Days of the notice from the Beneficiary under Section 44.5(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the Claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 44.5(c).
- (e) The Beneficiary will be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any Claim, or of any incidental negotiations, to which Section 44.5(d) applies. The Operator acknowledges and agrees that where the Province is the Beneficiary, the Province may retain or take over such conduct in any matter involving compliance with environmental standards and Applicable Law or any matter involving public policy. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such Claim to the Beneficiary and will provide to the Beneficiary all relevant documentation and all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. If the Beneficiary gives any notice pursuant to this Section 44.5(e), the Indemnifier will be released from any liabilities arising after the date of such notice from any liability under its secured indemnity given under Section 44.5(b), but the Indemnifier will not be thereby released from its obligations to indemnify the Beneficiary pursuant to Sections 44.1 or 44.2, as the case may be.
- (f) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief, set off or other benefit or otherwise, a sum or anything else of value (the "Recovery Amount") which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the

indemnity, the Beneficiary will forthwith repay to the Indemnifier whichever is the lesser of:

- (i) an amount equal to the Recovery Amount, less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

provided that there will be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier will be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary.

- (g) Any person taking any of the steps contemplated by this Section 44.5 will comply with the requirements of every insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.
- (h) To the extent that an Indemnifier has fulfilled its indemnity obligations pursuant to this Section 44, such Indemnifier will be subrogated to all rights and claims of the Beneficiary who the Indemnifier has indemnified, and will be entitled to exercise all remedies available to such Indemnifier.

44.6 Private Agreement

The parties acknowledge and confirm that the provisions of this Section 44 and of Section 34.5 are a private agreement respecting liability for Contaminants on, in, at, under or Released to, from or at the Mine, the Site, the Fan Area, the Outfall; Jane Basin, the Access Road, the Jane Basin Road or the 4100 Adit and any contamination of adjacent properties and waters or other areas resulting from such Contaminants.

44.7 Mitigation – Indemnity Claims

For greater certainty, notwithstanding that any Beneficiary may have a claim for indemnity pursuant to this Agreement, such claim for indemnity will not lessen any obligation such Beneficiary may have to take reasonable steps to mitigate the circumstances which gives rise to the claim for indemnity.

44.8 Survival

The provisions of this Section 44 will survive the expiry or Termination of this Agreement.

45. PROHIBITED ACTS

45.1 Definition

- (a) The term “Prohibited Act” means:

- (i) offering, giving or agreeing to give to the Province or any Governmental Authority or to any person employed by or on behalf of the Province or any Governmental Authority, or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - A. for doing or not doing, or for having done or not having done, any act in relation to obtaining the right to perform this Agreement; or
 - B. for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Province or any Governmental Authority;
- (ii) entering into this Agreement or any other agreement with the Province or any Governmental Authority in connection with the Work or the Project for which a commission or a fee has been paid or has been agreed to be paid by the Operator or on its behalf, or to its knowledge, unless before the relevant agreement is entered into, particulars of any such commission or fee and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Province;
- (iii) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any Governmental Authority in connection with the Work or the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Province or any other Governmental Authority in relation to this Agreement or any other agreement with the Province or any other Governmental Authority in connection with the Work or the Project.

45.2 Warranty

The Operator represents and warrants that neither the Operator, nor to the best of the knowledge and belief of the Operator, any of the Subcontractors, nor anyone employed by or acting on behalf of them, has directly or indirectly committed any Prohibited Act in relation to the award of or entry into this Agreement.

45.3 Remedies

- (a) If the Operator or any Subcontractor, or anyone employed by or acting on behalf of any of them, has committed, or after the date of this Agreement commits, any Prohibited Act, the Province will be entitled to act in accordance with the following:
 - (i) if a Prohibited Act is committed by the Operator or by an employee not acting independently of the Operator, the Province may terminate this Agreement with immediate effect by giving written notice to the Operator and Section 39.5 will apply;

- (ii) if the Prohibited Act is committed by an employee of the Operator acting independently of the Operator, the Province may give written notice to the Operator of termination and this Agreement will terminate and Section 39.5 will apply, unless within 5 Days of receipt of such notice the Operator terminates the employee's employment and the relevant part of the Work or Operations is performed by another person;
 - (iii) if the Prohibited Act is committed by a Subcontractor or by an employee of that Subcontractor not acting independently of that Subcontractor, the Province may give written notice to the Operator of termination and this Agreement will terminate and Section 39.5 will apply, unless within 5 Days of receipt of such notice the Operator causes the termination of the relevant Subcontract and the relevant part of the Work or Operations is thereafter performed by another person who is permitted to perform such work by this Agreement; and
 - (iv) if the Prohibited Act is committed by an employee of a Subcontractor acting independently of that Subcontractor, the Province may give notice to the Operator of termination and this Agreement will terminate and Section 39.5 will apply, unless within 5 Days of receipt of such notice the pertinent Subcontractor causes the termination of such employee's employment and the relevant part of the Work or Operations is thereafter performed by another person.
- (b) Any notice of termination under this Section 45.3 will specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom the Province believes has committed the Prohibited Act; and
 - (iii) the date on which this Agreement will terminate in accordance with the applicable provisions of this Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 45.3, the Province will be entitled to recover from the Operator:
- (i) the amount or value of any gift, consideration, commission or fee; and
 - (ii) any other loss sustained in consequence of any breach of this Section 45.

45.4 Permitted payments

Nothing contained in this Section 45 will prevent the Operator, the Subcontractor or any Operator's Consultant or any one employed by any of them from paying any proper commission or bonus to its employees within the agreed terms of their employment, and such commission or bonus will not constitute a Prohibited Act.

45.5 Notification

The Operator will notify the Province of the occurrence and details of any Prohibited Act promptly upon the Operator becoming aware of its occurrence.

46. GENERAL PROVISIONS

46.1 Notice

Except in the case of an Emergency, when notice may be given by telephone with later confirmation in writing, any notice which may be or is required to be given under this Agreement will be in writing and either be delivered by hand or sent by facsimile transmission, addressed as follows:

(a) To the Province or the Province's Representative:

Attention: Mr. Brian D. Clarke
Director, Contaminated Sites Management
Ministry of Sustainable Resource Management
PO Box 9361, Stn. Prov. Govt.
Victoria BC V8W 9M2
Fax: (250) 356-7830

(b) To the Operator or the Operator's Representative:

Attention: Mr. David Rector
12260 Vickers Way
Richmond BC V6V 1H9
Fax: (604) 270-3851

or to such other address or facsimile number of which notice has been given as provided in this section. Any notice which is delivered by hand will be deemed to have been given on the first Business Day after it is dispatched for delivery. Any notice which is sent by fax transmission will be deemed to have been given on the first Business Day after it is sent, provided that the sender obtains an electronic confirmation of receipt. If a party changes its address or facsimile number, or both, it will promptly give notice of its new address or facsimile number, or both, to the other party as provided in this Section 46.1.

46.2 Waiver

An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of that breach. An express written waiver of a particular breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

46.3 Failure to Enforce

If either party permits any non-compliance by the other of any obligation, that will not operate as a waiver of such obligation in respect of any continuing or subsequent non-observance.

46.4 Severability

If any term of this Agreement is determined to be unenforceable, that term will be severed from this Agreement and the rest of this Agreement will remain in force unaffected by the severance of such term.

46.5 Entire Agreement

This Agreement is the entire agreement between the parties regarding its subject-matter and it supersedes the Province's request for proposal in relation to the Project and the Operator's Proposal and all other negotiations and communications between the parties. There are no representations, warranties or understandings between the Province and the Operator in relation to the Project, the Site or this Agreement which are not expressly set out in this Agreement (including its Schedules).

46.6 Modification

This Agreement may not be modified except by written agreement of the Parties.

46.7 Law of the Agreement

The law of British Columbia will govern the interpretation of this Agreement and the parties irrevocably submit to the jurisdiction of the courts of British Columbia in any matter which is not required to be resolved pursuant to the Dispute Resolution Procedure. Notwithstanding such submission to jurisdiction, the Province may seek to enforce this Agreement in any jurisdiction where the Operator carries on business or has assets.

46.8 Rights and Remedies

The duties and obligations imposed by this Agreement and the rights and remedies available under this Agreement will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

46.9 Confidentiality

Except as required by the *Freedom of Information and Protection of Privacy Act* (British Columbia), the Province and the Operator will keep confidential all matters respecting technical, commercial and legal issues relating to or arising out of the performance of this Agreement and will not, without the prior written consent of the other, disclose any such matters, except to their respective professional advisors and then only if such professional advisors have agreed to keep such matters in strict confidence or except to the extent that such disclosure is required by Applicable Law, in which case the receiving party will give to the other party prompt prior written notice of the requirement so that the other party may seek a protective order or other appropriate remedy restricting or limiting the disclosure and/or waive compliance with this Section 46.9.

46.10 Binding Effect

The Agreement binds the parties and their respective successors and assigns and enures to the benefit of the parties and their respective successors and permitted assigns.

46.11 Counterparts and Facsimile Delivery

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument, provided that an executed counterpart of this Agreement is delivered by each of the parties to the other. A counterpart of this Agreement may be delivered by facsimile transmission, provided that promptly following such transmission, the party which has transmitted the facsimile delivers to the other party or its counsel an originally executed counterpart which, in the case of the Operator, will bear the corporate seal of the Operator.

46.12 Further Assurances

The parties will do everything reasonably necessary to give effect to the intent of this Agreement, including the execution of further instruments.

THE BALANCE OF THIS PAGE IS BLANK

The parties have caused this Agreement to be executed and delivered, in the case of the Operator, under its common seal, by their authorized signatories as of the date set out above:

EXECUTED AND DELIVERED by HER
MAJESTY THE QUEEN AS
REPRESENTED BY THE MINISTER OF
SUSTAINABLE RESOURCE
MANAGEMENT

Authorized Signatory

Full Name

EXECUTED AND DELIVERED by EPCOR
BRITANNIA WATER INC. acting by

Authorized Signatory

Full Name

Authorized Signatory

Full Name

SCHEDULE A – IMPLEMENTATION SCHEDULE

[◆Schedule A – Implementation Schedule will set out a schedule for the performance of the Work as outlined in Schedule B – Work, and will reflect the successful Operator’s Proposal. It will contemplate a Completion Date in the Fall of 2005]

SCHEDULE B – WORK

[◆Schedule B – Work will contain an outline of the work required to construct the Project and will contain elements of the Performance Specifications, as set out in the RFP, and will be drafted in light of the successful Operator’s Proposal.]

SCHEDULE C – SPECIFICATIONS OF CONTAMINATED WATER

SCHEDULE D – INSURANCE CONDITIONS

Please refer to separate document for Schedule D.

SCHEDULE E – PAYMENT MECHANISM

[◆The Payment Mechanism will be as set out in the Request for Proposals, subject to any modifications required in light of the successful Operator’s Proposal.]

SCHEDULE F – OPERATIONAL PERFORMANCE REQUIREMENTS

[◆The Operational Performance Requirements will be developed from the Performance Specifications as set out in the RFP. For the most part, the Operational Performance Requirements will be quantifiable and will include the requirements set out in the Discharge Permit for the Project from the Ministry of Water, Land and Air Protection. While the details of the Operational Performance Requirements will depend to a significant degree on the terms of the successful Operator’s Proposal, the technical requirements specified in applicable Permits, including notably, the Discharge Permit, will not be negotiable.]

SCHEDULE G – PERMITS

[◆This Schedule will set out details of the Permits as of the date of the Project Agreement and will be based on the Permit requirements as set out in the RFP. It is possible that on the Commencement Date, some of the Permits may be of a temporary or interim nature.]

SCHEDULE H – DRAWINGS

[◆The Site is currently expected to be located in proximity to the 4100 Adit, and will be a parcel which is sufficiently large for the WTP, and all related parking areas, storage tanks, if any, site for temporary storage of sludge and landscaping. The Sketches will show the Site, the location of the Fan Area and the locations of the Access Road, Jane Basin Road etc.]

SCHEDULE I – COMMUNICATION PLAN

[◆This Schedule will set out the Communications Plan to be developed by the Operator in conformity with the requirements of the RFP.]

SCHEDULE J – ORDINARY REPAIR AND REPLACEMENT

DELETED. This will be developed as an element of the Operating Quality Control Plan

SCHEDULE K – TERMINATION PROCEDURE AND COMPENSATION

[◆This Schedule is being prepared as a separate document]

SCHEDULE L – LIST OF REFERENCE DOCUMENTS

[◆This will be an exhaustive list of the documents made available by the Province to the Proponents, whether in the electronic data room for the Project or otherwise.]